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Economic Justice and the Kantian State.
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Abstract:

According to a widely accepted interpretation, the Kantian state is a version of classic liberalism's *night watchman*. Since strict right for Kant consists in the protection of individual freedom and property and not in the attempt to make people happy, the Kantian state must be indifferent if not opposed to the promotion of social welfare. A concern with social justice can have at most a merely instrumental character for the state, in which it contributes to the stability of the system. Is it possible to account for any *duties* of the state to foster social and economic justice or any welfare rights within a Kantian theoretical framework?

In this paper, I will reject a libertarian interpretation of the Kantian state. I will argue that Kant's liberal theory of right does not exclude the possibility of deriving an obligation of governments to promote social welfare. Although Kant's theory of social justice is in need of further development, there is enough textual evidence for the claim that Kant had a broader conception of the state than usually assumed.

I. Kant's Theory of Right and the Justification of the State.

As Kant stresses, the role of the state cannot consist in the promotion of the happiness of individuals. Not only is the notion of happiness too indeterminate to serve as the basis for legislation: it would also be paternalistic of a state to try to make people happy. It is up to the individuals to make their own happiness. According to Kant, the role of the state consists primarily in the protection of the external freedom and property of individuals. Through its coercive power, the state is able to establish the so called *civil condition*: the juridical framework necessary for the systematic regulation of individuals' actions and for property rights. The state therefore enables its members to pursue their own individual conception of happiness unhindered as long as these pursuits can be reconciled with the freedom of others.

Kant's theory of the state has often been interpreted as having an essentially libertarian character: interference in the economy and in the distribution of wealth cannot be justified *per se*, but only under certain circumstances, if in the interest of the state itself. Is it possible to recognize any *duties* of the state to promote and secure social and economic justice? Furthermore, is it possible to provide a Kantian justification for welfare *rights*?

Pure or *strict* right has as its object the regulation of external freedom, i.e. the possibility of coordinating the actions of a plurality of individuals among themselves. While virtuous or moral action is determined by the specific quality of the maxims adopted by the agent, rightful action does not presuppose a moral motive for the action. For Kant, "any action is right (*ist recht*) if it can coexist with everyone's freedom in accordance with a universal law" (MS 6:230)¹. The role of right is primarily to protect the innate right of individuals to pursue their own ends without hindrance, as long as these actions can be reconciled with the pursuits of others. The concept of right therefore implies the notion of *authorized coercion*. It is against right to coerce others, thereby hindering the exercise of their freedom. However, the state is authorized to impose limitations on everyone's freedom and to coerce in order to

¹ Kant's writings are cited according to the volume: page number of the Prussian Academy Edition of Kant's Complete Works (1900-, *Gesammelte Schriften*, Ausgabe der Preußischen Akademie der Wissenschaften, Berlin: Walter de Gruyter). I use the following abbreviations for the individual works cited:
 -IAG 'Idee zu einer Allgemeinen Geschichte in weltbürgerlicher Absicht' (Idea for a Universal History with a Cosmopolitan Intent);
 -MS *Die Metaphysik der Sitten* (The Metaphysics of Morals);
 -EF 'Zum ewigen Frieden. Ein philosophischer Entwurf'. (Toward Perpetual Peace. A Philosophical Sketch);
 -TP 'Über den Gemeinen Spruch: das mag in der Theorie richtig sein, taugt aber nicht für die Praxis'. ('On the common saying: That may be correct in theory, but is of no use in practice'.).
 -WA 'Beantwortung der Frage: Was ist Aufklärung?' (Answer to the question: What is enlightenment?)

protect and coordinate the agency of all. State coercion in this sense amounts to “hindering a hindrance of freedom” (MS 6:231) As Kant notes, “right and authorization to use coercion (...) mean one and the same thing” (MS 6:232).

But who is to enforce respect for external freedom? *Per definition*, strict right cannot be properly enforced by agents individually. This is because right deals with a plurality of agents who pursue not only different goals but also have their own conception of happiness and of what is good. Individuals will therefore try to impose their own values and opinions on each other in a unilateral way: they will at most enact what seems right to *them*, but not necessarily to everyone (MS 6:312). As Jeremy Waldron rightly observes, the possibility of universalising one’s maxims still does not guarantee external coordination. An individual’s maxim might pass the categorical imperative test, i.e. be morally acceptable, while still being contingently incompatible with the permissible actions of other individuals *qua external actions*. Because it enables the coordination of a multitude of agents pursuing different ends, Kant’s doctrine of right seems thus to counteract the external consequences of individual autonomy.²

A condition in which individuals impose their own views on each other, i.e. when only the *private* right of individuals is valid, is the so called *state of nature* (MS 6:306). In contrast, a condition of *proper* right will be necessarily *public*. Right thereby becomes valid and binding for everyone. For this, individual agents must unify their wills into a *general* will and agree to submit to the authority of a *government*. As a mere rational concept, the state must thus be conceived as emerging from an *original contract* of the people. This contract is not a historical event, but an *idea of reason* which helps us determine if the policies of a concrete state can be reconciled with strict right. The idea of an original contract implies that “what a people may never decide upon itself, a monarch may still less decide upon the people, for his legislative authority rests precisely on this, that he unites in his will the collective will of the people.” (WA 8:40-41)

The state, conceived as an institution placed above individuals, monopolizing coercive power and at the same time representing the will of all, is what enables the transition from private right into a condition of public law: the *civil condition*. But why should individuals be obliged to leave the state of nature and enter a condition of public law?

² Jeremy Waldron, 1996, p.1560 and 2006, pp. 189-190.

As Kant argues, the main reason for abandoning the state of nature is the need to secure individual *property* (MS 6:256). In the state of nature the only available principle for defining ownership is *original acquisition*. However, property according to this principle can only be *provisory*: if someone takes away the object I have been using until now, I am not able to make any claims on the lost object, even though Kant acknowledges a *natural right* of individuals to property. It is only after establishing a juridical framework (by formulating positive laws regulating ownership relations) adequately enforced by a sovereign power, that individuals are able to make *permanent* claims about property. A crucial role of the state is therefore to enable property at all, by securing the right to property through the enforcement of a legal framework (MS 6:312)³.

In some well known passages, Kant vehemently rejects the promotion of general happiness as a legitimate task of the state. State policies must remain merely negative, i.e. the state must restrict itself to suppressing unjustified hindrances to individual freedom. Unless it is in the interest of the state to reduce social inequality, there can be no obligation of the state to care about social welfare⁴. Kant seems to think that to enforce some positive end through legal means would amount to forcing some specific conception of happiness on individuals. The state would then violate the innate right to freedom as the right of each individual to choose her own ends and to form her own conception of happiness. The only legitimate task of the state therefore consists in the regulation of the external relations among individuals. The content of individuals pursuits regulated thereby must be left to agents themselves to decide.

*A government established on the principle of benevolence toward the people like that of a father toward his children-that is, a **paternalistic government** (...), in which the subjects, like minor children who cannot distinguish between what is truly useful or harmful to them, are constrained to behave only passively, so as to wait only upon the judgment of the head of state as to how they **should be happy** and, as for his also willing their happiness, only upon his kindness - is the greatest despotism thinkable (...).* (TP 8: 290-291)

The aspects of Kant's theory of right I have just sketched have strongly contributed to the traditional interpretation of Kant's state as a *minimal state* or a version of classic liberalism's

³ It is important to note that Kant is no legal positivist in a strict sense. As Kant argues, if there were no provisional right to property in the state of nature, there could be no duty to leave the state of nature and enter civil condition. See MS 6: 312.

⁴ See TP 8:398.

“*night watchman*”⁵. According to this interpretation, Kant’s conception of the main functions of state as protecting freedom and property (a liberal political theory) necessarily commits his theory to economic libertarianism⁶. In this sense, Kant’s political theory not only lacks the theoretical resources for establishing a duty of the state in intervening in the economy or social distribution, but would even be overtly *against* any intervention of the kind. A clear statement of this interpretation can be found in Wolfgang Kersting’s work:

*(...) Kantian equality is totally indifferent towards the economic structure of society and the distribution of goods, means and socio-economic power laid down by it. Kant’s legal and political equality lacks all economic implications and social commitments; it cannot be used to justify the welfare state and to legitimise the welfare state programmes of redistribution. (...) The promotion of social equality and the increase of economic justice is not considered as a necessary political aim by Kant’s political philosophy.*⁷

In this paper, I shall reject a libertarian interpretation of the Kantian state. As I will show, textual evidence suggests that Kant had a broader conception of the state than traditionally assumed, although his theory is in need of further development.

In the next section, I will analyse Kant’s theory of the state and query if the core of his political theory necessarily commits us to economic libertarianism. In section III, I will explore passages which contradict a libertarian interpretation of the Kantian state and sketch an answer to the problems of the obligations of the state concerning social and economic justice and the derivation of welfare rights. I will conclude that the state has an obligation to promote economic justice which can be derived both from the systemic character of social and economic inequality and from the notion of *original contract* implicit in the idea of civil condition.

⁵ Some proponents of the libertarian interpretation of the Kantian State are Mary Gregor, 1963, Wolfgang Kersting, 1992 and Howard Williams, 1983.

⁶ Allen Wood, 2008, p.193.

⁷ Wolfgang Kersting, 1992, p. 153.

II. The Kantian State and Social Justice.

Kant bases the notion of the civil condition on three a priori principles: civic freedom, equality and independence (TP 8:290). Against what one might be inclined to conclude given Kant's views on the equal moral worth of all human beings, civic equality does not entail social or economic equality. In fact, social inequality in Kant's theory is compatible with the requirement that citizens must be equals before the law, i.e. that nobody should *per se* have the authority to bind others legally in a way that others cannot bind her in turn. (MS 6:314). As Allen Wood observed, civil equality means for Kant merely the prohibition of a particular kind of power asymmetry within the juridical system, but not of all kinds of asymmetries in society.⁸ It is thus not possible to derive a legal obligation to promote social justice from Kant's juridical concepts of right, freedom and equality.⁹

As Wolfgang Kersting acknowledges, it is still possible to sketch a justification of the welfare state compatible with Kant's political theory, but this can only be based on a derivative or instrumental argument for economic justice. Unless there are "reasons of state" for reducing social inequality (say, in order to avoid social tensions which could threaten the stability of the system), there can be no direct obligation of the state to reduce economic inequality. Some authors have considered a merely derivative argument for state intervention in the distribution of wealth not only unsatisfactory, but also contradictory given other aspects of the Kantian theory.¹⁰ Furthermore, some passages suggest that economic justice in the Kantian state has more than only instrumental value.

*To the supreme commander there belongs indirectly, that is, insofar as he has taken over the duty of the people, the right to impose taxes on the people for **its own preservation**, such as taxes to support organisations providing for the poor, founding homes and church organisations, usually called charitable or pious institutions.*

The general will of the people has united itself into a society which is to maintain itself perpetually; and for this end it has submitted itself to the internal authority of the state in order to maintain those members of the society who are unable to maintain themselves. (...)

The wealthy have acquired an obligation to the commonwealth, since they owe their existence

⁸ Allen Wood, 2008, pp.194.

⁹ Idem, p.164, footnote 7.

¹⁰ See Allen Wood, 2002 and 2008, Alexander Kaufmann, 1999, Allen D. Rosen, 1993, and Markus Willaschek, forthcoming.

to an act of submitting to its protection and care, which they need in order to live; on this obligation the state now bases its right to contribute what is theirs to maintaining their fellow citizens. (MS 6: 325-6)

In this passage, Kant speaks of a *duty* which the state has “taken over” from individuals and about its right to tax the wealthy in order to maintain the poor. Kant seems to be arguing that the preservation of the state itself requires maintaining those members of society who are not able to meet their basic needs¹¹. On the other hand, since the wealthy owe the protection of their property and social standing to the existing state order (which protects them against the threats of the destitute, who must thereby remain destitute), the state is authorized to redistribute wealth by taxing wealth or economic activity.

However, contrary to a common interpretation of this passage, Kant is not referring to the preservation of the state or of the supreme commander herself, but of the *people*. The aim of taxation of the rich is thus directly the preservation of the members of the state, and not only a means to the perpetuation of the state itself. Mary Gregor’s translation is ambiguous and could be interpreted as if “its own preservation” refers to the *state*, instead of to the *people*. However, the original German is clear enough¹². My reading is reinforced further in the same passage:

*This (the taxation of the rich to support the poor) can be done either by imposing a tax on the property or commerce of citizens, or by establishing funds and using the interest from them, **not for the needs of the state (for it is rich) but for the needs of the people.*** (MS 6: 326, my emphasis)

Does Kant’s criticism of happiness as a political task exclude the responsibility of governments to promote economic justice? I will argue that Kant’s argument has been misunderstood by proponents of the libertarian interpretation. In fact, Kant’s criticism of happiness as a political principle helps us cast light on the relationship between right and social welfare in the Kantian state.

¹¹ This is a questionable thesis. Why should the state not be able to exist without its poor?

¹² *Dem Oberbefehlshaber steht indirect, d.i., als Übernehmer der Pflicht des Volkes, das Recht zu, dieses mit Abgaben zu seiner (**des Volks**) eigenen Erhaltung zu belasten (...)* (MS 6:326)
[To the supreme commander there belongs indirectly, that is, insofar as he has taken over the duty of the people, the right to impose taxes on the people for its own preservation (**of the people**)]. (My emphasis).

III. Publicity as a political principle: reconciling right and economic justice in Kant's political theory.

As Alexander Kaufmann stresses, Kant's rejection of happiness as a juridical principle and task of the state is a consequence of his concern to avoid state paternalism. Although Kant's abhorrence of paternalism in general can be easily understood with reference to his moral theory (as a threat to individual autonomy), Kant's vehement rejection of paternalism in his *political* theory has a specific historical background. It is a direct response to *cameralism*, a philosophical movement whose main proponents were Kant's contemporaries Christian Wolf and J.H. Justi. Cameralists made the case for an excessively controlling government, on the assumption that individuals are not able to determine what is best for them alone. Their happiness and the choice of the means conducive to it should be thus wholly determined by the state¹³. In this sense, Kant's energetic rejection of any legal attempt to "make people happy" can be understood not as rejection of happiness *per se*, but as the well justified concern about the interference of government into the private sphere of its citizens.

Kant's rejection of general happiness as a task of the state is by no means a mark of Kant's indifference to the welfare of the members of the state. It is the very opposite: Kant takes the individual right to determine one's own conception of happiness too seriously to let a particular conception of happiness be imposed on individuals by the state. The formation of an individual conception of happiness as well as the pursuit of ends included in this conception is deeply connected to the exercise of freedom, the protection of which is the main concern of Kant's political theory. To make a comprehensive conception of the good or substantive moral theory the basis of jurisdiction would undermine external freedom in its very root: rational agents' capacity of freely adopting ends. The protection of the freedom of all agents in accordance to universal laws requires us not only to accept pluralism about value, but to restrict state agency to the coordination of the relations between individuals, regardless of the needs they chose to pursue, as long as these can be reconciled with the ends of everyone else.

But what does Kant mean when he says that the supreme commander has "taken over the duty of the people" and that this duty authorizes him to provide for the poor? Which duty is Kant

¹³ Alexander Kaufmann, 1999, pp.39, 50-60.

talking about? One might think Kant is saying that the state has taken over the individual duty of beneficence, and thus has an indirect duty to promote the happiness of its members¹⁴. However, as Kant stresses, once the state has adopted this duty, the contribution of the wealthy should no longer remain a voluntary act of beneficence towards the poor. The distribution of wealth must be carried out as *legal coercion*, by public taxation (zwangsmässig, als Staatslasten) (MS 6: 326). This contradicts the view that the state must have duties of beneficence towards its members. If the obligation in question can be reinforced by legal means it is *per definition* no longer a duty of virtue. It has become a *perfect duty of right* and implies a corresponding right or claim. But why should the imperfect duty of individuals be legally enforced by the state? And how can this alleged duty to assist the disadvantaged be reconciled with the formal requirements of Kant's theory of right? I will now develop an answer to these questions by reinterpreting some of the allegedly "contradictory" passages in Kant, i.e. those passages which seem incompatible with the core of Kant's theory of right.

It is a common strategy to ascribe certain political conclusions to Kant with appeal to his Formula of Humanity. The requirement to treat persons always as ends and never merely as means seems to justify the obligations of the state concerning a more just distribution. This move is too easy: it ignores Kant's distinction in the *Metaphysics of Morals* between right and virtue, in which it tries to derive political conclusions from moral claims.¹⁵ I will therefore take another path. My thesis is that although it is not possible to derive a duty of the state to promote social and economic justice directly from the pure concept of right, it follows from its *empirical consequences* that the state must compensate social inequality within the system. Why? Because the very structure of the system generates asymmetries in society which in turn have an impact on the exercise of external freedom.

Having the resources to practice such beneficence as depends on the goods of fortune is, for the most part, a result of certain human beings being favoured through the injustice of the government, which introduces an inequality of wealth that makes others need their beneficence. Under such circumstances, does a rich man's help to the needy, on which he so

¹⁴ See for instance Allen D. Rosen, 1993, p.193.

¹⁵ Cf. Markus Willaschek, forthcoming. This criticism presupposes the view that right and virtue constitute two independent normative domains and consequently that right is not based on Kant's moral theory. There is a wide discussion and little consensus about how to understand the relationship between right and virtue, but I accept the view that right is independent from morality.

readily prides himself as something meritorious, really deserve to be called beneficence at all? (MS 6:454)

Kant allows social inequality on the basis of differences of talent and merit, but poverty, as Kant recognizes in the passage, has an essentially systemic character. Now, social inequality becomes the object of the duty of beneficence. There is a duty of beneficence to some extent because there is social injustice, because some people have something and others have nothing. The concept of beneficence presupposes that one party is able to give whereas the other, who receives, is in need¹⁶. Kant queries the status of beneficence as an imperfect duty, taking into account that social inequality is generated by the system of right itself, in which it protects not only individual property as such, but also a historically given unequal distribution of wealth. Because inequality is system generated, it cannot be effectively addressed as a matter of virtue.

This interpretation can provide a starting point for deriving a obligation of the state to remedy the systematic injustice it has created. Governments would be obligated, if not to promote strict social equality, at least to compensate the least advantaged for their hindrance to freedom since it results not from the different talents and merits of individuals but from legislation itself. A possible objection to my thesis would be that given Kant's procedural conception of justice, anything that happens within a rightful or lawful framework, is *per definition* not unjust. As already noticed, social inequality is compatible with the basic principles of right. Why should systemic "injustice" be a problem for the state, if only an unintended side effect of the civil condition? It is therefore still not clear why the state should "take over the duty of individuals" to promote the welfare of the poor.

As I will propose, the very notion of original contract implicit in Kant's idea of civil condition is what generates the obligation of the state to care about systemic inequality. The idea of an original contract implies that *publicity* is a necessary attribute of justice.

According to Kant, publicity is implied in any legal claim (EF 8:381). Since justice is necessarily fit to be publicly proclaimed, publicity is a necessary condition of justice. Kant uses the principle of publicity as a procedure for determining if a legal claim is consistent with right. The thought experiment consists in imagining whether a certain political maxim would meet the resistance of citizens if it were to be made public, i.e. if it would contradict

¹⁶ This is not to say that if there were no social inequality there would be no longer an imperfect duty of beneficence or benevolence. The natural vulnerability of human beings and their dependence on each other would still generate the need for mutual help, even in a society without social inequality.

“the basic principles of the agent”. (EF 8:381) For Kant, this method is an axiom, and is “beyond doubt.” It is a merely negative procedure, determining whether a political maxim is compatible with right. Kant also offers a *positive* version of the principle of publicity. If a maxim is not only fit to be made public, but even *requires* publicity in order to achieve its aim, it is necessarily in agreement with right and morality.

For if they [the maxims] can attain their end only when that end is made public, then they must also conform to the general end of the public (happiness), and it is the proper task of politics to attain this harmony (to make population satisfied with its condition). (EF 8:386)

Kant proposes public happiness if not as a direct task of the state, then as a *test* for identifying the legitimacy of political decisions or aims. In this sense, it becomes clear that the concern with public welfare is by no means absent from Kant’s political theory and that it remains an important *touchstone* for any activity of the state. As Kant stresses, the task of the state is to *reconcile* right with general happiness. This reconciliation will exclude paternalistic interference of the state but does not exclude policies promoting social welfare which do not imply paternalism. As Allen D. Rosen observed, a state unable to do more than enforce strict right would be very distant from what we would consider a modern state. The state would not provide the infrastructure we usually associate with it, such as public sanitation, the construction of roads and airports or catastrophe relief. However, in the “Idea for a Universal History with a Cosmopolitan Purpose” Kant acknowledges the duty of the state to establish and bear the costs of education (IAG 8:26, SF 7:92-93). This clearly contradicts the view that the state has no other positive tasks beyond merely “hindering to a hindrance of freedom”¹⁷. Unfortunately, Kant did not develop his conception of what would be an extension of the core duties of the state. Although social welfare legislation does not belong to the primary tasks of the Kantian state (since it cannot be derived as an a priori principle from the basic concept of right), it belongs to the extended, secondary tasks of the state after the protection of freedom and property.

Conclusion.

According to my interpretation of Kant’s theory of the state, social welfare must be subordinated to the protection of individual’s external freedom. In contrast to the main assumption of the libertarian or minimalist interpretations of Kant, a liberal conception of

¹⁷ Allen D. Rosen, 1996, pp.193-194.

right does not exclude the promotion of economic justice as a secondary task of the state. The role of the Kantian state should not be confined to the promotion of *strict* right, although it does constitute the primary task of the state and the core of Kant's political thought. Instead, strict right should be conceived as imposing constraints on state policies in general, including social welfare policies. The reason for this hierarchy of concerns of the state is for Kant the attempt to avoid state paternalism: if we do not impose limitations on the promotion of public happiness, state interference can easily become abuse of power.

That the concern for public happiness is not excluded from Kant's political theory is confirmed by the fact that general happiness constitutes a criterion for testing the compatibility of political maxims with right (the principle of publicity, both in its negative and positive sense). As I have shown, there is also good textual evidence that Kant recognized duties of the state that go beyond strict right. Furthermore I argued that the systemic character of social inequality, which is the object of the individual duty of beneficence, cannot be properly addressed as a matter of virtue alone. The civil condition generates a systemic kind of economic asymmetry in which it sanctions an already existing unequal distribution of wealth, and consequently imposes a severe impairment on the freedom of the disadvantaged. Although Kant is no strict egalitarian, he recognizes that economic inequality is often not merely due to a difference of merit and talent. Once the state constitutes "the united will of all", and citizens must be conceived as "having agreed" to limit their freedom and submit to the power of the state, it follows that the state must be conceived as "taking over" the responsibilities of individuals to counteract social injustice. This is not to deny that individuals are morally required to help the disadvantaged. However, as Kant recognizes, since poverty has a systemic character, beneficence as such can be put in question as a mere matter of virtue: indeed, it raises the suspicion that we have here to do with a proper *right* of individuals to a more just distribution of wealth. This is why social welfare legislation should not be conceived as a matter of voluntary contribution, but as legal coercion.

Unfortunately, Kant did not work out his theory of social welfare as he did his core theory of right. The further development of a distinctively Kantian theory of social justice is therefore a task left to Kant's heirs. It can offer a valuable alternative to consequentialist or utilitarian based theories of welfare and to strictly libertarian theories of the state. This article, as well as the other contributions I have commented in my paper, can be seen as a beginning.

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