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Redistribution in the Kantian State: Toward a Deontic-Republican Critique of Inequality

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Abstract

In this article, I defend and expand on what I call the republican view of the Kantian state's duty to the poor. Against minimalist sceptics, I argue that the republican view makes a compelling case for the state's duty with conceptual resources internal to Kant's philosophy of right. Against maximalist critics, I argue that the republican view need not limit redistribution to poverty relief and that it provides resources to overcome an important interpretative challenge facing attempts at justifying more expansive redistribution on Kantian grounds.

Keywords: Kant; legitimacy; poverty; redistribution; republicanism

1. Introduction

In a well-known passage in his *Doctrine of Right* (hereafter DR), Kant claims that governments have a duty to support organizations that provide for the poor, and that, to accomplish this duty, they have a corresponding right to tax the wealthy (MM, 6: 325–6).¹ The passage is much discussed, and there is controversy about whether these claims accord with the basic principles of Kant's philosophy of right. Some claim that 'Kant rejects the welfare state' (Byrd & Hruschka 2010: 42n99) or that Kant's theory 'is totally indifferent towards the economic infrastructure of society and the distribution of goods' (Kersting 1992: 153). Others have looked to Kant's ethics and the duty of beneficence to justify public welfare measures (O'Neill 1989: 219–33; Rosen 1993: 173–208; Gilabert 2010).

In this article, I defend what I call *the republican view* of the state's duty to the poor. The republican view differs from views of the sorts mentioned above by justifying the state's duty to the poor with conceptual resources internal to Kant's philosophy of right. According to proponents of this view, the state's duty to the poor follows from its sanctioning of a private property regime, and fulfilment of this duty is a condition for legitimate exercise of political power. Important proponents of the republican view include Ernest Weinrib (2003), Helga Varden (2006; 2010), and Arthur Ripstein (2009). They may find the label 'republican' fitting to a greater or lesser degree, but their works on Kant share at least two features that align Kant's theory with the

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republican tradition of political thinking. First, they emphasize that the idea of external freedom implied in Kant's principle of right involves an independent standing vis-à-vis others comparable to the republican ideal of freedom as non-domination. Second, they emphasize that there is a constitutive relation between public authority and freedom so understood, which is comparable to the republican idea of 'freedom as citizenship ... a status that exists only under a suitably legal regime' (Pettit 1997: 36).

I will defend what I take to be the 'overlapping consensus' of those defending a republican view against recent criticisms that come from two different directions. On one hand, what I call *minimalist sceptics* question whether the republican view successfully justifies the state's duty to the poor on moral grounds internal to Kant's philosophy of right. On the other hand, what I call *maximalist critics* argue that the republican view rests on too restrained premises, and for this reason, does not recognize how far-reaching the redistributive power of the Kantian state is. In my view, minimalist sceptics either misrepresent or overlook central assumptions in the republican reconstruction of Kant's justification of the state's duty to the poor, and for this reason, fail to disprove the republican view. Maximalist critics for their part defend reasonable public redistributive measures beyond securing the basic needs of the poor, but they underestimate the capaciousness of the republican view. In agreement with the basic premises of the republican view, I argue that Kant's republican ideal can be invoked in defence of redistributive arrangements aimed at reducing economic inequality (and not just creating an economic safety net for the poor). An interpretative challenge for this view is that Kant at times seems to defend the economic inequalities and dependence relations that maximalist arrangements are a response to. Relying on work by Jacob Weinrib (2019), I argue that it is possible to overcome this challenge. Considering the deontic nature of Kant's theory – which contrasts with the consequentialism characterizing much contemporary republican theory – the argument can be seen as a step towards a deontic-republican critique of inequality.

2. The republican view of the state's duty to the poor

It is a merit of the republican view that it explains the state's duty to support the poor with conceptual resources internal to Kant's philosophy of right.² State support of the poor through taxation of the wealthy is an issue that concerns the legitimate scope of a state's power. For this reason, we cannot look to Kant's ethics if we want to account for his position on public poverty relief. Kant's ethical theory informs us about the duties of a rational will and how rational agents should conceive these duties as incentives for action, but it offers no account of the moral rights and duties of state authorities. The rights and duties of states are a topic that belongs to the philosophy of right, which accounts for the ground and the conditions of legitimate political rule.

The republican view also has merit compared with the prudential view that public welfare arrangements can be justified to prevent 'social tensions, class conflicts and economic inequality ... undermine the firmness of the legal order and destabilize the rule of law' (Kersting 1992: 164n7; see also Aune 1979: 157 and LeBar 1999: 236–7). Although I see no reason to deny that welfare arrangements can help preserve political stability, there is at least one major problem with understanding what Kant

says about the state's duty to the poor along these lines. In DR, Kant presents the duty to support the poor as one of 'the effects with regard to rights that follow from the nature of the civil union' (MM, 6: 318). In this way, he indicates that the duty is implied in the moral argument that justifies the civil condition where individuals are united as a state. Since establishing such a condition is an unconditional duty (TP, 8: 289; MM, 6: 307), it seems that welfare arrangements cannot simply be a response to contingent empirical circumstances but are required by the moral logic that necessitates the state.³

In contrast to prudential interpretations, the republican view sees public support for the poor as a condition for legitimate political rule and links the duty to provide poverty relief to the state's sanctioning of a private property right regime (Weinrib 2003: 801; Varden 2006: 271; Ripstein 2009: 272–3). That a government is legitimate means that it has a moral right to exercise political power within a given jurisdiction. For proponents of the republican view, this right rests on the provision of a rightful condition that enables private persons to interact on terms compatible with each person's innate right to freedom.

The innate right to freedom is the right to 'independence from being constrained by another's choice . . . insofar as it can coexist with the freedom of every other in accordance with a universal law' (MM, 6: 237). As a right to independence vis-à-vis others, the right to freedom implies a right to pursue ends of one's own choice rather than ends set by others, on the condition that one's pursuance of ends is compatible with the freedom of others. The same idea is expressed in Kant's universal principle of right: 'Any 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 a universal law' (6: 230).

Proponents of the republican view emphasize that the innate right to freedom concerns our standing in relation to others, and that it involves a prohibition against subordination to other persons' arbitrary choice. As a prohibition against subordination, Kant's idea of freedom as independence is comparable to the idea of freedom as non-domination found in contemporary neo-republican theory, for instance as defended by Philip Pettit. The two ideas have a common core, where freedom is linked to being one's own master, understood relationally as having no one else as master, and where slavery is seen as the paradigmatic antithesis of freedom.⁴ However, the two ideas are not fully congruent. Kant's idea differs from Pettit's influential account of republican freedom both conceptually and with respect to the way it guides normative reasoning.

The conceptual difference concerns how Kant and Pettit spell out the contrast between freedom and its opposite. For Pettit, domination is the capacity to interfere on an arbitrary basis in the choice situation of others. In his view, acts of interference are arbitrary if they are 'chosen or rejected without reference to the interests, or the opinions, of those affected' (Pettit 1997: 55). If interferences are subject to controls that force the interfering agent to track the interests of those affected in a way that accords with these persons' own judgements, they are not arbitrary, and so does not involve dominating power.

This explication of republican freedom conflicts with Kant's approach, which focuses on choice as the capacity to pursue ends and on the possibility of uniting one person's free choice with the choice of others in accordance with a universal law of

freedom. In the introduction to DR, Kant specifies that the concept of right ‘does not signify the relation of one’s choice to the mere wish (hence also to the mere need) of the other)’ and that it takes ‘no account at all . . . of the *matter* of choice, that is, of the end each has in mind with the object he wants’ (MM, 6: 230). On this approach, freedom is the capacity to decide for oneself what end to pursue, whereas hindrances to freedom are unilateral interferences with the choice-making capacity of others. Our choice-making capacity consists of the means at our disposal, and, as proponents of the republican view point out, they comprise our bodily powers and whatever external possessions we have acquired. Accordingly, hindering freedom involves interfering with the body or the possessions of other persons, for instance by harming them, damaging their property, making them do things they would not otherwise do by fraud or threats, or taking what is rightfully theirs (Weinrib 2003: 804–5; Varden 2008: 6–8; Ripstein 2009: 40–6, 66–7).

Harm, damage, fraud, threat, and theft are acts that typically set back the interests of others. However, on the republican view, it is not the failure to track the interests or ideas of others that makes them hindrances to freedom in accordance with universal laws. What makes them such hindrances is that they are unilateral interferences with other persons’ capacity to pursue ends of their own choice. They are acts that either involve using others as means or depriving others of their means, or both. In this perspective, slavery is the antithesis of freedom in accordance with universal laws not because of the slaveowner’s power to interfere with the slave in ways that negatively affects the slave’s interests, but because of the slave’s status as a mere means for the slaveowner. And even if interferences with other persons’ choice-making capacity often set back their interests, one should also note that they need not do so. The doctor who gives patients medical treatment without their consent draws them into purposes they have not chosen, even if the treatment serves what the patients recognize as their own interests. If the patients are not given the chance to consent, it is a case of unilateral interference with their choice-making capacities, no matter how much the treatment benefits their health.⁵

The conceptual difference points towards the different ways in which Pettit’s idea of freedom as non-domination and Kant’s idea of freedom as independence guide normative reasoning. Pettit defends a consequentialist version of republicanism, where freedom as non-domination is seen as a distinctive good that we ought to maximize. For individual persons, non-domination is a primary good that it is rational to value and want irrespective of what other things we value or want (Pettit 1997: 90–2). As a standard for political institutions, it is a goal which should be promoted with whatever means prove to be most effective (pp. 97–102). Accordingly, Pettit’s republican ideal is a state where public policies and institutional arrangements effectively protect citizens against arbitrary interferences, from other citizens as well as from the state itself.

In contrast to Pettit’s consequentialism, Kant’s idea of freedom as independence works as a deontic restraint which limits how we can rightfully pursue ends. His principle of right does not require us to pursue any specific purposes. We need not even make the principle of right the maxim of our actions. As a formal principle regulating external relations between interacting persons, it only says that freedom is limited to actions that can coexist with the freedom of everyone in accordance with a universal law (MM, 6: 230–1). To pursue ends in a rightful way, it suffices that we do

not impair the freedom of anyone. Our pursuance of ends may of course have effects that obstruct the ends of other people, but as long as we do not use other people as means or their means as if they were ours, we act in conformity with each person's innate right to freedom.

It is important to note that to exercise free choice in accordance with universal law involves observance of the duty of rightful honour, which 'consists in asserting one's worth as a human being in relation to others' and is 'expressed in the saying, "Do not make yourself a mere means for others but be at the same time an end for them"' (MM, 6: 236). Kant does not take the right to freedom to imply libertarian self-ownership allowing persons to alienate themselves through contracts reducing them to things at someone else's disposal. Rightful exercise of freedom is not only limited to choices compatible with the freedom of others but also to choices that preserve one's own choice-making capacity.

In Kant's view, it is not possible to interact rightfully, i.e., to exercise freedom in accordance with universal law, outside a legitimate state. Without a system of public laws and institutions that unite separate persons into a people, interacting persons unavoidably subject each other to one-sided and arbitrary constraints (MM, 6: 312). The view that rightful interaction is impossible outside a legitimate state leads us to the postulate of public right, which requires every person who cannot avoid interaction with others 'to leave the state of nature and proceed with them into a rightful condition' (6: 307). Conversely, where public authority is present, everyone is obliged to comply with public laws and directives because to do otherwise would be to 'do wrong in the highest degree by willing to be and to remain in a condition that is not rightful' (6: 307–8).

On Kant's view, a legitimate state is an institutional structure that enables private persons to interact on terms compatible with each person's innate right to freedom. Ideally, proponents of the republican view argue, the Kantian state is a state where laws guarantee each person's innate right and where citizens give laws to themselves (Varden 2006: 274; Ripstein 2009: 202–3). A state need not conform fully to this ideal to be legitimate, but the purpose of the state, i.e., providing a rightful condition for its citizens, defines what the state can and must do. On the republican view, the state is obliged to continuously maintain and improve itself as a freedom-enabling institutional structure, limited to the use of means compatible with each citizen's innate right. This obligation requires that one creates public offices vested with the powers to make, apply, and enforce laws (MM, 6: 313). It also requires the state to perform essential public tasks that prevent unjustifiable dependence relations between private persons. Based on Kant's discussion of the sovereign as the supreme proprietor of the land (6: 323–5), proponents of the republican view identify the provision of public infrastructure and public spaces as well as regulation of economic and financial systems as such tasks (Ripstein 2009: 243–9; Varden 2010: 340–3). More important in our context is of course provision of poverty relief, which is required to reconcile the state's sanctioning of a private property regime with each citizen's innate right to freedom (Weinrib 2003: 810; Varden 2006: 270 and 2010: 344; Ripstein 2009: 277–8).

Property right is the right to things external to oneself. In contrast to innate right, rights to external things must be acquired through acts. Acquisition involves bringing external things under one's control in such a way that others are excluded from using

it without permission. In Kant's view, it is morally required that persons are allowed to have external things as their own because a general prohibition against the possession of external things would be an arbitrary restriction of freedom (*MM*, 6: 250–2). He also claims that it takes a law-governed civil condition to make acquired rights conclusive – i.e., rights that are determinate and enforceable through procedures consistent with each person's innate right to freedom (6: 255–7, 264). At the same time, proponents of the republican view point out that establishing a state-sanctioned regime of conclusive property right gives rise to a problem that makes it a public duty to support the poor.

The problem concerns the unequal accumulation of limited resources that a regime of private ownership enables. Through a series of individual and legitimate acts of acquisition, some may amass abundant wealth whereas others end up with nothing, and so will lack means for their sustenance and continued capacity to pursue ends of their own choice. In this way, a system that allows unequal accumulation of resources can lead to systematic dependence relations, where the poor live at the mercy of the wealthy. Unless the sanctioning of a private property regime is complemented by public efforts at securing the basic needs of all citizens, the poor can only have legal access to necessary means through private charity. However, to depend on charity is to depend on the goodwill of other persons. According to the republican view, this in turn explains why it is a public duty to support the poor.

A government that does not provide poverty relief does not live up to the rationale that justifies its own existence. In failing to secure the basic needs of every citizen, it does not protect against subjection to the choice of others but instead institutionalizes a system where the poor lack independent standing in relation to the wealthy. Accordingly, to act as the representative of all its subjects, conceived as a union of free and equal citizens, a government must complement its enforcement of private property rights with provisions for the poor (Weinrib 2003: 816, 818; Varden 2006: 270–1 and 2010: 344–5; Ripstein 2009: 274, 278–9). On the republican view, then, it is not prudential concerns that justify social welfare programs. Public provisions for the poor are morally required as part of 'the conditions under which the choice of one can be united with the choice of another in accordance with a universal law of freedom' (*MM*, 6: 230).

In recent years, the republican view has been challenged in two different directions. *Minimalist sceptics* argue that the republican view of the state's duty to the poor fails to justify welfare arrangements on moral grounds internal to Kant's philosophy of right. *Maximalist critics* argue that the republican view takes a too moderate stance on permissible redistribution in the Kantian state. In the following sections, I take issue with these two types of challenges to republican views.

3. Minimalist scepticism – and why it is mistaken

The minimalist sceptics with whom I take issue in this section do not embrace minimalist policies. In their view, welfare arrangements or arrangements that reduce economic inequality are essential for political justice. Accordingly, they see the capacity to justify basic welfare measures as a test of Kant's theory. If there is no justification coherent with it, that would be all the worse for the theory. The sceptics differ in how they assess the prospects for such a justification, but they all find the

republican view untenable because of moral commitments and architectonic restraints internal to Kant's philosophy of right. In various ways, they argue that the republican view fails to demonstrate that poverty constitutes wrongful dependence on Kant's own terms. This failure in turn means that an essential element in the republican justifications of coercive redistribution is missing.

Luke Davies (2020) challenges the republican view of poverty as wrongful dependence by focusing on a comparison that Ripstein makes between the problem of poverty and the problem of landless persons in a world where all land is privately held. The problem of the landless arises because the right to occupy space is a condition of a person's rightful exercise of external freedom. Where all land is privately held, the landless can occupy space only at the good grace of landowners. This in turn means that their innate right to freedom is compromised: 'the person who can only occupy space with the permission of others has no capacity to set and pursue his own purposes. As such, the person in need is like a slave, and the contract creating such a situation is, like a slave contract, incoherent' (Ripstein 2009: 280). In the same way, Ripstein argues, the poor face the problem of being completely subject to someone else's arbitrary choice. Lacking resources to maintain control with his or her own bodily powers, the poor person is systematically dependent on the wealthy in pursuing any purpose at all, which is to be 'in the juridical position of a slave or serf' (p. 281).

According to Davies, the two cases are not sufficiently alike to ground the view that the poor are wrongfully dependent on the wealthy. Unlike the landless, who cannot use what they have (their bodies) without someone else's permission, the poor are in control of what little they have. What they have might not be enough to satisfy their ends or to sustain themselves in the long run, but what must be shown, says Davies, is that the poor depend on the wealthy for the *rightful* use of their own means. If the poor are entitled to use whatever they have, they are not wrongfully dependent on the wealthy, even if they lack means to survive and preserve their own purposiveness over time (Davies 2020: 8–9).

Bo Fang makes a similar point by focusing on the formal nature of Kant's concept of right. Fang argues that both Weinrib and Ripstein adopt 'a material understanding of independence' by making access to 'material means to satisfy ... basic needs' a condition of independence (Fang 2022: 197). But to rely on such a material understanding is to bring in empirical considerations extraneous to a moral practical doctrine that explicates an a priori concept of right. According to Fang, Kant's formal concept of right brackets not only the ends for which someone acts but also facts about an agent's economic situation or needs. In his view, poverty and basic needs are empirical factors that generate sensible stimuli that 'can constitute obstacles to the agent's choice', but 'choice is still free as long as no one coerces him or her to make a deal' (p. 199). And if empirical restraints do not prevent the poor from making free deals, it seems that poverty cannot count as wrongful dependence on Kant's terms.

A third minimalist sceptic, Brian McKean, focuses on Weinrib's reconstruction of Kant's justification of poverty relief. McKean points out that Weinrib relies on empirical assumptions when presenting the problem of poverty as the possibility that a person's 'continued existence may become dependent on the goodwill or sufferance of others' in a publicly sanctioned private property regime (Weinrib 2003: 815; see McKean 2022: 536). The problem with this approach, says McKean, is that Kant's moral

commitments exclude that possible dependence caused by poverty can delegitimize the state or justify coercive redistribution. According to McKean, Weinrib's reconstruction involves the view that poor individuals 'face a choice between being independent in the state of nature or potentially dependent on others under a government that tolerated significant economic inequality' (McKean 2022: 535–6). But, McKean argues, hypothetical dependence relations generated by economic inequality cannot outweigh the duty to leave the state of nature. For Kant, subjection to the public authority of the state is a moral necessity wherever contact with other people cannot be avoided. Subjection is required to structure relations between private persons in a rightful way. And since interaction between private persons cannot be rightful outside a legitimate state, a government's legitimacy does not rest on the consent of the governed. The poor might prefer lawless independence to lawful dependence, but their consent is not needed to exercise legitimate political power. As McKean sees it, this argument 'leaves little conceptual space for the claim that states ... are unjustifiable because of a merely probable dependence stemming from an unequal distribution of goods' (p. 536). In his view, all that follows from the postulate of public right is that every person must subject to a common authority that secures formal equality before the law. The duty to do so cannot be conditional on the presence of welfare arrangements that protect against hypothetical or actual dependence relations caused by economic circumstances. To make such arrangements a condition, he suggests, is to require that the public will that unites separate persons into a people has material content, and this is a requirement which does not fit with the *a priori* nature of Kant's argument (pp. 536–7).

As far as I can see, none of these sceptical arguments succeeds in undermining the republican view of the state's duty to the poor. First, the republican view does not rest on the assumption that the poor cannot rightfully use whatever they have as their own. The purpose of Ripstein's comparison of the landless and the poor is to illustrate how poverty involves a juridically significant problem of systematic dependence on others (Ripstein 2009: 280–1). The argument does not require the two cases to be alike in every respect. Whether the poor – unlike the landless – are free to use what little they have is beside the point. What matters is that both cases can be identified as situations where the state-sanctioned institution of private property makes some persons unable to sustain their independence in relation to others. Davies does not challenge this idea. On the contrary, he seems to accept it by admitting 'that the poverty-stricken person depends on the wealthy for the continued use of her means' (Davies 2020: 9).

Second, the republican view is not in conflict with the formal nature of Kant's concept of right. It is not entirely clear how Fang arrives at the conclusion that the concept of right takes no account of economic circumstances, but he makes at least one problematic assumption. This is the assumption that economic circumstances are contingent empirical factors of no relevance to the conditions that establish rightful relations between persons. The assumption is problematic because a person's economic situation is inextricably connected to property right, which in Kant's view is a juridical relation between persons (*MM*, 6: 260–1). To acquire a right to a thing involves bringing the thing within our control in such a way that others wrong us if they make use of it without our consent. Further, since acquisition of property puts

'others under an obligation they would not otherwise have', it is conclusive 'only in the civil condition' where everyone is subject to a common public authority (6: 264; see also 255–6). In Kant's analysis then, the state, 'the whole of individuals in a rightful condition' (6: 311), is partially responsible for the economic circumstances in which we find ourselves. Accordingly, it is odd to say that economic circumstances are mere empirical facts of no concern to right.

It is of course true that Kant's concept of right abstracts from the material ends private persons pursue. Right has to do with the external relations between interacting persons. It requires that the conditions under which we make choices are compatible with everyone's freedom of choice, but no one can have a juridical duty to make the purposes and corresponding needs of others their own end. Beneficence – 'the maxim of making other's happiness one's end' (*MM*, 6: 452) – is an ethical duty. However, that private persons are not juridically obliged to provide for others does not imply that it is permissible for the state to ignore the economic situation or needs of citizens. What holds for private persons does not necessarily hold for any kind of agent, and the state is a special kind of agent with distinct public powers and responsibilities.

Although Kant in some contexts finds the relations between states comparable to the relations between private persons (*MM*, 6: 343–4; *PP*, 8: 354), he does not attribute to states the right to pursue ends of their own choice. Unlike private persons, states are public entities that exist for one and only one basic purpose: to provide a rightful condition for its citizens. As a public entity responsible for structuring interaction among private persons in a rightful way, the state has both rights and duties that no private person has or can have. For instance, to establish a rightful condition, states have the right to make, adjudicate, and enforce laws (*MM*, 6: 312–16). No private person could have such rights because that would conflict with the innate equality entailed in each person's right to freedom (6: 256). Similarly, the republican view attributes to the state a duty to provide poverty relief without attributing any such duty to private persons. As Weinrib puts it: 'The public duty to support the poor is . . . not the response of one person to the need of another, but the response of the commonwealth to the possible dependency that is incompatible with the commonwealth's obligatory existence' (Weinrib 2003: 821). In other words, private persons can, as a matter of right, permissibly ignore the needs of the poor, whereas the state cannot do so without contradicting the rationale justifying the exercise of political power. The idea is that an arrangement ensuring legal access to means for everyone is part of the rightful condition that enables private persons to interact on terms compatible with each person's innate right to freedom. Defending this idea does not involve any questionable introduction of contingent material elements into Kant's a priori concept of right. Accordingly, an appeal to the formality of Kant's concept cannot, without further argument, suffice to dismiss the republican view.

Third, it is not the case that the republican view weighs dependence relations caused by economic inequality against the duty to be subject to public authority. On the contrary, proponents of the republican view consistently emphasize the unconditional duty to be subject to public authority (Weinrib 2003: 809–10; Varden 2006: 268–9; Ripstein 2009: 145–76), while questioning the legitimacy of coercive arrangements that involve no welfare measures. At issue is not whether we are obliged to comply with the laws and directives of public authorities, but what

conditions must be met to establish public authority in the first place. On the republican view, consent is not such a condition, whereas publicly secured support for the poor is, because a coercive arrangement that leaves some persons without legally guaranteed access to means necessarily fails to establish a rightful condition. As suggested by the argument above, I believe this is a completely formal requirement. The republican view does not tell what specific arrangements must be made to guarantee everyone legal access to means. The point is that an arrangement which allows the continued existence of some persons to depend on the goodwill of other private persons conflicts with the duty of rightful honour (Weinrib 2003: 816). In other words, it is an arrangement which does not establish the conditions required for interacting persons to exercise their right to freedom in accordance with a universal law. In view of this, McKean's critique seems inconsequential to the republican view. The critique rests on a misreading of Weinrib's argument, and for this reason, it misses the mark.

4. Maximalist criticism and the capaciousness of the republican view

Where minimalist sceptics question the cogency of the republican view, maximalist critics find it too parsimonious. While the republican view reconstructed in section 2 accounts for the Kantian state's duty to support persons who lack basic needs, it does not explicitly address grounds for redistribution beyond the prevention of poverty. According to maximalists, the account is not necessarily mistaken, but it does not go far enough. In their view, a too narrow focus on dependence relations between private persons prevents proponents of the republican view from recognizing the full potential of Kant's philosophy of right as a framework for justifying public redistribution.

One such critic is Sarah Holtman, who argues that 'support that saves one from the life of a beggar is only the beginning of what justice requires' (2018: 61). Holtman specifically addresses Ripstein's account of the problem of poverty, which, in her view, proceeds from the idea that justice essentially is a matter of preventing force and fraud and of enforcing contracts. She considers this restrained starting point compatible with welfare arrangements providing citizens with an economic safety net. Still, she finds that it implies a form of middle ground view that either fails 'to recognize the capacity of Kantian justice to address the complexities that can imperil agents' or plays down 'the import of conceptions of joint responsibility, general will and citizenship essential to Kant's account' (p. 38).

In Holtman's view, Kant's account of justice entails a demanding ideal of participatory citizenship. Civic freedom, she claims, does not only involve compliance with laws ensuring each person's independence vis-à-vis others but also capacity and equal standing to participate in law-making processes (Holtman 2018: 49–50; see also Holtman 2004). Considering this ideal, the state has a duty to promote the independence of citizens by enabling them to pursue their own life plans, interact with others on terms of mutual respect, and contribute reflectively to public law- and policy-making. Accordingly, we should not be content with a mere economic safety net for all citizens. State support must also include measures that enable citizens to develop the capacities needed to be a self-governing person and to exercise the role as co-legislator of the political community.

In a similar vein, Rafeeq Hasan, also choosing Ripstein as his main target, objects to a one-sided focus on direct interpersonal domination that overshadows the important issue of indirect structural domination. Hasan points out how institutions can establish asymmetrical power structures that enhance the freedom of some to the detriment of others. Even in settings where no one has direct control over someone else's choice-making capacity, inequalities of power and wealth can put some persons in position 'to bind another in ways that do not leave the bound agent equal influence' (Hasan 2018: 914). According to Hasan, counteracting such dominating structures is an important task well within the scope of the Kantian state's legitimate power. Since the right to freedom also implies 'innate equality', characterized by Kant as 'independence from being bound by others to more than one can in turn bind them' (MM, 6: 237–8), systemically caused dependence is a threat to freedom that the state must take measures to prevent. However, in Hasan's view, Ripstein obscures the problem of structural disempowerment by making one person's usurpation or destruction of another person's powers or means the core cases of domination. Ripstein's discussion of poverty is primarily concerned with the prevention of 'semislavery', and this in turn makes it 'hard to see how more robust redistributive policies could find traction' within this framework (p. 919).

Both Holtman and Hasan emphasize the openness and context sensitivity of their respective maximalisms (Holtman 2004: 101; Hasan 2018: 923). Accordingly, they provide no detailed scheme for adequate redistributive measures in the Kantian state. Still, they point to various types of arrangements that might facilitate independence for all citizens. For instance, Holtman suggests that 'income redistribution, access to basic education, housing and the like' could be necessary to give every citizen a real opportunity to 'develop and exercise civic capacities' (Holtman 2018: 53). Hasan for his part argues that, to realize the ideal of equal external freedom, the state should have 'final authority over the workplace through labor law' (Hasan 2018: 922). Such authority might be used to establish 'universal basic income', 'coerce employers to recognize or bargain with a union', and 'create new employment opportunities' to 'provide exit-options or counter-pressures to the asymmetrical force of workplace domination' (p. 923).

I believe there is much to say in favour of the ideas that the Kantian state should adopt maximalist arrangements enabling the development of civic capacities and counteracting structural domination. However, I do not think support for such arrangements requires us to reject the republican interpretation of Kant's innate right, where external freedom is understood in terms of personal independence in direct relations between individuals. In her defence of maximalist arrangements, Holtman develops an alternative account where freedom is understood in terms of civic personhood and standing as active citizen (Holtman 2018: 46–50). Hasan, for his part, argues that the institutional dimension has primacy for Kant. On this account, 'it is first and foremost the political and economic systems, and only derivatively ... individual relationships ... which threaten external freedom' (Hasan 2018: 922). These accounts challenge an important aspect of the republican view, but in other respects, Holtman and Hasan seem to overstate their differences with republicans.

For one thing, it is not correct to say that proponents of the republican view play down the problem of structural threats to freedom. Even if they explicate the idea of external freedom in accordance with universal law by focusing on direct relations

between individuals, they analyse poverty as a structural or systemic threat to freedom enabled by the state-sanctioned institution of private property. And related to the systemic analysis of the problem, we also find a systemic solution. Even if individual citizens must pay the taxes required to support the poor, their juridical duty is not a direct duty to the poor. Their duty is to the state that enables and secures their wealth, whereas the duty to the poor befalls the state, as a necessary part of its provision of a rightful condition (Weinrib 2003: 817–18; Ripstein 2009: 282–3; Varden 2010: 344).

Moreover, Holtman and Hasan underestimate the capaciousness of the republican view by defining it as a middle-ground view. It is true that the republican reconstruction of Kant's argument about the public duty to the poor focuses on the need to avoid a situation where some person's continued existence is dependent on the arbitrary choices of others. However, there is nothing in republican accounts that rule out more far-reaching redistributive arrangements. The republican view explains why legitimate states *must* secure legal access to means for all citizens, but it does not imply that legitimate social support should be kept at a subsistence minimum. In fact, proponents of the republican view have made cases not only for middle-ground poverty relief but also for maximalist arrangements along the lines suggested by Holtman and Hasan. For instance, both Varden (2006: 274–5) and Ripstein (2009: 293–4) argue that the Kantian state should give citizens the opportunity to develop and exercise civic capacities because of its duty to transform into a republican form of government where citizens give laws to themselves. They also point out that the Kantian state can and should regulate work conditions through labour law to hinder exploitation in employment relationships (Varden 2006: 272; Ripstein 2009: 285–6).

I further believe that Kant's republican ideal can be invoked to support maximalist *redistribution*, that is, redistribution aimed at reducing economic inequality (and not just creating an economic safety net for the poor). Specifically, it seems that a good case can be made for the view that progress towards republican government requires less concentration of wealth at the upper end of the economic spectrum. In addition to the problem of structural domination among private parties analysed by Hasan, there is a danger that economic inequality leads to domination via privileged access to political institutions and law-making processes. Even where all adults have the same set of civil and political rights, large economic differences make it likely that the wealthiest exert a disproportionate influence on lawmaking because of the many ways in which money can be used to weaken the democratic credentials of political processes (see, for instance, Christiano 2012). Indeed, evidence from US politics suggests that such influence is not just a likely possibility, but a troubling reality: when the preferences of high-income groups stand against the preferences of mid- or low-income groups, the former have a significant impact whereas the latter have either next to insignificant or no impact at all on political outcomes (Gilens 2005; Bartels 2008).

To the extent that economic differences hinder democratic lawmaking, there are good reasons to adopt tax schemes and economic policies that redistribute wealth well beyond providing for those who have insufficient means for maintaining themselves. Redistributive arrangements must aim at what John Rawls calls the fair value of equal political liberties, which requires 'that citizens similarly gifted and motivated have roughly an equal chance of influencing the government's policy and

of attaining positions of authority irrespective of their economic and social class' (Rawls 2001: 46; see also 148–9).

Like Holtman and Hasan, I consider it an open question how far-reaching public redistribution should be. Specifying how a given state can best approximate the ideal of a true republic requires what Kant calls 'a principle of *politics*' which applies a priori concepts of right to empirical circumstances based on 'experiential cognition of human beings' (SRL, 8: 420). Maybe the fair value of equal political liberties requires a transition towards property-owning democracy or liberal socialism, as Rawls suggests (Rawls 2001: 138–40), or perhaps progressive tax schemes that effectively reduce today's extreme concentration of wealth might suffice (see Piketty 2020). Presumably, some degree of economic inequality is compatible with Kant's republican ideal, but the preceding argument suggests that, in addition to creating an economic safety net for the poor, the Kantian state should reduce the concentration of wealth at the upper end of the economic spectrum.

An interpretative challenge for any defence of maximalism on Kantian grounds is that Kant at times seems to justify inequality and asymmetrical power relations between private persons. For instance, in *On the common saying: That may be correct in theory, but it is of no use in practice* (hereafter TP), Kant says that the equality of persons as subjects of public laws not only is consistent with inequality in possessions but also is consistent with the hierarchical relations caused by such inequalities (TP, 8: 291–2). In DR, he makes a similar point when saying that passive citizens' 'dependence upon the will of others ... is ... in no way opposed to their freedom and equality as *human beings*, who together make up a people' (MM, 6: 315).⁶ To show that we can reconcile these claims with Kantian maximalism I will in the next section make use of work by Jacob Weinrib, who elucidates normative aspects of sovereignty through an interpretation of Kant's philosophy of right (Weinrib 2019). Using Weinrib's interpretation as a backdrop, I argue that it is possible to explain why maximalist redistribution is morally required even if there is a sense in which dependence relations caused by economic inequality are compatible with public right. Since the main features of Weinrib's account agree with the republican view, the argument in the next section can be seen as part of a deontic-republican defence of maximalism.

5. The right to rule and the duty to the ruled: A deontic-republican defence of maximalism

For present purposes, my interest in Weinrib's work on Kant lies in his analysis of the relation between the postulate of public right, which establishes the sovereign's right to rule, and the idea of an original contract, which establishes the sovereign's duty to the ruled. On Weinrib's analysis, both ideas flow from the unifying principle that everyone has a right to interact with others within a system of reciprocal restraints on external freedom, but they delineate different rights and duties to governments and their subjects, and they have different conditions of satisfaction and application. In view of this analysis, I argue that we can see middle-ground poverty relief as part of the conditions that satisfy the postulate of public right and maximalist redistribution aimed at reducing inequality as part of the conditions that satisfy the idea of an original contract.

In line with the republican view, Weinrib argues that a sovereign's right to rule rests on the provision of an institutional arrangement that enables interaction on terms compatible with each person's innate right to freedom (Weinrib 2019: 25–7). And, also in line with the republican view, he sees the postulate of public right as a correlate to this idea. Should persons who unavoidably interact find themselves in a state of lawlessness, they are obliged to establish a rightful condition. Wherever a rightful condition exists, interacting persons are obliged to act according to the laws and directives promulgated by public authorities (p. 28).

Weinrib further agrees with proponents of the republican view in denying that any regime exercising coercive power on a territory is thereby publicly authoritative (Weinrib 2019: 29). In view of Kant's justification of the right to rule, possible coexistence of interacting persons' external freedom under law is a limiting condition for the exercise of public authority. Accordingly, public authorities cannot enact and enforce laws that deprive some persons of all rights, leaving them at the mercy of others. With Julius Ebbinghaus, we might call legislation that leaves some persons without a legally protected capacity to exercise external freedom 'an act of inhumanity' (Ebbinghaus 1953: 21). Such legislation goes beyond the authority of any government, and so does not give rise to novel obligations for anyone.

This limiting condition aside, the postulate of public right tells us nothing about what duties befall those exercising political authority. The postulate informs us about the duties of private persons but leaves open what duties a sovereign has to its subjects. To be informed about the duties of the sovereign, Weinrib argues, we must instead look to the idea of an original contract, which Kant presents as 'a rational principle for appraising any public rightful constitution' (TP, 8: 302). As a moral standard for assessing a state's constitution, this principle requires continual and gradual reform towards a form of government 'which makes *freedom* the principle and indeed the condition for any exercise of *coercion*' (MM, 6: 340). According to Weinrib, the principle is implied in the republican justification of the right to rule, and it requires reconciliation of public authority with the freedom of subjects through continual constitutional reform involving both procedural and substantive improvements. Procedurally, such reform involves transition towards democracy because democratic lawmaking is the only form of lawmaking that does not impose arbitrary constraints on the freedom of those subject to coercive laws. Substantively, it involves transforming the legal system into a system where all prohibitions and prescriptions can be justified by the need to secure the equal freedom of interacting persons (Weinrib 2019: 34–6; see also Weinrib 2016: 59–60).

Reading these procedural and substantive requirements into the idea of an original contract accords with the republican view by attributing to Kant a commitment to the ideal of a self-legislating political community where binding laws serve the purpose of enabling exercise of free choice compatible with the freedom of all. As I see it, attributing such a commitment to Kant resonates well with his account of the idea of an original contract in DR. Here, the original contract is linked to the idea of a 'true republic' which 'is and can only be a *system representing* the people ... by all the citizens united and acting through their delegates' (MM, 6: 341) and to the idea that 'the human being in a state ... has relinquished entirely his wild, lawless freedom in order to find his freedom as such undiminished, in a dependence upon laws' (6: 316).

A possible objection to this reading is that in TP Kant presents the idea of an original contract in a way that seems to imply a much less demanding principle. Here, the idea is described as ‘the touchstone of any public law’s conformity with right’ requiring us to consider a law just ‘if it is *only possible* that a people could agree to it’ and unjust if ‘a whole people *could not possibly* give its consent to it’ (TP, 8: 297). By itself, this description might suggest that the idea of an original contract simply works as a formal constraint on public laws, akin to what I above called a limiting condition for exercise of public authority, rather than as a principle of progressive reform.

But even if Kant’s account in TP seems to indicate a less demanding standard than the idea of a republican government where citizens collectively author the laws that bind them, I do not see it as a serious challenge to the progressive reading defended by Weinrib and proponents of the republican view. In addition to the explicit connection between the idea of an original contract and the idea of a true republic in DR, we find several claims throughout Kant’s legal and political writings to the effect that the form of government best suited to the concept of right involves self-government by the people (TPP, 8: 350n and 372; DR, 6: 313–14; CF, 7: 90–1). Moreover, one should note that Kant’s account in TP is not in conflict with interpreting the idea of an original contract as a principle of progressive reform. On the contrary, the duty of the sovereign to reconcile its own power with the freedom of its citizens implies acting within the constitutive limits of public authority. In reforming the constitution, public authority must not be exercised in ways that subvert the purpose justifying its own existence. Accordingly, that the idea of an original contract involves a formal constraint on public laws aligns well with understanding the same idea as a duty to transform into a true republic.⁷

Presuming that Kant’s theory has the structure suggested by Weinrib, it is possible to square Kant’s claim that civil dependence is consistent with right with the claim that maximalist redistribution is morally required. According to Weinrib’s proposal, the postulate of public right and the idea of an original contract are not only principles delineating different rights and duties to governments and their subjects, but they also have different conditions of application. The postulate, Weinrib argues, applies wherever private persons interact, and it obliges private persons to subject their interaction to public laws. The idea of an original contract applies to the relationship between governments and their subjects, and it obliges governments to reconcile their coercive power with each subject’s right to freedom. In this view, the postulate is a principle for identifying instances of legitimate political rule, whereas the idea of an original contract is a principle for assessing the moral adequacy and guiding reforms of legitimate systems of political rule. Political rule is legitimate if it subjects private persons to the prescriptions of a system of public laws rather than the arbitrary choice of others, and it is morally adequate if the system of public laws satisfies the procedural and substantive requirements of the idea of an original contract (Weinrib 2019: 36–9).

An important implication of this proposal is that the idea of an original contract only applies where legitimate political rule is present. As a principle of constitutional reform, it applies to every government, but since its requirements concern the vertical relation between governments and their subjects, it is inapplicable where legitimate government is absent (see also Ebbinghaus 1953: 18). Further, since

maximalism is an implication of the idea of an original contract, we might say that limiting redistribution to middle ground poverty relief is in accordance with right in one sense, even if contrary to right in another sense. Middle-ground poverty relief can be sufficient for organizing a rightful condition which protects private persons from slave-like dependence relations. Such limited redistribution is part of the conditions that establish legitimate rule and political obligations – and in this sense, it is compatible with right. At the same time, where obstacles to democratic lawmaking can be diminished through maximalist redistribution, a government acts in conflict with the idea of an original contract if it limits redistribution to middle-ground poverty relief. Such limited redistribution can be sufficient for protecting persons from living completely at the mercy of others, but in permitting economic inequality to hinder approximation towards the ideal of a true republic, a government exercises public authority in a morally inadequate way.

Seeing things this way helps us explain how maximalism need not conflict with Kant's claim in TP that the hierarchy caused by inequality in possessions is consistent with the equality of individuals as members of a state (TP, 8: 291–2). Kant here speaks specifically of the equality of members of a state *as subjects*. The main issue in this context is not the relationship between ruler and ruled, but the equal legal standing of private persons. Accordingly, what Kant says is that the equality of individuals as subjects of law is not undermined by economic inequality and social hierarchy. And saying so is compatible with the claim that approximating a true republic where the subjects of law collectively author the laws requires maximalist arrangements.⁸ Even if a community characterized by economic inequality and social hierarchy can satisfy the minimal conditions for the rightful independence of persons considered as legal subjects, inequality and hierarchy can still frustrate progress towards government in conformity with the republican ideal implied in the idea of the original contract.

This line of interpretation aligns well with Kant's repeated claims that we should prefer defective constitutions to having no rightful constitution at all, and that the defects of constitutions do not negate the duty of subjects to comply with public laws and regulations (TPP, 8: 373n; MM, 6: 372). These claims reflect the idea that even defective constitutions are freedom-enabling and authoritative institutional structures. Subjects do wrong if they act as if the laws and regulations of defective systems of political rule are null and void because then they reserve the right to act as judges in their own case, and thus subject others to their own arbitrary choice. Still, the duty of subjects to comply with defective exercise of public authority does not cancel the duty of public authorities to reform the constitution towards the ideal of the true republic. Kant emphasizes that rulers are obliged to be concerned with how known defects 'can be improved as soon as possible' (TPP, 8: 372). He recognizes that there can be times where reforms would be premature. Since political rule typically involves decision-making under unfavourable circumstances, existing empirical constraints might justify postponing making certain improvements. But progressive reforms cannot be postponed indefinitely. Once the time is ripe, there is no excuse for further delay (8: 373).

In *Towards Perpetual Peace*, Kant points to the presence of external threats, 'the risk of being at once devoured by other states', as a legitimate ground for postponing constitutional reform (TPP, 8: 373). Likewise, it might be that tax havens today frustrate the implementation of a just tax regime, and so justify postponing certain

progressive economic reforms. Even so, there are good reasons to see maximalist redistribution as part of the reforms required by the idea of an original contract. The state neglects its duty to the ruled if it makes no effort to hinder that economic differences convert into institutionally entrenched asymmetries of power because then it allows economic differences to subvert the aim of approximating the ideal of a true republic.

6. Conclusion

Proponents of the republican view claim that the state's duty to the poor is a condition for legitimate exercise of political power, and they account for this duty with conceptual resources internal to Kant's philosophy of right. This contrasts with readings that respond to Kant's claims about the duty to the poor either by judging them as inconsistent with the basic principles of his legal theory or by looking to considerations extraneous to the philosophy of right. I have defended the republican view against minimalist sceptics and maximalist critics. Where minimalist sceptics question the republican view on mistaken premises, maximalist critics overstate their differences with the republican view. Defending maximalism is challenging in view of Kant's claim that economic inequality and dependence relations caused by economic inequality are compatible with right, but the challenge can be overcome if we distinguish between the conditions that satisfy the postulate of public right and the conditions that satisfy the idea of an original contract. In the present account, middle-ground poverty relief is part of the conditions that satisfy the former whereas maximalist redistribution is part of the conditions that satisfy the latter. The argument suggests that the Kantian state should redistribute not only to create an economic safety net for the poor but also to reduce the concentration of wealth. Contrary to common opinion, there is room for a more radical, deontic-republican critique of inequality in Kant's philosophy of right.

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Notes

1 I refer to Kant's works according to the Prussian and later Berlin Academy pagination. I have made use of these works: *On the common saying: That may be correct in theory, but it is of no use in practice* (TP), *Toward Perpetual Peace* (TPP), *The Metaphysics of Morals* (MM), *On a supposed right to lie from philanthropy* (SRL), and *The Conflict of the Faculties* (CF). I quote from TP, TPP, MM, and SRL according to the translations in Kant (1996), and from CF according to the translation in Kant (1979).

2 The presentation of the republican view in this section builds on, and partly overlaps with, sections 1 and 2 in Mikalsen (2021).

3 Weinrib makes a similar point by referring to Kant's claim that supporting the poor is a duty of the people taken over by the state (MM, 6: 325–6). Since 'duty' is a technical term referring to 'the matter of obligation' and 'obligation' is 'the necessity of a free action under a categorical imperative of reason' (6: 222), Weinrib suggests that the duty to the poor reflects 'a normative necessity rather than a prudential option' (Weinrib 2003: 800).

4 This similarity has been pointed out by Ripstein (2009: 42–3), Hodgson (2010: 806–7), and Pettit (2013: 177).

5 According to Louis-Philippe Hodgson, the focus on freedom as the capacity to pursue ends of one's own choice allows Kant to sidestep a problem that arises for Pettit. By explicating non-domination in terms of having one's interests and ideas protected, Pettit's account seems to imply the implausible idea that paternalism does not hinder freedom if interferences are forced to reliably track our interests. Hodgson argues that Kant avoids this problem by locating freedom in the capacity to set ends independently of the ends other people pursue (Hodgson 2010: 809–12). For a similar line of criticism, contrasting Pettit with Rousseau, see Neuhouser (2013: 198–200).

6 Based on claims like these, Sylvie Loriaux has recently criticized maximalist interpretations of Kant, arguing that 'they place the Kantian state under a juridical duty to combat dependence relations, which Kant ... seems to consider consistent with right' (Loriaux 2023: 242; see also Davies 2020: 10). It lies beyond the scope of this article to make comprehensive assessments of Holtman's and Hasan's maximalist positions. Accordingly, I will not discuss to what extent their interpretations are susceptible to Loriaux's criticism. However, I still need to show how the interpretative challenge can be met on republican grounds, and doing so is the main purpose of section 5.

7 Thanks to an anonymous referee for prompting me to clarify this point.

8 For a similar interpretation of what Kant says about inequality in TP, see Holtman (2018: 54).

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