

Neither justice nor charity? Kant on ‘general injustice’

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ABSTRACT

We often make a distinction between what we owe as a matter of repayment, and what we give or offer out of charity. But how shall we describe our obligations to fellow citizens when we are in a position to be charitable because of a past injustice on the part of the state? This essay examines the moral implications of past injustice by considering Immanuel Kant’s remarks on this phenomenon in his lectures and writings. In particular, it discusses the role of the state and the individual in addressing the problem.

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1. An uneasy distinction

We often make a distinction between what we owe as a matter of repayment, and what we give or offer out of charity.¹ An act of repayment responds to a precise claim that compels its subject to perform a specific action. This may be to pay back a loan, or to set right the damage done to a neighbor’s property. These are matters, in the broadest of terms, of justice. Charity, on the other hand, is performed out of the kindness of one’s heart. It is appropriate to praise a person for her charity, but inappropriate to lavish praise upon her for repaying a debt. Similarly, while it may be appropriate to be grateful for the kindnesses of others, gratitude for repayment seems misplaced. Within the context of civil society, the distinction becomes more vivid still. In that context, matters of justice are matters for the appropriate institutions and authorities to prescribe, adjudicate, and enforce. Institutions can certainly *encourage* charitable behavior, but charity cannot be compelled as a matter of strict obligation. Still less is a charitable character or generous disposition a matter for enforcement.

Civil institutions reinforce the distinction between justice and charity, but they also problematize it. How, for example, shall we describe our obligations

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to fellow citizens when we are in a position to be charitable because of a past injustice on the part of the state? How shall we describe these obligations when those we help are in need because of the same injustices? Are these actions still properly speaking *charity*? After all, the assistance is voluntary and legally unenforceable; yet praise and gratitude now seem out of place. Indeed, it might be argued, the apparent act of charity seems now to have the character of simply setting things right.

As it happens, Immanuel Kant – himself a great explicator and defender of the distinction between justice and charity – is aware of precisely this problem in his published texts and lectures. In remarks that appear over twenty years of teaching and writing, Kant repeatedly observes that what we take to be an instance of charity may in fact be an instance of repayment. This shift from charity to restitution occurs when some members of political society ‘take a share in [a] general injustice’² that ‘introduces an inequality of wealth that makes others need their beneficence.’³ In these cases, Kant observes, ‘if we ... do a kindness to an unfortunate, we have not given him something for nothing, but repaid him what we were helping to take away through a general injustice.’⁴

This essay will examine the moral implications of civil injustice through this Kantian lens. Kant is by no means the only – or most recent – philosopher to have wondered how institutional injustice affects the content or degree of our moral obligations, especially those of assistance.⁵ Still, there are clear philosophical advantages to a detailed Kantian exploration of the phenomenon. Most fundamentally, Kant’s moral philosophy offers an argument for and elaboration of the distinction between perfect duties – including duties of repayment – and imperfect duties. On the Kantian account, some perfect duties toward others are externally enforceable. As such, these can be duties of right – that is, duties for a legitimate political authority to prescribe and enforce. When it comes to charity, Kant’s theory offers a rich account of the obligations and reactive attitudes associated with the performance of beneficent action. This includes, for example, a detailed account of praise, merit, honor, and gratitude – all attitudes and obligations that further problematize acts of charity in the face of past injustice and its resulting inequalities. Finally, the distinction between perfect and imperfect duty is, for Kant, part of a larger systematic framework that includes a liberal political theory about the justification and shape of legitimate political institutions, especially the institution of property and contract right. In sum, Kant’s systematic account of moral and legal obligation provides a rich foundation from which to consider the obligations that fellow citizens may have toward one another in the context of civil injustice.

To be clear, the questions considered in what follows are not in the first instance questions about restitution, nor are they necessarily questions about the appropriate institutional responses to past injustice. These questions will naturally emerge over the course of the discussion, but the problem considered here precedes these concerns, in a sense. At the core of this discussion is

a question about how injustice refigures and complicates ethical relationships among fellow citizens. This includes a question about the content of our ethical obligations toward one another under such circumstances. But it also includes questions what it means to be a virtuous moral agent under such conditions, and how a virtuous moral agent in a position of relative privilege under such conditions should conceive of her beneficent actions – for example, whether she should expect or deserve praise and gratitude as a response to them.

2. Beneficence in the face of ‘general injustice’

We begin by considering the textual bases for a Kantian theory of past injustice, something Kant often refers to as ‘general injustice.’ One of Kant’s earliest discussions of the phenomenon appears in the lecture notes dated to the mid 1770s:⁶

But since respect for rights is a result of principles, whereas men are deficient in principles, providence has implanted in us another source, namely the instinct of benevolence, whereby we make reparation for what we have unjustly obtained. We thus have an instinct for benevolence, but not for justice. By this impulse men have mercy on another, and render back the benefits they have preciously snatched away, though they are not aware of any injustice; the reason being, that they do not rightly examine the matter. One may take a share in the general injustice, even though one does nobody any wrong by civil laws and practices. So if we now do a kindness to an unfortunate, we have not given him something for nothing, but repaid him what we were helping to take away through a general injustice. For if none might appropriate more of the world’s goods than his neighbor, there would be no rich folk, but also no poor. Thus even acts of kindness are acts of duty and indebtedness, arising from the rights of others.⁷

Kant’s reported remarks in this lecture appear as part of a teleological story about the ‘instinct of benevolence.’ Kant argues that this instinct has been implanted in us to rectify or counteract a type of epistemic and moral deficiency. Specifically, we often fail to examine properly the salient details in matters concerning strict duty or repayment. The case of general injustice appears to be a common and intractable instance of this failure. Perhaps because we can participate in general injustice without breaking the law, we fail to notice this injustice, and the fact that we stand in a relationship of obligation to others. Here Kant makes for the first time what will become a recurrent observation, namely, that it is possible to benefit from – and thus participate in – an injustice *even though one has not violated any civil laws*. Though the claim is perhaps polemical, Kant even suggests that participating in injustice in this way amounts to a kind of theft: benefits have been ‘unjustly obtained’ and ‘snatched away.’ This leads Kant to conclude that what we take to be acts of charity in these cases are actually duties of repayment or restitution. In the face of this epistemic error, the ‘instinct of beneficence’ also appears to have a motivational role – through the mercy they take on each other, individuals render to others that which they owe. Note, however, that being motivated by mercy to pay a kind of debt introduces its

own set of worries – for example, that a person might expect praise or merit for an action that was owed. Later, in the *Doctrine of Virtue*, Kant notes that mercy (*Barmherzigkeit*) is ‘an insulting kind of beneficence’ that ‘one has toward someone unworthy.’ Indeed, he also associates it with a tendency to ‘make a display’ of one’s virtue.⁸

Notably, we also find in this passage some suggestion that there is something at least *prima facie* suspicious about vast inequality as such, or one person appropriating ‘more of the world’s goods than his neighbor.’ A few lines earlier in the lecture, Kant again appeals to a teleological story to support this sort of claim: he argues that ‘since the provision made for us is universal, one must not be indifferent in regard to the happiness of others.’ He continues with an example: if I were to come across a ‘table laden with food in the forest,’ I could not assume that the bounty is intended for my benefit alone. Rather, I ‘must also be mindful of leaving something for others.’ This, Kant concludes, is the source of ‘beneficence by means of obligation.’⁹

Another fragment from around the same time foreshadows themes that come to the fore in Kant’s later discussions of general injustice. Though Kant does not mention the phenomenon of general injustice by name, the contours of the problem bear an obvious similarity to the state of affairs described in the earlier lectures. Specifically, we often fail to recognize our duties of restitution, because we would prefer to be lauded for our apparent generosity, rather than be reminded of our obligations:

Many people may well have the desire to do good deeds, but do not want therefore to stand in obligation to others; when one approaches them only with submissiveness, they will do everything; they do not want to submit themselves to the rights of man, but instead view these as objects of their magnanimity. It is not immaterial under which name I acquire something. That which belongs to me, must not be granted merely at my pleading.¹⁰

Similar themes of unwarranted self-congratulation appear again in a footnote to a discussion of the role of praise and esteem in moral education in the *Critique of Practical Reason* (1788):

It is quite advisable to praise actions in which a great, unselfish, sympathetic disposition or humanity is manifested. But in this case one must call attention not so much to the elevation of soul, which is very fleeting and transitory, as to the subjection of the heart to duty, from which a more lasting impression can be expected, because this brings principles with it (but the former, only surges of emotion). One need only reflect a little and one will always find a debt that he has somehow incurred with respect to the human race (even if it were only that, by the inequality of human beings in the civil constitution, one enjoys advantages on account of which others must all the more do without), which will prevent the self-complacent image of merit from supplanting the thought of duty.¹¹

General injustice is here presented as the background condition of a *moral deficiency* – a tendency to ascribe undeserved ‘merit’ to oneself. Kantian merit is the moral esteem that agents earn in going beyond the requirements of

strict duty.¹² Thus, when these agents allow the image of merit to replace the thought of duty, they mistakenly congratulate themselves for having performed an imperfect duty of beneficence when, in fact, they have merely taken a step toward paying back a kind of debt.

The footnote from the second *Critique* repeats and expands upon several of the claims found in the earlier lectures. Again Kant emphasizes the *epistemic failure* at the core of general injustice: agents have a tendency to mistake restitution for beneficence because they do not sufficiently examine the moral features of a situation. And again, Kant suggests that agents can participate in injustice, not by committing a civil wrong, but merely by ‘enjoy[ing] advantages’ gained through a past injustice. Further, in this passage, Kant explicitly references the source of general injustice: an ‘inequality of human beings in the *civil constitution*’ is responsible for this state of affairs.¹³ This failure of the civil constitution – the details of which we will examine in the next section – renders benefits to some that others must ‘all the more do without.’

A final reference to general injustice in the published works appears again in a passage from the *Doctrine of Virtue* (1797):

Having the resources to practice such beneficence as depends on the goods of fortune is, for the most part, a result of certain human beings being favored through the injustice of the government, which introduces an inequality of wealth that makes others need their beneficence. Under such circumstances, does a rich man’s help to the needy, on which he so readily prides himself as something meritorious, really deserve to be called beneficence at all?¹⁴

Kant’s reference to ‘the injustice of the government’ reiterates his assertion in the *Critique of Practical Reason* that some institutional failure is to blame for this injustice. Further, Kant here makes explicit what was perhaps only implicit in the previous discussions of inequality: general injustice creates a *structural dependence* among citizens. Some citizens are in *need of help* and some are in a *position to help* because of the very same injustices.

Kant’s remarks in this passage appear among a series of ‘casuistical questions’ attached to his discussion of various duties of virtue in the *Doctrine of Virtue*. These questions have a certain pedagogical aim: having introduced his argument for a type of obligation, Kant proceeds to consider these difficult cases, at least in part in order to help sharpen his readers’ judgment about matters of application. Kant only sometimes answers the questions he raises, so in some cases there is room to wonder about what Kant’s answers to these questions might have been. In this case, he seems *at least* to be saying that general injustice seriously complicates the way we ought to conceive of acts of beneficence. But his precise stance is not wholly clear. Only a few lines earlier, he remarks that a rich person ‘should hardly even regard beneficence as a meritorious duty on his part, even though he also puts others under obligation by it.’¹⁵ That remark appears in the context a more general observation about the relative ease with which the rich can be beneficent, and not yet in the context of general injustice.

Still, Kant seems to think that the rich person *can* put others ‘under obligation’ with at least *some* helping actions – in Kantian terms, this means that these actions count as instances of wide or imperfect duty. In both remarks, however, Kant suggests that we not *call* the act beneficent, or *regard* the act as beneficent. The suggestion is remarkable, not least of all because it suggests a kind of sleight of hand when it comes to how we describe helping actions under such conditions. I will return to this point in the final section of the essay.

Before proceeding to consider the type of injustice implicit in ‘general injustice,’ it is worth pausing to make a few observations. First, in all of the passages in which Kant discusses the phenomenon of general injustice, Kant at least puts pressure on the idea that helping actions under conditions of general injustice should be considered acts of beneficence. In some cases, he even goes further to suggest that these are cases of indebtedness and acts of repayment. Of course, this does not yet tell us that these are matters of *right* or *justice*. Kant sometimes discusses obligations of indebtedness and repayment in purely ethical (i.e. non-judicial) terms, as for example, in his discussion of debts of gratitude. To be sure, Kant does reportedly refer to duties of repayment under conditions of general injustice as ‘arising from the rights of others’ in the early Collins lecture, but we should be hesitant to assume that he necessarily has a *judicial* right in mind here. Assuming the transcribed text accurately reflects Kant’s thought, it might still be the case that Kant simply means that a person’s provisional rights have been violated under conditions of general injustice.¹⁶ Recall that the discussion of general injustice in the Collins lecture follows immediately upon Kant’s claim that nature makes a universal provision for mankind. As such, taking more than one’s fair share – especially to the point where others become dependent upon one’s beneficence – might easily amount to a violation of a person’s provisional right. A fragment from about the same time as the Collins lecture makes a similar point. There, Kant asserts that ‘One has actually a right to constrain others to preserve our own life, with regard to the barest necessities, because property is only a share in the communal endowment of nature.’¹⁷ The right at issue, in other words, may not be a judicial right, but a provisional right springing from nature’s original, universal provision, which all human beings share in common. Further, even if helping actions under conditions of general injustice are, in some sense, instances of rightful restitution, it would seem these cannot be externally coerced like other duties of right. I will return to this point in section four.

Second, it is noteworthy that *all* of Kant’s remarks concerning general injustice appear in the context of discussions of *virtue*, and not in the context of judicial right. Even where the passage refers or alludes to duties of repayment, it is in the context of pointing out a failure on the level of character or virtue – a failure to recognize our duties for what they are. Indeed, in both of the later, published, passages, Kant’s main target is a tendency on the part of agents toward self-congratulation, or toward ascribing unwarranted merit to one’s maxims. Kant’s remarks appear to be fundamentally concerned with instilling a kind of

moral humility. Because agents need not commit an identifiable civil wrong in order to participate in general injustice, there is a tendency to mistake the salient features of a situation and suppose oneself to be performing an uncomplicated act of beneficence when one is actually setting things right in some sense.

3. Two interpretations of general injustice

We are now in a position to examine the injustice implicit in 'general injustice' in more detail. Two observations about this phenomenon have already emerged in the course of the discussion: first, within the civil condition, its source appears to be traceable to some institutional failure. Kant cites 'injustices of the government'¹⁸ and the 'civil constitution'¹⁹ as the source of general injustice. Second, general injustice concerns *material inequality* – an observation that Kant makes explicit in the *Critique of Practical Reason* and *Doctrine of Virtue* passages cited above. But just how these two observations come together to form a conception of general injustice is a matter of some interpretation.²⁰

To begin: injustice is a violation of the laws of right in Kantian civil society.²¹ A violation of right, in turn, obtains when the innate right of freedom of one person is unilaterally subject to the choice of another, or placed at the whim of another.²² Kant glosses the innate right to freedom in relational terms: he describes it as a right against 'being bound by others to *more than one can in turn bind them*.'²³ In Kantian civil society, then, a person's right to freedom is not violated simply because it is subject to another person's choice. Rather, injustice occurs when a person's freedom is *unilaterally* subject to another's choice.

This sketch provides us with a formal definition of Kantian injustice. But recall that *general injustice* involves material inequality, and here we encounter a new puzzle. In Kant's mature political theory, there is nothing *prima facie* unjust about material inequality. The 'thoroughgoing equality of individuals within a state, as its subjects, is quite consistent with the greatest inequality in terms of the quantity and degree of their possessions.'²⁴ Thus, for material inequality to constitute or be associated with an *injustice*, it must unilaterally constrain a person's innate right to freedom, or result from an action that so constrains freedom. Commentators on Kant's political philosophy have been divided about the set of material circumstances that occasion such injustice. Some argue that material injustice includes only a relatively minimal set of wrongs that directly infringe upon a person's freedom – theft and fraud, for example.²⁵ Another interpretation – gaining prominence in recent decades – observes that material conditions like poverty and severe dependence can severely limit or constrain a person's freedom. On this interpretation, injustice can occur whenever such material conditions obtain as a result of civil laws and practices.²⁶ In this essay I will not – and need not – commit myself to one or the other view. Indeed, as I hope to argue in the remainder of the discussion, Kant's concerns about general injustice apply whichever view one adopts.

3.1. The 'narrow' interpretation: general injustice as 'force and fraud'

The narrower account of material injustice considers material conditions, including material inequality, to be unjust insofar as these conditions have been brought about by or constitute a direct infringement upon a person's freedom.²⁷ Most straightforwardly, then, instances of 'force and fraud' – for example theft, coercion, and failure to make good on contracts – meet this criterion. On this interpretation, coercive measures regarding property are only legitimate insofar as they rectify or prevent such invasions of freedom.²⁸ Examples include using coercive measures to return stolen property to its rightful owner.

On the narrow interpretation of Kantian injustice, then, the civil authority could commit an injustice against a particular citizen or group of citizens in one of several ways: first, it could itself commit an act of force or fraud against a citizen. Second, and more plausibly, it could pass legislation that effectively allowed others to commit such acts. Third, it could fail to adequately enforce prohibitions against force or fraud with respect to some citizens. On this narrow account, then, general injustice would obtain when some people benefit materially – and others suffer materially – because the state has actively interfered with individuals' freedom in one of these ways. The inequality that results from such injustice – often magnified and entrenched over the course of many generations – would constitute Kantian general injustice.

An example that springs readily to mind is, of course, the great injustice of slavery in the United States in the eighteenth and nineteenth centuries.²⁹ Slavery was unjustly permitted by the civil authority, and many argue that reparations are due for this injustice – minimally, for the stolen labor that slavery represents. Of course the immediate victims of this injustice are dead, and even if we posit that the civil authority has maintained an identity over time, certainly its laws regarding slavery have changed.³⁰ Still, the injustice of slavery continues via the burdens and benefits that the descendants of these respective groups experience. I will return to a discussion of these benefits and burdens below.

3.2. The 'wide' interpretation: justice and welfare

A wider interpretation of the innate right to freedom and Kantian injustice begins with the observation that certain material conditions and relations can endanger a person's independence, or the quality of being one's own master. These observations, so the argument goes, suggest that the civil authority has some obligation to ensure that these conditions do not obtain.

There exist different accounts of how material inequality or dependence can endanger the innate right to freedom and independence. Some offer developmental arguments for this claim. Sarah Williams Holtman, for example, argues that independence is a capacity that develops, or at least emerges under certain conditions. Material dependence, she argues infringes upon the development of

this capacity (2004, 98–100). Arthur Ripstein offers a similar, though less developmental, account, focusing instead on the ‘systematic’ injustice of poverty and material inequality. As Ripstein puts it, this ‘systematic’ injustice consists of the fact that ‘a person cannot use his or her own body, or even so much as occupy space, without the permission of another.’ Her entire ‘purposiveness depends on the grace of others’ (2009, 281). Most straightforwardly, one would be in this position if her very survival depends upon the beneficence or choice of other private citizens.

Note that there is a particularly problematic feature of these kinds of relations in civil society. On one description of the Kantian account, citizens enter into political society, including its system of property rights, on the condition that they will be able maintain their innate right to freedom, and they would not agree to do so otherwise.³¹ There is thus something insidious about political injustice that *endangers* the innate right to freedom in these ways. It is perhaps even a sort of contradiction if the very institution intended to maintain the innate right to freedom puts some of its citizens at the whim of others by placing them in a relation of material dependence. The Kantian emphasis upon the innate right to freedom as the *raison d’être* of the state yields an obligation on the part of the state to respond to features of the human condition that might otherwise force some citizens to exist according to the choice of others. The resultant civil society will presumably include extensive social programs and ‘safety nets’ to ensure that its citizens are never forced into a position in which they become systematically dependent upon the free choice of others.³²

On the wider account, then, the state can commit an injustice if it fails to ensure the material conditions necessary to maintain the freedom and independence of its citizens. It may be helpful to again illustrate with an example. If a government fails to provide adequate provisions for health care, this forces some citizens to become dependent upon the free choice of others. Citizens will depend, for example, upon the choice of an employer to provide insurance instead of being able to rely on health care as a matter of citizenship. On the wider account of Kantian justice, their innate right to freedom has been compromised by an injustice of the government (in this case, a failure to ensure a basic need). And, when some *benefit* from this injustice, even indirectly, those citizens participate in and gain from a general injustice.

4. Two challenges to a juridical duty of restitution

Whichever interpretation of Kantian injustice one finds more convincing, it is clear that cases of general injustice are by no means rare. And, by Kant’s own lights, those who benefit from general injustice seem to owe something to those who suffer from it. But we quickly run into trouble if we conceive of this debt as a duty of right, or an externally-coercible debt.

4.1. *The problem of equity*

The debts and duties associated with general injustice are diffuse: it is not clear *how much* is owed in general, a *fortiori* in any particular case. And though Kant is generally clear that the rich almost always stand in some relation of debt to others, it is nearly impossible to determine which agents are in that position *as a result of general injustice*, and how much those agents have benefited from general injustice. It is thus impossible to determine not only how much is owed, but also *who owes whom*.

Those familiar with Kant's political philosophy may recognize some similarities between this case and the special case that Kant describes as the 'right of equity'. In the *Doctrine of Right*, Kant introduces cases of so-called 'equity' as an exception to his foundational claim that duties of right are those duties that can be externally coerced. Cases of equity are cases in which there exists a right without the possibility of coercion.³³ Kant cites the example of a servant who agrees to work for a certain wage, but only collects a salary after a devaluation of the currency, reducing the buying power of the agreed-upon salary. In this case, Kant argues, the servant's employer ought, *as a matter of right*, adjust the wage to reflect the current value of the currency. However, without a clause to this effect in the contract (which we can presume is absent in this case), any coercion to adjust the wage is impossible.

It is important to note that there are at least two possible interpretations of Kantian equity. According to the first interpretation, coercion is impossible because *even though we know what is owed*, such payment or restitution is not specified in the contract, and so cannot be legitimately enforced by a court as a matter of right. So, for example, the employer in the scenario above could simply calculate the servant's fair wage by consulting the rate of inflation during the servant's time of employment, though no court could legitimately coerce him to pay this wage. Several remarks that Kant makes suggest that he has this interpretation of equity in mind. First, Kant refers sometimes to *giving others their due* in his remarks on equity, suggesting that this involves a concrete payment or action.³⁴ Second, Kant remarks that cases of equity must appeal to the *court of conscience*.³⁵ Again, there is here a suggestion that some specifiable and concrete repayment is at issue: in order for the court of one's conscience to be satisfied, one must be satisfied that one has done what was owed as a matter of equity.

However, a second interpretation of the right of equity is available. On this account, coercion is impossible in matters of equity because the precise *content* of obligation is not known, and was not specified in the contract. One example that Kant uses in the *Doctrine of Right* points, perhaps, in the direction of this interpretation. In that example, partners who have contributed variously to a business venture are left with a question about how much compensation is owed to each after the venture goes awry. Coercion, in this case, is practically

and morally impossible. It is practically impossible because there is no way of knowing precisely how much the burdened partner is owed. It is also morally impossible, since any attempt on the part of a judge to compel the other partners to contribute some 'ballpark' amount would be met with their legitimate protest that the contract in no way requires or allows such a contribution (Byrd and Hruschka 2010, 228).

Importantly, cases of general injustice are *further removed* even from this broader interpretation of the right of equity. Even in that case, the parties involved are clearly identifiable and known to each other. In the case of general injustice, however, there is only the very real, but nevertheless very diffuse, awareness that those who have benefited from general injustice stand in a relation of indebtedness to those who have suffered from it. An example may drive the point home. A recent report showed that black families in the United States are far more likely to be defendants in debt collection lawsuits than white families, even when household income is similar between the groups (Kiel and Waldman 2015). The source of the discrepancy is not direct racism, but, in large part, the fact that the median net worth of white households is thirteen times greater than the median net worth of black households – \$141,900 and \$11,000, respectively (Kochhar and Fry 2014). Even among families with a household income between \$40,000 and \$60,000, the median net worth of white families is nearly five times greater than that of black families – \$101,000 and \$22,825, respectively. Unsurprisingly, white families also tend more often to have family or close friends who can loan them money in order to avoid a debt-collection suit. The authors of the report attribute the gap in wealth and resources to institutionalized racism that 'extends back to the institution of slavery, and, more recently, to twentieth century policies that promoted white homeownership while restricting it for blacks' (Kiel and Waldman 2015). Both practices – and more between – would count as patently unjust on even the narrowest understanding of Kantian injustice. Yet the example shows how diffuse and entrenched the burdens of injustice can become over time. Note, too, that the contours of injustice become even *more* diffuse the wider one's interpretation of injustice (see section three). If, as on the 'wider' account, general injustice also includes the failure of institutions to ensure the material conditions of freedom and self-sufficiency, the parties to general injustice and their relationships of indebtedness will be almost impossible to identify, except in the broadest of terms.

4.2. The problem of presumptive ownership

A further hurdle to any juridical duty of restitution, on the Kantian account, has to do with the fact that Kant thinks that there ought to be a presumption in favor of a person's possession of a thing, assuming the property was acquired by observing the formal conditions for such acquisition. In a discussion in the *Doctrine of Right* on the 'Recovery (Repossession) of Something Lost,'

Kant considers the appropriate legal response to a scenario in which a person unknowingly, and following all formal laws of acquisition, acquires a piece of stolen property, in this case a horse.³⁶ Kant considers the argument that might be made on behalf of the first, rightful, owner – that ‘any acquisition from one who is not the owner of a thing...is null and void.’³⁷ However, Kant observes, the resulting requirement on behalf of any person who ever wished to acquire something would be to ‘investigate whether the thing he wants to acquire does not already belong to somebody else.’ This, Kant argues, would require the prospective buyer to ‘discover who was absolutely first (the original owner) in a series of putative owners,’ something which Kant thinks would be ‘largely impossible’ and make all rightful trade and possession impossible.³⁸ In a civil society, Kant concludes, we ought therefore postulate that ‘conformity with the formal conditions of acquisition’ serves as a substitute for this sort of title search. Kant’s thesis is by no means universally-accepted in contemporary legal theory; many legal systems reject the idea that lawful acquisition can replace a title search.³⁹ But within the context of Kant’s own thought, we can perhaps expand the example beyond deeds and horses – when it comes to the salary that a person earns, for example, this money should be considered rightfully hers, so long as it is earned in conformity with the rules of acquisition. Importantly, Kant’s theory does not prevent citizens from pursuing a title search in the court of conscience. Citizens may, as a result of such an investigation, decide that they have an obligation to return previously-stolen property, or repay the proceeds of a past injustice. Kant’s point is merely that a coercive law to return such property is impossible, because the kind of title search required for such a coercive law would render trade impossible. Of course, this is not to say that the victim of theft is left high and dry, on Kant’s view. In cases like that of the stolen horse, the thief must compensate the original victim monetarily, presumably with the money he illicitly earned by selling the horse.

But when we consider Kant’s suggested solution in such cases (i.e. that the thief compensate the original victim of theft), the case of general injustice threatens to introduce several further complications to Kant’s arguments regarding presumptive ownership. First, in the case of the horse, the person from whom the horse was stolen is able to make a claim of ownership and demand compensation from the thief. But the actors and the conditions in the case of general injustice are importantly different. Civil *institutions*, and not any particular person, are responsible for the injustice in this case. And even if we posit that these institutions persist over many generations, these institutions themselves haven’t retained the resources that have been illicitly taken from the victims of general injustice. The spoils of general injustice, as it were, have been passed along to fellow citizens, many of whom have committed no ostensible wrong in obtaining their wealth. Of course, there is a sense in which the state can be said to own property by way of the taxes it is entitled to collect, and one might argue that it is precisely this property that the state should return to the

victims of past injustice. But on Kant's view, there are two potential problems with this solution. First, his theory of presumptive ownership suggests it would be difficult, if not impossible, to alienate property via taxation on grounds of past injustice. Second, even if this were possible, problems of equity would remain – it would be impossible to determine how much tax should be collected and how many benefits distributed. But this is not to say that the state is powerless in the face of past injustice. In section six, I propose several grounds on which the state might levy corrective taxes in such cases.

5. Neither justice nor charity?

Though Kant sometimes discusses the phenomenon of general injustice in terms of debt and obligation, it is clear from the preceding discussion that the repayment of this debt cannot be externally-coercible. Insofar as the beneficiaries of general injustice owe a debt to its victims, payment of this debt cannot be a matter of right.

One might object here that this conclusion is too quick, since general injustice might be characterized as a case of equity, and equity, for Kant, is still a matter of right – albeit one instance in which right and the possibility of coercion come apart. As noted above, however, general injustice is at least one degree further removed from equity than the cases that Kant appears to have in mind. Even if we interpret equity liberally, that is, as including those cases in which the *content* of obligation is unclear and so not externally coercible, general injustice is even *more obscure still* – and obscure in ways that make it ineligible for being a matter of right. Even on the looser interpretation of equity, the parties to the case are known, and known to each other: the losing business partner can appeal to his colleagues, and his colleagues ought to have a sense (a pang of conscience, perhaps) that they owe the losing partner *something*. But because general injustice is perpetrated through institutions, and because its effects are spread out over populations and generations, even this feature of equity is missing in cases of general injustice. Recall, too, that the more one's interpretation of Kantian justice tends to include welfare rights, the more diffuse these debts and relationships will be.

Further, even if general injustice *were* a case of equity, this would pose its own set of challenges. On that interpretation, beneficiaries of injustice would have to use their own judgment to determine obligation. Agents would know that they owe a debt to others as a matter of right, but they would have to rely on their own judgment to determine the content, extent, and recipients of this obligation. Given the diffuse nature of the injustice, even the most well-meaning agents would simply have to make a choice about whom and how much to help. But this way of describing the obligation places the victims of past injustice at the whim of other citizens *twice over*. They are first placed at the whim of others because the state fails in its institutional obligations toward its citizens (however

we understand these). And they are placed at the whim of others a second time when restitution becomes a matter of judgment and free choice on the part of the beneficiaries of general injustice. Describing the help offered under conditions of general injustice as an instance of the right of equity may help explain the intuition that gratitude and praise are out of place, but it does so at the cost of subjecting the victims of injustice to an extra layer of dependence.

The same problems arise if we think of the solution to general injustice as a matter of charity or beneficence. Even on the most demanding interpretation of the duty of beneficence, agents must decide *how best* to help and *whom* to help, even if they are helping as much as they possibly can.⁴⁰ But again, this makes the solution to general injustice a matter of free choice on the part of its beneficiaries, and it places its victims at the whim of fellow citizens in the ways described above. Note, too, that such a solution will carry with it the risk of various sorts of bias and partiality, even for the most well-meaning agents. Agents may judge, for example, that they can best help close to home, or within their own communities. But the effects of general injustice rarely stay close to home.

And, again, characterizing the response to general injustice as a matter of beneficence introduces a series of moral attitudes and obligations that seem out of place in this case. Perhaps it may seem fitting for the recipient of 'charity' in such cases to be appreciative, or grateful *that* her benefactor has decided to act on her obligations of beneficence. But gratitude, understood (as Kant does) in terms of having a debt toward one's benefactor, or viewing one's benefactor with unceasing respect and obligation, seems inappropriate in the case in which a benefactor is in a position to help because of a past injustice. Indeed, if nothing else, this seems to be Kant's core concern in his discussions of general injustice.

6. Toward a response to general injustice

We return, then, to the central question guiding this discussion: how ought individual agents conceive of their helping actions when they are in a relatively favored position as a result of general injustice? I have argued above that any solution to general injustice cannot be thought of as a matter of right or restitution. Nor should we think of the solution as a matter of charity. Another way of stating these conclusions, then, is just that any solution to general injustice cannot fall to citizens or moral agents *acting as individuals*. It must instead be a matter for institutions. It would take us too far afield to enter into an extended discussion about how, precisely, civil institutions should respond to general injustice, but a few remarks are in order.

First, and most obviously, institutions that are still enabling the injustices described above ought to be corrected. Once this has been accomplished, there remains a more difficult question concerning the damage that has already been done. One option would be for the state to respond in good conscience, as it were, via an appeal to equity. Though benefits and burdens cannot be traced

precisely, the state might do its best to compensate victims of past injustice materially and symbolically (e.g. by publicly recognizing and memorializing past injustice). A few caveats are in order with respect to this solution, however. First, the concerns about equity described above make it the case that there is only a limited sense – if any at all – in which such a solution can count as *complete restitution*, since it would be impossible to know when the victims of general injustice have been made whole. Second, any such solution that relied on levying corrective taxes would have to be careful to avoid the problems posed by Kant's theory of presumptive ownership described above.

Fortunately, when it comes to correcting the damage of general injustice, there are ways to bypass at least the second of these concerns. On what I have dubbed the wider interpretation of Kantian justice (i.e. the welfarist position), the material conditions that have *resulted* from general injustice are themselves sufficient to warrant an immediate revision of institutions with the aim of restoring or establishing conditions under which civil independence is possible for all citizens.⁴¹ On the welfarist position, in other words, one need not even appeal to the fact of past injustice in order to justify institutional change, corrective taxation, and a more just sharing of benefits and burdens.

What if one endorses only the narrower interpretation of Kantian justice and injustice? Note that any condition in which some citizens suffer or are at a disadvantage because of some systematic injustice while others benefit from the same systematic injustice will be unstable, especially since systematic injustices and inequalities have a tendency to repeat and entrench themselves. As John Rawls observes, 'Distrust and resentment corrode the ties of civility.' (Rawls 1999, 6) and Kant is explicit in his assertion the state can levy taxes in order to ensure the stability of the state:

The general will of the people has united itself into a society which is to maintain itself perpetually; and for this end it has submitted itself to the internal authority of the state in order to maintain those members who are unable to maintain themselves. *For reasons of state* the government is therefore authorized to constrain the wealthy to provide the means of sustenance to those who are unable to provide even for their most necessary natural needs.⁴²

On a narrower reading of Kant's theory of right, the mere fact of general injustice will be enough of a threat to the stability of the state to warrant levying corrective taxes, for example. Of course, one might complain that describing general injustice as a threat to stability, rather than a matter of repayment and obligation, is to misrepresent the moral contours of the phenomenon. That would certainly be the case if one were to *reduce* general injustice to a mere threat to stability. But none of these remarks precludes serious moral discussion of the phenomenon. The preceding only makes a much more circumscribed point about the possibility of institutional reform and taxation. Even on an account of Kantian civil society according to which the role of institutions is very limited indeed, there are good Kantian grounds to respond institutionally to general injustice.

But even if the *solution* to general injustice is an institutional matter, we are left with a question about how individual citizens should comport themselves as moral agents in the context of general injustice. How, in other words, should a virtuous person respond to the phenomenon before an institutional response is enacted or complete? Insofar as we think of agents as also political participants, it is plausible to think that a good citizen ought to lobby for the sorts of reforms described above. Though Kant's own account of political participation is generally limited to a discussion of voting and creating legislation, civic participation can extend well beyond such actions, and a virtuous citizen who recognizes injustice should press for change, for example, by publicizing the injustice or lobbying representatives.

But how shall agents comport themselves in the face of general injustice when they are not acting as political agents, but merely as private individuals striving to be virtuous? Kant may give us a clue to the answer in his discussion of beneficence in the *Doctrine of Virtue*:

Someone who is rich (has abundant means for the happiness of others, i.e. means in excess of his own needs) should hardly even regard beneficence as a meritorious duty on his part, even though he also puts others under obligation by it. The satisfaction he derives from his beneficence, which costs him no sacrifice, is a way of reveling in moral feelings. He must also carefully avoid the appearance of intending to bind the other by it; for if he showed that he wanted to put the other under an obligation (which always humbles the other in his own eyes), it would not be a true benefit that he had rendered him. Instead, he must show (*sich ... äußern*) that he is himself put under obligation by the other's acceptance or honored by it, hence that the duty is merely something he owes, unless (as is better) he can practice his beneficence in complete secrecy.⁴³

We saw part of this passage earlier in passing. The subject of Kant's remarks is a person who is wealthy, though not necessarily or explicitly a beneficiary of general injustice. (Though, as we saw above, Kant does sometimes express a suspicion that any great wealth is the result of some injustice.) Curiously, Kant here appears to be pushing a wedge between beneficence and the attitudes that generally accompany beneficence – including praise for the benefactor, and a humbling of the recipient. The fact that Kant describes the benefactor as putting 'others under obligation' indicates that we are here still discussing an act of beneficence (rather than an act of repayment). Elsewhere in the *Doctrine of Virtue*, Kant defines acts of beneficence as acts that put others under obligation.⁴⁴ But here he makes several further remarks about beneficence under conditions of marked inequality. First, the benefactor ought not 'revel in his moral feelings' or show that he wants to put the other under obligation through beneficence – both are pieces of advice that Kant would give across the board. More interestingly, however, a benefactor in these circumstances should not even *regard* beneficence as a meritorious duty. And he should express himself outwardly as if he is not performing an act of beneficence at all, but instead fulfilling a perfect duty.

A similar suggestion appears again in the *Vigilantius* lecture from around the same time, in the context of a discussion of beneficence between friends.

The only way left ... to confer a benefit without injuring the sense of honor, is to so wrap it up (*einzukleiden*) that it would seem a duty of friendship if the other were to accept it, so that only a duty is being met.⁴⁵

Here the source of Kant's worry is not a preexisting relationship of relative privilege, but the observation that an act of beneficence will disrupt the delicate relation of equality between friends. But in both cases, the suggested solution may strike the reader as having a rather *un-Kantian* flavor. Kant seems, on the face of things, to be suggesting a kind of noble lie or sleight of hand – that we pretend to be fulfilling a perfect duty – in order to navigate these difficult ethical waters. Aside from the hint of deception, the suggestion to obscure the nature of the action may seem almost patronizing – especially if the recipient is aware of the strategy. How might we make sense of Kant's suggestion in a way that avoids these concerns?

Perhaps Kant is merely suggesting that the beneficent agent not *lay claim* to gratitude and merit under certain circumstances (e.g. where problematic inequality exists, or where beneficence would damage friendship's balance of love and respect). The strategy is familiar enough – for example, when we say, 'Please don't thank me; it was no trouble at all.' The solution has one major advantage: it removes the worry that we might reinforce or make worse already-existing inequalities by performing an act of beneficence. And Kant sometimes suggests that the degree of merit we ascribe to an act of beneficence can depend on how difficult the action was for the benefactor.⁴⁶

Though relatively tidy, there are two problems with such a solution. First, there is a clear sense in which a virtuous Kantian should never attempt to *claim* gratitude from another, even when it is owed. Doing so – however unsuccessfully – would certainly indicate the kind of moral self-congratulation that Kant warns so strenuously against. But here another problem emerges. Though Kantian agents ought never lay claim to gratitude, it is nevertheless the case that acts of beneficence *by definition*, put their recipients under obligation.⁴⁷ A virtuous agent ought never *claim* gratitude; but her beneficent actions generate debts and obligations nonetheless.

So we are left with a question about whether it is possible to drive a wedge between Kant's *philosophical* understanding of beneficence – which by definition includes putting the recipient under obligation – and the way it is *practiced*, where this includes the possibility of earning neither gratitude nor merit for one's action, in a sense treating beneficence as if it were a perfect duty, perhaps a duty of restitution. Notably, there is at least one moment in Kant's discussion of beneficence where Kant explicitly allows for such a thing, even if only in passing. This appears in his discussion of gratitude. The very least a grateful person should do, Kant suggests, is to 'render equal services to the benefactor if he can receive them.'⁴⁸ Crucially, if the benefactor *cannot* receive such repayment,

Kant suggests that the recipient render those services to others. On its face, the suggestion is not terribly surprising, but it opens up an interesting possibility with respect to Kant's account of beneficence and obligation. In cases in which a benefactor cannot receive the recipient's gratitude, Kant suggests that the grateful agent pay a debt (of gratitude) through an act of beneficence. There is no sense that the grateful agent owes the chosen recipient of his help any form of repayment; he has merely chosen a particular act of beneficence to make good on a pre-existing and otherwise unpayable debt. In one sense, the act is an act of beneficence – it is freely chosen, and not prescribed by perfect duty. But in another sense, it is not an archetypal act of beneficence, since it is, strictly speaking, the payment of a debt, albeit not to the original benefactor. It is, in a sense, repayment under the guise of beneficence.

I want to suggest that something similar is possible in the case of general injustice. To be clear, the claim is *not* that the beneficiaries of general injustice owe a debt of gratitude to its victims. Rather, the suggestion is simply that we might also think of beneficence under conditions of general injustice as repayment under the guise of beneficence. In both the case of gratitude described above (i.e. the case in which the benefactor is dead) and in the case of general injustice, human limitations make a straightforward exercise of repayment impossible. In the special case of gratitude, the human limitation at issue is the mortality of the benefactor. But we can easily imagine other types of limitations standing in the way of other types of repayment. In the case at hand, the epistemic indeterminacy characteristic of general injustice stands in the way of repayment. Though a duty of repayment exists, identifying the proper recipients of repayment and the content of repayment is impossible under conditions of general injustice. But such indeterminacy does not release a person from his obligations of repayment, just as the death of a benefactor does not (as far as Kant sees it) exempt a person from duties of gratitude and repayment.

Citizens who benefit from general injustice benefit illicitly, and in this sense, they acquire a kind of debt. But this debt cannot be understood in terms of a perfect duty of restitution or rightful repayment, for the reasons discussed above. Beneficiaries of general injustice must, then, fulfill their ethical duties of repayment through acts of beneficence. Minimally, this means that facts about structural injustice should figure into a privileged agent's assessment of her various obligations – in Kantian terms, these provide a ground of obligation for the agent who is a beneficiary of general injustice. It is crucial to emphasize that such acts of beneficence cannot stand in for the necessary institutional response to general injustice – this would, as noted above, subject the victims of injustice to the whims of others twice over. At issue here is simply the ethical duty owed by beneficiaries of past injustice. I suggest that this ethical duty is a duty to repay a debt through acts of beneficence.

Unlike other acts of beneficence, however, these acts warrant neither merit nor gratitude (at least as Kant understands it – i.e. as an eternal, unpayable debt).

Agents who offer assistance to others under conditions of general injustice are, in a sense, practicing beneficence – their actions are freely chosen and not owed to any particular recipient. Still, the circumstances of general injustice make it the case that they are also, in another sense, repaying some kind of debt. As Kant is at pains to point out the passages discussed at the outset of this paper, agents should avoid any hint of self-congratulation for performing acts of beneficence in these circumstances. Rather, they should humble themselves in recognition of the debt they owe. This approach is either a patronizing noble lie or a moral sleight of hand; it is simply to acknowledge the diffuse, systematic, and entrenched nature of past injustice.

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Notes

1. For the sake of clarity, references to Kant's works are to the text, followed by volume and page number in the Academy Edition of Kant's works (Kant 1900ff). Abbreviations of Kant's texts are as follows: *KpV*: Critique of Practical Reason; *MS*: Metaphysics of Morals; *R*: Fragments and Reflections; *TP*: On the Common Saying: That May be Correct in Theory but is of no use on Practice; *V-Mo Collins*: Collins Lectures on Ethics (Kant 2001, 37–221); *V-Mo Vigilantius*: Vigilantius Lectures on Ethics (Kant 2001, 249–452). Unless otherwise noted, quotations refer to the translations listed in the works cited.
2. *V-Mo Collins*, 27, 416.
3. *MS*, 6, 454.
4. *V-Mo Collins* 27: 416. I have altered Heath's translation of '*nichts umsonst gegeben*' ('freely given') to 'not for nothing'.
5. Most notable, perhaps, is Pogge (2002), who considers the problem from the standpoint of international aid.
6. Though the date of the lectures attributed to Georg Ludwig Collins are dated from the winter semester of 1784–1785, they are almost identical to the lectures attributed to Johann Friedrich Kaehler, sometime between 1774 and 1777. The Kaehler and Collins lectures thus represent Kant's thought on moral philosophy a decade or so before the publication of the *Groundwork*.
7. *V-Mo Collins*, 27, 415–416, substituting 'mercy' for 'pity'.
8. *MS*, 6, 457.
9. *V-Mo Collins*, 27, 414, reading '*Wohlthun*' as 'beneficence'.
10. R 6736 (19, 145), following in large part Allen Wood's translation in his discussion of the phenomenon (2007, 198–200).
11. *KpV*, 5, 155n, reading '*Aufwallungen*' as 'surges of emotion'.
12. *MS*, 6, 390.
13. Author's emphasis. Note that there are at least two possible interpretations of this claim. Kant may be suggesting that civil society simply legitimizes pre-existing inequalities, or that it actually creates them.
14. *MS*, 6, 454.

15. *MS*, 6, 453.
16. In Kantian terms, provisional rights are secured by entering into a civil condition.
17. R 7193 (19, 268), author's translation.
18. *MS*, 6, 454.
19. *KpV*, 5, 155n.
20. There is some tendency in the literature to argue that Kant's remarks on general injustice provide a Kantian argument that the state has an obligation to ensure a relatively expansive set of welfare rights (see the second interpretation, below). For such interpretations, see Allais (2014), Pinheiro Walla (2015) and Wood (2007). This interpretation is understandable, since Kant's observations regarding general injustice demonstrate that he was aware of and concerned with the ways in which material injustice can be subtly and systematically perpetuated in civil society. Still, it seems any account of general injustice will first need to address the question of how, precisely, Kant understands *injustice*. Further, it is noteworthy that Kant's remarks and warnings regarding general injustice stand, even on the *narrowest* interpretation of Kantian justice and injustice (i.e. the first interpretation offered below).
21. As Kant puts it in the *Doctrine of Right*, 'What is right in accordance with external laws is called just (*iustum*); what is not, unjust (*iniustum*):' (*MS*, 6, 224).
22. *MS*, 6, 237–238. I borrow the language of being placed at the whim of another from Ripstein (2009, 42–43).
23. *MS*, 6, 237, author's emphasis.
24. *TP*, 8, 291–292. See also the *Doctrine of Right*, where Kant argues that the innate right to freedom and independence 'does not signify the relation of one's choice to the mere wish (and hence also the mere need) of the other' (*MS*, 6, 230). On their face, these claims seem to be at odds with Kant's criticism of inequality in the early lectures (see section two). This may be attributable to a difference in scope. Here, Kant may only be concerned with justice and injustice within a civil context, whereas the earlier passages may be concerned with what agents owe to one another *qua* ethical duty.
25. See, for example, Aune (1979), Murphy (1970), Williams (1983), and Van der Linden (1988).
26. See, for example, Allais (2014), Guyer (2000), Holtman (2004), Ripstein (2009), Rosen (1993, 173–208), and Wood (2007).
27. See Murphy (1970, 109).
28. See Murphy (1970, 112).
29. One might worry that slavery is the type of injustice that would prevent a state from being even minimally legitimate, since it 'violates the postulate of public right' (Ripstein 2009, 338–340). And indeed, Kant is critical of serfdom, a condition that deprives a person of all freedom (*MS*, 6, 324). Kant further places serfs and slaves in the same category of 'human beings who have only duties but no rights' – a relation of right to duty that is, on his account, impossible (*MS*, 6, 241). Still, Prussia only outlawed serfdom in 1807, and Kant gives no indication that he viewed Prussia as an illegitimate state or a non-state prior to this reform. The discrepancy may illustrate a rift between Kant's ideal theory of statehood, and a non-ideal theory pertaining to existing states and practices. For an extended discussion of related matters, see Byrd and Hruschka (2010, 143–167). Note, too, that a 'non-ideal' conception of the state allows us to trace the benefits and burdens of injustice back through the history of one, continuous institution, as opposed to positing the emergence of a new state once reforms have been instituted.

30. In the case of the United States, reference to a single civil authority is perhaps misleading, since laws regarding the slave trade were largely made by individual states before the Missouri Compromise of 1820. However, that decision to allow slavery south of the 36th parallel certainly represents the will of a federal authority.
31. See Guyer (2000, 254–255) for this argument.
32. See Varden (2006).
33. *MS*, 6, 234.
34. *V-Mo Vigilantius*, 27, 574.
35. *MS*, 6, 235.
36. *MS*, 6, 300–303.
37. *MS*, 6, 301.
38. *MS*, 6, 302.
39. Byrd and Hruschka (2010), 223n. They note that contemporary German and US law take the opposite of Kant's view, namely that one cannot 'obtain good title from a thief'.
40. On demandingness, see Baron (1995) and Timmermann (2005).
41. See especially Allais (2014).
42. *MS*, 6, 326, author's emphasis.
43. *MS*, 6, 453.
44. *MS*, 6, 448.
45. *V-Mo Vigilantius*, 27, 697.
46. E.g. *MS*, 6, 228; *MS*, 6, 456. See also Johnson (1996).
47. *MS*, 6, 448.
48. *MS*, 6, 456.

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