Chapter 7: Kantian Conditions of Civil Society

For Kant, participation in civil society is morally obligatory in that it is a necessary condition for the fulfillment of our duties to self (of self-perfection) and others (of their happiness). Civil society is the condition through which the innate right of every person—the right of freedom—is guaranteed. Therefore, while the association and cultivation of friendships and associations is *praiseworthy* according to Kant, a general disposition of beneficence and respect is morally *mandatory*. In one sense, this concludes the matter at hand, in that it establishes civil society’s moral necessity and restores Kant’s consideration of politics and jurisprudence as an essential part, if not the driving force, of his total philosophical project. But there may be a lingering sense of dissatisfaction with Kant and also with my project as framed, if it is not shown that what Kant set forward as part of the moral theory has a practical application in the world. In this chapter, I will examine three necessary conditions of civil society, according to Kant—freedom, independence, and equality—and three prohibitions—violence, paternalism, and hereditary privilege. Each of the three is a necessary corollary to the acceptance and respect of the singular innate right of man. Part and parcel of the discussion will be a consideration of the points of agreement and divergence with traditional natural law theorists.

7.1 Freedom and the Natural Law

In the *Metaphysics of Morals*, Kant states:

Freedom (independence from being constrained by another’s choice), insofar as it can coexist with the freedom of every other in accordance with a
universal law is the only original right belonging to every man by virtue of his humanity.¹

As was discussed in previous chapters, the concept of humanity is the basis of a complete self-identity and respect for humanity as a concept applicable to both self and others yields the concurrent duties of pursuing self-perfection and promoting the happiness of others. The dual acts of pursuit and promotion occur within a sphere of activity which, like Kant’s doctrine of physical motion of bodies, consists of both positive influence and negative resistance. In this way, he is clearly accepting the condition of conflict that natural law theorists, including Rousseau, cite as inherent to the human condition.² But I maintain that Kant’s concern with regard to conflict was not the appropriation of goods, and he does not thereby belabor his work with an extended discussion of property rights as a fundamental ordering principle of society, but rather with the appropriation of ends with a view of property and rightful possession as corollaries aimed at human flourishing. This explains why Kant allows that there can be societies “compatible with rights” in the state of nature, yet such societies still “do wrong in the highest degree.”³ This ends vs. means distinction might also explain the division between Rousseau and traditional natural law theorists. Whereas the natural law theories of Hobbes, Locke, Pufendorf, and Grotius seem to be articulating the means for acting in accord with God’s directives, Rousseau and Kant seem to cast natural law as the pursuits of ends that it is right to

¹ Metaphysics of Morals, 6:237.
² Though the ‘state of nature’ as described by theorists such as Hobbes is not, for Rousseau, the condition that magnifies this tendency. But the important point at this juncture is the acknowledgement of the tendency itself as a common theme.
³ Metaphysics of Morals, 6:306-308.
have. For Kant, this pursuit leads to ‘worthiness’ of God’s grace, but is not identical to action in accordance with directives from God. If God is the moral author and motivator, then man escapes the moral imputability test, and that is not an escape that man should be seeking.

Given that Kant was not merely concerned with the regulation of property and saw a larger role for civil society in the moral development of man, his parenthetical notation in the aforementioned passage is of critical importance. Kant is therein defining ‘freedom’ as “independence from being constrained by another’s choice.” This does not mean that a free man must avoid the influence of any other, nor that he must run from cooperative endeavors initiated by another. It is, in fact, the concern with the choice of others that makes fulfillment of our duty to promote others’ happiness possible. We must first recall what it is that man chooses when he is said to be exercising his freedom. According to Kant, man is choosing the particular ends that he will set for himself. In the context of defining this innate right of freedom, Kant is invoking the doctrine of virtue, which requires both “being one’s own master in a given case, and ruling oneself.” The idea of ‘ruling oneself’ is further defined as “subduing one’s affects and governing one’s passions.” To this end, Kant advocates for a “moral apathy” which, far removed from the negative connotation that the term apathy usually carries in moral discourse, is described by Kant as “a tranquil mind with a considered and firm resolution to put the law of virtue into practice.”

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5 Ibid.
a doctrine of considered, deliberate, *moral motion* through which a particular man
becomes self-respecting and thereby self-governing. As Kant says, a recognition of
the self as participating in a non-sensory, noumenal realm provides the proper
perspective of duty through which we “become aware that one *can* do it because our
own reason recognizes this [duty] as its command and says that one *ought* to do it.”7
According to Kant, it is then “revealed to the human being an inner capacity not
otherwise correctly known by himself, the inner freedom to release himself from the
impetuous importunity of inclinations so that none of them, not even the dearest, has
any influence on a resolution for which we are now to make use of our reason.”8 This
obligation of virtue, to respect the universal law as such, extends by means of our
individual virtuous dispositions, “to duties of right as well.”9 So, when Kant ascribes
to every man the independence from being constrained by another’s choice, he is
speaking of a *qualified* constraint. Being unconstrained is not ‘unbounded’ in the
same way that freedom of choice is not to be equated with a ‘freedom of
indifference.’ The key notion is that of reciprocity. Individual freedom, derived from
the understanding of the self as a participant in a noumenal community, is a
reciprocal dynamic of action. A situation in which another person’s choice unduly
bound me would be a situation in which he had made himself an exception to the
universal law as we saw in the discussion of coercion in Chapter 6. In doing so, he
has reduced himself. What Kant is saying is that no man is able to thereby reduce me

7 *Critique of Practical Reason*, 5:159.
8 *Critique of Practical Reason*, 5:161.
without my cooperation because while he can choose to set for himself an end that is not consistent with his own self-respect, no man can compel me to accept any end for myself. As in Chapter 6, we again see the way in which reciprocity serves not only as a principle of restriction, but as a principle of reason’s productive power. The balance of reciprocity restricts others from overriding my will, but it is also insures that my will carries the fullest possible weight.

An understanding of the innate right of freedom provides the appropriate theoretical backdrop for assessing the practical conditions of Kantian civil society. What Kant aims at describing is a “rightful condition.” Such a condition exists when there is a judicial body that can decide, in accordance with the law, “what is laid down as right” and thereby determine the rightful form of association amongst people, the definition Kant provides of a “constitution.”10 The condition applied to the judgment of what is laid down as right is the fundamental commitment to the one and only innate right of freedom. The constitutive principles, with innate right as their point of derivation, provide the conditions for the collective pursuit of the ends that it is also a duty to have: the pursuit of self-perfection and the promotion of the happiness of others. The society is therefore the embodiment of the notion of reciprocity, and is called, by Kant, “a condition of distributive justice.”11

The ‘rightful condition,’ that of ‘distributive justice’ holds the following law a priori, “all human beings who could (even involuntarily) come into relations of rights

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with one another *ought* to enter this condition.”\(^{12}\) And we know from the foregoing discussion that all human beings *do* come into relations of rights with one another by virtue of the reciprocal connection underlying the innate right of freedom. This allows Kant to conclude that those who refuse to participate in the rightful condition of civil society do wrong in the highest degree “because they take away any validity from the concept of right itself and hand everything over to savage violence, as if by law, and so subvert the right of human beings as such.”\(^{13}\) The savage violence referred to by Kant is not merely the threat of physical force, but the entirety of activities that debase the humanity in oneself or another. This again highlights why property, as considered by traditional natural law theorists, was not Kant’s primary concern. In the earlier chapters I discussed the tension between Kant and Leibniz on the notion of preestablished harmony and the necessitation of action that stems from it. That concern reemerges here, with regard to the role of civil society in general. This time the tension is between Kant and the natural law theorists. In most cases, natural law theorists ascribe to two critical views: First, that the properly ordered society is one whose laws allow men to live as God intended them to. Second, that it is the fear of God that motivates men to act according to those laws. In other words, God has determined how we should live and if we don’t figure it out or follow it correctly, there will be Hell to pay (literally). Here we are back squarely into the moral imputability discussion. If man must legislate in a way that merely stumbles upon the predetermined legislative order of God, then is man really self-legislating?


\(^{13}\) *Metaphysics of Morals*, 6:307n.
And if not, then how can he be held responsible if he fails to get it exactly right? Add to that the motivational dimension (is man motivated to obey the laws he sets down because he sets them or because they are the proper laws that God wanted?) and we can see why Kant wanted to break loose from this tradition. The notion of coercion to obey the laws, first coming from God and then from a secular order intended to coerce those not properly motivated by God from the outset is at work in the natural law theorists. In that way, coercion generates obligations for man and action in accordance with obligation (submission to coercion) constitutes moral action. So, while Kant and the natural law theorists see man’s political organization and participation as an essentially moral project, there is significant disagreement about what constitutes moral action therein.

Again, the concept of respect for humanity—both the concept as a whole and the individual instances of humanity within particular persons—is what both motivates and defines Kantian political theory. While some theorists may have believed that man had the capacity to come to know the ‘natural laws’ by sufficiently taming their passions so as to obey the external force of reason (be it given by Church or State), we recall Kant’s primary duty to ‘know thyself.’ In doing so, Kant believes that every man has within himself an essential tendency towards the good and an internal arbiter of actions in accordance with such. It is thereby the human conscience that gives man the awareness of his self-governing capacity. That capacity hinges on consideration of the self as a participant in both the noumenal and the phenomenal realms. And if man can be self-governing then he, by definition, can
be self-obligating. If he can be self-obligating, then he can act apart from external coercion from either the Church or the State. He can participate in each fully, as a co-creator of the doctrines therein and as such only submits himself to an ‘external’ coercion to the extent that it was authorized in accordance with his own self-legislation.

Thus, in refusing to share the underlying tenet of some natural law theorists’ work—namely, that man is simply meant to discern and follow divine decrees—Kant is reasserting the primacy of freedom as a constitutive element of civil society. In his *Lectures on the Philosophical Doctrine of Religion*, Kant states that,

> governing presupposes aims...[and] our own reason requires that we search everywhere for universal laws according to which certain occurrences are ordered. For in this way we bring unity and harmony into our cognition of nature, instead of destroying all order in nature, as we would do if we regarded every single thing in the world as an effect of God’s special providence.\(^{14}\)

In seeking universal laws, as was discussed in Chapters 2 and 3, we find the concept of humanity as the end in itself, the end that it is also a duty to have. So, with humanity as an aim, governing must happen in such a way as to promote, protect, and preserve humanity as an end in itself. Hence, the innate right of freedom.

### 7.2 The Kantian Prohibition on State Violence

In his review of Gottlieb Hufeland’s essay on natural right, Kant expresses confusion over the proposed balance between right and coercion. It appears that Hufeland is read by Kant to be asserting that “permitting coercion...rests on an inner

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\(^{14}\) *Lectures on the Philosophical Doctrine of Religion*, 28:1114.
obligation in every case to obtain the contested perfection for ourselves, if necessary with force."\textsuperscript{15} Thus, according to Kant, the authorization of coercion “must turn out to be so artificial that even the most practiced understanding must find itself in continual bewilderment, if not in a downright impossible position, when it tries to make out for far its right might reach.”\textsuperscript{16} In considering the inner right of freedom that each person has, Kant makes several analogies with the laws of motion. Here again, the analogy bears fruit. What Kant seems to be saying is that Hufeland, in claiming that the supreme principle of natural right is self-perfection, establishes a sphere of influence for the individual that is essentially unbounded. If it is every man’s right to pursue his own perfection, then it is each man’s right. But the laws of motion would say that for every individual motion (in this case, towards individual perfection) there is an equal and opposite resistance (in this case, from another individual’s pursuit of his own perfection). Hufeland’s principle offered no insight into how such conflict would be mediated, other than a merely ‘artificial’ determination. From Kant’s primary ethical duties—pursuing self-perfection and promoting the happiness of others—we examined the notion of reciprocity in action and the required considerations of \textit{mutual} motion. Likewise with Kant’s principle of the innate right of freedom. The principle does not simply state that man has a right to do whatever he wishes. Instead, it specifically references coexistence consistent with the fundamental concept of reciprocity. So, where Hufeland went wrong, according to Kant, is constructing a merely self-regarding concept of natural right whereby man is

\textsuperscript{15} \textit{Review of Hufeland’s Essay}, 8:129.
\textsuperscript{16} Ibid.
seeking laws based on an obligation that does not appropriately consider the 
association of others.

This is a significant point to understand Kant’s prohibition on violence in civil 
society. When Kant is prohibiting violence, it is perhaps more appropriate to think of 
it in terms of prohibiting ‘violations’ rather than prohibiting force. In many instances, 
in fact, in a crucial way, Kant sees the use of force (as coercive power) as necessary 
to the proper functioning of the state. But this coercive power is not an illegitimate 
violation of the right to freedom and in that way is not violence in the general sense. 
So, in making freedom a constitutive condition of civil society, Kant prohibits 
vioence. This is not to say, in contrast with Hufeland, that all force is illegitimate. 
Instead, Kant’s doctrine of freedom contains an implicit authorization for coercion. 
In civil society, coercion is only legitimate when exercised through an appropriate 
arbiter. This arbitration does not occur between members of society, as such, because 
each—being equal—has an equal claim to enforcement of the law. But that shared 
position of subjects under the law requires a “commander” to which the right of 
enforcement is given. In the same way that the individual can view himself as both 
governor (as member of the noumenal realm) and governed (as an empirical being), 
so, too, must the public be both commander (through the unity and publicity of 
‘public justice’) and subject (as individual wills). According to Kant, the appropriate 
arbiter for a civil society is the system of courts, judges, and juries that are 
empowered to pass verdicts in accord with public justice.  

17 Metaphysics of Morals, 6:317.
7.3 A Patriotic Government

If the innate right of freedom, as a constitutive principle of civil society, carries with it an authorization of coercion by an external authority, Kant must then explain the bounds of such an authority. As Mary Gregor discusses in her works on Kant’s theory of property and natural rights, Kant’s dissatisfaction with the capricious nature of judgment (in terms of arbitration) within the state of nature bolstered his claim that civil society was necessary. Within civil society, then, the settling of disputes must be based on “public laws binding on both parties to the dispute.”\(^{18}\) The prerequisite rights of freedom and equality, united in a Constitution, require that each member be fully invested as both author and subject of the public laws. So, Gregor concludes, Kant’s project in describing civil society is “to specify the high-level principles on which the contingent and chosen enactments of a legislator must be based if people’s acts of choice to acquire rights are to conform with the highest-level principle of the will expressed in the universal principle of Right.”\(^{19}\) In other words, what restrictions does the innate right of freedom impose on the sovereign authority and the legislative, executive, and judicial functions therein authorized? What Kant is clearly attempting to avoid is a *paternalistic* society, in which the problems inherent in the state of nature are perpetuated. It cannot be the case that participants in civil society can be *coerced* into adopting particular ends and thereby to pursue particular projects against their wills. To avoid such paternalism, Kant reasserts a public


\(^{19}\) Ibid.
doctrine of “civil independence,” whereby one owes his existence and preservation only “to his own rights and powers as a member of the commonwealth, not to the choice of another among the people.” 20 With regards to rights and ends, men within an appropriately ordered society pursue their own ends and secure their own rights, not because they are allowed to by some elected leader, but by virtue of their own participation in that commonwealth.

The alternative to a paternalism, according to Kant, is a patriotic government. A patriotic government is one that treats citizens “as members of one family” but also recognizes each member as his own master, not as “children.” 21 Independence is another necessary requirement of civil society which can also be traced back to respect for humanity. In the same way that each person can recognize the freedom of another and that freedom is based on the ability of each person to set for himself an end that it is also a duty to have, the end of humanity requires that a person is never used merely as a means. To use someone as a means is to usurp his own selected ends and substitute them with your own. This effectively subsumes his personality under your own, making his projects dependent on those you have selected. This makes him, in terms of moral imputability, merely an instrument of another and unable to be held accountable. So, the lack of respect for another’s humanity reduces that person to the status of a ‘dependent.’ But, by contrast, when we exercise our duty to promote the happiness of others, we are—at its most basic level—acknowledging

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20 Metaphysics of Morals, 6:314.
21 Metaphysics of Morals, 6:317.
another’s ability to set ends for himself. In taking those ends together as a joint endeavor, the affirmation is patriotic, rather than paternalistic.

Kant’s description of the inner workings of a patriotic government are a bit murky. Much of that is owing to the fact that he does not seek to orient such a society in history, nor to require that it be initiated apart from society as we currently find ourselves situated. Instead, he is providing the underlying principles that could, feasibly, guide civil progress towards a ‘rightful condition.’ The mutual recognition of independence, balanced against the required notion of inter-dependence of state citizens is key to that. How can one be both independent and dependent, self-legislating and coerced? That is a key question. The answer to the latter appeared above, now it’s time to tackle the former. Keep in mind that in Kant’s contrast between the paternalistic and patriotic governments, he did not reject the notion of the state as a family. Instead, it was the dependency relationship that he wanted to avoid. So let’s use an example of family to try and illustrate this concept:

Rosemary, Tom, Mary Regina, Greg, and Andy are all adults. They are also members of a nuclear family that we will call ‘Rotomarga Associates.’ Each member has, in his own right, an identity with associated ends, projects, and talents. For instance, Rosemary has a talent for crafts, Mary Regina a talent for music, and Andy is pursuing a Masters degree to further his career. But collectively, as members of ‘Rotomarga Associates’ they participate in the ends, projects, and talents of each other. This participation might be merely taking an active interest in another’s work or it may be creating a family meal schedule that accommodates the pursuit of
particular projects, but at its most basic, its aim is to provide the greatest opportunity for each member to pursue his ends. Let’s say that it has become tradition for Rotomarga Associates to share a family meal at 5pm on Thanksgiving night. But, Greg is offered an opportunity to take bass guitar lessons from the legendary “Flea” who is in town for Thanksgiving 2009 and has only the 5pm lesson time available. In this case, you might say that Greg has conflicting obligations. On the one hand, his membership in Rotomarga Associates means that he should be present for Thanksgiving dinner; on the other hand, his commitment to self-perfection in bass playing means that he should attend the lesson. But to say that he has a conflict is to acknowledge that he is independent, in a relevant way, from Rotomarga. Were he dependent, in the Kantian sense, then Rotomarga would necessitate his presence at Thanksgiving dinner—there would be no ‘ought to be there’ only that he ‘will be there.’ In a traditional family setting, where one might assume that the father sets the rules, according to his sole conception of what is best for the family, and the children obey without question (i.e. paternalism), the dilemma doesn’t exist. But in a situation where concern for the family is paramount, but the ends, projects, and talents of individuals play a role in shaping that collective concern, a scheduling dilemma can both occur and be resolved. In such a case, Greg could explain to everyone in the family the opportunity that has presented itself, and they could discuss the ways in which that helps Greg or ways in which it might interfere with others’ plans, and a decision would be reached. Presumably, under normal circumstances, some accommodation could be made so that Rotomarga convenes for dinner at a time that
allows Greg to both take the lesson and join the feast. Consideration of this sort,
where obligations associated with the personal and collective identities can be sorted
out, is similar to what Kant describes as ‘patriotic’ governance, whereby

everyone in a state (its head not excepted) regards the commonwealth as the
maternal womb, or the country as the paternal land, from which and on which
he has arisen and which he must also leave behind as a cherished pledge, only
so as to consider himself authorized to protect its rights by laws of the
common will but not to subject the use of it to his unconditional discretion.
This right of freedom belongs to him, a member of a commonwealth, as a
human being namely insofar as he is a being that is, as such, capable of
rights.22

In this way, we can see Kant’s rejection of paternalism as the necessary
corollary to the affirmation of the independence of individuals. Paternalism, having
ends set for oneself by another, is only tenable under two conditions. Either those
being governed in such a way must be incapable of effectively setting ends, or they
must be predisposed to set ends that are destructive to themselves or to the
community. The traditional Christian doctrine of original sin, which I discussed
through a Kantian lens in earlier chapters, would have supported a paternalistic
government for the second reason—namely, that man could not be trusted to set his
own course because not only is he unable to comprehend what is truly in his own best
interest, but also because once setting upon such a course (even if minimally flawed)
he could not avoid lapsing into evil and causing harm to others. Kant rejects this.
The claim that man is somehow ineffective at setting ends for himself in general fits
the definition of ‘minority condition’ that Kant ascribes only to children and to

22 Theory and Practice, 8:291.
women. So, the notion of a patriotic government and the rejection of paternalism, is the necessary condition of a civil society that recognizes and actively promotes the independence of its members. Yet, Kant is simultaneously establishing an interdependent relationship between the members of a civil society and their collectively determined laws. This leads directly to the last constitutive principle of civil society: equality.

7.4 Equality and the ‘Rightful Condition’

Having established that members of a civil society are free and independent to the extent that any limitations imposed upon them are self-imposed, the third concept in the triad of a ‘rightful condition’ is the equality of each member of society with every other as regards that self-legislation. Back to the example just given, a detail was omitted that makes a crucial difference. Greg’s Rotomarga dilemma would not be an instance of patriotic, independence-preserving governance, if he—or some other subset of members—were the only ones confronted with a scheduling dilemma, or the like. In other words, it cannot be the case that Greg is the only one who must balance his interests against those of the family unit. Any (and every) other member of the family must face the same conflict if similarly situated. If Mary Regina were the one to have the bass guitar lesson opportunity, and if she simply skipped dinner without a word and if there were no consequence (assuming that the consequence

23 Metaphysics of Morals, 6:276-283 allows me to believe that the status of women is, at least, an open question for Kant. Contrary to his discussion at 6:315, I do not find that Kant necessarily rejects the independence or equality of women, though the fact that it remains an open question is, in itself, enough to raise the eyebrows of many a feminist philosopher.
would be drawing the ire of the rest of the family), then that would signal an *inequity* amongst the family members. Were she to do so, she would effectively be setting herself apart, and above, everyone else and treating her family obligations as optional. But members of a patriotic-ly governed civil society, according to Kant, have as attributes of their membership, “civil *equality*, that of not recognizing among the *people* any superior with the moral capacity to bind him as a matter of right in a way that he could not in turn bind another.”

This defense of civil equality is, in turn, an indictment of hereditary privilege in governing. Kant captures this in the statement that “What a people (the entire mass of subjects) cannot decide with regard to itself and its fellows, the sovereign can also not decide with regards to it.” Could the people assent to a principle that allowed a subset to be considered more than mere citizens in perpetuity? Perhaps, but the basis of the decision is not an inherited inequality amongst citizens, but rather on individual actions that count in relevant ways. For instance, it could be the case that philosophy professors are the pool of candidates deemed ‘most qualified’ for the role of the sovereign. Citizens of a state in a rightful condition could agree (and they might) that philosophical training is a necessary prerequisite. But that does not mandate that a particular philosophy professor will be sovereign nor only certain people will be allowed to pursue philosophical training. Instead, it creates a set of qualifications that are not arbitrary and are within the realm of free and independent people to pursue. Contrast that with a selection based on (natural) eye color. Not only could we

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reasonably argue that eye color does not directly bear on the disposition or suitability of a person to govern, it would also be immediately obvious that eye color is an exclusionary criterion from birth. In agreeing to that, the community would be ascribing the attribute ‘capable of governing’ to one group of people while ascribing the attribute ‘incapable of governing’ to everyone else. Not only is such a distribution inequitable, but it violates the freedom and independence of individuals to set their own ends, develop their own talents and, in effect, define their own attributes. Similarly, Kant says that hereditary privilege “precedes merit and also provides no basis to hope for merit, and thus is a thought-entity without any reality...[for] if an ancestor had merit he could still not bequeath it to his descendants: they must acquire it for themselves, since nature does not arrange things in such a way that talent and will, which make meritorious service to the state possible, are also hereditary.”

The notion of ‘meritorious service to the state’ brings us full circle in the discussion of the moral necessity of civil society. Participation as a citizen in a properly ordered civil society ensures the dignity of the person and, as such, is an instantiation of the respect for humanity in oneself and in others. A ‘rightful condition’ is one in which the freedom, independence, and equality of persons is recognized and through which the reciprocal motion of the pursuit of individual and collective ends is codified, and thereby harmonized. In recognizing our duty to self-perfection and the happiness of others, by virtue of each person’s humanity, we

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recognize a corresponding duty to the innate right of freedom that humanity confers. The recognition of rights is the recognition of our capacity to put ourselves and others under obligation. In a state of nature, according to Kant, the validity of the concept of right is taken away because the notion of obligation is not given power over inclination. No man is acting according to the principle of freedom and in this way everything, including his own humanity, is handed over “to savage violence, as if by law, and so subvert[s] the right of human beings as such.”  

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27 Metaphysics of Morals, n.6:308