

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

by Elvira Basevich

Assistant Professor of Philosophy  
University of California, Davis  
Laurence S. Rockefeller Visiting Faculty Fellow  
Princeton University

(Forthcoming in *Kantian Review*)

Abstract.

This essay applies Charles W. Mills's notion of the domination contract to develop a Kantian theory of justice. The concept of domination underlining 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.

Key words: republicanism, gender, race, domination, justice, freedom

Introduction.

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 nonwhite racial groups reveals what Charles W. Mills describes as the "domination contract", a form of structural domination that denies women and people of color equal public standing (2007: 92-101; 2017: 36-39). In this essay, 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 under-developed for the task of social justice reform that shows how to dismantle it with respect to exploitive race- and gender-based labour relations.

In Section I, I present Mills's 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 color. In section II, I demonstrate that Kant's account of active and passive citizenship rationalizes the state's coercion of socially denigrated groups in the organization of exploitive labour relations. Finally, in Section III, I rethink the ideal of civic equality to provide an alternative to state-supported social welfare programs to assist exploited labourers achieve civic equality and resist structural domination.

## I. Mills on The Domination Contract

The concept of domination is central in Africana and African-American political philosophy, as it reflects a strident feature of the modern black experience. Mills asserts that the domination contract is a heuristic device for conceptualizing the sociohistorical nature of domination in modern republics founded on slavery and colonialism (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 with which persons should exit a hypothetical state-of-nature to found republics. The domination contract, instead, captures *unjustifiable* inequalitarian 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 (2007: 108). The condition of political membership was—and remains—submission to state-supported social systems, in which some groups assume a denigrating 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.<sup>i</sup> 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 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 color 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 had 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 had built it. One cannot say that the Roman engineers knew all along that one day cars will come and Rome will be a popular travel destination overrun with tourists. So too the re-appropriation of Kant's system *can* support a theory of justice that fosters an inclusive polity. But for that re-appropriation 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, first, we 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 sociopolitical 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,
- (5) considers social identities such as race, class, and gender to be social constructions, rather than the fixed 'natural' features of persons. (2007: 92-101; 2017: 36-39)

Taken together, these features capture that dominating power has a sociohistorical 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 unjust *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 to illuminate an original meta-philosophical standard for philosophical scrutiny: structural domination.

Let's 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.<sup>ii</sup> 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 choice without regard to their interests; such arbitrary interference need not be actualized, but only present as a latent capacity in another person's unbridled capacity for choice. Not all forms of interference are arbitrary expressions of dominating power. On the dyadic model, a just state is a coercive bulwark against the wrong kind of 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's picture of the domination contract, the primary agents of domination are institutional and social practices; 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 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 color. The businessowner’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 businessowner’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 evaluative commitments.

We can now better understand the implication of the sociohistorical phenomenon of the domination contract for a theory of justice. The concept of structural domination *systemizes* the underlining structure of the experience of racial domination among vulnerable groups. Namely, it shows how it 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; that is, 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 sociohistorical emergence of the domination contract signifies gross institutional failures.

In repurposing Kant’s theory of justice, we need an account of a social 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.

## II. 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” (*MM* 6: 311). 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 co-exist 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” (*MM* 6:213, 6:237; 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” (*MM* 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 cosmopolitan federation of peaceful republics. Unfortunately, it is not quite clear what sort of juridical system is essential for securing 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 that of “positive rights, which proceeds from the will of a legislator” (*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 requirements of justice. 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 independent civil personalities as *sui juris* agents with a civic status. For the ideal of public right leaves *underdetermined* the requisite scheme of acquired civic rights and privileges that a person *must* acquire to complete the transition from a position of natural equality to that of publicly conferred civic equality as a member of a political community. As civic equals, all persons enjoy the “positive” public recognition of their “quality” of being a *sui juris* agent.

Let’s consider what the ideal of public does *not* entail because it is inconsistent with the natural equality of persons as innately free. It follows from Kant’s defense of the ideal of public right that the state cannot coercively prevent some groups from having authoritative command over their choices, bodies, and property. Everyone must be able to assert their free choice in concert with others with respect to their physical bodies and property. 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.<sup>iii</sup> 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, since 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 in my discussion below.

### III. 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 a just system of public right. 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 in public institutional arrangements. For just institutional arrangements must eliminate the background institutional conditions constituting structural domination. Unfortunately, there is an ambiguity concerning (i.) what 'equal' public standing in a political community amounts to as a juridical subject as opposed to an equal citizen, (ii.) how a substantive ideal of civic equality can protect all persons against structural domination, and (iii.) what state-backed political mechanism can secure freedom for historically marginalized groups. Notwithstanding Kant's lack of clarity on these issues, I believe that answers are forthcoming, if not to the letter, then to the spirit of his political philosophy.<sup>iv</sup> Or so I argue below.

i. 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 (*MM* 6:314). They enjoy the normative ideal of freedom as self-mastery that I discuss 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 a political process of public will formation as civic equals.

Kant's rationale for political exclusion rests on a notoriously untenable model of citizenship that distinguishes active from passive citizenship, perhaps the weakest element of his mature political philosophy. Active citizens, writes Kant, have the "essential" attributes of freedom, equality, and independence (*MM* 6:315). "The attribute of civil independence", he explains, 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" (*MM* 6:314). Active citizens have civil independence in that their "existence and preservation" does not rest "on the will of another" (*MM* 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 2017). Their independence from the direction of another as labourers positions them as *sui juris* agents in civil society. Active citizens are, then, authorized to represent their own interests in the public sphere (*MM* 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 (*MM* 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, nonwhites, 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” (MM 6:315). 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 (MM 6:315). Kant views all persons as “natural” moral equals before the law, even as he appeals to notions of “natural” social *inferiority* that bars 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 social groups as natural social inferiors, Kant demarcates the civic status 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.<sup>v</sup> 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 color 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* 6:276-283). Exploitive labour relations constitute nested spheres of private dependence, with women of color 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 that dependent labourers suffer the social 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 both the wealth and civic status of those whom materially benefit from it. 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 more esteemed social groups. The exploitation of labour thus betrays a relation of civic inequality among groups. In the next section, I consider how to rework the ideal of public right using the ideal of civic equality, so that all persons regardless of their

social identity can enjoy independence as *sui juris* agents. The ideal of civic equality must intervene in the background institutional conditions of labour; 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. 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 minority to enjoy civic standing in practice at the expense of others.

ii. 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). In my view, our natural moral equality entails 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: it 1) 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, it 2) 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 favored social identity. Otherwise 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 do 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 favored social group, which shores up their de facto access to private property 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 unjust 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 certain groups access to labour conditions that secure their civil independence. As Charlotte Sabourin eloquently puts it, passive citizenship "is inherently political and, in the case of women, [people of color, and wage labourers], takes the form of a legal subjection preventing" members of these groups from achieving civil independence (2021, 252; 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?

### iii. State-Sponsored Poverty Relief Initiatives

Kant counsels that a just state must not prevent second-class citizens from becoming active citizenship, 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, writing “whatever 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-back measures can undo labour-based forms of structural domination, which the state helped establish in the first place in its social denigration of women and people of color.

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 2017, 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 supports the civil independence of all. Food, education, medicine, and a living-wage better position a person to enjoy a good life. Surely, soul-crushing poverty constitutes undue interference in the power of choice. Yet state-sponsored poverty relief initiatives alone cannot achieve the ideal of civic equality. The assumption is that a thin (or a thick) bundle of material goods as part of social welfare scheme is sufficient to undo structural

domination. As I see it, there are at least two problems with this materialist interpretation of Kant's ideal of public right, demonstrating that social welfare measures are necessary but insufficient for justice.

First, passive citizenship primarily attacks one's civic status, not one's social welfare or wellbeing, however much it also degrades 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 programs can undo structural domination with respect to the organization of 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 color 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 the terms of their lives. However, the vast majority of women and historically oppressed racial groups would remain subject to the domination contract. Jordon Pascoe and Dilek Huseyinzadegan observe that a successful white woman will hire immigrant women of color as care workers, so as to enjoy her newfound civil independence (2022, 2023). The public administration of material goods does not by itself improve an immigrant woman's subordinate social status that makes her vulnerable to hunger, poor compensation, poor health, and limited and unrewarding job prospects that deny her a good life.

Second, Kant's freedom-based model of justice avoids outlining social welfare rights that should underwrite the co-existence 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 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. The state is not an extremely powerful and efficient tool for tracking persons' aggregate material interests (*MM* 6: 318).

The promise of Kant's theory of justice is not his thin account of which material needs should count as 'basic' in a scheme of social welfare rights that 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 that entails 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 conditions.

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.<sup>vi</sup> 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 plights. 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 checks and the “fair” opportunity to attend elite schools or climb a corporate ladder.

#### IV. 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 below 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 2017; Love 2017; Gilabert 2017, 566-67). I focus more narrowly on what kind of state-led measures can alleviate exploitation, given that some version of a capitalist free market, property rights, and wage labour exists. Below 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 color and the working poor. As we have seen, Kant has good reason for avoiding listing social welfare rights that might secure the self-mastery of all persons. I propose that we theorize a

scheme of *civic rights* to identify the background structural conditions in support of civic equality. Civic rights primarily aim not to increase well-being or social welfare but to ensure reciprocal relations among civic fellows:

1. *Rethinking Property Rights*. Kant's original theory of justice emphasizes that access to private capital best positions one to enjoy civil independence. Unfortunately, as Love, Wood, and many others have noted, Kant's defense of private property neglects to assail the relations of private dependence that it presupposes. And yet, his defense of private property also shows that it stands as the foundation of persons' civil independence and political power. The public administration of private property is the crux of Kant's theory of justice precisely because of its influence on 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 private property rights to ensure that none languishes in private dependence. I suggest two ways for reimagining property rights to secure universal civil independence.

The state should support labourers' right to housing. Women and women of color 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. [T]he right to housing is the form of our juridical abode" (2021, 198-202). She adds, "unhoused persons do not have a civic existence" (2021, 199). We can extrapolate on Herman's critical observation to think more expansively about the background institutional conditions that make possible our civic existence

and should thus stand as civic rights.

In the U.S. 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 benefitted white male-led households; and they were also premised on brutal westward colonial expansion in the 18<sup>th</sup> and 19<sup>th</sup> century. 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 2021). These calls stand as a litmus test for the future development of a theory of justice that can undo the domination contract.

Additionally, the cooperative ownership of the means of production by productive labourers mitigates civic subordination. Authoritative control over one's own labour gives one civic status as a person whose work has dignity and should be the material basis for their reciprocal command of political power. Pace Kant, we cannot condone the existence of 'underlings' whose social necessary labour makes possible the social reproduction of a 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: (i.) workers controlling the conditions of production in their workplace and (ii.) workers assuming political control "over the conditions of production in the economy as a whole" (2019, 259). Labourers' joint ownership of the capital requisite for production process secures their structural independence and better positions them as civic equals in the public sphere.

2. *Defending the Public Provision of Care-work.* Exploitive reproductive labour practices disproportionately burden women and women of color. To alleviate their hardship, the state should regard the public organization of care-work as also essential to their 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 domestic workers. Access to quality daycare and elder care is therefore critical to liberate 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 labourers*. The occupational de-segregation 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.

## V. 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's 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.

#### Acknowledgements:

I warmly thank Yoon Choi, Bella-Rose Kelly, Frank Kirkland, Robert Loudon, Huaping Lu-Adler, Charles Mills, Jordan Pascoe, Sarah Clark Miller, "Radicalizing Kant" workshop participants, and two anonymous reviewers for their comments.

#### References

- Basevich, Elvira (2020) 'Reckoning with Kant on Race'. *The Philosophical Forum* 51, 3: 221-45.
- Basevich, Elvira (2022) 'W.E.B. Du Bois's Socialism: On the Social Epistemology of Democratic Reason'. *Philosophical Topics* 48, 2: 23-49.
- Fisette, Jason E. (2021) 'At the bar of conscience: A Kantian argument for slavery reparations'. *Social Theory and Practice* 1-29.
- Fraser, Nancy (2016) 'Contradictions of Capital and Care'. *New Left Review* 100: online.
- Gilabert, Pablo (2017) 'Kantian Dignity and Marxian Socialism'. *Kantian Review* 22, 4: 553-77
- Hasan, Rafeeq (2021) 'Republicanism and Structural Domination'. *Pacific Philosophical Quarterly* Early View.
- Hasan, Rafeeq (2018) 'Freedom and poverty in the Kantian state'. *European Journal of Philosophy* 26, 3: 911-31.
- Lu-Adler, Huaping (2023) *A View from Somewhere: Kant, Race, and Racism*. New York: Oxford University Press.
- 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.
- Huseyinzadegan, Dilek (2019) *Kant's Nonideal Theory of Politics*. Evanston: Northwestern



University Press.

Huseyinzadegan, Dilek and Jordan Pascoe (2023) 'Kant and Feminist Political Thought, Redux: Complicity, Accountability and Refusal'. eds. Susanne Lettow and Tuija Pulkkinen *Palgrave Handbook of Feminism and German Idealism*. New York: Palgrave MacMillan

Kant, Immanuel (1996) *The Metaphysics of Morals*. New York: Cambridge University Press.

Kirkland, Frank (2022) 'Black Radical Kantianism (BRK) or the Radicalization of Kant in Black (RKB): Kant & Du Bois'. *Kantian Review*

Kleingeld, Pauline (2019) 'On Dealing with Kant's Sexism and Racism'. *SGIR Review* 2, 2: 3-22.

Kleingeld, Pauline (2000) 'Kantian Patriotism'. *Philosophy & Public Affairs* 29, 4: 314-41.

Love, S. M. (2017) 'Kant after Marx'. *Kantian Review* 22, 4: 579-598

Mills, Charles W. (2018) 'Black Radical Kantianism'. *Res Philosophica* 95, 1: 1-33.

Mills, Charles W. (2017) *Black Rights/White Wrongs: The Critique of Racial Liberalism*. New York: Oxford University Press.

Mills, Charles W. (1998) *Blackness Visible: Essays on Philosophy and Race*. Ithaca: Cornell University Press.

Moran, Kate (2021) 'Kant on Traveling Blacksmiths and Passive Citizenship'. *Kant-Studien* 112, 1: 105-26.

Pascoe, Jordon (2022) *Kant's Theory of Labour*. New York: Cambridge University Press.

Pascoe, Jordon (2017) 'Working Women and Monstrous Mothers: Kant, Marx, and the Valuation of Domestic Labour'. *Kantian Review* 22, 4: 599-618

Pateman, Carole and Charles W. Mills (2007) *Contract and Domination*. Cambridge: Polity.

Sabourin, Charlotte (2021) 'Kant's Enlightenment and Women's Peculiar Immaturity'. *Kantian Review* 26, 2: 235-60.

Varden, Helga (2020) *Sex, Love, and Gender: A Kantian Theory*. New York: Oxford University Press.

Varden, Helga (2016) 'Self-Governance and Reform in Kant's Liberal Republicanism: Ideal and Non-Ideal Theory in Kant's *Doctrine of Right*'. *Diospontos* 12, 2: 39-70.

Varden, Helga (2014) ‘Patriotism, Poverty, and Global Justice’. *Kantian Review* 19, 2: 251-66.

Vrousalis, Nicholas (2019) ‘Workplace Democracy Implies Economic Democracy’. *Journal of Social Philosophy* 50, 3: 259-79.

Vrousalis, Nicholas (2013) ‘Exploitation, Vulnerability, and Social Domination’. *Philosophy & Public Affairs* 41, 2: 131-57.

Wood, Allen (2014) *The Free Development of Each*. New York: Oxford University Press.

---

<sup>i</sup> On the contrary, it may be more finely attuned to provide ideological support for race discourse that bolsters global white supremacy. See Huaping 2023, chapter 4.

<sup>ii</sup> Philip Pettit’s work exemplifies the dyadic model.

<sup>iii</sup> Hasan aptly likens a just state on the dyadic model to a bulletproof vest that protects persons against external encroachments (2021: 18).

<sup>iv</sup> Cf. Mills’s notion of a ‘black radical Kantianism’ (Mills 2018; Kirkland 2022).

<sup>v</sup> In the *Anthropology*, Kant assigns women domestic labour as “natural” to her gender. As Basevich has argued with respect to race, Kant posits the supposed under-development or defective exercise of the rational capacities of certain groups (2020).

<sup>vi</sup> Nicholas Vrousalis makes the helpful distinction between absolute vulnerability 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” (2013, 133). Persons may avoid absolute vulnerability, while remaining exposed to the relational power of others.