

SLAVERY AND KANT'S DOCTRINE OF RIGHT

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In the 1780s through the end of 1790s, Kant made various references to slavery (in its different forms) and the transatlantic slave trade in the context of his political philosophy or philosophy of right. He thereby had opportunities at least to articulate a normative critique of the race-based chattel slavery or Atlantic slavery and the associated slave trade qua (legalized) institutions. But he did neither. This normative silence about the institutions of Atlantic slavery and the slave trade points to certain limitations of Kant's political philosophy, limitations that might have made it theoretically difficult for him to figure out exactly what to do about those institutions as entrenched political realities.

1. Introduction

Here is an observation: in the 1780s through the end of 1790s, Kant made various references to slavery (in its different forms) and the transatlantic slave trade in the context of his *political* philosophy or philosophy of *right*; he thereby had opportunities to speak in favor of abolitionism, which was gaining momentum in parts of Europe, or at least to articulate a normative critique of the race-based

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chattel slavery or Atlantic slavery and the associated slave trade qua institutions;¹ but he did neither, as we shall see in section 2. Why?

In raising and seeking an answer to this question, I am not interested in what Kant's normative silence about the institutions of Atlantic slavery and the slave trade may tell us about him as a person, such as, for example, whether he was blinded by his own racist prejudices or whether he was affected by some kind of cognitive dissonance.² Rather, I will focus on what it may tell us about certain limitations of his political philosophy, limitations that might have made it *theoretically difficult* for him to figure out exactly what to do about those institutions as entrenched political realities.

The main issue, as I shall explain in section 3, is that Kant treats right as a reciprocal relation between human beings who are free members of a civil state to begin with. On his account, whatever innate right one has by virtue of one's humanity, one's claim to it against another human being can be *rightfully secured* only under a civil condition (*status civilis*). More specifically, individuals in a state (*civitas*) or commonwealth can have a rightful claim against each other only as citizens, in virtue of which they have civil personality. This presumption of civil personality underpins both Kant's argument against voluntary slavery (by contract) and his endorsement of penal slavery or slavery through liability (through committing crimes). The same presumption also means, however, that Kant would not know what to prescribe about chattel slaves, whose enslavement was legally sanctioned by European states through the end of the eighteenth century and well into the nineteenth century. From his perspective, those human beings, who were not citizens but purchased as mere goods, were civically unfranchised. As such, they were *civil non-beings* (except as properties) in the eye of a European state. Accordingly, there is no place for them in the Kantian system of right. This, I surmise, may partly explain why, unlike some of his contemporaries, Kant never applied his theory of right to the controversy over Atlantic slavery or the slave trade.

1. I call Atlantic slavery and the slave trade 'institutions' in order to capture the features that differentiate them from mere practices. Above all, they are *organized*, involving collective and coordinated actions of the relevant stakeholders. They have an established *structure*, in which each of those stakeholders plays a determinate role that serves to sustain the structure—for example, as a 'slave holder,' 'slave trader,' or 'investor' in the trade. And they are embedded within a larger *system*, in which they link up with such other institutions as banks. Last but not least, they are regulated by legal codes as well as shared practical norms, which both give them the appearance of legitimacy and ensure their sustainability by, for example, preventing self-undermining ways of using slaves (see Lu-Adler 2022: 273–75 for a brief discussion of Edmund Burke's argument for regulating slavery in the British colonies).

2. See Lu-Adler 2022 for a detailed treatment of the relation between Kant's racism and his attitude toward Atlantic slavery.

2. Kant on Atlantic slavery and the slave trade

What would it sound like for an eighteenth-century Enlightenment thinker explicitly to condemn Atlantic slavery and the slave trade and to call for abolition by invoking the 'right' of the enslaved? I shall briefly answer this question before turning to Kant, so that we can study what he said—or did not say—about those institutions against an appropriate historical backdrop. To pave the way for my analysis in section 3, I will highlight one particular contrast: whereas an unequivocally anti-slavery and pro-abolitionist narrative would invoke the inalienable *right* to freedom that 'Negro' slaves had qua human beings,³ Kant never talked about those slaves' right to freedom even in his scant and belated admonitions about the conditions of their enslavement.

Let me begin with an entry entitled 'Traite des nègres' (slave trade) in volume 16 of the *Encyclopédie* edited by Denis Diderot and Jean d'Alembert, published in 1765. The author is Chevalier Louis de Jaucourt (1704–80), the most prolific contributor to the *Encyclopédie*. The entry starts by denouncing the slave trade as wrong in every sense imaginable: this trade of human beings, 'as if they were merchandise,' is a practice that 'violates all religion, morals, natural law, and human rights.' Alluding to the various contemporary attempts to justify this practice, Jaucourt contends that nothing whatsoever can justify it. In particular, 'the Negroes did not become slaves by any right of war; nor did they voluntarily sacrifice themselves to slavery.' If 'everyone knows' that they were sold by their king, prince, or magistrate, everyone should also know that rulers 'are not owners of their subjects; therefore they are not entitled to their subjects' freedom, nor do they have the right to sell anyone into slavery.' On the flipside, 'nobody has the right to buy these subjects or to call himself their master.' Human beings are 'not objects of commerce' and so can never be 'bought at any price' (Jaucourt 2007).

Jaucourt does not stop at this moral condemnation of the slave trade. He takes it to its logical conclusions. First, the enslaved must be emancipated. Jaucourt argues for this demand by appealing to the slaves' natural right to freedom and equality. A 'Negro' who was sold into slavery did not—nor could he

3. Kant locates what he calls 'true Negroes' in the West-African region of Senegambia (VvRM2: 441–42). His rationale is that the air in this region is so 'phlogistized' that only those with the blackest skin can survive there (BBM8: 103; ÜGTP8: 169–70n.). For this reason, I retain Kant's use of 'Negro' as a term with a special meaning to him. It is also worth highlighting what is obvious here: West Africa was the epicenter of the transatlantic slave trade. So, it is no coincidence that Kant often characterizes the 'Negro' race as uniquely and naturally fit for slavery (see note 10 below; for discussion, see Lu-Adler 2022). Meanwhile, the suggestion that human beings of this so-called race are fit to be *used as if they were* mere things, which indicates their *legal* status qua property in institutionalized Atlantic slavery, is compatible with Kant's view that *ontologically* speaking they *are* human beings just like all the other so-called races, not mere things.

ever—lose this natural right. Rather, he carries it *everywhere*, which licenses him to ‘demand that he be allowed to enjoy it wherever he goes’ and gives him ‘the right to be declared free’ (by judges). The claim of this right, furthermore, has *absolute precedence* over existing civil laws, even if the latter (despicably) authorize slavery. ‘Can one raise the question of whether a judge is more obligated,’ Jaucourt asks rhetorically, ‘to observe [the natural laws of equity] than to respect the arbitrary and inhumane customs of colonies’ (Jaucourt 2007)?⁴

Second, European colonies should be ‘destroyed’ insofar as their existence is the root cause of the transatlantic slave trade, which serves no other purpose than supplying slave labor to those colonies. Jaucourt is thereby responding to the argument that ‘these colonies would be quickly ruined if the slavery of Negroes were abolished.’ This kind of argument is preposterous, Jaucourt contends, as it presumes ‘that the Negro population must be horribly wronged for us to enrich ourselves, or provide for our luxury.’ Nay, the Europeans have no ‘right to enrich themselves in such cruel and criminal ways in the first place.’ So, destruction is the only deserving fate of European colonies, dependent as they are on slavery and disastrous as they are in causing ‘so many unfortunates’ (Jaucourt 2007).

In sum, the abolitionist demand in Jaucourt’s entry, along with its explicit affirmation of literally every single human being’s natural *right*, is abundantly clear.⁵ Against this backdrop, let us look at what Kant actually wrote about Atlantic slavery and the slave trade in the 1790s. To begin with the slave trade, we may first consider his allusion to it in a section of *The Metaphysics of Morals* (1797) entitled ‘What Is Money?’ (part of the Doctrine of Right). Here, Kant includes the ‘black slaves [*Negersklaven*]’ on the Coast of Guinea—known as the Slave Coast in the eighteenth century—as an example of ‘goods’ that eventually became *money* or ‘a lawful means of exchange of the industry of subjects with one another.’ Kant describes those slaves as the kind of good that, if one individual shows a demand for it, this demand will move another individual to ‘industry in procuring it’ (MS6: 288).⁶ This captures the logic of the slave trade

4. Jaucourt may be alluding to the Code Noir that Louis XIV issued to regulate the practice of slavery in French colonies. The edict was issued in 1685 and registered in Saint-Domingue (now Haiti) in 1687. It was last edited in 1788, three years before the onset of the Haitian Revolution. For the French original and English translation of its 1724 edition (enacted for the French Louisiana), see Palmer 2012: 163–91. For an analysis of the Code as part of colonial France’s effort to establish slave societies, see Cohen 1980: 35–59.

5. For a brief but resourceful overview of Jaucourt’s arguments about Atlantic slavery and the slave trade, see Jorati 2023: 241–43.

6. For a contextualized analysis of this passage, see Capener 2023.

well. And Kant does not say, as his readers today might expect him to, that one ought not to treat humans as goods under any circumstance whatsoever.⁷

In his physical geography lecture in 1792, Kant asserts (without explanation) that 'trade in Negroes' is 'morally reprehensible,' only to claim that 'it would have taken place even without the Europeans' (V-PG/Dohna26.3: 1142). He then adds: slavery—'the fate [*Schicksal*] of the Negroes' on the Slave Coast (*Sklavenküste*)—is nevertheless 'bearable [*erträglich*];' for their alternative fate under the totally despotic rule by their kings would be death (Dohna manuscript 2019: 234).⁸ Meanwhile, Kant shows an awareness of the economic connection between the use of 'Negro' slave labor and certain goods consumed in Europe. Behind the European consumption of all sorts of sugar products, for instance, are the 'Negroes' who process sugarcane into raw sugar (2019: 192).⁹ It is also apparent that Kant sees no dignified fate for the 'Negroes' who have been bought and transported to the European colonies other than toiling as slaves, which at least makes them useful in the machinery of global commerce. For, in Kant's opinion, there is 'something essential in the character of the Negro' that makes him unable to use freedom well even when it is granted to him (2019: 105).¹⁰

Kant made those remarks while knowing that abolitionist movements had been gaining ground in parts of Europe.¹¹ Most notably, the British Society for Effecting the Abolition of the Slave Trade was founded in 1787. Its campaigns resulted in Parliamentary investigations, motions, and debates about the slave trade through the 1790s (the Slave Trade Abolition Act would not pass until 1807). Kant referred to those debates in the 'Conflict of Faculties' (1798), with-

7. I am not suggesting that this moral silence about the slave trade indicates that Kant approves of it. Most likely, as I have argued in Lu-Adler 2022, he—or the disinterested philosophical historian in him—never saw it as a pressing moral problem.

8. This refers to the 2019 version of the complete transcript of *Physische Geographie: Dohna* (https://telota-webpublic.bbaw.de/kant/base.htm/geo_doh.htm). The remark about slavery being a relatively more bearable fate is not included in the Akademie edition of the lecture (the other remarks I am referencing are also missing). I thank Julia Jorati for drawing my attention to this omission (see Jorati 2024: 302–03).

9. In his first essay on race (1775/77), Kant suggests that only the 'Negro' slaves—as opposed to 'the red slaves' (Native Americans)—were strong enough to labor in the sugarcane fields (VvRM2: 438n). He reiterates this claim in the Dohna manuscript (2019: 241), asserting that 'only Negroes'—in contrast with the 'old Indian inhabitants'—are 'made' to endure the work on the 'Sugar Islands.'

10. The Akademie edition only includes the part where Kant attributes to Hume the claim that among the thousands of freed 'Negroes' one could not find a single example of anyone excelling in a particular skill. The surrounding texts make it clear, however, that Kant is only using Hume as a mouthpiece to make his own essentializing assertion about the 'Negro' race.

11. Kant alludes to the well-known controversy between the abolitionist Reverend James Ramsay and the anti-abolitionist merchant James Tobin in his third and final essay on race (1788), only to invoke the latter's claim that freed 'Negroes' all became useless drifters; he thereby suggests that this so-called race is constitutionally incapable of making the best out of freedom even when it has freedom (ÜGTP8: 174n).

out indicating any moral concern about the slave trade itself or any interest in how the political struggle over it should be resolved. To provide some context, Kant makes the reference in part two of the ‘Conflict’ (written in 1795), in a section on ‘the difficulty of the maxims applying to world progress with regard to their publicity.’ By ‘publicity,’ Kant means ‘the public instruction of the people in its duties and rights vis-à-vis the state to which they belong.’¹² Given that the ‘enlightenment of the people’ consists precisely in this publicity, Kant argues, its prohibition by the state ‘impedes the progress of a people toward improvement, even in ... its simple, natural right.’ Kant then uses Britain as an example of ‘false publicity’: in theory, this nation has ‘a constitution *limiting* the will of the monarch through the two Houses of Parliament, acting as representatives of the people’; in practice, ‘the monarch’s influence on these representatives is so great and so certain that nothing is resolved by the Houses except what he wills and purposes through his minister.’ The people are thereby deceived with ‘the illusion of a *limited monarchy* in power by a law which issues from them, while their representatives, won over by bribery, have secretly subjected them to an *absolute monarchy*’ (SF7: 89–90). Kant uses the debate over the slave trade to illustrate this point:

[the minister appointed by the monarch] probably even proposes resolutions in connection with which he knows that he will be contradicted, and even arranges it that way (for example, with regard to slave-trade) in order to provide a fictitious proof of the freedom of Parliament. (7: 90)

Thus, Kant shows no interest in the substance of the British Parliamentary wrangling over the slave trade. Rather, he mentions it only to make a palpably cynical point about the relation between a people and the constitutional representatives of the people’s rights and wishes vis-à-vis the head of the state, in this case the monarch. In particular, he seems uninterested in where William Pitt the Younger, British Prime Minister since 1783, actually stood on the slave trade. Pitt, a close friend of the prominent abolitionist William Wilberforce, gave an impassioned speech in the House of Commons in 1792 calling for the immediate and total—not delayed or gradual—abolition of the slave trade. He condemned the trade, in no uncertain terms, as a ‘cruel’ and ‘incurable injustice’ that the

12. For Kant’s account of this kind of publicity and its significance for a civil state, also see TP8: 304 (a work from 1793). Remarkably, this account comes right after Kant’s argument for an *unconditional* prohibition of any forceful resistance by the subjects of a commonwealth to its supreme legislative power. Kant deems this kind of resistance the highest political crime because it threatens to destroy the very foundation of a commonwealth—as the civil condition that can alone secure rightful relations among the members of a society—and therefore deserves the greatest punishment. And Kant uses Great Britain to illustrate this point (TP8: 299–303).

Europeans had long inflicted against the Africans (Harlow 2003: 100–08). Kant, by contrast, is narrowly concerned with the rightful relation between a people and a people's state. As I shall explain later, this narrowness of his discourse on a people's right also suggests its inability to deal with issues that pertain to the right of the enslaved, who are strictly speaking not members of a state.

A defender of Kant may point to yet another text in which he mentions the slave trade, namely his drafts for 'Toward Perpetual Peace,' written sometime between 1793 and 1795. In the part that relates to the published version of the third article for perpetual peace concerning 'cosmopolitan right' (ZeF8: 357–60), Kant describes the *Negerhandel* as 'an offense against the hospitality of black peoples' (VEF23: 174). Pauline Kleingeld interprets this as evidence that 'Kant repeatedly and explicitly criticizes slavery of non-Europeans in the strongest terms, as a grave violation of cosmopolitan right' of blacks (2007: 587). If one reads Kant's statement in its context, however, one can see that Kleingeld's inference is unwarranted. For one, violating the 'hospitality' of Black peoples is not the same as violating their 'cosmopolitan right,' which Kant characterizes as a *right of foreign visitors* against the native inhabitants on a piece of land (VEF23: 172). Given the historical context, Kant must be talking about the *Europeans'* 'cosmopolitan right to limited hospitality' (23: 174), which he does not explicitly grant to the Black peoples whose land was being visited by uninvited Europeans. Moreover, Kant's criticism of the Europeans' offense against the hospitality of presumptively free native inhabitants in Africa tells us nothing about what he thinks of the *enslaved* Africans in the West Indies, for instance, who were no longer free inhabitants of their own land. For another, Kant's ultimate concern about the slave *trade* is evidently not about the traded 'Negroes.' Rather, he worries that it is bad 'for Europe in its consequences'—including never-ending struggles among some European states with their increased sea power (23: 174).¹³ That is, as I have argued elsewhere (Lu-Adler 2022), what seems to be really unsettling Kant is the potential of the slave trade to impede progress by indirectly worsening intra-European power struggles and dimming the prospect of perpetual peace.¹⁴

So, we have no clear evidence that Kant ever condemned the slave trade as an unjust violation of the *right* of Black Africans, even though he had an opportunity to do so in each of the contexts mentioned above. The situation is not any

13. See Bernasconi 2011: 301–3 for a penetrating analysis—in response to Kleingeld's—of Kant's remarks about the slave trade in the drafts, which are notably absent in the published version of 'Toward Perpetual Peace.'

14. This interpretation is inspired by Inés Valdez's (2017) analysis of Kant's belated criticisms of settler colonialism: what best explains those criticisms is the concern that European expansionism and the intra-European rivalries driven by colonialist and imperialist impulses, which were becoming alarmingly worse in the 1790s, would undermine the possibility of a peaceful equilibrium among the European powers.

better when we look at the two places where Kant mentions Atlantic slavery in the 1790s. One mention is in ‘Toward Perpetual Peace’ (1795), again in a section on cosmopolitan right as ‘the right of a foreigner not to be treated with hostility because he has arrived on the land of another.’ This right to hospitality, Kant argues, is not unlimited: it ‘does not extend beyond the conditions which make it possible to *seek* commerce with the old inhabitants.’ He then criticizes certain European commercial states for violating those conditions by the hostile and unjust behaviors they show while visiting foreign lands. Such behaviors not only cause disasters in other parts of the world, Kant cautions, but also threaten to undermine the prospect of peace in Europe (ZEF8: 357–59). It is with the latter concern in mind that he alludes to Atlantic slavery, particularly as it was practiced on the sugar plantations in the West Indies:

the Sugar Islands, that place of the cruelest and most calculated slavery, *yield no true profit* but serve only a mediate and indeed not very laudable purpose, namely, training sailors for warships and so, in turn, carrying *on wars in Europe*. (8: 359, emphasis added)

One should not rush to celebrate the fact that Kant, at last, called out the slavery practiced on the Sugar Islands as cruel and calculated. By the 1790s, most prominent thinkers in Europe would likely be willing to grant that the *practice* of slavery on some colonies was in fact exceedingly cruel. Whether they would also call for the abolition of slavery as a state-sanctioned institution is a separate matter.¹⁵ Such a call for abolition is what we should look for in Kant’s work if we want to prove that he belatedly but unequivocally objected to Atlantic slavery *as an institution*. Unfortunately, one cannot infer this objection from Kant’s passing remarks about *certain practices* of slavery. Describing those practices as exceedingly cruel and calculated is a far cry from condemning slavery per se or affirming the slaves’ inalienable *right* to freedom qua human beings, as Jaucourt did three decades earlier. Kant, as we shall see, is well-versed in the language of ‘right’ to make such an affirmation. But he does not. Once again, as the italicized phrases in the above passage suggest, he appears to be primarily concerned about Atlantic slavery’s political effects on Europe, not the fact that some human beings are unfree or that their unfreedom is legally licensed by powerful European states.

15. Take Edmund Burke for instance. While explicitly condemning Atlantic slavery and the slave trade as evil, Burke was at best ambivalent and at worst coldly calculating about what to *do* about them now that they had become an entrenched part of Britain’s economic system. See my discussion of his position in comparison with Kant’s in Lu-Adler 2022: 273–75, 290n.40.

Similarly, in *The Metaphysics of Morals* (1797), Kant's reference to the slaves on the West-Indian sugar plantations is couched in language that is neither about Atlantic slavery at large nor about any right of the enslaved. He makes the reference while making a significantly qualified argument that a *citizen of a state* cannot lease himself to someone else, *by contract*, for an indeterminate extent of service.

For if the master is authorized to use the powers of his subject as he pleases, he can also exhaust them until his subject dies or is driven to despair (as with the Negroes on the Sugar Islands); his subject will in fact have given himself away, as property, to his master, which is impossible. (MS6: 330)

This parenthetical reference to 'the Negroes on the Sugar Islands' suggests that Kant knows about their dire situation. The point of the reference, however, is not to show that Atlantic slavery itself is an unjust institution in having violated the enslaved human beings' inalienable right to freedom. Rather, what Kant is doing is nothing short of *instrumentalizing* facts about the condition of slavery on the Sugar Islands—a world away from Europe—to demonstrate the need to impose legal limits on labor contracts between presumptively free citizens of a European state. I will return to this in section 3.

In sum, Kant never came to 'unambiguously,' 'categorically,' or 'repeatedly' (Kleingeld 2007: 587–88) condemn the twin institutions of Atlantic slavery and the slave trade. Nor, to be clear, did he explicitly condone them as permissible. As I have argued elsewhere (Lu-Adler 2022), he overall seemed indifferent to those institutions and never confronted their existence as an urgent moral problem.¹⁶ Meanwhile, Kant also never directly countered his depiction of the 'Negro' race—a concept reserved for populations in West Africa, the epicenter of the transatlantic slave trade—as singularly fit for slavery. One therefore has reason to suspect that Kant's failure to join the chorus of abolitionism is partly rooted in his long-held racist worldview. This may well be true. As I shall explain next, however, there may also be another obstacle: Kant's conception of right makes it *theoretically difficult* for him to offer a clear prescription about what to do about *civically unenfranchised* human beings, such as the African slaves purchased by the Europeans and brought to their colonies.

16. For another study of Kant's views on slavery that arrived at basically the same conclusion as mine, see Jorati 2024: 280–307.

3. Varieties of slavery and Kant's theory of right

3.1. Why Kant's theory of right does not entail the rejection of slavery: an overview

The Doctrine of Right is the only place where Kant explicitly connects 'right' and 'slavery' and considers the latter's legality. A contextualized reading will show that Kant is only concerned with two varieties of what Jaucourt calls 'civil slavery' in a separate entry on slavery (2012; originally published as 'Esclavage' in volume 5 of the *Encyclopédie*, 1755). The first is voluntary slavery, when a person sells himself to another. The second is penal slavery, when a person becomes a slave by committing a crime. Kant already rejected the former and endorsed the latter in his course on natural right in the 1780s (V-NR/Feyerabend27: 1381). The Doctrine of Right, as we shall see, merely contains a more elaborate and polished argument for the same conclusion; this suggests that there is no significant conceptual change in Kant's view on slavery from the 1780s to the 1790s. And there is nothing special about that conclusion: it was a common one in the natural law tradition, as one can tell from Jaucourt's *Encyclopédie* entry.

What is notable for our purpose, however, is the way in which Kant's treatment of slavery in the Doctrine of Right falls short in comparison with Jaucourt's entry. Kant is silent about whether the connection he draws between right and slavery applies to Atlantic slavery, even though Atlantic slavery was the most glaring example of slavery in his time. By contrast, Jaucourt explicitly seeks to prove that nothing whatsoever legitimizes slavery (other than penal slavery). Slavery 'can never be whitewashed on any reasonable grounds,' Jaucourt contends, 'not by the law of war, ... by the law of acquisition, nor by that of birth.' In particular, there is no rightful acquisition of slaves 'by means of money.' This is worth noting given my earlier reference to Kant's inclusion of African slaves as an example of money in the Doctrine of Right. In rejecting this source of slavery, Jaucourt obviously has the slave trade in mind: 'trafficking in slaves like brutal beasts in order to make a vile living is repulsive to our religion.' All men are equal, he argues, according to 'the principles of Nature and of Christianity' alike. The European 'Christian powers' violated those principles when they, 'having made conquests in lands [in the New World] where they believed it in their interest to have slaves, permitted them to be bought and sold.' Jaucourt goes further: by natural law, if X attempts to deprive Y of his liberty and to exert absolute power over him (that is, make him a slave), X thereby puts himself in a 'state of war' with Y; Y is thereby *authorized to resist*. Although Jaucourt does not straightforwardly infer that 'a slave in our colonies' has the right to break his 'chain,' it is not hard for a reader to piece things together and arrive at such a conclusion. After all, Jaucourt is literally referring to every single human being—*especially*

those who are *deprived* of liberty by other humans—when he states, ‘everything converges to leave to man the dignity which is natural to him. Everything cries out to us that one cannot deprive him of that natural dignity which is liberty’ (Jaucourt 2012).

If Jaucourt can make all these points forcefully in the limited space of an encyclopedia entry, what stops Kant from doing the same while connecting ‘right’ and ‘slavery’ in his lengthy and intricate Doctrine of Right? This is the question that interests me here.

One thing from the Doctrine of Right, namely Kant’s affirmation of innate right, may seem to encourage the thought that he would, at least *in principle*, reject all forms of slavery other than penal slavery as invalid. Regarding ‘what is innately, hence internally, mine or yours,’ Kant states in the prolegomena to the Doctrine of Right, there is only one right, that is, one’s ‘innate right to freedom.’ An innate right is ‘that which belongs to everyone by nature, independently of any act that would establish a right’; by contrast, the right for which such an act is required is an ‘acquired right,’ which concerns ‘what is externally mine or yours’ (MS6: 237–38). Kant specifies innate right as follows:

Freedom (independence from being constrained by another’s necessitating power of choice), insofar as it can coexist with the freedom of every other in accordance with a universal law, is the only original right belonging to every man by virtue of his humanity. (6: 237; modified translation based on Flikschuh 2022: 824)

This concept of innate freedom, Kant adds, analytically contains ‘innate *equality*,’ on account of which one is one’s ‘own master’ and cannot be ‘bound by others to more than one can in turn bind them’ (6: 237–38). The dominant trend in Anglo-American approaches to the Doctrine of Right, according to Katrin Flikschuh, is to interpret this claim about innate equality as ‘affirming an equal right of each to freedom of choice and action.’ This interpretation ‘aligns Kant’s political philosophy with current [liberal] intuitions about rights and freedom’ (Flikschuh 2022: 824). It also helps to explain, I add, why most Kant scholars who have registered his failure to condemn Atlantic slavery find it baffling. After all, his affirmation of innate right—as a liberal Kantian reads it today—seems to *entail* that Atlantic slavery is a blatant violation of the enslaved people’s innate right to freedom. If Kant indeed failed to draw such an inference, some commentators surmise, it must be due to his racial prejudice, which hindered him from recognizing what is entailed by his theory (Louden 2000: 105; Allais 2016).

However, as Flikschuh goes on to show, the liberal reading has missed what is distinctive about Kant’s concept of right. This concept, Flikschuh explains, is concerned with ‘a strictly *reciprocal* relation between the power of choice of one

and that of another,' which calls for 'a public will capable of imposing reciprocally equal terms on all parties simultaneously.' The coercive nature of the public will in turn means that it must be restricted to an *acquired right*, which merely pertains to external objects of choice. This helps to explain why 'innate right,' after its brief appearance in the prolegomena, drops out of sight in the body of the Doctrine of Right, which revolves around acquired right (2022: 833–34).¹⁷

This critique of the liberal reading of Kant's concept of innate right helps to pry open an exegetical space for understanding why, in the Doctrine of Right, Kant does not even entertain the question of whether Atlantic slavery has violated any 'right' of the enslaved. Here is an outline of how I will carve out that space:

- (1) Whatever right one has innately by virtue of one's humanity, one's claim to it against another human being can be rightfully secured only in a certain *condition* of human existence.
- (2) For Kant, the requisite condition can only be *civil condition*, in which alone can a people actually enjoy right. In particular, members of a *state* can have a rightful claim against each other only as *citizens*, each of whom is a *civil person* on that account.
- (3) Both Kant's argument against voluntary slavery and his support for penal slavery make sense within this framework: the former is invalid because it is self-contradictory for a civil person to relinquish that personality by contract; the latter is valid because someone who commits a crime thereby violates the laws of the state that have been laid down to regulate rightful relations among all its citizens.
- (4) But that framework cannot tell us anything about what to do about 'Negro' slaves who, against their will and by no fault of their own, have been deprived of freedom and whose enslavement—as well as commodification—has been legally sanctioned by the relevant European states. The problem, as Kant the political philosopher would see it, is that they are civically *unenfranchised*—that is, they are *not citizens of a state*—and so do not possess civil personality in the first place.

In what follows, I will explain each of these points in turn.

17. Innate right is not to be confused with what Kant calls 'natural right,' which indeed features prominently in the body of the Doctrine of Right. The latter right is a *private* right in a state of nature, whereby something can be mine or yours only provisionally; as such, it is contrasted with *civil* or *public* right in a civil society, whereby what is mine or yours is *secured* conclusively in accordance with statutory or public laws (MS6: 242, 256–57). In the scheme of things, the concept of natural right is significant only insofar as it is 'that right which can be derived from a priori principles for a *civil constitution*' (MS6: 256, emphasis added).

3.2. Kant on what is 'innate' and its conditional development

Let us begin with Kant's characterization of the right to freedom as 'innate' (*angeboren*). Flikschuh claims that the idea of innateness 'sits uneasily with Kant's critical philosophy and rejection of innatism in favor of generative accounts of human knowledge and morality' (2019: 823). One misunderstands the critical Kant, however, to say that he rejects innatism simpliciter. To the contrary, an innovative conception of innateness plays a special role in various parts of his philosophy, from his theory of knowledge to his account of the history of humanity as purposively oriented toward moralization; this account will in turn help to contextualize the Doctrine of Right.

Take for example Kant's theory of pure cognitions, including pure intuitions (space and time) and pure concepts of the understanding (categories). While these cognitions *qua representations* are all acquired, the *ground* of their acquisition must be innate. That is, there must be something in the cognitive subject 'which makes it possible that these representations can arise in this and no other manner' (ÜE8: 221–22). In the case of categories, this means that

[we must pursue them] into their first germs [*Keime*] and predispositions [*Anlagen*] in the human understanding, where they lie ready, until with the occasion of experience they are finally developed [*entwickelt*] and exhibited in their clarity by the very same understanding. (A66/B91, modified translation)

Kant characterizes this empirically occasioned development of categories from germs and predispositions as '*epigenesis* of pure reason' (B167). Epigenesis, as Kant's preferred theory of organic life, always presupposes an innate generic preformation (KU5: 223–24). In these terms, Kant characterizes the entire 'self-development of reason' as akin to the development of 'an animal body': just as the development of an animal presupposes certain germs in the original phylum of its species, so is there some original *Keim* in reason 'all of whose parts still lie very involuted [*eingewickelt*]' and are to develop over time, under contingent historical conditions (A833–34/B861–62).¹⁸

So, a distinctive aspect of the Kantian account of innateness is that what is posited as innate—the original germs and predispositions—is yet to develop in appropriate conditions. In the case of the development of reason, Kant uses his idea of human history to spell out the relevant conditions: reason must progress from the (lawless) *state of nature*, via *culture*, to the *state of law* under the high-

18. In Kant's vocabulary, involution is associated with preformation. On his analogization of reason as an organism, see Mensch 2013: 92–109, 125–45.

est authority of critical reason. This progression begins with discipline or the ‘*compulsion* through which the constant propensity to stray from certain rules is limited and finally eradicated’—an indispensable ‘negative’ step that precedes the positive work of culture (A709/B738). As Kant puts it elsewhere, the human being must first be *disciplined* in order to be cultured, civilized, and finally moralized (Päd9: 449–50). The ‘undisciplined’ is a savage (9: 444). Savagery comes down to lawless freedom. If not eradicated early, Kant warns, it would become entrenched and hinder the ‘germs for greater perfection innate to human nature’ from developing (V-Anth/Fried25: 694). That is why, when it comes to any form of human development, discipline must come first, through which the human being leaves the state of nature and is ‘submitted to the laws of humanity’ (Päd9: 442).

This emphasis on the need to overcome *lawless freedom* through discipline is worth highlighting here. The ‘civil state,’ as opposed to state of nature, Kant argues, is ‘the only condition in which all the natural predispositions of the human being can be developed’ (V-Anth/Mron25: 1423). In positing that ‘innate to human nature are germs [*Keime*] which develop and can achieve the perfection for which they are determined,’ Kant grants that ‘a savage Indian or Greenlander’ has those germs as much as ‘a civilized human being’ does; it is just that the germs are ‘developed’ only in the latter, not in the former (V-Anth/Fried25: 694). What matters to Kant, however, is precisely this *difference* between the ‘savage’ and the civilized. Insofar as it behooves human beings themselves ‘to develop the natural predispositions proportionally and to unfold humanity from its germs and to make it happen’ that the species reaches its final (moral) destiny (Päd9: 445, modified translation), they are obliged first to leave the state of nature and enter a civil state. Kant stresses this point throughout the Doctrine of Right.

3.3. Kant on ‘civil condition’ as the only rightful condition

A civil condition, Kant writes, is that which ‘secures what is mine or yours by public laws’ (MS6: 242). It is the only condition that is a ‘rightful condition, under an authority giving laws publicly’ (6: 255). It is rightful as the only kind of human relation that ‘contains the conditions under which alone everyone is able to *enjoy* his rights’ (6: 305–06). In this condition, rational law-giving with respect to rights accords with the principle of ‘distributive justice,’ whereby the legitimacy of acquisition is judged not by the private will of each, but before a *court* that stands under the united will of all (6: 302). It is a condition of ‘public justice’ and ‘public right’ on that account. By contrast, the state of nature is a ‘condition that is not rightful, that is, a condition in which there is no distributive justice,’

only 'private right.' While the *matter* of right may be the same in both conditions, Kant adds, the *form* makes all the difference: the rightful civil condition is what 'all human beings who could (even involuntarily) come into relations of rights with one another *ought* to enter' (6: 306). Such is the 'postulate of public right' according to Kant: 'when you cannot avoid living side by side with all others, you ought to leave the state of nature and proceed with them into a rightful condition.' Strictly speaking, humans in the state of nature, as a 'state of externally lawless freedom,' do not wrong *one another* when one seeks to 'lord it over others as their master.' It is just that they commit a higher-order wrong by wanting to remain in an unrightful condition where 'no one is assured of what is his against violence' (6: 307–08).

This account of the need to transition from the state of nature to a civil state marks the end of Part I (on private right) of the Doctrine of Right. Part II (on public right) begins with the 'right of a state.' Kant now characterizes civil condition as the 'condition of the individuals within a people [*Volke*] in relation to one another.' In those terms, a 'state' is 'the whole [*Ganze*] of individuals in a rightful condition, in relation to its own members'; the state is called a 'commonwealth' on account of its form, whereby 'all are united through their common interest in being in a rightful condition.' The state is also called a 'nation (*gens*)' in that 'the union of the members is (presumed to be) one they inherited' (6: 311; see 6: 313). This stipulation about membership in a state or nation will, as we shall see, raise questions about the placement of slaves who were purchased as goods and brought from Africa.

3.4. Kant on civil slavery

Now let us look at what Kant says about slavery in Part II. As I mentioned earlier, Kant is specifically concerned with certain forms of *civil slavery* in this context. As I also mentioned, he already argued in the 1780s that one can rightfully become a slave by committing a crime. Now he emphasizes that this can be the case only in a civil state, where the criminal-to-be has enjoyed 'lawful *freedom*' (MS6: 314). The state of nature is 'a state *devoid of justice*,' in which the question of what is lawful or unlawful does not even arise (6: 312). By contrast, being a member of a civil state means one 'has relinquished entirely his wild, lawless freedom in order to find his freedom as such undiminished ... in a rightful condition' (6: 316). In the latter state, a human being 'at least has the dignity of a citizen' to begin with, which he can then *lose* by his *own* crime. If the crime is not punishable by death and he is to be kept alive, he loses his civil personality and is reduced to the status of a bondsman (*Leibeigener*) or a slave in the strict sense (*servus in sensu stricto*) 'by a verdict and right'; he thereby becomes another's 'property' and can

be used ‘as a thing’ (6: 329–30).¹⁹ In issuing this kind of verdict (through a court), the authority of a state is exercising the ‘*right to punish ... against a subject to inflict pain upon him because of his having committed a crime.*’ This law of punishment—in accordance with ‘the principle of retribution, of like for like’—is a ‘categorical imperative,’ Kant argues, because ‘if justice goes, there is no longer any value in human being’s living on the earth’ (6: 331–32).

Just as the state has the right to reduce a criminal to slavery, Kant suggests, it also has the right to regulate contractual relations between its citizens and, in particular, to void any attempted contract that virtually renders one person slave to another. One cannot give oneself away ‘as property’ to a master by contract. This voluntary self-enslavement is ‘impossible’ in the following sense: one can make a contract only as a *person*, but one ‘ceases to be a person’ if one turns oneself into another’s property—a mere *thing*—by contract; that amounts to self-cancellation (MS6: 330). Of course, people may still attempt to sign a contract of this nature. The question is whether it can be recognized as lawful in a civil state. This may be why Kant, having already pointed out the ‘self-contradictory’ nature of a contract whereby one party ‘completely renounce[s] its freedom for the other’s advantage’ in Part I of the Doctrine of Right (6: 283),²⁰ revisits the topic in Part II, specifically in a section on the various ‘effects with regard to rights that follow from the nature of the civil union’ (6: 318). In this context, he is concerned with labor contracts between individuals qua free citizens of a state. When X, by contract, puts himself ‘under obligation to another person [Y] ... to perform services (in return for wages, board or protection) that are ... *indeterminate* in terms of their quantity,’ Kant argues, one cannot say that X has thereby merely turned himself into a ‘subject’ (*Untertan*) to Y, not a bondsman or *servus*. For such a contract would virtually authorize Y to use X’s powers (*Kräfte*) ‘as he pleases’—as if he were using a mere thing—to the point of driving X to ‘despair’ or even literal death. So, however X himself interprets the contract, he would truly ‘have given himself away, as property,’ to Y. This essentially self-enslaving contract,

19. Kant treats the case in which ‘someone can have as his own another *human being* who by his crime has forfeited his personality (become a bondsman)’ as an example of ‘right to a thing.’ He distinguishes this right from the ‘right to a *person* akin to a right to a thing.’ In the latter case, Kant claims, one is ‘not *treating* persons in a similar way to *things* in all respects’—because ‘no right of a *thing* against a *person* is conceivable’—but rather ‘*possessing* them as things and dealing with them as things in many relations’ (MS6: 358).

20. This remark appears in the context where Kant discusses ‘rights to persons akin to rights to things’ in a household (MS6: 276). These include marriage right, parental right, and the right of the head of household in relation to domestic servants. The claim about the self-contradictory nature of a contract whereby one completely renounces one’s freedom pertains to the third right. Importantly, this claim is not about the servants’ right, but about the need to limit the household head’s right in *using* them (6: 283).

even if it appears otherwise to the parties involved, must be considered null.²¹ A labor contract is valid only if the laborer does not thereby virtually 'forfeit his personality' but hires himself out only for a determinate kind and amount of work (6: 330).²²

Remarkably, as I already noted in section 2 above, Kant mentions 'the Negroes on the Sugar Islands' in this particular context to illustrate what it looks like when a master is 'authorized to use the powers of his subject as he pleases' (6: 330). As I have explained elsewhere (Lu-Adler 2022), Kant is *not* arguing that the enslavement of those 'Negroes' is impermissible (nor is he saying that it is permissible; he is simply not entertaining the question about its permissibility). Rather, he is using their treatment as a realistic cautionary tale of what would happen if no limits were placed on labor contracts between citizens who are presumed free. This tells us nothing about what to do about the human beings who are already enslaved against their own will. In other words, far from expressing any interest in the status of *actual slaves* who are granted no civil personality in the first place, and so cannot freely decide what to do with their own powers, Kant has turned their case into material for constructing a counterfactual scenario and thereby demonstrates the need to regulate voluntary contracts between free citizens of a (European) state.

3.5. *The quandary of civically unenfranchised humans*

The Doctrine of Right includes a case that may give us some clue as to what Kant, if pressed, might say about what to do about the humans who were purchased and transported from Africa as mere goods and labored as slaves on one of those Sugar Islands in West Indies. The case involves infanticide, which appears at the end of a section where Kant explains the state's right to punish and to grant mercy. Having argued that 'every murderer ... must suffer death' (MS6: 334), Kant turns to cases where it seems controversial whether the death penalty should be legally imposed. One case involves a mother killing her illegitimate child. In this case, Kant writes, 'it seems that ... people find themselves in the state of nature,' wherefore the killing is not strictly 'murder' and so 'cannot be punished with death by the supreme power.' The child was born 'outside

21. In a chapter of the *Social Contract* (1762) entitled 'Slavery,' Rousseau also argued that the supposedly voluntary act of selling oneself to another is empty because it is self-contradictory. Rousseau went further than Kant in arguing—against Hugo Grotius—that there are no grounds for any 'right of slavery' (Rousseau 1913: 9–13). Like Kant, though, Rousseau was silent about Atlantic slavery. On the complexities of Rousseau's attitude toward slavery (and race), see Jorati 2023: 218–27.

22. On Kant's theory of labor (partly) in light of his claims about slavery, see Pascoe 2022.

the law (for the law is marriage),’ the argument goes, and so the child is beyond the protection of the law (6: 336). In other words, the child is a kind of civil non-being.

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. (6: 336)

If this consideration of the child’s civil standing suggests a lenient treatment of the mother, Kant sees a ‘quandary’ for penal justice: it is ‘either cruel or indulgent’ with respect to the mother. That is, either it discounts the ‘honor of one’s sex’ that drove her to kill her child, treats the killing as murder, and punishes her with death; or it ‘must remove from the crime the capital punishment appropriate to it.’ Kant’s proposal for how to undo this knot keeps intact the ‘categorical imperative of penal justice’ (the like-for-like principle of retribution I mentioned in section 3.4). It merely stresses, without explanation, the need to further develop the civil constitution itself so as to address the supposed ‘discrepancy between the incentives of honor in the people (subjectively) and the measures that are (objectively) suitable for its purposes,’ between ‘the public justice arising from the state’ and ‘an *injustice* from the perspective of the justice arising from the people’ (6: 336–37).

This proposal says nothing about what, if anything, it would take for a child born out of wedlock to be enfranchised as a civil being and thereby brought within the protection of the law of a civil state. And this is where a parallel question remains for the state of chattel slaves: they were *de facto* civil non-beings (except as properties) in the eighteenth century; as such, they did not enjoy any right as members of a civil state. What would it take to change this situation? To elaborate, recall the various remarks that Kant made about ‘Negro’ slaves in the 1790s, which we examined in section 2. Those remarks suggest the following picture as he saw it: (some of) the slaves were first traded as goods in parts of Africa; the European traders then transported them to places like West-Indian colonies, where they were forced to toil as slaves but were at least kept alive, a fate still more ‘bearable’ than the alternative of being killed at will by their despotic African kings. Even in cases where European ‘visitors’ to the African coasts blatantly kidnapped locals—thereby violating the ‘cosmopolitan right to limited hospitality’ of presumptively free native inhabitants—and then sold them as slaves to the planters, this would not stop the planters from claiming ownership of these human beings as legally protected properties *on the colonies*. It follows that the enslaved human beings on those colonies are beings without civil personality. If a European state had laws regulating its colonies, such laws

would protect those enslaved human beings at best as somebody else's property, but never as right-bearing civil persons.

Kant is not naïve about such matters. He is evidently aware of the civil status of a slave. In his course on natural right, for instance, he remarks that the Romans 'considered slaves as things and so a slave could never do wrong.' Slaves lack civil personality, which is a precondition of being held legally accountable for one's doings. It follows that there is no place for them in a system of right. For 'right' is a *reciprocal* relation between 'beings who themselves do have freedom,' in relation to which 'the freedom of everyone else is limited.' Things or beings treated as things, by contrast, 'could ... not be limited in their freedom.' Since they 'have no freedom,' there is nothing to limit in the first place (V-NR/Fey-erabend27: 1335; see 27: 1345, 1506). Kant reiterates in *The Metaphysics of Morals* that right consists in a 'reciprocal relation of [free] choice' (MS6: 230). Accordingly, his division of the Doctrine of Right admits only one '*real* relation between right and duty,' which is 'a relation of human beings to human beings' equally considered *as persons*, who 'have rights as well as duties.' Such a division has no place for the relation involving 'human beings without personality (serfs, slaves),' which is an asymmetrical relation 'in terms of rights of human beings toward beings that have only duties but no rights' (6: 241).

As I have already argued elsewhere (Lu-Adler 2022), one should not infer that Kant is thereby condemning slavery (or serfdom for that matter). The text itself only makes a conceptual point about the would-be slaves: such beings would lack civil personality to begin with, wherefore they lie *outside* the system of right. This abstract conceptual point does not tell us anything whatsoever about what to *do* about Atlantic slavery as a reality—an extremely complex and deeply entrenched one, at that. What we are left with is at best a quandary: if the gist of Kant's Doctrine of Right is that one can *enjoy* right only as a citizen of a civil state, what are we to do about those who do not have this civil standing?

One may wonder whether Kant's notion of passive citizenship can serve as a somewhat promising way out of the quandary.²³ On his account, strictly speaking only an active citizen has civil personality, which presupposes independence as 'a part of the commonwealth acting from his own choice in community with others.' Passive citizens include women, minors, domestic servants, 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).'²⁴ They 'lack civil personality and their existence is, as it were, only inherence.' This civil inequality or dependence on other people's

23. I thank Karen Stohr for convincing me that I should at least consider this possibility.

24. It is also worth noting that, on Kant's account, in the domestic sphere active citizens have rights to some of the passive citizens—wives, children (natural minors), and servants—'akin to rights to things' (MS6: 276–84, 358–61).

will, Kant adds, is nevertheless compatible with the passive citizens' 'freedom and equality *as human beings*.' That is, they must still be 'able to demand that all others treat them in accordance with the laws of natural freedom and equality as *passive* parts of the state.' Therefore, 'whatever sort of positive laws the [active] citizens might vote for, these laws must still not be contrary to the natural laws of freedom and of the equality of everyone in the people corresponding to this freedom.' Specifically, these laws must make it possible that 'anyone can work his way up from this passive condition to an active one' (MS6: 314–15). This sounds promising, right?

Not so. The provision that Kant grants to passive citizens comes with a crucial caveat: these human beings must already be 'parts of the state' who 'together make up a people' (MS6: 315). A 'state' is not just any group of human beings who happen to be in the vicinity of one another. Given Kant's views, which I mentioned at the end of section 3.3, on what it means for a people to relate to one another in 'civil condition' and to form a 'state,' and in what sense this state constitutes a 'nation,' it is clear that he has a restrictive notion of *nation-state* in mind. As he puts it in the *Anthropology from a Pragmatic Point of View* (1798), the union of a people (*populus*) makes a nation insofar as it 'recognizes itself as united into a civil whole *through common ancestry*' (Anth7: 311, emphasis added). This suggests that the African slaves toiling on the colonies owned by a European state would not be recognized even as passive *parts* of the state. They are civil *non-beings* in the eye of the state, except as some of its active citizens' legally protected properties. So, Kant's willingness to grant passive citizens of a state the ability to demand that they be treated in accordance with natural freedom and equality tells us nothing about whether he would grant the same to the Africans bought and owned by the Europeans as mere things. What ought to be done about the positive laws of a European state that legitimized the commodification and ownership of those human beings? This was where Kant fell silent.

4. Conclusion

I have emphasized that right as Kant conceives it in the body of the Doctrine of Right is a reciprocal relation between human beings who are presumed as free to begin with; one can *enjoy* this right only as the citizen of a state—that is, as a civil person—in accordance with coercive public laws. The presumption of civil personality underwrites Kant's arguments for penal slavery, when a citizen forfeits his civil personality by committing a crime, and against voluntary slavery, which amounts to the impossible act of self-cancellation by a free citizen. Meanwhile, the same presumption makes it difficult to figure out *what to do* about Atlantic slavery. In this case, the enslaved were not free members of a state in

the first place; their only civil standing in the eye of a (European) state was as somebody else's property. As property, a slave has no place in Kant's system of right, which is designed to limit the freedom that a civically enfranchised person enjoys so that it does not impinge on another presumptively and equally free person's freedom.

In other words, given the historical context of Kant's writing, the public laws of a (European) state that were to secure rightful relations between its free citizens would at best recognize the enslaved as properties, with respect to which one free citizen can make rightful claims against another. The laws, insofar as they permitted slave trading and slave owning, did not treat the enslaved as right-bearing persons whose freedom was violated by those institutions. This was a historical fact that Kant was cognizant of. By all appearances, he did not see it as a pressing problem concerning the right to freedom even as he developed a complex and systematic doctrine of right.

I contrasted this normative silence on Kant's part with Louis de Jaucourt's categorical objections to Atlantic slavery and the slave trade. What is especially worth highlighting here is that, as I noted in section 2, Jaucourt's objections hinge on the views that (i) every single human being has an original and inalienable right to freedom, that (ii) one carries this right *everywhere*, and that (iii) it has *absolute precedence* over existing civil laws, so that it delegitimizes any such laws that contradict it. This belief in the unconditional and inviolable nature of every human being's right to freedom grounds Jaucourt's unequivocal calls for the abolition of Atlantic slavery and the slave trade: those institutions are unjust vis-à-vis the natural laws of equity; any civil laws that sanction them are therefore morally invalid. And enslaved people have the right to demand the restoration of their freedom.

Kant apparently does not share Jaucourt's propositions (ii) and (iii). Although he claims that every human being has an innate right to freedom, the crucial question here is whether one can *enjoy* this right *everywhere* or under every condition, so that it is absolutely inviolable and takes precedence over any civil law that comes into conflict with it. This is where Kant's emphasis on civil condition being the *only* rightful condition makes all the difference: it is difficult to see on what Kantian grounds the slaves on the West-Indian sugar plantations, who are not free members of a civil state to begin with, can demand the protection of their freedom from the infringement by others.

What about Kant's moral theory? It is commonly assumed that such a theory directly contradicts practices like Atlantic slavery ('contradiction thesis' for short);²⁵ for, as Kleingeld puts it, 'the basic moral principle which Kant

25. In Lu-Adler 2023: 33–75, I used this notion to capture a basic assumption in the prevailing discourse about Kant's relation to racism, namely that it contradicts his moral universalism. I explained that, when we read Kant systematically and contextually, we will recognize that there is in fact no contradiction.

formulates during the 1780s, the Categorical Imperative in its several versions, is, at least in its wording, addressed to all humans (or, *even more broadly*, to all finite rational beings)' (2007: 574, emphasis added). The italicized phrase in this quote holds the key to the contradiction thesis: it assumes that the core Kantian moral claims are universal in the sense of being *generalizable* over a given domain of subjects, that 'finite rational being' simply has a wider scope than 'human,' and that the notion of humanity in Kant's pure moral philosophy—as represented by the *Groundwork of the Metaphysics of Morals* (1785)—encompasses the aggregate of all individual humans. These assumptions, however, reflect a misunderstanding of the distinct methodology of Kant's pure moral philosophy. In the *Groundwork*, Kant seeks to set forth moral concepts and laws in their universality, which means to set them forth *in abstracto* (GMS4: 409). That is, he derives them not 'from any empirical and therefore merely contingent cognitions,' but from the pure concept of a finite rational being as such (4: 411–12)—in total abstraction from 'the circumstances of the world in which he is placed' and even from 'the nature of the human being' (4: 389). The resulting universality of Kantian moral laws is crucially different from mere generality.²⁶

This is where Kant's notion of conditional development, as I sketched it in section 3.2, becomes relevant. In a sense, what is outlined in the *Groundwork* is an ideal (moralization) to be achieved or approximated at the far end of human history. If the human species, which for Kant is not the same as an aggregate of all individual humans (Anth7: 320), were to reach that ideal, it must first become cultured and civilized. Civil condition or state of law is therefore a necessary precondition for approaching the ideal state of moralization, whereby the innate germs for morality contained in the original phylum of humanity would be finally perfected. This—and here I venture to speculate for the sake of inspiring further inquiry—might be why Kant came to theorize systematically about the coercive authority of public laws within a civil (European) state, about the law-governed orderliness of such a state, and about intra-European peace (that is, peace among European states that are powerful enough to undermine one another through constant wars or threats of war).²⁷ If he at the same time neglected to consider—or to condemn and call for the abolition of—Atlantic slavery as a state-sanctioned but fundamentally unjust *institution* that blatantly violated the enslaved human beings' innate right to freedom and equality, it might not be because he secretly endorsed it. Rather, he might find its aboli-

26. See my detailed explanation of this point in Lu-Adler 2023: 48–52.

27. This concern about peace might well be what drove Kant's belated and limited criticisms of colonialism (Valdez 2017) and of certain practices of slavery (Lu-Adler 2022).

tion all too destabilizing and all too destructive for the European states.²⁸ While Jaucourt, looking at the injustice from an uncompromising moral standpoint, would see such destruction as well deserved, Kant's manifest silence in this regard should make us wonder about the force of his lofty moral theory vis-à-vis his political theory.²⁹

Competing Interests

The author has no competing interests to declare.

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28. I am drawing a distinction between being pro-slavery and being anti-abolition: one may well object to Atlantic slavery on moral grounds and yet resist the call for its (immediate) abolition out of political considerations. This would be my most charitable interpretation of Kant's stance, although we can never know with certainty what he actually thought.

29. This paper incorporated the following scholars' comments on an earlier draft: Mavis Biss, Haley Brennan, Andrew Cooper, John Harfouch, Tim Jankowiak, Julia Jorati, Dean Moyer, Laura Pappish, Karen Stohr, Yunqi Tian, and Julie Walsh.

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- KU Kritik der Urteilkraft (AA5)
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- MS Die Metaphysik der Sitten (AA6)
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- Päd Pädagogik (AA9)
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