

Jan-Willem van der Rijt

The Importance of Assent

A Theory of Coercion and Dignity

THE IMPORTANCE OF ASSENT

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THE IMPORTANCE OF ASSENT

A Theory of Coercion and Dignity

by

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To my parents and godparents

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Contents

1	Introduction	1
Part I Coercion		
2	The Analysis of Coercion	5
2.1	Introduction	5
2.2	Evaluating Coercion Accounts	11
2.3	The Position of the Coerced	17
2.4	The Role of the Coercer	24
2.5	Summary	30
3	Coercion and Moral Judgment	33
3.1	A Definition of Coercion	33
3.2	Discussion	37
3.3	Applications	42
Part II Dignity and Interference		
4	A Kantian Perspective	51
4.1	Introduction	51
4.2	Considering Oneself Wronged	53
4.3	Moral Agents, Chosen Ends, and Wrongful Interference	56
5	Moral Objections and the Categorical Imperative	61
5.1	Introduction	61
5.2	Coercion and Disagreement	63
5.3	The Formulae of Universal Law and End-in-Itself	67
5.4	The Formula of the Commonwealth of Ends	75
5.5	Conclusion	98
Part III A Kantian Reconstruction of Republicanism		
6	Republicanism	103
6.1	Introduction	103
6.2	Republican Freedom	105

7	Non-domination and Dignity	117
7.1	Introduction	117
7.2	Dignity and Avowed Interests	120
7.3	Immunity vs. Impunity	125
7.4	Implications I	127
7.5	Implications II: Retributive Justice	133
7.6	Summary	141
8	Conclusion	143
8.1	Summary	143
8.2	Dignity and Sincerity	146
	Abbreviations to Kant’s Works	147
	References	149
	Index	153

Chapter 1

Introduction

The view that persons are entitled to respect because they are moral agents is fairly standard in modern day philosophy. What exactly is entailed by respecting persons as moral agents is, however, far less uncontroversial. In this book, one particular aspect of respect for the moral agency of persons takes centre stage: the idea that if people do indeed matter because of their moral agency, then their moral judgments concerning issues by which they are directly affected (in particular those concerning the way they are treated by others) must matter as well. In fact, they matter so much that it is problematic to override or dismiss them, even when they can be shown to be fundamentally flawed, mistaken or otherwise in error – or so I shall argue.

To bring the importance of persons' subjective moral judgments to the fore, this book scrutinizes the role such judgments play in the context of two crucial topics in contemporary moral theory: coercion (Part I) and (non-)domination (Part III). Both coercion and (non-)domination are issues of particular interest because they exemplify cases where the moral agency of the person affected is negated in a very specific, in some sense subtle, but nonetheless pervasive way. Especially with regard to coercion, this claim may seem somewhat odd. After all, coercion typically tends to be blunt rather than subtle, and, as it often is seen as the opposite of freedom, it also seems obvious how it denies a person's agency. As the large amount of literature on the subject of coercion testifies, however, this simplicity is merely apparent and quite deceptive. As will be shown in Part I, being coerced is not just a matter of having one's freedom curtailed by being interfered with as such, but of being interfered with in a particular manner. When a person is coerced, he is being made to do something he thinks he should not be made to do by someone else; to put it differently, his will is subjected or subjugated to the will of another. What coercion does to a person is not just curtail his freedom, but challenge his standing as an autonomous moral agent, too, thereby constituting an affront to his dignity.

After I have discussed the literature on coercion at some length ([Chapter 2](#)) I present my own conceptualisation of the notion in [Chapter 3](#). In my account, I emphasise the subjective, even personal, aspect of coercion, which I argue takes the form of a moral judgment by the coerced on the interfering act of the coercer. In Part II I provide an analysis designed to show that a person's personal moral judgment concerning the way he is treated by others is to be considered of

moral relevance and concern, and why this is so. My argument to this effect is distinctly Kantian in nature, relying as it does on a person's role as a lawgiver in a Commonwealth of Ends. After I have sketched the main outlines of the Kantian framework within which I develop this argument in [Chapter 4](#), [Chapter 5](#) contains my interpretation of the notion of the Commonwealth of Ends and the way it relates to the dignity of the individual moral agent. I argue that dismissing or overruling a person's sincere objections to the way he is treated by others is at odds with the idea of the moral agent regarding himself as a lawgiver in such a Commonwealth. As, in a Kantian perspective, this lawgiving ability is what gives persons dignity in the first place, this makes overruling or dismissing a person's moral objections to the treatment to which he is subjected an affront to his dignity.

In Part III I discuss a different strand in political philosophy, in which the subjection of one person to the will of another is deemed a matter of prime concern: the republicanism of Quentin Skinner and Philip Pettit. In particular, I analyse Pettit's notion of non-domination. Pettit is a declared consequentialist, and my analysis in this part can be viewed as a constructive Kantian critique of this form of republicanism. The notion of non-domination has been most thoroughly debated within the context of the conceptual analysis of freedom. Because this debate thus provides the best introduction to the specificities of the notion of non-domination, I discuss this debate in [Chapter 6](#). According to Pettit, his notion of non-domination can be used to designate a particular conception of freedom, which he contrasts with the more standard interpretation of freedom as the absence of interference. Advocates of this latter conception of freedom have, however, challenged Pettit's notion of freedom, which focuses on one person's power to interfere arbitrarily in the affairs of another. One of the most fundamental differences between the two notions of freedom, according to Pettit and Skinner, is that negative freedom is too much focused on the restriction of choice as such, whereas the republican notion of freedom takes being free, at least to a large degree, to be a matter of standing. As a result, some of the most salient concerns of republicans cannot be adequately addressed by focusing solely on freedom of choice. Though this debate on the proper way to conceptualise freedom is still ongoing, I largely leave aside the question of how best to conceptualise the notion of freedom in order to focus on dignity and standing. [Chapter 7](#) scrutinises the notion of non-domination as it has been explicated by Pettit solely within this context. I argue that the notion of non-domination is very apt to address certain kinds of intrusions into a person's dignity, but that the notion as defined by Pettit contains a number of ambiguities that need to be addressed. Applying results from the analysis in Parts I and II, I offer a Kantian reformulation of the notion of non-domination that explicitly interprets it in terms of a person's vulnerability to interference he regards as wrongful to his person. I argue that ensuring non-domination thus reinterpreted will safeguard an important aspect of a person's dignity as it enables him to assert himself as an autonomous moral agent of full standing. Lastly, I discuss a number of implications this reconceptualisation has for political theory.

Part I
Coercion

Chapter 2

The Analysis of Coercion

2.1 Introduction

Coercion is a notion of prime importance and concern in a number of different disciplines. In ethics, for instance, coercion is considered problematic because it is said to vitiate voluntariness and/or a person's responsibility for his actions (Frankfurt 1988; Lyons 1975; Olsaretti 1998; Wertheimer 1987); in the legal field there is a need for a precise account of coercion, because lawyers want to know if and when it would be prudent to refrain from punishing a person who was unduly pressured into performing an otherwise illegal act (Wertheimer 1987) or when to declare a contract void that came about in such a manner (Philips 1984; Murphy 1981); while in political theory coercion is often the focus of attention out of anxiety about its effects on the autonomy and freedom of the person (Hayek 1960; Knight 1953; O'Neill 1991; Ripstein 2004; Rosenbaum 1986; Zimmerman 2002). These are but some issues connected to the analysis of coercion in such fields; naturally, neither the fields nor the issues are mutually exclusive. The purported coercive nature of the legal system (Lamond 2000, 2001; Edmunson 1995), for instance, is a matter of concern to both legal and political scholars, and the effects coercion has on the moral responsibility of the individual is possibly not entirely separable from the way it affects his legal responsibility (Wertheimer 1987).

As a result of these diverse yet overlapping interests, as well as the different disciplinary frameworks within which the various scholars who have written on coercion work, the literature on coercion is both vast and complex. Different strands within this literature have become hopelessly entangled on certain issues, and very little agreement has been reached with respect to the best way to describe the notion. In itself this is not so surprising, as persistent disagreement occurs to some degree in almost any conceptual analysis, but it seems safe to say that the analysis of coercion certainly stands out in this regard. Though some still prefer to speak of a number of nested conceptions of coercion (e.g. Lamond 2000, 45), others doubt whether much useful insight can be gained from attempts that seek to develop a coherent, unified description of the concept by interconnecting the various usages, intuitions and concerns about coercion (e.g. Berman 2002, 45–46; O'Neill 1991, 175).

For all this disagreement there are nevertheless two things that are hardly contested. First, coercion is something that has its proper place in any political

theory; without recourse to at least some forms of coercion the disagreements, misunderstandings and disputes that are bound to occur between the members of any sizable political community will quickly lead to chaos. Coercion is therefore not something to be eliminated altogether. The second matter on which virtually everyone agrees is that coercion is a bad thing, or as philosophers tend to phrase it: a *prima facie* wrong. Coercion is inimical to the moral agency of the person who is subjected to it, or, as Lamond put it most succinctly: ‘Coercion is hostile’ (Lamond 2000, 61). Though the use of coercion is sometimes, perhaps even often, unavoidable and required, it is a necessary evil at best. A moral or political theory that would advocate (or even allow) the gratuitous use of coercion would be rejected by virtually all contemporary moral philosophers. If and when you advocate the use of coercion in political philosophy, you have some explaining to do; you have to justify its use. Before you can justify something, however, you need to have a reasonably clear idea of what it is you are trying to justify; hence the need for conceptual analysis of coercion.¹

In this first part I argue that though the literature on coercion is already extensive, and although many authors are worried about coercion because of what it does to the individual, there is a subjective aspect to coercion that is often understated, sometimes even neglected. One way of elucidating the reason why coercion is so hostile to the individual is to point out that when a person is coerced, he is subjected to the will of another. Though many (according to some, even all) cases of coercion involve a genuine choice made by the coerced, the context of that choice has been deliberately manipulated by someone else to ensure that the ‘correct’ choice is made. Many approaches, especially those that contrast coercion with voluntariness or freedom, have therefore paid particular attention to the position in which the coerced is forced to make his choice, trying explicitly to identify what coercion is or does in terms of aspects of his choice situation (see Section 2.3). If personal aspects of the coerced person are taken into account at all in such approaches, it is usually in a rather straightforward way that refers to his wants or preferences. Other accounts place more emphasis on the fact that coercion is essentially a relational issue, concerning the interaction between two persons, and expend much effort analysing the role of the coercer by scrutinising the acceptability of the means she employed to get the coerced to act in accordance with her wishes (see Section 2.4).² Here too,

¹ In fact, it would generally be advisable to make sure you have such a reasonably clear idea beforehand, so you can decide whether you want to try to justify it at all.

² When discussing the notion of coercion it is useful to use the feminine pronoun for one person and the masculine for the other, as this avoids referential confusion. For reasons of political correctness, I use the feminine pronoun to refer to the coercer and the masculine to refer to the coerced. In cases where the coercer is clearly male and/or the coerced female, as in some particular examples, however, I have chosen to deviate from this general approach (for instance, the paradigm example of coercion is the highwayman extorting money from his victim at gunpoint (see p. 8), but in such cases I have chosen to disregard considerations of political correctness, because ‘highwayperson’ sounds – to my ears at least – simply ridiculous, as does ‘highwaywoman’).

however, the coerced is often treated in a rather general way, which shows little concern for the particularities of his person or his will.

In this chapter I argue that as a result of this disregard for the personal characteristics and will of the coerced person, the existing accounts of coercion all have highly problematic implications.³ In the next chapter I present an alternative account of the notion of coercion that particularly emphasises those subjective aspects, linking coercion directly to the will of the coerced. This means that whether or not a person is coerced depends, at least partially, on the values and judgments of the person involved. Some may find this a very unappealing, or even unacceptable feature, and it certainly complicates matters (cf. [Section 3.2](#)), but I shall nonetheless defend such a (partially) subjective account. If coercion is indeed mostly problematic because of what it does to the individual – which does not seem a very controversial claim – then this individual aspect should be one of primary concern when analysing the notion of coercion. Neglecting it just to avoid complications would then be most unwise.

Though, to my mind, most existing accounts pay too little attention to the role of the will of the coerced in coercion, some do take them into account to some degree. However, they usually do so in a very different way than I do in my account. Coercion can be characterised as compliance without assent. Rather than focusing on the desirability of the different, often grim, choices faced by the coerced in terms of subjective preferences or wants, or even the coerced's ability to resist, as many existing accounts do, I argue that this lack of assent should be understood in moral terms. Characteristic of our personhood is that we are not just agents, but *moral* agents who can determine for ourselves what is right and wrong and act accordingly. As moral agents, however, we can also judge the actions of others, particularly those actions that directly affect ourselves. It is in this way, I argue, that we should interpret a person who is coerced as being subjugated to the will of another. Though he considers the way the coercer attempts to make him perform a specific action wrongful to his person, he nonetheless complies. Exactly why this kind of subjugation is to be considered problematic is the topic of Part II; the final remarks in this first part discuss some of the implications of the definition of coercion I have propounded.

2.1.1 Examples

Before turning to the next section and discussing the literature on coercion, it is useful to get a 'feel' for the subject matter through a number of examples.⁴ The following examples all contain a number of features that are frequently associated

³ The importance of taking account of such personal characteristics is also emphasised by, for instance, O'Neill (1991) and Crocker (1980).

⁴ Examples 2 and 4 are taken, with slight modifications, from Nozick (1997), Example 3 is taken, with slight modifications, from Wertheimer (1987). Example 7, however, has less reputable origins and is based on your run-of-the-mill Hollywood interpretation of the legend of King Arthur.

with coercion. Not all of these examples are usually considered to be cases of coercion, though. The last, *Chess*, for instance, would not normally be regarded as constituting coercion, nor, I expect, would *The Soldier I*. The first example, *Highway Robbery*, is considered the paradigm case of coercion, but as far as the other examples are concerned, the question whether they constitute coercion will be more controversial. Most of these examples are used at some point in the discussions to follow.

Example 1 – Highway Robbery

Whilst travelling on the open road, person B suddenly finds his coach stopped by a masked individual (A) who, pointing his pistol in B's direction, utters the immortal but most unimaginative phrase 'your money, or your life'. B decides to part with his valuables.

Example 2 – The Slave Master

In a society that fully accepts the institution of slavery, a slave master (A) has the standing practice of having his slave (B) whipped daily. At some point, the slave master tells the slave that he shall forego the daily whipping conditional on the slave's performing some disagreeable task X. The slave does X.

Example 3 – The Mistress

A single mother (B) of a sickly child is unable to pay for her child's lifesaving medical treatment. A, a wealthy local businessman who has long coveted her, offers to pay for the surgery provided she agrees to become his mistress. The mother reluctantly accepts the offer in order to save her child.

Example 4 – The Addict

A drug addict (B) has a regular supplier (A) who provides him his periodic shot at the going market price. One day, however, the supplier refuses to sell the addict the drugs, but offers to give them to him provided the addict beats up another person with whom the supplier has a score to settle. The addict is a peace loving person and would much prefer to buy the drugs at the regular price. Nonetheless, he is sufficiently afraid of the excruciating symptoms of withdrawal to agree to the supplier's demand.

Example 5 – The Soldier

I. *A soldier (B) is ordered to defend a strategically important hilltop. After a lengthy siege, the ferocity of the enemy's onslaught and their overwhelming numbers finally take their toll and his position becomes untenable. His company has taken many casualties and is woefully short of ammunition. Before the final assault, the enemy general (A) offers him and his men safe passage if they surrender their position; if he refuses his position will quickly be overrun and most of his men will fall in battle; the few lucky enough to survive will undoubtedly be captured. The soldier decides to surrender the hilltop.*

II. *A soldier (B) is ordered to defend a strategically important hilltop. After a lengthy siege in which the enemy is repeatedly repulsed, the enemy general (A) decides to change tactics and informs him that unless he cedes his position and withdraws his company, they will start executing their captives forthwith. The soldier retreats.*

Example 6 – A Court Case

B is accused of a crime he did not commit. His trial, however, is not going at all well for him due to a number of perjured testimonies and he finds these proceedings most unfair – a feeling he constantly communicates to all present at court in no uncertain terms. After one of his outbursts the judge informs him that if he does not stop disrupting the proceedings he will be held in contempt of court and gagged.

I. *B decides to be silent to avoid being subjected to the humiliation of being gagged, but thinks this is most unfair.*

II. *B declares that that is indeed a fairly accurate description of his feelings towards the court, and that he believes he is entitled to this opinion. The judge, however, disagrees and orders the bailiffs to gag B. B resists, but is overpowered, gagged and restrained.*

Example 7 – Camelot

At some point in the well known legend of King Arthur, Guinevere, his beloved wife and queen, decides to engage in a certain kind of activity with one of her nobles that is not quite in accordance with the behaviour one might reasonably demand from a lady in her position. Arthur has his suspicions, but decides that he does not want to know any more. Not only would it be most painful and humiliating to him to know his suspicions were true, but given Guinevere's status such behaviour would constitute treason, and by the laws of the land – which he is sworn to uphold – that means he would have to have her beheaded. Being a noble king, but a big softy at heart, he really does not want to have Guinevere lose her fair head, even if there are considerable difficulties of a semantic nature in regarding her as a faithful woman. Unfortunately for Arthur (as well as Guinevere), Mordred knows about Guinevere's antics, and publicly confronts Arthur with proof of her behaviour, gleefully pointing out that Arthur now must have Guinevere executed (or break his oath). Arthur desperately puts up a few feeble counterarguments, arguing that Mordred has no business interfering in his marital problems, but ultimately acquiesces and passes sentence over the adulteress in accordance with the law, as Mordred intended.

Example 8 – Wage Reduction

A owns a small business that employs one other person (B) besides herself. A pays B a wage that is by all accounts generous, and B has always reciprocated this kindness by being a hardworking, trustworthy employee. However, the market has fallen into sharp decline and A can no longer afford to pay B such wages. So she tells B that his wages will be reduced to the minimum wage and if he does not accept this reduction in wages, he will be fired. To avoid being totally without income, B reluctantly agrees to work for the minimum wage.

Example 9 – Chess

A and B are playing a game of chess. A has been pursuing B's queen for some time and at some point in the game corners her. B sees no other option than to exchange his queen for a much less valuable piece.

These examples all capture one or more features that are often associated with coercion. In all of them, for instance, it can be said that it involves a person doing

something he does not want to do. The victim of the highwayman does not want to part with his money, the young mother does not want to prostitute herself, the addict would much have preferred to buy his drugs at the regular price, the employee is most reluctant to accept the reduction of his wages and Arthur does not want to have Guinevere executed. Furthermore, all these examples involve at least two persons, where one person deliberately (and successfully) tries to get another to perform a fairly specific action (possibly with the exception of *A Court Case II*). Although there is a sense in which the latter person does something he does not want to do, there is nonetheless also a sense in which he or she genuinely does want to do what he or she does, and makes a conscious and deliberate choice or decision to do it. In the example of the highwayman, for instance, there is a genuine sense in which the victim hands over his purse willingly; and, as the witticism goes, not only does he hand it over willingly, given the options before him he does so *very* willingly. He much prefers losing his money to losing his life, but this is merely a matter of (some-what strong) preference and he could always choose the latter option. Similarly, the addict could of course decide not to accept the offer, crawl in a hole somewhere and suffer the consequences, but he (perhaps selfishly) decides that it is much more acceptable to him to inflict serious bodily harm on some stranger instead. The soldier could refuse to budge, and Arthur could have broken his oath, but they both decide that the other option is to be preferred – unhappy though they may be to be faced with the options before them.

Some of the examples clearly involve wrongdoing on the part of the (would-be) coercer. Of the highwayman, the drug dealer and the enemy general in *The Soldier II*, it is quite clear that they should not act the way they do. The wealthy businessman, however, may be accused of wrongdoing, but the young mother clearly prefers the businessman making the repulsive offer to his making no offer at all. Although the offer is reprehensible, it is in this sense not totally unwelcome. Similarly, the slave master is undoubtedly subject to moral condemnation because of his inhumane daily practice, but given that the society in which he lives fully accepts slavery, he does not transgress against the slave's rights (a slave per definitionem has none) and it is arguably supererogatory to demand he free his slaves in such a society. Mordred also lacks moral fibre, but this is because of his malicious intentions, not due to his act itself. To report treasonous acts of fellow nobles to one's monarch is not a morally reprehensible act – in fact it can be argued that it is one's duty. The judge in *A Court Case* is probably not acting wrongly by upholding the court's procedures, but A's innocence does make the whole situation morally problematic.

One of the features shared by the two examples that would not normally be considered to be cases of coercion, *The Soldier I* and *Chess*, is that unlike many of the other examples, there is not even a hint of any wrongdoing involved. This suggests, though it obviously by no means provides sufficient evidence, that there may be a moral aspect inherent to the notion of coercion. Some of the other examples, however, arguably also involve no wrongdoing, but there the question whether it constitutes coercion would be less uncontroversial. Therefore, if wrongdoing does indeed play an essential role in coercion, it is likely to be a complicated and subtle

one (Dworkin 1968, 229). In the next sections we turn to the literature on coercion and the different ways different authors have tried to unravel the intricacies inherent to the notion of coercion.

2.2 Evaluating Coercion Accounts

As the literature on coercion is both substantial and complex, it is useful to briefly discuss a number of issues and requirements that can be used to evaluate the adequacy of a coercion account before discussing some of the accounts that have been propounded in greater detail. Having some idea beforehand of what a coercion account should be able to do, and what the most familiar problems in the conceptual analysis of coercion are, will greatly facilitate the discussion. If we need to judge the adequacy of different coercion accounts, it is useful to have some standards by which to judge and classify them.

I must stress, however, that given the diversity of approaches and reasons for interest in coercion already mentioned in the previous section, any list of such adequacy conditions is at least to some degree a matter of personal choice and hence open to debate. Nonetheless, by specifying which issues and conditions I specifically take into account in the following sections I hope to structure the discussion, but also to make explicit which aspects are not a matter of prime focus in the analysis, so that anyone who is particularly interested in such a feature knows where the discussion is likely to need further development. The purpose of this section is not merely to provide a list of conditions, but also to show why those aspects on which I have chosen to focus are indeed relevant. This makes it possible not only to judge whether or not a specific account is satisfactory, but also to identify its strengths and weaknesses, which may be helpful to further develop it or devise an alternative conception.

2.2.1 *The Primacy of Non-moralised Accounts*

One of the great controversies within the literature on coercion concerns the question whether or not coercion is a concept that is necessarily or essentially ‘moralised’ (Dworkin 1968; Rhodes 2000; Ryan 1980; Wertheimer 1987; Zimmerman 2002). An account of coercion is said to be essentially moralised if it is based on a moral judgment in such a way that we cannot determine if something is an instance of coercion without first endorsing particular moral judgments about the case at hand. Murder (defined as the wrongful killing of a person), for instance, is a moralised concept, whereas killing is not. You can ascertain whether person A killed person B purely on factual grounds, but if you want to determine whether a particular killing constitutes murder, then by definition you have to make a moral judgment about it.

On the whole, non-moralised (sometimes also called empirical or factual) accounts of coercion are deemed preferable over moralised accounts.⁵ Moralising the concept leads to a number of undesirable implications and complications. In moral and political theory, problems of an analytical nature arise whenever the same normative system that is used to define the concept is also used to analyse it, in particular the danger of circularity. There is little point in asking whether a murder is wrong, for it is so by definition. For murder this may not be that problematic; but if you define coercion in moral terms the question whether coercion is wrong becomes equally trivial, and that will often cause problems, because the question whether the use of coercive means is acceptable is in many situations both meaningful and pressing (see e.g. Dworkin 1968, 228). Moreover, if you define coercion in moral terms, then a discussion of whether or not a person was coerced reduces (or can reduce) to a debate about the underlying moral outlooks of the discussants. If you and I are trying to determine whether person A coerced person B, we should be able to do so without you first having to convince me of the validity of your consequentialist view of morality, or I you of the superiority of the deontological perspective (cf. below; see also p. 27). Furthermore, a number of influential political and moral theories use concepts such as freedom and/or (the absence of) coercion as the fundamental principle on which the rest of the theory is built. If the notions of freedom and coercion are themselves moralised, however, then such theories ultimately remain groundless (Zimmerman 2002).

It is, of course, possible to use a different normative system to define a concept – for instance if murder is defined as ‘illegal killing of a person’ rather than ‘immoral killing’ – and evaluate it using another. The question whether a murder is wrong from a moral perspective is a meaningful question if murder is defined in legal terms, and (barring disputes about jurisdiction) it is normally clear which legal system is referred to. Nonetheless, even then practical problems remain. First of all, referral to the legal system may be inappropriate in certain cases. If you were to shoot an unarmed outlaw in the back, it makes sense for his family to accuse you of being a murderer, even though they are quite aware of the fact that you are not doing anything illegal.⁶ The legal normative system is simply not the one they are implicitly referring to, so a reply that points to the legality of one’s actions is utterly beside the point. The converse also holds. If you subscribe to the view that judges and juries should be neutral with respect to different views of morality, restricting themselves to deciding whether or not a defendant broke the law, rather than deciding what to do with him based on their moral appraisal of his deeds, then moralised definitions of legal terms cause problems. If the law were to accept a definition of murder that equates it to immoral killing, for instance, then you would be able to

⁵ Even one of the most famous advocates of a moralised account, Alan Wertheimer, openly admits that non-moralised accounts are preferable: ‘Of the two [the moralised and the non-moralised, empirical theories of coercion], it must be said that an empirical theory would be more attractive – if it turned out to be true.’ (Wertheimer 1987, 8).

⁶ I use ‘outlaw’ here in its literal meaning: someone who is placed outside the law; what in Dutch would be ‘een vogelvrijverklaarde’, or in German ‘ein Vogelfreier’.

defend yourself against the legal charge of murder by admitting that you intentionally killed someone, but convincing the judge or jury that it was not morally wrong for you to do so. However, what one person considers a valid reason for taking a life may not be accepted by another (the killing of promiscuous female family members in order to save the family honour may be an example). Whether someone should be convicted of murder, however, should not depend on whether the judge or jury shares the particular moral views of the defendant.

Despite such problems, a large number of moralised accounts of coercion have been proposed in the literature. Advocates of such accounts usually do not dispute the virtues of non-moralised accounts, as may perhaps be expected, but rather claim that it is impossible to develop an adequate notion of coercion without referring to morality (e.g. Berman 2002, 45; Wertheimer 1987, 8); non-moralised accounts are simply unable to offer adequate tools, which we need to address some of the most fundamental issues about coercion – or so it is claimed. Unfortunately, however, the moralised accounts that have been propounded are equally unsatisfactory, as is argued in the next sections. Ideally, therefore, a definition of coercion should be non-moralised and yet be able to account for the most important issues surrounding the concept, or if moralisation cannot be avoided, it must be able to provide remedies to the standard problems of such accounts like the ones outlined above.

2.2.2 *Intuitions*

The role of intuitions in judging the adequacy of an account of coercion is rather tricky. On the one hand, intuitions are sometimes all we have to go by, and it certainly is the case that a coercion account that has many highly counterintuitive implications is very suspect for that reason. On the other hand, however, intuitions are well known to be less than reliable (for some examples where intuitions have led to erroneous judgments see e.g. Posner 1993, 449; see also Wilkes 1988, 8, 16). The fact that an account has *some* counterintuitive implications is therefore not a sufficient reason to dismiss it.⁷ Equally important, however, is that an account of coercion does not yield an empty definition. To be acceptable, a coercion account must be compatible with at least a large part of the intuitions we have connected with the concept.

⁷ This point is particularly relevant for philosophical practice, as philosophers often have a tendency to come up with rather outlandish, imagined situations, especially when they want to provide counterexamples to the view or position they are criticising (besides the various lifeboat and desert island cases, the issues philosophers have pondered include, for example, playing a piano suspended in midair, waking up to find one has suddenly been turned into a vital part of a violinist's life support system, and the implications of a causal relation between you being pinched and the quality of life of a number of cows). While I have nothing against this practice in general – such examples can often be most insightful even though they are somewhat exotic – I do find it problematic when it is combined with intuitional arguments. If there is one area where intuitions are unreliable, then it is in situations that stress the imagination to its limits or beyond (for a most critical discussion of intuitions and exotic thought experiments see Wilkes (1988, especially 46–47)).

By and large I shall follow a method close to what Daniels (1979) (following Rawls 1975, 1971/1999) calls ‘wide reflective equilibrium’: what we should look for is a good fit between the description of the concept and our intuitions, in which the reasons behind the definition of the concept as well as the intuitions carry significant weight, but in which neither are sacrosanct. The implications of the definition should accord reasonably well with our intuitions and when they do not, we should try and see if the definition can be adjusted. Simultaneously, however, when the reasons we have for putting forth a specific definition are strong enough, it may be the case that we should revise our intuitions (or at least not trust to them in this particular case) instead of the definition. Ideally, therefore, an adequate account of coercion will either fit with our intuitions, or be able to provide arguments for not adhering to our intuitions whenever it has implications that go contrary to them.

2.2.3 *Distinctiveness*

Besides the question whether a given definition covers the cases it should cover, it is also important that a conceptual account distinguishes the concept it analyses from other notions that may be closely related to it, but are not quite the same (McCloskey 1980, 335; Wertheimer 1972, 221). Coercion, for instance, may be of normative interest for many of the same reasons that, for example, deception is (see e.g. O’Neill 1989, 113 and Korsgaard 1996a, 348), but coercing someone is clearly not the same as deceiving him. Similarly, to say that A coerced B is not the same as saying that A forced B, even though there may be many cases in which both descriptions are applicable (as is the case in the paradigm example of coercion, that of the highwayman). One important difference between the notions of forcing and coercing is that coercing can only be done by and to moral agents,⁸ whereas non-moral entities can force and be forced, but not coerce or be coerced. An approaching natural disaster can force you to abandon your home and livelihood and to head for the hills, but it does not coerce you to do so.⁹ Neither, I would say, can animals. When an angry bull chases you off its territory it forces you to climb over the fence to safety, but it does not coerce you. Not only is the one who exercises coercion, the coercer, necessarily a moral agent, the same holds for the

⁸ What exactly constitutes a moral agent is a matter of vigorous debate (see e.g. Haksar 1998). For the purposes of this book I assume that adult human beings of ordinary capacities, as well as certain collectives made up of such adults, qualify as moral agents, whereas animals do not. Probably a number of non-adults as well as certain adults of non-ordinary capacities qualify as moral agents, too, but the precise scope of the term moral agent has little particular relevance here. My main focus is on coercion of individual moral agents by other individuals or by collective agents. I do not specifically deal with coercion of a collective moral agent, but the analysis can easily be adjusted to deal with such cases, too. For notational ease I usually refer to both A and B as persons.

⁹ If, on the other hand, you leave your home because I have brought it to your attention that I just dispatched my band of brigands with specific instructions to inflict serious bodily harm should they happen to find you there, it is quite possible that I have coerced you to abandon your house.

recipient, the coerced. You can force a door open, but you cannot coerce it; you can force a horse to jump a fence, but you cannot coerce it to do so. Coercion is a concept that applies exclusively to the interaction between moral agents, but this is not the only difference by which it is distinguished from forcing, for one moral agent can force another to do something without coercing him (the chess example is a case in point). The relevance of this distinction can be illustrated by the two soldier cases. Suppose the soldier's commanding officer demands an explanation as to why he failed to hold the hilltop. It would be rather odd for the soldier to claim that he did so because the enemy general coerced him in the first case, though the claim that he was forced to may be quite appropriate. In the second case, however, there seems nothing odd about calling his withdrawal coerced. One way of explaining this distinction is to say that claiming to be coerced implies an accusation addressed to the coercer (see Berman 2002), whereas this need not be the case when one claims to be forced by another. This explanation of the distinction has some important advantages, for instance that it explains why coercion is limited to cases of interaction between moral agents as only moral agents can accuse or stand accused (see also Section 4.2). For now, however, the main point is not how best to make this distinction, but rather *that* this distinction exists so that any satisfactory account of coercion must be capable of accounting for it.¹⁰ Most moralised accounts are quite capable of making this distinction, but it has proven to be a considerable obstacle for non-moralised accounts.

2.2.4 *Justified Coercion*

As problematic as coercion is, there is little doubt that it can sometimes be justified. Coercion is, for instance, almost inherent in the workings of any legal or political system. Many legal directives are followed by persons not so much because they agree with them, but (in full or in part) because they are backed by the threat of force; convicted criminals tend to be locked up against their will, but few will accept this as a very persuasive argument for claiming that the law that prescribes this punishment is therefore morally reprehensible.¹¹ Whether a particular instance of coercion is

¹⁰ Here it must be mentioned, however, that there probably are cases where 'B was forced' and 'B was coerced' can be used as synonyms in colloquial English, but these are typically cases where there is no mention of the other agent. Furthermore, even in colloquial usage the two terms are certainly not equivalent in all cases and have clearly distinct meanings in some (the phrase 'I was forced to concede the point', for instance, will normally be taken to mean that my opponent in a debate was able to show I made an error in my reasoning, or that her reasoning was superior to mine; the phrase 'I was coerced to concede the point', however, suggests (besides sounding somewhat odd) I was made to declare that I was wrong by means that have nothing to do with reasoning and debate at all). For philosophical purposes this distinction is particularly relevant, so I shall, for the sake of clarity, stick to a more rigorous separation of the terms, even in those cases where this is probably not necessary in everyday usage.

¹¹ Of course, one can criticise a particular legal system for being overly or unnecessarily coercive, but the fact that it involves *some* coercion is itself hardly a damaging criticism.

justified may be a matter of great debate and disagreement, but that there are cases of justified coercion is not. Though this point may seem obvious, the possibility of justified coercion has caused quite some problems for a number of accounts, particularly the moralised ones.

In order to make this problem clear, however, it is important not to misunderstand the term justification. When a person is asked to justify something – say his actions – the typical setting is one of suspicion of wrongdoing, or sometimes outright accusation. To justify one's actions in such a setting often has the practical purpose of avoiding blame (and any possible further consequences resulting from this blame, such as punishment). However, there are two ways in which one can try to avoid blame (without disputing one performed the actions at all). One is to justify one's actions, the other is to argue one should be excused for having performed them. The notions of excuse and justification are often confounded, but it is useful to distinguish the two clearly (see Austin 1970). To justify something is to show that, for instance because of specific circumstances, what one did was in fact not morally wrong but at least permissible, and possibly even required (even though it would perhaps have been wrong in most other circumstances). To respond to an accusation of wrongdoing by justifying oneself is to claim that the accusation is false. It is not false because one did not perform the action but because one did no wrong, which makes blame inappropriate.

To argue that one should be excused for one's actions is quite different, though. In that case one does not dispute that the action one performed was wrong, but argues that there are reasons not to ascribe any blame resulting from that to one's person. There are different reasons why it may be appropriate to be excused, but the most common ones are focused on the relation between the agent and the action he performed, as when a person is not fully in control of his actions,¹² when his action was totally out of character, or when he made conscientious errors in his judgment.

When it comes to the ascription of blame, the distinction between justification and excuse has little practical relevance, for in both cases the person will not be blamed. In other regards, however, the distinction does have important implications. The way we view a person whose actions are justified and the way we regard a person who has been excused is, for instance, quite different – as is the way he may regard himself. A person whose actions were justified has not acted morally wrongly and can hold his head high; he has no reason to feel humbled or ashamed, and can often even take pride in his action. In cases where one is excused, however, this is quite different. Though shame or feelings of humiliation need not be appropriate, to be excused affects the connection between the person and his actions by denying his responsibility for them and is therefore always humbling; taking pride in one's action is certainly out of the question in such cases. This difference also shows itself

¹² Not all views of moral responsibility will accept this, because it is possible to argue that when one is not in control of one's actions, such actions have no moral worth at all, and hence cannot be wrong. To views that do hold such actions to be genuinely wrong, however, vitiated control over the action performed may be a ground for excuse.

in what we would regard as an appropriate response by the person in question. A person who was excused for his action is still often expected to be apologetic; but a person who was justified in what he did may legitimately argue that he has nothing to apologise for.

When a person is coerced into doing something, this is often regarded as a ground for claiming he is not responsible for what he does. Here, too, the difference between the notions of justification and excuse are relevant. The problem of whether coercion justifies a person's action, whether it always does so, or only in particular cases, will be discussed in more detail later (see [Section 3.3.1](#)), but this is not the problem of justified coercion. Justified coercion is not coercion that justifies, but coercion that is itself not wrongful; justified coercion is not so much a practical problem as a conceptual one. If we know that there are cases of justified coercion, then any account of coercion that makes this conceptually impossible must be rejected (i.e. an account of coercion may not lead to implication that 'justified coercion' is a *contradictio in terminis*). As shown below, this problem is particularly acute for certain moralised accounts.

To conclude this section let me briefly summarise the four major issues that are relevant to determining the adequacy of a particular account of coercion I have discussed. First of all, it would be preferable if an account is non-moralised, but if this cannot be, then it should be moralised in such a way that the most familiar problems of moralised accounts can be avoided; second, an account must fit reasonably well with intuitions concerning coercion, but this congruence need not be perfect; third, a coercion account must be able to distinguish being coerced from similar but not identical issues, such as being forced and being deceived; fourth, an account of coercion must be such that the notion of justified coercion remains, at least conceptually, a possibility.

2.3 The Position of the Coerced

This section explores the different ways in which authors who have written on coercion have tried to capture the precarious position in which the coerced person finds himself. Though in many cases of coercion the coerced makes a conscious decision to comply with the intentions of the coercer rather than incur the consequences of crossing her, and in that sense makes a genuine choice, this choice is constrained to such a degree that one can with equal plausibility say that he nonetheless had no choice but to comply. This notion of having 'no choice' or no 'real' choice, however, has been explicated in various ways by different authors. I shall discuss four such accounts in particular, which represent different approaches to the problem of elucidating the way in which the coerced can be said to have had no real choice, even though he clearly had alternatives – dire though they may have been. One such account, Frankfurt's, is centred on the notion that the coerced's compliance must be accounted for by his inability to do otherwise; the coerced could not bring himself to choose any of the alternatives. Wertheimer, however, suggests that having 'no choice' should be understood in explicitly moral terms, meaning that the

coerced cannot be morally expected to have accepted the consequences of refusing to comply. At the opposite extreme to Wertheimer's position we find a view like Olsaretti's, who claims that the lack of a real choice faced by the coerced should be related to the acceptability of the alternatives defined in objective terms. An account that can in some ways be seen as taking a middle position between Wertheimer's explicitly moralised and Olsaretti's objective account is Gert's, who suggests we use what would be reasonable for a rational man to do in such situations as the relevant standard.

No discussion of the literature on coercion can be complete, however, without acknowledging the vast impact of one other paper that both kickstarted the debate and influenced much of its subsequent structure: Robert Nozick's 1969 article 'Coercion' (reprinted in Nozick 1997). Though coercion played an important role in many previous political theories, it was rarely the focus of conceptual analysis prior to this seminal piece. Nozick describes this paper as an exploratory study, which focuses more on specifying the philosophical problems related to coercion than on providing final answers to them. Given the tremendous influence this article had on the subsequent literature, it was clearly a success as an exploratory study. However, Nozick's focus on describing the problems rather than giving definitive answers to them also makes it difficult to determine how committed Nozick is to the tentative solutions he does propose.¹³ For this reason, and because the most salient elements of his tentative solutions have been taken up and further developed by later authors, I shall not discuss Nozick's own account in any great detail, focusing instead on the later contributions mentioned above.

One of the most influential aspects of Nozick's study is his choice to limit his analysis of coercion to cases involving conditional threats ('if (and only if) you do not do X, I shall do Y; and you really do not want me to do Y, so you'd better do X'), thus excluding cases of so-called physical coercion.¹⁴ Many subsequent authors have accepted this view (Fowler 1982; Gert 1972; Gorr 1986; McCloskey 1980; Olsaretti 1998; Wertheimer 1987), often arguing that in cases of so-called physical coercion, the person does not really do anything at all, but something is done to him. The accused in *A Court Case II*, for instance is gagged, but it can be argued that his resulting silence is not something *he* does. Other authors, however, do think cases of physical coercion are genuine cases of coercion (Gunderson 1979; Held 1972; Lamond 2001; Bayles 1972). Apart from the purely linguistic argument – that such cases are not called physical coercion for no reason – some support for this claim can also be found in the fact that even if coercion were to be limited to threats, it is possible to coerce a person without this resulting in action on his part. Even those who want to limit coercion to cases involving threats accept that a person can be

¹³ This problem is compounded by the fact that some authors ascribe a notion of coercion to Nozick based on his description of voluntariness in *Anarchy, State, and Utopia* (Nozick 1974) that is not completely identical with his analysis in 'Coercion' (e.g. Olsaretti 1998; Zimmerman 1981).

¹⁴ Characteristic of physical coercion is that A makes it physically impossible for B not to do X. Standard examples include imprisonment and incapacitation such as *A Court Case II*, but also the direct application of physical force to, for instance, force-feed hunger strikers.

coerced into refraining from acting ('if (and only if) you do X, I shall do Y; and you really don't want me to do Y, so you'd better not do X'). If the coerced person does not do anything in those cases of coercion, why would inactivity be a sufficient reason to exclude cases of physical coercion? After all, in *A Court Case II*, for instance, it is customary to say that the accused is coercively restrained; yet no threat is involved at all.¹⁵ The most compelling argument propounded by those wishing to exclude physical coercion is that there is a very different way in which the person is made not to do something in the case of threats than in the case of physical coercion. The former works through the will of the agent, through motivation, whereas the latter does not. This makes the former an extremely interesting philosophical topic, whereas the latter is much less so. To this, of course, one may reply that this merely makes clear that coercion by threat provides much more interesting cases of coercion than cases of physical coercion. This fully justifies Nozick's decision to limit the scope of his analysis, but should not lead us to deny that the uninteresting cases of physical coercion are still genuine cases of coercion.

Whether or not cases of physical coercion should be classified as coercion I shall set aside, for now. Nozick's choice to focus on cases of coercion through threats has probably been so appealing to many authors because it captures those cases where one does something one does not want to do, but still genuinely chooses to do it. The will of the threatened person is thus simultaneously in control of the action and not in control of the action – a Socratic puzzle indeed.

Not all situations where one person (A) succeeds in getting another person (B) to perform a specific action (X) constitute coercion. If A somehow manages to get B to do what she wants him to do completely willingly (by simply asking him, for instance), then she has no need to avail herself of coercive means. According to those who want to limit coercion exclusively to threats, this essential difference in voluntariness can best be captured by the distinction between threats and offers. If B does X because A threatened him, then he did not do X willingly, but if he accepts an offer, his compliance with A's intentions was voluntary. That the difference between offers and threats is essential to coercion is, however, not uncontested. Authors like Frankfurt (1988); Held (1972); Lyons (1975) and Stevens (1988), for instance, claim that certain kinds of offers are just as coercive as threats.¹⁶ Ultimately, I believe these authors are correct in their view that the distinction between offers and threats is not fundamentally important to the analysis of coercion (see also [Chapter 3](#)). Nonetheless, the attempt to come up with a satisfactory account of coercion by

¹⁵ Some authors, e.g. Lamond (2000), make a distinction between coercion and a proposal being coercive. This distinction is mostly used to differentiate between unsuccessful and successful attempts to coerce (where only the latter are called coercion and the former merely coercive; see also p. 21). Unless explicitly indicated otherwise, I do not adhere to this distinction. However, even if one wants to make this contrast, it does not apply here: the judge is quite successful in making the accused stop his disruption of the proceedings.

¹⁶ Olsaretti (1998) takes something of an intermediate position here. Though she accepts that certain offers may vitiate voluntariness in much the same way as threats do, she does maintain that coercion must involve a threat and cannot be the result of an accepted offer.

distinguishing threats from offers has been so influential that it is impossible to provide an adequate overview of the literature without discussing it (three of the four accounts introduced at the beginning of this section and discussed below subscribe to this view in one way or other).¹⁷

The standard approach to distinguishing between offers and threats is to do so by reference to a baseline. A clear discussion of this method is provided by Steiner (1994, 22–32). In order to determine whether a proposal (P) is an offer or a threat we need to distinguish between the attractiveness of a number of possibilities to the person (B), whom the proposal is intended to influence. For the sake of simplicity, let us express this attractiveness in terms of wellbeing. Let us assume that if B accepts P, then his resulting level of wellbeing will be U. If he declines the proposal, then his wellbeing will be of level V. As the proposal is intended to be accepted, U is greater than V. These possibilities we need to compare to a baseline, for instance the level of wellbeing B would normally be expected to attain if A did not come up with P. This baseline level of wellbeing we shall call W. P then constitutes an offer if U is greater or equal to W (which of course implies that U is greater than V); it constitutes a threat if U is less than or equal to W (which implies that V must be smaller than W). If U is greater than W, but V smaller than W, then P is a mix of an offer and a threat (sometimes also called a ‘throffer’). In summary:

offer:	$U > V \geq W$;
threat:	$W \geq U > V$;
throffer:	$U > W > V$.

Thus, *Highway Robbery* involves a threat, because both accepting the proposal (handing over the money) and declining it (being shot) will lead to a situation where B is worse off than he otherwise would be. *The Soldier I* is an offer, as the normal course of events that would occur if A had not made the proposal is identical to those that will occur if he declines the proposition: his position will be overrun with all the nasty consequences this would involve, and accepting the proposal allows the soldier to avoid these unpleasanties. *The Addict* is an example of a throffer. If the addict does as his dealer wants, he will get his drugs for free which will leave him better off than he would normally be (where he would have had to pay for them), but declining the proposal will leave him worse off than he normally would be (he does not get his drugs).¹⁸

Thus far, this approach seems to work quite well; it is clean, clear and fairly straightforward. Nonetheless, there are two major problems with the application of

¹⁷ For those who wish to limit coercion to cases involving threats, the distinction between offers and threats is not the only relevant one. They also have to address, for instance, the difference between a threat and a warning. Although this, too, is not completely straightforward, it has proven more manageable than the distinction between threats and offers (see, for instance, Nozick 1997).

¹⁸ If the addict’s feelings of guilt for having beaten another person senseless can somehow be taken into account when it comes to the addict’s wellbeing, however, it may be that the proposal ends up being a threat instead of a throffer.

such an approach. First of all, as Steiner notes, from a motivational point of view all that matters is the relative attractiveness between accepting and declining the proposal, the difference between U and V. As far as the prospects of ensuring B's compliance goes, therefore, the distinction between a threat and an offer is irrelevant. If you want to determine voluntariness or coerciveness in this fashion, you need some additional argumentation to explain the relevance of the baseline, argumentation that does not depend on motivational considerations. Second, if you want to make the distinction between threats and offers in this way, much depends on what baseline you choose (where you put W). What the relevant 'normal' course of events would be if the proposal were not made is relatively clear in the aforementioned examples, but this is not always the case. Nozick's famous example of *The Slave Master* nicely illustrates the problem (Nozick 1997). As Nozick points out, if the normal course of events is equated to what one would expect to be the case had the proposal not been made, then the relevant baseline is that the slave receives his standard daily trashing. This would make the proposal an offer. On the other hand, it is anything but normal that the slave is treated in this brutal way in the first place. If one were to use a more humane treatment as the relevant baseline, however, then the proposal can become a threat solely through this shift in baseline.

A number of different baselines have been proposed in the literature. These can be divided into two kinds. Baselines with respect to demands placed on the coercer will be discussed in the next section; here I want to concentrate on approaches that focus on the coerced.¹⁹ Most authors agree that coercion is a 'success' concept. In order for A to have coerced B, her attempt to make him perform X must have been successful; B cannot have been coerced to do X if he did not do X.²⁰ When we focus on the recipient of a potentially coercive proposal, therefore, the question is not a matter of predicting whether he will choose to comply rather than resist, but the retrospective issue of how we should regard his decision to comply rather than decline to do so. One possibility is to ask ourselves whether he could have resisted; another is to question whether he might have been expected to resist. An example of the former is Frankfurt's account (Frankfurt 1988, 26–46), according to which (among a number of other conditions) a person's will must have been overcome to the degree that it is (volitionally) impossible for him to decide not to comply.²¹ This brings coercion through the will very close to physical coercion, and no further reference to a particular baseline is necessary. However, when it comes to the question whether the person who complied may have been expected to resist, a number of different ways have been suggested to further explicate this. Wertheimer, for instance, claims we should ask ourselves whether the coerced's decision to comply

¹⁹ These approaches are not mutually exclusive. Wertheimer, for instance, uses two baselines in his account of coercion; one with respect to the position of the coerced, and another concerning the coercer's decision to make the proposal (Wertheimer 1987).

²⁰ One of the very few accounts that does not limit coercion to such successful attempts is Carr's (1988).

²¹ As such a volitional impossibility can also be the result of an offer, Frankfurt does not limit coercion to cases that involve threats.

was morally acceptable (Wertheimer 1987). If it is, so that it could not have been morally demanded of him that he resisted, then (assuming some further conditions are met) he was coerced; but if this is not the case, then there was no coercion. Olsaretti (1998), on the other hand, claims we should ascertain whether the person had any genuine or ‘acceptable’ alternatives to compliance. In later work, she further develops this notion of acceptability and suggests it can be defined in terms of an objective level of welfare and basic needs (Olsaretti 2004, 154).²² Only if such acceptable alternatives are not present can there be coercion. Gert offers yet another possibility, proposing we should compare the coerced’s decision to comply with what would be reasonable for a rational man to do in such a situation (Gert 1972). Only if no rational man would resist rather than comply can the compliance be considered to be the result of coercion.

All these suggestions have problematic implications, though. Gert’s approach depends on what we think would be reasonable for a rational man to do. What counts as a rational man is open to debate, as is what would be reasonable for such a person to do. This is problematic because, without a well-defined description of these terms, we cannot determine what kind of incentives count as coercion and which do not.²³ More importantly, however, even if it were possible to come up with an acceptable specification of what constitutes a rational man, this overlooks the fact that virtually all real persons are imperfectly rational. Phobias are an extreme example, but virtually all persons have flaws and weaknesses of some kind that would not be present in the rational man. Gert discusses this objection only with respect to its most extreme form, phobias. He makes a distinction between coercion and compulsion, claiming that the difference between the two can be determined by the location of origin of the incentive on which the person acts (Gert 1972, 38). According to Gert, in cases of phobias and other forms of compulsion, the origin of the incentive on which the person acts is internal to the person, whereas in cases of coercion the incentive comes from outside the person, from the situation in which he finds himself. Hence, he claims, phobias are irrelevant to the question whether someone is coerced. The distinction between compulsion and coercion is, however, not as clear-cut as Gert suggests. First of all, a person’s decision to perform an action is never only the result of matters internal to the person, nor is it exclusively a matter of situational aspects, but always a combination of both. Phobias are only the extreme case, but even in these extreme cases of actions performed as the result of

²² There is a possible ambiguity in the notion of ‘objective’ as it is used here. On the one hand, objective can be opposed to subjective; on the other, it can be used as a synonym of empirical in the empirical-moralised distinction. As Olsaretti (1998) is highly critical of moralised accounts, and her account is presented as an alternative to such views, I take her to be advocating a non-moralised view. It should also be mentioned that in her 1998 paper she seems to be closer to a view like Gert’s (although she makes no reference to his work) as she describes an acceptable option as one that is choiceworthy, which is contrasted with an unacceptable option which is ‘one which no rational agent may reasonably be expected to choose.’ (72).

²³ It is unclear, for instance, how strong or weak willed a person may or must be in order still to count as rational. What kind of pressure would be reasonable to expect such a person to resist, however, will depend on these boundaries.

phobias the feared object still needs to be present to account for the action. You may be irrationally afraid of mice, but this will not make you climb onto your table unless you believe there is a mouse present. What Gert seems to overlook is that in cases of coercion the person who seeks to ensure that another person performs a certain action will typically look for such weaknesses, for these are the influences to which her intended victim is most susceptible, and manipulate the situation accordingly (see O'Neill 1991). If I know you are frightened of mice, but fearless when it comes to dogs, then I shall not threaten to set my vicious pit-bull on you for this will have little effect on you – even if every rational person would be quite disconcerted by this prospect. Instead I shall tell you I shall set free my rodents unless you do as I say. When it comes to coercion, what is reasonable for a rational man to do is often utterly beside the point, for when it comes to assuring compliance we are always dealing with particular persons with their personal quirks and weaknesses, and I see no reason why the deliberate manipulation of such weaknesses could not amount to coercion.

An account like Olsaretti's is vulnerable to similar problems because it refers to an objective standard of welfare. One problematic issue concerns the determination of such an objective standard of welfare whereby all situations are to be judged. Without going too far into the details of the notion of basic needs, one can doubt, for instance, whether a drug addict's dependency gives rise to a basic need. Even if such problems can be avoided, however, an account like Olsaretti's, which relies on an objective level of welfare, faces an additional problem because it implies that every person who is sufficiently affluent that he cannot fall below this minimally acceptable level cannot be coerced. If, for instance, a powerful politician extorts money from a successful businessman by informing him that she will make sure the state will seize all his businesses, which he carefully built over the course of his life through honest hard work and thrift (and a little luck), unless he makes a number of generous donations to her party or her private bank account, this could constitute coercion even if the businessman's private savings keep him well above the minimum level of welfare.

Wertheimer's account contains moralised conditions with respect to both the coercer and the coerced, so I shall discuss his account in more detail in the next section. Before doing so, though, a few remarks need to be made about Frankfurt's approach. The Frankfurtian account focuses on the person's ability to control his will and thereby puts more emphasis on the personal aspects of the coerced person. Nonetheless, it has its own highly problematic implications. Take, for instance, the paradigm coercion case of the highwayman, but assume that his victim is a person of great physical prowess whose first inclination is to assault the insolent delinquent who had the audacity to treat him so disrespectfully. However, because of his higher order commitment to his much loved family whose livelihood depends on his continued existence, he manages with great exertion of his willpower to control this urge and decides instead to hand over his purse. Then, according to an account like Frankfurt's, which limits coercion to cases where the coerced's will is overcome, this cannot be a case of coercion, for the victim is in full control of his will and

acts in full agreement with his higher order commitments.²⁴ This, however, seems an unacceptable implication. Surely the victim of the highwayman is coerced when he hands over his money at gunpoint. Whether he fully identifies with the desire on which he acts when he does so, is of little relevance (see also Thalberg 1989).

This section has discussed various ways in which authors have attempted to explain the unwilling compliance of a coerced person by focusing on features of the coerced's choice situation. All of these approaches, however, face serious problems. Claiming that a person must have been (volitionally) unable to resist is too strong a requirement, whereas objective baselines are often beside the point.²⁵ The main problem of such baseline approaches is that they assume or imply that what coerces one person must also coerce another, but as O'Neill has pointed out, this is not the case. Coercion is always coercion of a particular person, and in the next chapter I present an account of coercion that is particularly designed to take such personal characteristics into account. Coercion is not a one person issue, however, and the role of the coercer is no less important than the position of the coerced. In the next section we shall therefore explore the way the role of the coercer has been analysed in the literature on coercion.

2.4 The Role of the Coercer

In the previous section, various modes of explaining how a coerced person genuinely chooses to do what he does but yet does not do it completely willingly, took central stage. Coercion is not just a matter of the coerced doing something unwillingly or reluctantly, however. Although it may indeed often, perhaps even always, be the case that coercion involves some sense of involuntary action on the part of the coerced, this certainly cannot be its only relevant feature. If it were, then it would be impossible to distinguish cases of coercion from cases where the person is merely being forced, which implies involuntariness at least to the same degree as do cases of coercion. At least as essential to coercion is the fact that it involves one person's will being subjugated to the will of another. Coercion is a fundamentally social or interpersonal issue; it is a matter of the interaction between two moral agents. Thus, to determine whether A coerced B to do X, we need to pay equal attention to A's role in B's choice to do X.

²⁴ A possible Frankfurtian reply to this problem may be to point out that the victim of the highwayman in this example may act on a desire he endorses, but still does not hand over his money wholeheartedly (cf. Frankfurt 1988, 159–176). This is probably true. However, this lack of wholeheartedness is not a matter of not acting in accordance with one's higher order commitments, nor is there any lack of coherence in these higher order commitments, for we may assume that the victim fully and unequivocally identifies with his decision to put the wellbeing of his family above his desire for vengeance. How wholeheartedness fits in a Frankfurtian framework if it is not based on such higher order commitments as would have to be the case here, is unclear to me.

²⁵ The problems of explicitly moralised accounts such as Wertheimer's are discussed in the next section.

As was the case with the analysis of the position of the coerced, some authors have tried to describe the role of the coercer in completely non-moralised terms, whereas others favour moralised characterisations. In this section I again focus on two very influential accounts that exemplify the problems to which these respective approaches give rise. First, I scrutinise an important non-moralised account, that of David Zimmerman. The most important problem faced by those who favour non-moralised approaches is to adequately restrict the scope of their accounts. The definitions such approaches propound often turn out to be insufficiently distinguishing, so that many instances of interaction between agents that we would not consider coercive meet the proposed definition, too. This problem is fairly easily resolved if one is willing to adopt a moralised approach to characterising the role of the coerced, but doing so gives rise to other problems. As is shown in the discussion of Wertheimer's analysis of the concept of coercion, such accounts are at great pains to deal with the conceptual possibility of justified coercion. After discussing the two standard approaches to describing the role of the coercer (moralising it or not), I explore the possibility of conceptualising coercion in terms of *prima facie* moralisation rather than 'full' moralisation. Though this may at first glance seem to be a promising way of solving the problem of justified coercion that plagues 'fully' moralised accounts, closer analysis will show that this is not a viable alternative.

2.4.1 Zimmerman's Non-moralised Account

One of the most convincing non-moralised accounts of coercion is presented by Zimmerman (1981), who is particularly interested in the question if and when job offers are coercive in a capitalist society. He suggests that a proposal is coercive if and only if (1) there is an alternative pre-proposal situation that the recipient of the offer highly prefers to the actual one that is both technically and economically feasible at the time the offer is made, and (2) the one who makes the offer prevented the recipient of the offer from being in this more preferred situation.²⁶ Alexander (1983) has criticised Zimmerman's account on the grounds that it implies that virtually all real-world offers would be coercive. As Alexander argues, in any real-life situation there will almost always be an alternative possible world in which the recipient of the proposal (B) would rather be: for instance, the situation in which he owns all the world's riches. This world is feasible in both economic and technological terms, and as these riches include all A's assets, A can be regarded as one of the persons who restrains B from being in that position. Hence, any offer that A would make B would count as coercive; an implication that is clearly unacceptable. In *Wage Reduction*, for instance, B could well (strongly) prefer to keep his old wage, even if that would mean A would herself be left with far less than the minimum wage, or

²⁶ Zimmerman presents his definition in terms of capitalists making wage offers to workers (both plural). The definition has been adjusted slightly to fit better in the general setting applied throughout this book.

even leave A ruined. The soldier in *The Soldier I* would also much prefer that the enemy general just rounded up his troops and departed, leaving him in possession of the hilltop; and in *Chess* B would much prefer A left him another option, but this does not make it a case of coercion.²⁷ Zimmerman's proposed account of coercion is an attempt to develop a non-moralised account that pays attention to both the role of the coercer and the situation of the coerced. It runs into problems, however, because it allows B's unbridled preferences to place unreasonable demands on A's proposals.²⁸ In his reply to Alexander's objection, Zimmerman points out that he interprets A's preventing B from being in a more preferred situation in a narrower sense than Alexander's example suggests:

It must be the case that [A] does more than merely prevent [B] *from taking from* [A] resources necessary for securing [B]'s strongly preferred preproposal situation; [A] must prevent [B] *from acting on his own* (or with the help of others) *to produce or procure* the strongly preferred preproposal situation. (Zimmerman 1983, 167).

The emphasis of Zimmerman's approach thus seems to be on the fact that the situation of dependency or vulnerability in which B finds himself is deliberately created or maintained by A. Though this specification resolves some objections to Zimmerman's account, it still gives rise to problems. *Chess*, for instance, meets these criteria, as will many other situations where A and B are involved in strategic interaction. Not all such cases where B's compliance with A's intentions is the result of strategic behaviour will involve coercion (e.g. *The Soldier I*), however. If Zimmerman's approach is to lead to more plausible outcomes, what would seem to be needed is some more precise description of the measures A may employ to entice B into accepting her proposal, without this leading to the conclusion that B is coerced. Without some notion of entitlement, however, it is very hard to distinguish between A 'merely preventing B from taking resources from A' and 'A preventing B from acting on his own'. The obvious solution would be to introduce a notion of A's rights or entitlements, by which we can designate what is A's and what is not. Doing so would make it fairly straightforward to determine when A is merely protecting her own resources, and when she is engaging in problematic manipulative behaviour designed to put or keep B in a situation of dependency which she can exploit. Zimmerman is an explicit opponent of moralised accounts, though (Zimmerman 2002), which means he cannot avail himself of such a solution.²⁹ It may be that it is possible to develop an adequate distinction between stratagems that

²⁷ Even if it turns out that these examples do constitute coercion, it is not the fact that the coerced could imagine a more attractive, feasible situation than his current one that makes them so.

²⁸ Even more disturbing implications than the one pointed out by Alexander can be derived from Zimmerman's proposed approach. Suppose for instance that B has a strong dislike of A, one so strong that he would greatly prefer to be in a world without A in it. Such a world is certainly economically and technically feasible. Since any offer on A's part must presuppose A's existence, however, B's dislike of A would make any proposal A makes coercive.

²⁹ In his reply to Alexander, Zimmerman suggests a solution can be developed by looking at what A would do 'in the normal course of events' (Zimmerman 1983, 169). The problematic nature of the notion of 'the normal course of events' has already been discussed (p. 21).

coerce B to do X and those that do not (though they may force B to do X) without having recourse to normative concepts such as rights or entitlement, but to my knowledge no such satisfactory solution has yet been found.

2.4.2 Wertheimer's Moralised Account

Not all authors share Zimmerman's aversion to moralising the concept of coercion, however, and some are quite willing to define what may be expected of the coercer in normative terms. Nozick favoured such a baseline in moral terms, suggesting that there can be no coercion as long as the would-be coercer stays within her rights. A similar position is found in Wertheimer's two-pronged analysis of coercion (Wertheimer 1987), in which he claims that coercion involves a situation in which (1) the coerced B has no choice but to (i.e. is entitled to) accept A's proposal (see above), and (2) that the coercer A acts wrongly in creating B's situation. This, however, still leaves some room for interpretation. Wertheimer claims, for instance, that *The Mistress* does not constitute a case of coercion because A did not create B's situation (he is not involved in the child's illness), nor does B have any claim on his money. A therefore does no wrong to B in making the offer (self-serving though it may be). Hence, only one of the two conditions necessary for constituting coercion is fulfilled, according to Wertheimer.

This analysis of the particular case of *The Mistress* is highly debatable, however. It is true that B may have no claim on A's money; it may also be that A does not transgress any rights B has towards him, in a legalistic, or perhaps libertarian, sense. But this does not justify the conclusion that A therefore does not do wrong, nor does it imply he does not do wrong to B (see also Section 5.4.5). If it can be shown that A does do wrong, then Wertheimer's second condition would also be met, and it would class as coercion according to his account.

This particular example nicely illustrates one of the major problems of moralising an account of coercion. If you accept a largely consequentialist version of morality, such as Wertheimer seems to embrace, then the case of the mistress does not qualify as a case of coercion, whereas adopting a more Kantian view, which places greater emphasis on the respect people are due, could mean the definition is met. The question whether someone is coerced or not should, however, be answerable without first committing to such a broader moral outlook.

This is not the only problem with a moralised account of coercion such as Wertheimer's, though. If coercion involves wrongdoing on the part of the coercer, then the notion of justified coercion entails a contradiction – for it simultaneously implies that the coercer does wrong (otherwise it cannot be coercion), and not wrong (otherwise it cannot be justified) – and hence is nonsensical (other accounts that face this problem include Haksar (1976) and Murphy (1981)). However, there indubitably are cases of justified coercion (*A Court Case* may be an example), so advocates of such accounts should explain how this can be. Some do not seem to see this as a problem at all, claiming that the fact that coercion involves a wrong

does not imply it cannot be justified in particular cases – to avoid another, greater evil for instance (e.g. Haksar 1976, 73). However, this only works if one takes the wrongness of coercion as a *prima facie* rather than an actual wrong (for a discussion of issues related to the notion of *prima facie* wrongness, see below); otherwise it rests on a confused understanding of ‘justification’. However regrettable or unfortunate a justified act may still be, when it is truly justified it is by definition not *wrong*.

Wertheimer discusses the issue of justified coercion in the context of coercion by the state and claims that justified coercion is possible because

In most coercion contexts, B’s action would change his moral or legal status—were it not for the coercion. [...] By contrast, the state’s coercive threats typically give B prudential reasons to do what he is morally obligated to do in any case (not kill, not steal, pay his taxes, and so forth). Because the coercion does not change B’s moral status, whether the state is exercising coercion is not problematic. (Wertheimer 1987, 256).

This passage is puzzling. Wertheimer suggests that B’s moral status is not changed by state coercion because it only coerces him to do things he is obligated to do anyway. However, the fact that one has a duty to do something does not mean one’s moral status is not changed by being coerced to do it. Having a duty to do something does not imply the person or institution to whom one owes this duty is entitled to force one to do it, let alone coerce one to do it (see also Section 5.4.5 and the discussion on which decisions are whose to make on p. 122), so the mere fact that state coercion typically makes the coerced do something he had a duty to do anyway is not sufficient to show that state coercion is or can be justified. Moreover, a coercive threat, even if it is justified, *does* change the moral status of the person; the moral worth of your showing up at the enlistment office when drafted because you see it as your patriotic duty, or your showing up because if you do not you will be shot for desertion is quite different (even if we assume, for the sake of the argument, that a state is justified in threatening to execute deserters). The last part of this passage, Wertheimer’s claim ‘whether the state is exercising coercion is not problematic’, is also worth attention, for this *is* problematic. If the state is not coercing its citizen when (it is justified in) issuing a threat to make him do what he should do anyway, then Wertheimer has not explained the possibility of justified coercion. However, if this does constitute coercion, then Wertheimer has to explain how the second prong of his definition of coercion is compatible with the state being justified in doing so, as it would mean that the state acts wrongly yet with justification at the same time. As far as I can see, therefore, a proposal that meets Wertheimer’s definition cannot be a case of justified coercion³⁰; an act cannot be wrong and justified at the same time.

³⁰ Wertheimer limits his account of coercion to coercion of the kind that affects the responsibility of the coerced. Though I doubt there is such a particular kind of coercion (see also Section 3.3.1), it could be that this is the source of confusion. If we grant there are different kinds of coercion, it could be that only some of them can give rise to justified coercion. The notion of justified coercion as such would then not be contradictory, even though coercion of the kind that Wertheimer analyses could never be justified.

2.4.3 *Prima Facie* Moralisation

The problem of justified coercion occurs in accounts that take the wrongfulness of the interfering act by which A gets B to comply with her wishes as constitutive of coercion. In such accounts the wrongfulness that makes the act coercive is incompatible with its simultaneously being justified. Some authors, however, do not regard coercion as being necessarily actually wrongful, but merely as *prima facie* wrongful (e.g. Fowler 1982; Gunderson 1979; Stevens 1988). If this is the case, then there is no contradiction in justified coercion, because what is merely *prima facie* wrong need not also be actually wrong in all circumstances, so there may be particular cases in which, all things considered, coercion would be justified. At first glance, this may seem to provide a nice way out of the predicament. Instead of claiming that the coercer must commit a ‘truly’ wrongful act for there to be coercion, we claim instead that this act must merely be *prima facie* wrong, and all our problems disappear. Unfortunately, however, using *prima facie* in such a fashion is not a genuine option. To see why, we must take a closer look at what it means to say that something is *prima facie* wrong.

If we take *prima facie* literally, then to say that something is *prima facie* wrong is to say that it must appear to be wrong on its first appearance. This, however, is a very superficial interpretation of the term *prima facie*, and it has obvious problematic implications. Although it would allow for cases of justified coercion, it would not allow for cases of coercion of which it is immediately obvious that they are justified, and there seems to be little reason to think that such cases do not exist, let alone that they would be conceptually impossible. Moreover, if coercion must involve a *prima facie* wrong in this sense, then something that would initially seem morally unproblematic, but on closer inspection turned out to be horrible wrong, could not constitute coercion solely because it seemed unproblematic at first. One simply cannot define something, not even partially, by referring to the way it initially appears to be, for first appearances are notoriously frequently deceptive.

A more viable way of interpreting the notion of *prima facie* wrong can be based on the way the term *prima facie* was first used by the intuitionist philosopher William Ross (1930/2002). If it is interpreted along such lines, to say that Y constitutes a *prima facie* wrong (or that Y is *prima facie* wrong) is tantamount to saying that Y has some essential characteristics that are themselves morally undesirable. If coercion can be shown to be inherently inimical to the autonomy of the coerced, for instance, then given that we value autonomy, we have a strong reason to be wary of the use of coercive means to get people to do what we want them to do. This does not mean that the use of coercion always involves an actual wrong, for in particular situations there may be other considerations that legitimise an intrusion into the autonomy of the coerced, but *ceteris paribus* it would be better if coercion were avoided.

Using the notion of *prima facie* moral judgments in such a fashion is in itself not objectionable, and though it is not in all cases equally explicit, this is how I take most of the authors who use the notion of *prima facie* in relation to coercion use it. However, it is important to stress that if it is used in such a manner, it is used in an

evaluative, not a definitional way. It is not used to *define* the concept of coercion, but to say something *about* coercion. It presupposes that a fairly definite description of the concept is already available on the basis of which we can subsequently conclude that it has some morally undesirable characteristics, and saying that coercion is *prima facie* wrong does little more than highlight the fact that such morally undesirable features are present. To say that something is *prima facie* wrong is to caution against its use in moral deliberations – a caution that can be overridden by other concerns, but must not be taken lightly. In fact, because of the danger of circularity if we use a moralised account of coercion, using the notion of *prima facie* moral judgments in this way works best if coercion itself is defined in fully non-moral terms.

To recapitulate, though the notion of a *prima facie* moral judgment can legitimately be used to express a moral concern about the occurrence or use of coercion, it cannot be sensibly used to define the concept itself. Coercion accounts thus are either ‘fully’ moralised, or not moralised at all; they rely on a ‘final’ moral judgment or they do not rely on any moral judgment at all. Once you have accepted any such account, you can make a *prima facie* judgment about it on purely definitional grounds. In a particular case where you are unsure whether the requirements of your preferred definition of coercion are met, you can make preliminary judgments whenever you do not have all relevant facts about the case, but such judgments do not affect the issue whether an account is moralised or not. An intermediate option between ‘full’ moralisation and a totally non-moralised account, something like an ‘essentially *prima facie* moralised concept’, is not a genuine possibility.

2.5 Summary

In this chapter I have discussed the main strands in the literature on coercion. I have argued that none of the accounts propounded is fully satisfactory. The intuition that coercion makes the coerced’s decision less than fully voluntary has led to a number of different attempts to describe the precarious situation of the coerced and the way this determines his choice. These approaches often seem tacitly to presuppose something like the assumption that if persons B and C both comply and their situations are identical, then it must also be the case that B’s compliance can only be coerced if C’s is too. Such accounts take insufficient account of the fact that in many cases of coercion the situation is deliberately tuned to take advantage of personal particularities and weaknesses of the person coerced. They underestimate or disregard the very subjective aspect of coercion.

As vital as the analysis of the position of the coerced is, however, coercion is not just a matter of the choice situation faced by the coerced and particular attention must be placed on the coercer’s attempt to make the coerced do her bidding as well. Coercion is essentially a battle of wills; a battle lost by the coerced. This makes coercion a fundamentally interpersonal concept. Without making reference to the morality of the coercer’s attempt to make the coerced perform a specific action, it

remains, for instance, problematic to distinguish between situations where A coerces B, and cases where A forces B but does not coerce him.³¹ For moralised accounts this is less problematic because they can use some notion of entitlement to place restrictions on what A and B may do to each other or require from each other. Such accounts all face serious problems of their own, however. The most pernicious of these is that the notion of justified coercion becomes self-contradictory.

One of the main problems when developing a satisfactory account of coercion is thus that we cannot avoid referring to the morality of the attempt of the coercer by which she gets the other person to do as she wishes, but that we simultaneously need to avoid committing ourselves to the validity of a specific moral judgment before we can judge something as a case of coercion. In the next chapter I present an account that meets these conditions.

³¹ It is sometimes suggested that the distinction between ‘A forced B’ and ‘A coerced B’ can be made by reserving the former for cases of physical coercion, and the latter for cases of coercion of the will. Clearly, however, this will not do. In *Chess*, for instance, A clearly forces B to exchange his queen, but she does not coerce him. Obviously, no physical coercion is involved here either.

Chapter 3

Coercion and Moral Judgment

3.1 A Definition of Coercion

In the previous chapter I have discussed the literature on coercion, and argued that both advocates of moralised accounts and their opponents have valid reasons for criticising the accounts propounded by those in the opposing camp. The moralised accounts that have been proposed all face serious objections, but unfortunately the non-moralised accounts that have been suggested do not fare much better. What makes an account moralised is not just the fact that it refers to a moral judgment, but also that the validity of this judgment is deemed essential to the concept. Under a moralised conception of coercion you have to commit to a particular moral judgment before you can ascertain whether there is coercion at all, which ultimately makes the concept of coercion depend on the view of morality you adhere to. The distinction between referring to a moral judgment and being committed to its validity may initially seem to be a point of negligible relevance – for why would you want to require a moral judgment if you are not going to rely on it? – but though subtle, this distinction is an important one. What my account proposes is to use this distinction to develop a definition that satisfies the criteria of those who are opposed to the moralisation of concepts like coercion, so that one can ascertain empirically whether or not a person was coerced, while still using the insight that coercion involves a moral judgment to place adequate restrictions on the requirements regarding the coercer's manipulative interference with the coerced. As mentioned several times before, coercion is (1) a fundamentally interpersonal notion where (2) the will of one moral agent is subjugated to that of another. In the definition of coercion I present, the emphasis is on these two aspects. The way I propose to capture these two essential issues is by focusing on the moral judgment of the coerced on the way the coercer interferes with him.

Coercion may be a matter of the interaction between two moral agents, but of course it is not the case that any kind of interaction between moral agents can qualify as coercion. Coercion is inherently manipulative, it is a way of making someone else do what you want them to do. It is sometimes suggested that coercion is a way of

using someone merely as a means, and not, as Kantians require, as an end in itself.¹ When you coerce someone, you use him as a tool and fail to regard him as a moral agent in his own right. This, however, needs qualification. Setting aside for now the issue of physical coercion and whether or not a person who is physically coerced can be said to act at all, it is important to stress that the coercer normally explicitly acknowledges the coerced's *agency* because it is a way of getting someone to *do* or refrain from doing something. If coercion indeed involves a denial of the status of the moral agent in some way, it is the *moral* part that is denied, not the agency part.

Not all forms of manipulation constitute coercion. Although coercion need not always be blunt and may involve more subtle forms of persuasion as well, it is in important respects always overt. This sets coercion apart from deception, for instance. When someone is deceived, he is unclear about the true intentions of the person with whom he is interacting; in cases of coercion, however, he is typically painfully aware of the other's intentions to make him perform a certain action, as well as the means by which she aims to persuade him to perform it.² (In all of the examples provided in the introductory chapter, for instance, both parties know *exactly* what is going on and what is being required from/by them.) Hence, the first (of the four) conditions of the definition of coercion (where person A coerces person B to do X) I propose is:

1. *A interferes with B in a deliberate attempt to get B to perform a specific action X, and this is fully known to B.*

Just trying to get someone to perform a specific action is of course not enough. If A were to try to get B to perform X, but B would refuse, then A may have tried to coerce B, but she clearly did not succeed. As mentioned before, it is generally accepted that an adequate definition of coercion involves a 'success condition': A's interference must have brought B to perform X. For this, it is of course necessary that B performs X, but this is not sufficient. It must also be the case that A's interference has been instrumental in B's doing X. This may be taken to suggest that B cannot be coerced to do X if he would have done it anyway, but this condition is too strong. Take, for instance, the following alternative version of *Highway Robbery*.

¹ This formulation is expressly Kantian, and the Kantian point of view is obviously not without its critics. However, the basic idea of respect for the individual that underlies this formulation is one that is often shared by Kantians and non-Kantians alike.

² I should add though that the fact that the coerced is aware of both what the coercer wants him to do and the inducements she employs to get him to do so, does not preclude the possibility that he remains in the dark with respect to other aspects of the situation. The coercer's deeper reasons for wanting him to perform the specific action may, for instance be unknown to him, as may be the full extent of the consequences of his doing X. Similarly, it is possible that the incentives the coercer provides are, unbeknownst to the coerced, mere bluffs, on which she is either unable or unwilling to follow through.

Example 10 – Highway Robbery II

B is travelling down the open road and sees A sitting by the road side with a sign requesting alms. B takes A's plight to heart and decides to give A the small amount he still has on him. He tells the driver to stop the coach and walks back to A to give A the few coins he has left in his purse. When B reaches A, however, A draws a knife and demands B hand over his purse. B does so.

Clearly, when B hands over the money because he is threatened with death, the situation is identical to the original highway robbery example, and it is quite clear B is coerced to hand over his money even though he intended to hand over the money anyway. Frankfurt, however, discusses an interesting version of this example where B *fully* ignores A's threat, and hands over his money totally on his original motive of beneficence (Frankfurt 1988, 43). Given that A's threat is then an utterly irrelevant fact with respect to B's handing over the money, so Frankfurt claims, B is not coerced in that case. Although, for reasons discussed in the previous chapter, I do not find Frankfurt's own account very persuasive, I do take him to be right in this observation (although the particular example seems rather unrealistic, and I certainly do not want to suggest B acts correctly in ignoring A's threat); for there to be coercion, A's interference must be relevant to B's performing X.

We thus need to formulate a condition that captures the idea that A's interference does account for B's doing X, but that does not exclude the possibility that B is coerced to do something he intended to do anyway:

2. *B does X, and A's interference is a constitutive reason for B's doing so.*

Here a constitutive reason is taken to mean that some of the aspects of B's situation that have been brought about by A's interference are necessary to account for B's doing X.³ This notion is inspired by the well-known notion of an INUS condition introduced by Mackie (1999).⁴ I use the term 'constitutive reason' here instead of the term INUS condition itself because an INUS condition is developed within the context of a theory of causation, and the relevant setting here is one of

³ This leaves open the possibility that without A's interference B would have been in another situation in which he might have done X. However, if we leave out those aspects of B's present situation that have been brought about by A, then we cannot account for B's doing X (without adding new elements or alternative motivations).

⁴ An INUS condition is a condition that is 'an *insufficient* but *necessary* part of a condition that is itself *unnecessary* but *sufficient* for the result' Mackie (1999, 414). The example Mackie gives is a short-circuit that is said to have caused a fire to break out in a house. The short-circuit is not a necessary condition of the fire, for other things could have set fire to the house as well. Nor is it sufficient, for if there had not been flammable materials nearby, the fire would not have broken out even if the short-circuit had occurred. Moreover, if there had been a working sprinkler installation at the right spot, even the flammable materials and the short-circuit together would not have led to the house being set on fire. Nonetheless, the short-circuit is an essential factor contributing to the fire, for without it the present conditions would not have led to the fire breaking out (see Mackie 1999, 413–414).

reasons. An INUS condition is by definition never sufficient to account for the consequence it is said to (partially) bring about, and Mackie therefore usually speaks of ‘at least an INUS condition’. I use the term ‘constitutive reason’ as equivalent to this. Obviously, in cases of coercion we do not want to exclude the possibility that A’s interference is in itself sufficient to account for B’s doing X. We do want to allow for the fact that B’s doing X is also based on other relevant considerations that are not attributable to A’s interference, however. (In the standard highwayman example, for instance, B’s desire to stay alive is as relevant in accounting for his handing over the money as is the presence of the gun).

These first two conditions together capture the particular type of interaction between moral agents with which coercion is concerned, namely the type of interaction where one person gets someone else to perform a particular action she wants him to perform. However, these two conditions are clearly not sufficient. If they were, then, for instance, any accepted offer would constitute coercion. It may be a matter of debate whether offers can constitute coercion at all, but even those who say they can do not suggest that all offers are coercive. Moreover, any successful plea for help would qualify, and although some requests for aid may involve a coercive element (for instance if the person requesting the aid deliberately takes advantage of circumstances in which social pressure makes it difficult for the other to refuse), it is obviously not the case that all calls for aid constitute coercion.

We still need to address the fact that coercion involves someone being made to do something against his will, which means focusing on the coerced and his assessment of the situation and his interaction with the coercer. In this regard, an important insight can be gained by looking at Berman’s analysis of ‘coercion claims’ (Berman 2002). Rather than focusing particularly on the concept of coercion, Berman scrutinises what people who claim to have been coerced seek to attain by making this claim. He distinguishes two such goals. One is to avoid being held responsible for what they did; the other is to accuse the coercer. I shall discuss the relation between coercion and the responsibility of the coerced later (Section 3.3.1), focusing on the accusing aspect here. I take this aspect to be fundamental to coercion. If B claims that A coerced him (rather than that A merely forced him), this involves a claim of wrongdoing, laid at the address of A. This explains why accounts that rely on the preferences or wants of the coerced fail to convince, for that B does something he does not like doing, or that B would have much rather have done something else, does not necessarily imply an accusation of wrongdoing directed at A.⁵ Suppose, for instance, that A is B’s boss, and A tells B to do some unpleasant task that falls fully within B’s responsibilities. B also thinks that it is part of his responsibilities, he just finds this particular task rather tedious. Although he would have much preferred it if A had given him some other task, he does not think A does wrong by telling him to perform it. Doing unpleasant things is a fact of life, and as long as B can regard his having to perform the disagreeable tasks as such, he does not need to consider himself wronged by A (cf. Murphy 1981; see also Section 4.3). In such cases one

⁵ Except, of course, for hedonistic moral egoists.

can still say one is forced to do something, or that one has no choice but to do it, but not that one is coerced. Indeed, this explains why the examples of *Chess* and *The Soldier I*, are not usually considered to be cases of coercion.

I therefore suggest we should interpret the coerced ‘doing something against his will’ in terms of his complying with a manipulative act of interference which he simultaneously condemns. Though he complies with it, he does not assent to the way he is being induced to do what he does. Conditions 1 and 2 describe B’s compliance, the lack of assent that is essential to coercion I define as follows.

3. *B considers himself, at the time of doing X, morally wronged by A because of her interference.*⁶

This almost concludes my proposed definition of coercion, but not quite. Although this condition captures much of the way in which coercion is primarily a matter of the interaction between moral agents, it still understates the role of the coercer. Conditions 1–3 would, for instance, allow for what could be called ‘accidental coercion’. Suppose, for instance, that A interferes in a way she expects B to find totally acceptable, but to her genuine surprise he finds it morally reprehensible. If she had known about this, she would immediately have refrained from interfering as she did. Surely, this would not be sufficient to say that B was coerced, especially as no restrictions are placed on B’s moral judgment of the interference, either with respect to its validity or even its reasonableness. Therefore, we need to add a fourth condition that shows how coercion entails that one person deliberately subjugates another person’s will to her own⁷:

4. *A maintains her interference notwithstanding B’s moral objections.*

This condition identifies the way in which the *moral* agency of the coerced is deliberately put aside by the coercer. It expresses that she is willing to dismiss or overrule any moral objections B may have. Thus, condition 4 is satisfied when A knows of B’s moral objections but maintains her interference nonetheless; but also when she does not have actual knowledge of his objections but would have maintained her interference even if she had.

3.2 Discussion

In the previous section I presented my conceptualisation of coercion, which focuses on the fact that coercion is a matter of the interaction between moral agents, and which explains the way the moral agency of the coerced is intruded upon through

⁶ I shall not address the particular case where B judges A to have acted morally correctly only because A herself was coerced by a third party.

⁷ The way I use ‘deliberately’ here does not imply she needs to have actual knowledge of B’s objections, or that it is her explicit goal to subjugate B’s will. It merely indicates that she is willing to do so if that is needed to ensure B’s compliance.

the unwillingness of the coercer to abide by, or address to his satisfaction, the moral objections of the coerced to the way he is treated by her. Coercion entails compliance without assent and is therefore hostile to the autonomy and dignity of the coerced.

Exactly why this dismissal of the moral judgment of the coerced constitutes such an affront to the dignity of the coerced will be analysed in more detail in Part II. In this section I discuss my account of coercion, as well as a number of possible objections to it; before doing so, though, it will be useful to recapitulate the complete definition:

Person A coerces person B to do X if and only if:

1. *A interferes with B in a deliberate attempt to get B to perform a specific action X, and this is fully known to B.*
2. *B does X, and A's interference is a constitutive reason for B's doing so.*
3. *B considers himself, at the time of doing X, morally wronged by A because of her interference.*
4. *A maintains her interference notwithstanding B's moral objections.*

In the previous chapter I claimed that an adequate definition of coercion must meet a number of criteria. It should distinguish being coerced from merely being forced as well as from being deceived. It should be non-moralised, or if it is moralised, somehow it must avoid the most important problems to which such accounts are known to be prone; in particular, it must leave open the possibility of justified coercion. Lastly, it should fit reasonably well with our most important intuitions about coercion. So let us see how my proposed definition measures up to these criteria.

The distinction between deceit and coercion follows directly from the first condition, as has already been discussed (p. 34). The definition allows us to distinguish cases where B is being coerced from those where he is merely being forced because the latter do not imply an accusation of wrongdoing laid at the address of the interfering person,⁸ which also explains why coercion can only occur between moral agents.⁹ Neither does the possibility of justified coercion pose any conceptual problems for this account. Although a moral judgment is involved in this notion of

⁸ It should be noted that the distinction between being coerced and being forced also applies to physical coercion. Though all cases of physical coercion imply that the coerced was forced to do as he did (after all, physical coercion means it is physically impossible for the coerced not to do what he is coerced to do), the converse does not hold. A situation where things are deliberately arranged in such a way that it becomes physically impossible for a person to do anything other than what he is intended to do, only amounts to physical coercion if the person whose physical freedom is thus restricted also judges this curtailment of his physical freedom to be illegitimate (see footnote 17, p. 45 for an example).

⁹ It is worth mentioning that the statement 'you are morally right to coerce me' is self-contradictory in my account of coercion. The statement 'you are morally right to force me' is not self-contradictory, nor are the statements 'you will be morally right to coerce me' or 'you were morally right to coerce me'. For instance, suppose person B is addicted to some narcotic substance and his friend A locks him in a room to beat this addiction. Then it is quite possible that B objects to this treatment, regarding A as acting morally reprehensibly while he is locked in the room, but would afterwards (when he has cooled down and sees things more clearly) agree not only that what A did was not morally wrong in itself, but even that this was a case of justified coercion.

coercion, no assumptions are made about its validity. By emphasising the importance of the subjective element of coercion – which fundamentally boils down to the fact that coercion is compliance without assent – we do not need to presuppose the validity of any moral judgments before we can ascertain whether there is coercion. Although the definition involves a reference to morality in the form of a moral judgment, it satisfies the main criterion of opponents of moralised conceptions of coercion in that it is an empirical, or factual, definition. Whether B *deems* himself morally wronged is (as opposed to whether he actually is) a matter of empirical fact.¹⁰ Hence there is no contradiction in the notion of justified coercion, because there may be cases where it is legitimate to set aside someone's moral objections to the way he is treated without addressing them to his satisfaction.

So let us now turn to the issue of how the proposed definition fares in respect of more intuitive criteria. Here the referral to the coerced's personal judgment without any further conditions as to its validity or even reasonableness gives rise to a potential problem. The lack of such limitations implies that when a person is coerced, this may be as much due to his own particular moral views as to anything the coercer does. It may therefore be argued that the definition I present makes too much of the moral judgment of the coerced, leaving it open to similar criticism as that discussed in respect of Zimmerman's account. Suppose, for instance, that the moral objections of the coerced are based on views that are rather eccentric or even utterly unreasonable, and that the coercer has gone out of her way to show this inadequacy of the moral beliefs of the coerced; do we still then want to say that this constitutes coercion?¹¹ I believe we should. As long as she fails to address his objections to his satisfaction and maintains her interference, then his compliance is to be regarded as coerced. The crucial issue is whether his assent is or is not lacking when he performs the complying act. Hence, when we want to judge whether or not someone is coerced, we must focus on the person as he is, not as we think he ought to be (cf. O'Neill 1989, 105–106; 1991, 184–187); whether or not he is being reasonable has little or no bearing on the question of whether he is coerced,¹² but when it comes to the issue of whether a particular case of coercion is or can be justified, however, then

¹⁰ Of course, in practice it may be very hard to determine if this is really the case, as B may hide the fact that he feels this way, or be dishonest about it in order to achieve certain responses from others. Nonetheless, whether B really regards himself as wronged is a purely empirical issue.

¹¹ An important difference between Zimmerman's account and mine is that his refers to the preferences of the coerced, whereas mine relies on the coerced's moral judgment. Though there may be persons to whom virtually any interference will be offensive, so that my account implies that virtually any kind of interference could be coercive if maintained (see also p. 93), it is not the case, as in Alexander's criticism of Zimmerman, that almost any kind of interference is necessarily coercive. Many kinds of interference will usually not be considered wrongful by the persons whom it affects, though most people can generally imagine feasible situations, preferable to the ones they are presently in.

¹² There is one remote possibility by which the reasonableness of the objections by the person on the receiving end of the interference may have some relevance to the matter whether or not it constitutes coercion. This is when his objections become so distorted that we may doubt whether his moral agency is still intact.

obviously such considerations do matter. After all, one of the main reasons why state authorities are entitled to coerce is exactly because people are quite often less than fully reasonable (*A Court Case* may be an example here), and an important reason why eccentrics have such a tough time fitting in with society is exactly because they hold idiosyncratic views. It may often be impossible to accommodate such views, but this should not lead us to deny the injury that is done to the eccentric when he is coerced to comply (for a more detailed account of this injury, see Part II).

But this, it may be objected, suggests that it is fully up to the coerced to make any interfering act coercion, solely through objecting to it on moral grounds; it equates the recipient's of the interference *feeling* coerced with his actually *being* coerced.¹³ This, however, is not the case. The judgment of the coerced is only invoked with respect to the moral evaluation of the interfering act of the coercer, not with respect to the other conditions. So if B thinks the other conditions are met, but this is in fact not the case, then B can feel coerced without being coerced. The opposite does hold, though. Because coercion is so overt in its nature (which sets it apart from various other forms of manipulation, like deception), it cannot be the case that a person is coerced without he himself regarding it as such. This has some important practical implications, because it means that indoctrinated people or so-called happy slaves are not coerced when they follow the instructions of their masters. This is not to deny, of course, that the process of indoctrination itself may very well involve coercion. However, when we want to judge whether someone is coerced to do what he does, we must look at the person as he is when he does it, not how he got to be that person (see also McCloskey 1980). This may be relevant to other issues, such as his liability to punishment, but not to the question of whether the person he now is, is coerced to perform X or not. Once the process of indoctrination is completed, no further coercion is involved, nor needed, in getting the indoctrinated person to comply with the wishes of his master.

A related question is whether we should regard as coerced people who perform a particular act in response to an instance of manipulative interference designed to make them do so which they judged to be wrongful to their person (and for the sake of argument we may assume for the length of this paragraph that they are indeed right in this), but which they could have been expected to resist. Some may want to deny this, because we have good reasons not to let people off the hook too easily. This intuition, I think, rests on the idea that regarding such people as coerced also commits us to not holding them responsible for what they do. This implication, though, does not necessarily follow (see also Section 3.3.1), and acknowledging that we should not hold such weak-willed people any less responsible for their actions when they choose to give in to such attempts should not lead us to deny

¹³ Note that the definition is only satisfied when the coerced's objections are sincere, for otherwise he would not really be considering himself wronged but only feigning.

the truism that it is easier to coerce weak-willed people than to coerce people of stronger character.¹⁴

It should also be stressed that the moral judgment by the coerced on the interference of the coercer is a moral judgment of a particular kind, for it is limited in its scope. It is, for instance, possible that B judges A to have acted immorally, without considering himself wronged. An example may be when A makes B a seductive proposal that B judges to be wrong solely because it is incompatible with A's duties towards someone else. Such cases would not meet the conditions of the definition I propose, in which it is essential that B considers A's interference wrongful *to him*. Coercion is thus intrinsically personal; its inherent hostility is linked to the moral status of the coerced (see also Part II). It is also important to note that B's judgment is directed primarily at A's interference; it can thus be based on the fact *that* A interfered, the *way* A interfered or that it was A who interfered, but it is not primarily based on B doing X. The morality of doing X, and the morality of A interfering with B in order to get him to do X, are two separate questions. While these matters will often be related, they need not be.

The definition of coercion in its present form is developed to capture those cases of coercion described earlier as 'coercion of the will'. Obviously, condition 2 does not apply in many cases of physical coercion, as in such cases reasons are often wholly irrelevant to B's compliance. However, the other three conditions are by and large usable in their present form,¹⁵ so only the second condition needs to be augmented substantially to accommodate cases of physical coercion. An obvious augmentation would be to replace 'constitutive reason' by 'cause', resulting in *A's interference is a cause of B's compliance*. Clearly, different theories of causation will yield different versions of such a modification of the second condition. I shall not discuss the various ways in which one can do so, because this would take us too deeply into the metaphysics of causation and action. After all, the main point I want to emphasise is the importance of being made to comply with something one judges to be wrongful to one's person. As this aspect is fundamentally no different in cases of physical coercion than it is in cases of coercion of the will, I shall put aside the technical complications involved in physical coercion and, unless specified otherwise, focus on cases of 'coercion of the will'.

Lastly, I shall discuss a possible objection to my account of coercion based on the fact that it will classify certain trivial, but still morally wrong (according to B) interferences on the part of A as coercion. If A threatens to pinch B unless he performs some insignificant favour to A, then some might be reluctant to call this coercion. This could be considered a problematic implication because of the intuition that coercion implies a certain gravity and cannot be the result of trivialities. However, as plausible as it may appear, there are good reasons to doubt the reliability of this

¹⁴ In fact, if the weak-willed person himself also judges that he should be able to resist such intrusions, the humiliation involved in his compliance is all the deeper for it.

¹⁵ Some attention would probably have to be paid to the question of the degree to which physical coercion involves B *doing* something, however.

particular intuition. There is no reason to assume that all cases of coercion must be equally serious. In fact, it seems quite plausible that coercion comes in various degrees of severity (cf. e.g. Gunderson 1979), and if that is the case it would also seem that rather insignificant instances of it will occur at times. The definition of coercion presented can accommodate this insight. The severity of a particular instance of coercion can, for instance, be linked to the seriousness of wrongdoing involved (as judged by the coerced). Relatively mild instances of coercion could occur, for instance, in cases where methods of persuasion are used that are judged to be only somewhat less than appropriate. Consider, for instance, B who engages in an activity he knows is harmful to himself. Caring A is very worried about B's health and constantly confronts him with arguments and information that show exactly how harmful it is, to make him stop. B has repeatedly made clear that he knows what he is doing is bad for him but that it is none of A's business and she should let the matter drop. This A refuses to do, and at some point she gets through to him. B becomes convinced he should stop and does. Nonetheless he maintains that A's belligerent interference was most disrespectful and therefore wrongful to him.

Assuming that coercion indeed comes in various degrees of severity, the possibility of insignificant cases of coercion is not problematic. Nonetheless, some may disagree with this and want to rule this possibility out. In order to do so, the proposed definition could be augmented by introducing a threshold, as by demanding that interference can only constitute coercion if it is substantially wrong (as judged by B), or one might impose restrictions on the kinds of interference that can lead to coercion. (This will also allow the exclusion of certain other possibly counterintuitive results, as in the aforementioned case of eccentrics, or in certain cases of bribery, seduction, and otherwise indecent proposals where all the present conditions are met, should that be deemed desirable.) I must add, however, that I see no obvious, non-arbitrary way of developing such a threshold or limitation on the kinds of interference that can constitute coercion, and it seems to me quite correct that certain such cases of improper but successful persuasion can qualify as coercive. I shall therefore not pursue this possibility any further here.

3.3 Applications

3.3.1 *Coercion and Responsibility*

In this section I discuss a number of important issues involving coercion. One of the most important practical implications of coercion is its purported negating effect on the responsibility of the coerced for performing the action he was coerced into performing. I have already indicated that I do not think coercion necessarily negates responsibility in this way (p. 40), but that does not mean it cannot affect the responsibility of the coerced at all. Indeed, an account that would deny any relation between the responsibility of the coerced for what he did and the presence of coercion would be highly suspect.

In order to address this issue let us briefly revisit Berman's discussion of the two different things people who claim to be coerced usually seek to achieve (p. 36). One reason for claiming to be coerced is to avoid being held responsible for one's actions; the other is to accuse the coercer of wrongdoing (Berman 2002). As Berman shows, these claims have different truth conditions. The fact that the coercer did something wrong need not imply that the coerced is not responsible for his actions, nor does the fact that the coerced cannot be held responsible for his actions imply that the coercer must have done something wrong. This insight I shall not dispute. Nonetheless, the fact that the one need not imply the other does not mean that one cannot affect the other. In this section I do indeed argue that there is a connection between these two issues.

According to my definition, a person can only be coerced if he claims the coercer did him wrong. Hence, when a person is coerced, the second kind of claim discussed by Berman is implicit, but the truth conditions of this claim are irrelevant. The mere fact that the coerced deems himself wronged is sufficient to constitute coercion. So how, then, does a person's being coerced affect the coerced's responsibility for his actions?

If a person seeks to avoid responsibility for his actions, he needs to provide a justification showing that, though his action perhaps would have been wrong in most circumstances, it was not wrong in this particular situation; either that, or he needs to show grounds for excuse. Let us focus on justification for now. Can a person legitimately offer the fact that he was coerced (according to my definition) as a justification for his action? Yes, this is possible. In order to make this clear, it is important to realise that though the validity of the coerced's moral judgment is irrelevant to the issue whether he is coerced, the coerced certainly must hold it to be valid. Hence, when a person offers the fact that he is coerced as a justification of his action, he is in fact claiming that he was acting in response to a wrong. This can be a legitimate justification of one's actions, because one is often morally allowed to do things in response to a wrong that one would not otherwise be allowed to do. A shopkeeper may not normally refuse to allow people to exit her store, but if someone tried to steal her products she may use force which she would not otherwise be allowed to use in order to detain him. In this example the response to the wrong is not one of compliance, but there is no reason to assume compliance would not sometimes be an appropriate response to a wrong as well. It is normally wrong for a cashier to give away the monetary assets entrusted to his care by his employer, but if a masked individual threatens to kill him or a number of innocent bystanders, he is or may be justified in handing them over.

This shows how a person can sensibly offer the fact that he was coerced as a defence, as grounds upon which he should not be held responsible for his actions. Whether such a defence is valid, whether the fact that he was coerced fully justifies his actions, will of course depend on aspects particular to the case at hand. The validity of the coerced's moral judgment on what was done to him will normally be relevant to this issue, but even if it is valid then it need not be the case that his action was fully justified. When wronged there are a number of things you would not normally be allowed to do which you may now do, but the fact that you were

wronged does not necessarily mean you may do whatever you want (the shopkeeper may not, for instance, shoot the shoplifter, but she may use physical force to restrain him).¹⁶ Even if the coerced's moral judgment is flawed, however, it can still be the case that the fact that he was coerced is a sufficient ground for absolving him from responsibility for what he did. If a person sincerely believed he was wronged, then, as long as his response was appropriate in regard to what he believed to be the case, the fact that his wrongful action was the result of a sincere but erroneous belief can (sometimes) be a legitimate ground for excuse.

In summary, there is a relation between coercion and responsibility of the kind that allows a person sensibly to claim coercion in an attempt to avoid being held responsible for what he did. A person who is coerced is responding to a perceived wrong to his person. This fact can often justify one's actions, even if they would otherwise be wrong. In cases where this is not the case, it may be still be that the sincere belief that one was responding to a wrong excuses what one did. Coercion does not, however, *necessarily* negate responsibility. There may well be situations where a person is coerced, but this neither justifies nor excuses his actions, so he remains fully responsible for them.

3.3.2 *The Coerciveness of the Law*

An important feature of any theory of coercion is the way it allows us to account for its political implications. Coercion can occur between citizens, but at least as important is the relation between the citizen and the state. In western democracies, the state is said to have the exclusive right to use force, and many of the regulations designed (one hopes) to improve the welfare of its citizens, to maintain order, or to protect the state from outside aggressors depend, in various degrees, for their implementation on the state's willingness to avail itself of this monopolistic power. Most people will not deny that these are indeed legitimate government goals, and that – within limits – the state is authorised to use its power to make citizens comply with its directives. Criminals must be prosecuted and, if found guilty, locked up; taxes must be paid; traffic regulations abided by. If the state is under direct threat, it may even impose martial law and conscription, thereby forcing part of its citizenry to place themselves in positions where they are likely to incur serious bodily harm, even death.

At the same time, however, states should be respectful of the moral agency of its citizens, and citizens can be most unwilling to comply with the directives issued by their government. Traffic regulations should be abided by, and if you drive like a

¹⁶ In certain legal systems, for instance, the claim of coercion cannot be offered in defence of the murder of an uninvolved party. I take it that, strictly speaking, we should not take this to mean that the legal profession thinks a person cannot be coerced into performing a murder, but rather that it neither justifies nor excuses it (whether this is necessarily the case, however, is another issue, for there are certainly conceivable consequences with which one can threaten a person that are even worse than his killing an innocent) (see also Wertheimer 1987, 155–157).

madman you should be stopped by the police, but when regulations become excessively restrictive (unreasonably low speed limits, or the excessive placement of speed bumps may be examples that appeal to many),¹⁷ many citizens may feel the government goes too far. Drafts are often most unpopular (and not only with those directly affected), particularly when the citizenry opposes the war, or does not deem such harsh measures necessary.¹⁸ Many draftees comply only because of the sanctions imposed on them by the state should they refuse (and the same holds for speed limits).

The state clearly has the power to coerce its citizens, and although most people will agree that the state should, at least to some degree, have such power, they are simultaneously very wary of the state exercising it. In a modern democracy the fear of state power is not based solely on the fear that the state may use this power against its citizens to deliberately harm them, but also on the fear that it may behave in an excessively paternalistic manner, where the state uses its power to coerce people to do what it judges to be in their best interests (for a few of the most famous examples, see Hayek 1960; Mill 1972; Pettit 1997; Nozick 1974). A benevolent totalitarian dictator may have the best interests of his citizens at heart, but this does not safeguard their freedom and autonomy (see also Section 3.3.3 and the discussion of republicanism in Part III) – and sometimes the behaviour of a democratically elected government need not be all that different.

One of the primary ways by which the state attempts to get its citizenry to behave the way it wants them, is the legal system. Characteristic of laws is that they are backed by the threat of force. If you break the law you will have to pay the penalty – assuming you do not manage to get away with it. This has given rise to the question whether the law is inherently coercive (see e.g. Lamond 2000; Edmunson 1995). The proposed definition shows that we can explain the paradox that the same law can at the same time coerce some people, whereas it does not coerce others. The definition refers to the individual moral judgment of the coerced and as these judgments can vary over persons the same law can be accepted by some citizens while being condemned by others. If B deems the particular law to be an illegitimate instance of government interference, then his compliance means he is coerced.¹⁹ However, if C accepts the law and regards it as legitimate, then his compliance with it does not constitute coercion. This may suggest that in the latter case C is not coerced as a

¹⁷ Speed bumps provide an interesting possible example of physical coercion, as they make it physically impossible for a person to traverse a particular stretch of road at certain speeds, even though the coerced still genuinely *acts* in accordance with the coercer's intentions when he slows down. They also make clear why being physically forced to do something need not imply that one is also physically coerced to do it: a person who agrees with the placement of a speed bump is forced to pass over that section of road more slowly (he cannot pass it at a higher speed), but is not coerced by it.

¹⁸ As appealing as the idea of a completely non-conscript army may be, the idea that the state may legitimately draft its citizens in true emergencies is not that controversial (though the question whether a particular situation constitutes such an emergency is likely to be much more so).

¹⁹ Assuming the other conditions are met.

result of the fact that he does not comply with it because of the threat that backs it, but because he agrees with it. The threat is therefore not effective and hence there is no coercion. This, however, is not necessarily the case. First of all, the fact that one agrees with a law does not mean that the threat that backs it up is not effective. One's agreement with it is a matter of moral evaluation, whereas the efficacy of the threat is a matter of motivation. One may, for instance, agree with the law that one may not drive faster than, say 130 km/h on the highway, but still be inclined to drive faster whenever one finds oneself in a rush. In such cases it may very well be the threat of the fine that keeps one from speeding, but that does not make the compliance a case of coercion. Furthermore, the fact that one accepts a law as legitimate does not mean one needs to agree with its contents. One may very well deem a particular law wrong, but accept that the state is authorised to make such regulations and enforce them. Although one then judges the law with which one complies to be wrong, this need not also imply that one deems oneself wronged by it. You may, for instance, be of the opinion that there should be no speed restrictions on the highway (on moral grounds²⁰), but simultaneously accept a government decision to impose a restriction as legitimate. After all, for a society to work it is often necessary to decide among the different conflicting opinions (moral as well as non-moral) of its citizens. Given that the state is authorised to make such decisions, one may sometimes accept as legitimate a decision with which one does not agree.

At the same time, however, this does not mean that one has to accept as legitimate any decision made by the government, for even state authority has its bounds.²¹ If one judges the state to encroach on areas it has no business interfering with, one may very well judge oneself wronged by the state. To many Europeans, for instance, a total ban on firearms is fully acceptable, whereas a number of their distant relatives across the Great Pond see things somewhat differently. This means that a law banning firearms would not coerce the former, whereas those who see the right to bear arms in terms of inalienable (often God-given) rights are coerced when they hand over their guns to the state authorities, either because of the fear of government reprisal or because they see the futility of resistance.

Whether or not a law coerces thus depends on the moral judgment of the individual citizens on the law. This judgment is not so much directed at the specific content of the law (though this may be indirectly relevant), but on the question whether the individual citizen accepts the state as authorised to impose it. This, however, also shows that it is often unavoidable that the law is indeed coercive, if this is taken to

²⁰ E.g. the right to freedom of movement.

²¹ The proposed conception of coercion also offers an interesting explanation why, for instance, certain orthodox socialists find (state) coercion much less problematic than, for example, most liberals, libertarians and republicans. To the latter groups, individuals matter because they are moral beings, and hence their individual morality is vitally important as well. To orthodox socialists, on the other hand, the people entertain a flawed notion of (bourgeois) morality due to their false consciousness anyway, so treating them in ways *they* deem wrongful to themselves is not considered particularly relevant (see for instance Lenin (1918) on the role of the vanguard during the dictatorship of the proletariat).

mean that it coerces at least some citizens. As laws by their very nature apply to (virtually) all citizens alike it will be nigh impossible in a sizeable society to avoid some citizens judging some laws as morally wrongful to their person. In such cases coercing these citizens may well be unavoidable and therefore justified. However, this does not imply that such cases of coercion do not imply a notable injury to their persons. When feasible, therefore, a state that values the dignity and autonomy of its citizens should attempt to avoid coercing its citizens (see also [Sections 5.4.3 and 7.4](#)).

3.3.3 Coercion and Autonomy

So far, I have discussed a number of particular issues and intuitions that are typically considered relevant to coercion. I have not yet addressed the most important one (at least not in any detail): the basic intuition that there is something intrinsically problematic about coercion, the idea that coercing someone is *prima facie* wrong. As we have seen, advocates of moralised accounts have attempted to incorporate this intuition directly into their accounts – albeit not wholly successfully – but even their opponents (e.g. Gorr 1986; Zimmerman 1981) agree that an adequate conception of coercion must be able to account for this morally suspect aspect.

This *prima facie* wrongness is explained through the third and fourth conditions in the account I have proposed. The third condition places coercion at odds with the autonomy of the coerced moral agent. If persons are to be respected, then their moral views on how they ought to be treated should also be regarded as relevant. Putting these moral objections aside, which is entailed by the fourth condition, is therefore problematic from a moral perspective. Exactly why a person's moral views are so vital to his moral agency will be explored more extensively in the next part of this book, but the general thought behind it is clear enough, I hope. If one's moral objections are put aside, rather than addressed to one's satisfaction, then one's compliance constitutes subjugation to the will of the other and this is profoundly humiliating to the coerced. Coercion is indeed problematic because of its inherent hostility to the individual. This hostility is not primarily a matter of a diminishment of utility, nor is it necessarily opposed to the interests of the coerced,²² but follows from its incompatibility with the status and dignity of the coerced as an autonomous moral agent. Dignity, however, is a highly charged, elusive concept in its own right, and in Part II I provide an analysis that shows how it is affected by coercion.

²² Coercion may, for instance, result from paternalistic motives. It may even be successful in achieving its paternalistic goals, but that does not explain away the problematic nature of coercion even in those cases.

Part II
Dignity and Interference

Chapter 4

A Kantian Perspective

4.1 Introduction

In the previous chapters I have emphasised the subjective aspect of coercion. I have claimed that coercion entails compliance without assent, and that this lack of assent should be understood in terms of a moral judgment by the coerced on the interfering (and overtly manipulative) act of the coercer. Furthermore, I have claimed that coercion is not just subjective in this way, but that it is inherently personal. The coerced not only deems the interfering act wrongful in general, but wrongful to himself. Coercion is a matter of interaction between moral agents, and this very personal aspect comes about through the fact that to be coerced is thus to be subjected to the will of another.

What remains to be demonstrated, however, is that this individual moral judgment, or more specifically its dismissal or its being overridden by the coercer, is of moral relevance and concern. The central argument of this second part of my study is designed to show that this is indeed the case. I have already indicated the more general intuition to this effect: if persons are to be respected as individual moral agents, then their subjective moral judgments, especially those that intimately concern themselves, must also be regarded as relevant. Although I take this claim to have at least some initial plausibility, it clearly does not yet form a conclusive argument. For instance, a commonsense, and hence forceful, objection to the view that a person's moral objections always matter as long as they are sincere, is the following. Although moral philosophers have a tendency to want to emphasise the more lofty traits of humanity, such as our rationality and reasonableness (or at least our capacity thereto), there is no denying that often, to use the words of Monty Python, 'people are stupid, obnoxious and daft' as well. Some people simply hold moral views regarding the way they may be treated by others that are deficient, overly self-ish or outright unreasonable, not to mention sometimes even reprehensible. Perhaps it would indeed be problematic to treat reasonable people in ways they deem wrongful to their person, but we certainly do not want to reward those found lacking in this regard for their unreasonableness by being overly considerate of their wild claims. So if we are justified in our confidence that the way we treat them is morally acceptable, what does it matter if such characters happen to think otherwise? It would of

course be preferable if we could show them the errors of their views and so obtain their assent, but if they are simply too obstinate to see reason, why should we not just brush their objections aside and proceed in a way we know to be perfectly fine?

Though this objection surely holds merit, I defend the position that we should take a person's sincere moral judgments (at least those involved in cases of coercion) as morally relevant facts even in cases where we know them to be unreasonable, or otherwise faulty. To do so I develop a distinctly Kantian argument based on the third formulation of the Categorical Imperative, that of the Commonwealth of Ends (Section 5.4).

The outline of this second part is as follows. In this chapter I set out the framework of my analysis, discussing a number of important features of the Kantian approach I adopt. Section 4.2 deals with the question of what is involved in a person considering himself wronged. Essential to such judgments is the recognition of the status of both the wrongdoer and the wronged as moral agents. Section 4.3 seeks to specify what aspect of moral agency is endangered by coercion. One familiar, essential aspect of moral agency that has received much attention in contemporary moral philosophy is the fact that persons, as moral agents, are purposive beings who shape their own lives by setting and pursuing their own chosen goals. I stress, however, that when it comes to explaining the problematic nature of dismissing or overruling a person's sincere moral objections, this aspect of moral agency is of only secondary concern. Instead I claim we should focus on the essentially political nature of moral agents. After the Kantian framework within which the argument to be developed has been set out, Chapter 5 shows why a person's sincere moral objections of the kind involved in coercion are of such fundamental importance, independently of their content. The first part of this chapter (Sections 5.2 and 5.3) discusses the Kantian literature that is most relevant to the issue at hand before I present my own solution to this problem in Section 5.4.

Before I proceed to present the Kantian framework that will be used, however, a few cautionary points and clarifications are worth making. First of all, though I claim that a person's sincere moral objections are always of moral relevance, I do not claim that they are sacrosanct to the degree that they may never be set aside. Although the argument I develop will show the relevance of such sincere objections, it should not (and does not) commit us to being overly accommodating. There indubitably are cases where we may set a person's sincere moral objections aside without addressing them to his satisfaction. However, the fact that doing so may at times be justified should not lead us to deny the inherent injury to the affected person that this implies (justified coercion still is coercion).

Furthermore, the goal of this part is to show the relevance of a person's moral objections from a Kantian perspective. This chapter seeks to facilitate the main analysis that follows in the next chapter by making explicit a number of features of the framework used. Though many of the features outlined are not beyond dispute (many non-Kantians may, for instance, object to the (implicit) meta-ethical presuppositions of the framework or the way it takes moral agency as the most fundamental aspect of being a person) it is not my intention to defend the Kantian framework itself; its credentials, though not undisputed, are established well enough.

Obviously, Kantianism, like any other major strand in moral philosophy, is a wide field that encompasses many different authors who have put forth varying points of view. Hence, the framework I outline is not shared entirely by all Kantians, though I hope any such disagreement will largely be of a less fundamental nature.¹

A last cautionary comment that needs to be made in this regard concerns translation. The word ‘coercion’ appears with some regularity in the standard English translations of the (moral) works of Kant, and this use often does not cohere particularly well with the notion of coercion I have presented. This is largely due to the fact that the German ‘zwingen’ (with its corollary noun ‘Zwang’) can mean both ‘to coerce’ and ‘to force’.² Whilst I do not want to dispute the use of ‘coercion’ in the standard translations, it is important to stress that this translation is not fully neutral and that it would therefore be a mistake to directly and uncritically take what Kant says on ‘Zwang’ to be his considered view on the concept of coercion.³

4.2 Considering Oneself Wronged

In my definition of coercion a vital part is played by the moral judgment of the coerced that he is personally wronged by the interference of the coercer. In this section I discuss what is involved in judging oneself to be wronged by someone else.

When a person deems himself wronged, he will typically be angry – and understandably, perhaps even rightly, so. Nonetheless, from a Kantian perspective, it is important to distinguish a person’s judgment that he is wronged from any feelings that may accompany it. To someone who works within a sentimentalist framework, for instance, this distinction is less important, perhaps even non-existent. In the Kantian framework within which I am working, however, a moral judgment, no matter how instantaneously it may come about, always involves the use of reason

¹ I also should stress that mine is a *Kantian* analysis; hence, my aim here is to develop an argument inspired by Kant’s overall moral framework which we can usefully apply to elucidate the specific problem of coercion. Though I believe that important aspects of my interpretation of key notions introduced by Kant (especially that of lawgiving in a Commonwealth of Ends) are supported by passages in Kant’s own writings, I do not claim that mine is the only viable interpretation, or that it completely covers what Kant himself thought. Most of the important notions in Kant’s thought have been the subject of considerable academic scrutiny, leading different scholars to emphasize different aspects or dimensions of these notions. How these various aspects are to be integrated to identify what Kant himself held the concepts he used to mean – if indeed they can all be successfully integrated – is a question that falls mostly within the purview of the history of philosophy and therefore outside of the scope of this book.

² And possibly ‘to compel’ and, in certain contexts, ‘to oblige’ as well.

³ Another German term that is in colloquial usage sometimes translated into English as ‘to force’ or ‘to coerce’ is ‘nötigen’ (noun: ‘Nötigung’). Kant uses this term with some regularity, but in the standard translations it is usually translated by ‘to necessitate’ (and the noun by ‘necessitation’ or ‘constraint’) rather than by ‘to coerce’. One argument for not doing so is that it lacks the inherent accusatory aspect that is central to coercion.

at least to some degree, so that moral judgments are of a fundamentally different nature than brute feelings of anger and/or resentment.

One way in which a moral judgment depends on the use of reason is that it must acknowledge the moral status of the entity that is judged to do wrong, a distinction feelings do not need to make. For instance, if, while walking down the road, I am attacked by a dog I can certainly feel anger towards the beast as its fangs tear their way through my calf on their way to make contact with my fibula. Unless I engage in quite inappropriate anthropomorphising, however, I cannot consider myself wronged by the bloodthirsty monster. The mongrel simply lacks the adequate standing to be able to wrong me. I can, however, consider myself wronged by its owner who, by failing to restrain the mutt, to my detriment also failed to observe the required respect for my wellbeing. In order to be able to consider myself wronged, I must award the agent whom I claim wrongs me a certain status, namely that of a moral being.

However, even though it is the owner of the beast who is at fault, and not her vicious canine companion, my response to the owner is ruled by much tighter constraints than my response to the animal. To hold that the latter must be put down because it has shown itself to present a danger to human beings is in all likelihood a very reasonable position to take, but to claim that its owner should suffer the same fate certainly is not. The same acknowledgment of her status that made it possible for me to consider myself wronged by her negligence in the first place, also forces me to admit – however reluctantly – that there are restrictions on what may be done to her. Acknowledging her standing under the moral law places demands on her, but also protects her.

However, it is not just her status as a moral agent that I must acknowledge if I am to consider myself wronged; I must recognise my own standing as well. If I am not an entity that matters in the very basic sense that my existence restricts how others are to behave towards me, then I cannot be transgressed against. To consider oneself wronged one must have a certain measure of self-respect.⁴ In Kantian terms, this translates into the acknowledgment that I am an end in myself, which restricts the way I may be treated by all beings who are subject to the moral law (see also Sections 4.3 and 5.3). The main point here is not that we have a duty to such self-respect (see also Hill 1991) – which I do not deny – but the more analytic point that for it to be possible for me to hold that someone else fell short in their duties toward me, I have to regard myself as such an end.

⁴ The notion of respect is an ambiguous one. An important distinction between two kinds of respect is Darwall's distinction between appraisal respect and recognition respect (Darwall 1995). The latter kind of respect Darwall claims 'consists in giving appropriate consideration or recognition to some feature of its object in deliberating about what to do' (183); the former kind of respect on the other hand 'consists in an attitude of positive appraisal of [a] person either as a person or as engaged in some particular pursuit' (184). The main difference between the two notions is that appraisal respect is purely evaluative whereas recognition respect has direct, practical implications. As Darwall puts it: '[t]o have recognition respect for something is to regard that fact as itself placing restrictions on what it is permissible for one to do' (185). The kind of self-respect at issue here is one of recognition (self-)respect.

To consider oneself wronged by someone else thus presupposes a reciprocal relation between the (alleged) wrongdoer and the wronged. Both are regarded as having the standing of moral agents, subject to the requirements of morality. Strictly speaking, this relation does not necessarily have to be one of full equals. It is easy enough to find historical examples that show it is perfectly possible for a person to consider himself wronged by another whom he does not regard as an equal. Nonetheless, even if you do not regard the other party as an equal, for you to consider yourself wronged by her, you must at least award her some moral status, or she cannot be regarded as being subject to the moral law, nor to the restraints you think morality imposes upon her. If she is not subject to any constraints towards you, she cannot transgress them, and hence she cannot wrong you.⁵ However, the view that all moral agents are of equal status has become commonplace and, unless explicitly mentioned otherwise, I shall also assume this to be the case.

In summary, in order for person B to consider himself wronged by person A, he must:

1. hold himself to be a moral agent;
2. hold A to be a moral agent;
3. have some convictions about how moral agents ought to treat each other;
4. hold A to have fallen short in observing the restraints B's status imposes upon her (i.e. violated 3).

This brief analysis of what is involved in a person considering himself wronged is not limited to Kantianism alone, and it is therefore not necessary to assume that the moral convictions to which the third clause refers, are themselves Kantian. However, certain views on morality are excluded. A moral nihilist, for instance, cannot consider himself wronged by anybody else, as he denies altogether that there is such a thing as morality.⁶ Similarly, certain versions of utilitarianism may also be excluded because although they can account for an action being wrong when it does not maximise social utility, they may be at great pains to account for the notion of a particular person being wronged by another. For the following analysis the grounds on which a person considers himself morally wronged are not that relevant; the relevant point is that he does so. The goal of the analysis is to show why such personal moral judgments are relevant. In answering this question I adopt a Kantian perspective, but the judgments themselves may be expressed by agents who do not themselves adhere to the Kantian point of view. The person who considers himself wronged may, for instance, be a sentimentalist or an egoistic hedonist who does not award any particular importance to the fact that he considers himself morally wronged (his

⁵ I use the terms 'constraints', 'restrictions' and 'transgression' here because this seems most conducive to the problem at hand, which deals explicitly with cases of interference. This should not be taken to imply, however, that one cannot wrong another through omission or neglect.

⁶ Though a moral nihilist certainly can have convictions, he cannot have convictions of the kind condition 3 refers to. A noteworthy implication of this is that a nihilist cannot be coerced, although, of course, he can be forced; and it is possible for others to be coerced by him.

prime focus may be his feelings of anger, or the diminishment of his enjoyment). From the Kantian perspective such objections matter; they matter not because of the content of these judgments – a Kantian may even hold them to be misguided – but they matter because they are the sincere moral objections of a moral agent.

4.3 Moral Agents, Chosen Ends, and Wrongful Interference

The previous section argued that in order for a person to consider himself wronged by someone else, he must both regard himself and the wrongdoer as moral agents. As mentioned before (footnote 8, p. 14), I shall not provide a detailed description of what exactly constitutes a moral agent. Nonetheless, it is useful to elucidate a number of aspects of moral agency that are of particular relevance to the discussion to follow. This specification is all the more called for because the aspect of moral agency I hold to be most at issue in cases of coercion is not one that has featured as prominently in recent moral philosophical debates as some others. In particular, I argue that the fact that moral agents are purposive beings who shape their own life by pursuing ends they have themselves chosen – a feature of moral agency that has been at the centre of attention in many modern moral theories – is only of secondary relevance if we are to explain the problematic nature of coercion. As a consequence, the primary reason that coercion is so problematic is *not* that it frustrates a person's pursuit of his chosen ends.

According to Kant, what entitles a person to respect from others is that, as a person, he is possessed of dignity. Because of this, he ought to be treated and valued by others 'not [...] merely as a means to the ends of others, or even to his own ends, but as an end in itself' (*DV* 6:435).⁷ What it means to use somebody as a means to some other end seems clear enough, but what exactly is implied by treating and valuing someone as an end in itself (and hence what amounts to treating someone *not merely* as a means) is far less obvious. At the very minimum, however, it must involve the realisation that the person matters in and of himself, and hence that his existence imposes restrictions on the actions of others. Our dignity, which grounds our status vis-à-vis all moral agents, is in turn grounded in our ability to govern our own conduct. Unlike animals, a person can, as a rational being, consider himself '[...] free with respect to all laws of nature, obeying only those which he himself gives [...]' (*G* 4:435). What gives people dignity (and standing under the moral law) is their ability to control and master themselves, and therefore to act morally (see also Gewirth 1984). Unlike animals, we are not just pre-determined to do whatever we feel an inclination to do. In Kant's terminology, this means we have inner freedom; the freedom to judge for ourselves what is right and wrong and to decide to act accordingly (see, for instance, *CPR* 5:161, *DV* 6:396, 6:418, *OT* 8:144–145, *REL* 6:133).

⁷ For a list of the abbreviations of Kant's works see p. 147.

This, however, is only part of the story. For not only can we exert control over ourselves in the sense that we constrain our inclinations, we are also purposive beings who can recognise that certain entities are valuable in and of themselves, and can experience the duty to constrain our actions accordingly so as not to destroy or harm these entities.⁸ Moreover, such entities which we perceive as valuable not only restrict our actions, they can also give meaning and direction to our lives as goals to be actively pursued. Persons are purposive beings, and it is by pursuing the goals we personally choose to pursue that our lives become meaningful. This view has become commonplace in present-day political philosophy (for a number of important examples, see Gewirth 1984; Hill 1992; Rawls 1971/1999; Raz 1986), and is sometimes even taken a step further, so that these projects we have chosen for ourselves not only give our lives meaning, but are also constitutive of our identities. According to some philosophers, who we are is by and large determined by what we care about and are committed to.⁹

As familiar and accurate as this picture seems, however, it may be misleading in an important way. It is important not to overstate the notion of choice in these matters, which would give the impression that the projects a person pursues, and therefore how he gives meaning to his existence, is fully up to the person himself.¹⁰ Although it is true that different people make different life choices and thus derive meaning from different endeavours, the ends one deems worthy of pursuit is not a matter of choice. If confronted with a possible end to pursue, one may choose to pursue it or not, and one can choose the way to pursue it, but one cannot choose to deem it worthy of pursuit.¹¹ How exactly we come to the conclusion that certain goals are worth pursuing while others are not is a complicated issue that falls largely outside of the scope of this book (and I certainly do not want to suggest that, as some poets would have it, the ends choose their pursuers), but in the Kantian account I

⁸ Dignity and standing are thus inherently linked to the ability to experience duty.

⁹ This view is central to, for example, the works of Harry Frankfurt (e.g. Frankfurt 1988, 1999); for a Kantian who embraces a similar view, see Korsgaard (1996b, 90–130).

¹⁰ Korsgaard, for example, argues that the ends we pursue become valuable by our choosing to pursue them so that all value originates in our moral agency (see, e.g. Korsgaard 1996a, 106–132). This may suggest that whatever end one deliberately chooses to pursue would thereby become bestowed with value. In economic terms this would undoubtedly be true, but that is not the way she intends value here. A clear indication that a deliberate choice to pursue a possible end by a moral agent is not sufficient to endow it with value, is that she also claims that what bestows value on an object (on an end) is that it is *rationally* chosen (idem, 122).

¹¹ Of course, in cases where one is unsure about something's worthiness as a possible goal to pursue, or unsure whether something is an end-in-itself, one may *choose* to treat it as such. This, however, is not the same as choosing it to be worthy (the awkwardness of this phrase 'choosing something to be worthy' already underscores the problem) – even if, after treating it as such for a sustained period of time, one may eventually become convinced that it is indeed something worthy of pursuit (or an end-in-itself).

am using, our ability to choose is limited to what we decide to do and has no direct bearing on what we think, believe, or deem to be the case.¹²

A further feature of the Kantian framework used is a commitment to a kind of realism (cf. Kain 2004). Not the kind of realism that claims that moral worth is something that is ‘out there’ for us to discover, but the kind that presupposes ‘facts of (practical) reason’. It holds, for instance, that correct judgments about the worthiness of a specific goal are possible, and the correctness of such judgments does not depend on who makes the judgment. Hence it is also possible to err in such matters, and it is possible for people to dedicate their life to goals that are distinctly unworthy of pursuit. For instance, a life dedicated to experiencing all of the basest pleasures life could possibly offer is a tragic waste of a life, even if the person living it would disagree whilst revelling in the achievement of his life goal.

Of course, none of this denies that among the many possible goals that are worthy of pursuit, different people may (and probably should) make different choices and hence derive meaning from different pursuits. Making one’s own choices remains a vital precondition for moral agency. In order to be able to pursue those ends one has chosen to pursue, the ability to act in accordance with one’s own choices without being restricted or otherwise interfered with by others is clearly an important prerequisite. This Kant calls a person’s external (or outer) freedom (*DV* 6:396, *PP* 8:350; see also *CS* 8:290–291, *DR* 6:237, *DV* 6:375, *RLP* 8:429, *REL* 6:133). This notion of external freedom plays an important role in Kant’s notion of rights, and hence also pertains to the issue of when a person is wronged. However, when it comes to a person being wronged by another’s interference, the particular pursuits that give meaning to a person’s life are not the primary focus of attention – even though the interference may be most inconvenient to this pursuit.¹³ When it comes to one person being wronged by another, the focus is primarily relational and directed at the interfering person. When judging whether someone’s interference with you is wrongful or not, the primary question is not whether this interference is beneficial to your pursuits, but whether she may do so, i.e. whether or not it is an acceptable way of treating you.

Obviously, different people’s pursuits may collide in certain instances, but when this happens the main issue from a moral point of view is not so much whose pursuits are frustrated and whose are not, but whether or not the colliding parties can resolve the issue in a way that is sufficiently respectful of both their positions as moral beings. The mere fact that someone else’s actions interfere with you and thus limit your external freedom is not sufficient to denounce them as wrongful. Unlike inner freedom, external freedom need not be absolute. In fact, given the fact that in a community of any size it is practically guaranteed that the pursuits of different persons will at times collide, each person’s external freedom ought to be subject to

¹² I should like to emphasise, perhaps superfluously, that this rejection of direct doxastic voluntarism is a feature of the Kantian framework I am using. Such a rejection is not undisputed, however. For an overview of the various possible philosophical positions with respect to the level of control persons have over their beliefs, see e.g. Vitz (2008).

¹³ Their impact on those pursuits may, however, be indirectly relevant; see also footnote 16, p. 59.

boundaries. According to Kant, the proper boundaries of a person's external freedom are determined by only one restriction: that his freedom is compatible with the equal freedom of all others (see e.g. *CS* 8:290, *DR* 6:237, *DV* 6:396). One can debate what this means in practical terms (i.e. one can disagree over where the legitimate boundaries lie between the external freedom of one person and that of another) but the main point to be stressed here is that, in a Kantian approach, there are such things as legitimate bounds on a person's external freedom, and these are directly set by the external freedom of another person. Kant equates these legitimate bounds on a person's external freedom to his (external) rights. Hence, when one person transgresses the boundaries of her own external freedom (takes too many liberties), she necessarily transgresses against the rights of another, thereby unduly restricting the external freedom of the latter. If this happens we can say that the interfering party wronged the other person (*DR* 6:231).¹⁴ The main issue here, however, is the transgression of another person's rights, not the frustration of his pursuits. If one person fails to observe the rights of another, she wrongs the latter even if this does not affect his pursuits at all; at the same time, however, it is sometimes also possible for a person to block the pursuits of another whilst staying within her own rights, and thus not wrong another. Hence it is even possible for a person to judge his pursuits as being completely frustrated by the interference of another whilst simultaneously maintaining, with equal plausibility, that the interference does not constitute a wrong to his person.¹⁵ As important as a person's pursuits may be to that person, they are not of inviolable importance.¹⁶ Being treated in a way that is properly respectful of his status as a moral agent, however, has a much stronger claim to such inviolability (*DV* 6:464). What makes coercion so problematic is more fundamental than merely the fact that it hinders the pursuits of the coerced – though it may (and usually does), of course, also do that.

So far, I have outlined what it means for one person to be wronged by the interference of another, at least according to a Kantian perspective. The main point is that a person's being wronged is not – or at least not primarily – a matter of the frustration of his pursuits, but of treating him in a way that does not do justice to what

¹⁴ A transgression against such rights is the most obvious way a person can be wronged, which is why I use it as an example here. In [Section 5.4.5](#), however, I argue that it is possible to be wronged even if one's rights thus understood are not at issue.

¹⁵ When this takes the form of utterly subordinating one's own goals and commitments to that of another person, this may become most problematic, leading to the charge of servility (see [Hill 1991](#), 4–24). Although this is a danger, it does not in any way negate the fact that there are situations where one can quite appropriately acknowledge the fact that respectful treatment need not imply absolute non-interference even if the interference does not track the pursuits of the person interfered with.

¹⁶ Of course, this should not be taken to deny that the pursuits, and their importance to the person involved, are of moral relevance themselves. They are, however, taken into account only in a derivative matter. They matter because they matter to the person involved. They are his ends, but not ends in themselves. Any restrictions such ends impose on the actions of others can ultimately be reduced to the restrictions that follow from the status as a moral person of the person who values these ends.

he is entitled to as a moral agent. However, the relevant question here is not whether someone is wronged by another's interference but that he *regards* himself as such. Why would this be problematic? If the interference is morally acceptable (compatible with the equal freedom of all), what does it matter if the person subjected to it disagrees – he is after all claiming something not due to him? The reason this is relevant is that there is more to being a moral agent than merely being a purposive being who sets his own goals. If this were all there were to it, then the 'moral' in 'moral agent' reduces to little more than selecting ends worthy of pursuit and choosing which of those to pursue. There is, however, more to our morality than that alone. From a Kantian perspective (unlike, for instance, a Hobbesian point of view), we are not just individuals who happen to pursue our own ends in a world where others are doing the same, so that we unfortunately see ourselves forced to somehow find a way to co-exist with these bothersome other beings. We are – to Kant no less than to Aristotle – beings of an essentially *political* nature (cf. *DV* 6:471)¹⁷; and it is because of this that coercion is so problematic, as the next chapter shows.

¹⁷ It is no coincidence that one of the most authoritative introductions into Kant's ethics of the last few decades (Sullivan 1994) starts by describing and emphasising the importance of Kant's general political outlook before going on to discuss his (individual) ethics within that context.

Chapter 5

Moral Objections and the Categorical Imperative

5.1 Introduction

Central to Kant's moral philosophy is the notion of the Categorical Imperative. According to Kant it is the supreme principle of morality (*G* 4:392), and just as supreme beings come in threes, so does the supreme principle. Kant gives us three formulations of the Categorical Imperative, claiming that they ultimately have the same practical content (*G* 4:436).¹ The first formula, known as the Universal Law Formula states: '*Act only in accordance with that maxim through which you can at the same time will that it become a universal law*' (*G* 4:421). The second formula, known as the Formula of the End-in-Itself (also known as the Formula of Humanity) holds '*So act that you use humanity, whether in your own person or in the person of any other, always at the same time as an end, never merely as a means.*' (*G* 4:429). The third formulation is commonly known as the Formula of the Kingdom of Ends, but this is a very loose and somewhat misleading translation of 'Reich der Zwecke'. I prefer 'Commonwealth of Ends'.² Unlike the first two formulations, Kant does not offer us an exact formulation in terms of an explicit act-guiding principle. The Commonwealth of Ends is described as 'a systematic union of various rational beings through common laws' (*G* 4:433) and 'morality consists [. . .] in the reference of all action to the lawgiving whereby alone a [commonwealth] of ends is possible' (*G* 4:434).

As the Categorical Imperative is the supreme principle of morality, it is a crucial notion in all of Kant's moral philosophy. It unites both his political and his ethical thinking. Nonetheless, these two parts of Kant's moral thinking are often

¹ Some authors distinguish more formulations of the Categorical Imperative. Paton, for instance, distinguishes five (Paton 1947, 129): the three formulae mentioned, as well as the Formula of the Law of Nature ('*act as if the maxim of your action were to become by your will a universal law of nature*' (*G* 4:421)), and the Formula of Autonomy ('*act only so that the will could regard itself as at the same time giving universal law through its maxim*' (*G* 4:434)). However, these two formulae are so closely related to respectively the Formula of Universal Law and the Formula of the Commonwealth of Ends that they are usually taken to be identical for all intents and purposes. Kant himself speaks of three different representations of the Categorical Imperative (*G* 4:436).

² Another possibility is 'Realm of Ends'.

viewed separately. Major works for those who are exclusively or mainly interested in his ethics are the *Groundwork to the Metaphysics of Morals*, *Critique of Practical Reason* and the *Doctrine of Virtue* (the second part of the *Metaphysics of Morals*). Those who intend solely to study his political theory, on the other hand, often focus on the *Doctrine of Right* (the first part of the *Metaphysics of Morals*) and *Toward Perpetual Peace*. Especially if one takes his ethical works as primary (which seems to be the standard view), these two parts of his moral theory may seem radically different; many who have exclusively studied his ethical theory are at first stunned to find that the same author put forth the positions and doctrines Kant sets out in his political theory. Many a student who struggled to master Kant's often highly sophisticated argumentation in the *Groundwork to the Metaphysics of Morals*, with its complicated reasoning on the maxims and motives that underlie an action is, for instance, initially baffled (though when the first shock has passed often also relieved) to find that they seem to play hardly any role in his political theory. The *Doctrine of Right*, for instance, is almost solely concerned with actions themselves, independently of their intended purpose; it focuses on the legitimate bounds of persons' external freedom and holds that as long as a person stays within his rights, all is well. Whether he does so because it was more convenient for him to do so, or whether he does it because he sees it as his duty to respect another person's rights is essential when it comes to Kant's ethics, but from a political point of view Kant could care less – or so it seems.

When it comes to understanding or interpreting Kant's moral theory as a whole, drawing a clear distinction between his ethics and politics is not the most felicitous approach, however. In particular, as Sullivan (1989) shows, one should not underestimate the relevance of Kant's political teachings for understanding his ethical thought. In this regard it is particularly noteworthy that though the first two formulae of the Categorical Imperative make little explicit reference to political issues,³ the third one, which is presented as the most complete formulation of the Categorical Imperative (*G* 4:436), explicitly refers to a political ideal: the Commonwealth of Ends. Hence, if we try to understand the Categorical Imperative through this formulation, we first need to form a conception of this political ideal.

The goal of this chapter is to demonstrate the moral relevance of coercion. In order to do so, it must be shown that overriding a person's moral objections to the way he is being treated is problematic independently of the content or validity of these judgments. In the next section I outline the different steps of the strategy by which I set out to tackle this problem. Initially, I limit myself to demonstrating the problematic nature of coercion for cases of coercion that involve moral conflict. In many respects these are the cases where the burden of proof is hardest, but if it can be shown that coercion is of moral importance in those cases, it is fairly straightforward to expand the argument to the cases of coercion where no such conflict is present. In Section 5.3 I argue that the first two formulae of the Categorical Imperative are

³ A case can be made, however, that the basic notions of equality and fairness that are expressed by the requirement of universalisability, as well as the demand that we respect the status of others in our actions in the second formula, both display a distinctly social approach to individual ethics as well.

unfortunately little use if we want to understand what is problematic about the dismissal of a person's sincere moral objections. The Formula of the Commonwealth of Ends, however, has the potential to be more use; but in order for this to work we first need to interpret the notion of a Commonwealth of Ends. In Section 5.4 I therefore first offer an interpretation of this 'very fruitful' (*G* 4:433) notion based on Kant's political writings before using it to show the relevance of a person's moral objections (Section 5.4.2). I argue that the problematic nature of coercion is explained by the fact that it constitutes an affront to the dignity of the coerced. Subsequently, I further discuss the interpretation of the Commonwealth of Ends I propound and show that it does not commit us to being overly accommodating to unreasonable moral objections.

5.2 Coercion and Disagreement

As stressed before, coercion is a relational issue, and its problematic nature arises from the fact that it involves one person's will being subjected to that of another. The nature of this subjugation is explicated by the fact that the coercer maintains her interference notwithstanding the objections of the coerced. In order to structure the discussion that follows in the next sections of this chapter it is useful to distinguish between those situations in which the coercer disputes the validity of the coerced's objections, and those where she does not. If the coercer's disagreement with the validity of the coerced's objections is part of the reason why she is unwilling to abide by them, we can say that the coercion is based on an underlying moral conflict. This need not always be the case, however; the highwayman, for instance, will in all likelihood not dispute the claim that he is treating his victim in a way that is not morally acceptable, yet cynically persist in his immoral behaviour. In cases of coercion that do involve moral conflict, on the other hand, B's judgment that he may not be treated by A in the fashion she treats him is denied by A, who claims that the way she interferes with B does not constitute a wrong to his person. Obviously, at most one of them can be correct in their judgment concerning the acceptability of A's interference (see p. 58). This gives rise to three possible types of cases of coercion that are worth distinguishing:

1. A and B agree that A's interference is wrongful to B⁴;
2. A and B disagree with respect to the wrongfulness of A's interference, and B's judgment is correct whereas A's is fundamentally flawed;
3. A and B disagree with respect to the wrongfulness of A's interference, and A's judgment is correct whereas B's is fundamentally flawed.⁵

⁴ When A and B agree on the wrongfulness of the interference, the question of which of them is correct is moot.

⁵ Obviously there are more possibilities; for instance where both A's and B's judgments are equally mistaken, or where neither of them are completely correct but one of the two judgments is clearly superior to the other. These intermediate possibilities are, however, not of particular interest to the structure of the argumentation that follows in the rest of this chapter.

Intuitively, the case that something of a morally problematic nature is occurring is weakest in the last of these possibilities. In the first, even the perpetrator agrees that what she is doing is wrongful to the coerced; in the second, too, the coerced is clearly being wronged, for his judgment that he is, is by assumption correct. In the third, however, the coercer's judgment that her interference is not wrongful to the coerced is correct, which gives rise to the question why this would be a matter for concern. The commonsense objection mentioned in the previous chapter is based on such a situation.

The first order of business when demonstrating the problematic nature of coercion is to rebut this commonsense objection and show that even in those cases where the coerced's objections are clearly misplaced, coercion is a matter of moral concern. Hence, in the following sections I first focus on such cases of coercion, i.e. cases of coercion based on a moral conflict in which the coerced's objections are fundamentally flawed.⁶ When it has been shown that coercion is problematic even in those cases, we can turn to the other two. Though intuitively these cases are less controversial, it would greatly enhance the strength of the argument if what is shown to explain the problematic nature of coercion in cases of the third kind is not just an ad hoc explanation, but applies to the other two cases as well. In particular, this means that what makes those first two cases problematic is not just a matter of the coerced being interfered with in a wrongful way⁷; being wrongfully interfered with does not in itself yet constitute subjugation to the will of another.

5.2.1 Moral Conflict

As outlined above, I shall for the time being confine myself to demonstrating the problematic nature of coercion that involves a moral conflict between the coercer and the coerced. In this section I want briefly to address two issues with respect to this restriction. When it comes to dealing with moral conflict, one of the most influential approaches in present day political philosophy is the one presented by John Rawls in *Political Liberalism* (Rawls 2005), and those familiar with this field of literature may perhaps expect me to take a similar approach. I would therefore like to take a few moments to explain why I do not. The second issue is one that concerns the compatibility of persisting moral conflict and the Kantian framework I introduced in [Chapter 4](#).

⁶ It is important to distinguish between the coercer's 'sec' judgment that the coerced's objections are misplaced, and the coercer's judgment that she is justified in coercing B. The former, which is at issue here, is a moral judgment by A on her own interference that does not take account of the bare fact that B objects. The judgment that she is justified in coercing B however, means she holds herself justified to maintain her interference even though B objects. To the matter of justified coercion we shall turn later (Section 5.4.4.2), but that issue can only be addressed after we have ascertained the moral importance of coercion as such.

⁷ Which does not deny, of course, that the fact that they are interfered with in a wrongful way is itself also a matter of moral concern.

5.2.1.1 The Rawlsian Approach to Moral Conflict

Rawls sets out his analysis of the problems posed by moral disagreement and conflict for political theory in his second-most famous work *Political Liberalism*. One of the main questions Rawls seeks to address in this work is to determine the grounds for and limits of toleration within a just, liberal society. Hence, his prime concern is when (and when not) the liberal state may use its coercive power to suppress or overrule the views of people who disagree with it. In addressing this question he limits his focus to cases of what he calls reasonable disagreement. He only addresses those differences of opinion that can be put forth by people who are willing to accept certain rules of justice and fairness beforehand.⁸ The main question that needs to be addressed in this part is, however, significantly different from the problem Rawls seeks to address. What I seek to ascertain here is what coercion does to a person, and hence why the use of coercion is a matter of moral concern. I am not directly concerned with determining the precise limits of the (liberal) state's right to use its coercive power (though of course the answer to the question of what is problematic about coercion will not be irrelevant to answering the question of when the state may coerce). An important methodological consequence in this difference of focus is that the question I seek to address does not allow for a similar restriction to disagreement between reasonable persons. What coercion does to person, it does independently of whether or not he or his moral objections meet the criteria of a particular account of reasonableness. In fact, many cases of moral conflict and coercion may implicitly or explicitly involve a rejection by the coerced of the standards of reasonableness the coercer expounds. Though I do not deny that some notion of reasonableness will often have to be appealed to if one is to determine when dismissing the coerced's objection is or can be justified, I am not convinced by Rawls's suggestion that all objections that implicitly or explicitly dispute his particular conception of reasonableness (or any other account of reasonableness for that matter) may be overruled or dismissed out of hand.⁹ Moral agents can (and do) disagree about what constitutes reasonable as they can disagree about just about anything else, and claiming that coercing you is not problematic because (your sincerity notwithstanding) you are just being unreasonable shows little respect for your moral agency and standing.

5.2.1.2 Moral Conflict and the Kantian Framework

Some may wonder whether it is even possible in a Kantian framework to have a situation of persistent, sincere moral disagreement. After all, in a Kantian approach, the morality of any action is ultimately a fact of (practical) reason. Hence, if A's judgment is correct, then she can resolve the problem by showing that her judgment is correct and B's is flawed. If the moral law can be ascertained by practical reason,

⁸ For a more detailed description of Rawls's notion of reasonableness, see e.g. Rawls (2005, 47–66, 488).

⁹ E.g. Rawls (2005, 488): 'We simply say that such a doctrine is politically unreasonable. Within political liberalism nothing more need be said.'

then B's access to it is equal to A's. Hence, in a Kantian framework the whole issue of moral disagreement and conflict is moot, for the disagreement can be resolved through discussion and debate. This objection overlooks an important feature of the Kantian perspective, however. It may be true that the Kantian approach holds the moral acceptability of A's interference to be a fact of practical reason, and it also holds that no-one has privileged access to it,¹⁰ but although they are all possessed of reason, all human beings are also flawed reasoners (cf. Herman 1993, 90–91; Nell 1975, 130; Sullivan 1989, 162). Therefore, when both A and B sincerely claim that theirs is the correct judgment, the fact that at most one of them can be right does not help them much. Kant would certainly favour the resolution of moral conflicts through arguments (see e.g. *DV* 6:463), and moral debate may resolve the problem when it leads to at least one of the persons involved altering his or her judgment, but there is no guarantee that such agreement can be reached (nor, for that matter, is there any guarantee that if they do manage to reach agreement the judgment they jointly arrive at will be correct).¹¹ Furthermore, practical considerations may make it impossible for (public) reasoning fully to take its course, especially when the time is pressing for action. Hence, even in a Kantian perspective, moral disagreement and conflict are a genuine possibility¹² and coercion is at times necessary to prevent the window of opportunity for action from closing. Kant himself may have been optimistic (perhaps overly so) about the possibility to make progress in moral reasoning, but not even the great man himself held that action ought to be postponed until all whom it affects assent to it (see also Waldron 1999, 36–62).¹³

The fallibility of our reasoning abilities, should not be taken too far either, however. One might claim, for example, that what is problematic about the idea that one

¹⁰ The impossibility of privileged access to the moral law follows from the fact that every moral agent has the capacity to be autonomous.

¹¹ For an overview of more specific causes of why sincere moral judgments of persons may differ (even among reasonable persons) see e.g. Rawls's discussion of 'the burdens of judgment' (Rawls 2005, 54–58).

¹² This, however, should come as no surprise, as Kantians themselves often disagree on specific moral matters (Sullivan, for instance, provides a clear example of a practical issue where Kantians can vehemently disagree about its permissibility in the issue of abortion (Sullivan 1994, 111–113)); let alone when non-Kantian positions are taken into account as well (see also Sullivan 1989).

¹³ A clear example of this is that Kant, his advocacy of the continuous exercise of public reason and his optimistic belief in the moral progress that would result from this notwithstanding, was quite adamant that public authorities were entitled to make practical decisions without any agreement being reached and that these decisions had to be obeyed virtually unconditionally (see e.g. *DR* 6:319–322, *CS* 8:298–299). He also held that the state is authorised to enforce these decisions through coercive means if anyone is inclined to resist them. In fact, one of the more notorious of Kant's positions is that one generally has to submit to the decisions of the state authorities, even if one correctly judges oneself to be wronged by them (cf. *DR* 6:319). (It must also be mentioned, though, that Kant's position on the possibility of a citizen being wronged by the state is somewhat ambivalent; many passages show that he held this to be a genuine possibility, e.g. *CS* 303–304, *DR* 6:319-6:322, *DV* 6:424, but at the same time he states in *DR* 6:321 that a sovereign can do no wrong).

person dismisses or overrules the moral objections of another is that this signifies that the person who does the dismissing or overruling is insufficiently sensitive to her own fallibility. We should not be willing to dismiss or overrule other's moral objections to the way we act, for it may always be the case that their objections hold (at least partial) merit. Their disagreement signifies our own judgment is probably less than perfect and we should always be willing to refine it. To dismiss or overrule another's moral objections, then, is a sign of haughtiness and arrogance. However, although the concern this objection expresses deserves some sympathy, it is ultimately mistaken. The fact that we should be careful not to be overconfident in our own judgments in no way diminishes the force of the commonsense objection that certain persons may enter fundamentally flawed moral objections, for our own fallibility does not affect the general point on which this objection rests: that there are cases where we are sufficiently certain that ours is the correct judgment and that the objection of the person with whom we interfere is misplaced (or at least that our judgment is vastly superior to theirs). Our fallibility certainly complicates life, but it is not a tragedy that makes it impossible or impermissible for us ever to be confident in our sincere moral judgments and act accordingly.

5.3 The Formulae of Universal Law and End-in-Itself

Having restricted, for the time being at least, the focus of analysis to cases of coercion involving sincere moral conflict, let us now turn to the different formulations of the Categorical Imperative and see what insights they provide with respect to explaining the problematic nature of coercion. Kant maintained that the three formulae of the Categorical Imperative are ultimately one and the same (*G* 4:436). Kant presents this unity in rather scholastic terms: form (Formula of Universal Law), matter (Formula of the End-in-Itself) and its totality (Formula of the Commonwealth of Ends). For practical purposes (moral appraisal and determining what to do), he clearly favoured the first formula. However, when it comes to understanding the Categorical Imperative (or as Kant puts it, to 'provid[ing] access for the moral law' by 'bring[ing] it closer to intuition' (*G* 4:437)) the other two formulae are needed as well.

Modern moral philosophy has, however, shown that there are serious problems with the Formula of Universal Law (the most important being that it fails adequately to classify morally acceptable and morally unacceptable actions), which casts serious doubt on Kant's view that for practical purposes the Formula of Universal Law suffices.¹⁴ In an attempt to remedy these deficiencies of the Formula of Universal Law many authors have focused on Kant's claim that the three formulae ultimately identify one and the same principle. Different ways of reducing the three formulae

¹⁴ For a short overview of the most important of these problems see for instance Hill (1992, 62–63).

to each other have been proposed, often based on awarding more importance to one formulation or another.

The three formulations can, for instance, be regarded as showing the supreme moral principle from a different point of view (cf. *G* 4:436–438). The Formula of Universal Law represents the viewpoint of the agent acting (in our case A), the Formula of the End-in-Itself that of the person acted upon (B), and the Commonwealth of Ends formulation that of a person in a community of equal moral beings (Herman (1993, 227); O’Neill makes a similar point (O’Neill 1989, 142)). Herman, however, emphasises that the different formulations show different aspects of rational agency that can lead to contradictions under generalisation, which suggests that in Herman’s view the Formula of Universal Law is primary, and the other two are ways of explicating and exemplifying the first formulation. In O’Neill’s view the Formula of Universal Law and the Formula of the End-in-Itself are complementary,¹⁵ and the Commonwealth of Ends Formulation does nothing but combine the two (O’Neill 1989, 143–144). Donagan (1985) suggests that the Formula of the End-in-Itself best captures the fundamental idea behind Kant’s moral thought, without which the Formula of Universal Law cannot do its job of determining whether or not an action is permissible.¹⁶ The Formula of the Commonwealth of Ends he regards as little more than ‘the natural completion of the idea behind the [Formula of the End-in-Itself]’ (Donagan 1985, 64).¹⁷

The central problem of this chapter is how the Categorical Imperative can be used to elucidate the problematic nature of moral conflict and coercion. I shall therefore restrict my discussion of the different formulations of the Categorical Imperative to what is relevant to this particular problem. Rather than developing a complete theory of how the different Formulae relate to each other, the main purpose is to see what insights the different formulations give us with respect to the problematic nature of dismissing or overruling a person’s moral objections. Hence I discuss the different Formulae in turn when applied to the problem of sincere moral conflict. In the next sections I discuss the Formulae of Universal Law and the End-in-Itself in this context. Both these formulae of the Categorical Imperative

¹⁵ Although she too seems to take the Formula of Universal Law as the most substantial part, not only dedicating a whole book nearly exclusively to this formula (Neill 1975), but also claiming in later work that ‘Kant’s question is always fundamentally the agent’s question, “What ought I to do?”, not the recipient’s question, “What am I owed?”’ (O’Neill 1989, 142). This emphasis may hold for the *Groundwork of the Metaphysics of Morals*, but given Kant’s emphasis on standing up for oneself and refusing to let others treat one as mere means in the *Metaphysics of Morals* (see e.g. *DV* 6:435–437), and the fundamental importance of respect for the humanity in one’s own person in his work in general, this claim can be challenged.

¹⁶ Another author who claims the Formula of the End-in-Itself is the most important one is Cummiskey (1996). Wood, too, claims that the Formula of Universal Law is less important than the other two formulae, and emphasises the central importance of the Formula of the End-in-Itself in Kant’s thought (Wood 1999, xiii, 141).

¹⁷ Nonetheless, Donagan claims that the Formula of the Commonwealth of Ends provides the fundament on which the *Doctrine of Right* is built, whereas the *Doctrine of Virtue* is developed from the Formula of the End-in-Itself.

are not without their problems, which have received ample discussion in the literature (see, for instance, Cummiskey 1996; Donagan 1985; Herman 1993; Hill 1992; Korsgaard 1996a; Nell 1975; O'Neill 1989; Paton 1947; Wood 1999; Sullivan 1989), many of which I do not discuss in detail here since they are not particularly relevant to understanding the problematic nature of sincere moral conflict. I therefore discuss only those problems that are relevant to this particular problem. These problems are severe enough, however, and my ultimate conclusion is that the first two Formulae do not offer us many direct insights into the problem of moral conflict.

5.3.1 The Formula of Universal Law and Sincere Moral Conflict

According to the Formula of Universal Law, whether an action is permissible depends on the maxim that underlies it. The term maxim is a technical one. Kant describes it as a 'subjective principle of action' (*G* 4:422, fn.); to modern ears this sounds rather complicated, but according to Sullivan there is nothing mysterious about maxims: 'Maxims simply articulate an agent's intentions or disposition [...] the rules a person adopts and on which a person actually acts [...]' (Sullivan 1989, 28). A maxim thus states the 'nature and the purpose' (Hill 1992, 62) of an action. The Formula of Universal Law holds that the morality of an action can be determined by testing whether the maxim from which it stems can be universalised. If you can will a world in which everyone would act on the maxim you are about to act on, then your intended action is morally permissible, but if you cannot will such a world your proposed course of action is morally deficient. Many authors (Hegel probably most famously), have questioned whether it is at all possible to derive any specific, non-trivial practical content by applying this purely formal test, but it is not my intention to rehearse such familiar criticisms in any detail here. The question at hand is what insights the Formula of Universal Law can give us with respect to the problematic nature of coercion. For that purpose it is more worthwhile to focus on what those who are more optimistic about the usefulness of this formulation of the Categorical Imperative think it says about coercion and scrutinise these specific positions, rather than try to defend or reject the Formula of Universal Law as a whole. Even if the critics of this formulation turn out to be right and the universalisability test turns out to be plagued by fundamental problems, this does not preclude the possibility that it may provide useful insights.

One of the more optimistic authors when it comes to the practical usefulness of the Formula of Universal Law is Onora O'Neill, who also dealt explicitly with the issue of coercion (O'Neill 1989, 1991). When it comes to the universalisability of coercion, O'Neill claims this is not possible:

The maxim of coercing another has as its universalized counterpart the maxim that all coerce others; but if all coerce others, including those who are coercing them, then each party both complies with others' wills (being coerced) and simultaneously does not comply with others

but rather (as coercer) exacts their compliance. A maxim of coercion cannot coherently be universalized and reveals moral unworthiness. (O'Neill 1989, 96)¹⁸

To assess this claim, we first have to make clear what it means for a person to act on a 'maxim of coercion'.¹⁹ This is not as straightforward as it may initially seem, because, as O'Neill notes, coercers often do not describe their own action as coercion (O'Neill 1991, 173). The highwayman, for instance, typically cares only that he gets the money; whether the person he induces to part with his assets does so willingly or deems the incentives used wrongful to his person, is a matter of supreme indifference to the highwayman (see also *Highway Robbery II*). Hence, if asked to explicate the subjective principle underlying his action, the highwayman may well state a maxim that makes no reference whatever to the moral objections of his victim. This may be viewed as a deliberate act of (self-)deception, but this need not always be the case. Such considerations may truly be simply alien to the highwayman's way of thinking. None of this exculpates the highwayman, of course, but it does show that taking a 'maxim of coercion' too literally as the subjective principle on which the agent acts is problematic.

It can be argued, however, that in the context of assessing the moral relevance of particular aspects of a situation, the conscious intentions of the coercer are not that relevant, particularly as Kant famously argues we can never be certain of the true grounds on which we have acted anyway (*G* 4:407). So let us not be too quick to disqualify the notion of a maxim of coercion. According to the definition of coercion, A interferes with B in a deliberate attempt to get B to do X. Hence, the goal of A's action is that B does X, and the means by which she does is the manner by which she interferes (let us call this Y). Though from this we can derive a description that qualifies as a maxim ('to do Y in order to get B to do X'), this does not seem to be an adequate characterisation of a maxim of coercion (as argued in [Section 3.1](#), it would qualify too many cases as coercive). Moreover, as far as the cases of coercion to which we have for the time being restricted our attention are concerned (i.e. those based on moral conflict where the moral objections of the coerced are misplaced), we have stipulated that the coercer's interference itself is not morally deficient. Hence, the maxim 'to do Y in order to get B to do X' passes the universalisability test by assumption.

¹⁸ This is not the only argument O'Neill presents with respect to the moral unacceptability of coercion, as she also claims coercion cannot be universalized because it undercuts the agency and willing of the agent, which means the victim of coercion cannot assent to being coerced so that a principle of coercion cannot be universally acted upon (O'Neill 1989, 215, see also 113). This explanation of the problematic nature of coercion relies not only on the Formula of Universal Law, but also on that of the End-in-Itself. As I argue in the next section, the Formula of the End-in-Itself does indicate why coercion is problematic, but this does not go beyond the general intuition we started with: that respecting moral agents implies their moral judgments (their willing) are relevant as well.

¹⁹ O'Neill (deliberately) does not provide a detailed account of exactly what cases constitute coercion and which do not (O'Neill 1991, 180; see also O'Neill 1989, 113). In the following, my discussion is limited to the universalizability of coercion as conceptualized in [Section 3.1](#).

If we want to know what is problematic about coercion, trying to characterise a ‘maxim of coercion’ solely by reference to the first condition of the definition of coercion is not a very fruitful approach. Equally essential to coercion is the coercer’s willingness to overrule or dismiss a person’s moral objections (condition 4). Hence, for a maxim to be a ‘maxim of coercion’ it also needs to make reference to this aspect of the coercer’s role in coercion. For a maxim to be aptly characterised as a maxim of coercion it would roughly have to take the form ‘to do Y in order to get B to do X, even if B considers this wrongful to his person.’

Such ‘even if. . .’ clauses are known to pose problems for the universalisability test (see e.g. Nell 1975, 134). Moreover, the fact that we are dealing here with sincere but mistaken moral objections adds to the standard problems connected to this test. For if we want to universalise the maxim ‘to do Y in order to get B to do X, even if B considers this wrongful to his person’ in these cases we get the universalised maxim: ‘Everyone will do Y in order to make another person do X even when the latter mistakenly considers this wrongful to his person’. This would mean we would have to contemplate whether we can also will such a maxim in the cases where we ourselves are the ones whose sincere but mistaken moral objections are overridden. Whilst we can without problem acknowledge that from time to time we ourselves too will entertain such objections (we know, after all, that we too are imperfectly rational agents), it must also be noted we can never have a sincere moral objection we simultaneously hold to be mistaken. Thus, the universalisability test in this case asks us to determine whether we can will something we cannot adequately conceptualise: what we would will with regard to something we must simultaneously hold mistaken and correct.

We can try to get out of this predicament in two ways, but unfortunately there does not seem to be an obvious way to determine which is the most plausible one. Moreover, these two possible solutions lead to contradictory conclusions. If we emphasise that the objections we must universally will to be overridden are mistaken, it seems there is no contradiction in willing this universalised maxim. It is not necessarily inconsistent for me to will that others correct or mitigate the effects of my mistakes, humbling though this may be. To hold the converse – that others must always bend to my will even when I am in the wrong – certainly does not seem to be a tenable position (especially since the universalised version of this position means that I too must be willing to bend to every mistaken objection from another person).²⁰ However, if we emphasise that the universalised maxim ‘Everyone will do Y in order to make another person do X even when the latter mistakenly considers this wrongful to his person’ at times implies we also will our own sincere moral objections to be overridden, it seems we cannot consistently will this universalised maxim. To have sincere moral objections to Y (whether they be mistaken or not) means, after all, that we will that we are not subjected to Y, and you cannot simultaneously will to be subjected to Y and to be not subjected to Y.

²⁰ This would also imply justified coercion would be an impossibility.

In the case at hand, therefore, the Formula of Universal Law does not seem to provide any straightforward insight or answer, which is probably due to the fact that as a purely formal and rather abstract test it is ill-equipped to deal with universalised maxims that ask us to explicitly consider our own fallible, and hence sometimes flawed, use of practical reason and judgment. Perhaps it is possible to develop an interpretation of the Formula of Universal Law that can address such problems, but I shall not pursue that possibility here. Such a project would require an extensive analysis that would almost certainly take us quite far from the standard formulation of the Formula of Universal Law, and there is no guarantee that it would lead to success. I therefore put the discussion of the Formula of Universal Law to rest and instead examine what insights into the problematic nature of coercion can be derived from the Formula of the End-in-Itself.

5.3.2 *The Formula of the End-in-Itself and Sincere Moral Conflict*

When we turn to the Formula of the End-in-Itself (*'So act that you use humanity, whether in your own person or in the person of any other, always at the same time as an end, never merely as a means'*), one problem immediately presents itself. Like the Formula of Universal Law, this principle too is greatly underdetermined. The general idea that this formula expresses seems clear enough, we should respect persons and not merely use them as tools in our own pursuits. It should be stressed, though, that the formula does not forbid the use of other people in one's own pursuits. It merely states that when one does so, one should do so in a way that is sufficiently respectful of their status as Ends-in-Themselves. This general call for respect for persons is not that controversial (many non-Kantians are also willing to accept it). Problems arise, however, when we ask what this entails. It seems clear enough that the purpose of this formula is to restrict the way people may use one another, but exactly what the restrictions are that follow from this formula is much less clear.

When viewed from the person who is acting (A), acknowledging the other person (B) as an End-in-Itself will necessarily commit her to acknowledging that there are *some* restrictions on what she may do to B, but it does not tell her specifically what these restrictions are. This is particularly relevant to the issue of coercion because the coercer typically *uses* the coerced to ensure that X is done. Thus, when it comes to the morality of coercion the main question is whether the way she does so is acceptable. As indicated in the previous section, however, the type of coercion we have for now restricted our attention to stipulates that the interference to which A subjects B is in itself (*sec*) not wrongful. What remains to be seen, however, is whether and how A's unwillingness to abide by B's (misplaced) objections is compatible with treating him as an End-in-Itself.

The limitations of the Formula of the End-in-Itself in this regard can be illustrated by the problems posed by a specific kind of being whose existence has proved to be something of an inconvenience to liberal theorists of many different persuasions,

not just Kantians: children. What makes children particularly interesting here is that (though this is not completely beyond dispute)²¹ they are ordinarily thought to qualify as End-in-Themselves (they matter in and of themselves), but that overruling their objections to the way they are treated is not generally thought a matter of great concern. Liberalism in general, and Kantianism in particular, is by its nature adverse to paternalism, but it is obvious that children generally need this kind of guidance and protection and it is a little hard to argue, on both theoretical and on practical grounds, that there is something wrong with treating a child as if it were child, for it *is* a child.²² At the same time, however, few things are more insulting and humiliating to adults than being treated like a child.

This highlights an important problem for the Formula of the End-in-Itself, because there is a strong egalitarian aspect to this formula. It demands that we always respect the humanity in all persons, and hence that we respect all persons equally as Ends-in-Themselves. What one person is entitled to by virtue of his or her humanity, every other person is entitled to as well. If that is the case, however, then it is hard to account for the difference between the way one may treat a child and the way one ought to treat adults. That there is a fundamental difference in the way we are to comport ourselves towards children and towards adults, however, is evident. To give an example, when children misbehave they may and must be disciplined, but though adults may be held to account for inappropriate conduct, disciplining them normally goes too far (Shapiro 1999, 717).

Not all Kantians, however, are convinced that the Formula of the End-in-Itself implies that all persons must be treated alike. O'Neill, for instance, argues that this is emphatically not the case. Respecting a person, so she argues, requires more than merely acknowledging she is an abstract End-in-Itself; it means one must acknowledge her as the particular real-life person she is (O'Neill 1989, 105–125; 1991). Hence, treating other persons respectfully presupposes taking account of their relevant personal particularities (especially their needs, weaknesses and limitations). If this is true, then problems like those posed by children can be avoided; if we can take such particularities into account, then we may treat children in certain ways while other rules apply to the way we engage adults.

The problem with such an interpretation of the Formula of the End-in-Itself, though, is that the Formula does not itself explicate which features of the person with whom we are interacting are relevant, and which are not. Obviously, requiring *all* particularities to be taken into account puts too great a burden on the acting person. Moreover, in many instances, certain particularities are to be explicitly disregarded (ethnicity is a possible example). Without further interpretation, however, the bare Formula of the End-in-Itself does not provide much guidance in this regard. This is of particular importance to the problem of coercion, because that problem

²¹ This disputability mainly concerns very young children and infants; the view that children only become Ends-in-Themselves the moment they reach adulthood is not very plausible.

²² For examples of Kantian attempts to deal with the problems posed by the existence of children see O'Neill (1989, 187–205) and Shapiro (1999).

hinges on the question whether a person's (mistaken) moral beliefs regarding the way he is treated by others is a personal particularity of the kind that is to be deemed relevant or not.

Luckily, the Formula of the End-in-Itself does give us some indication where to start developing such an interpretation. Whereas the Formula of Universal Law's only focus is to prescribe what (not) to do, the Formula of the End-in-Itself indicates that for the sake of which we are to restrict our choice of action: Ends-in-Themselves. Furthermore, it also identifies the essential feature by virtue of which persons are Ends-in-Themselves: humanity. To Kant humanity is essentially the same as rational nature, i.e. the ability to be autonomous, self-legislating. Hence, to treat someone as an End-in-Itself is the same as treating him as an autonomous being, capable of self-legislation.²³ The notion of self-legislation, however, is a complicated one in its own right and, in order to get a sound grasp of it, we need to turn to the third formulation of the Categorical Imperative.²⁴ After all, the Formula of the Commonwealth of Ends is specifically designed to provide insight into moral law (*G* 4:436) and, as I argue below, it is this formula that is particularly useful to gain insight into the problematic nature of coercion (if, for this still needs to be shown, it indeed has such a nature).

5.3.3 *The Role of Practical Judgment*

Before we turn to the Formula of the Commonwealth of Ends, it is important to make one more comment on the relation between the Categorical Imperative and actions. This point is of particular relevance to the notion of moral lawgiving which plays a vital role in the analysis that follows. The Categorical Imperative is the supreme principle of morality, and as such it is formulated at a highly abstract level. It is intended (at least in its first two formulations) to guide a person's actions; it dictates to a moral agent what he ought to do. However, an action is always performed in a particular situation, so there is a large gap between the abstract level of the Categorical Imperative and the concrete level of action. How exactly this gap is to be bridged falls largely outside of the scope of this book, but a few points must be made. Acting morally is partly a matter of deductive reasoning from the Categorical Imperative down to more concrete categorical imperatives. At the same time, however, it also relies on practical judgment, by which one selects the relevant aspects of the situation in which one is to act (Sullivan 1989, 159–160; Nell 1975, 37). In a Kantian perspective, morality is very similar to law and this analogy is very useful in exemplifying this point. As the supreme principle of morality, the Categorical Imperative is analogous to a constitution in law; from this, more specific moral laws

²³ What makes children so distinct is that, though they lack this ability at present, they are (as far as we know) the only beings that can develop it.

²⁴ It is no coincidence that Shapiro's analysis of the position of children is largely based on the Formulation of the Commonwealth of Ends.

can be deduced, just as subsidiary laws are deduced from the constitution. No matter how far one specifies these laws, however, there comes a point when the law must be applied to a particular situation. In law, as well as morality, one can never fully codify life, and one should not endeavour to do so (cf. *CS* 8:275, *CPR* 5:67–69). In a legal system it is the role of the judge to determine how the law is to be applied to a particular case; when it comes to moral agency it is the moral agent who does this by exercising the faculty of practical judgment. Lastly, when she has judged what the moral law demands be done in a particular case, she has to see that it is enacted: she must act in accordance with her judgment.

5.4 The Formula of the Commonwealth of Ends

5.4.1 Outline

In the previous section I have argued that the Formulae of Universal Law and End-in-Itself provide little concrete insight into the problematic nature of coercion. In this section I discuss the Formula of the Commonwealth of Ends. According to this formulation of the Categorical Imperative, the essential aspect of the moral agency of persons is their ability to give moral law. In the following (Section 5.4.2), I first discuss what is involved in a moral agent setting the moral law. Next, I focus on the notion of a Commonwealth of Ends itself. Kant himself gives relatively little detailed information about the exact features of this Commonwealth, so this notion needs to be further interpreted if it is to be used to address the issue of sincere moral conflict. I provide such an interpretation based on what Kant says on commonwealths in general in his political works. In Sections 5.4.2.1 and 5.4.2.2 the main focus is on the *Doctrine of Right*. In this work Kant deals explicitly with a number of the most fundamental features of commonwealths, especially their legal structure. The Commonwealth of Ends can be regarded as the most perfect form of commonwealth, and by scrutinising the analysis he gives of commonwealths in the *Doctrine of Right* we can develop a more concrete interpretation of what such an ideal Commonwealth would look like. Once we have thus formed a clearer picture of the notion of a Commonwealth of Ends we can turn to the relation between the moral agent as a lawgiver for such an ideal Commonwealth and coercion. For cases based on sincere moral conflict, the problematic nature of coercion is demonstrated in Section 5.4.2.1. I show that a person whose sincere moral objections to the way he is treated are dismissed or overruled cannot be regarded as giving law in a Commonwealth of Ends. As our ability to regard ourselves as lawgiving is what gives us dignity, the problematic nature of coercion is thus explained as an affront to the dignity of the coerced.²⁵ Section 5.4.2.2 deals with those cases of coercion that

²⁵ Though the concept of dignity is an important one in both moral theory and practice, it is also a quite elusive notion. Both its theoretical contours and its practical implications are matters of intense debate. In this book, I do not seek to provide a full account of it, but focus only on those

are not based on moral conflict. I show that such cases too involve a denial of the lawgiving status of the coerced. With this the main question left open at the end of Part I is answered. The problematic nature of coercion is explained in terms of the affront to the dignity of the moral agent inherent to it.

However, having ascertained the problematic nature of coercion as an inherent affront to the dignity of the coerced, the question rises whether this does not make justified coercion an impossibility. After all, dignity, in Kant's words, is of absolute worth. I address this issue in Section 5.4.3. Following Hill's analysis of the absoluteness of the value of dignity (Hill 1992, 48), I argue that justified coercion remains a possibility, because sincere moral disagreement can create a situation in which the demands of the dignity of one person can conflict with those that follow from the dignity of another. In such cases it may be acceptable to coerce another, but, by drawing an analogy between the notions of a Commonwealth of Ends and that of Perpetual Peace, I argue that even then the idea of a Commonwealth of Ends still constrains the coercer. The notion of a Commonwealth of Ends restrains the coercer in cases of sincere moral conflict in much the same way as Kant argues that the idea of Perpetual Peace places restrictions on the behaviour of states, even when they are at war with one another. Though coercion always involves an affront to the dignity of the coerced, I argue that, just as coercion comes in various degrees of severity, so not all affronts are equally pernicious. In certain unfortunate situations causing affront may prove unavoidable, but in such cases one should still seek to minimise the affront.

These two Sections, 5.4.2 and 5.4.3, contain the heart of my argument on the problematic nature of coercion. The analysis in these sections gives rise to a number of additional questions and issues, however, and these are addressed in Section 5.4.4. A final further issue is discussed in Section 5.4.5. My main argument in Section 5.4.2 relied on an interpretation of the notion of a Commonwealth of Ends that was primarily based on the *Doctrine of Right*. The Categorical Imperative is the supreme principle of all of morality, however, and this includes more than just issues of right; in particular, it also includes matters of virtue. In Section 5.4.5 I explore the possible relevance of the *Doctrine of Virtue* to the issue of coercion.

Before I present my analysis of the way the Formula of the Commonwealth of Ends allows us to explain the problematic nature of coercion and with that the importance of persons' subjective moral judgments, it is perhaps worth mentioning that not all present-day moral philosophers are equally willing to accept the central role Kant ascribes to the notion of a Commonwealth of Ends within morality. As Paton (1947, 188, 196), for instance, has pointed out, the notion of a Commonwealth of Ends is clearly inspired by the religious concept of the Kingdom of God (which also explains the standard translation of *Reich der Zwecke* as 'Kingdom of Ends').

aspects of dignity that are directly affected by coercion (and, in Part III, domination). For further analyses of various aspects of a person's dignity – both in Kantian and non-Kantian contexts – see e.g. Darwall (2006); Griffin (2008); Hill (1991, 1992); Margalit (1996); Meyer (1989); Meyer and Parent (1992); Kolnai (1995); Kretzmer and Klein (2002); Pritchard (1972); Sensen (2009); Waldron (2007).

This may give rise to the concern that it is far too heavenly or optimistic a notion to be of much use in the messy world of real-life moral practice. Moreover, as an Idea of Reason (see e.g. Sullivan 1989, 17–19) the Commonwealth of Ends might be regarded by some as too deeply entangled in Kant’s transcendental metaphysics. As I use it in the following sections, however, neither the Commonwealth of Ends’ kinship to the Kingdom of God,²⁶ nor Kant’s transcendental metaphysics play a significant role. Instead, I take the idea of moral agents regarding themselves as lawgiving in a Commonwealth of Ends as a particular way of explicating what is involved in persons exercising their individual morality – or, if one prefers more Rawlsian terminology, in applying their sense of justice²⁷ (as argued before, persons are not just agents but *moral* agents). It is a way of describing what is involved in pondering what is morally required, both in general terms and in particular cases. Of course this particular way of explicating what it means to determine what morality demands may be contested, but the idea that our dignity is intimately connected to our ability to exercise our moral nature or our sense of justice is not particularly controversial (cf. e.g. Rawls 1963/1999, 115) and although I here analyse the problematic nature of overriding a person’s sincere moral judgments primarily in this Kantian framework of moral agents regarding themselves as lawgiving in a Commonwealth of Ends, I expect that a similar kind of argument can also be made for many non-Kantian frameworks (see also p. 118–119).

5.4.2 *The Commonwealth of Ends and the Affront of Coercion*

Central to the Formula of the Commonwealth of Ends is the notion of legislation. Kant explicitly states that our capacity to give law is what endows us rational beings with dignity: ‘[. . .] the dignity of humanity consists just in this capacity to give universal law, though with the condition of also being itself subject to this very lawgiving.’ (*G* 4:440). Our dignity is thus intimately connected to our ability to be self-governing or autonomous; that is, not being determined by outside forces such as the will of others, or by inside forces such as our inclinations. Respect for our own dignity is shown by setting the law for ourselves, and subsequently by following it (this also explains the connection between self-respect and acting morally; a person who knowingly acts immorally shows disrespect for himself as legislator, thereby tarnishing his own dignity). The notion of setting the law for oneself is not to be misinterpreted, however. Modern Kantian constructivism (see e.g. Rawls 1971/1999; Korsgaard 1996a; Reath 1994) could, if misinterpreted, lead us to believe that the notion of self-legislation would allow a person to determine

²⁶ In fact, as argued in the next sections, my interpretation takes the similarities between the Commonwealth of Ends and the Kingdom of God to be limited in important respects.

²⁷ Provided that ‘sense’ in ‘sense of justice’ is taken sufficiently broadly and not reduced to a moral sense as that term is commonly used by moral sentimentalists. In particular, it must encompass the use of reason as outlined in [Section 4.2](#).

by choice what is moral and what is not. This would give self-legislation a strongly positivistic flavour in the sense that whatever we decide to be the moral law thereby is the moral law, and could even lead to moral relativism. In fact, when it comes to legislating the moral law, we encounter an issue similar to that discussed in relation to the choosing of ends. We choose to pursue (some of) those ends that we recognise as worthy, but we cannot make them worthy by an act of choice. So too, we cannot choose to shape the moral law in whatever form we happen to like. Seeing ourselves as lawgivers requires we take ourselves to be the person who imposes the moral law, but does not require we see ourselves, as Kain (2004, 260, 266) puts it, as authors of the moral law as well (see also *MM* 6:227). Indeed, Kain argues that for Kant authorship of the moral law is beyond us, and that the content of the moral law is something that follows from practical reason itself (idem, 288). By exercising our practical reason we can discover its contents, and subsequently we impose it on ourselves.

Kant describes the Commonwealth of Ends as a '[...] systematic union of rational beings through common laws, that is, a [Commonwealth], which can be called a [Commonwealth] of ends (admittedly only an ideal) because what these laws have as their purpose is just the relation of these beings to one another as ends and means.' (*G* 4:433). What we are legislating on, when we consider ourselves as legislators in the Commonwealth of Ends, is therefore the way people may treat one another. The Commonwealth of Ends as envisioned by Kant is a distinctly political community, a state or republic (see also Korsgaard 1996b, 99; Hill 1992, 58; Sullivan 1994, 85; 1989, 214). What is particular about this state is that all of its members are simultaneously its legislators and its subjects. Unfortunately, beyond the fact that the Commonwealth of Ends is described as a political community, a state or republic, Kant does not specify the Commonwealth of Ends in any great detail. He does not, for instance, go into a detailed description of all the virtues of this republic and its members as, for instance, many utopian theories do. In itself this is not too surprising, for the Commonwealth of Ends is not primarily intended as a mirror by which to judge the flaws of our own society. Nonetheless, this lack of detail is unfortunate, because the notion of a Commonwealth of Ends is vitally important if we want to gain a good understanding of the Categorical Imperative. What I shall do in the following, therefore, is present a more detailed interpretation of this notion of a Commonwealth of Ends. This interpretation relies heavily on what Kant said on commonwealths in his political works. As discussed in more detail later, the Commonwealth of Ends can be seen as a kind of ideal commonwealth (an ideal state); the basic idea underlying my interpretation of the Commonwealth of Ends is that we can get a better understanding (and in turn make better use) of this notion of an ideal commonwealth by focusing on what he said on commonwealths in general. Thus, my interpretation especially emphasises the importance of Kant's political works, interpreting the most fundamental notion of his ethics in this context (cf. Sullivan 1989, 1994). Rather than treating the third formulation as little more than a somewhat obscure, poetic way of describing the ultimate, blissful union of all of morality, I take it as referring to an in a certain sense idealised but nonetheless genuine commonwealth. In particular, this means that those features that are essential to all commonwealths will also be present in a Commonwealth of Ends.

5.4.2.1 Dignity and Legislation

When we regard ourselves as legislating in a Commonwealth of Ends, we regard ourselves as rational because it is by grace of our rationality that we can be legislators at all. However, when we legislate we should also regard ourselves as capable of irrational behaviour, or the whole exercise of legislation would make little sense. If we were perfectly (or exclusively) rational there would be no need for legislation, for we would be unable to act otherwise. In Kant's terms, we are members of the Commonwealth of Ends, both legislators of and subject to the moral law that governs it. We are not holy beings, and we should not regard ourselves as such, not even in a Commonwealth of Ends. When Kant describes the Commonwealth of Ends as ideal he does not imply that everyone in it is to be idealised, but rather that the systematic union of ends is ideal in the sense that it is as good as possible and unlikely ever to be fully realised in reality (although it is theoretically feasible that it would be realised). It is the system that is to be ideal, not the members in it, and for a system to be ideal it must take account of the nature of the beings in it.²⁸ There is, however, some idealisation with respect to the members of a Commonwealth of Ends, in that their irrationality (or their capacity thereto) is limited to their role as subjects of the law. As the rules that govern a Commonwealth of Ends are as perfect as they can be, the lawgivers who impose these rules must be assumed not to be making errors of reason and the like.²⁹

According to Kant, we should always regard ourselves (and others) as members of a Commonwealth of Ends, that is both as lawgivers of and as subject to the moral law that rules it. When we regard ourselves as lawgiver we see ourselves as imposing, on ourselves *and on others*,³⁰ a system that we believe should regulate the way we ought to behave toward each other. When we regard ourselves as subjects to it, we realise that we are obliged to act accordingly; when we observe others acting in ways we judge to be incompatible with this system, we hold them to be acting wrongly. This system should not deny that there are ways in which people may make use of others to further their own projects (recall that 'its purpose is [. . .] the relation of these beings to one another as ends *and [as] means*' (G 4:433, emphasis added)), but does set limits to the way this is done. It allows for the possibility that others may interfere with us for the sake of their own projects, but the moral laws that govern a Commonwealth of Ends are designed to ensure that this is done in such a way that it does not tarnish the dignity of the person who is interfered with.

²⁸ The Commonwealth of Ends, as I interpret it, is the idea of a republic governed by 'the most perfect political constitution' (a notion of which Kant, according to his colleague Johann Schultz, was very fond (see Wood 1999, 208)).

²⁹ For more on the idealisation of the legislators in a Commonwealth of Ends, see e.g. Hill (1991, 59–61) (I must add, however, that my interpretation of a Commonwealth of Ends does not encompass all the features Hill describes; for more on the distinction between his interpretation of a Commonwealth of Ends and mine, see Section 5.4.4.1).

³⁰ It is fairly standard in Kantian literature to emphasise the fact that one thus imposes the moral law on oneself, and downplay the importance of the fact that as a legislator one also imposes the moral law on others. As will be shown in the remainder of this chapter, however, this latter aspect too has important implications.

It is important to stress that when we regard ourselves as lawgivers in a Commonwealth of Ends, we are to ask ourselves which laws perfectly rational legislators would give in such a realm. However, in this judgment we can of course err for we are fallible beings, so that what one person conscientiously judges such perfect lawgivers would legislate can differ from the laws another person believes such lawgivers would embrace. If both you and I conscientiously ponder what the moral law looks like, we can in all sincerity come up with different answers. *Regarding ourselves as legislators in a Commonwealth of Ends is therefore compatible with sincere moral disagreement, even though within the idea of a Commonwealth of Ends such disagreement is impossible because of the perfect rationality of its legislators.*

When we focus on interference with others, Kant's analysis of law in the *Doctrine of Right* holds we should look exclusively at the way people act, and disregard their motives. If the law allows person A to cut the branches of B's tree that have grown over the fence that separates their properties, then A may do so. Whether she does this to ensure that her own tomatoes get sufficient sunlight to grow or whether she does it because she knows it will kill the tree and she enjoys B's hurt over this loss, is highly relevant from an ethical perspective but is irrelevant when it comes to law. This suggests that when we try to imagine a '[...] systematic union of rational beings through common laws [...]' we should look only at (legal) laws that govern the actions of the people populating the Commonwealth of Ends. This would imply that all we should try to do is devise a system that defines each person's rights (i.e. a system that defines the rightful limitations on each person's external freedom). A person then does wrong to another person only if he transgresses these bounds (cf. *DR* 6:231). The imposition of laws that regulate each person's external freedom I indeed take to be an essential part of seeing ourselves as lawgivers of the Commonwealth of Ends. However, focusing exclusively on this part of the system of laws that regulates the Commonwealth of Ends would disregard the fact that the Commonwealth of Ends, as a description of the Categorical Imperative, is a formulation of the supreme principle of all of morality, not just of a part of it. What Kant says in the *Doctrine of Virtue* (the second part of the *Metaphysics of Morals*) is therefore also connected to the notion of a Commonwealth of Ends and the common laws that regulate it. In particular, this means that the distinction Kant makes between duties of right and duties of virtue will be present in the Commonwealth of Ends as well. If and how a person can be wronged on the basis of considerations pertaining to the latter kind of duties is a more complicated matter, however; one I shall return to later (Section 5.4.5). For now, when B considers himself wronged by A's interference, let us assume this is because B believes that A violates B's rights (which, if B were a Kantian himself, would mean that B believes she restricts his external freedom further than its rightful boundaries).³¹

³¹ I am only looking at this problem from a Kantian perspective, and therefore framing the issue in Kantian terms. This specific issue is, however, not dissimilar from, for example, a Millian style disagreement about the proper boundaries of a person's private sphere, or a libertarian who wants to ascertain what rights we have towards others, and which rights others have towards us.

When restricted to this specific problem, regarding each other as fellow members of the Commonwealth of Ends translates to determining the proper boundaries of each of their external freedom. Thus, when B regards himself as a legislator in the Commonwealth of Ends, the law he sees himself legislating will regulate the interaction between all members in that realm (which will include the interaction between A and himself). He must thus also lay down by law the bounds of both of their external freedom. Regarding himself as a legislator in the Commonwealth of Ends thus requires him to form a conception of the moral law and what that entails in the particular case where A interferes with him. Furthermore, A, when she regards herself as a legislator in the Commonwealth of Ends, must do the same.

When we regard ourselves as legislators for the totality of moral laws that would govern a Commonwealth of Ends, it is easy to see why it is most improbable that a Commonwealth of Ends, with its perfect constitution, will ever be attained. Though there is nothing in the concept of a Commonwealth of Ends that excludes the possibility of it being realised, the likelihood that such kind of perfection will ever completely be reached seems extremely remote. When addressing the issue of coercion, however, we do not need to take such an ambitious encompassing view, and we can restrict ourselves to the particular case of interaction at hand, so that we only need to know how the moral law as A and B see it applies to the interference to which A subjects B. In such particular situations, it is often quite possible to interact in ways both persons involved can accept as being compatible with the moral laws they would legislate in a Commonwealth of Ends, but in a case of sincere moral disagreement A's and B's respective views unfortunately diverge. The law as A believes it should be legislated differs on this particular instance of interference from the law as B would legislate it.³² Sincere moral disagreement can thus be regarded as a disagreement between legislating members of a Commonwealth of Ends on what law to legislate, at least with respect to the particular instance of interference at hand, were it not for the fact that the idea of a Commonwealth of Ends, because of the perfect rationality of its lawgivers, cannot encompass such disagreement. One way or other, therefore, this disagreement will have to be resolved.

Now, it must be mentioned that sincere disagreement in itself need not yet cause a problem as far as A and B being able to *regard* themselves as legislators in a Commonwealth of Ends is concerned. Both A and B are imperfect beings and, knowing this, they both know that their sincere views regarding the moral law can be less than perfectly accurate. No-one has privileged access to the moral law, so the mere fact that one party disagrees need not cause affront to the other party. Nonetheless, as conscientious moral agents they are committed to what they sincerely take to be the correct view of the moral law. They may, and usually must, be willing to scrutinise their moral views when others call them into doubt. This may lead them to become convinced that they should augment their

³² Strictly speaking, however, moral disagreement is a conflict between A and B as lawgivers; this can be a matter of their roles as moral legislators, but this is not necessarily the case. For a more detailed discussion of this point see Section 5.4.2.2.

view, but it may not. As conscientious moral agents they must remain committed to whatever they sincerely believe to be the right view.³³ What makes morally disputed interference problematic is therefore not just the fact that there is a difference of opinion with respect to the demands of morality,³⁴ but that one party acts on her beliefs, thereby bringing this disagreement from an abstract level to a concrete conflict.

When A interferes with B and refuses to accept B's moral objections to this treatment as a sufficient grounds to desist, then, as far as this particular instance is concerned, B can no longer see himself and A as legislators of 'a systematic union of rational beings through common laws' (nor, for that matter, can anyone else). B may be aware of the fact that A sincerely believes that her behaviour towards him is morally acceptable and therefore intends no denial of his being an end that restricts her behaviour towards him, but at best this means that the laws that govern their interaction are those of A, not those of B. If A dismisses or overrules B's moral objections, she effectively declares that B's status as a legislator in the Commonwealth of Ends does not bind her. The laws that govern her behaviour towards B are hers and hers alone.^{35,36} This resembles the republican worry of domination, to be discussed in Part III: when the rules that govern the interaction between A and B are purely A's, then B's status is challenged for he is subjected to the (law-giving) will of another.

When subjected to such interference, B can still maintain his inner freedom in that he can himself decide how he is to respond to (what he regards as) wrongful treatment, and act accordingly. He may still preserve the notion of a union that is essential to the Commonwealth of Ends by complying, but if he does so he must still regard A as a dominator who treats him as an underling, rather than as a fellow lawgiver. His compliance is thus an act of submission to laws that are not his.

³³ The fact that one cannot alter one's sincere judgments by an act of choice (see p. 57–58) thus is an important contributing factor to the occurrence of sincere moral conflicts.

³⁴ This should not be taken to imply that moral disagreement cannot cause a problem in itself. If one party, for instance, is committed to moral views that deny the moral status of the other person altogether, then the latter party may well take gross offence purely on these abstract views. The point here, however, is that mere disagreement need not imply such a denial and is compatible with the view that the other party indeed has the status of a legislator in the Commonwealth of Ends.

³⁵ In the *Doctrine of Right* Kant makes a distinction between citizens and underlings of the commonwealth. The difference between the two is that the first are fit to vote and hence able to partake in the government of the commonwealth, whereas the latter are not 'because they have to be under the direction or protection of other individuals, and so do not possess civil independence' (*DR* 6:315). Transposing this to the Commonwealth of Ends, we could say that when A dismisses B's objections and declares herself to be bound only by the moral law as she would legislate it, thereby (implicitly or explicitly) denying she is bound by the moral law as B would legislate it, she treats B (at best) as an underling of the Commonwealth of Ends, not as a full member.

³⁶ Here I restrict myself to the moral conflict between A and B; it may be that the moral views that A propounds are not 'hers alone' in the sense that her views are shared by other persons C, D, E, et cetera, but that does not affect the central issue here, which focuses on the fact that the laws that govern the interaction between A and B are imposed by A and not shared by B.

This explains the problematic nature of coercion, its hostility to the person who is coerced, and thereby answers the central problem we set out to address. In cases of coercion that involve sincere moral conflict, the laws that govern the interaction between A and B are solely A's; B's status as a lawgiver, and hence the source of his dignity, is denied (or at the very least suspended) by A's denial that she is bound by what B regards as the laws that ought to govern their interaction. It is in this way that coercion implies that one person is subjected to the (lawgiving) will of another.

As the argument I have presented makes no reference to the validity of B's moral judgments concerning A's interference, it is independent of any such validity. The Formula of the Commonwealth of Ends thus shows that all that is required for a person's moral judgment to be of moral relevance is that it be sincere. The Formula of the Commonwealth of Ends explains the problematic nature of coercion, at least in those cases that involve sincere moral conflict, by showing that such instances inherently constitute an affront to the dignity of the coerced. Not all cases of coercion involve sincere moral conflict, however, so let us now turn to instances of coercion in which such conflict is absent.

5.4.2.2 Dignity and Autonomy

In Section 5.4.2.1 the affront to the dignity of the coerced was shown to follow from the fact that the laws that govern the interaction between A and B were A's, not B's, and hence that B is subjugated to the lawgiving will of A. This argument, however, only applies in those cases of coercion that are based on an underlying moral conflict. If, for instance, A agrees with B what the moral law prescribes but simply refuses to do her duty, we cannot say that the laws that govern their interaction are the moral laws as A sees them. As a result, neither can we say that B is subjected to A's legislative will. In this section I therefore further explore the notion of moral lawgiving and show that, in cases of coercion that are not based on an underlying moral conflict, B's status of a lawgiver in a Commonwealth of Ends is also at issue, and hence that in those cases too coercion involves an affront to the dignity of the coerced. In particular, I show that coercion makes it impossible for the coerced to be seen as a person who imposes the moral law; the coerced's inability to make the coercer refrain from treating him in ways he regards as wrongful to his person shows he is not fully autonomous.

Self-legislation is an essential feature of being an autonomous moral agent. However, autonomy (self-governance) entails more than just declaring what the (moral) law is and attesting that it is binding. Being autonomous, as indicated in Section 5.3.3, also involves the practical application of the law to specific cases, and putting this judgment into effect. Thus, when Kant says that '[...] the dignity of humanity consists just in this capacity to give universal law [...]' this 'lawgiving' is a richer notion than it may seem at first glance. Besides the setting of the law (legislation in the strict sense), it also involves adjudicating and enforcing it. When it comes to individual ethics, the latter essentially reduces to self-control and/or continence: acting in accordance with what one sees as one's duty and overcoming any

inclinations that would lead one to act otherwise.³⁷ In the political setting of giving law to a Commonwealth of Ends, however, this aspect of autonomy is more complicated as it is no longer just a matter of seeing to it that the moral law is observed by just oneself, but – as far as one is directly affected by their actions – by others as well. As our dignity is related to our capacity to give law in this wider sense (our capacity to be autonomous), we need to ascertain how these features of autonomy (adjudicating and imposing the moral law) are affected by coercion as well. This is of particular importance because the definition of coercion requires only that the coercer refuses to abide by the coerced's objections, it does not demand that she denies the validity of these objections.

There is an obvious hierarchical connection between the different aspects of being an autonomous moral agent outlined above. Without a moral judgment there is nothing to enact; and without legislation there is no moral law to apply to particular cases. Hence, it seems fair to say that our ability to legislate the moral law is the most fundamental feature of our autonomy, but this does not mean the other features are not equally essential. In fact, in the *Doctrine of Right* Kant explicitly relates dignity to these three capacities:

Every state contains three *authorities* within it, that is, the general united will consists of three persons (*trias politica*): the *sovereign authority* (sovereignty) in the person of the legislator; the *executive authority* in the person of the ruler (in conformity to law); and the *judicial authority* (to award to each what is his in accordance with the law) in the person of the judge (*potestas legislatoria, rectoria et iudicaria*). (DR 6:313).

and:

All those three authorities in a state are dignities [...] [that] arise necessarily from the idea of a state as such [...] (DR 6:315).

Unfortunately, as Gregor mentions in her translator's notes (Kant 1996, 457), Kant's discussion of these notions is not the clearest part of the *Metaphysics of Morals*.³⁸ Hence, when it comes to transposing these functions to the Commonwealth of Ends there is rather little further text for us to rely on. Nonetheless, as Kant explicitly states that *every* state has these three authorities in it, it is fair to assume that they must also be present in a Commonwealth of Ends and that they are held by all its members alike.

Those familiar with more traditional interpretations of the Commonwealth of Ends may be inclined to disagree with this, on the ground that there is no place for practical judgment in such an ideal systematic union, let alone for the enforcement of judgments. I have, however, emphasised the fact that although the Commonwealth of Ends is an ideal political community, its members are decidedly

³⁷ For a more detailed discussion of the relation between self-control and autonomy see e.g. Feinberg (1986, 27–51); for an account that deals with this issue but also addresses the difference between self-control and continence, see Hill (1991, 118–137); for a discussion of the relation between dignity and self-control, see e.g. Meyer (1989).

³⁸ She also warns that there are difficulties in translating into English the German terms used by Kant.

imperfect beings, capable of irrationality (if they were not, then the entire notion of lawgiving would be senseless). As a result there is, for instance, room (and need) within this community for a legal system that is backed up by force, as well as all the other essential features of a commonwealth (note that the Commonwealth of Ends is theoretically realisable – it therefore must have all the features a state must have in order that it can exist). However, as all members can consider themselves the legislators of this legal system, these constraints do not affect their dignity. When it comes to such laws as are backed up by forcible measures, the members of the Commonwealth of Ends are forced to comply with the law, but because they freely assent to these measures, so these are in a sense self-imposed, this does not limit their standing. Such laws would force a Commonwealth of Ends' members into compliance, but would not coerce them.³⁹

The incompatibility of coercion and lawgiving in the Commonwealth of Ends is therefore not simply a matter of the threat of the use of force, but a matter of the threat of force (or any other incentive) that the coerced person considers (morally) illegitimate. When the coercer disagrees with this judgment by the coerced and refuses to be bound by his judgment, this may be a denial of the legislative capacity of the latter, as outlined in the previous section. In that case, the coercer denies that the moral law is what the coerced claims it to be. However, this need not be the case in all instances of coercion. Consider, for instance, a case of moral conflict where both the persons involved are in full agreement with respect to the moral law; their disagreement concerns only the analysis of the particular case, and hence the appropriate application of the moral law to it. In such a situation the moral conflict does not affect the legislating status of either of them (the validity and binding nature of the law they would legislate is not called into question). Nonetheless, the autonomy of the coerced is still at issue because his dignity as an adjudicator of the moral law is denied.

Nor should the importance of the role of the moral agent as an executor of the moral law be underestimated. Take, for instance, a situation like *Highway Robbery*, where the coercer fully agrees with the coerced that her interference is contrary to the demands of morality but where she maintains it nonetheless. It seems pretty clear that when she does so, she is acting immorally. However, without focusing on the executive feature of autonomy, it is not clear why such an instance of coercion would constitute an affront to the dignity and autonomy of the coerced. Neither his legislative nor his adjudicative status is called into question. What makes such

³⁹ It is a matter of interpretation, which I shall leave open for now, whether these forcible measures which back up its legal system would ever have to be used. The ability of its members to act irrationally is in itself sufficient to explain the use of legislation and forcible measures to back it up, but it is possible to interpret the Commonwealth of Ends in such a way that all members will always abide by the laws (possibly because of the forcible threats that back up its laws), even though they are capable of transgressing them. If this is the case, the threats inherent to its legal system would never be put into practice. Possibly, however, an interpretation that uses the notion of just punishment can be used to provide an alternative interpretation of the Commonwealth of Ends that is not committed to perfect compliance with the law (see also [Section 7.5](#)).

a case of coercion nonetheless an affront to the dignity of the coerced is that his compliance signifies his inability (or failure) to impose the moral law as he sees it.

In summary, coercion is at odds with the dignity of the coerced because it involves a denial of at least one of the three essential features of lawgiving by virtue of which a person has dignity. It may, but need not, deny his status as a legislator and adjudicator of the moral law. His compliance with an overtly manipulative attempt he regards as wrongful to his person, however, always makes it impossible for him to see himself as the one who imposes the moral law. His action is not (completely) determined by laws he himself gives.

5.4.3 The Commonwealth of Ends and How to Deal with Coercion

Section 5.4.2 explains why coercion is always something that is of moral relevance, for it shows that when a person is coerced this necessarily entails an affront to his dignity. This provides the answer to the most important issue left open in Part I: why a person's (sincere) moral objections to the way he is being treated by others are always to be considered of moral relevance. The argument to this effect emphasises the importance of a person's conscientiousness in making these moral judgments with respect to the way he is treated by others, but beyond this sincerity, it makes no use of any additional adequacy standards (in particular, it does not make reference to any standards of reasonableness of the judgment). In fact, it cannot and should not do so, because such standards are themselves always disputable and hence can themselves be the topic or underlying cause of the moral disagreement at issue.

What still needs to be shown is that the conception of coercion I have defended is compatible with the fact that there are instances of coercion that are justified. It might be objected that, although the Commonwealth of Ends analysis I have given in the previous section explains why coercion (or a person's sincere moral objections) is always to be considered relevant, it does so by making it too relevant. If coercion is incompatible with the dignity of the coerced, then certainly, coercion is *never* acceptable as dignity by its nature is sacrosanct. A person's dignity is, after all, as Kant puts it, of absolute value, and can hence not be sacrificed for anything else. In this section I argue, however, that the Categorical Imperative formulated in terms of the Commonwealth of Ends does not bear this implication and allows for the possibility of justified coercion. Although my interpretation of the Commonwealth of Ends differs on a number of points from Thomas Hill's, its practical implications are very similar to his.⁴⁰ Hill argues that the absolute value of dignity means it may not be sacrificed for anything else (in particular happiness), but this does not mean it cannot be curtailed when one person's dignity conflicts with that of another (Hill 1992, 48–49).

In my interpretation of the third formulation of the Categorical Imperative, it obliges us to let our actions be guided by the notion of a Commonwealth of

⁴⁰ Hill presents his interpretation of the Commonwealth of Ends in Hill (1992) and Hill (2000). I discuss the most salient differences between his interpretation and mine in Section 5.4.4.1.

Ends. This interpretation does not imply we are thereby committed to doing whatever is necessary to bring such a Commonwealth of Ends about. First of all, the Commonwealth of Ends is deliberately described by Kant as an ideal that, though theoretically feasible, is not presented as something ever likely to be fully realised in practice. To Kant it is a teleological ideal, something to be striven for; progress towards this ideal is a definite possibility, but the society with the perfect constitution is unlikely ever to be truly realised. Moreover, interpreting the Commonwealth of Ends as something we should directly endeavour to bring about in reality would be much too consequentialistic an interpretation, which could evoke (rather *rücksichtslos*) behaviour that is totally opposed to the general spirit of Kant's ethical and political thought. The horrors that people are prepared to engage in if one presents a social ideal of this kind as the direct goal of all their actions, are only too familiar.

If we are to allow our actions to be guided by the idea of a Commonwealth of Ends, we should interpret it in a different, more subtle manner. Kant claims that all action should be made 'in reference [...] to the lawgiving by which alone a Commonwealth of Ends is possible' (*G* 4:434; emphasis added); he does not say all action should directly seek to bring such a Commonwealth about. As I take it, we should interpret this to imply that we should endeavour to ensure that our action, and in the case at hand particularly our interaction with others, is such that it does not make it impossible for ourselves and for those with whom we interact to regard ourselves as lawgivers in a Commonwealth of Ends. In general terms, acting in reference to the lawgiving, by which alone a Commonwealth of Ends is possible, means recognising the dignity of others as well as ourselves when we interact with them (see also the Formula of the End-in-Itself). To focus more closely on a case where we interfere with someone else, this means we are obliged to endeavour to act in such a way that both we and the person with whom we interact can accept our interaction as respecting our mutual lawgiving status. Ideally, our interaction should therefore be such that both we and the person with whom we interact can accept our respective actions as a morally acceptable way of our treating each other; our actions should be in accordance with the moral law as we sincerely believe it to be (as we would legislate it), but also in accordance with the way those who are directly affected by it would legislate it.⁴¹ If we succeed in this, then both we and the person with whom we interfere can take our mutual interaction to be compatible with the idea of such a Commonwealth.

⁴¹ Note that, strictly speaking, this does not mean we necessarily have to come to a mutual agreement with respect to the moral law; all that is required is that the act is in compliance with both views of morality. In my interpretation of the Formula of the Commonwealth of Ends, letting our actions be guided by the idea of such a commonwealth that is ruled by *common* laws, only requires that these laws are binding on all members (and a law only demands your compliance, not your agreement). It does not require that these laws are also commonly agreed upon (though, as rational beings, each person must of course sincerely believe that the laws he thinks ought to be enacted *could* be accepted by all).

Indubitably, though, there are cases where this is not possible. Situations sometimes occur where what one person sincerely believes she ought to do is incompatible with the relevant moral views of the person with whom she will be interfering. In our imperfect world, sincere moral disagreement and conflict simply cannot be avoided all the time. This is why I used the phrases ‘we are obliged to endeavour to act in such a way that. . .’ and ‘Ideally, our interaction should therefore be such that. . .’, not ‘we *must* always act in such a way that. . .’. To such cases of persistent sincere moral conflict, however, the ought-implies-can principle applies. The Formula of the Commonwealth of Ends may, as a formulation of the Categorical Imperative, be a formulation of the supreme principle of morality, but what holds for all of morality also holds for its supreme principle: it can only demand from us what is possible. Therefore, when, for whatever reason, it is impossible for you to act in a way that both you and the person with whom you interact can accept as compatible with both your and his respective lawgiving status, you cannot be bound to do so. Hence, in such situations coercing a person, though causing affront to his dignity, may be permissible.⁴²

In such cases of persistent, sincere moral disagreement, the Categorical Imperative is constrained by the ought-implies-can principle, but this does not mean that the idea of a Commonwealth of Ends ceases to be relevant altogether. Basing our choice of action on the idea of a Commonwealth of Ends as a systematic union through common laws does indeed imply that we should act in ways that are deemed morally acceptable by all involved whenever this is possible. By doing so, every person involved can see himself as well as the others, as if they were lawgivers in a Commonwealth of Ends. In situations of persistent, sincere moral conflict this may be impossible, however. Yet even in such unfortunate situations the idea of a Commonwealth of Ends can function as a way to guide, or restrict, our behaviour towards each other. If we cannot act in such a way that everybody concerned can consider himself a lawgiving member in the Commonwealth of Ends now, the idea of a Commonwealth of Ends may still guide our behaviour towards each other because it obliges us to act in such a way that this ideal (that both we and the persons with whom we interfere can see our mutual interaction as compatible with the idea of a Commonwealth of Ends) must remain possible in the future. When we cannot treat each other in such a way that it allows all to regard themselves as lawgiving in a Commonwealth of Ends here and now, we should still treat them in a way that regards them as possible fellow lawgivers in a Commonwealth of Ends later on.

Here we can draw an important analogy with Kant’s arguments in *Toward Perpetual Peace*. *Toward Perpetual Peace* is first and foremost concerned with

⁴² All this argument shows is the *possibility* of justified coercion, even though coercion implies an affront to the dignity of the coerced; the argument does not imply that coercion is justified *whenever* there is sincere moral conflict. It merely shows that when there is sincere moral conflict which cannot be avoided or solved by other means, the decision to coerce another person can sometimes be justified as the demands of one’s own dignity are not inferior to the demands of the dignity of another (see also Section 5.4.4.2).

international relations, not primarily with individuals, but the similarities between the function of the idea of a Commonwealth of Ends and the idea of Perpetual Peace are striking. Both are described as ideals that are not likely ever to be fully realised, but both are to be regarded as theoretically possible. Moreover, both involve the notion of a systematic union in which its various members (individuals in the Commonwealth of Ends, republics in Perpetual Peace) and their mutual interactions and relations are rationally (morally) regulated.⁴³ Furthermore, the fact that they are theoretically possible is intended to regulate the behaviour of rational agents in the real world: individuals in the case of the Commonwealth of Ends, and states in the case of Perpetual Peace.

In *Toward Perpetual Peace* Kant argues that the idea of Perpetual Peace restricts the way states may behave towards each other even when they are at war. Obviously, when at war, it is impossible for states to treat each other as if they were in a state of Perpetual Peace. To do so would likely lead to almost instantaneous defeat; this is not only more than can be morally required, but may even be contrary to what morality demands. However, so Kant argues, even when states are at war the idea of Perpetual Peace still places restrictions on what they may do to each other, for they may not act in such a way as to make future peace impossible.

Kant gives a number of examples of stratagems that states may never avail themselves of, such as assassination, breach of surrender and incitement to treason. What these examples all share is that they would make it impossible for one state ever to trust the other, thus leading to a war of extermination (*PP* 8:346, *DR* 6:347). This can be interpreted as an uncharacteristically consequentialist argument for a deontological theorist like Kant, but he also dismisses such stratagems on the ground that they are dishonourable. More importantly, however, although this argument can be taken as a consequentialist argument, it also fits in a Kantian analysis. When a state engages in these types of behaviour, the lack of trust that results will remain a permanent block, making impossible the moral progress towards the goal of Perpetual Peace. At best this will result in a state of Perpetual War, while at worst it will end in the annihilation of at least one of the two warring parties. This may of course bring about (permanent) peace, but not the required systematic union of – in this case – republics.

In a case of sincere moral disagreement, the idea of a Commonwealth of Ends may function similarly. To coerce may be permissible in cases where it truly is impossible to act in a way that satisfies the sincere moral views of all concerned, but even in those cases, the way coercion is implemented ought to be such that there remains a possibility in the future that both we and those with whom we now interfere in ways they deem wrongful can entertain the idea that such a union is guiding our mutual interaction.⁴⁴ Thus we should ensure that we do not create unavoidable

⁴³ On Perpetual Peace being feasible see e.g. *CS* 8:313 and *PP* 8:368; on Perpetual Peace being based on a systematic union of states, see e.g. *PP* 8:356–357, 8:385.

⁴⁴ Here it is important to note Kant grounds our dignity in our ability to be (self-)legislating, not in our actually being (self-)legislating (see also Kant's comments on the dignity of criminals (e.g.

blocks to the idea of such a union. Trust is one of the notions that are an issue here, but equally important is the notion of mutual respect. Hence, even when we are forced to coerce others (which always entails at least some affront), we should at least make sure we try to minimise the insult this entails. As pointed out in Part I, coercion comes in varying degrees of severity (p. 42), and aspects such as the means by which we coerce others or the attitude with which we do it, can reduce the affront it causes – even if it cannot eliminate it altogether (see also [Section 7.4](#)).

5.4.4 Completing the Interpretation of the Commonwealth of Ends

The previous sections contain the core of my analysis of the problematic nature of coercion. In order to complete my Kantian account, however, three more issues need to be addressed. In [Section 5.4.4.1](#), I compare my interpretation of the Commonwealth of Ends with one of the most influential existing interpretations of the same notion, that of Thomas Hill. In [Section 5.4.4.2](#) I return to coercion that is the result of an underlying moral conflict between A and B, and discuss the question whether A can legitimately decide to accommodate B's objections even though she judges them to be misplaced and would normally consider the interference to which B objects as her duty. The last issue to be explored ([Section 5.4.5](#)) is the possible relevance to coercion of the maxims on the grounds of which A interferes with B. In particular, I ask the question if the Kantian framework is able to accommodate cases of coercion where B considers himself wronged by A due to the motive underlying A's interference rather than the interference itself.

5.4.4.1 The Interpretation of the Commonwealth of Ends

One of the most important interpretations of the notion of the Commonwealth of Ends in present-day Kantian literature is Hill's (Hill [1992](#), [2000](#)). My own interpretation of the Commonwealth of Ends has certainly been influenced by his work – especially his insights concerning the possibility of conflicts between the dignity of one person and that of another. There are, however, also points where my interpretation differs significantly from his, and these are discussed in this section.

A first difference of interpretation lies in the fundamental function of the notion of the Commonwealth of Ends. Hill regards the Commonwealth of Ends as primarily intended to derive more general abstract moral principles (see Hill [2000](#), esp. 51) in a way that is somewhat akin to Rawls's Original Position (Rawls [1971/1999](#)), whereas my interpretation allows the notion to be applied more directly to particular issues, such as sincere moral conflict. Furthermore, my interpretation of the Commonwealth of Ends emphasises that the members of the Commonwealth are

DR 6:333)); accordingly, the prime focus when it comes to treating others respectfully is also the *ability* to be self-legislating, not the exercise of that ability.

not perfectly rational as subjects to the moral law, but only as legislators. This does not quite contradict Hill's assertion that '[m]any of our practical worries that shape our legal systems will have no place in the [commonwealth] of ends' (Hill 1992, 60), because for a number of such practical considerations this may be true, but the main focus is clearly different, as my interpretation emphasises that there are nonetheless issues of a purely practical nature that will be relevant to the Commonwealth of Ends. A third difference is more fundamental. A major problem for the Commonwealth of Ends formulation is, according to Hill, that '[. . .] it demands that we determine our principles of conduct by considering what rational legislators would will for a community of perfectly rational citizens, ignoring in the process the fact that we must live in a world of imperfectly rational men' (Hill 1992, 66; see also Hill 2000, esp. 53). Part of this objection can be met by the difference just pointed out, but even then much of the criticism remains because the real world has no perfect legislators either. However, because my interpretation emphasises the ability of persons to *regard* themselves *as* lawgivers in a Commonwealth of Ends, much of the force and urgency of this problem dissipates. In my interpretation of the Formula of the Commonwealth of Ends, acting in a way that is guided by the idea of a Commonwealth of Ends does not mean acting in accordance with the rules that would govern a 'perfect' Commonwealth of Ends as the objection runs, but entails that we seek to act in such a way that all agents who are affected by our action can continue to regard themselves as lawgivers in a Commonwealth of Ends. This means we do not have to base ourselves on laws that are actually perfect, but can restrict ourselves to best estimations of what such laws would say about the case at hand; our own best estimation, but also that of those with whom we interfere. We show respect for the moral agency of others by trying to ensure that both we and the persons with whom we interact can entertain the notion of a Commonwealth of Ends governing our mutual interaction. This means it is quite possible to be guided by the idea of a Commonwealth of Ends whilst taking account of the various imperfections and injustices in the present world. In fact, that is what it requires.

5.4.4.2 Dealing with Sincere Moral Conflict

So far, I have explained why coercion is problematic (Section 5.4.2) and why it is possible for it to be justified nonetheless (Section 5.4.3). However, the analysis of the incompatibility between regarding oneself as lawgiving in a Commonwealth of Ends and coercion does give rise to an interesting predicament. In Section 5.4.3 I have argued that coercion can be justified in cases of moral conflict where the dignity of one person cannot be satisfied without tarnishing that of another. In such a situation, the ought-implies-can principle says we may cause affront to the dignity of at least one of these persons, simply because it is unavoidable. This, however, gives rise to the question whether in cases of sincere moral conflict it could ever be permissible for a person to accommodate the objections of the other person even though she judges them to be mistaken. If you sincerely believe your interference (*sec*) is not wrongful, may you then ever decide to act against this judgment in order to avoid coercing another person, thereby bowing to a demand you sincerely

believe to be wrong? Does doing so not amount to denying your own lawgiving status and dignity? After all, accommodating objections one judges to be misplaced would amount to knowingly doing something one judges to be wrong, and that a conscientious moral agent may never do.

Before answering this question, it is important to note that it does not apply to all cases of coercion that are based on moral conflict. For there to be moral conflict A must believe B's objections to be misplaced, but that does not yet imply she regards refraining from interfering with B as constituting a wrong. This latter implication only follows when the interfering agent A not only believes she is morally entitled to act the way she does, but regards it as something that is morally obligatory (for instance, because of concerns for her own dignity, or that of others). The mere fact that one regards something as morally permitted does not give one a reason to do it, so there seems little morally objectionable in not doing it. If A knows interfering in a certain way would offend B, then it seems that this fact in itself could be a reason for A not to do it. Unless she believes it is obligatory for her to act as she does, there is no immediate problem with regard to A's dignity if she accommodates B's objections. This, however, does not solve the problem, but merely specifies it. Suppose therefore that A does believe (*sec*) she has a moral obligation to do what B considers wrongful interference, but B believes it is wrongful to him for her to do so. The question at hand can then be reformulated as: can what would be a duty to do, were it not for the sincere moral objections of a moral agent who is directly affected by the action, cease to be a duty just because of these objections (even if these objections are mistaken)?

My interpretation of the Formula of the Commonwealth of Ends allows for this possibility. The argument that it leaves room for such accommodation goes as follows. When A finds herself in a position of sincere moral conflict where she believes herself bound to interfere (*sec*) in a way B deems wrongful, she cannot act in such a way that makes it possible for both of them to regard their interaction as compatible with the idea of a Commonwealth of Ends. In such a situation, however, the Commonwealth of Ends still should guide her behaviour, in that it demands she act in such a way as is most conducive to making it possible in the future to engage in mutual interaction that can be regarded by both parties involved as compatible with the idea of a Commonwealth of Ends in which they are lawgivers (see p. 89). If she judges the most conducive way to bringing about such a situation in the future is (partially) to accommodate B's objections, even though she judges them to be misplaced, then she can in principle be allowed to do so. Thus, one can, for instance, decide to suffer a minor insult to one's own dignity to prevent a greater one to someone else's (in this case B's).

It must be emphasised, however, that although this is sometimes permitted (and perhaps even called for), this course of action should only be taken with the utmost care. Such accommodation is only permissible when it is truly judged most conducive to bringing about a future situation in which both can regard their interaction as compatible with the idea of a Commonwealth of Ends in which they are lawgivers, and this implies that one does not underrate one's own dignity either. When one does decide to swallow an affront, it must always be clear to the other party in

whose favour one decides to do so that one in no way relinquishes one's own status as a full member in the Commonwealth of Ends, or give false credibility to his mistaken moral claims; otherwise one would effectively end up degrading oneself and that is never permissible.⁴⁵

Suppose, for instance, that you intend to mow your lawn this Sunday. Unfortunately, however, your otherwise most gentle and considerate neighbours adhere to a somewhat strict interpretation of Christianity and frown heavily (though sincerely) on any failure to observe the Lord's Day, and you know they will be personally offended if their solemn contemplation is disturbed by the view of you jolting about on your old, diesel-powered lawnmower. In such a situation you might well decide to accommodate your neighbours' objections for the greater good and decide to mow your lawn on Saturday, even though this is less convenient for you. However, you may also feel that giving in to such demands erodes your own external freedom too much, and suggest to your neighbours that their moral views are of superior status to your own – especially if this is part of a pattern of misplaced demands on their part. If this is the case, you are surely entitled, perhaps even obliged, to resist any urge to be accommodating to your neighbours and act as you would have, had you not been aware of their disapproval.

None of this, however, affects the basic fact that a person's sincere moral objections are and remain a morally relevant fact, and this means that such objections can affect what duty prescribes. Whether they also do so in a particular case, though, is always a matter of practical judgment. If one judges that they do not, one can decide to maintain one's interference and thereby coerce the other person (assuming one can attain his compliance), holding this to be a case of justified coercion. This belief is a necessary condition for the moral acceptability of one person's coercing another, but it is obviously not sufficient for the coercion to be justified, for that demands that the judgment that a person's moral objections to the interference may be dismissed is correct. Hence, it is possible that a person who sincerely believes she is engaging in justified coercion is actually committing a wrong (thinking something is justified does not make it so). However, if her judgment is sincere, so that her wrongful decision to coerce is based on an error in her reasoning or judgment, then her sincerity may go a long way towards establishing grounds on the basis of which she can be excused for wrongfully coercing another person.⁴⁶

Before continuing, I should like to return briefly to some of the examples of potential cases of coercion presented at the beginning of Part I. As my account of coercion refers to the subjective moral judgment of the person involved, *all* these examples could strictly speaking be cases of coercion. In some of these cases this would, however, entail that the coerced must make some rather problematic moral judgments. In *Chess* it would take a very self-absorbed person to claim that this

⁴⁵ See, for instance, Kant's comments on servility (e.g. DV 6:434-6, 6:464); see also Hill (1991, 4–24).

⁴⁶ Whether such sincerity is in itself sufficient ground for holding that she must be excused is an issue that falls outside of the scope of this book.

constitutes a wrong to his person. Similarly, *The Soldier* in situation *I* does not seem to have any grounds to complain (though both the chess player and the soldier may each in his own way lament his position). These are, I take it, the strongest examples where the moral judgment by the coerced that he is wronged is at fault. I do not want to claim of all the other examples that it is necessarily the case that they do involve a wrong to the coerced, but it in each of those cases the judgment to that effect seems at least defensible, even if it is not uncontroversial.

Let us therefore focus on *Chess* and *The Soldier I*, and assume that the agent involved does indeed make these problematic judgments. In these cases it may be argued that it is not the subjugation to the other person's interference that tarnishes their dignity, but the absurdity of their moral judgments. The harm to their dignity is fully their own doing, not that of the coercer. I disagree with this assessment, however. Although it is unmistakably true that there are problems related to the dignity of the coerced in these cases which can be linked to their faulty judgments, this does not negate the additional, or different, affront that is the result of the subjugation of the will of the coerced to that of the coercer. It may very well be that the coercer was forced so to coerce the other person, since giving in to such demands would show disrespect to her own rational nature (I do not deny it is a case of justified coercion if one overrides the moral objections of the coerced in these cases); but the fact remains that the subjugation to the will of another that is inherent in coercion is an affront to the dignity of the coerced that is different from any tarnishing of his dignity that is purely his own doing.

5.4.5 *Wronging Through Maxims and Motives*

Thus far I have analysed the problem of moral conflict based on Kant's more political works: the *Doctrine of Right* and *Toward Perpetual Peace*. The types of coercion into which these works (especially the former) provide insights are those where the coerced considers himself wronged because he judges the coercer to have violated his *rights*; in Kantian terms, the coerced judges the coercer to have transgressed the proper boundaries of their respective external freedom. Such transgressions clearly constitute a wrong to the person on the receiving end of the interference, but it is an open question whether such transgressions are the only form of wronging a person. In this section I explore the possibility of a person being wronged in the absence of such issues of right: to put it differently, can the Kantian framework accommodate cases where person B judges himself wronged by A's interference even though B does not dispute that A's interfering action does not transgress the legitimate bounds of her own external freedom?

In order to answer this question we need to turn to the *Doctrine of Virtue* and the various types of duties discussed there. I argue that the Kantian framework can accommodate such cases, but only when very specific duties are at issue: strict duties of virtue to others. Though such duties do not give rise to rights in the external freedom sense, they do (unlike, for instance, wide duties) give rise to entitlements. If person A violates such a duty, she thereby denies B something he is entitled to,

and hence B can be said to be wronged. Subsequently, I argue that those cases of coercion in which the coerced's judgment that he is complying with a wrong to his person is based on such considerations, involve a similar kind of affront as the cases of coercion in which the coerced's judgment that he is wronged relies on an (alleged) transgression of his external rights. In both cases the coerced cannot take the interaction between himself and the coercer as compatible with the idea of a Commonwealth of Ends to which he is a lawgiver. An important difference, however, is that in cases concerning external right, this impossibility hinges on the coerced's role as a lawgiver in such a Commonwealth, whereas the cases where violations of strict duties of virtue are at issue undermine the very idea of a Commonwealth of Ends.

I should stress that the purpose of this section is to indicate one possible way in which considerations of wronging through the violation of duties of virtue can be accommodated by the Kantian framework. I do not claim that this suggestion is the only way this can be done. Furthermore, the way I propose such considerations can be accommodated relies on a particular interpretation of the distinction between duties of right and duties of virtue; whilst I hope to show that this is a plausible interpretation and that it is in line with a Kantian approach, I am not claiming this is *the* way the distinction between duties of right and duties of virtue is necessarily best understood.

Before I proceed with the discussion of duties of virtue, however, let me briefly illustrate the type of cases we are dealing with when a person judges himself wronged without considering his external rights to be violated. One possible example is a situation of misuse of authority. Suppose, for instance, that a police officer stops your car and demands to see your papers. Let us also assume you agree that the police should have the authority to conduct such checks for the sake of road safety, so you do not consider the demand for your papers of itself an intrusion into your rights. However, you know this particular officer, and you know she does not check you out of such dutiful considerations as ensuring road safety, but because she enjoys harassing you. In such cases you may well consider yourself wronged, but it is not the interfering act as such that explains this affront. *Camelot* provides another, more colourful, example. In *Camelot*, Mordred interferes with Arthur because he wants the king to order Guinevere's execution. Mordred's accusations at Guinevere's address are painfully accurate and, as a noble of the realm, he is certainly within his rights when he brings treasonous activities to the attention of his monarch – in fact, it probably is his duty to do so. None of these points are disputed by Arthur (his feeble attempts to avert the impending doom notwithstanding). Though Arthur would have much preferred to be allowed to remain ignorant in this regard, he does not claim any right to remain ignorant, which Mordred has violated. So if Arthur considers himself wronged by Mordred (which would mean *Camelot* qualifies as an example of coercion), then it must be on the basis of something other than a transgression in terms of external freedom (rights). It is quite plausible that Arthur does consider himself wronged by Mordred (and rightly so), however, because he is quite aware that considerations of duty had nothing to do with Mordred's decision to interfere, his sole motivation being malice and spite.

These examples show that the view that a person can be wronged without his external rights being at stake is at the very least plausible. What remains to be seen, however, is how the Kantian framework can accommodate such considerations. So let us now turn to the *Doctrine of Virtue* and the distinction between duties of right and duties of virtue. The *Doctrine of Right* and the *Doctrine of Virtue* together comprise the *Metaphysics of Morals*. The primary focus of the former is external actions, whereas the latter is mostly concerned with the grounds on which a person acts, his maxims and motives. Observing the duty to respect others' legitimate external freedom is, according to Kant, an obligation of right; that is, failure to observe these limits constitutes a violation of the right of someone else. If his rights are violated, then clearly he is wronged. When it comes to the types of duties Kant introduces in the *Doctrine of Virtue*, however, the argument is not that straightforward.

There are various ways by which the distinction between duties of right and duties of virtue can be characterised. Unique to duties of right, for instance, is that they can and may be backed up by force.⁴⁷ Moreover, duties of right are always strict or perfect duties, whereas many duties of virtue allow for some latitude or discretion in their observance (so-called wide or imperfect duties) (*DV* 6:390). Moreover, all duties of right are duties toward others, but we have duties of virtue toward ourselves as well as others (*DV* 6:417–418). All these distinctions between various types of duties are subject to considerable academic debate in their own right (see e.g. Gregor 1963, 95–112; Hill 1992, 147–175; Herman 1993, 46–72, 159–183; O'Neill 1989, 81–104; Byrd 1989, 167–169; Korsgaard 1996a, 18–22) for more thorough discussions of these distinctions). The distinction between duties of virtue and duties of right that I take as primary here, however, is the distinction that underlies the division of the *Metaphysics of Morals* in a *Doctrine of Right* and a *Doctrine of Virtue*: duties of right concern actions, and hence directly affect the external freedom of others, whereas duties of virtue refer to maxims on which we ought to act (*DV* 6:388–389, Kant also refers to this as the distinction between Right and Ethics; see also Donagan 1985, 64). If we take this as the fundamental feature of a duty of virtue, the question whether a person can be wronged through a violation of a duty of virtue can be further specified as: can a person be wronged by another person solely because of a deficiency of the maxim or motive on which this other person acted?

Most of the duties of virtue Kant explicitly discusses are either wide duties to others, or duties to oneself. As mentioned, what characterises wide duties is that they do not specify how they are to be fulfilled, so we have some latitude in deciding how to execute them. We have, for instance, a duty to beneficence towards others, but we may ourselves decide how best to execute this duty. As a result, no particular person has any corollary right we can violate. Our duty of beneficence towards others, for instance, does not entitle a beggar to any of the content of our purses, and we do not wrong the beggar if we refuse to part with it. Just how much leeway we

⁴⁷ On enforcing duties of right, see *DR* 6:231; on duties of virtue not being enforceable, see *DV* 6:381–383.

have when it comes to wide duties such as beneficence to others is a matter of debate (for some views on this issue see e.g. Hill 1992, 147–175 and Herman 1993, 46–72), but here all that is relevant is that such wide duties, because they do not give rise to any entitlements, can never be the ground on which we do wrong to another person.⁴⁸

When it comes to strict duties of virtue, however, most of Kant's examples deal with duties to oneself which for obvious reasons are not very relevant here. Kant does not explicitly discuss strict duties of virtue toward others, but his discussion of duties of respect indicates that such duties do exist (*DV* 6:464). Though duties of respect are duties of virtue, Kant claims that, unlike the wide duties toward others he discussed before, respect is something others are *entitled* to, and that violating such duties constitutes a wrong to their person (see also Gregor 1963, 182). Though there is some suggestion in Kant's remarks that he may have held duties of respect to be the only duties of virtue that give rise to entitlements by others, I see no reason why this would be the case. The reason there is room for other strict duties of virtue toward others is that there is an important difference between failure to observe a wide duty, and acting from its opposite (see also *DV* 6:390).

Wide duties are usually discussed primarily in relation to our tendency to be rather lax in observing them. We often fail to act out of beneficence, for instance. Such laxities do not result in wrongs to others, as argued above, because no one is denied anything to which he is entitled. This, however, is not the whole story. Failure to act out of beneficence is one thing, but acting from its opposite is quite another. If you act from malice, for instance, then you do not merely fail to act from a duty of beneficence. Furthermore, to act in this way is no victimless shortcoming and it clearly violates the Categorical Imperative – this is most obvious in the third formulation. Fundamental to the notion of the Commonwealth of Ends is that of a systematic *union* of ends (the most important of which are persons). When B is sure that A acted from malice toward him,⁴⁹ then obviously he cannot entertain the notion of such a union governing their mutual interaction. Such an action he can only regard as a personal attack, which is incompatible with the idea of a Commonwealth of Ends, even if the laws that would govern this union are not at issue. When it comes to acting from malice, the question is not about the sense in which B's status in a Commonwealth of Ends is infringed upon, but A's denial of the whole idea of such a Commonwealth (union) of which both are members.

⁴⁸ Of course, a particular beggar may disagree with this and claim he is wronged by your withholding alms. This, however, the Kantian framework can easily accommodate as the beggar (mistakenly) claiming he is entitled to your money, or even that he has a right to it, which he holds you to have violated.

⁴⁹ It is important to stress that malice will only constitute a violation of duty if it is actually acted upon. Much of the following argument also applies to the mere feeling of malice on A's part toward B. However, given that control over feelings is limited to our deciding to act on them or not, not to whether or not we experience them, the ought-implies-can principle implies that feelings as such are outside of the bounds of morality; we do not have duties to have or not have certain feelings towards others (*DV* 6:401; see also Gregor (1963, 182)).

When we focus on the acting agent, the Formula of the Commonwealth of Ends tells her to ensure her action is done in reference to the idea of such a Commonwealth, from which duties of right as well as wide and strict duties of virtue follow. When viewed from the perspective of the person who is on the receiving end of another person's acting, the notion of the Commonwealth of Ends tells him what he is entitled to. Both duties of right and strict duties of virtue give rise to such a personal entitlement. Wide duties of virtue, however, do not give rise to any such entitlements, so the Kantian perspective must take a person who considers himself wronged to be claiming the person who interferes with him to have violated a strict duty she has towards him.

Before turning to the conclusion of this chapter, I must address one possible Kantian objection to the view that a person can legitimately consider himself wronged based on a violation of a strict duty of virtue. The view that a person can legitimately consider himself wronged on such grounds could be disputed on the basis of Kant's insistence that we can never be absolutely certain what the maxim is that governs the performance of an action (e.g. *G* 4:407). Hence, so the objection goes, we cannot judge ourselves wronged by others based on a violation of a strict duty of virtue they have towards us, for we can never know what the maxim of their action is, which we need to know if we are to hold it inconsistent with a strict duty of virtue. However, although the cautionary note that we should not be too hasty to judge others is valid enough, this does not mean that we can never be sufficiently sure of another's motives to judge them.⁵⁰ In fact, we often do so, and in order to maintain ourselves in our imperfect world we often have to do so. Moreover, if there is one kind of motive that we are often quite capable of picking up in others, it is the less noble, aggressive ones, such as malice, self-serving opportunism, envy, hatred and spite. What makes such violations of perfect duties of virtue cases of particular interest is that (as long as they do not lead to violations of right), the proper response cannot be one that involves the use of force (see also [Section 7.4](#)).

5.5 Conclusion

In these two chapters I have developed an argument that shows it is always to be considered important, or morally relevant, when a person's sincere moral objections to the way he is being treated are overridden. Although there may be cases – and these may even be frequent – where doing so may be justified, it is never something that should be taken too lightly, as it entails an affront to the dignity of the person whose judgments are thus dismissed. The argument I have provided to this effect is a Kantian one that relies on the notion of a Commonwealth of Ends. It grounds the dignity of the individual in the fact that he is a moral agent, capable of autonomy.

⁵⁰ There is also textual evidence that Kant held it possible to judge the maxims of others with sufficient certitude to base a response on such judgment. In *DR* 6:349, for instance, he claims that a maxim can be revealed 'by word or deed'.

Being such an agent involves at least three aspects. First, it means determining for oneself what the moral law is (i.e. how a moral being should act, and particularly relevant to the analysis of coercion: how such moral beings ought to interact with each other). In Kantian terms this is the notion of self-legislation. However, being autonomous (or self-governing) is more than this and also includes the exercise of one's practical judgment to apply the moral law as one sees it to particular cases, as well as to see to it that these judgments are subsequently acted upon.

In modern Kantian ethics, the prime focus in this area has usually been the individual, governing himself. Thus, self-legislation is restricted to determining what the moral law allows and forbids *me* to do; practical judgment, determining how *I* should act in a particular case, and the ability subsequently to act according to this judgment, is then by and large reduced to self-control, strength of character, and/or the ability to resist inclinations that would move me to act otherwise. This is certainly an essential part of being an autonomous agent, but it is too narrow a perspective. It neglects the fact that moral agents are essentially political beings. To be self-governing is not just a matter of reacting appropriately to the circumstances in which one finds oneself, it also has a social aspect. Being an autonomous, self-governing moral being does not require total independence from others⁵¹ (which would amount to denying our political, social nature); one may (and in certain respects ought to) be affected by other agents, but one may not be governed (subjected or subjugated) by them.⁵² Thus, being an autonomous, self-governing moral agent requires that one has control not just over one's own behaviour, but also over the behaviour of others, to the extent that their actions directly affect one's person.⁵³

Here, however, problems are bound to arise, for in such matters different persons do not always see eye to eye. How best to manage such conflicts whilst still being sufficiently respectful of the dignity of all persons as beings capable of autonomy is one of the central problems of political philosophy.⁵⁴ I have made no attempt to provide a full theory to this effect and focused on only one aspect: the problem of coercion. Undoubtedly there are many other problems that call for attention related to the dignity of the individual. Obviously we can ourselves tarnish our dignity just

⁵¹ For a critical discussion of the notion of autonomy as radical independence see e.g. Dworkin (1988) or Feinberg (1986, 27–51).

⁵² Just as one should be affected by one's feelings and inclinations in a Kantian account, but may never be governed by them. (Kant explicitly rejects the point of view that one should extinguish one's inclinations (e.g. *REL* 6:58)).

⁵³ This limitation is important: being an autonomous moral agent does not require one gets to lay down the moral law in general, but merely when it directly concerns oneself. This does not mean we have to accept injustices as long as they do not concern ourselves and may never act to correct them, but it does mean we should be rather reserved in this respect. Generally, one should not interfere in such matters unless one is, for instance, sufficiently sure one's interference is also willed (at least) by the injured party.

⁵⁴ There are of course strands in political philosophy that deny or are at great pains to accommodate the notion of the dignity of the individual. Nihilism and many forms of utilitarianism may be examples. This, however, provides a strong (if not the strongest) argument against such theories, rather than being a point of critique here.

as much as others can. A person who habitually gives into temptation or constantly rearranges his priorities displays a lack of self-control that shows he is not living up to his status as a moral agent as he fails to stand by his commitments (see e.g. Hill 1991, 118–137). Similarly, a person who controls his actions but is committed to the wrong things is also problematic when viewed in relation to dignity. Whilst we should accept we are flawed beings, this does not entitle us to fully accept our flaws, let alone glorify them. Personal dignity is in many ways a very elusive concept, one certainly worthy of a more encompassing analysis in its own right. Such a full theory of dignity is not intended here, but the Kantian approach that grounds it in the ability to be autonomous certainly provides a promising starting point for such an analysis. Being self-governing has at least three aspects, pointed out earlier, and things can go awry with respect to all of these aspects. We, as flawed rational beings, can make mistakes when it comes to determining what the moral law is,⁵⁵ just as we can err in our practical judgments. If we do so, this may very well cause problems with respect to our dignity in their own right, but when it comes to coercion it is the failure to effectuate our moral judgments and thus assert ourselves as self-governing moral agents that primarily explains the affront it entails.

In the next and final part of this book I shall use the Kantian account I have developed that emphasises both the political nature of persons and the importance of their dignity and standing in their ability to be self-governing and autonomous to discuss a quite different field of literature. This field of literature, namely the (neo-)republicanism as developed by Quentin Skinner and Philip Pettit, advocates many of the same points and uses very similar terms, but does so from a very different perspective. In the next chapters I explore how the republicanism of Pettit and Skinner and my own Kantian approach compare. In particular, I use the account and arguments developed in Parts I and II to scrutinise Pettit's notion of non-domination.

⁵⁵ Happy slaves are an example.

Part III
A Kantian Reconstruction
of Republicanism

Chapter 6

Republicanism

6.1 Introduction

Spearheaded by the works of Quentin Skinner and Philip Pettit, the last two decades have seen a revival of republicanism in political philosophy. Exactly what underlies such a resurgence is always a matter of some conjecture, but one possible reason why republicanism has been so appealing to many is that it can be regarded as taking a middle position in a number of recent debates. In the conceptual debate on the notion of freedom, for instance, the republican conception of freedom as non-domination gives an intriguing third alternative to the now standard dichotomy between positive and negative concepts of liberty (Pettit 1997, 27; see also Section 6.2.1) first introduced by Isaiah Berlin (1969). On the level of more all-encompassing political theories, republicanism occupies an interesting position somewhere between liberalism, which has often been criticised for being too narrowly concerned with individuals, and communitarianism, which in seeking to remedy this purported defect of liberal theories often leaves itself open to the charge of being overly conservative, prone to paternalism and authoritarianism, as well as leaving the individual inadequately protected against the pressures and interests of the community (for a survey of the debate between liberals and communitarians see Mulhall and Swift 1992).

Republicanism has a longstanding tradition, encompassing many different strands, and the boundaries between republicanism and other schools of political thought are not always drawn in the same way. Laborde and Maynor, for instance, discern two major traditions within republicanism (Laborde and Maynor 2008, 3). One is Aristotelian in outlook and is influenced by an idea of a republic based on that of ancient Athens, emphasising the importance of participation in political life if persons are to realise their political nature. As examples of authors belonging to this tradition, Laborde and Maynor mention Charles Taylor (1995) and Michael Sandel (1996) – authors who are often regarded as prominent proponents of the communitarian tradition (e.g. Mulhall and Swift 1992). The other republican tradition discerned by Laborde and Maynor, to which Pettit and Skinner belong, is more influenced by ideals and views presented by admirers of the Roman Republic (Cicero, Livy, Sallust, Tacitus, Machiavelli). It was popular in the seventeenth and

eighteenth centuries among opponents of absolutism in various revolutionary movements, such as the English parliamentarians and the American rebel colonists. This tradition embraces, as Skinner puts it, the idea that ‘[. . .] it is only possible to be free in a free state’ (Skinner 1998, 60). It does not champion participatory citizenship as a goal in itself, but seeks (at least in its modern forms) to ensure the liberty of its citizens as something they are entitled to.¹ Both traditions emphasise the importance of citizens being involved in the running of the state, but to the latter it is a (necessary) means to an end (its primary function being to curb the influence of those in power), whereas the former sees it as an essential goal in itself.

It is the neo-Roman tradition to which Skinner and Pettit belong on which I shall focus in the remainder of this book.² Central to the republicanism of Pettit and Skinner is a concern for the abject position of a person who must in his endeavours rely on the good graces of another. A person who finds himself in such a position of dependency is ‘subject to the will of another’ (Skinner 2006, 403), a vulnerability that has debilitating effects on his ability to choose and pursue his own projects, but also – and to Skinner and Pettit most importantly – destroys his status and standing (e.g. Skinner 1998, 2006, 2008; Pettit 1996, 1997, 2002, 2008).

Skinner and Pettit have couched their concerns mainly in terms of freedom, claiming that the republican notion of freedom that equates freedom with the absence of such dependency is both fundamentally different from, and in many respects superior to, the negative ‘liberal’ notion of freedom that equates freedom with the absence of interference (Skinner 1998, 2006, 2008; Pettit 1997, 2002). These claims have been vigorously challenged by defenders of the negative understanding of freedom such as Ian Carter (1999, 2008), Matthew Kramer (2003b, 2008) and Robert Goodin (2003), which has led to a flourishing philosophical debate on the nature of freedom. Though many of Skinner’s and Pettit’s most important arguments are formulated within the context of this debate, their work – Pettit’s in particular – shows a clear concern not just with the freedom but also, perhaps even especially, with the dignity of the individual.

In fact, many of these concerns show a remarkable similarity to the issues I have argued in the first two parts of this book are at stake when a person is subjected to coercion. This coincidence is all the more striking as my analysis is distinctly Kantian, whereas Pettit is an avowed consequentialist and quite averse to deontological considerations (Braithwaite and Pettit 1990; Pettit 1997). In this final part I focus on this republican desire to safeguard the dignity and standing of the individual. Pettit’s theory of republican freedom is centred around his ideal of non-domination. I scrutinise the adequacy of this notion as a means to safeguard the dignity of the individual.

¹ In older versions of this form of republicanism the ultimate goal was usually the achievement of glory and greatness (e.g. Machiavelli 1996).

² When I use the term ‘republican’ in the following it is exclusively this strand to which I refer.

In this chapter I introduce the notion of non-domination as it has been explicated by Pettit. In order to do so we have to turn to the debate in which this notion has been developed, the aforementioned debate between republicans and negative freedom's advocates. I want to stress, however, that my purpose in discussing this debate is limited to determining the most essential features of the notion of non-domination; I do not seek to contribute to the core of this debate, which is how best to understand the notion of freedom. In the next chapter I turn to the key question of this third and final part: how is the dignity of the individual – or, to use the term Pettit prefers, his standing – affected by non-domination or the absence thereof? First (Section 7.1), I briefly recapitulate the different features of individual dignity as introduced in Chapter 5. I argue that, with some minor alterations, this outline of the various aspects of individual dignity (legislation, adjudication and imposition of the moral law) can also be used in a non-Kantian framework. Subsequently, I isolate that aspect of dignity that the ideal of non-domination is designed to protect. As was the case in the previous parts of this book, only a specific kind of affront to the dignity of the individual is directly targeted by republicans. Next (Sections 7.2 and 7.3), I scrutinise Pettit's formulation of the notion of non-domination. I argue that the way Pettit defines this notion contains a number of ambiguities that must be addressed. In order to resolve these ambiguities adequately I suggest a reformulation of the notion of non-domination that emphasises the importance of a person's own moral judgments (the importance of which has been discussed at length in Part II). In doing so, I thus offer a distinctly Kantian reinterpretation of the notion of non-domination, and in many ways my analysis can thus be regarded as a Kantian reconstruction of republicanism.

In the final sections of Chapter 7 (7.4 and 7.5) I discuss the practical implications of this reformulation. I argue that my reinterpretation of non-domination supports a number of well-known republican tenets such as the importance of discourse and contestability, but also that it contradicts others. In particular I argue that there is room and need within republicanism for retributive punishment, a view explicitly rejected by Pettit (Braithwaite and Pettit 1990; Pettit 1997).

6.2 Republican Freedom

Pettit presents his republican political theory as a grievance (Pettit 1997, 4); he claims that most modern political-philosophical debates have overlooked a particular ideal that is of great importance: that of persons not being dominated. Though a number of important earlier traditions were quite aware of the importance of this value, the ascendancy of liberalism with its focus on its own particular understanding of liberty has managed to push this value into the background to such a degree that it had all but disappeared from the political-philosophical debate (Skinner 1998; Pettit 1997). In fact, liberals have done such a thorough job of burying the old republican tradition to which the absence of domination was so dear – so Pettit and Skinner claim – that even many of their critics (communitarians in particular)

have failed to realise its potential. Pettit and Skinner worry that we disregard the dangers of domination at our peril, and they have therefore sought (successfully) to gain a renewed hearing for this republican ideal in political philosophy.

According to Pettit and Skinner, the value of non-domination that lies at the heart of the republican tradition which they seek to revive, gives rise to a distinctive understanding of what it means to be free. Based on this particular republican, or neo-Roman,³ understanding of freedom they have challenged the standard dichotomy in political philosophy between positive and negative conceptions of freedom (Skinner 1998, 2006; Pettit 1997, 2002). Advocates of a negative understanding of freedom in particular have responded to this challenge with vigour (Carter 1999, 2008; Kramer 2003b, 2008). The debate that ensued can be broken down into two main issues of contention: the republicans' claim that their notion of freedom is distinctive (i.e. of a fundamentally different nature than the standard negative concept), and their claims that the republican understanding of freedom is in many ways superior to the negative, liberal one. Because the republican attempts to contrast their understanding of freedom as non-domination from the negative understanding of freedom as (essentially) the absence of interference provide the clearest insights into the exact nature of their core notion of non-domination, in this chapter I focus mostly on the former issue under contention in this debate. The reason why non-domination is an important value, one to be concerned about, is discussed in Chapter 7. Before we turn to a detailed discussion of the distinction between negative and republican freedom, however, let me briefly introduce the standard distinction between positive and negative freedom, to which the republican understanding of liberty is presented as an alternative.

6.2.1 Positive and Negative Freedom

The standard dichotomy in the conceptual analysis of freedom is that between positive and negative conceptions of freedom. Positive notions of freedom are primarily concerned with self-mastery or self-realisation, whereas negative conceptions focus exclusively on absence of interference (usually by other persons or collective agents).⁴ The notion of positive freedom is, in some ways, close to that

³ Skinner prefers the term 'neo-Roman' to 'republican' when denoting their typical understanding of freedom, because a number of historical authors who adhere to this understanding of liberty were anything but republicans. In his contribution to the edited volume by Laborde and Maynor, however, he announced his decision no longer to resist the use of the term 'republican freedom' which has become the standard way of referring to this understanding of freedom in recent philosophical literature (Skinner 2008, 84).

⁴ The term 'self-mastery' when used to describe positive notions of freedom can lead to confusion when positive freedom is compared to the republican notion of freedom, because the republican notion of freedom, especially the way Skinner describes it, focuses on 'being one's own master'. When positive notions of freedom are described by the term self-mastery, however, the focus is usually on being master over one's self, for instance by controlling one's desires and inclinations (cf. Berlin (1969) on the distinction between the 'true' and the empirical self). When republicans

of autonomy (self-governance), but not quite identical to it (though sometimes they are equated). In some ways the notion of negative freedom is the simpler of the two: it holds that a person is free to do X as long as no other person interferes with him. Though one may still argue about what constitutes interference, or what type of agents are capable of limiting one's freedom,⁵ the basic idea is rather straightforward and intuitively appealing. You are free to do X as long as no-one actively restrains you from doing X. Advocates of positive notions of freedom (e.g. Crocker 1980; Taylor 2006), however, are often dissatisfied with the ideal of 'mere' negative freedom. To such theorists there is more to being free than merely not being interfered with. *The Mistress* is an interesting example in this respect. If you use a negative concept of freedom, then the offer by the lecherous businessman enhances the young mother's freedom, for he in no way constrains her and only increases her options by his offer that she should become his mistress. Furthermore, this is in no way a meaningless option to her as it allows her to save her child. Many who favour a more substantial conception of freedom will likely find this conclusion appalling, however, arguing, for example, that the mother's situation is so dire that it is ridiculous to say that she is free at all. Having to choose between prostituting herself or seeing her child perish is no choice at all, let alone a free one. For the mother to be free, she must have a number of truly meaningful options and the state must ensure that such situations do not occur, for instance by providing adequate healthcare to her child.

Psychological and physical injuries similarly constrain a person, but again this can often not be linked to the active interference of any particular person; the same holds for many social injustices. But – so advocates of positive freedom (especially those with Marxist leanings) may claim – that no one agent actively restricts a person who is in such a situation misses the point; what matters is that such persons are empowered so that they become able to develop themselves and thus lead meaningful lives, for that is what true freedom means. To this a number of conceptual objections can be raised, for instance that such positive accounts tend to confound freedom with equality, justice or self-fulfilment. These are obviously related issues, but conceptually they are not the same and it is important to separate such notions if we want to have a clear political debate or philosophical analysis. These points have been made with great eloquence by Berlin (1969), who also identified a number of more directly practical political concerns connected to positive notions of freedom. Particularly when you take psychological constraints into account, positive notions of freedom are especially apt to justify almost any interference in the affairs of another on the grounds that it is designed to remove these internal blocks

talk about 'being one's own master', they are describing their ideal situation in which a person is not in a state of subservient dependence in relation to another person.

⁵ If the police close a mountain road, for instance, you would not be free in the negative sense to take it. However, if the police only post a no-entry sign that is enforced by prohibitive fines, advocates of negative freedom may disagree whether you are free to use it or not; similarly, disagreement is possible about the question whether or not your freedom is curtailed if the road is blocked by a naturally occurring landslide.

that keep a person from being free (Berlin 1969, 133, 150–151); sometimes, to use Rousseau’s phrase, we must force people to be free. The first step to freeing a person is to make him aware of his unfreedom, and to do that, false (class) consciousness and other internalised modes of oppression that make people content with their positions must be removed – one way or another. Therefore, so Berlin famously, but not wholly uncontroversially, warned, advocating a positive notion of freedom is extremely dangerous, for it is likely to lead to the total erosion of any meaningful kind of freedom, rather than enhance it.

This discussion of positive and negative notions of freedom is of necessity too brief to do real justice to all the different aspects that have been brought into play in the analysis of freedom; the field is simply too extensive to provide even a remotely adequate survey here (for reviews, see for instance Carter et al. 2007; Miller 1991 or Gray 1991). Nonetheless, the above account should suffice to explain why the republican ‘third’ concept of liberty is an appealing alternative to many. Setting aside for the moment purely conceptual matters, the issue with positive and negative conceptions of freedom can be succinctly put (though admittedly this is something of a caricature) as follows: to be truly free negative freedom is not enough, but positive freedom demands (and allows for) too much. Hence, if there is a viable alternative that promises to offer more than purely negative accounts of freedom, but can avoid the dangers of positive notions of freedom, then that would be most useful.

6.2.2 *Freedom as Non-domination*

The republican notion of freedom is in some ways closer to being a negative concept of freedom than a positive one. After all, it focuses explicitly on the absence of something: domination (see e.g. Pettit 1997, 22). Nonetheless, most of the arguments propounded by Skinner and Pettit are directed against the negative notion of freedom that equates freedom with absence of interference by others.⁶ In particular, they take aim at the strictest interpretation of negative freedom, which holds in true Hobbesian style, that you are free to do X as long as no-one makes it physically impossible for you to do X. This implies, for instance, that the highwayman does not make you unfree to keep your money when he threatens you at gunpoint (at least not under the somewhat unrealistic assumption that he will not take your money after having shot you) – he merely makes that particular alternative rather unattractive.⁷

⁶ Because of this Pettit and Skinner have, on occasion, described the republican conception of freedom as an alternative understanding of *negative* freedom (e.g. Skinner 2006, 409). For notational ease, however, I refer to the republican notion of freedom as a third alternative, and when I use the term ‘negative freedom’ in the following, it is the standard interpretation of the term as absence of interference to which I refer.

⁷ It should be added, however, that most modern advocates of such a notion of freedom (unlike Hobbes) make a distinction between being free to do something, and doing it freely or voluntarily. Hence, they do not follow Hobbes in claiming that the highwayman’s victim handed over his

Central to the republican position is the claim that the mere absence of such interference is insufficient to call a person free. What the notion of freedom as absence of interference overlooks, so Pettit and Skinner claim, is that a person (B) can be lacking freedom even if he is in no way interfered with, as long as someone else (A) is in a position to do so whenever she feels so inclined. The paramount example of a person who is not free is, to republicans, the (Roman) slave. Even a slave with a benevolent (or indifferent) master who chooses not to interfere with his slave remains a slave and is unfree because he always needs the (implicit) permission or goodwill of his master to be able to do as he (the slave) wishes. He is subject to the will of another, or, to use a now somewhat archaic term, in the dominion of another.

The most explicit formulation of the republican notion of freedom has been provided by Pettit through his notion of non-domination. Pettit is also more emphatic than Skinner in contrasting his position with those who advocate the notion of freedom as non-interference. To Skinner, to be free means to be free from domination as well as from actual interference, whereas Pettit claims that domination should be the real focus of freedom and non-interference is of secondary concern at best (see Pettit 2002). As the difference between republican freedom and negative freedom is clearest in Pettit's account as a result, I shall focus mainly on his analysis rather than Skinner's more historical approach. Pettit explicates republican freedom through his notion of non-domination. According to Pettit, a person is dominated whenever someone else holds arbitrary power of interference over him, and this arbitrary power Pettit defines as follows:

[S]omeone has an arbitrary power of interference in the affairs of another so far as they have a power of interference that is not forced to track the avowed or readily avowable interests of the other [...] (Pettit 2002, 341–342).

Subsequently, we can define the republican notion of freedom: a person is said to be free in the republican sense if no-one holds such arbitrary power over him, i.e. if he is not dominated.

This definition contains a number of ambiguities, and it must also be mentioned that this is not the only way Pettit has formulated what he holds to be the defining characteristic of republican freedom. In earlier work (e.g. Pettit 1997), he defined non-domination in terms of interference that is not 'forced to track the interests and ideas' of the person interfered with, and before that he described the republican notion of freedom as 'antipower' (Pettit 1996). More recently he again reformulated the republican ideal, shifting focus from arbitrary power to what he calls 'alien control' (Pettit 2008). To what degree this last reformulation will turn out to have substantial implications is as yet unclear, but Pettit claims it does not constitute any fundamental departure from his former account (Pettit 2008, 102). I shall therefore focus on the definition of non-domination as cited above.

There are a number of elements in this definition that require elaboration, such as the meaning of 'avowed or readily avowable interests' and what it means to be

money freely; they merely claim he was free to do so, as he was also free to refuse to do so (see e.g. Carter 2008, 62–63).

‘forced to track’ these. These issues are addressed in detail in the next chapter. In order to grasp the distinctiveness of the republican position vis-à-vis that of proponents of a negative conception of freedom, the way the notion of arbitrariness is used is a more pressing matter. Pettit’s formulation is ambiguous in this regard. On the one hand, he speaks of ‘an arbitrary power of interference’, which suggests that ‘arbitrary’ qualifies ‘power’. On the other hand, the way this formulation explicates arbitrariness is by qualifying the type of interference, not the power as such. It is interference that can track or not track a person’s avowed or readily avowable interests, not power itself. In fact, Pettit’s formulation seems to combine two distinct meanings of arbitrary. In the first sense it refers to a power that is absolute (i.e. unbridled or unchecked); in the second sense it refers to discretionary power, i.e. the wielder of the power need not take account of the avowed or readily avowable interests of the person who is interfered with and can interfere (within the boundaries of that power) at her leisure. Obviously, someone who wields arbitrary power in the first sense also holds power that is arbitrary in the second sense. Contrary to what Pettit’s formulation suggests, however, to have power that is arbitrary in the second sense (discretionary power) does not need to imply this power is arbitrary in the first sense. There is no contradiction in having a limited discretionary power.⁸

In the conceptual debate on freedom the republican arguments that have received most attention do not depend on whether or not the power to interfere in the affairs of another is absolute or limited, so in the remainder of this chapter I focus mainly on arbitrary power as discretionary power. In order to interfere with another in ways that do not track their avowed or readily avowable interests, one need not have absolute power. The person who wields such discretionary power I shall refer to as the dominator, and the person who is subject to this power as the dominated.⁹

Based on this, we can highlight two important differences between the republican notion of freedom as non-domination and the notion of freedom as non-interference (cf. Pettit 1997, 63–66; 2002). Whereas the republican notion of freedom holds your freedom curtailed only by a *specific* kind of interference (arbitrary interference, interference that does not track your avowed or readily avowable interests), freedom as non-interference holds your freedom diminished by *any* kind of interference. In this sense, the notion of freedom as non-interference is a more demanding notion

⁸ In his 2008 paper Skinner has accepted Pettit’s claim that ‘[. . .] the capacity to engage in acts of arbitrary interference depends on the prior possession of arbitrary power [. . .]’ (Skinner 2008, 84). It is not clear whether this is intended as a general claim, or only affects the particular historical case they are discussing in this passage (neo-Roman criticism of the Stuart Monarchy). As far as the historical issue is concerned I am in no position to have any opinion on the matter. As a general claim, however, the proposition that discretionary power to interfere must imply absolute power does not hold.

⁹ Even though ‘dominator’ is grammatically clearly a masculine noun, I shall refer to the dominator by the feminine and the dominated by the masculine pronoun, following my earlier usage (cf. footnote 2, p. 6).

than republican freedom, as the former can be curtailed when the latter is not (i.e. in cases of non-arbitrary interference: interference that does track your avowed or readily avowable interests). When it comes to the second difference, however, these roles are reversed, and the notion of freedom as non-domination requires more than the notion of freedom as non-interference. The latter is only curtailed when one person *actually* interferes with the other,¹⁰ but the republican notion of freedom already holds freedom curtailed when the first person *could* decide to interfere (arbitrarily) with the other even if she refrains from doing so. Both these differences provide vital insights if we are to gain a thorough understanding of the notion of non-domination and the reasons why it is such an important value. As the second distinction between the two notions of freedom has received far more attention in the debate between republicans and advocates of negative freedom, I turn to that distinction first.

6.2.3 *Republican Freedom More Demanding than Negative Freedom*

According to Pettit and Skinner, being dominated has three major effects on a person. First of all, being dominated creates a great degree of uncertainty; second, in trying to influence this uncertainty, a dominated person will be moved to engage in self-censorship and acts of self-abasement; third, as the dominated person is in a state of dependency of which both the dominated and the dominator are aware, they cannot relate to each other as beings of equal standing (see e.g., Pettit 1997, 2002; Skinner 1998, 2008). This last point will be discussed in more detail later on; here I focus first on the former two.

One of the major issues advocates of pure negative freedom overlook, so republicans claim, is the debilitating effects that follow from being dominated itself, even without physical interference. For instance, even if the person who dominates you benevolently chooses to restrain herself, the mere fact that she could change her attitude to you at any point in time creates a great degree of uncertainty on your part. You may be able to avail yourself of certain opportunities now, but you never know if you still will be able to do so in the future. The slightest fickleness in your dominator's character can have great effects on your situation. This uncertainty greatly hampers your ability to set and pursue long term goals, which are often deemed essential to living a meaningful life. Being dominated thus forces you to live in the moment, which (for all the short term benefits this may provide) is not a sustainable way to live if it obtains for a longer period of time.

¹⁰ If counterfactuals are taken into consideration, then this needs qualification, for negative freedom would then also be constrained if a person *would* interfere in certain counterfactual situations. For instance, I am unfree to go and vote if you were to prevent me from doing so, should I try. In such a case, I am not free to vote according to the negative conception of freedom, even when there is no actual interference on your part because I did not try to vote (cf. Kramer 2003a). This does not affect the distinction between negative freedom and republican freedom, however, for the latter focuses on the fact that you *could* interfere, independently of whether you would.

This, however, is not where the ills of domination end, for not only are you permanently unsure of your options, you are aware of the fact that your behaviour does have an impact on your future prospects. Even if your dominator does not now see fit to bar you physically from performing some particular action, you would do well to make sure she would not be dismayed to discover you had had the audacity to avail yourself of it. For if you do, and this does not meet with her favour, you may well find that you will not have this option again. But not only may you not have this particular option again in the future, you may well pay for your insolence by having a number of other options removed as well. Therefore, even if you are lucky enough to live under the dominion of a dominator who is at present well disposed towards you, you had better make sure she stays that way. Hence you will be forced constantly to engage in self-censorship, which effectually means you cannot avail yourself of a number of options which you are not at present physically unable to do. At the same time, moreover, the fact that your prospects are so dependent on the disposition your dominator holds towards you will mean that it is not only important that you refrain from offending her by exhibiting behaviour she may frown upon; it also implies that you would do well to actively seek her affection, driving you to engage in rather nauseating acts of sycophancy. In short, if you are in a state of domination this will pervade your entire existence; and it will do so even without your dominator ever actually having to interfere physically in your affairs.

Present day advocates of pure negative freedom such as Carter (1999, 2008) and Kramer (2003b, 2008) have replied to these charges. Rather than denying these ills of domination, their main defence is the claim that purely negative accounts of freedom can account for these ills just as well as the republican notion of freedom. In effect, they argue that the republicans overlook the fact that theorists advocating negative freedom have managed to make some headway since the days of Hobbes. In particular, they are now well able to accommodate restrictions of liberty resulting from credible threats. The approaches advocated by Carter and Kramer focus on conjunctively exercisable opportunities or action bundles rather than isolated actions, which enables them to accommodate threats as restrictions of freedom without having to give up the prime tenet of pure negative liberty that the only restrictions on freedom are interferences by others that make it physically impossible for you to perform a specific action. When the highwayman makes his characteristic threat, it makes certain options physically unavailable to his victim, so Carter and Kramer argue, because all the options previously available to the victim that depend on his continued existence *and* having the money at his disposal are removed from his option set. The highwayman, for instance, makes it physically impossible for the victim of highway robbery to buy a drink in the tavern at his destination. Hence, so Carter and Kramer argue, the highwayman also restricts the freedom of his victim under a negative account of freedom.

Once it is possible to incorporate threats as genuine restrictions of freedom in negative accounts, it is pretty straightforward to show that the ills of domination discussed above can be accommodated, too. All of these ills result from the fact that the possible (future) interference by the dominator hangs over the head of the

dominated like a sword of Damocles.¹¹ The dominated constantly lives under the threat that it may fall. The freedom of the dominated person is limited by domination even under a negative account of freedom, because all options (or all action bundles) that rely on performing an action that is frowned on by the dominator *and* avoiding her future interference are unavailable. As far as these ills are concerned, therefore, republican freedom is no different from negative freedom, so Carter and Kramer argue.

Though Skinner and Pettit have, to my knowledge, not at present fully accepted the equivalence of republican and negative freedom on these points (see Skinner 2008; Pettit 2008), these replies by Carter and Kramer have led them to emphasise more strongly than before that these points are only of secondary concern to the republican account of freedom. Even if the accounts of Carter and Kramer can account for self-censorship and self-abasement, the main point of the republican position – which is that the dependency of the dominated in itself creates a difference in status between the dominated and his dominator – is something that Pettit and Skinner hold cannot be accommodated by accounts of negative freedom. The primary focus of negative accounts of freedom is what a person can *choose* to do without others preventing him, but what is no less important in republican freedom is the *standing* towards one another of the persons involved (see e.g. Pettit 2002, 351).

6.2.4 Negative Freedom More Demanding than Republican Freedom

To advocates of a negative conception of freedom, the sense in which republican freedom is more demanding than negative freedom has been more interesting than the sense in which the reverse is true. The reason for the relatively minor interest shown by advocates of negative freedom in the sense in which republican freedom is less demanding than republican freedom is that champions of a negative understanding of freedom like Kramer and Carter wholeheartedly agree with Pettit that their understandings of freedom differ in this regard. Carter and Kramer have actively sought to show that their understanding of freedom is, for most intents and purposes, equivalent to republican freedom as far as the debilitating effects of being dominated are concerned, but they explicitly reject Pettit's position that certain kinds of interference – which Pettit calls non-arbitrary – would not limit a person's freedom. This aspect of non-domination, however, is vital to some of Pettit's most pressing concerns, and will play an important role in the discussion to follow in the next chapter. In this section I therefore explore this second distinction between negative and republican freedom.

¹¹ Actually, the situation of the dominated is even worse, for not only does he constantly have this sword over his head, his dominator holds the scissors with which to cut the thread by which it hangs.

Freedom as non-domination is less demanding than negative freedom in the sense that, at least as far as Pettit is concerned, it allows for certain kinds of interference (those of the non-arbitrary kind) without this counting as a restriction of your freedom, whereas pure negative freedom does not. Interferences that track your avowed or readily avowable interests do not, so Pettit claims, have the same effect on you as interferences that do not track them. According to Pettit, this difference is vitally important, because interferences that track your avowed or readily avowable interests are acceptable to you in a way that those that go against them are not. The latter are in a sense hostile or alien to you, whereas the former are friendly, benevolent, or can at least be accepted by you as being on a par with acts of nature (Pettit 1997, 84–89; see also Pettit 2002).

Carter's rejection of Pettit's understanding of freedom is, as far as the distinction under consideration in this section is concerned, based on two worries. First of all, Carter points out that Pettit's view has very counterintuitive implications. If you deny, so Carter argues, that a person becomes unfree to do something whenever he is physically prevented from doing it, then (on conceptual grounds) you cannot account for paternalist intervention – not, at least, if paternalist intervention is understood in its common sense: intervention that reduces a person's freedom in his own interest (Carter 2008, 64).¹² Second, Carter worries that Pettit's understanding of freedom as non-domination moralises the concept of freedom (Carter 2008, 65).¹³ This worry is not so much based on Pettit's formulation of the notion of non-domination as it is on the implications Pettit maintains can be drawn from it. In *Republicanism* Pettit famously claimed that 'neither a tax levy, nor even a term of imprisonment need take away a person's freedom' (Pettit 1997, 56, fn. 3). The reason this need not diminish a person's freedom, so Pettit claims, is that laws should be designed to track the public interest, not private ones. As individuals' interests coincide, at least partially, with the public interest, a person who is convicted on laws that track the public interest is convicted on laws that also track his own – or at least the relevant ones (Pettit 1997, 55–56). Hence, a person who is sentenced to imprisonment on laws that track the public interest is not subjected to arbitrary interference, or so Pettit's argument goes.

It is important to stress that it is the step from avowed interests as such to the interests a person (avowedly) shares with the rest of society that causes Carter to suspect that Pettit's conception of freedom is moralised, not the definition of non-domination in terms of avowed interests itself. As Carter points out, in many situations a person's private interests do not coincide with the common interest, and without taking a normative stance there is no reason to assume that a person's avowed interests would be those he shares in common with the rest of society. Certainly a person who is about to be locked up can – and barring exceptional cases

¹² The problems with Pettit's formulation of non-domination and paternalist interference are discussed in more detail in [Section 7.2](#).

¹³ For objections to moralising central notions like freedom and coercion see [Section 2.2.1](#).

of extreme penitence ordinarily will – readily avow that his interests are best served if he is treated as an exception to the law (Carter 2008, 65).

Carter’s critique on this point is very convincing. It must be emphasised, however, that this critique relies more on Pettit’s leap from the avowed interests of the individual to the common interest in which he is said to share than on the notion of non-domination itself. That the relevant interests that need to be tracked are ones the individual holds in common with others is a moral position, which suggests that the interests that need to be tracked are not the interests avowed by the victim of the interference, but those he ought to avow. In the definition of non-domination itself, however, there is nothing that indicates the notion must be moralised. The interests a person avows, or even would avow, is in principle a matter of empirically ascertainable fact. I restrict myself here to analysing the notion of non-domination as Pettit defined it, setting aside his own interpretation of the way this translates to the common interest. Nonetheless, it should be stressed that Pettit is undoubtedly correct that there is an important difference between a person who is imprisoned on the basis of laws or courts whose authority he rejects, and a person who is subjected to punishment he can himself accept as just and/or fair.

This brings us to the most fundamental remaining difference between republicans and advocates of negative freedom: the relation between freedom and standing. As shown in Section 6.2.3, proponents of a negative understanding of freedom have succeeded in showing that their conception of freedom is able to account for a number of the issues the republicans initially claimed they were unable to deal with. The headway negative freedom theorists have made in this regard has, to some extent, also been acknowledged by their republican adversaries (Skinner 2008; Pettit 2008). Nonetheless, so Pettit and Skinner maintain, fundamental differences between the two notions remain; in particular, so Pettit and Skinner emphasise, the negative understanding of freedom fails to realise that being free is in essence (also) a matter of standing.

To Pettit, the connection between freedom and standing is probably the tightest; some of his arguments can even be taken to suggest that freedom in his view is to be equated to standing (e.g. Pettit 2002).¹⁴ Skinner is somewhat more moderate in his views, but he too accepts the view that status is an integral part of what it means to be free – though in his view, so is a certain amount of negative freedom. Advocates of a fully negative understanding of freedom will most likely not deny that there is an important relation between standing and freedom, just as there are strong connections between freedom and, for instance, justice and equality. Most likely, however, they would point out that freedom and standing remain two very different concepts.

The conceptual debate on the nature of freedom between republicans and their adversaries will undoubtedly continue. On the one hand, it must be granted the ultimate implication of Pettit’s view of imprisonment – the fact that a person who is

¹⁴ According to Pettit, a lack of negative freedom merely ‘conditions’ your enjoyment of your freedom (Pettit 2002, 342).

serving a life sentence does not have his freedom curtailed at all if only he avows it is in his or the common interest – is somewhat counterintuitive. On the other hand, as argued before, one counterintuitive implication does not necessarily rebut a theory, and Pettit certainly seems willing to accept this counterintuitive implication. But even if the advocates of negative freedom were to show that, as far as the notion of freedom is concerned, such implications turn out to be too burdensome in the end, this would not in any way undermine the fact that standing is an important value in its own right, well worth investigating further. The conceptual debate between republicans and their adversaries on the nature of freedom I will therefore set aside, to focus instead on the question of the degree to which Pettit's notion of non-domination is adequate in addressing issues of dignity and standing. Whether it matters to your freedom if you can assent to the restrictions and interferences imposed on you or not, can remain an open question: that such assent is relevant to your dignity and standing should be evident from Parts I and II.

Chapter 7

Non-domination and Dignity

7.1 Introduction

When we switch (or restrict) the focus from freedom to standing, the main issue with domination is no longer primarily what a person who is dominated can or cannot do (or what he has to do in order to be able to do something else), but the mere fact that what he can do is up to someone else. A dominated person is not his own master, which, according to the republican point of view, implies that being dominated is profoundly humiliating in and of itself. That individual dignity and standing is an important part of the republican concern for domination is clearly revealed in Pettit's choice of words: people who are dominated are 'demeaned by their vulnerability' (Pettit 1997, 5), and non-domination is to be furthered because it allows people to 'look the other in the eye' and ensures that 'they do not have to bow and scrape' (Pettit 1997, 87). The historical excerpts Pettit cites often also combine the importance of liberty with a clear concern for dignity, e.g.: 'An exterior Power claims a Right to govern us, and have for a number of Years been levying an illegal tax on us; whereby we are *degraded* from the rank of Free Subjects to the *despicable* condition of Slaves' (cited in Pettit 1997, 34, emphases added).¹ The republican concern with dignity is shown most explicitly, though, in the following citation (Pettit 2002, 351): 'The terrible evil brought about by domination [...] is that it deprives a person of the ability to command attention and respect and so of his or her standing among persons.' In short, domination denies people their dignity.

As these quotations show, according to the republican point of view, a person's dignity and standing are at stake whenever he is vulnerable to (certain kinds of) intrusions by other people. When you are dominated, somebody else can do to you as she wishes, at least with respect to specific areas of your affairs. To be non-dominated, therefore, means that one is able to resist those intrusions into one's affairs that one rejects. What republicans have in mind when they seek to free dominated people from their yoke is a form of empowerment. One should be able to '*command* attention and respect' (idem, emphasis added). In some ways

¹ This passage is part of an instruction voted by the town of Boston in May 1772.

this concern is similar to Feinberg's when he stresses the importance of a concept of rights (Feinberg 1970). Having a concept of rights is vital, so Feinberg claims, because it enables people to demand their due, rather than request it. However, while having a notion of rights may be a necessary condition for being able to stand up for oneself, it certainly is not sufficient. One must also be able to assert what one sees as one's rights if one thinks they are being violated. A dominated person lacks this ability, not because he lacks a notion of his rights but because the power of his dominator acts like a knife to his throat.

In calling for empowerment, the republican case also shows similarities to points made by advocates of positive liberty and autonomy (e.g. Crocker 1980; Dworkin 1988; Rawls 1971/1999; Raz 1986; Taylor 2006). It should be stressed, though, that there are important differences between the republican call for empowerment and the empowerment envisioned in such accounts, because the empowerment non-domination provides is primarily a defensive ability. It enables persons to ward off intrusions into their affairs if they choose to, but it does not necessarily provide them with further abilities they may need to pursue other goals or live the lives they want to live.

According to Goodin, a critic of republicanism, the republican ideal (both in its historic and more modern forms) is 'the sturdy man of honor, relying only on the strength of his own arms' (Goodin 2003, 66, referring to Slote 1993). Formulating the neo-republican ideal so directly in terminology that belongs to the republican thought of centuries ago is probably something of a caricature, but like all good caricatures, it contains an important element of truth. Republicans clearly feel that as an individual you should have the ability to ward off intrusions into your affairs purely on the ground that these are *your* affairs and that *you* do not want these intrusions. This is indeed an important ability. It is hard to conceive of a society taking the rights and status of individuals as moral beings seriously if there are no areas in which the individual alone gets to decide whether someone else may interfere with his activities; and when people do get to interfere with you in ways you regard as objectionable, and you are powerless to do anything about it, this powerlessness does affect your dignity and standing. Having to stand idly by as people bulldoze your rights as you see them is profoundly humiliating.

In this concern for dignity and standing, Pettit's opposition to domination is strikingly similar to what I have argued is the primary reason why coercion is of moral concern. Let me briefly recapitulate the major aspects of the Kantian account of dignity I used in Part II to explain the problematic nature of coercion. According to Kant, we have dignity because as moral agents we have the ability to be autonomous, which is also why we have standing under the moral law. Being autonomous means living in accordance with the (moral) law we give ourselves. Thus, in order to be autonomous, we must regard ourselves as lawgivers in a Commonwealth of Ends. This lawgiving has three discernible aspects: legislating the moral law (determining by our own reason what the content of the moral law is), adjudicating it (determining how it is to be applied to particular cases), and enforcing it (seeing to it that these judgments are put into practice). Pettit is a consequentialist, not a Kantian, but we can maintain the most salient aspects of this account without casting it in explicitly

Kantian terms. As persons and moral beings, we have dignity because we have a notion of our (and others') rights (cf. Feinberg 1970, 252), which tells us how others may treat us and how we may treat them (i.e. what our mutual entitlements are; what we owe each other). When it comes to particular situations we must determine how these rights apply to the case at hand; and when we have determined that, we must ensure that both we and the persons we interact with get no less than what we judge them (and ourselves) to be entitled to. Similar to the Kantian account, things can go awry at each of these three steps. A person can have a warped understanding of his and others' rights, he can err in his judgment of how the rights apply to a particular situation, and he can fail or be unable to impose them.

This is but a rough sketch, but it will suffice for our purposes. Pettit's notion of non-domination focuses mainly on the last of these steps, in which a person imposes his judgment concerning what he is entitled to, and whereby he asserts himself as a person or moral agent of full standing. That he is not dealing with the other aspects, Pettit puts in unmistakable terms: 'Embrace the life of a sect who abase themselves before some self-appointed guru and you will see little in the ideal of freedom as non-domination' Pettit (1997, 97). Obviously, this does not mean that there is no problem from the perspective of dignity when it comes to people who do embrace such a life, and the sarcastic undertone in Pettit's formulation shows he also considers it highly problematic if people do so.² However, this is not the aspect of individual dignity that is at issue when people are dominated. This point is similar to one argued before: though there is a problem with respect to dignity in the case of happy slaves and indoctrinated people, this problem is importantly different from the dignity-related problems of coercion (cf. Sections 3.2, 5.5), and they are equally different from concerns about domination.

What Pettit's concern for domination shares with my concern in cases where people's moral judgments on interference that intimately affects them are overruled or dismissed, is a focus on the importance of persons being able to assert themselves when they are subjected to interference that they reject. Furthermore, both Pettit's and my own account show that their inability (or failure) to do so is to be understood in terms of subjugation and an affront to their personal dignity and standing. Coercion is problematic, so I argued, because it makes it impossible for the person who is coerced to regard himself (and to be regarded by others) as the person who imposes the moral law. Thereby his dignity and standing as a full moral agent are being denied or tarnished. Pettit's concern for people who are in a state of domination is very similar to this. In the following sections I scrutinise Pettit's notion of non-domination and see how well it succeeds in securing the dignity and standing of the individual.

² Pettit does not specify in much detail why republican freedom is not directly concerned with the other aspects of dignity (in fact, he rarely uses the term dignity, focusing as he does on standing); however, it is possible to interpret important parts of his work, especially Pettit (2001b), as arguing that, if non-domination is assured, people will be able to maintain their standing, and then the other aspects of individual dignity will by and large see to themselves (see also Pettit 1997, 97).

7.2 Dignity and Avowed Interests

An important implication drawn from Pettit's formulation of non-domination in terms of interference that must track the avowed or readily avowable interests is, as noted in the last chapter, that it accepts certain interferences (those that do track such interests) as unproblematic. This, as shown, has some troublesome implications when we analyse non-domination in terms of freedom (Section 6.2.4), though Pettit is quite willing to accept these. When we look at non-domination in relation to the individual's dignity, however, these implications are a clear asset. It seems obvious that certain kinds of interference are indeed compatible with a person's dignity, whereas other types are not. Moreover, the insight that this difference is related to personal judgments with respect to these interferences is equally accurate, as is clearly exemplified by the incompatibility of dignity with paternalism (cf. Section 5.3.2).

What remains to be seen, though, is whether the distinction between those types of interference that are not problematic with respect to dignity and standing and those that are is adequately captured by the formulation of non-domination in terms of avowed or readily avowable interests. The notion of avowed or readily avowable interests emphasises that there is no problem with people being able to interfere with you as long as they can only do so in ways that serve what you fully acknowledge as your interests. Though people typically care a great deal about (what they see as) their interests, however, the following examples show that this is not sufficient to make interference unproblematic with respect to the dignity of the person interfered with.

Suppose I am a smoker. Suppose furthermore, that even though I regularly indulge in this habit I do not deny the harmful effects this has on my health, so I avow – or would readily avow if so asked – that smoking is indeed bad for me and harmful to my interests. Although I perhaps have come to accept the shameful fact of being an addict, I do not in any way value smoking, other than that it gives me some momentary pleasure. I do not consider being a smoker a constitutive part of my identity, or anything of the like; nor do I see struggling with the addiction as a worthwhile, character building exercise – in fact, I do not struggle with my habit at all. I am reasonable enough to agree that it would be better for me that I do not smoke, yet I do smoke. In short, like most smokers, I am knowingly harming my own avowed or readily avowable interests.

According to Pettit's formulation of non-domination, this avowal would provide someone else with sufficient legitimation to interfere with my smoking, as well as that of all other smokers who share the same attitude to their habit – at least as long as the way by which she interferes with my smoking is not more harmful to my interests than my smoking is. Yet I somehow suspect that if you were to go out on the street armed with a fully loaded water pistol looking for people who are about to light up and prevent them from harming their readily avowable interests, you would encounter a considerable amount of righteous indignation.³ Moreover,

³ For the sake of argument we may also assume you are a perfect shot, so that their interests are in no other ways affected by your interference other than that they are unable to light up.

this indignation is not (or need not be) based on the fact that their interests are harmed, but simply on the fact that they feel you have no right to interfere with them in that manner and that, when you do so, you are grossly offending them. When pressed, they may even agree that your interference *is* in their best interests, while nevertheless maintaining their rejection of your interference.⁴ In this way, it therefore seems that the definition of non-domination as it stands is insufficient to safeguard a person's dignity because arguably it would allow for this kind of interference. After all, you may quite plausibly argue that your squirting interference is tracking their avowed and certainly their readily avowable interests, as they have avowed that smoking is harming their interests and all you have done is prevent this harm from occurring.⁵ However, the fact that something is in someone's interests, even in his interests as he sees them is not always sufficient to make it acceptable.

One possible explanation of the smokers' indignation is the fact that they have not given their consent to the interference they are subjected to, so perhaps we should interpret the individual's avowal of his interests as a form of consent. Pettit, however, stresses (for valid enough reasons) that non-domination should not be seen as a notion based on implicit or explicit consent (Pettit 1997, 61–63). If a person is in a state of dependency, his explicit consent is often easily obtained because of his fear of what will happen if he withholds it, so requiring explicit consent does little to diminish his vulnerability. Relying instead on a notion of implicit consent, as for instance many populist views on society do, would offer the individual even less protection, as exemplified by the dangers of unrestricted majoritarian rule. Nonetheless, some level of assent is needed for interference to be non-offensive to the dignity and standing of the person who is subjected to it, and this is not sufficiently guaranteed by the notion of non-domination formulated in terms of interests (avowed or otherwise). Therefore, a reformulation of the notion of non-domination is called for, and the remainder of this section seeks to determine how best to do this.

As noted before, Pettit did not always formulate non-domination in terms of avowed or readily avowable interests. In his earlier works (e.g. Pettit 1997) he formulated non-domination in terms of interference that does not track your 'interests

⁴ It is important to stress that the crucial point of this example is that even those smokers who agree that your interference is tracking their avowed or readily avowable interests can legitimately take offence because of your interference. Of course there will be smokers who will avow that being allowed to smoke is in their true interests (for instance because they consider smoking a sufficiently worthwhile activity in itself, well worth reducing their expected lifespan for, or because they regard it as a character building exercise to struggle with their addiction themselves) and thus reject the interference on those grounds, but that is beside the point here.

⁵ The example of the water pistol toting interferer is deliberately extreme to highlight the problems associated with Pettit's referral to a person's 'avowed or readily avowable' interests, which suggests that only the ultimate effect the interference has on these interests is what counts, whereas other aspects, such as the way this effect is brought about, may be just as relevant (see p. 124). A similar argument could be based on less colourful examples, such as smokers' indignation over smoking bans in public places, but such examples often provide less clear illustrations of the same point, because other issues may come into play as well; smoking bans can, and often are, also defended because of the harm to others that results from secondary smoking, for instance.

and ideas' (my emphasis). Whether this is intended as a substantial difference or not is unclear, but either way it does raise the question of what we are to make of this 'and ideas' part in his earlier formulation. One possibility is that the later formulation uses a broader notion of interests, in which a person's ideas are regarded as part of his interests. This, however, makes the notion of a person's interests, which is a somewhat obscure concept anyway, very ambiguous (see e.g. footnote 8 below).⁶ The other possibility is that Pettit no longer deems a person's ideas as especially relevant, having added the phrase 'avowed or readily avowable' to prevent (certain types of) paternalistic interference. This interpretation would accord well with Pettit's commitment to consequentialism, but as the smoking example shows, such a narrow interpretation of interests cannot rule out certain, grossly offensive kinds of interferences.

A reason why such interferences may still cause affront is that they take from a person the option of acting against his own (avowed) interests. From a consequentialist perspective this may not seem very problematic, for why would someone want to act against his own interests? Yet one may very well hold dear to such an option. It may be argued, for example, that if you interfere in line with my interests, you still deny me the choice to do as I see fit. It may be that I then – due to your interference – do what I think I should have chosen to do anyway, but in an important way the choice is no longer mine. Your interference has robbed me of this choice, and this choice itself may be important to me. I may, for example, greatly value the freedom to smoke independently of having any desire to smoke.⁷ This argument is intuitively most plausible if I would indeed have chosen the action you now force me to take, but it holds even if I know I would have chosen the option you took from me. I may hold such a choice dear even if it leads me astray. This is not because the choice necessarily enables me to pursue my interests better (clearly, if I know I shall make the wrong choice it does not), but simply because I regard the choice as mine to make (as I think is the case for most smokers who object to being prevented from smoking: their objections have far less to do with their interests than with what they see as their right – even if it is a right to harm themselves).⁸ This argument that focuses on the choices a person regards as his to make is less easily accommodated in a consequentialist setting where the focus is on a person's interests, but it fits very well in a framework that emphasises the standing and dignity of a person as

⁶ It also raises the question, when focusing on those interests that would formerly be covered by the term 'ideas', of what would constitute 'avowed or readily avowable ideas'.

⁷ See e.g. Carter on the intrinsic and constitutive value of freedom vs. its instrumental value (Carter 1999, 41–60).

⁸ Of course, one could argue that in such cases one's true avowed interests are the ability to choose whether or not to smoke, and not 'not smoking'. Even if this is so, however, one still has to grant that the term 'interests' is needlessly ambiguous and confusing, and that reference to a person's ideas would be more appropriate and more specific. Moreover, it should be noted that identifying a person's true avowed interests with having choice as such comes very close to a straightforward appeal for negative, liberal freedom; as republicans are adamant that they are not arguing for pure negative liberty, it seems unlikely that this interpretation is to be favoured.

a (moral) agent whose very status grounds a number of entitlements or rights (see also the discussion of external freedom in [Sections 4.3](#) and [5.4.2.1](#)).

If we are to focus on a person's dignity and standing, then a person's ideas concerning which choices are his to make are at least as important as his interests. In fact, it is even possible for interference to go utterly against a person's avowed interests and still not cause affront. As argued in [Section 4.3](#), there are situations where persons can be willing to accept that their own (avowed) interests are made subservient to other considerations. Suppose, for instance, that on some faraway island an imminent natural disaster threatens the lives of the local population. Suppose furthermore that you neither have, nor ever will have any dealings with these people. Suppose that your government decides to help these islanders, but that in order to fund the rescue effort they have to levy a substantial extra tax. This extra tax prevents you from engaging in certain activities dear and important to you. In such a case it is quite plausible that you will regard this tax as going against your avowed interests, and it obviously interferes with you, but you may still feel this interference does not cause affront to your person. You may feel, for instance, that the government's rescue efforts legitimise this harm to your interests, so that you assent to this government intrusion in your financial affairs to the degree that there is no affront. Of course it may also be the case that you regard such government intrusion as a grossly illegitimate act of government interference if your beliefs are that governments have no standing to enforce such activities – for instance because you feel this should be left to voluntary contributions. This again reinforces the point, however: it is your ideas and moral judgment about the interference, and not your interests, that determine whether an instance of interference can cause affront to you.

One could of course argue that the term interests should be stretched so far that whatever I claim to be entitled to thereby become my avowed interests, which would mean Pettit's definition would suffice in its present form. If this is how the formulation is to be understood, however, then the referral to interests is obsolete and confusing. In such an interpretation, the avowal 'creates' the interests, and it is purely the person's ideas about what he regards himself as entitled to that really need to be tracked. If this is the correct interpretation, then the referral to interests mistakenly suggests that what needs to be tracked must be both in the person's (more or less objective) interests and be acknowledged by the person as such, for all that really needs to be tracked is a person's views of the acceptability of the interference to which he is subjected, independently of whether it tracks any of his real interests (for a similar point, see Friedman (2008, 262) who argues that issues of domination should be separated from issues of harm).

Of course I do not seek to claim that one's interests and one's ideas are completely independent. Quite often one's interests will shape one's ideas, and one's ideas may in turn influence what one regards as one's interests. The arguments above do show, however, that when it comes to the particular aspect of dignity and standing with which non-domination is concerned – that of asserting yourself as a full moral being – what those who are in a position to interfere with you should be forced to track first and foremost are your beliefs and ideas, rather than your interests. If the two coincide, so much the better, but when they diverge, your ideas and beliefs should take precedence.

To refer to one's ideas about the interference has the added advantage that the manner in which the interference came about can be accommodated, too. To refer to interests suggests, in true consequentialist style, that all that matters if we are to judge the possible dominating nature of an instance of interference, is the ultimate effect of the interference. But your personal dignity and standing may be affected by other aspects, too, such as the way the interference is implemented, as well as by the identity of the interferer. Someone with whom you have a close personal relationship, for instance, or those whom you regard as legitimate authorities on the issue at hand may interfere with your affairs in certain ways without causing affront, whereas there would be great affront if some random stranger acted that way (cf. [Section 3.2](#)). If we take a person's ideas on the interference as the guiding principle, rather than the notion of his interests, it is immediately clear that we can take this into account.

What this shows is that, when it comes to the dignity of the person concerned, Pettit's earlier formulation, which explicitly held that a person's ideas should (also) be tracked, is more conducive than his later formulation in terms of avowed or readily avowable interests. However, even in that earlier formulation the referral to interests is obsolete and confusing. A person's interests can be relevant to domination, but they are so only indirectly, namely if they are recognised by the person who is interfered with as affecting the (moral) acceptability of the interference. In this sense they must be 'avowed' to be relevant, as in Pettit's later formulation. Sometimes, however, a person's interests are totally irrelevant when it comes to domination. Some interferences that do not track the person's interests at all may be acceptable, and some that do may still be problematic. As far as the dignity and standing of the person is concerned, a referral to a person's beliefs or ideas with respect to the acceptability of the interference suffices.

As these ideas or beliefs describe what a person deems himself entitled to in terms of the way he is to be treated by others because of his status, they are moral beliefs.⁹ This makes it possible to reformulate the notion of non-domination in a way that makes it more suitable to ensure the dignity and standing of the person (or at least the aspect of his dignity and standing we are dealing with here): a person B is dominated by person A whenever A has the power to interfere with B independently of B's moral beliefs on this interference; or, to stay closer to Pettit's original formulation, when A has the power to interfere with B without (this interference) having to track B's moral beliefs. This brings the concept of domination very close to the notion of coercion as I defined it in [Section 3.1](#). If A dominates B, then B is

⁹ The moral beliefs in question are only those that determine how the person thinks he may and may not be treated by others. Of course, a person usually holds other moral beliefs as well, for instance with respect to how third persons ought to be treated, but (as was the case with coercion (cf. [Section 3.2](#))) those are irrelevant to the issue of domination. The aspect of dignity with which republicans are concerned when it comes to domination is in a way highly personal: it is between you and your dominator.

defenceless against interference by A that he deems wrongful to his person. Hence, when you are dominated, someone else holds coercive power over you.¹⁰

7.3 Immunity vs. Impunity

In the previous section I have argued that the arbitrariness of the interference non-domination focuses on is, as far as it relates to individual dignity, better formulated in terms of (moral) ideas, rather than avowed or readily avowable interests. What still needs to be discussed, however, if we want to safeguard the dignity and standing of individuals by making sure they are not dominated, is how we are to understand (not) having a power to interfere in such a manner. This is an important issue, as the last section addressed the question of which kind of intrusions can cause affront to dignity, but the republican position emphasises that it is the vulnerability to such intrusions that is problematic, not just their actualisation.¹¹ What we still need to ascertain, therefore, is just what kind of vulnerability we are talking about when we say that person B is vulnerable to interference that need not track his moral beliefs, and why this kind of vulnerability is in itself sufficient to tarnish the dignity of the person who is so dominated. When we say that A dominates B because she has the power to interfere without being forced to track B's moral beliefs (or, for that matter, not forced to track his avowed or readily avowable interests, in Pettit's formulation), what exactly is meant by this notion of 'being forced'?

There are at least two ways we can take this notion, both of which can be supported by excerpts from republican writings. The first interpretation focuses on the fact that domination is first and foremost a power relation, so any problems resulting from it can be resolved by removing the dominator's ability to interfere. If understood in this way, it is the mere fact that someone else could, if she were to form a determined will to do so, interfere with you in ways you deem wrongful that constitutes a demeaning vulnerability on your part (see e.g., Pettit 1997, 22, 31–33; 2002, 342; Skinner 1998, 71). This, however, seems far too extreme an implication. There is little demeaning, for instance, about the fact that the group of friendly youths outside my office building could, if they were truly determined to do so, decide to stop me from leaving the building. Obviously, making all such possible interferences truly impossible, even if people form determined wills to perform them, would

¹⁰ Here I do use 'coercive' in the meaning of 'not necessarily successful' (see footnote 15, p. 19). One reason why we cannot straightforwardly equate A dominating B with A having the power to coerce B, is the fact that B could always still refuse to comply despite his vulnerability; though B has no adequate way to defend himself against her intrusions, strictly speaking, A often cannot guarantee that B will do X. As the discussion of the ills of domination (p. 111–112) shows, however, such a refusal will typically lead to dire consequences for B, many of which will in turn involve (physical) coercion by A.

¹¹ As I take it, this should not be taken to mean that *only* the vulnerability is problematic, while the occurrence itself is not. Rather, I take it to mean that this vulnerability is in itself sufficient to tarnish the dignity of the dominated person, even when there is no actual interference of that kind.

require draconian measures that would restrict social interaction beyond all viable limits, since social life is full of such possibilities (cf. Friedman 2008). If what non-domination requires is the true removal of all such possibilities of interference, then non-domination would indeed qualify as a conception of freedom, but this is the freedom of the paranoid: anyone who could possibly be out to get you – and to the truly paranoid that means everyone – must have their ability to interfere with you removed. The only way to achieve this would be to physically restrain everybody so they cannot interact with each other at all. Only thus would the possibility that someone could interfere with you in a way that does not track your moral beliefs be absolutely ruled out.

This is therefore not, I take it, how we should interpret the notion of non-domination, and there are clear indications in republican texts that what they have in mind is indeed something less radical. What makes being at the mercy of someone else's will problematic is not so much the fact that, should she truly decide to interfere with you she would succeed, but that she would be able to do so with impunity (see e.g. Pettit 1996, 578; 1997, 58, 93; 2001b, 78; Skinner 1998, 72; 2006, 412; 2008, 84, 90). What is needed (and sufficient) to ensure that you are not dominated, therefore, is that if someone were to transgress against you (interfere in ways you deem wrongful to your person), she would be punished for it. Interpreting non-domination in this fashion shows there are indeed two different notions of arbitrariness at issue: the interference you must not be vulnerable to is arbitrary interference (interference that does not track your moral beliefs, i.e. interference you deem wrongful to your person); and the power nobody may have over you is to be non-arbitrary in the sense that it must be impossible for them to interfere in that way with impunity.

This allows us to further specify the notion of non-domination: person A dominates person B when A can with impunity interfere with B in ways B deems wrongful to his person. What makes this vulnerability problematic with respect to the dignity of B can again be shown from the Kantian analysis of a moral lawgiver in Section 5.4.¹² To regard oneself as a lawgiver in a Commonwealth of Ends is to regard oneself as the person who imposes the moral law. To know you are dominated, however, is to know that if the person who dominates you were to treat you in a way you deem wrongful to your person, you would be unable to do anything about it, and moreover that she would also not be liable to punishment for doing it. What the vulnerability a dominated person (B) is exposed to thus tells him (as well as everybody else) is that he is no such lawgiver in a Commonwealth of Ends in which A is also a member, because he knows he is unable to impose the moral law. That A gets to treat him in such ways *with impunity* is important in this regard for – as I argued in Section 5.4.2.2 – the notion of a Commonwealth of Ends encompasses

¹² In line with the rest of this book I use the Kantian account of the dignity of the moral agent as a possible lawgiver in a Commonwealth of Ends here to illustrate the point; a similar argument can also be made by using the non-Kantian outline of the three aspects of individual dignity presented in Section 7.1. In order to do so, however, that account would have to be expanded to include the views of the person interfered with as to what response that is called for if others do transgress against him.

a system of (moral) laws that are punitively enforced. Hence, when A treats B (as B sees it) wrongly, this is a challenge to B's dignity (because it challenges his status as a moral lawgiver), and is therefore already a personal insult, but it does not yet make it impossible for B to regard himself as a moral lawgiver as long as he can rely on the punishment prescribed by the moral laws of the Commonwealth of Ends being brought to bear on A. However, as domination implies impunity, B knows this is also not the case. Hence, it is A's impunity that deprives B of the last possibility to see himself as a (fellow) legislator in the Commonwealth of Ends. Even if his dominator were to treat B in ways he regards as morally acceptable (in which case he has no cause to blame A for any particular injury), the fact that this is solely a matter of A's (moral) indulgence is sufficient to make it impossible for B to see himself as the person who imposes the moral law. As the ability to regard ourselves as the imposer of the moral law is why we are endowed with dignity in the first place, such vulnerability is a significant diminishment indeed.

7.4 Implications I

In this chapter I argued that the republican notion of non-domination is highly suited to address concerns that pertain to a particular aspect of a person's dignity – provided it is suitably reformulated to resolve a number of ambiguities. By going back to the Kantian analysis of Part II, which showed the importance of a person's moral beliefs with respect to interference he is subjected to, we can provide an alternative ground for the republican claim that the mere vulnerability to interference one rejects is in itself highly problematic, even in the absence of actual interference. Independently of any relation there may be between domination and a person's freedom, domination undermines a person's dignity and standing. In these last two sections I explore a number of the implications the Kantian reconstruction of the republican ideal of non-domination has for political theory. In Section 7.4.1 I show that the Kantian reconstruction supports a number of well-known republican tenets. Section 7.4.2 returns to the problem posed by persons who hold deficient moral beliefs and 7.4.3 explores the material implications of non-domination. Though not all implications discussed in this section coincide completely with Pettit's positions, the differences are mostly minor. In Section 7.5, however, I discuss an implication that directly contradicts Pettit's own expressed views, as I argue that non-domination commits us to taking a largely retributivist stance on penal justice.

7.4.1 *Discursive Means and Contestability*

By emphasising non-domination, republicans seek to empower individual citizens by enabling them to respond to and/or ward off intrusions into their affairs that they reject. As argued in Section 7.3, an important aspect of this is that they know that any person who interferes with them in such ways is liable to punishment (the

implications of this particular point are discussed in Section 7.5). Having a person dragged before a punitive court, however, is to be seen largely as a last resort.¹³ It is vital to the dignity of the individual to know he has this last resort at his disposal, but in by far the majority of cases of disputed interference, the disagreement should be resolved by other means. Especially when it concerns minor intrusions (or, for instance, the kinds of affront discussed in Section 5.4.5, which cannot be addressed through legal enforcement), one should have less severe measures at one's disposal as well.¹⁴ This section discusses two such less invasive means of reducing domination advocated by Pettit: discourse and contestation.

One way of responding to an undesired act of interference is so obvious it is easily overlooked: confront the interferer, explain that her interference is in violation of your moral entitlements, and politely demand that she cease her interference (see e.g. Duff and Marshall 2006, 68). Here, the formulation of non-domination in terms of moral beliefs and personal moral judgments has a clear advantage over the formulation in terms of avowed or readily avowable interests as it can explain how this approach may be effective. One possibility is that by explaining your position you may succeed in convincing the other party of your point of view and thus get the interference lifted, which will solve the problem. This, however, is not the only way in which the affront caused by such interferences can be avoided or alleviated (cf. Husak 2006). After having confronted the interfering party with your grievances it may also happen that she offers a reply to your objections that changes your judgment on the morality of the interference. In a fair discussion or discourse, both parties must have the ability to convince the other (Crocker 1980, 79), and if you are shown the moral acceptability of the interfering action, you may cease to see it as a morally wrongful way of treating you. This possibility to reduce affront is much more easily accommodated in a context of domination explicated in terms of moral ideas than avowed or readily avowable interests, as such communicative practices can directly affect a person's moral judgments, but will very often leave one's avowed interests unaffected. It would be a tall order to ask a person to convince you that her interference is tracking your interests – and if you were to demand such a legitimization of the interference in terms of your avowed interests, you will probably (and often rightly) be much more likely to be sent on your way with the

¹³ Or perhaps the penultimate resort; there always remains an option to take the law into one's own hands.

¹⁴ Using Goodin's militaristic caricature, we can draw an analogy to a country whose only defensive capability is a nuclear response. Such a country would still be highly vulnerable to minor incursions on its territory, as these do not call for such a response – nor are the costs of starting a nuclear war acceptable in light of such minor incursions (for a comical but most illuminating illustration of this point, see the *The Grand Design* episode of the famous BBC-series *Yes, Prime Minister* on 'salami tactics'). Similarly, non-domination requires a more extensive arsenal than just the last resort of punitive justice, otherwise the person's dignity remains vulnerable to slow erosion through minor intrusions (*de minimis non curat lex*).

sardonic reply that though it may not be in agreement with your interests, it certainly is conducive to hers.¹⁵

Confronting a person whom you think is interfering with you in a wrongful manner can thus reduce affront, either because it may lead to the cessation of the interference, or because you may receive an acceptable explanation, but there is of course no guarantee that this will be the case. Even after your confronting your interferer, she may remain unwilling to accommodate your objections, nor will it always be possible for her to convince you of her point of view. Before discussing a somewhat more forceful measure designed to minimise people's vulnerability to such intrusions, however, it must be mentioned that presenting direct confrontation as a means of alleviating affront already presupposes a substantial degree of non-domination. If you are not dominated, you can afford to stand up for yourself, because you know there is no other area of your affairs in which she can retaliate for having had the audacity to confront her. Pettit calls this having 'discursive control' (Pettit 2001b). Non-domination is self-enforcing in this regard; if you are non-dominated you have discursive control and this allows you to stand up for yourself and thereby you may succeed in having intrusions you reject addressed to your satisfaction.

When individuals are unable on their own to resolve their differences concerning the acceptability of an act committed by one person that interferes with the pursuits of another, Pettit offers another remedy through his notion of contestability (see e.g. Pettit 1997, 183–198). Pettit advocates the creation of procedures and institutions that will enable people to contest acts of intrusion into their affairs. Though his discussion of contestability focuses mainly on cases where a citizen wants to contest an intrusion into his affairs by the government, there is no reason to exclude similar procedures for dealing with conflicts of this kind between citizens. The criminal court is an essential element of this framework, as is the civil court, but other, more deliberative institutions of arbitration and mediation are included as well. For ease of reference I shall refer to these latter institutions as arbitral courts, even though not all of these institutions designed to improve contestability and discursive control may resemble courts in equal degree. The primary goal of such arbitral institutions is not to seek to punish the perpetrator, but to find a way of resolving the dispute equitably. If you are unsuccessful in getting a person to cease interfering in your affairs in ways you deem inappropriate, you could go to such a court with your grievances and state your case. There are two main ways in which such arbitral institutions can function to reduce domination. First of all, there is the hope that this court's mediation will allow the two contending parties to come closer together and thereby manage to resolve their conflict in a way acceptable to both. If this proves

¹⁵ Under the avowed interests formulation of non-domination, such cases where the avowed interests of two persons conflict could only be resolved if one of the two persons involved were to avow the interests of the other person as being his own. Though this is sometimes possible, it will often have to presuppose an uncalled-for and inappropriate identification with the other person. One may very well do something for others or respect their entitlements without having to identify with them in any way (cf. Section 4.2).

impossible, however, such a court of arbitration can hand down its own ruling. This does not ensure that both parties will be sufficiently satisfied, but Pettit claims that the fact that they have had a fair hearing will often in itself already reduce the affront (Pettit 1997, 198–199). People will often find it much easier to reconcile themselves with such a ruling, even if it goes against them, than to accept a refusal from a particular person to abide by their objections.

The creation of such arbitral courts is an imaginative way to try and reduce domination, but it must also be said that the possibility that such courts will be effective in this regard depends to a large degree on their being recognised as fair and authoritative by the individual persons involved in the conflict. This implies that court officials have to be regarded as incorruptible and impartial, but it also makes demands on the fundamental premises on which the court makes its ruling, as well as its procedures. If you know beforehand that such a court does not share your basic notions of fairness and legitimacy, there is little point in going there to contest an instance of interference. If you are a radical feminist who deems that she has been subjected to inappropriate interference, for instance, but you know the court's sense of justice and its procedures are based on a fundamentalist interpretation of religious law, you will have little incentive to go there; even if you do, a ruling that goes against you will not do much to reduce the affront (in fact, it is likely to exacerbate it).

This problem shows that, though contestability and discourse are important tools to reduce domination, they have their limitations. Their ability to reduce affront depends greatly on congruence in the basic ideas of fairness and justice in a society. This point is in some ways similar to communitarian appeals to let minority communities, for instance, administer their own justice. There is, however, a great difference between the communitarian argument to this effect and the republican concern for this problem, because in the republican account this problem arises out of explicit concern for the individual and is not based on any rights or interests of the community. As a result, the republican call for non-domination is much less susceptible to the charge that it is bound to lead to the crushing of the individual by the community and its interests. Nonetheless, the limits of contestability and discourse as domination reducing tools do show that non-domination is more easily realised in societies that are more homogeneous with respect to the fundamental moral beliefs of its citizens.¹⁶

¹⁶ Interestingly enough, this is a point where Pettit and Kant's views seem to come together. In *Toward Perpetual Peace*, Kant argues that people who have fundamentally different beliefs and customs would do better to form separate (mutually respectful) societies rather than attempt to form a single state because of people's need to recognise themselves and their most basic beliefs in the way they are treated by the state (as Kant held that the most fundamental moral beliefs of all persons must ultimately be the same, however, he makes this point primarily in terms of language and religion; see *PP* 8:367, fn.). Pettit makes a very similar point in terms of persons who cannot accept the judgements of (arbitral) courts because they reject their procedures or the interests those courts are designed to track. The ultimate implication of this, according to Pettit, is, at least in principle, that such a group should be allowed to secede. He adds, however, that this will often not be a viable option (Pettit 1997, 199–200).

7.4.2 *Abject Moral Beliefs*

By focusing on the moral beliefs of the person who is vulnerable to interference by others, the notion of non-domination (at least as I reformulated it) is open to a similar criticism to the one against coercion as discussed in the previous parts of this book. When people hold moral beliefs that are reprehensible or repugnant, so this objection runs, the empowerment that non-domination gives them will only serve to enable them to engage in behaviour that is most objectionable. Furthermore, when their moral beliefs are hostile to other persons, as in the case of racists, for instance, it is not possible to distinguish between enabling them to make sure they are treated as they think they are entitled to and enabling them to subjugate others. Thus, the ideal of non-domination is in danger of implying that we should be overly considerate to the misplaced and abject complaints of such bigots. Obviously, this would be an unacceptable implication.

To this objection a number of comments must be made, however. First of all, I do not consider it problematic to say that a racist or bigot is being humiliated if she is forced to treat those whom she regards as inferior to herself as equals. In fact, many who take satisfaction in the anger of such bigots when those they claim to be superior to are, for instance, elected to higher office, are only too aware that these bigots are thereby truly humiliated. There undoubtedly is some poetic justice in this, but this poetic justice only underscores the fact that there is real humiliation in the situation of such a bigot. Second, as was the case with coercion, the fact that this humiliation can be fully justified does not make it wholly unproblematic from a moral point of view. It would, for instance, still be preferable if the bigot could be brought to see the error of her ways (and, poetic justice notwithstanding, there certainly is something morally problematic about taking pleasure in the humiliation of others). Third, and probably most importantly, non-domination is not a political ideal that is presented as something that is ever likely to be fully realised, but as an ideal that should be furthered as much as possible. What republicans call for is not the total absence, but the minimisation of domination. In a perfect world there would perhaps be no domination at all, but we do not live in such a world, so minimisation of domination is all we can require.¹⁷ In such an imperfect world it is unfortunately impossible to fully satisfy all the demands of dignity (as stressed before, the demands that follow from the dignity of one person may prove incompatible with those that follow from the dignity of another), and it is quite likely true that one cannot always avoid that empowering one person means she will misuse the abilities this provides to transgress against others.¹⁸ Nonetheless, the fact that the ability to ward off intrusions that cause affront can be misused by those who hold flawed beliefs with respect to what they are entitled to, in no way disqualifies it as an

¹⁷ Furthermore, as non-domination addresses only one aspect of a person's dignity, it is not inconceivable that the ideal of non-domination must at times be weighed against concerns that affect other aspects of dignity.

¹⁸ This problem is very similar to Goodin's criticism that republicanism is prone to the (often violent) problems associated with shame and honour societies (Goodin 2003, 63–66).

important ability for those who do not. How best to deal with sincere racists, sexists and other bigots is a practical question that cannot be dealt with here, but it is certainly not the case that the notion of non-domination as I reformulated it implies we should be overly accommodating to those who adhere to such questionable beliefs. What it does entail, is that it must be acknowledged as a genuine problem. One does not forfeit one's entitlement to be taken account of by being wrong; not even by being very, very wrong.

7.4.3 Non-domination, Authority and Equality

My reformulation of non-domination in terms of the moral beliefs of persons implies that non-domination is in principle compatible with almost any kind of societal structure, provided it is in congruence with the moral beliefs of the persons who live in it. The interference of authorities that are accepted by the persons over which they hold this authority will not cause affront, as long as it stays within the boundaries of the authority (as judged by the persons who are subjected to it). This is an important implication because, as well as providing some essential insights into the relation between authority and dignity, it allows us to explain the somewhat eye-catching fact that many modern day republicans, among them Pettit himself, are declared egalitarians (Pettit 1997), whereas many of their historical predecessors (and I expect some contemporaries as well) were anything but.

Exactly what level of hierarchical structure in society one should be willing to accept is a complicated question. Certainly, if you are willing to accept too much discretionary power, your dignity is at stake for other reasons than domination.¹⁹ Absolutism of a Hobbesian kind that literally holds the sovereign can do no wrong, most probably also falls within this domain. At the same time, however, to accept no authorities at all (the anarchist's position) is equally problematic. To claim that dignity requires this kind of radical independence is to overlook or deny the fact that moral agents are by their very nature political creatures. The range between these extremes, however, is vast. Most importantly, however, this is not a matter of non-domination itself, but a matter of determining within which context non-domination is a matter of prime concern. Many who advocated the ideas from which Pettit developed the concept of non-domination certainly did not seek to establish what is nowadays called a republic (see e.g. Skinner 2008, 84), and a constitutional monarchy is probably in many situations also quite compatible with the demands of dignity and standing, as may some other constitutional forms.²⁰

So far, I have primarily discussed the formal structure of society, but it is interesting to spend a few moments to see if any implications can be derived from the

¹⁹ In such cases, your dignity and standing is not at issue because you fail to or are unable to assert yourself as a person capable of enforcing the moral law, but because something must have gone wrong in determining what the moral law entails, what your rights are. It is the first (and possibly the second) fundamental aspect of dignity and standing discussed in Section 7.1 that lies at the heart of such problems, not the third, which is the one non-domination addresses.

²⁰ Provided, of course, the persons who live in it also see it that way.

ideal of non-domination concerning the material distribution of wealth in a society as well. If the persons who make up a society are all of the sectarian kind described derisively by Pettit in his guru comment (see p. 119), then probably non-domination will have no material implications at all, as it is a redundant notion in that case. However, as soon as people do value the ability to resist intrusions into their affairs, it seems that some material implications can be derived from the notion of non-domination. A poor person, for instance, is often unable to stand up for himself against the persons on whom he depends for his meagre income, even if the law formally grants him full equality. Though the ideal of non-domination does not demand total independence of the anarchist type, it does require that a person should not depend excessively on any particular person. Thus, some level of basic welfare seems defensible on grounds of non-domination, so that a person can afford to stand up for himself when he deems someone is treating him wrongly (see also Pettit 1997, 113–119; 2007).²¹

7.5 Implications II: Retributive Justice

7.5.1 *Impunity and Retribution*

In Section 7.3 I argued that non-domination should be understood in terms of impunity rather than immunity. Dignity does not require that a person cannot interfere with you in ways you deem wrongful to your person in a physical sense, but it is required that she cannot do so with impunity. This makes non-domination a much more workable ideal than it would be under the immunity interpretation, because punishing those who transgress against others requires far less invasive measures than making sure no-one can transgress at all. At the same time, however, focusing on impunity rather than immunity has important implications, especially for the function of the criminal justice system and the role of penal law. To be able to do something with impunity is to be able to do something without being punished for doing it. To ensure that someone cannot do something with impunity one would either have to make sure she cannot do it (incapacitation), which, as argued in Section 7.3 is unfeasible as a general approach,²² or ensure that if she does transgress, she will subsequently be punished for it. Punishment can only follow a crime that has been committed, however, and this *ex post* nature of punishment has

²¹ Material egalitarianism that goes beyond such a basic level of welfare does not seem to be directly required by the aspect of individual dignity with which non-domination is concerned, though.

²² Braithwaite and Pettit are very critical of preventionist views on punishment which seek to incapacitate or deter possible offenders (e.g. Braithwaite and Pettit 1990, 46, 79, 124–132). That deterrence is not the primary focus of a republican view of punishment is also supported by Pettit's explicit rejection of the suggestion that non-domination seeks to reduce the probability of interference (e.g. Pettit 2008, 122–124). If actual interference is also reduced, that is merely a pleasant side effect; what matters for non-domination is that no-one is able to interfere arbitrarily.

an important, often overlooked and possibly at first sight counterintuitive implication about when an interfering act constitutes an act of domination. In an important way, the notion of non-domination thus conceived allows us to determine the past.²³ As an interfering act is only an instance of domination if it is done with impunity (which for acts already committed equates to their remaining unpunished), we get to decide at a time $t+\epsilon$ whether a transgression against a person committed at time t is to be an act of domination by deciding whether or not to punish the perpetrator. If we fail to punish her, then she interfered with impunity, which makes her act one of domination, whereas if we do punish her, then clearly she did not do it with impunity.

It is also worth noting that the prevention of impunity is not just a formal matter. The rule of law is an integral part of the way republicans seek to reduce domination (Braithwaite and Pettit 1990; Pettit 1997). If a state were to declare certain intrusions into the affairs of others illegal but subsequently fail to enforce these laws, this will do little to reduce the demeaning vulnerability of the dominated person – in fact, the lack of commitment to the dignity of the individual expressed by such a callous attitude on the part of the state will often worsen the affront caused by such intrusions (cf. Roberts 2006, 44). Hence, under the impunity interpretation of non-domination it is vital that society shows itself willing and able to apprehend and punish the perpetrators of crimes if those who have been the victim of such intrusions so demand.

7.5.2 *Republican Sentencing Policy*

This basic fact – that preventing impunity implies those who do transgress must be punished and hence that the need for punishment follows directly from the dignity of a victim of wrongful intrusions – has a striking further implication, for it shows that (and explains why) retributive punishment is to be considered a vital part of the republican account of criminal sentencing policy. This implication is especially salient because it directly contradicts Pettit's own expressed views on criminal punishment (Braithwaite and Pettit 1990; Pettit 1997). Braithwaite and Pettit explicitly reject the penal principle that all those found guilty of a crime should be punished in accordance with the severity of the crime. This principle is known as the retributivist principle or the principle of just deserts. One of the most salient features of this principle is that there is both a minimum and a maximum level of punishment to which those who committed a crime are to be subjected. What these minimum and maximum levels are depends on the severity of the crime committed. Braithwaite and Pettit are willing to accept the retributivist point as far as it concerns the upper bound to the level of punishment (a person should not be punished in excess of what her crime warrants), but claim that the position that she may not be punished any less than her crime warrants lacks all grounds, and that the notion of just deserts is

²³ For more on the possibility to change the nature of past acts, see Peijnenburg (2007).

therefore inherently flawed. The argument above, however, shows that the republican notion of non-domination can itself be used to provide the retributivist position with the underpinning Pettit and Braithwaite say it lacks.²⁴ Crimes as such are not yet evidence of domination; only unpunished ones are.^{25, 26}

This argument in favour of the retributivist principle for criminal punishment differs in an important way from the notions of retributivism discussed and rejected by Braithwaite and Pettit, as its emphasis is much more on the dignity of the victim. In the retributivist account to which Pettit and Braithwaite are most sympathetic, that of Jean Hampton (Murphy and Hampton 1988), the perpetrator's crime is viewed as an assertion of superiority over the victim. In her view, retribution is then called for to refute this claim by the perpetrator and re-establish their equal footing. Pettit and Braithwaite have some sympathy for this view but point out that it is hard to interpret all crimes, especially relatively minor ones, as claims to superiority over the victim Braithwaite and Pettit (1990, 160). This may be true, but it should be stressed that even if it is unlikely that a relatively minor crime like petty theft is a claim to superiority – I indeed seriously doubt that perpetrators think of their actions in such a way – it nonetheless does constitute a denial of the status of the victim as a person whose rights and dominion are to be respected. Simply put, if you do think his rights and status are to be respected you would not take away his belongings without his consent. In general, such intrusions will be much less in cases which affect a person's property than they will be in cases where grave violence is involved, which directly harms his physical person (Braithwaite and Pettit 1990, 102), but even when it comes to issues like theft, being treated in such a way is personal (even if, or perhaps especially when, the perpetrator does not see it as such). The republican argument for retributive justice from dignity does not, however, need to regard the offence by the perpetrator as a claim to superiority. All it needs is that a crime constitutes an infringement on the status and personal sphere of the victim, and

²⁴ In this regard it is worth noting that though the notion of impunity plays an important role in Pettit's later work, Braithwaite and Pettit (1990) hardly mentions the notion at all, and when it is mentioned (118), it is discussed dismissively.

²⁵ A somewhat striking implication of the republican focus on preventing the power of persons to interfere arbitrarily, rather than preventing interference as such, is that the main target of a republican criminal justice system has to be to minimise the number of unpunished crimes, taking account of their severity, and not necessarily to minimise the number of crimes committed. Of course, although this is in itself a noteworthy implication, the two will normally be closely correlated. If fewer crimes are committed, then typically there will also be fewer unpunished ones. Furthermore, given the fact that the level of affront will typically be more or less proportional to the severity of the crime, it seems appropriate that societal resources are primarily spent on solving severe crimes or on ways that significantly reduce the number of minor ones as this seems to be the most efficient way to minimise domination.

²⁶ It is also worth stressing that the fact that punishment prevents an already performed transgression from becoming an act of domination refutes one of the main objections Braithwaite and Pettit put forth against the retributive view, as they claim that the benefits of punishment in terms of non-domination 'are almost always of a distant and probabilistic character' (Braithwaite and Pettit 1990, 87). In fact, they are immediate, and probabilistic only with regard to the possibility that errors will sometimes be made so that the wrong person will regrettably be convicted.

this is clearly the case. Almost any crime for which the victim deems it necessary to address the criminal justice system will involve a personal injury to the victim, part of which is the legitimate feeling of being wronged and therefore offended. It may be true that thieves and burglars generally do not think of their victims at all, but this does not mean that such neglect does not constitute a significant personal affront to the victim. One can quite appropriately take offence at an interfering act that does not have ‘causing offence’ as its motivation (cf. Duff and Marshall 2006). By punishing the perpetrator, society cannot remove this affront as it is a personal matter between the perpetrator and her victim. It can, however, ensure that it does not add insult to injury by failing to prevent this offence from being an instance of domination by ensuring it was not done with impunity.

It is important to stress that this argument for retributive punishment does not seek to *restore* a person’s dignity through the infliction of punishment on the perpetrator. It does not try in some symbolic way to undo the affront the perpetrator caused by treating the victim in unacceptable ways. Not all injuries can be undone. What punishment does do in this account is to prevent a crime from becoming an act of domination. It does not restore the dignity and standing of the victim; it protects it. By punishing the perpetrator, society ensures that the victim is (and was) not in a state of domination; it tells the victim as well as every other citizen: nobody gets to treat you this way with impunity.

As alternatives to the notion of just deserts as a principle for punishment, Braithwaite and Pettit advocate what they call ‘the three Rs of republican sentencing’ (Pettit 1997, 156): *Recognition* by the offender of the status of the victim; *Recompense* for the harm done; and *Reassurance* that the offender will not be a further threat either to this victim or to society at large. Though I do not wish to deny these are important goals, I do not believe they are directly related to the notion of non-domination, nor do they ensure the status of the individual as an autonomous moral agent. Recognition by the offender of the status of the victim may possibly reduce the initial affront her intrusion caused, but does not affect the basic point that she interfered that way with impunity if she is not also shown to be liable to punishment. Such recognition may well be important, but in itself it can never be sufficient because, to use the Kantian formulation, it does not enable the victim to see himself as a lawgiver in a Commonwealth of Ends. The same objection the republicans put forth against the well-meaning dominator apply here. If recognition were sufficient, then the victim remains subjected to the will of the dominator, for it is her gracious acknowledgment of his status on which he must apparently depend to receive his due – recognition by the offender does not, in itself, enable the victim to *command* respect. Thus, even if the perpetrator acknowledges the status of the victim, by showing remorse and apologising, for instance, it remains vital that the state shows itself willing and able to inflict punishment on the perpetrator if the victim so desires.²⁷ *Recompense* is also called for, but this is especially suited to

²⁷ This does not necessarily imply that the punishment must always be inflicted; if the victim accepts the apology, for instance, then, confident in the knowledge that it is within his power to have the punishment inflicted should he so demand, he can decide to be merciful (see also Section 7.5.4).

address the harmed interests of the victim. This, however, is more a matter of civil law than of penal law. Paying damages is unpleasant for the perpetrator, and it is certainly called for in situations where the perpetrator wronged her victim, but it does not in itself constitute punishment (cf. Duff and Marshall 2006, 70–71). As far as reassurance goes, this too is important; obviously, when the offender could be shown to remain a threat, then the victim and society must be protected from her. However, this too is not primarily a matter of punishment (a person who has become a danger to society (e.g. through insanity) may be restrained independently of having committed a crime). The primary function of reassurance is bodily safety and material security, not (or not directly) the protection of the status and dignity of the victim. Therefore, as beneficial as these principles may be, as far as non-domination goes, they are at best subordinate to the primary ‘R’ that should guide a republican sentencing policy: the ‘R’ of *Retribution* – the principle that those who committed crimes thereby become liable to adequate punishment.

An interesting corollary of the connection between non-domination, dignity and retributive punishment is that it enables us to (partially) rehabilitate an oft-cited example that is sometimes used rhetorically to undermine all defences of retributivism as being unacceptably heartless and vindictive. In the *Doctrine of Right* Kant (in)famously claimed that²⁸:

‘Even if a civil society were to be dissolved by the consent of all its members (e.g. if a people inhabiting an island decided to separate and disperse throughout the world), the last murderer remaining in prison would first have to be executed, so that each has done to him what his deeds deserve and blood guilt does not cling to the people for not having insisted upon his punishment; for otherwise the people can be regarded as collaborators in this public violation of justice.’ (*DR* 6:333).

Before I defend a version of the basic principle Kant is propounding here, it should be noted that not all versions of retributivism have to rely on the *lex talionis* in its standard, blinding form. A notion of just or adequate punishment does not have to demand that what is done to the victim be done to the perpetrator in return; and I certainly do not wish to defend the death penalty. Nor do I intend to defend the notion of blood guilt that Kant fears will cling to the hands of those who refuse to execute the convicted murderer. But I do want to argue that a version of the basic principle that underlies this perhaps somewhat too vigorously phrased comment, the principle that perpetrators should be punished for the sake of the dignity of their victims, is sound enough in itself. If one accepts the basic principle that the dignity of a person requires that we do not let others trample with impunity on a person’s rights (cf. *DV* 6:436),²⁹ a principle that both Kant and Pettit adhere to, then those who have trampled on the rights of others will have to be punished, for that is the

²⁸ Traditionally Kant has often been regarded as a paradigm example of a retributivist, and this passage undoubtedly contributed to that view. Nonetheless, not all Kant’s comments on punishment fit equally well within a purely retributivist understanding of punishment. For discussions of the various retributive and non-retributive elements in Kant’s thought on punishment see e.g. Byrd (1989); Hill (2000, 173–199); Merle (2000).

²⁹ *DV* 6:436 discusses this as a duty to self, demanding that you respect your own dignity and standing by not letting others trample you underfoot, but this principle can easily be generalised.

only way still open to ensure they did not trample on those rights with impunity. This also means that, due to the *ex-post* nature of punishment pointed out earlier, the dignity of the victim thus places demands on society, even after his death. By adequately punishing the murderer we can still ensure the status and dignity of the victim. Obviously, we cannot bring him back to life, but in some ways at least, dignity thus transcends death.³⁰

7.5.3 *Retribution vs. Vengeance*

In the previous section I argued that a society dedicated to the republican ideal of non-domination has to commit to a retributivist view of criminal punishment. In doing so I also showed that there are important similarities between the republican position and the Kantian one. One important difference between the Kantian-republican argument I have presented and Kant's own account of punishment, however, is that I have explained the need for retributivist punishment primarily out of the demands that follow from the dignity of the victim, whereas Kant usually insists on the need for punishment out of a concern for the dignity of the perpetrator (for Kant's views on punishment see e.g. *DR* 6:331–337, 362–363). I shall not discuss Kant's views on punishment in any great detail, but this difference in the ground for the need for punishment is worth mentioning because it may give rise to a possible (Kantian) objection to my account. According to this objection, my claim that the perpetrator must be subjected to adequate punishment because of the dignity of the victim, effectively means that I call for the sacrifice of one person (the perpetrator) on the altar of the another (the victim) so that the latter's wrathful anger and desire for vengeance may be satisfied. Even if this desire for vengeance is understandable and not something the victim should be blamed for, so it may be argued, it does not justify handing over the perpetrator to this end, who, for all his crimes, remains a human being who may never be treated as a mere means to the ends of others.

Clearly it is not an appealing idea to effectively hand over perpetrators to their victims for punishment. Doing so would likely lead to excessive and cruel forms of punishment. However, this is not what the retributivist argument for punishment I have presented amounts to, and there are a number of elements in this argument that make clear that this form of retributivism takes full account of the dignity and status of the perpetrator as a moral being. First, acknowledgment of the status of the perpetrator as a moral being is assured by the very fact that retribution is called for because of the offence to the dignity of the victim. As only other persons or moral beings can cause offence or become dominators, the perpetrator has to be regarded as a moral being right from the start (see [Section 4.2](#)). Furthermore, the very fact that the question of appropriate punishment comes up at all also implies

³⁰ For a somewhat similar point in terms of posthumous interests, see e.g. Feinberg (1984, 79–95).

that the perpetrator is regarded as a moral being. If she were not, we would simply treat her the way we would treat, for instance, animals that have been shown to pose a danger to persons. Most importantly, however, it should be stressed that there is an important distinction between a person's anger and desire for vengeance on the one hand, and his notion of just and adequate punishment on the other. If the state ever catches the miscreant who violated the sanctity of my dwelling, my wrathful desire for vengeance may well demand he be subjected to a variety of extreme forms of punishment, but my notion of just and adequate punishment will go against such excessive violence and be satisfied much sooner. To use the Kantian formulation again, what my dignity demands is that I can continue to regard myself as a lawgiver in the Commonwealth of Ends; it thus demands that the perpetrator be punished in accordance with (what I hold to be) the punishment that the laws of such a commonwealth would prescribe. To put it in less Kantian terms: what the type of retributivism I am defending demands is, in principle, that the perpetrator be punished according to the victim's notion of just punishment, not that his desire for vengeance is fully satisfied.

It should also be noted that the victim's dignity requires only that the aggressor has no power to interfere with impunity in the affairs of another. It does not require that punishment comes about solely at the hands of the victim.³¹ The protection of a person's dignity by ensuring he is and was non-dominated therefore does not demand that the victim gets to act out all his desires for revenge on the perpetrator. It does mean, however, that the victim should not feel the punishment is excessively mild, amounting to little more than the proverbial slap on the wrist, for that he may legitimately take as an insult by the state. If the victim cannot accept the punishment as fitting, he may well regard the transgression as an act of (partial) domination, and doubt whether the state really takes him and his status as a full moral person seriously. Of course, as with all moral judgments, it may be that the sense of just punishment of a specific person still demands modes or levels of punishment that cannot (or should not) be accommodated in a particular society. The dignity of the perpetrator also places limits on what may be done to her, and when it comes to defining what is to be an adequate level of punishment for a specific crime, those who make the laws will have to weigh these two demands. Ideally, both the victim and the perpetrator would be able to accept the punishment as just, but often this will not be possible. In such cases, the sentence will regretably cause affront (or even outrage) to one or both parties involved. Nonetheless, it remains important to acknowledge these issues and be aware of the communicative effect of punishment. Punishment is the primary means by which society can show to the victim as well as all other citizens that he is indeed a member of society with full standing, because it is only through punishment that one can ensure that those who have already been transgressed against were not transgressed against with impunity.

³¹ See also Pettit's endorsement of the importance of 'passive empowerment' (Pettit 2001a).

7.5.4 *Mercy and Mandatory Sentencing*

The retributivist position is in some sense indeed harsh, for its demand for punishment, being grounded in the dignity of the victim, is virtually categorical. A perpetrator of a crime against another person *must* be shown to be liable to punishment. Nonetheless, any suggestion that it would be heartless is misplaced. First of all, the retributivist position is based on a clear concern for the victim, which cannot be called heartless nor misplaced. Moreover, it is also worth mentioning that it does not call for mandatory sentences. Mandatory sentences disregard essential facts of individual cases that are highly relevant to the seriousness of the intrusion and the level of affront caused thereby. The retributivist principle demands that the punishment fit the crime, and due to their inflexibility it is highly unlikely that mandatory sentences will achieve that result. If such circumstantial factors have been taken into account, however, there is very little room within retributivism for mercy. If a judge or jury were to apply mercy (defined as punishing someone less than her crime warrants) in sentencing the perpetrator, the punishment would no longer suffice (assuming the victim deems the ultimate punishment too low) to prevent the intruding act from constituting an act of (partial) domination. By being merciful to the perpetrator the judge or jury communicates to the victim and all other members of society that he is not a member of full standing.

Nonetheless, there is one possibility by which mercy can have a place in a retributivist framework. The main problem with mercy, if granted by a judge or jury, is its detrimental implications for the dignity and standing of the victim. However, if mercy were to be bestowed by the victim rather than the judge or jury, it would not have this effect. What the victim needs to know in order to be undominated is that the perpetrator may not treat him with impunity in the ways she did. What he needs from society, therefore, is that it declares itself willing to inflict the punishment the crime warrants, and shows itself prepared to do so.³² The republican concern with non-domination is fuelled by the desire to empower individuals, and to this end it may well be most conducive to give the victim the right to grant mercy.³³

This suggestion may not be received too warmly in legal circles, though, because it means that the legal system gives away some of its control to the victim. A more substantial objection some legal theorists may make is based on the principle that like cases must be treated alike, which is one of the ways the law seeks to explicate basic fairness and equality. If the level of punishment is to be (partially) determined by the victim, so it could be argued, this would no longer hold and the perpetrator's

³² There is a similarity here with contractarian accounts of the state and its monopoly on the use of force and punishment. If everyone hands over his natural right to punish those who transgress against him to the state against the promise that the state will punish any wrongdoers in his name, then a refusal by the state to punish those found guilty of a crime constitutes a breach of contract (cf. Byrd 1989, 187–188).

³³ Some practical issues would have to be addressed, though, such as ensuring that the victim is not put under undue pressure to grant mercy.

punishment will depend on whether she was lucky enough to have messed with a person of merciful character or unlucky enough to have offended a more vindictive person. That the level of punishment inflicted will indeed depend on this is true. Whether this truly is to be considered a serious problem, however, is something on which I should like to cast some doubt.

First of all, there is a personal aspect to any crime that is dependent on the character of the victim. The effects of a crime often (partially) depend on characteristics of the person against whom it is committed. As all persons differ from each other in important ways, there is a basic sense in which crimes against different victims are not alike. Hence, it may not be that bad if there is some way in which this can find expression. Most importantly, however, the victim only gets to decide whether or not (or how much) mercy is to be shown to the perpetrator. Hence, assuming the courts have indeed sentenced her as the crime warrants, the perpetrator is not in danger of being excessively punished, moreover equality and fairness are already expressed in this sentence. The perpetrator stands to gain by the victim's decision to grant mercy, but she does not lose anything she is entitled to or can lay claim to if it is denied.³⁴ If the victim chooses to withhold mercy, the only thing the perpetrator has grounds to lament is that she was not as lucky as some other perpetrators were. Luck, however, has very little to do with dignity and is generally accepted in legal frameworks anyway (it is standard practice, for instance, to hand out lower sentences for attempted manslaughter than for successful attempts to that effect). Like cases should indeed be treated alike, but it remains to be shown that this must ultimately also involve identical punishment (but if it does, then there would be no room for mercy anyway).

7.6 Summary

In this third and final part I have explored the republican notion of non-domination. In the debate between advocates of a negative conception of freedom and republicans who favour identifying freedom with non-domination, the latter have put forth a number of arguments that were designed to attack the negative freedom theorists on their home turf, the area of individual choice. These arguments were intended to show that a dominated person cannot avail himself of a large number of options that seem to be open to him under the negative notion of freedom, even though there is no actual interference on the part of the dominator. These charges have been answered by advocates of negative freedom by showing that the notion of negative freedom can account for these effects, contrary to the republicans' claims. Though this debate is still ongoing and will undoubtedly continue, it has led the proponents of freedom as non-domination to re-emphasise that individual choice is not the core issue of their concerns. At the heart of the republican advocacy of non-domination

³⁴ It may be, however, that a case can be made on the basis of the dignity of the perpetrator that she has the right to reject any offers of mercy as well.

lies a concern for the dignity and standing of the individual. Quite apart from any practical implications that may go with it, to be in a state of domination is first and foremost to be regarded as objectionable in and of itself, so republicans claim. This concern for standing has led the republicans to accept a number of implications many negative freedom theorists find objectionably counterintuitive, such as the fully free prisoner. Rather than attempting to develop a solution to this dispute, I have focused on the republican concern for dignity and standing and scrutinised the notion of non-domination as presented by Pettit solely in this regard.

In doing so, a number of implications that were deemed counterintuitive with respect to non-domination regarded as a distinct conception of freedom, lose their force and can even be turned into assets. Nonetheless, a number of ambiguities in the formulation of the concept of non-domination had to be addressed. Rather than focusing on avowed or readily avowable interests, I argued we should focus on the moral beliefs and judgments of the person who is (vulnerable to being) subjected to interference by others. By reinterpreting the notion of non-domination in this way, it becomes better suited to protecting the dignity and standing of the individual. Furthermore, arguments from Part II were used to explain why being dominated is an affront to the dignity and standing of the individual. A person who is in a state of domination cannot regard himself as a fully autonomous being. The (moral) laws that govern (a substantial part of) his existence are not imposed by him, but determined by his dominator. Subsequently, I argued that the vulnerability to interferences of a kind that one deems wrongful to one's person that lies at the heart of this destructive effect of domination, should be understood in terms of impunity rather than immunity. Seeking immunity to such types of interferences is both impossible and undesirable in practical terms, for it would require draconian measures, and is philosophically unnecessary. For a person to be non-dominated it suffices that no-one can interfere with impunity with him in ways he deems wrongful to his person.

Based on this reformulation, I re-examined a number of familiar republican means to reducing domination. Discourse and contestability were shown to be important tools in this regard, though of limited applicability. The most important and striking implication, however, was that non-domination must rely on a primarily retributivist understanding of punishment, a result directly contradicting Pettit's own expressed views on this matter. In contrast to most standard retributivist accounts that centre mostly on the perpetrator to explain the basic fact that those who do transgress against others must be punished in accordance with the severity of their crime, the Kantian-republican argument to this effect relies almost exclusively on the dignity and standing of the victim. If non-domination implies that no-one can transgress against a person with impunity, then when another does transgress against him, punishment is the only way that this act can be prevented from being an act of domination. Failure to punish would add insult to injury and hence cause additional affront to the dignity and standing of the victim.

Chapter 8

Conclusion

8.1 Summary

To coerce someone is to subjugate him to your will. You want him to do something, and though he disagrees, you make him do it anyway. That this is not a particularly nice thing to do to someone seems obvious. But many things in life are not nice, so that fact in itself is not sufficient to explain the apprehensions many philosophers and political theorists feel for the use of coercion. Coercing a person is more than just unpleasant or unfriendly towards him, it is in a basic sense downright hostile to his person. It cuts at something that is at the very core of what it is to be an autonomous person. In Part I I have discussed various ways in which philosophers and other political theorists have attempted to explicate exactly why coercion is such a fundamental affront to the person who is subjected to such treatment. In doing so I emphasised two fundamental facts. The first is that coercion is something that can occur only between moral agents, and that it is this relational aspect on which we need to focus if we are to explain the injurious nature of coercion. The second is that coercion is problematic because of what it does to the individual who is coerced, and that we can therefore not afford to abstract from or overlook the very subjective element of coercion. If coercion is the subjugation of the will of one person by another, then we shall have to take account of the specificities of the will that is coerced if we want to understand coercion properly.

In many existing accounts of coercion, these two facts are insufficiently addressed, or sometimes denied altogether. The second point especially is one that may prove unpopular to many. The first point is no less worth emphasising, though, because many existing accounts attempt to explain the problematic nature of coercion by describing various ways in which the coercer undermines the *agency* of the coerced, overlooking the fact that persons are not just agents, but *moral* agents. Based on these two basic facts, I have presented an account of coercion that explicates the way the coerced's will is subjugated by the coercer in terms of a moral judgment by the coerced on the coercer's interference that is designed to make him perform a specific action, a judgment the coercer is unwilling to abide by. Though coercion implies that the coerced ultimately chooses to comply with the wishes of the coercer, this compliance remains without assent.

At the end of Part I, I discussed a number of the details and implications of conceptualising coercion in the manner I propose. The most important question – why does this make coercion so hostile to the individual? – was addressed in Part II, where I developed a Kantian argument that showed that a person's sincere moral judgments concerning the way he is treated by others are of vital importance to his dignity and standing as a moral agent. As coercion entails that these judgments are dismissed or overridden by another moral agent, coercion as a consequence entails an affront to the dignity and standing of the coerced.

The argument to this effect was developed from Kant's third formulation of the Categorical Imperative, that of the Commonwealth of Ends. In my interpretation of this formula, a Commonwealth of Ends is to be regarded as a political ideal. It is the idea of a perfectly legislated commonwealth. This does not mean that the laws that govern such a commonwealth can by definition not be broken by its members. The beings that inhabit such a commonwealth are not perfectly rational, and hence are quite capable of breaking the law. According to Kant, we, as moral agents, have dignity because we have the ability to be autonomous: to live according to laws we give ourselves, and the law we should ideally give ourselves is identical to the law that governs a Commonwealth of Ends. Hence, in order to be autonomous, we must regard ourselves as lawgivers to such a commonwealth. Here, however, the beautiful picture ends. We are not perfectly rational beings, so when we regard ourselves as lawgivers to such a commonwealth and ask ourselves what the moral law says about a particular case, we will frequently come up with different answers. What I take the moral law to demand in a particular situation may differ from what you think ought to be done, and moral disagreement and conflict can arise. Many cases of coercion will involve such a conflict. Person A sincerely judges she may or ought to make B do X in a particular fashion, but B, with equal sincerity, disagrees. Lawgiving (moral or otherwise) contains (at least) three distinct elements: legislation, adjudication and imposition. To give law is to determine what the law says, then judge how it applies to particular cases, and then to enforce it. When it comes to coercion, it is this last aspect especially that is important. In Kantian moral literature the focus is usually on the person who is about to act and must try to figure out what he ought to do, but also find the strength of will to do it once he has figured that out. But regarding yourself as a lawgiver in a Commonwealth of Ends is more than just giving law to yourself. You give it to everybody else as well. Hence, to be fully autonomous requires not merely that you do what you think you ought to do, but also that when it comes to the way they interact with you, others abide by the same rules. When you are coerced, the person who coerces you treats you in a way you think she may not treat you. She, however, refuses to abide by your objections and persists in her manipulative behaviour. As a result, the fact that you comply with her intentions even though you think you may not be manipulated in this fashion, signifies an inability or failure on your part to impose the moral law. As a result, you do not completely live in accordance with laws you set yourself; as far as this particular action is concerned, you cannot see it as something you did fully autonomously. You did it because you are subjugated to the will of another: your coercer's. As the

ability to be autonomous is why moral agents have dignity in the first place – why they matter in ways infinitely superior to anything of a different nature – this cannot but be a serious injury to a moral agent.

In the third and last part I discussed a notion that lies at the centre of a number of recent philosophical debates, the notion of non-domination as explicated by the republican philosopher Philip Pettit. Though the republicanism that Pettit envisions is anything but Kantian, the concerns he expresses show important similarities with what I have argued to be the primary reason why coercion is problematic. Pettit and his ally Quentin Skinner both claim that it is important that persons are not subject to the will of another because, if they are, their status and standing are at issue. Whereas coercion is a particular instance where someone is actively subjugated to the will of another, Pettit and Skinner claim we should widen our scope, for a person can be subjugated to the will of another not just when he is being coerced or otherwise interfered with, but also by merely being vulnerable to such intrusions. According to Skinner and Pettit, to be subject to the will of another is to be in a position of dependency on their good graces.

Pettit has explicated the particular type of dependency he is concerned with through his notion of non-domination. His formulation, which focuses on one person's power to interfere in the affairs of another without thereby having to take account of the 'avowed or readily avowable interests' of the latter, contains a number of problematic ambiguities that need to be addressed if non-domination is indeed to safeguard the dignity and standing of the individual, or so I have argued. An important insight provided by Pettit is that when it comes to dignity and standing, not all interferences are alike. Certain types of interferences are most injurious to one's standing, but others are not objectionable at all. Pettit's way of attempting to distinguish between these two types of interferences refers to the (avowed or readily avowable) interests of the person who is or may be subjected to interference. I argued, however, that when it comes to dignity and standing, a person's interests, avowed or otherwise, are not of primary concern. I therefore favoured a reformulation that, like my conceptualisation of coercion, focuses on a person's moral judgments on the interference to which he may be subjected. An act of interference causes affront to a person when he disputes the interferer's authorisation to do so, so only a vulnerability to these kinds of interferences is to be deemed problematic.

In the last sections of Part III I addressed the issue of exactly what kind of vulnerability we should be focusing on when we seek to limit the kind of dependency that concerns Pettit. I argued that a total immunity to intrusions of the kind described is practically infeasible and philosophically unnecessary; to ensure the dignity and standing of the individual it suffices that no-one is in a position to interfere with him *with impunity* in ways he deems wrongful. As a result of this focus on the absence of any power to interfere in such a manner with impunity, the role of punishment in the criminal justice system becomes of prime importance. For crimes committed, the only way to ensure they were not done with impunity is to make sure the perpetrators are duly punished. As a result, and contrary to Pettit's own expressed views

on this matter, a society dedicated to the republican ideal of non-domination will have to embrace a retributivist view of criminal justice.

8.2 Dignity and Sincerity

In this book I have greatly emphasised the importance of a person's sincere but subjective moral beliefs and judgments. Even though the Kantian framework I used in Part II is committed to a kind of realism that holds there must ultimately be an objective answer to moral questions, I have stressed on a number of occasions that the validity of a person's moral judgments is largely irrelevant when it comes to the kind of affront to dignity that is inherent to coercion; all that matters is their sincerity. As long as a person sincerely believes he is being wronged, the fact that his judgments are overruled or dismissed is sufficient to cause an affront to his dignity. This gave rise to two questions. First of all, if these moral judgments are themselves highly objectionable, e.g. in cases of racism or bigotry, is it then really still problematic to dismiss or overrule them out of hand? My answer to this question was affirmative. Though objections of these kinds cannot and should not be accommodated so that any coercion that results from this is most likely justified simply because of that fact, even justified coercion remains coercion and entails an affront to the dignity of the coerced.

The second issue is what to make of people who fail to raise moral objections to the way they are treated when they ought to. So-called happy slaves and human doormats, for example. Is their dignity not also at issue? To this question the answer must also be affirmative. However, the way their dignity is tarnished is very different. In cases of coercion, the dignity of the coerced is tarnished because it makes it impossible for him to regard himself, and to be regarded by others, as the one who imposes the moral law. He cannot see himself as fully autonomous. In the case of happy slaves and human doormats the problem is not one of an inability to impose the moral law as one sees it, but a failure or inability to see or apply the moral law as it should be seen and/or applied. Undoubtedly, such cases are problematic from the point of view of dignity in their own right; in some respects even more so than the cases I have dealt with in this book. Certainly many questions can and have to be raised about how to deal with them, and how to analyse them in greater detail. There is indubitably more to say and more to research on the topic of dignity.

Nonetheless, in this book I have restricted my attention to one aspect of dignity: the aspect that has to do with imposing one's moral judgments and thereby asserting oneself as a moral agent of full standing. Whatever else dignity may demand, this certainly is one essential aspect of it. As moral agents, persons are inherently political beings; it is through their sincere, subjective moral judgments that they can (and must) assert themselves as autonomous individuals.

Abbreviations to Kant's Works

<i>CPR</i>	<i>Critique of Practical Reason</i>
<i>CS</i>	<i>On the Common Saying: That May Be Correct in Theory, but Is of No Use in Practice</i>
<i>DR</i>	<i>Metaphysical First Principles of the Doctrine of Right</i>
<i>DV</i>	<i>Metaphysical First Principles of the Doctrine of Virtue</i>
<i>G</i>	<i>Groundwork of the Metaphysics of Morals</i>
<i>MM</i>	<i>Metaphysics of Morals</i>
<i>OT</i>	<i>What Does It Mean to Orient Oneself in Thinking?</i>
<i>PP</i>	<i>Toward Perpetual Peace</i>
<i>QE</i>	<i>An Answer to the Question: What Is Enlightenment?</i>
<i>REL</i>	<i>Religion within the Boundaries of Mere Reason</i>
<i>RLP</i>	<i>On a Supposed Right to Lie from Philanthropy</i>

Page indications refer to the standard German edition of Kant's works, *Kants Gesammelte Schriften*, edited by the Royal Prussian/German Academy of Sciences. Literal quotations are based on the translation by Mary J. Gregor (Kant 1996); for *Religion within the Boundaries of Mere Reason* and *What Does It Mean to Orient Oneself in Thinking?* I relied on the translation by Allen Wood and Georgi di Giovanni (Kant 1998).

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Index

A

- Acceptable, 6, 10, 12–13, 18, 22–23, 37,
46, 51, 58, 60, 63, 66–67, 70, 72, 82,
86–88, 93, 114, 121, 124, 127–129,
136
- Accommodation, 40, 52, 63, 90–93, 129, 132,
139, 146
- Accusation, 15–16, 36, 38, 43, 53
- Adequacy, 11, 13–14, 17, 86, 104
- Adjudication, 83–85, 105, 118, 144
- Affront, 1–2, 38, 63, 75–86, 88, 90–92,
94–95, 98, 100, 105, 119,
122–125, 128–136, 139–140,
142–146
- Agency, 1, 34, 68, 70, 143
See also Moral agency
- Alternative, 7, 11, 17–18, 22, 25, 85, 103, 106,
108, 127, 136
- Arbitrary, 2, 109–111, 113–114, 125–126, 133,
135
- Assent, 7, 37–39, 51–52, 66, 70, 85, 116, 121,
123, 143
- Assert, 2, 100, 118–119, 123, 132, 135,
146
- Authority, 44, 46, 66, 84, 95, 115, 124, 130,
132
- Authorship, 78
- Autonomy, 1–2, 5, 29, 38, 45, 47, 61, 66, 74,
77, 83–86, 98–100, 107, 118, 136,
142–146
- Avowal, 109–111, 114–115, 120–125,
128–129, 142, 145

B

- Baseline, 20–21, 24, 27
- Basic needs, 22–23
- Beneficence, 35, 96–97
- Bigotry, 131–132, 146

C

- Categorical Imperative, 52, 61–100, 144
See also Commonwealth of Ends,
End-in-Itself, Universal Law
- Children, 73–74
- Choice, 2, 6–7, 10, 17–19, 21–22, 24, 27, 30,
37, 56–58, 60, 74, 78, 82, 88, 104,
107, 113, 118, 122–123, 141
- Circularity, 12, 30
- Coercion
analysis of, 5–31, 99
definition of, 7, 13–14, 25, 27–30, 33–43,
45, 53, 70–71, 84
justified, 15–17, 25, 27–29, 31, 38–39,
47, 52, 64–65, 71, 76, 86, 88, 91,
93–94, 146
maxim of, 69–71
physical, 18–19, 21, 31, 34, 38, 41, 45, 125
- Coerciveness of the law, 5, 15, 44–47
- Commitment, 23–24, 57, 59, 81, 100, 134
- Common interest, 114–116
- Commonwealth, 75, 78, 82, 85–86, 139, 144
- Commonwealth of Ends, 2, 52–53, 61–63,
67–68, 74–98, 118, 126–127, 136,
139, 144
- Communitarianism, 103, 105, 130
- Community, 6, 58, 68, 78, 84–85, 91, 103, 130
- Compliance, 7, 17–19, 21–24, 26, 29–30,
37–41, 43–47, 51, 69–70, 82,
85–87, 93, 95, 125, 143–144
- Compulsion, 22
- Conflict, 62–76, 81–83, 85, 88, 90–92, 94, 99,
129–130, 144
- Conscientiousness, 16, 80–82, 86, 92
- Consent, 121, 135, 137
- Consequentialism, 2, 27, 87, 89, 104, 118, 122,
124
- Constructivism, 77
- Contestability, 105, 127–130, 142

Contract, 5, 140
 Court, 115, 128–130, 141

D

Deception, 14, 17, 34, 38, 40, 70
 Deliberate, 6, 10, 23, 26, 30, 34–38, 57, 70
 Dependence, 23, 26, 104, 107, 111–113, 121, 133, 145
 Dignity, 1–2, 38, 47, 51–100, 104–105, 116–142, 144–146
 Disagreement, 5–6, 63–67, 76, 80–82, 85–86, 88–89, 128, 143–144
 Discourse, 66, 105, 127–130, 142
 Dismissal, 1–2, 37–38, 47, 51–52, 62–63, 65, 67–68, 71, 75, 82, 93, 98, 119, 144, 146
 Distinctiveness, 14–15, 17
 Domination, 1–2, 76, 82, 100, 105–106, 108–113, 116–121, 123–142, 145–146
 Duty, 10, 28, 41, 54, 57, 62, 80, 83, 90, 92–98, 137

E

Eccentric, 39–40, 42
 Empowerment, 107, 117–118, 127, 131, 139–140
 End-in-Itself, 34, 54, 56–57, 59, 61, 67–75, 87
 Ends, 54–61, 66–97, 138
 Entitlement, 26–28, 31, 60, 92, 94, 97–98, 104, 119, 123–124, 128–129, 131–132, 141
 Equality, 55, 59–60, 62, 68, 73, 107, 111, 115, 131–133, 135, 140–141
 Error, 1, 13, 15–16, 44, 52, 58, 79, 93–94, 119, 131, 135
 See also Fallibility; Flawed; Mistaken
 Evaluation, 11, 30, 40, 46, 54
 Examples
 The Addict, 8, 10, 20
 Camelot, 9–10, 95
 Chess, 8–11, 15, 26, 31, 37, 93–94
 A Court Case, 9–10, 18–19, 27, 40
 Highway Robbery, 6, 8, 10, 14, 20, 23–24, 34–36, 63, 70, 85, 108, 112
 The Mistress, 8, 10, 27, 107
 The Slave Master, 8, 10, 21
 The Soldier, 8, 10, 15, 20, 26, 37, 94
 Wage Reduction, 9–10, 25
 Excuse, 16–17, 43–44, 93

F

Fallibility, 66–67, 80–81, 100
 False consciousness, 46
 Flawed, 1, 44, 46, 51, 63–67, 72, 100, 131
 See also Error; Fallibility; Mistaken
 Forced, 6, 14–15, 17–18, 24, 27–28, 31, 36–38, 45, 53, 55, 60, 85, 90, 94, 109–110, 112, 123, 125, 131
 Frankfurt, Harry G., 5, 17, 19, 21, 23–24, 35, 57
 Freedom, 1–2, 5–6, 12, 38, 45–46, 56, 60, 103, 105, 117, 122, 126–127
 external, 58–59, 62, 80–81, 93–96, 123
 inner, 56, 58, 82
 negative, 2, 103–116, 122, 141–142
 positive, 103, 106–108, 118
 republican, 2, 103–116, 119–120, 141–142
 See also Domination

G

Grace, 104, 136, 145

H

Happy slaves, 40, 100, 119, 146
 Hill, Thomas E. Jr., 54, 57, 59, 67, 69, 76, 78–79, 84, 86, 90–91, 93, 96–97, 100, 137
 Holy beings, 79
 Hostility, 6, 38, 41, 47, 83, 114, 131, 143–144
 Human doormats, 146
 Humanity, 51, 61, 68, 72–74, 77, 83
 Humiliation, 9, 16, 41, 47, 73, 117–118, 131

I

Idealisation, 78–79, 84, 86, 88–89
 Ideas, 109, 122–125, 128, 130
 See also Moral beliefs
 Identification, 129
 Identity, 120, 124
 Idiosyncratic, *see* Eccentric
 Immunity, 125–127, 133, 142, 145
 Imposition, 78–80, 82–84, 86, 105, 118–119, 126–127, 132, 142, 144, 146
 Impunity, 125–127, 133–140, 142, 145
 Independence, 82, 99, 132–133
 Individual, 5–7, 14, 34, 45–47, 51, 60, 62, 77, 82–83, 89, 98–99, 103–105, 114–115, 117–121, 125–130, 133–134, 136, 140–146
 Indoctrination, 40, 119
 Indulgence, 127
 Injury, 40, 47, 52, 107, 127, 136, 142–143, 145
 Insult, 73, 90, 92, 127, 136, 139, 142

- Interaction, 6, 15, 24–26, 33–34, 36–37, 51, 73, 81–83, 87–92, 95, 97, 99, 119, 126, 144
- Interests, 45, 47, 103, 109–111, 114–115, 120–125, 128–130, 137–138, 142, 145
See also Common interest
- Interpersonal, 24, 30, 33
- Intrusion, 2, 29, 41, 95, 97, 117–118, 123, 125, 127–129, 131–136, 140, 145
- Intuition, 5, 13–14, 17, 29–30, 38–42, 47, 51, 67, 70, 114, 116, 122, 134, 142
- INUS, 35–36
- Irrationality, 23, 79, 85
- J**
- Judgment, 1, 7, 13, 16, 30, 33–47, 51–56, 58–59, 62–67, 72, 74–76, 79–80, 82–86, 91, 93–95, 98–100, 118–120, 128, 130, 132
See also Moral judgment
- Justice, 65, 77, 91, 99, 107, 115, 127–128, 130–141, 146
- Justification, 6, 16–17, 28, 43–44, 107, 131
See also Coercion, justified
- K**
- Kantian, 2, 27, 34, 51–60, 64–67, 72–74, 76–77, 79–80, 89–90, 94–100, 104–105, 118–119, 126–127, 136, 138–139, 142, 144–146
- Kant, Immanuel, 53, 56–63, 66–70, 74–80, 82–84, 86–87, 89, 93–94, 96–99, 118, 130, 137–138, 144
- L**
- Lawgiving, 2, 53, 61, 74–88, 91–92, 95, 118, 126–127, 136, 139, 144
See also Legislation
- Legal, 5, 12, 15, 28, 44–45, 75, 80, 85, 91, 128, 134, 140–141
- Legislation, 74, 77–87, 89–91, 99, 105, 118, 127, 144
See also Lawgiving
- Legitimation, 29, 120, 123, 128
- Liberalism, 46, 64–65, 72–73, 103, 105
- Liberty, *see* Freedom
- M**
- Malice, 10, 95, 97–98
- Manipulation, 6, 23, 26, 33–34, 37, 40, 51, 86, 144
- Maxim, 61–62, 69–72, 90, 94–98
- Meaning, 57–58, 107, 111
- Member, 6, 78–79, 81–82, 84–85, 87–90, 93, 97, 126, 137, 139–140, 144
- Mercy, 136, 140–141
- Mistaken, 1, 63, 67, 70–71, 74, 91–93, 97, 100
See also Error; Flawed
- Moral agency, 1, 6, 37, 39, 44, 47, 52, 56–58, 65, 75, 91
- Moral agent, 1–2, 7, 14–16, 19, 24–25, 33–34, 36–39, 46–47, 51–52, 54–60, 65–66, 68, 70, 74–77, 81–85, 98–100, 118–119, 123, 126, 132, 136, 138–139, 143–146
- Moral being, *see* Moral agent
- Moral beliefs, 13, 39, 47, 51, 74, 81–82, 88–89, 93, 123–128, 130–132, 142, 146
See also Moral objections, Ideas
- Moralisation, 11–13, 15–18, 23–27, 29–31, 33, 38–39, 47, 114–115
- Moralised accounts, *see* Moralisation
- Morality, 12–13, 27, 30–32, 34, 39, 41, 46, 55, 60–62, 65, 69, 72, 74–78, 80, 82, 85, 87–89, 97, 128
- Moral judgment, 1, 11, 29–31, 33–47, 51–55, 64, 67, 70, 76–77, 83–84, 86, 94, 100, 105, 119, 123, 128, 139, 142–146
See also Judgment
- Moral law, 54–56, 65–67, 74–75, 78–87, 91, 99–100, 105, 118–119, 126–127, 132, 142, 144–146
- Moral objections, 2, 37–40, 47, 51–52, 56, 61–100, 122, 128–130, 144, 146
- Moral relativism, 78
- Moral views, *see* Moral beliefs
- Motivation, 19, 21, 35, 46, 95, 136
- Motive, 35, 47, 62, 80, 90, 94, 96, 98
- N**
- Non-domination, *see* Domination
- Normal course of events, 20–21, 26
- Nozick, Robert, 7, 18–21, 27, 45
- O**
- Objective, 18, 22–24, 123, 146
- Obligation, *see* Duty
- Offence, 39, 82, 92–93, 112, 121–122, 135–136, 138, 141
- Offer, 8–10, 19–22, 25–27, 36, 107, 141
- O'Neill, Onora, 5, 7, 14, 23–24, 39, 66, 68–71, 73–74, 96

Ought-implies-can, 88, 91, 97

Overtness, 40, 86

P

Paternalism, 45, 47, 73, 103, 114, 120, 122

Penal law, 133, 137

Perpetual Peace, 62, 76, 88–89, 94, 130

Personal, 1, 7, 23–24, 30, 39, 41, 51, 53, 55, 73–74, 93, 98, 100, 120, 124, 127–128, 135–136, 141

Pettit, Philip, 2, 45, 100, 103–106, 108–111, 113–130, 132–137, 139, 142, 145

Political, 6, 15, 44, 52, 60–63, 65, 75, 78–79, 84, 87, 94, 99–100, 103, 107, 131–132, 144, 146

Political correctness, 6

Power, 2, 44–45, 65, 104, 109–110, 117–118, 124–126, 132, 135–136, 139, 145

Preference, 6–7, 10, 25–26, 36, 39, 95

Prima facie, 6, 25, 28–30, 47

Punishment, 5, 15–16, 40, 85, 105, 115, 126–128, 133–142, 145

Pursuits, 52, 54, 56–60, 72, 78, 104, 111, 118, 122, 129

R

Racism, 131–132, 146

Rational, 18, 22–23, 51, 56–57, 61, 68, 71, 74, 77–82, 85, 87, 89, 91, 94, 100, 144

Rawls, John, 14, 57, 64–66, 77, 90, 118

Realism, 58, 146

Reason, 28, 33–38, 41, 52–54, 58, 62–63, 65–66, 72, 74, 77–79, 88, 92–93, 97, 118

Reasonable, 18, 22–23, 26, 37, 39–40, 51–52, 54, 63, 65–66, 86, 120

Reflective equilibrium, 14

Relational, 6, 58, 63, 143

Republic, 78–79, 89, 103, 132

Republicanism, 2, 45–46, 82, 100–146

Resist, 7, 9, 21–22, 24, 40–41, 46, 66, 99, 117, 133

Respect, 1, 23, 27, 34, 42, 44, 47, 51, 54, 56, 58–59, 62–65, 68–70, 72–73, 77, 87, 90–91, 94, 96–97, 99, 117, 129–130, 135–137

Responsibility, 5, 16, 28, 36, 40, 42–44

Retributivism, 105, 127, 133–140, 142, 146

Right, 10, 26–27, 38, 44, 46, 58–59, 62, 65, 68, 75–76, 80, 84, 94–98, 117–120, 122–123, 130, 132, 135, 137–138, 140–141

S

Secession, 130

Self-abasement, 111, 113, 119

Self-censorship, 111–113

Self-mastery, 106

Self-respect, 54, 77

Sentencing, 134–141

Seriousness, *see* Severity

Servility, 59, 93

Severity, 42, 76, 90, 134–135, 140, 142

Sincerity, 2, 40, 44, 51–52, 56, 63, 65–69, 71–72, 75–77, 80–83, 86–93, 98, 132, 144, 146

Skinner, Quentin, 2, 100, 103–106, 108–111, 113, 115, 125–126, 132, 145

Slave, 8, 10, 21, 109, 117

See also Happy slaves

Socialism, 46

Standing, 1–2, 8, 54–57, 65, 85, 100, 104–105, 111, 113, 115–125, 127, 132, 136–137, 139–140, 142, 144–146

See also Status

State, 23, 28, 40, 44–47, 61, 66, 76, 78, 84–85, 89, 104, 107, 130, 134, 136, 139–140

Status, 9, 28, 34, 41, 47, 52, 54–56, 59, 62, 72, 76, 82–83, 85–88, 92–93, 97, 100, 104, 113, 115, 118, 123–124, 127, 135–139, 145

See also Standing

Subjection, *see* Subjugation

Subjective, 1, 6–7, 22, 30, 39, 51, 69–70, 76, 93, 143, 146

Subjugation, 1–2, 6–7, 24, 33, 37, 47, 51, 63–64, 82–83, 94, 99, 104, 109, 114, 119, 127, 131, 136, 142–145

Sycophancy, 112

T

Threat, 15, 18–21, 23, 28, 35, 41, 43–46, 85, 108, 112–113, 123, 136–137

Throffer, 20

Transgression, 54–55, 59, 80, 85, 94–95, 126, 131, 133–135, 139–140, 142

Trust, 89–90

U

Uncertainty, 111–112

Underling, 82

Universalizability, 62, 69–72

Universal Law, 61, 67–70, 72, 74–75, 77, 83

Unreasonable, *see* Reasonable

V

Validity, 12, 31, 33, 37, 39, 43, 62–63, 83–85, 146
 Value, 7, 29, 47, 56–57, 59, 76, 86, 105–106, 111, 116, 120–122, 133
 Vengeance, 24, 138–139
 Virtue, 62, 68, 76, 78, 80, 94–98
 Voluntariness, 5–6, 10, 18–19, 21, 24, 30, 70, 108, 123
 Vulnerability, 2, 26, 104, 117, 121, 124–129, 131, 134, 142, 145

W

Warning, 20
 Weakness, 22–23, 30, 73

Weak-willed, 22, 40–41
 Welfare, 22–23, 44, 133
 Wellbeing, 20, 24, 54
 Wertheimer, Alan, 5, 7, 11–14, 17–18, 21–25, 27–28, 44
 Wholehearted, 24
 Will, 1–2, 7, 15, 19, 21, 23–24, 30–31, 33, 36–37, 41, 47, 51, 61, 63–64, 69–71, 77, 82–84, 99, 104, 109, 125–126, 136, 143–145
 Willingly, *see* Voluntariness

Z

Zimmerman, David, 5, 11–12, 18, 25–26, 39, 47