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The Promise and Limit of Kant's Theory of Justice: On Race, Gender and the Structural Domination of Labourers

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Abstract

This article applies Charles W. Mills' notion of the domination contract to develop a Kantian theory of justice. The concept of domination underlying the domination contract is best understood as structural domination, which unjustifiably authorizes institutions and labour practices to weaken vulnerable groups' public standing as free, equal and independent citizens. Though Kant's theory of justice captures why structural domination of any kind contradicts the requirements of justice, it neglects to condemn exploitive gender- and race-based labour relations. Because the ideal of civic equality must position all persons as co-legislators of the terms of political rule, the state must dismantle exploitive race- and gender-based labour relations for all persons to command political power as civic equals.

Keywords: republicanism; gender; race; domination; justice; freedom

In his political philosophy, Immanuel Kant does not countenance, much less redress, that the issues of gender and race *empirically* define modern republics and *normatively* constitute central obstacles to progress. The subordination of women and non-white racial groups reveals what Charles W. Mills describes as the 'domination contract', a form of structural domination that denies women and people of colour equal public standing (Pateman and Mills 2007: 92–101; Mills 2017: 36–9). In this article, I argue that the promise of Kant's theory of justice rests on whether it can provide the conceptual resources for persons to understand and undo the domination contract. Unfortunately, though Kant's original theory of justice can capture why the domination contract contradicts the requirements of justice, it is underdeveloped for the task of social justice reform that can dismantle it with respect to exploitive race- and gender-based labour relations.

In section 1, I present Mills' idea of the domination contract and explain that it presupposes the concept of structural domination, in which institutional and social practices unjustifiably undermine the equal public standing of women and people of colour. In section 2, I sketch Kant's ideal of public right and civic equality. In section 3, I demonstrate that Kant's original account of public right tolerates civic inequality

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in that it rationalizes the exploitation of passive citizens as labourers. Finally, in section 4, I rethink the ideal of civic equality by providing an alternative to state-supported social welfare programmes to help exploited labourers resist structural domination. I thus develop the ideal of civic equality as a principle to guide the historical development of a system of public right.

1. Mills on the domination contract

The concept of domination is central in African and African-American political philosophy, as it reflects a strident feature of the modern black experience. Mills regards the domination contract as a heuristic device for conceptualizing the socio-historical nature of domination in modern republics founded on slavery and colonialism (Pateman and Mills 2007: 87, 101). Formulated as an intervention in social contract theory, the domination contract is descriptive: it identifies social and institutional practices that render certain groups social inferiors and illicitly elevate other groups. Traditionally, social contract theory offers justifiable principles according to which persons should exit a hypothetical state-of-nature to found republics. The domination contract, instead, captures *unjustifiable* inegalitarian social and institutional practices that shape the history of modernity. The domination contract does not identify ideal terms for the establishment of states, but reveals the nonideal *de facto* terms of a modern state's historical development. For Mills, social systems of 'exclusion and inegalitarianism' have rendered non-white racial groups and women subordinate subjects in the historical formation of modern republics founded on black chattel slavery, the expropriation of indigenous lands and the genocide of indigenous peoples (Pateman and Mills 2007: 108). The condition of political membership was – and remains – submission to state-supported social systems in which some groups assume a denigrated social status and lack political power.

By understanding the domination contract, we can reassess Kant's theory of justice in terms of whether or not it can confront the domination contract as a normatively salient socio-historical phenomenon. The crucial upshot here is that our empirical understanding of key social conflicts – and philosophers' desire to rectify a newly salient, repugnant feature of the world – should inform the development of a philosophical framework (Herman 2021). Our very representation of the modern world betrays what we as philosophers care about and how we envision the application of our thought by likeminded others. For example, Kant asserts that republics do not meet rational humanity's potential to be free. Yet, as we will see, his theory of justice does *not* posit the political exclusion of people of colour and women, nor their subordination in civil society as exploited labourers, as contradictions of the requirements of justice. This oversight suggests that his system was not formulated with an eye toward establishing a *race-* and *gender-*inclusive polity and must, therefore, be *developed* for this purpose.

Allow me to restate the point by way of a metaphor. The Romans constructed aqueducts to transport water from the mountains across a vast empire. Some aqueducts are used today as bridges for car and foot traffic. Evidently, with some rebuilding, it is possible to use aqueducts for this new purpose. But it was not what Roman engineers could have ever imagined to be a marker for the practical success of their constructions. Perhaps one can suppose on an abstract level that their intention was the flourishing of human civilization, which the subsequent reconstruction achieves.

Still, though the original infrastructure can literally support it, the transportation of car and foot traffic was *not* the purpose for which they built it. One cannot say that the Roman engineers knew all along that one day cars would come and Rome would be a popular travel destination overrun with tourists. So too the reappropriation of Kant's system *can* support a theory of justice that fosters an inclusive polity. But for that reappropriation to work we need to recognize that the system was not created for this task, so that we make the necessary modifications to fortify it. Otherwise we will plunge off a cliff. Hence, Mills calls for the radical revision of the Kantian system, even as he draws on its ideals for support.

Following Mills, in repurposing Kant's system, we first need to understand reality. Mills provides the idea of the domination contract as a descriptive account to *expand* a theory's framework by proposing a new task: redress a social conflict that Kant had sidelined. With this task in mind, Mills identifies the following essential features of the domination contract.

- (1) It focuses on the nonideal circumstances of illiberal white supremacy,
- (2) is 'necessarily historical' in that it 'talk[s] about the human creation of socio-political institutions as the result of previous sociohistorical processes, not *ex nihilo* from the state of nature',
- (3) makes groups 'the key players' in its social ontology,
- (4) assumes that the groups in power have a vested interest in keeping their power and that inequality is the *de facto* social norm, and
- (5) considers social identities such as race, class and gender to be social constructions, rather than the fixed 'natural' features of persons. (Pateman and Mills 2007: 92–101; Mills 2017: 36–9).

Taken together, these features capture that dominating power has a socio-historical origin. It constitutes a central obstacle for the advance of justice, one that requires a political solution in which persons work to reconstitute a society's basic structure. The domination contract rejects the thought experiment that modern republics arise from a hypothetical state-of-nature. The notion of the state-of-nature makes it difficult to appreciate that *public institutional and social practices* have constituted dominating power relations among racialized persons and inform the background institutional conditions of prevailing social relations. The domination contract provides a better descriptive account of the modern world that illuminates a pressing socio-historical problem for philosophical scrutiny: the structural domination of groups.

Let us begin with the obvious: the reality revealed by the domination contract confirms that racial and gender groups are victims of structural domination. But what exactly is structural domination and how should it steer the philosophical scrutiny of institutional and social practices?

Rafeeq Hasan notes that there are two leading models for conceptualizing domination: the dyadic and the structural models. The dyadic model is the influential account of freedom as undominated choice independent of actual or possible external interference.¹ The dyadic model, Hasan explains, incorrectly assumes that dominating power originates in interpersonal relationships, in which one person puts another under their thumb. On this reading, dominating power is arbitrary because it

interferes in persons' free choices without regard to their interests. However, such arbitrary interference need not be actualized, but may only be present as a latent capacity in another person's unbridled capacity for choice. On the dyadic model, a just state is a coercive bulwark against external interference in persons' pursuit of interests.

In contrast, on the structural model, institutional and social practices dominate, not the singular will, conceived individually or in aggregate. Consistent with Mills' picture of the domination contract, the primary agents of domination are institutional and social practices that mediate individuals' choices and actions; and the primary victims of domination are social groups. Members of vulnerable groups occupy a subordinate *social role* that diminishes their equal public standing. The concept of structural domination thus highlights the fact that prevailing institutional arrangements publicly authorize dominating power in interpersonal relationships. As Hasan explains, 'institutionally created roles give meaning and social license to the forms of ill-treatment that the powerful inflict on the subordinated' (2021: 2).

To identify the role of public institutional and social practices in structural domination consider the case of a white restaurant owner who refuses to serve a person of colour. The business owner's dominating will is mediated by their public standing as a white person in the Jim Crow South, which confers on them public command over black and brown persons. One cannot 'reduce' the white business owner's decision not to serve black customers to an erratic evil will, or to being a bad, white-supremacist apple. Rather, a host of legal and extra-legal social norms sanctions a *de facto* white entitlement to control black and brown persons. The upshot is that *background institutional conditions* define subordinate social relations, which enforce and stabilize structural domination and thereby make it possible for individuals to become ensnared in dyadic domination in the first place. In the absence of these background institutional conditions, it is difficult to imagine the formation of white supremacist commitments.

We can now better understand the implication of the socio-historical phenomenon of the domination contract for a theory of justice. The concept of structural domination *systemizes* the underlying structure of the experiences of vulnerable groups. Namely, it shows how structural domination happens and how to prevent it. If public institutional and social practices buttressed by the state enforce subordinate social roles, background institutional conditions can and ought to be reconstituted in the light of an inclusive normative ideal of freedom. Or as Hasan puts it, the structural model of domination shows that there is an 'essential relation' between 'a lack of equal standing' and 'being dominated' (2021: 14). Public institutions are not a mere tool of coercion, like a gun in a mugging; they are not inert tools that dominating persons use to express an erratic, unpredictable will that wants what it wants. Rather, public institutions are 'essential' or 'intrinsic' to the social meaning of domination in that they *define* and *construct* the social relations that express dominating power in the first place. In essence, the socio-historical emergence of the domination contract signifies gross institutional failures.

In repurposing Kant's theory of justice, we need an account of a juridical system in which public institutional and social practices come to support the equal public standing of all persons as free. The issue is which, if any, (Kantian) conceptual resources are *ideally suited* for condemning dominating power relations by providing an *ideal* for

radical reforms. In the next section, I defend a *strength* of the Kantian system in terms of the ideal of civic equality to redress structural domination. Because Kant had not developed the ideal as a resource for undoing race- or gender-based forms of structural domination, it is important to clarify the positive role that it can play in a political critique, an issue to which I now turn.

2. The promise of Kant's theory of justice

Kant defends the ideal of public right to guide the formation of constitutional republics. His theory of justice should, in principle, be able to assail the domination contract, or structural domination, as an obstacle to justice. The ideal of public right (*Recht*) justifies the existence of the state; it sets the ideal terms for political rule by appealing to the normative ideal that all persons are innately free. Public right consists of 'the sum of laws which need to be promulgated . . . in order to bring about a rightful condition' (*Metaphysics of Morals* (*MM*), 6: 311; in Kant 1996). Unlike the dyadic model, for Kant, justice is a 'rightful condition' that applies not to persons but to public institutions, focusing on the organization of the state and the political relationships between states. The state enforces 'rightful' relations among citizens to actualize the requirements of justice. Kant does not assume that individuals (or dyads) are the locus of domination, nor can individuals alone (or in aggregate) enact justice, without the state adjudicating political power on the basis of the normative ideal of freedom.

In Part I of *The Metaphysics of Morals*, Kant asserts that the innate right to freedom is the sole innate right of humanity. It grounds a just republic as a system of equal freedom under law. The ideal of public right should create the background structural conditions for all persons to coexist in reciprocal relations of external freedom (*MM*, 6: 231). A rightful condition protects persons' 'external use of choice' by affording them 'independence from being constrained by another's choice' (6: 213, 237; Varden 2020: 189). Kant identifies the ideal of public right with the Universal Principle of Right: 'an action is right if it can coexist with everyone's freedom in accordance with a universal law, or if on its maxim the freedom of choice of each can coexist with everyone's freedom in accordance with universal law' (6: 231). The universal principle of right should establish public institutional arrangements, such that none is subject to the dominating will of another. Background institutional conditions come to ensure that none is vulnerable to becoming ensnared in dyadic domination.

How does the ideal of public right realize freedom via public institutional arrangements? At a minimum the ideal defends the public recognition of one's innate right to freedom, affirming all persons' natural equality. Innate 'natural' equality, Kant continues, should entail: 'the independence from being bound by others to more than one can in turn bind them' (*MM*, 6: 238). Innate natural equality attributes to all persons 'the quality of being one's own master' or a *sui juris* agent. The Universal Principle of Right compels the state to advance the equal public standing of all persons as *sui juris* agents. At a minimum, as *sui juris* agents, all persons should stand as rights-bearing subjects of a constitutional republic and, ultimately, as citizens in a cosmopolitan federation of peaceful republics. Unfortunately, it is not quite clear what sort of juridical system can secure the substantive background institutional conditions of self-mastery.

In his general division of rights, Kant distinguishes natural rights, which rest ‘only on a priori principles’, from the category of ‘positive rights, which proceeds from the will of a legislator’ and which are the outcome of the public arbitration of the general will (MM, 6: 237). The natural rights of moral equals underpin the positive rights afforded by the civic status of being a *sui juris* agent in a juridical system, but, as I will explain in the next section, the resultant scheme of positive rights can differ widely for different groups, while remaining consistent with the basic requirements of justice. Consequently, natural moral equals can enjoy different positive rights as citizens without damage to the ideal of public right. A gulf emerges between the natural equality of juridical subjects and the positive rights that are conferred on some but not all citizens who acquire independence as *sui juris* agents with a civic status. For the ideal of public right leaves *underdetermined* the requisite scheme of civic rights and privileges that are necessary to complete the transition from natural equality to civic equality. As civic equals, all persons enjoy the ‘positive’ public recognition of the ‘quality’ of independence in a political community.

Let us consider what the ideal of public right does *not* entail, because it is inconsistent with the natural equality of persons as innately free. It follows from Kant’s defence of the ideal of public right that the state cannot coercively prevent some groups from having authoritative command over their choices and bodies. Yet Kant leaves undetermined the scope of meaningful choices that should be available to a person by innate right. He does not defend an equitable distribution of property rights as a necessary condition for the advance of the universal principle of right. However, a communal scheme of property rights is not necessarily off the table either, since it too could be made consistent with the universal principle of right (Messina 2021; James 2016). Further, the ideal of public right does not protect the unhampered pursuit of interests. Civil and political rights are not mere ‘instruments’ for persons to satisfy their interests without undue interference. One should not conceive of a just republic as a *shield* guarding undominated choices against external infringement.² For the state should not *quantitatively* limit interference to ensure the highest number of undominated choices for the largest number of mutually indifferent, self-interested individuals. Rather, it should *qualitatively* transform one’s formal *relation* to one’s civic fellows to ensure that none can amass dominating power over another – not just exercise it less often or with less disastrous consequences. Ideally, a just republic should *eliminate* the background institutional conditions that prevent some from exercising their power of choice at the expense of others. The premier question, of course, is just how a republic can do this. Kant leaves this matter undertheorized in his rudimentary sketch of civic equality as a normative ideal that ought to guide the reform of a system of public right, an issue to which I now turn.

3. The limit of Kant’s theory of justice

Recall that on the structural model there is an essential relation between a lack of equal public standing and being dominated. Kant’s ideal of public right, however, fails to protect the equal public standing of *all* persons as *civic equals*. This means that achieving equal public standing as a juridical subject is necessary but insufficient for justice. Instead, one should regard Kant’s ideal of public right as nested within a substantive ideal of civic equality that guides the reform of a concrete juridical

order. The difficulty with Kant's political philosophy lies, in part, in theorizing the substantive conditions of legal equality that should underwrite the development of a system of public right (Lu-Adler 2023; Valdez 2019). Kant waffles on a crucial question: what sort of equal legal protection constitutes a requirement of justice? And if all persons are entitled to become *sui juris* agents, what measures must the state take to advance their public standing as civic equals? If Kant's original theory of justice has promise, it must offer robust legal protections that ensure that no one stands as a social inferior and secondary citizen. For just institutional arrangements must eliminate structural domination. Unfortunately, there is an ambiguity concerning (1) what 'equal' public standing in a political community amounts to for equal juridical subjects as opposed to equal independent citizens; (2) how a substantive ideal of civic equality can protect all persons against structural domination; and (3) what state-backed political mechanism can secure freedom for vulnerable groups. Notwithstanding Kant's evasiveness on these issues, I believe that answers are forthcoming, if not to the letter, then to the spirit of his political philosophy.³ Or so I argue below.

3.1 What is equal public standing?

Kant distinguishes between two notions of legal equality, or equal public standing, in a system of public right: persons are equal subjects *before* the law or equal authors *of* the law. All persons are equally subject to state coercion in the enforcement of the law. As equal juridical subjects before the law, they are rights-bearers whose interests the state must represent and to whose laws they hypothetically consent. Equal juridical subjects cannot be compelled to 'recognize ... any superior with the moral capacity to bind them as a matter of right in a way that they could not in turn bind the other' (*MM*, 6: 314). As equal authors of the law, persons assume a public normative authority that authorizes them to influence the political process, hold office and vote (*ibid.*). They enjoy the normative ideal of freedom as self-mastery that I discussed above. To wit, they stand as masters over their own lives through the joint administration of political power, which enables them to control the background institutional conditions of their existence. Kant warns, however, that being an equal subject before the law does not entail that one stands as an equal author of the law. For him, the innate right to freedom excludes the political right to govern that permits all persons to participate in public will formation as civic equals.

Kant's rationale for political exclusion rests on a notorious model of citizenship that distinguishes active from passive citizenship, perhaps the weakest element of his mature political philosophy. Active citizens have the 'essential' attributes of freedom, equality and independence (*MM*, 6: 315): 'The attribute of civil independence' is that 'of owing one's existence and preservation to one's own rights and powers as a member of the commonwealth, not to the choice of another among the people' (6: 314). Active citizens have civil independence in that their 'existence and preservation' does not rest 'on the will of another' (6: 315). Rather their *de facto* access to capital enables them to enjoy forms of employment, in which they can sell goods on the market, rather than being forced to sell their labour power (Pascoe 2022; Moran 2021; Hasan 2018). Their independence from the direction of another as labourers positions them as *sui juris* agents. Active citizens are, then, authorized to represent their own

interests in the public sphere (6: 314). They acquire a 'civil personality' through their use of the ballot, public office and public reason in the form of the written word and public debate (6: 315). Active citizens enjoy positive rights and privileges as civic equals; their *de facto* access to political and material capital is bolstered by dependent labourers.

Unfortunately, with the exception of children, passive citizens appear to languish in relations of private dependence as second-class citizens, as in the cases of women, non-whites and wage-contract labourers. For their 'preservation in existence (their being fed and protected) depends not on their management of their own business but on arrangements made by another' (*MM*, 6: 315). Because their survival depends on their labouring under the direction of another, legal guardians who benefit politically and materially from their labour represent these 'mere underlings of the commonwealth because they have to be under the direction or protection of other individuals, and so do not possess civil independence' (*ibid.*). Worse still, Kant does not regard private dependencies as miscarriages of justice, claiming passive citizenship is compatible with a juridical notion of equality in public right (*Recht*). All persons are 'natural' moral equals by virtue of their rational humanity, yet civil independence alone grants one public standing to rule as a civic equal – and there is no imperative to arrange for the equal civic standing of all persons. On the contrary, on his original account of a just state (*Rechtsstaat*), large sections of the populations subject to coercive state power are excluded from the public sphere. So long as persons' 'natural rights' are not violated, he reasons, they are equal juridical subjects who can remain mere associates of the commonwealth without an active role in government (*ibid.*). Kant views all persons as 'natural' moral equals before the law, even as he appeals to notions of 'natural' social inferiority that bar groups' civil independence (Kleingeld 2019: 6). A woman's 'natural' moral equality is somehow consistent with the 'natural' inferiority of her gender, which demands she submit to the needs of the family at her intellectual and political death. One's *social identity*, then, delimits one's entitlement to equal civic status. It also showcases why the suppression of one's civic standing nonetheless confirms that one can be said to have equal public standing consistent with an ideal of right. In denigrating certain groups as natural social inferiors, Kant demarcates the civic status that a person of *that social background* might hope for.

Consider that as unpaid domestic labourers women are tools for the reproduction of the household, just as a wage labourer is a tool for the accumulation of capital by the owners of the means of production.⁴ Gender identity rationalizes the civic subordination of dependent labourers. A male labourer whose economic exploitation makes possible the civic standing of other wealthy men cannot access political power, but he can still enjoy command over his own household, so much so that in time he can come to benefit from the care-work in his own household, as well as from other wage labourers. Race complicates the rationalization of civic subordination. White women can more readily escape care-work obligations by hiring women of colour who are, as a consequence, triply vulnerable as dependent labourers: they are forced to sell their labour power, carry on the reproductive labour in the household of their employers and often remain primary care givers in their own households (*MM*, 6: 276–83). Exploitive labour relations constitute nested spheres of private dependence, with women of colour standing at the very bottom rung to bolster the civic status of whites through their socially necessary reproductive labour.

The theory of exploitation that I suggest here captures the fact that dependent labourers suffer the denigration of their social identity, which informs both the perceived value of their labour and their civic status. Their labouring activity, on the one hand, prevents their participation in the formal public sphere and, on the other hand, buttresses the civic status of those who materially benefit from it. Kant's original model of public right is thus *parasitic* on the exploitation of dependent labourers. It positions women and women of colour as especially vulnerable to languishing under dominating power relations. Their civic subordination as a 'natural' social inferior is expressed through their economic exploitation in civil society and the family. Social denigration bolsters the civic status of some who happen to have *de facto* access to capital and political power on account of belonging to a more esteemed social group. The exploitation of labour thus betrays a relation of civic inequality among groups. In the next sub-section, I consider how to rework the system of public right using the ideal of civic equality, so that all persons regardless of their social background can come to enjoy independence as *sui juris* agents. The ideal of civic equality must intervene in the background institutional conditions that exploit labourers; the *de facto* access to capital that supports the civic status of men and white men in particular is inconsistent with justice. *Pace* Kant, I posit that a just republic cannot include passive citizens. For 'the end of securing independence is constitutive of the concept of right itself' (James 2016: 303). On my view, private dependence among labourers requires state-led corrective measures that actualize the ideal of civic equality for all. Otherwise a system of public right will have embedded within it dominating power relations that only allow a parasitic minority to enjoy civic standing at the expense of others.

3.2 Can the ideal of civic equality undo structural domination?

The ideal of civic equality is a requirement of justice that should support the civil independence of all persons as active citizens (Holtman 2018). Our natural moral equality should entail a political right to control the institutional conditions of our existence (Love 2017: 587–90; Wood 2014: 84). There are at least two reasons why the ideal of civic equality is essential for undoing structural domination: (1) it guides a political process of social justice reform to intervene in exploitive labour relations that Kant lets fester in a system of public right and, relatedly, (2) it showcases the complicity of the state in creating second-class citizens.

With respect to (1), the ideal of civic equality ensures that all persons stand as effective authors of the law, not mere passive associates of the state. Equality before the law must give all persons the equal public standing to hold political power as civic equals. The subjects of the law must be its rightful authors. In other words, the ideal of civic equality is just that: an ideal to which society should aim, rather than a privilege that some enjoy in the light of their *de facto* access to capital granted by their favoured social identity. One cannot assert self-mastery – and effectively bind another's power of choice – unless one already enjoys civil independence. The state should therefore protect the equal public standing of all groups to command political power by virtue of persons' innate right to freedom. In this way, the ideal of civic equality promotes the qualitative transformation of one's formal relation to one's civic fellows in a political process of social justice reform. Additionally, the ideal of civic equality would be

meaningless if persons did not apply it to disrupt exploitive labour practices that create private dependencies. Without a critique of exploitive labour, the only persons who would enjoy active citizenship are those who already have civil independence by virtue of their membership in a historically favoured group, which shores up their *de facto* access to capital and independence from the burden of care-work.

With respect to (2), recall that the domination contract does not appear *ex nihilo* from the state-of-nature. The concept of structural domination helps us appreciate that the ‘quality’ or ‘attribute’ of civil independence reflects background institutional conditions that produce defined social relations, sanctioned by the state, to constitute dominating power. The upshot is that, if there exists a category of second-class citizens, public institutional and social norms have created this class of passive citizens by institutionalizing exploitative labour relations. The *de facto* access to capital that some powerful groups enjoy from the jump is itself a form of structural domination. The state is the reason some groups lack access to the public sphere because it denies them labour conditions that secure universal civil independence. As Charlotte Sabourin eloquently puts it, passive citizenship ‘is inherently political and, in the case of women, [people of colour, and wage labourers], takes the form of a legal subjection *preventing*’ members of these groups from achieving civil independence (Sabourin 2021: 252; cf. Pascoe 2022). Public institutional arrangements, in effect, *coerce* vulnerable groups into becoming dependent labourers. The ideal of civic equality demands, instead, that the state intervene in exploitive labour relations for the sake of freedom for all. How might it do this?

3.3 State-sponsored poverty relief initiatives

Kant counsels that a just state must not prevent second-class citizens from becoming active citizens but says little about how the state should promote the ideal of civic equality in civil society. He notes that second-class citizens can work themselves up into active citizens:

[W]hatever sorts of positive laws [active citizens] might vote for, these laws must still not be contrary to the natural laws of freedom and of the equality of everyone in the people corresponding to this freedom, namely that anyone can work his way up from this passive condition into an active one. (MM, 6: 315)

He neglects to theorize, however, what sorts of state-backed measures can undo structural domination, which the state had help establish in the first place through the exploitation of women’s and people of colour’s labour.

Recent Kant scholarship defends the role of the state to help persons achieve civil independence, but unfortunately it neglects a critique of exploitation. For passive citizens to secure civil independence, many Kant scholars argue that, at a minimum, the state must advance anti-poverty legislation and basic equality of opportunity (Varden 2014: 251; Holtman 2018: 3). The satisfaction of persons’ basic needs prevents their reliance on charity to survive. So long as public office is open to all, quality public education is accessible and extreme poverty is eradicated, then a minimally just state can be said to support the civil independence of all. Yet state-sponsored poverty relief

initiatives alone, even given 'equality of opportunity', cannot achieve the ideal of civic equality. When it comes to undoing structural domination, too much is assumed here regarding the contribution of providing a thin (or a thick) bundle of material goods as part of a social welfare scheme. As I see it, there are at least two problems with this materialist emphasis, demonstrating the extent to which social welfare measures are necessary but insufficient for justice.

First, passive citizenship primarily attacks one's civic status, not one's social welfare or well-being, however much it also hurts the latter. Though it is vital for a person's basic needs to be met, the manner in which public institutional arrangements meet them mediates a person's civic standing. We must pose the deeper question of whether poverty relief programmes can undo structural domination with respect to exploitive labour relations. Unfortunately, the welfare state is consistent with the domination contract. The crucial satisfaction of basic needs does not by itself transform the background institutional conditions that disproportionately lock women and people of colour into structural domination as dependent labourers (Fraser 2016). They continue to languish as secondary citizens, remaining vulnerable to dyadic domination as dependent labourers who are unable to hold any public normative authority over the conditions of their existence but must instead acquiesce to the demands of employers and the market. Perhaps a small percentage can use their newfound opportunities to access civil independence and, ultimately, meaningful political power to freely define their lives. However, the vast majority of women and historically oppressed racial groups would remain subject to the domination contract. Jordan Pascoe and Dilek Huseyinzadegan observe that a successful white woman will hire immigrant women of colour as care workers, so as to enjoy her newfound independence (Pascoe 2022; Huseyinzadegan and Pascoe 2023). The public administration of material goods alone does not improve an immigrant woman's subordinate social status that makes her vulnerable to hunger, poor compensation, poor health and limited and unrewarding job prospects.

Second, Kant's freedom-based model of justice avoids outlining social welfare rights that should underwrite the coexistence of free choice. A republic that prioritizes the satisfaction of material interests above establishing *rightful relations* among civic fellows is unjustifiable. Kant's theory of justice cannot endorse a welfare state that forgoes the public recognition of persons' equal public standing as civic fellows to command political power in exchange for maximizing their happiness or material goods. Even an enticing bundle of goods should not compel anyone to forego their rightful moral claim to achieve substantive freedom as *sui juris* agents. Remember the state is not an extremely powerful and efficient tool for tracking persons' aggregate interests (*MM*, 6: 318).

The promise of Kant's theory of justice is not his thin account of which social welfare rights should count as 'basic' because they might translate into effective civic standing. Given the historical hold of the domination contract on modern republics, we have cause to doubt that social welfare policies will reliably increase the political power of the oppressed (Pascoe 2022). On the contrary, the modern welfare state has historically functioned to entrench racial and gender inequalities (Basevich 2022: 32). Notwithstanding the historical failures of the welfare state, there is a more worrisome philosophical issue at hand here. Kant scholars are in the strange position of listing bundles of social welfare rights, as if we can reach a tipping point of enough food, medicine and clothes to entail freedom for all. The promise of Kant's political thought

is that it helps us appreciate that any material claim to redistribution and resources should primarily aim to actualize an equal social relation among civic fellows. Redistribution efforts that neglect the qualitative transformation of civic relations will fall short of justice, as they tend to incubate dominating power relations instead, especially in the organization of reproductive labour.

Again, justice requires not mitigating external interference, so that it happens less often or with less disastrous consequences. Nor does it mean satisfying a minimal baseline of social welfare.⁵ Justice requires undoing the institutional conditions that prevent some groups from reciprocally binding others as civic equals in the public command of political power. It is therefore essential that reform efforts position labourers as public authorities about their economic plight. The input of the dominated assists in the determination of what even constitutes a violation of external freedom. For example, dependent labourers have cause to demand cooperative ownership of their workplace and the means of production, as well as state protection of racially integrated unions, rather than remain content with welfare cheques and the 'fair' opportunity to attend elite schools or climb a corporate ladder.

4. The ideal of civic equality and the critique of dependent labour

With some modification, the ideal of civic equality can restructure exploitive labour relations. I sketch here a proposal for how social justice reforms can actualize the ideal of civic equality to secure universal civil independence. I leave aside the obvious issue that a capitalist free market compels workers to sell their labour power, such that all wage labourers are subject to structural domination that gives an elite unbounded wealth and political power (Hasan 2018; Love 2017; Gilibert 2017: 566–7). I focus more narrowly on what kind of state-led measures can alleviate exploitation, given the existence of some version of a capitalist free market, property rights and wage-labour contracts. I sketch a reformulation of property rights and the public provision of care-work as essential for the advance of civic equality for all, but especially for women, women of colour and the poor. As we have seen, Kant has good reason for avoiding listing social welfare rights that might secure the self-mastery of all. I propose that we theorize a scheme of *civic rights* to identify the background structural conditions of civic equality. Civic rights primarily aim not to increase well-being or social welfare but to ensure reciprocal relations of power among civic fellows.

4.1 Rethinking property rights

Kant's original theory of justice emphasizes that access to capital best positions one to enjoy civil independence. Unfortunately, as Love, Wood and many others have noted, Kant's defence of property neglects to assail the relations of private dependence that it seems to presuppose. And yet, his defence of property rights also shows why capital is the foundation of civil independence that translates into reliable political power: the public administration of property rights is the crux of Kant's theory of justice precisely because of its influence on the character of civic relations (*MM*, 6: 261). The upshot is that a state committed to actualizing the ideal of civic equality is authorized to establish a scheme of property rights to ensure that none languishes in

private dependence. I suggest two ways for reimagining property rights to secure universal civil independence.

First, the state should support labourers' right to housing. Women and women of colour are disproportionately vulnerable to structural domination because they do not own a home. As heads of single-family households, women often stay in abusive relationships, drop out of school and accept poverty wages for fear of homelessness for themselves and their children. Barbara Herman explains that 'some things over which there are property rights . . . are necessary for our having civic standing and for the exercise of our rights generally. The right to housing is the form of our juridical abode' (2021: 198–202). She adds, 'unhoused persons do not have a civic existence' (p. 199). We can extrapolate from Herman's critical observation to think more expansively about the background institutional conditions that make possible our civic existence and should thus stand as indispensable civic rights expressing our independence (Messina 2021; James 2016).

In the US there is a strong historical precedent for the state to intervene to redistribute land and housing-stock through low-interest, federally backed mortgages, but these initiatives have benefited white male-led households; and they were also premised on westward colonial expansion. An alternative scheme of housing rights is crucial in the aftermath of economic crises that have left many without homes or housing insecure. Indeed, renewed calls for reparations for black chattel slavery and Jim Crow seek compensation for black homes and business destroyed by white mobs and discriminatory housing practices (Fisette 2022). These calls stand as a litmus test for the future development of a theory of justice that can undo the domination contract.

Second, the cooperative ownership of the means of production by productive labourers mitigates civic subordination. Authoritative control over one's own labour power gives one civic status as a person whose work has dignity and should be the material basis for reciprocal command of political power. *Pace* Kant, we cannot condone the existence of 'underlings' whose socially necessary labour makes possible the existence of modern society but who have no say in the political destiny of the community. Instead, we have to rethink the organization of productive labouring activities that position labourers in a role consistent with their self-mastery as civic agents. For example, Nicholas Vrousalis explains that realizing the republican ideal of independence in the workplace entails workers (1) controlling the conditions of production in their workplace and (2) assuming political control 'over the conditions of production in the economy as a whole' (2019: 259). Labourers' joint ownership of the capital requisite for the production process secures their structural independence and better positions them as civic equals in the public sphere.

4.2 Defending the public provision of care-work

Exploitive reproductive labour practices disproportionately burden women and women of colour. To alleviate their hardship, the state should regard the public organization of care-work as also essential to our civic existence. To be sure, adults should retain custodial authority in the home. However, because care-work is indispensable for maintaining a household, the absence of public support for this essential labour in effect coerces women into becoming dependent laborers. Access to quality day- and elder-care is critical for liberating women from burdensome domestic

responsibilities. Care-work must be publicly recognized for its integral role in human life and compensated as such. Additionally, public provisions for care-work should be integrated along racial *and* gender lines. White men are more likely to garner the political will to organize and compensate care-work fairly, and to regard labourers who execute it as civic equals, if they are also expected to take responsibility for it as *reproductive labourers in civil society*. In other words, the public administration of care-work should take it *outside of the household*; it is socially necessary labour that requires extensive public planning akin to the construction of public schools and hospitals. The occupational desegregation of care-work professions dominated by women and immigrants, increased compensation, as well as effective and integrated unions, are just some viable options for a Kantian theory of justice to consider.

5. Conclusion

Much work remains to be done to reconstruct a Kantian theory of justice that redresses race and gender-based forms of structural domination. Mills' account of the domination contract showcases that we must reconceptualize the very nature and advance of justice to establish all persons as free. Any appropriation of Kant's political philosophy to combat structural domination – and to undo the domination contract – must present an alternative, truly inclusive vision of public right by appealing to a substantive ideal of civic equality. It is not surprising that Kant offers little guidance on the matter. We can nevertheless explore the promise of his political philosophy to build an inclusive polity. I have defended it in terms of the ideal of civic equality. Though my account of civic equality departs from Kant's original model of citizenship, I have reformulated it in the spirit of freedom for all.

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Notes

- 1 Philip Pettit's work exemplifies the dyadic model.
- 2 Hasan aptly likens a just state on the dyadic model to a bulletproof vest that protects persons against external encroachments (2021: 18).
- 3 Cf. Mills' notion of a 'black radical Kantianism' (Mills 2018; Kirkland 2022).
- 4 In the *Anthropology*, Kant assigns women domestic labour as 'natural' to their gender. As I have argued elsewhere with respect to race, Kant posits the supposed underdevelopment or defective exercise of the rational capacities of certain groups (Lu-Adler 2022; Basevich 2020).
- 5 Nicholas Vrousalis makes the helpful distinction between absolute and relational vulnerability. A welfare state mitigates absolute vulnerability, such that none 'suffers a substantial risk of a significant loss in a relevant metric (welfare, resources, capabilities, and so on)' (2013: 133). Absolute vulnerability, however, 'does not make essential reference to an agent's power over another, or indeed to other agents whatsoever' (*ibid.*). Persons may avoid absolute vulnerability, while remaining exposed to the relational power of others.

References

- Basevich, Elvira (2020) 'Reckoning with Kant on Race'. *The Philosophical Forum*, 51(3), 221–45.
 ——— (2022) 'W. E. B. Du Bois's Socialism: On the Social Epistemology of Democratic Reason'. *Philosophical Topics*, 48(2), 23–49.

- Fisette, Jason E. (2022) 'At the Bar of Conscience: A Kantian Argument for Slavery Reparations'. *Social Theory and Practice*, 48(5), 674–702.
- Fraser, Nancy (2016) 'Contradictions of Capital and Care'. *New Left Review*, 100, 99–117.
- Gilbert, Pablo (2017) 'Kantian Dignity and Marxian Socialism'. *Kantian Review*, 22(4), 553–77.
- Hasan, Rafeeq (2018) 'Freedom and Poverty in the Kantian state'. *European Journal of Philosophy*, 26(3), 911–31.
- (2021) 'Republicanism and Structural Domination'. *Pacific Philosophical Quarterly*, 102(2), 292–319.
- Herman, Barbara (2021) *The Moral Habitat*. New York: Oxford University Press.
- Holtman, Sarah (2018) *Kant on Civil Society and Welfare*. New York: Cambridge University Press.
- Huseynzadegan, Dilek, and Jordan Pascoe (2023) 'Kant and Feminist Political Thought, Redux: Complicity, Accountability and Refusal'. In Susanne Lettow and Tuija Pulkkinen (eds), *Palgrave Handbook of Feminism and German Idealism* (New York: Palgrave Macmillan), 1–32.
- James, David (2016) 'Independence and Property in Kant's Rechtslehre'. *British Journal for the History of Philosophy*, 24(2), 302–22.
- Kant, Immanuel (1996) *Practical Philosophy*. Trans. and ed. M. J. Gregor. New York: Cambridge University Press.
- Kirkland, Frank (2022) 'Black Radical Kantianism (BRK) or the Radicalization of Kant in Black (RKB): Kant and Du Bois'. *Kantian Review*, 27(4), 635–50.
- Kleingeld, Pauline (2019) 'On Dealing with Kant's Sexism and Racism'. *SGR Review*, 2(2), 3–22.
- (2000) 'Kantian Patriotism'. *Philosophy and Public Affairs*, 29(4), 314–41.
- Love, S. M. (2017) 'Kant After Marx'. *Kantian Review*, 22(4), 579–98.
- Lu-Adler, Huaping (2022) 'Kant and Slavery: Or Why he Never Became a Racial Egalitarian'. *Critical Philosophy of Race*, 10(2), 263–94.
- (2023 [forthcoming]) *Kant, Race, and Racism: Views from Somewhere*. Oxford: Oxford University Press.
- Messina, J. P. (2021) 'The Postulate of Private Right and Kant's Semihistorical Principles of Property'. *British Journal for the History of Philosophy*, 29(1), 64–83.
- Mills, Charles W. (1998) *Blackness Visible: Essays on Philosophy and Race*. Ithaca, NY: Cornell University Press.
- (2017) *Black Rights/White Wrongs: The Critique of Racial Liberalism*. New York: Oxford University Press.
- (2018) 'Black Radical Kantianism'. *Res Philosophica*, 95(1) 1–33.
- Moran, Kate (2021) 'Kant on Traveling Blacksmiths and Passive Citizenship'. *Kant-Studien*, 112(1), 105–26.
- Pascoe, Jordan (2017) 'Working Women and Monstrous Mothers: Kant, Marx, and the Valuation of Domestic Labour'. *Kantian Review*, 22(4), 599–618.
- (2022) *Kant's Theory of Labour*. Cambridge: Cambridge University Press.
- Pateman, Carole, and Charles W. Mills (2007) *Contract and Domination*. Cambridge: Polity Press.
- Sabourin, Charlotte (2021) 'Kant's Enlightenment and Women's Peculiar Immaturity'. *Kantian Review*, 26(2), 235–60.
- Valdez, Inés (2019) *Transnational Cosmopolitanism: Kant, Du Bois, and Justice as a Political Craft*. Cambridge: Cambridge University Press.
- Varden, Helga (2014) 'Patriotism, Poverty, and Global Justice'. *Kantian Review*, 19(2), 251–66.
- (2016) 'Self-Governance and Reform in Kant's Liberal Republicanism: Ideal and Non-Ideal Theory in Kant's *Doctrine of Right*'. *Diosponos*, 12(2), 39–70.
- (2020) *Sex, Love, and Gender: A Kantian Theory*. New York: Oxford University Press.
- Vrousalis, Nicholas (2013) 'Exploitation, Vulnerability, and Social Domination'. *Philosophy and Public Affairs*, 41(2), 131–57.
- (2019) 'Workplace Democracy Implies Economic Democracy'. *Journal of Social Philosophy*, 50(3), 259–79.
- Wood, Allen (2014) *The Free Development of Each*. New York: Oxford University Press.

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