

Independent people

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1

In an appendix to *Force and freedom* Arthur Ripstein says that Kantian right is concerned with the practical upshot of spatial incompatibilities in the action of separately embodied persons. The bodies of human persons are “impenetrable solids in space.” Because their bodies “occupy space, the only way their activity can be rendered consistent under universal law is if they neither occupy nor interfere with the space occupied by others”. The fact of spatial incompatibility “is incorporated into the law of freedom that no person may invade the space occupied by another.” (373)

Let’s take a little more time over this problem of space.

“Any action is *right*” by Kant’s universal principle of right “if it can coexist with everyone’s freedom in accordance with a universal law.” (6: 231) If some action of yours can coexist with everyone’s freedom in accordance with a universal law, Kant adds, an action of mine that hinders this one of yours *wrongs* you.

I am going to assume that rightness is primarily a property of kinds of action and derivatively a property of their instances. An action is right if it belongs to a rightful kind. A kind is right if its every instance can coexist with everyone’s freedom under a universal law.

Coexistence needs explaining. But we might guess that the clearest-cut coexistence failures occur where an action kind’s instances hinder other actions of their own kind.

Think of the kind *occupying a space*. I’ll define this so that, for any small space and span of time, a person’s filling the space with her body during that span is an instance. By occupying a space I hinder your entering it, or I hinder your staying there. My occupation hinders yours. This kind of action can’t be right, then, and the wrongness of your invading a space that I occupy is not to be explained by the fact that your invasion hinders my occupation of it.

But now consider the action whose instances each consist, for some small space S and times t and u, in a person’s [filling S throughout (t, u) if no part of another

person's body is in S at t.] Call this *occupying an otherwise unoccupied space*. My entering some empty region and remaining there can hinder your own entrance into or tenure of the spot. But your occupation of the space would not constitute your occupying an otherwise unoccupied space. I was there first. If I don't hinder a conditionally described action just by making false the antecedent of the description—if my hindering your [doing x if p] instead requires that I hinder your *x'ing* and that p be *true*—then my occupying an otherwise unoccupied space does not hinder other action of its own kind. It's left open that this kind is right and so that your invasion of a space that was empty when I entered it wrongs me.

2

That an object is mine, says Kant, is that other persons would wrong me by using it without my consent.

It is possible for me to have any external object of my choice as mine, that is a maxim by which, if it were to become a law, an object of choice would *in itself* (objectively) have to *belong to no one* (*res nullius*) is contrary to rights. (6: 251)

This “postulate,” although it is “incapable of further proof,” is followed in the text by a sort of defense or motivation:

For an object of my choice is something that I have the physical power to use. If it were nonetheless not within my *rightful* power to make use of it, that is, if the use of it could not coexist with the freedom of everyone in accordance with a universal law (would be wrong), then freedom would be depriving itself of the use of its choice with regard to an object of choice, by putting usable objects beyond any possibility of being *used*; in other words, it would annihilate them in a practical respect and make them into *res nullius*, even though in the use of things choice was formally consistent with everyone's freedom in accordance with universal laws. (6: 250)

I wonder about this. Does a rightful use of external objects require that persons hold property in them?

Think of the action kind whose instances each consist, for some object distinct from the bodies of persons, in a person's using that object during some stretch of time. Most such uses of an object by a person hinder some other person's using the same thing at the same time. Instances of the action hinder action of their kind. If this were the only object-using action kind, no such kind would be right.

But here again we could get creative. Let an instance of *using an otherwise unused object* consist, for some object O and times t and u, in a person's [using O throughout (t, u) if no other person is using it at t]. When I do this I make it false that your using the object during that span would constitute your using an otherwise unused object. So my use of the unused does not hinder any other use of the unused, and it is eligible to be right.

This law of freedom stands in obvious analogy to the law of occupying-the-unoccupied. Each forces the externally incompatible actions of embodied persons into a definitionally secured interpersonal consistency. It does that by carving out a kind of action such that by “getting there first” and doing her thing of that kind a

person makes it the case that all other actions externally incompatible with hers are *not* of this kind.

Suppose then that the laws of freedom recognize, as a rightful action kind, the using of an otherwise unused object. Then one kind of object-using action—a person’s using a thing that was idle when she took it up—is right. Usufruct, the law of using the unused, seems to deliver that possibility of a rightful use of external things for which Kant’s postulate plumps.

3

Ripstein persuades me that this is not enough. His argument draws on a conception of purposive action that he ascribes to Kant and to Aristotle. He expresses the basic idea when he writes that “you can only *do* something if you set out to do it, and you can only set out to do what you take yourself to have the power to do.” (40)

The following passage might stand for several in which Ripstein develops the consequences for right:

As a matter of fact you may be able to set yourself the end of making a mushroom omelet without having rights to objects that are not in your physical possession, but you could not have an entitlement against others to set yourself the end of making one. If there were no such rights, someone else would be entitled to take the eggs you had gathered while you were sauteeing the mushrooms, and you would not be entitled to do anything to stop her. Your entitlement to set and pursue purposes would thus depend on the particular choices made by another. (91-92)

This argument takes issue with the proposal that my use of external objects is protected only by the bodily right that you violate when you interfere with my physical possession of them. But an easy adaptation will bring out the inadequacy of usufruct. Against usufruct and in parallel with the second quoted sentence Ripstein would presumably observe that my use-grounded right against others’ using any omelette ingredients that I’m already using doesn’t prohibit their using them before I’ve begun to cook. I imagine that he would conclude, in parallel with the first quoted sentence, that under this law I lack an entitlement against others to set for myself the end of cooking the omelette.

Spelled out a bit the inference could be this.

I can now set myself the end of a mushroom omelette only if I can now take it that others will not hinder my cooking some mushrooms.

For any end E and action x, if I have a right against others to set the end E, and if I can now set myself the end E only if I can take it that others will later not do x, then I now have a right against others that they later not do x.

I now have no right against others that they later not hinder my cooking some mushrooms.

so I now have no right against others to now set myself the end of a mushroom omelette.

The Aristotle-Kant view of purposive action sponsors the first premise, about setting ends. But the argument also relies, at its second premise, on a principle

about rights to set ends. Your right to set an end requires a right that others not do what, if you're to set the end, you must take it they won't do. I am happy to take that principle up and indeed to accept the whole argument.

In usufruct it will sometimes happen that I set the end of making an omelette. I can do this when mushrooms abound so that others are sure to leave me some. Once I've set myself the omelette purpose and started in to cook I come into a right against others that they not interfere with my cooking by making off with the particular ingredients I'm using. Now I meet the necessary condition for a right to set the end that is laid down by the argument's second premise.

But this right has come too late. I had set the end before I won the right to set it.

I think there's probably a purposive practical stance, *affirming* and pursuing a purpose, that I can take toward a purpose whether or not I've already set it. By starting in to use the ingredients I incur under usufruct a right against others' hindering my further use of them. Because I now have a right against their doing what would stop me from making an omelette, it seems open that I now have a right to *affirm* and pursue the end of an omelette.

This is not good enough, I think. I can't accept that a person's entitlement to affirm and pursue a purpose emerges only after and thanks to her original adoption and pursuit of it. And I can't accept that I depend for my entitlement to affirm and pursue the purpose on the happenstance that others forbear from impeding the initial stages of my project even as they were authorized to scuttle it. This is the sort of thing that Ripstein has in mind, I would guess, when he objects, at the third quoted sentence, that under the law of physical possession my entitlement to pursue my purposes "depends on the particular choices made by another."

In usufruct a person arrives at her right to hold and pursue an external-means-requiring purpose only after she's adopted it and begun to pursue it by using those means and only if the others chance not to exercise their own entitlements to frustrate her opening moves. That's not right.

4

Whatever its force against usufruct this argument from independence is no reason to settle for property. Property draws the same objection.

Suppose that I can come to own a thing by claiming or receiving a title to it that I enjoy independently of any actual or planned use of the thing. Suppose that I don't in this way own any mushrooms and that I can't grow mushrooms using only what's mine.

It may be that I can now take up the purpose of making a mushroom omelette. I can do that if I see the task as falling in my power. The task is in my power if I have some way of inducing the inputs' current owners to hand them over to me. Or if I can grab the ingredients and cook them up before anyone grabs them back.

But of course I lack any right against others that they fall in with this plan. No one wrongs me, under property, by declining to pass me the mushrooms she owns. A mushroom owner is in her rights to hide or lock her stuff away, to drive me off when I try to use it, to recover it by force if I succeed briefly in taking it over. She is entitled to do what hinders my use of the mushrooms. But I can set the omelette as an end only if she won't hinder my use of the mushrooms. So I who own no mushrooms lack an entitlement against others that I set myself the end of a mushroom omelette.

In the supermarket aisles of our actual property society you will presumably encounter persons who have set particular suppers as their ends although they do not yet own the ingredients. "Why you are putting those mushrooms in that cart?" "I'm making a mushroom omelette tonight." A shopper like this has managed to set out after her gastronomic end because she could see it as falling within her power. She was thinking that an offer of cash for the ingredients would move the grocer to give them up.

When a shopper purchases the ingredients, the onetime owners relinquish their rights to interfere with her cooking. She finally enjoys against them a right that they not withhold the means to her purpose. She has the makings not only of an omelette but of the right to set herself the omelette-making end.

But again that right has come too late. If the means were bought for the sake of the end, the end was set before she had a right against others to set it.

Perhaps the new owner of the ingredients enjoys a right to *affirm* the end she's already pursuing and to carry on with it. But if this is true it's true thanks to the accommodating particular choices of farmers and merchants. She owes her achievement of her right to do what she was already doing to the forbearance of persons who, after she'd set the end but before she'd bought the means, were entitled to act in ways that would have shut her project down.

A typical putative end-affirming right in the property society bears a strong resemblance to the would-be end-affirming right that's characteristic of usufruct. The right takes hold only once I've bought the things my purposes demand, and so it typically follows and depends on rather than preceding or protecting my initial pursuit of the purpose. And I only ever achieve the right if and because the others choose to part with their goods despite their entitlements to hold on to them. If like me and perhaps like Ripstein you think that a right to set ends has got to come first and that it's necessarily invulnerable to other persons' particular choices, then like me you should worry that property puts such independence out of reach. Independence will have you worried about property.

5

And not only about property. The argument also calls into question the law of occupying otherwise unoccupied spaces with which I pretended to solve the space problem.

Suppose that some purpose I might take up requires that I stand *right over there*. Often enough I can form that purpose, as when I'm sure of reaching the spot first because I'm the only person who's interested or close. But my right to affirm the purpose and to act for its sake comes on line only after and because I've taken the position. Before I reach the spot others are entitled to go there before me and so to act in ways that would put the purpose out of my power while constricting my right to pursue it. Under the law of occupying the unoccupied my right to set a typical geographically specific end postdates my decision to make it my own, and I depend for the right's establishment on the fact that persons have stood aside who were also authorized to get in my way.

This criticism overlooks another possibility of redescription. If our actions can be defined into consistency, our ends can be conceived so that everyone has an independent right to set them.

I'll have a nice picnic only if it doesn't rain. I can't stop the rain from falling. It seems to follow on the Kant-Aristotle view that I can't set out to have a nice picnic. To have a nice one is not something that I can *do* in the way that I can do such things as I can set out to do.

This truth does not put nice picnics beyond the reach of purposive action, beyond choice. A closely related purpose is available for adoption: I can set out [to have a nice picnic if it doesn't rain].

A defender of the law of occupying the unoccupied might seize on the phenomenon of settable-because-conditional ends. To vary the tale of a picnic, imagine that it's already raining but that my picnic will be nice enough if I lay my spread under the park's one tree. A nice picnic requires that I occupy that dry place. Because I can claim no right against your settling there first, I don't enjoy a right of adopting a nice picnic as my purpose. But that leaves open my right to set out to [have a nice picnic if no one assumes the dry location before I get there]. *This* right would precede my embrace of the end it protects, and it would not depend for its force on others' choices.

Usufructarians could go on to make a similar point about usufruct. Independently of anyone's choice I enjoy under that law a right to set the purpose of [building a house if no one walks off with the lumber] or the end of [cooking an omelette if no one else puts the mushrooms in her quiche].

It seems cheap, a reply perfectly insensitive to the concerns that move the objection. But why? This end-redescribing proposal purports to show that the law of occupying the unoccupied or the law of using the unused induces for every person a zone of independent purposiveness. Laws of this kind see to it that, for an entire class of space-requiring conditional ends, a person enjoys against everyone else a right to set any of those ends and does not depend for that right on others' accommodating particular choices.

If we're resisting this answer to the demand for independence, that's probably for the following reason.

We have it in mind that, if a picnic-minded person takes [having a nice picnic if no one gets to the dry spot first] as something that's *worth doing*, this is because she takes [having a nice picnic] as worthwhile. And we are thinking that, if someone sets as her end, not this unconditional picnic, but the merely conditional [having a nice picnic if no one gets there first], that's because she can't, under the space law, dismiss the prospect that others will reach the spot first and so hinder her picnic. In the teeth of others' capacity and permission to frustrate her unconditional picnic plans, she settles for the conditional picnic. Of the ends she's able to set, this one brings her action closest to the purpose she sees as worthwhile, the picnic itself.

Against certain lucky backgrounds, as when she's the only picnic person for miles around, she'll manage also to set the unconditional end. But the law of occupying the unoccupied falls short by leaving this to chance. We want it ruled out as a matter of the law's own content that a person would *ever* settle for E-conditional-on-others'-accommodating-choices just because that's the end, closest to E itself, that is settable given the undismitted prospect of hindrance by others' choices.

To put this in what Ripstein rightly regards as the crucial perspective, notice that a *servant* might set herself the end [having a nice picnic if her master doesn't order her to work on Saturday afternoon]. If she goes for that conditional end, in place of an unconditional picnic, it's because her master might force her to do chores then. Because he might hinder a Saturday picnic she can't set out after the unconditional picnic that's the object of her justificatorily basic endorsement.

I believe that, for all its stupidity, this stupid solution to the problem of independent purposiveness is pointing the way toward a more responsive one. To bring this out I'd like to turn to the topic of my favorite chapter of *Force and freedom*. I'd like to talk about traffic law.

6

The glory of the traffic law is that it allows a traveller to concern herself only with the law and never with *traffic*.

I am headed south, you're going west. If each keeps on as she's going, we'll collide. I decide not to cross the intersection just now. Why not?

Maybe I expect you to barrel ahead. Maybe I can't rule out that you will continue. Then I might take the fact that you will or might keep going as a reason to stand still. If you keep going you will hinder my own progress by knocking me off course or by disabling my body or vehicle. To move forward I've got to stay put. And so I yield.

I hate it when that happens. I hate that your going presents itself as a reason for me to stay. You are not a rolling stone or a runaway trolley. You are a person whose movement into the intersection answers to my own freedom.

The law arranges for me to arrive at this decision from a different motivation. I could decide to yield at this junction because I'm required under the law to yield

there. A two-way stop sign is posted, and you have the protected direction; or it's a four-way, and you got to it first; or the traffic light is giving you green. If I'm stopping because it's the law, I'm not stopping because you're going to go. I yield, not to your body, your momentum, or your car, but to your right of way.

What are the things that a person might set out to do because she regards them as worth doing? She might act for picnics, omelettes, or houses. She might head west or south. But she also might set out after freedom. Something that's worth doing for its own sake—and so something that need not be done as a concession to the external constraints thrown up by others' actual or incipient choices—is to act consistently with the freedom of other persons.

If the traffic law permits you to move ahead now, then under this law I have no right to set the end of [going south as soon as is physically possible]. For you are permitted to do what would hinder this. But this law might reserve for me the right to set as my end [going south as soon as that's consistent with your freedom]. Because you have the right of way, only my yielding is consistent with your freedom. So I act on my end by waiting for you to pass, and your going ahead does not hinder my pursuit of it.

This right to a conditional end avoids my earlier misgivings about a right to set the end of doing-E-if-others-don't hinder-my-doing-E. If I set out to [go south if that's consistent with your freedom], the reason won't be that you might hinder me from doing what I take as basically valuable. Instead I'll be doing this because I care your freedom: I value my trip's consistency with your freedom independently of anything you might do to hinder my trip.

This solution has been hiding in plain sight. Returning to Kant's statement of the universal principle of right, we find that it protects as rightful that action which can coexist not with the things that others do but with their freedom. There's a frank circularity to this formula. Kant identifies the freedom he's talking about with persons' enjoying the right to set out to do whatever is consistent with others' enjoyment of that freedom.

7

I think that *property* owes its appeal to the possibility of understanding the ends it protects in this circular way.

Maybe there's no ordinarily described end of [cooking an omelette] such that a person's right to set the end will precede her typical setting of it and will take hold independently of others' choices to act in the ways that permit it. But in the property society I enjoy the right to set myself the end of [making an omelette if I come to own the means of omelette making] whether or not anyone sells me eggs, mushrooms, pots and pans, or a stove. My various rights, for various ends E, to set myself the end of doing-E-if-I-acquire-the-means-to-E come together in my general entitlement to [use as I see fit any means that I acquire]. That entitlement, which is often invoked by Ripstein as the basic tenet of property, is presumably my

right, for any E, to set out to do [E if I come to own the external means to E]. If I have this right at all, I have it independently of your particular choices.

It's easy enough to dismiss this as another trick. What I judge basically worth working toward, you might suspect, is not E-if-I-come-to-own-the-means-to-E but E period. I care about owning the means to E because they're the *means to E*. If I set the merely conditional purpose, that's because it's the one I can set given that others might hinder my pursuit of an unconditional omelette by withholding the ingredients.

This is not the only way to see the matter. To give property its best shot we should suppose for a moment that the law of freedom encompasses a right of property in external objects. On that hypothesis my using only what I own is a using of external objects that's consistent with others' freedom. If I care about freedom—if I set out, among my other purposes, to uphold other persons' freedom—then I might well set out, not to make an omelette period, but [to make an omelette if I come to own the means to omelette making.] I might do this not because the coercive enforcement of property makes of this end a “second best” to an unconditional omelette but because, independently of anyone's coercion of me, it's the version of an omelette that's worth going for.

But this resolution of the independence problem is not proprietary to property. If usufruct were instead put forward as the content of the law of freedom with respect to the use of external objects, we could also understand the end of building-a-house-if-others-don't-grab-the-hammer-first on the pattern just explained. House-building coexists with others' freedom as that's understood by usufruct only if others are not already using the lumber and tools. So a right to set out to [build a house if others don't use the lumber and tools first] is a right to set out to [build a house consistently with others' freedom]. It's a right to set out after what I might well judge to be basically worth doing independently of what others will or might do that impedes it.

If this is the way to independence, it's seeming that we could reach it through a law of any otherwise eligible content. But I believe that the problem of independence imposes more structure on its solution than has been noticed so far. To explain this I need to return to the streets.

8

Suppose now that our intersection is neither lawless nor governed by a public traffic law. Instead the law of occupying the unoccupied holds sway. If you are going to stop for a moment, in a spot that I'm on course to enter before you'll have left it, then my moving ahead will hinder your occupation of an otherwise unoccupied space. If you are going to do this, I might stop because you're going to stop and so as not to hinder that.

This decision to yield poses as a kind of mixed case. It resembles the lawless decision I described insofar as it amounts to my stopping because of what you are going to do. It resembles the decision to obey a traffic law insofar as it's not my

stopping because your action would *hinder* my going. The second resemblance suggests that this decision might sort with obedience of a traffic law, on the side of independent purposiveness; the law of occupying-the-unoccupied ensures that I need never take your projected hindrance of my possible action as a reason to stop since I can, at the relevant intersections, find that reason in *my* possible hindrance of *your* projected action. But I am thinking that this is not good enough—that when I stop so as not to hinder your stopping I am subjected to your choice.

Imagine as before that I had set out [to go south as soon as is consistent with others' freedom]. Because you are going to linger in my path I've got to narrow this purpose, adopting as my specific plan that I [delay my southward progress for a moment so that I won't invade a space that you're going to occupy]. This narrowing of my purpose is compelled by the fact of your own particular action in advance of your road-occupying end. It's your projected tenure of the middle of the road that makes it true of me that I must set that narrower end if I'm to act on the broader one. The fact of your setting out to do what would be hindered by one version of my acting on my broader end compels me to boil my intention down to the version that doesn't hinder what you're going to do.

The traffic law refuses this adaptation of one person's end to the other's choice. It saves for everyone the right to set as her end [moving in a direction, or standing still, if that's consistent with others' freedom.] And for each action that might advance such an end, it determines that action's consistency with the others' freedom independently of any facts as to whether others are taking particular action that's externally inconsistent with it. If my going is contrary to your freedom, that's not because my going will hinder what you're going to do. It's because you have the right of way, a right you owe to the green light and not to your own tendency of forward motion. I can carry out my aim of moving consistently with your freedom even as I don't make it my purpose to act consistently with any particular action of yours.

9

Your right of way saves me from having to take your westward motion as my reason to yield. But in deciding whether to leave the house I'll often take the fact that thousands of others are moving west, east, south, and north as a reason to stay home. In this way I seem to yield to the choices of other persons and not to just to their rights. My earlier remark that traffic law frees a traveller's deliberation from constraint by traffic probably struck you as wildly mistaken. A typical subject of the traffic law, if she's lucky enough to live in a crowded place, is *obsessed* with traffic. Great stretches of her practical thinking are given over to the question of how to get where she's going given the trips that others are taking.

In a minute I will argue that this appearance is not to be trusted. But if it were correct I would take it to show, not that I've misconstrued the ground of traffic law, but that the existing positive traffic law is not living up to the demand for independence that grounds it. We should make a better law.

I am tempted to say that we should make *trains*. We should build a bunch of trains and run them on a public schedule so that in deciding whether to set out on any particular journey I can ignore the traffic reports in favor of a timetable. This would have the pleasant result that people reach particular worthy destinations after trips of predictable durations. But it would perhaps also serve freedom. It would tend to free our movements from subjection to the travel choices of all the others.

But on second thought it is clear that no technology will suffice for that freedom. Even in the smartest of mass transit systems I can get where I'm going only if I can find a seat on some train. When the 3:13 is full other persons' particular choices will have compelled me to pursue my original end of [going south as soon as is consistent with others' freedom] in some straitened form like [delaying my departure to 3:52].

Maybe an ideal traffic law requires a bigger timetable. It could first find out from all persons which particular destinations they're trying to reach by which times consistently with others' freedom. It would then publish to their smartphones a schedule of legally permitted individual departures and routes computed independently of persons' actual motions or dispositions to leave.

This again that would be a nightmare. Scheduled in this way we would lose the right to walk or ride around. I hope that the right to motive includes the right to wander or to mosey: setting out with no particular place to go, taking a turn down any weird alley that catches my interest. A timetable that licenses only particular scheduled trips from points A to points B denies me the independent right to set ends of motion that depend constitutively on the motion's spontaneous or exploratory character.

We might just forfeit the right to wander if the timetable were securing the independence of our rights to set any of a general class of other ends. But the timetable cannot do that either. A timetable that governs only my daily travel decisions leaves my pursuit of longer-run purposes subject to others' choices. When I'm deciding whether to sleep and eat at a greater or shorter distance from the site of some ongoing project I'll seem to have predict the commuting plans of others so as to predict the timetable's permissions of my won commutes. I might decide against a long commute, not because the timetable forbids *that decision*, but because the commutes it allows me will be slow and infrequent given that other people are going to jam the intermediate spaces.

This might inspire a bigger timetable, a schedule of rights of way not just for particular trips but all longer-run pursuits of space-occupying purposes. But that's not too attractive either. Not only would the grand timetable banish all improvisation. It calls for the impossible, a single "planning moment" that precedes all persons' particular pursuits of lifelong plans of action

We can do better, I think. One final clarification of the nature of the traffic law will explain how under that law emancipates even spontaneously decided and directed trips from constraint by others' decisions to make such trips of their own.

Let our paths cross one last time. I am going downtown, you are headed across town, and our possible collision lies over a patch of sidewalk that's not governed by any sign or light. One of us will have to yield. An independently purposive decision to yield must not be a decision to [stand still because moving would hinder or be hindered by the given motion of the other person.] But it's not obvious what else it can be. How can one person yield to the other's right of way if neither person comes into the encounter as the ordained bearer of that right?

But suppose that you've set out to [cross town if that's consistent with my freedom]. I've set out to [go downtown if that's consistent with your freedom]. I submit that these two ends together call for you and me to do either one of (you go, I stop) or (I go, you stop). We might each take those purposes as lending equal support to each pattern and then *pick* one of the two. For example I might wave you across, proposing that I yield, and you might accept the proposal with a nod or a glance. I think that you and I can each do her part of (you go first, I go second) while each taking my end of a freedom-consistent motion and your end of a freedom-consistent motion as supporting that pair of actions.

It might seem that when I decide to yield as part of your going ahead and my yielding, I am narrowing my end—from [continuing downtown if that's freedom-consistent] to [waiting a second until you've passed]. It might seem that I am doing that so as not to hinder a thing you're already doing, namely [heading across town consistently with my freedom]. This comes across as another asymmetrical adaptation of one person's purpose-pursuing to the other person's choice.

I think that another understanding is in reach, however. If you had set out to [go west now], then, true enough, your pursuit of that purpose would constitute the fact of your moving in a particular direction at a particular time such that I'm doomed to hinder that motion or to suffer its hindrance if I persist in my own original trajectory. It would give me a reason to turn away from any trajectory that's incompatible with this thing you're doing. In acting for that reason I would be adopting a narrower version of my end so as to fall in with your particular choice.

But your intention to [go west if that's consistent with my freedom] is not one that, in deciding when to move ahead, I may take as your given tendency *to go west now* or at any other particular time. What your end of freedom-consistent westward travel is bringing you to do, in the way of particular dated westward steps, is not determined independently of this deliberation that includes my own thinking about when to move. It is still to be decided within our currently unfolding decisions of how to act for our ends of freedom-consistent motion. Before you and I work that out, your freedom-consistent trip *stands in no determinate incompatibility relation toward my own possible bodily motions*. And so my decision to yield is not my choosing against some motion just because it's incompatible with the accomplished fact of what you're doing.

Another objection. If I'm yielding because a pattern of your continuing and my yielding is made rationally appropriate both by your end of [crossing town if that's freedom-consistent] and by my end of [going downtown if that's freedom

consistent], then it might seem that I'm acting *for your end*. The implication that I can't act for my end without acting for yours seems to give the lie to independent purposiveness.

Our encounter suggests to me that there's more than one way in which a person's end can rationalize a particular action. Your end can sponsor your action in virtue of the fact that the action directly serves the end as when it causally contributes to or helps to constitute your end's attainment. But your end can also help to make it true of some action of mine that, by leaving you free to pursue your end of freedom-consistent motion, the action advances my own end of acting consistently with your freedom. Here I can take it that your end rationalizes my action although I don't see my action as something to be done because it contributes to your end's *achievement*.

11

Even the nod and the glance are probably dispensable. A loose convention to some such effect as that participants in the sparser flow of foot traffic yield to participants in the denser one can serve as your and my cue to opt for (I stop, you go) as a profile that's supported by our ends of freedom-consistent motion. Of course I'd better not be thinking that I should stop because that convention disposes you to go independently of my own decision. But the convention might instead work just to make the one pattern salient so that each can decide to adopt her part, not as a response to what the other's going to do, but as an unconstrainedly recommended way of travelling consistently with the other's freedom.

Some conventionally orchestrated cooperations for street freedom have an especially misleading surface. The New Yorker who steps in front of an oncoming taxi appears to present its driver with a particular determinate motion—HEY, I'M WALKING HERE—to which the driver must yield if she's not to run him over. Locals know better than to take this literally. Each party's studiously pretended obliviousness to the other person's progress lends an exciting suspense to the age-old ceremony through which they settle, seemingly at the last nonfatal moment, on one particular pattern for acting on their ends of freedom-consistent motion. "I'm walking here" really means "I'm walking here consistently with your freedom, as you are driving consistently with mine, and this is me reminding you that we need to converge, soon, on a particular pair of freedom-consistent motions." It's a characteristically ironic performance, a rather beautiful thing.

A freedom-grounded law of traffic isn't bound to take the form of an antecedent assignment of rights of way to every point of possible external incompatibility between our actions. We can obey the law, when we reach those points, by spontaneously cooperating for freedom there. Faced with an intersection we can decide for a particular interpersonal pattern of externally compatible movements through it. We can take this up as a way in which each will do what she's already set out to do—travel consistently with the other's freedom.

I believe that this street-level cooperation for freedom is not after all an *alternative* to the mode I discussed earlier, the recognition of antecedently legislated rights of way. Even where I yield to you in obedience of a stop sign, we are there and then cooperating for freedom. We are each taking my end of travelling consistently with your freedom and your end of travelling consistently with mine as calling us for to organize our walking and yielding into the particular profile that the stop sign mandates. We're doing this so that each will have decided how to advance her end independently of what the other was going to do.

When I postpone my drive beyond rush the hour this need not be because too many others are leaving now. If we've all set ends of travelling in particular directions consistently with others' freedom, I can regard my later departure as part of a pattern that's supported by those ends. For example it might happen that, as a matter of convention, subjectively urgent trips take precedence over subjectively casual ones. This can sound like another nightmare of heteronomy: puffed up with the importance of your particular purpose you are going to go, and I stay home because you're going to go. But the urgency of trips can function instead as a factor of salience, a cue for picking one pattern from the many others through which we might act on our ends of travelling consistently with freedom. We could work the same focal magic by deferring urgent trips in favor of trivial ones, or by flipping coins. If every other person is deciding to make her particular trip in this way—as one of many trips sponsored by all our ends of freedom-consistent travel and picked out purely by the convention—then I am not deferring to anyone's disposition to make her particular trip let alone to her judgment of its urgency.

I concede that this is hard to recognize as a description of actual traffic. I live in Los Angeles. If it's not what we're doing now, we should give it a try.

In the end this ideal of free movement is probably easier to appreciate on foot. As I walk through the city I claim no right against other walkers that they yield to my particular motion. Often I stop short or change direction in a way that's partly explained by my concern to act consistently with their freedom. But the explanation is not that my original trajectory was inconsistent with what the others were already doing. The others had also set out to walk consistently with my freedom and are now yielding or advancing as part of a profile of everyone's motion supported by that purpose. As my own reason to stop or turn aside, then, I may take the fact that my action forms part of a pattern of walking rationalized by our ends of walking consistently with the others' freedom. Walking by myself is something that I do with other people if I do it freely.

12

I see no reason to confine this conception of the law of free motion to any particular subspace of traversable or usable space. Nor can I understand the point of confining it to *space*. I am thinking that independence requires that all the space we might ever occupy as we act for our purposes, and all the external resources we might devote to them, fall under a single law of social traffic. This law is to determine the freedom-consistency of persons' potentially mutually hindering

actions independently of the facts as to which of these actions are being or will be done.

A law of this generality can't be a timetable. It can't be an antecedent assignment of rights of way and rights of access to objects, determined before we ever interact. We will have to set its particular terms as we go along. But our improvisation will obey a general law that has force independently of our activity and that was there before we started: the law of freedom requiring us to pursue [our particular space-occupying and means-using ends consistently with others' freedom].

I also doubt that this law incorporates a general right of private property in spaces or objects. If there's a compelling rationale for property, it's that property frees our pursuit of object-requiring ends from constraint by others' choices. I've just claimed that this ideal of independent purposiveness is to be had by our all following laws that share out our access to resources on terms set independently of persons' dispositions to grab or use those goods. When it comes to deciding which particular laws to follow in this spirit, the imperative of independence does not favor private property over any other detailed scheme of access to external means.

Suppose that this last claim of mine is false. We *don't* secure independent end-setting rights by subjecting our potentially incompatible actions to joint decisions guided by everyone's aim of upholding others' freedom. Your pursuit of your purposes is *not* independent of my choice when it's bound by a requirement to resolve the potential incompatibilities of our action through deliberation that includes my own decision. Independence reserves for each person a right to pursue means-using purposes in a way that owes *no* fealty to any other person's decision.

If there's a trademarked virtue of property, it's that under property my deciding that you won't use an object I own settles the question of that use's consistency with my freedom independently of any decision that you might make about how it's to be used. But to embrace this case for property is to restore a troubling resemblance between property and usufruct.

You own some land. I have none. I set out to [feed myself while doing as little work as is consistent with others' freedom.] You set out to [feed yourself while doing as little work as is consistent with others' freedom]. In advance of your aim you intend to [bring it about that I'll grow a crop for you]. You move to do this by granting me entry to your land if and only if I'll grow a crop there for you.

If property is to secure the right of strictly unilateral disposition over owned resources that is now on offer as its distinctive rationale, then your policy of refusing entry unless I work for you must constitute a determinate intention as to what will happen on this land that I've got to take as given in deciding myself whether to go and what to do there. Because you are bent on keeping me off the land unless I work it for you I can advance my own purpose if and only if I now resolve to grow your crop. Your settled action compels me to take up what had been, before I faced this choice of yours, an alien purpose.

Right is concerned with external incompatibilities between the possible actions of embodied persons. What concern is that? Which practical problem do these incompatibilities raise? What is the point of a moral mechanics?

The problem can't be that we're in danger of doing physically, spatially incompatible things. It's not going to happen. Nor does Kant seem worried that we will fumble various worthy projects because each person's pursuit of them collides with the others. The first is not a problem, and the second does not cry out for freedom as its solution.

A great accomplishment of *Force and freedom* is to have isolated a genuine problem raised by the potential collision of bodily actions that only rights to freedom seem poised to solve. This is the problem of extending to every person a right to set ends that holds independently of others' choices even as every person depends for the power to accomplish her ends on others' omitting to choose what's incompatible with the action through which she pursues them.

I've argued that we can have this independence if every person, whatever her particular ends, sets out to [work for those ends consistently with others' freedom]. We do this by disposing of the space and the objects that our purposes demand through decisions to occupy and use them in profiles that these freedom-minded ends make rationally appropriate. Where we all follow this law of the street no one is compelled to go along with what what the others were already doing.

Having taken on Ripstein's conception of the point of right I find that it leads me to two sharp disagreements about right's content and status. One is already in the open. I doubt that independent purposiveness offers a good justification for a general right of private property in external objects.

A second disagreement concerns the nature of the practical guidance that right supplies. On my picture it will not suffice for independence that persons forebear from specific externally individuated kinds of action—kinds individuated independently of the motives for which they're done. It's not enough that I omit to bum-rush your space or that I keep my hands off your loot. If in acting for my ends I am bent on occupying a particular empty location or on making off with a particular idle tool, then you are compelled to defer to these actions by doing only what's externally compatible with them. But when I make it my purpose to [pursue my other ends consistently with your freedom], *this* practical stance does not constitute a tendency of action standing in determinate incompatibility relations with the things you might do. Instead of confining your action to what's externally compatible with itself, my freedom-minded intention joins yours in throwing rational support to one or another pattern of your and my compatible action.

Kant says up front that the domain of right is the domain of coercively enforceable, externally legislated obligations. He is thinking that right is upheld if people do what's consistent with others' freedom, and that they can do that whether or not they are acting for the sake of others' freedom. Against this proposal I've just argued that right obligates me to act for freedom: consistency with your freedom itself requires that I make that consistency my maxim. It would seem to follow, by

the letter of Kant's announcement, that others may force me to do that. But no one may force me to act for a particular motive. I deny that right's freedom-grounded obligations are satisfied independently of motive, and I deny that they're all coercively enforceable.

This marks a pretty drastic revision, I know. But I am thinking that we should go ahead and make it. It's true that Kant has set out in this book to characterize the universe of external and enforceable obligation. But he's also trying to say when and why it's okay for one person to hinder another person's action. The second project calls for some account of the problem raised by external incompatibility. Ripstein convinces me that, if this is a problem, that's because only certain patterns of mutual hindrance can coexist with every person's enjoyment of a right to set ends independently of others' choices. But I've just argued that no profile of externally compatible, externally individuated action *suffices* for that independence. You are not independent unless I am acting for the sake of your independence. If this is right we'll have to choose between Kant's two descriptions of his topic: between the study of external obligations and the reconciliation of mutual hindrance with independent purposiveness. For now I'm choosing the project whose point I hope I'm finally coming to see.

14

The novel *Independent people* by Halldór Laxness tells the story of an Icelandic sheep farmer who values two things above all others, his independence and his sheep. When we first meet Bjartur he has managed to put together a herd, some acres of grassland, and a farmhouse. "Size isn't everything," he says to his dog, acknowledging that the house is not big.

Take my word for it, freedom is of more account than the height of a roof beam. I ought to know; mine cost eighteen years of slavery. The man who lives on his own land is an independent man. He is his own master. If I can keep my sheep alive through the winter and can pay what has been stipulated from year to year—then I pay what has been stipulated; and I have kept my sheep alive. No, it is freedom that we are all after, Titla. He who pays his way is a king. He who keeps his sheep alive through the winter lives in a palace. (20)

Things don't turn out very well for Bjartur, and he makes several large mistakes. To keep his sheep alive through the winter he starves his family. To build a taller house he borrows against the high price commanded by Icelandic wool during the first world war. When peace breaks out and the price comes down, he loses his empty house along with the rest of his stake.

I take it that many of my fellow left-wing novel readers come away from this book confirmed in their view that independence is a joke. Even a person who tends sheep in the Icelandic interior finds his life course set not only by the weather—although, *yes*, by the weather—but also by his unchosen subjection to a matrix of social relations. By the price of wool in terms of coffee. Instead of a free life the most he can hope for is a happy one, a high price rather than a low.

I disagree. Bjartur's mistake is not that he aspires to independence in society but that he confuses that independence with property. An owner of sheep has the right to set sheep-related ends but in the property society is more or less sharply confined to doing what can be done with sheep. If he wants to do something beyond sheep he will have to find someone who's willing take his wool for cash with which he can buy the means to his other ends. In this way he depends for his entitlement to set non-sheep ends on merchants, bailiffs, manufacturers, bankers, and Danes.

Unfortunately Bjartur compounds his fetishism of ownership by also making a fetish of *sheep*. Refusing to sell even one ewe for a cow that would give more milk for his children, he appears truly to have set for himself the ownership of sheep as a final end.

But never mind. For all his mistakes Bjartur gets one thing right. He is for freedom. And he is sometimes even free as when, with no master to order him back to the house, he walks over the heath reciting his poems to his dog.

It might yet turn out that people living together can be independent people. That will not happen when everyone has managed to exclude all the others from her portion of external means. For a better example of how to do it I propose the law of the street. To escape constraint by others' choices we should share out the space for and means to our independently adopted ends through a law that binds us independently of those choices. This is a law that everyone will uphold, not because she must limit her activity to what can sustained on her lot, but because like Bjartur she is after freedom and so is trying to do what leaves the others free. The law will set us free by giving us this chance to act for freedom's sake.*

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