

Book Note

FORCE AND FREEDOM: KANT'S LEGAL AND POLITICAL PHILOSOPHY, by Arthur Ripstein¹

SIMON KUPI

ALTHOUGH IMMANUEL KANT'S THEORIES of ethics and metaphysics cast a long and defined shadow over the history of philosophy, his ideas in the realm of law and politics have had a more ambiguous influence. Many scholars, most famously John Rawls, have applied Kant's ethical concepts—particularly the “categorical imperative” of his *Critique of Practical Reason*²—in the furtherance of their own political and legal ideas. Few, however, have afforded diligent attention to “Kant's own questions,”³ as Arthur Ripstein observes in *Force and Freedom*. Instead, contemporary thinkers have viewed with scepticism the significance of the concepts of “public and private right,”⁴ developed in his lesser-read foray into political and legal philosophy, the *Doctrine of Right*. As Ripstein notes, Kant's legal and political theory, much to the dissatisfaction of many of his readers, belies a simple extension of his categorical imperative. Moreover, Kant takes a position largely unfashionable to the modern academy—denying that justice requires “a fair distribution of benefits and burdens”⁵ and instead proceeding from more classically-liberal notions of non-coercion. Front and centre for Kant is the “innate right of humanity”:⁶ what Ripstein describes as a person's right to be “free to use his or her powers, individually or cooperatively, to set his or her own purposes,”⁷ with

-
1. (Cambridge: Harvard University Press, 2009) 399 pages.
 2. Immanuel Kant, *Critique of Practical Reason*, trans. by Werner S. Pluhar (Indianapolis: Hackett, 2002).
 3. Ripstein, *supra* note 1 at 4.
 4. *Ibid.* at ix.
 5. *Ibid.* at 3.
 6. *Ibid.* at 33.
 7. *Ibid.*

no one—including the state—having a right to force him or her to advance or accommodate the purposes of another.

Kant's prescription of "equal freedom"⁸—which, for the philosopher, constrains all legal rights individuals and governments may possess—no doubt rests uneasily with the trappings and philosophical underpinnings of the modern welfare state. But Ripstein, as a professor cross-appointed to the Law and Philosophy departments of the University of Toronto, is well-equipped to provide an updated exposition and defence of Kant's legal and political ideas against their modern critics. In chapters three through five, the author re-examines Kant's views on private right, including the philosopher's extension of innate right to the common-law categories of property and contract. In chapters seven through eleven, Ripstein surveys Kant's parallel theory of public right, governing the relationship between the constraint of equal freedom and state power under a constitutional order.

The book is particularly noteworthy for its substantive legal content, animated by Ripstein's research interests in tort, contract, and criminal law theory. Ripstein draws into Kant's framework numerous tidbits of case-law and legal history to frame the *Doctrine of Right's* continued relevance to modern societies, applying Kant's theory to explain concepts as varied as the *volenti non fit injuria* principle, the criminal law's presumption of innocence, and the holding in *Roncarelli v. Duplessis*.⁹ It will thus be of great interest to law scholars and students whose interests or research projects intersect with legal theory. In elucidating the unifying concepts behind Kant's views on government, as well as squaring them against the views of Kant's modern intellectual rivals, the book is also a welcome contribution to the political theory literature on Kant. Ripstein's exposition is clear and well-reasoned, providing a lively and faithful defence of Kant's ideas that is as accessible as it is deep and comprehensive. However much Kant's legal and political philosophy has suffered neglect or misunderstanding at the hands of the academy, *Force and Freedom* recasts it anew—revitalizing an essential work of an intellectual giant in a manner sure to provide fodder for scholarly debate.

8. *Ibid.* at 10.

9. [1959] S.C.R. 121 (the landmark Supreme Court of Canada decision asserting the unwritten constitutional principle of "the rule of law" in finding that then-Quebec Premier Maurice Duplessis had overstepped his authority while revoking a liquor license).