

Domestic Labor, Citizenship, and Exceptionalism: Rethinking Kant's "Woman Problem"

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There is no doubt that Immanuel Kant has a woman problem. His anthropological studies of women are full of cutting remarks, and despite a generation of feminist Kantian scholarship, it is an open question whether he meant to include women as full, equal agents in either his moral or political philosophy.

Those who engage this question within Kant's political philosophy ask whether or not women can "work their way up" to full, active citizenship.¹ If women can achieve equality in this way, the argument goes, then we can solve Kant's woman problem. But this approach, I argue, asks the wrong question. It focuses on the status of wives rather than on the structure of the domestic sphere as a whole, and therefore obscures the ways in which the valuation of domestic space and reproductive labor shape access to rights and equality in Kant's political philosophy. I will argue that this approach misses the deeper structural and gendered inequalities built into Kant's conception of the state. Re-examining Kant's "woman problem" points us toward a larger problem with labor and inequality in the Kantian state: Kant's map of the rightful institutional order normatively requires that someone do the dependency work that makes independence possible.

In making this argument, I am responding to a recent move to reframe the Kantian state as a model of welfare state liberalism.² Critics have examined Kant's defense of unconditional poverty relief and distributive justice and his critique of the nobility in order to offer a robust account of the obligations of the public authority in the face of socioeconomic inequality.³ Although most of these analyses have focused on inequality in the public and market spheres, a few have taken up questions about dependency within the domestic sphere. Tamar Schapiro contends that the limits on rights for those within the domestic sphere is merely a temporary and nonideal feature of Kant's account of right. Helga Varden and Ernest Weinrib argue that if this is the case, the state must foster the conditions that will allow women, domestic servants, and other dependents to "work their way up" to full, active citizenship.⁴ I will show that these arguments fail to grapple with the relationship between reproductive labor and the independence of active citizens in Kant's account of the state, and therefore, that they underestimate the ways in which the domestic sphere operates as a distinct sphere of rights, labor, and relations within the Kantian state.

Against this move to frame passive citizenship as a temporary and nonideal element of Kant's political arguments, I argue that the inequality that organizes passive citizenship is organized by a distinction in labor practices that cannot easily be overcome given the structure of the Kantian state. Kant defends this distinction as a form of rightful inequality and builds it into the structure of the domestic sphere. By placing reproductive labor and the status of domestic servants at the center of my analysis of Kant's woman problem, I challenge the exceptionalism in the claim that there is no gender trouble in Kant if women are free to work their way up.

Instead, I argue that the invisibility of domestic labor in Kant's state is replicated in the blindness of contemporary liberalism toward the predicament of precarious domestic workers. In both contexts, the valuation of domestic labor and the limited rights and protections granted to those who work within the domestic sphere produce deep structural and gendered inequalities. These inequalities are often obscured by feminist analyses that focus on the question of whether women who work in the public sphere can attain equal rights. A feminist response to Kant's woman problem, then, must learn from contemporary projects that seek to undermine the exceptionalism built into liberal feminism and develop an account of solidarity between those who labor within the domestic realm and those who benefit from that labor.

The Problem: Kant's Account of Citizenship

Kant's political philosophy, like most Enlightenment arguments, emphasizes equality while quietly limiting access to full political participation for all citizens.⁵ In the *Doctrine of Right*, Kant defines citizens as "the members of . . . a society who are united for giving law" (6:314),⁶ which concretely means that citizens are those members of a society who can vote. A citizen is qualified to vote if (1) he is lawfully free, (2) he has reached a basic level of moral maturity or equality, and (3) he is independent (6:314).

But not all citizens meet these qualifications. So Kant draws on the distinction between "active" and "passive" citizens deployed by the Abbé Sieyès during the French Revolution, arguing that dependents cannot be active citizens, even though, as he admits, "the concept of a passive citizen seems to contradict the concept of a citizen as such" (6:314).⁷ Kant is careful to specify that the inequality of passive citizens is a political rather than a moral inequality. Active citizenship requires one to meet the standards of political, rather than moral, freedom, equality, and independence.⁸ An active citizen must "be his own master" while a passive citizen is a dependent (8:295).⁹ The distinction cashes out in terms of labor: those who support themselves with "any skill, trade, fine art, or science" qualify, whereas those who can earn a living only by "allowing others to make use of him" would not (8:295). Examples of passive citizens include "an apprentice in the service of a merchant or artisan; a domestic servant (as distinguished from a civil servant); a minor (*naturaliter vel civiliter*); all women;

and, in general, anyone whose preservation in existence (his being fed and protected) depends not on his management of his own business but on arrangements made by another (except the state)” (8:294). Active citizens, on the other hand, are independent: their position in the institutional order ensures that they cannot be asymmetrically bound by another.

This argument is at once progressive and pragmatic. It relies on the pragmatic insight that those who vote ought to be their own masters, so that they will not be coerced or swayed by others.¹⁰ And, unlike Locke, the American founders, and other social contract theorists before him, Kant does not tie the right to vote strictly to property ownership.¹¹ By attaching the qualifications for active citizenship to labor as well as to property, Kant opens political majority up to the rising merchant class along with the established land-owning class, and he argues that the restriction of rights of passive citizens is permissible precisely because passive citizens must be able to work their way up to active citizenship: this mobility is required by both their “natural equality as human beings” and “the laws of freedom” (6:315).¹² The distinction between those who have full rights and those who do not is rightful because it is neither arbitrary nor permanent: as long as the institutional order is just, then positions qualifying for active citizenship must be open to all, regardless of birth.

Thus, Kant claims that it is necessary that “anyone can work his way up from this passive condition to an active one” (6:315). This requirement has suggested to some critics that passive citizenship is merely a temporary and nonideal condition. Tamar Schapiro argues that passive citizenship is “the least unjust way of fitting dependents into a state containing independents. His claim is that we can cope with the existence of such dependence only if all regard is as a temporary deviation from the norm of independence.”¹³ Passive citizenship would then be an example of a permissive law designed to aid in the transition from an unjust to a just state.¹⁴ Helga Varden and Ernest Weinrib argue, accordingly, that the state has an obligation to create the conditions in which all citizens are able to work their way up to full, active citizenship.¹⁵

But Kant introduces the provision that “anyone can work his way up” in order to defend the justness of laws that exclude passive citizens.¹⁶ His claim is not that everyone can work his way up, but that the inequality between active and passive citizens is a rightful inequality if active citizenship is an open and attainable status. This has raised questions about who exactly has the capacity to become an active citizen, and these questions lead us directly into the rabbit hole that is Kant’s woman problem. In *Theory and Practice* Kant claims that “being an adult male” is an essential qualification of citizenship, which leads to feminist worries that Kant denies all women the possibility of active citizenship and falls short of his promise that anyone can work his way up (8:295). In *The Doctrine of Right*, he argues that “all women” are passive citizens, but he says that this is the case because “all women” are, in general, dependent on others for the management of their affairs (6:314; 7:204). Critics remain in dispute about this question: are women excluded as women, or because they most often find

themselves in positions of dependency? Answering this question reveals a deeper source of gendered inequality in the Kantian state.

Why Are “All Women” Passive Citizens?

Some commentators argue that the “all women” category stands alone, and that women as women are precluded from active citizenship: Kant never explicitly explores the position of an unmarried woman attaining the status of active citizen, which leaves open the question of whether such a move is possible.¹⁷ This argument seems to assume that Kant denies women citizenship on grounds of moral inequality, which makes them unfit for full political participation.

A second group of commentators include women—women as wives, daughters, and domestic servants—in the “dependent on others” category, and conclude, accordingly, that Kant includes women when he argues that anyone can work his way up to active citizenship.¹⁸ Indeed, if women have moral equality with men in a Kantian scheme, then it would seem that they have a duty to do so (8:39–40).

There are several reasons for preferring the second argument to the first. As I will argue, however, while this reading allows for the possibility that a few women in exceptional positions might be able to work their way out of passive citizenship, it does not suggest that women, as a class, could easily achieve political equality with men, nor does it undo the gendered inequality built into the dependency relations within the domestic realm.

Before dismissing the first argument out of hand, we should admit that it is entirely possible that the “anyone can work his way up” clause was never meant to be gender inclusive. There is much textual support for the idea that Kant purposely excluded women qua women if we turn elsewhere in Kant’s writings, to his early essays and his work in anthropology, particularly the 1764 *Observations of the Feeling of the Beautiful and the Sublime* and the 1798 *Anthropology from a Practical Point of View*, which together represent some of Kant’s earliest and latest arguments.

Kant’s anthropological arguments about gender largely deserve the bad rap they’ve gotten from feminist commentators: he makes several now infamous remarks about women’s capacities as scholars and reasoning beings (although, to be fair, he casts aspersions on most *men*’s reason, too) (7:307–308). But his account of gender relations is not, perhaps, as simplistic as one might assume. Kant thinks that the source of tension between the sexes is their fundamental natural equality, and that harmony (and, indeed, civilization itself) is possible only if “one partner must *yield* to the other” (7:303).¹⁹ He argues that, because “nature entrusted to woman’s womb its dearest pledge,” women seek male protection, to entreat men to behave “sociably and with propriety” and to establish marriage and the household, those two key civilizing features of social life (7:306). Within the household, “woman should dominate and the man should govern”; the domestic sphere is her domain, as the public sphere is his (7:309). These arguments might support the claim that women are not as women suited

to be voting citizens—since they should apparently be raising babies and planning dinner parties instead—but it does not support the deeper critique, that Kant held that women were morally inferior to men.

We do, however, have reason to resist relying on the anthropological texts in order to support the claim that Kant excludes women qua women from active citizenship. These texts are, after all, anthropological: they describe men's and women's natures in the settings in which Kant found them. While these remarks may indeed reflect his own best understanding of gender relations in Königsberg in the 1790s, they are not moral arguments: a distinction Kant insisted upon. Thus, it is dangerous to import this descriptive account of gender into a normative text like *The Doctrine of Right*.

And yet Kant does, on at least one occasion in *The Doctrine of Right*, make a normative claim that seems to draw on his own best anthropological understanding. In his discussion of marriage, he argues that the legal equality of spouses is not inconsistent with “the natural superiority of the husband to the wife in his capacity to promote the common interest of the household” (6:279). We might dismiss this remark merely as an instance of Kant's anthropological observations sneaking their way into his normative arguments, or we might, as I will advocate below, take this as a dangerous sign that the domestic sphere as Kant maps it is necessarily unequal—and that this inequality has troubling implications for his account of citizenship more generally.

To understand the place of women in the Kantian state, then, we need to look beyond Kant's remarks about women and explore his account of rightful inequality. Here we find another reason to reject the claim that Kant denied all women full political rights simply because they are women: he did not think that one's birth should determine one's rights. We might read a relevant passage from *Theory and Practice* with women in mind: “since birth is not an act on the part of the one who is born, it cannot create any inequality in his legal position” (8:293). Kant makes similar claims in *Perpetual Peace*, where he argues that attaching rank to birth is contrary to the original contract (8:350n), and in *The Doctrine of Right*, where he argues that neither rank nor punishment should be inherited by birth (6:330). Insofar as gender is arbitrarily attached to us at birth, it ought not to determine access to rights, opportunities, and equality.

So, instead of attaching rights to birth, to one's accidental circumstances or embodied self, Kant attaches them to one's position in the institutional order. The three requirements of active citizenship—lawful freedom, equality, and independence—together reflect a concern with the position one holds *vis à vis* others and, in particular, to how one's labor positions one in relation to others. The examples Kant offers to illustrate the distinction between active and passive citizens show that this distinction turns on labor practices: those who engage in forms of labor that require one to sell one's time or one's labor are dependent, while those who exchange the product of their labor for a price may qualify as independent.²⁰

Kant admits that this distinction reflects the structure of the market system in question: the blacksmith in India who travels with his wares from house to

house is a passive citizen, while the European blacksmith, who “can put the products of his work up as goods for sale” may be an active citizen (6:315). These labor conditions are neither fixed nor absolute, but tied to social patterns, market forces, and the structure of rightful juridical institutions.

Thus, the distinction between active and passive citizenship is rightful because it is attached to positions in juridical institutions that are (theoretically) open to all. Kant defends the possibility of mobility within the institutional order, arguing that offices and dignities must be merit-based, rather than attached to hereditary rights (6:329; 8:350n).

What does this tell us about the case of women? Kant’s defense of social and political mobility suggests that the embodied fact of being a woman may not be sufficient to limit one to the status of passive citizen. But once we take into account the position women, as wives and as domestic workers, hold in the Kantian institutional order, it becomes apparent that very few women would have the ability to raise themselves to the level of independence required for active citizenship. The trouble is not, in other words, that they are women; the trouble is rather that they are wives, daughters, or domestic servants who live and labor in conditions of dependency within the domestic sphere.

Dependency in Kant’s Domestic Sphere

Understanding Kant’s woman problem, then, requires us to look past Kant’s own prejudices about women, and to confront a troubling web of assumptions about labor, domesticity, and the idea of independence. Although he argues that the political equality of workers in the market sphere reflects the particular socioeconomic patterns of a given social order, there is one form of labor that is necessarily, as Kant would have it, done by passive citizens.²¹ Anyone who labors within the household finds him (or her) self “under the head of household” in a position of dependency (6:283), a relation Kant characterizes as the “right to persons akin to rights to things.” Kant tells us that these relationships are different from other rightful relationships (like those delineated by marketplace contracts) in that they are “a society of unequals (one party being in *command* or being its head, the other *obeying*)” (6:283).

The domestic realm plays a normative role in Kant’s state, ensuring the rightness of intimate interpersonal relations and of domestic labor relations. The “right to a person akin to a right to a thing” that so descriptively characterizes domestic relationships is a right to make use of others in ways that would normally be inconsistent with respect and the freedom of others. Within the domestic realm, persons may use each other in a range of intimate and otherwise impermissible ways, including sex, child-rearing, chamber pot-cleaning, sponge-bathing, and so on. These intimate tasks are necessary for human life, but inconsistent with the independence that characterizes the condition of the active citizen. For this reason, Kant thinks that no ordinary contract can organize these forms of labor, and thus a distinct rubric of law is necessary: what one agrees to, when one becomes a wife

or a domestic servant, is not a specific set of tasks and services, but to do whatever is necessary for the good of the household, and to enter into a relationship of servitude to the head of the household (6:360–361).

To understand the way in which inequality is organized within domestic right, we need to look further than Kant's infamous prejudices against women: all relationships between the head of the household and members of the household (be they wives, children, servants, or other relations) are explicitly described as unequal (6:283). So if women are excluded from majority because they are dependents, the inequalities on which Kant's juridical order depend rest on structural or institutionally produced inequalities rather than on essentialist or anthropological claims.

Thus, the defense of the domestic realm as a necessary social space in which rights to persons operate "as if" they were things is not a descriptive element of Kant's anthropology, but is central to his account of the just state, and to his story about why justice is impossible in a state of nature.²² Kant's denial of majority to women need not be explained by a descriptive, embodied account of gender culled from his anthropological arguments, nor challenged by the neo-Kantians assumption that women are morally equal to men. And, because of the role the domestic sphere plays in supporting the illusion of independence, it cannot be explained away as a nonideal feature of Kant's argument. Rather, this exclusion is consistent with Kant's account of the just institutional order as it is laid out in *The Doctrine of Right*.

If this reading is correct, then we might argue that it is only wives who are unfit to be full citizens, while women-as-women would not be barred from full political participation on this argument. And if this is so, we might argue, then women-as-wives find themselves in a position similar to that of Kant's Indian blacksmith: were the socioeconomic order different, they might find themselves independent (6:314).²³ If a woman were independent—if she headed her household, ran her own business and provided for herself—then she would meet the conditions for full and active citizenship, and in fact, such a law was on the books in Königsberg by the early 19th century.²⁴

But if Kant excludes women as dependents, rather than as women, this does not solve the problem of political exclusion. Those who emphasize that in Kant's arguments women are, like other passive citizens, free to "work their way up"—indeed, that they have an obligation to do so—tend to consider only women in exceptional positions. This move sidesteps the deeper structural inequalities that limit most women's access to citizenship, and in turn poses a problem for contemporary interpretations of Kant that posit the equality of women in the public sphere without challenging the institutional inequalities present in the construction of the domestic realm.

Challenging the Kantian Illusion of Independence

Wives and domestic servants find themselves in an intimate and subordinate relationship with the head of the household, so that their political rights, and

access to legal protections, are mediated through the head of the household.²⁵ For the purposes of thinking through Kantian citizenship, there are two features of this relationship to note. First, only the head of the household qualifies for active citizenship, and even then, only when his work in the market sphere also marks him as “independent.” But the independence of the head of household in the market sphere is of course supported by the labor done within the household: being “independent” in Kant’s time (and in ours) means, in part, that one has been fed, washed, clothed, and cared for in a whole host of ways that, if done in public view, might undermine that illusion of independence.

Second, Kant’s account of labor relations in the domestic sphere produces a sharp distinction between wage laborers and domestic laborers, and in the rights and protections available to each. If the wage labor contract in the market sphere is designed to protect the rights of workers through a united will and access to the adjudication of the public authority, the domestic labor relationship tends to minimize access to rights and legal protections of domestic workers, rendering them dependent on the head of household.²⁶ At the same time, while the wage labor contract works to clearly delineate the terms of the labor agreement, making it intelligible for public adjudication, the domestic labor contract tends to make domestic labor invisible, enclosing it within the household, subject only to the terms of the relationship (“akin to a right to a thing”) between the head of household and his subordinates.

These two problems are connected. The independence of the head of household in the public sphere is dependent on the invisibility of the labor of care within the household. To meet the concrete requirements of independence Kant lays out, the ways in which the householder is dependent on others—on his wife, on his servants, on those who socially reproduce him each day—must be invisible, enclosed within the domestic sphere. Domestic labor and intimate relationships are clearly an essential feature of life on the Kantian account, but they tend to undermine the independence required of public citizens, and so they are enclosed within the household, performed by wives and servants who then become publicly invisible, who are defined as passive citizens, who can be publicly spoken for by the head of their household. The domestic sphere is, according to Kant, an inherently unequal domain: the members of the household are united, he says, in being “under the head of the household” (6:283).

The role of the domestic sphere in the rightful state is not merely a historical feature of Kant’s juridical argument, one that simply reflects his understanding of the late 18th century Prussian household with its feudal origins. Rather, the distinction between contractual and domestic labor is one of the integral architectural features of the rightful Kantian state: the “right to a person akin to a right to a thing” is deployed as an essential element of private right, necessary to manage a whole host of morally troubling interpersonal relationships, including sex and parenting.²⁷ The domestic sphere is, moreover, a prerequisite for the active citizen himself, whose freedom, equality, and independence in the public sphere must be supported, somewhere, by others who do the labor of feeding him, washing him, and bearing his children.

To some degree, of course, the concrete division between domestic and wage labor is relative to the socioeconomic order. In Kant's time, all that feeding and clothing and baby-raising was certainly done by a member of the household. In our time, much of that labor has become wage labor, moving into the market sphere (in the form of textile factories and ready-made food manufacturing) and into the semipublic sphere (restaurants, hotels, department stores, day-care). But there remain, often in the form of wives, nannies and care workers, those whose labor is precarious, and organized more by the old "right to a person akin to a right to a thing" than by anything resembling a labor contract.

Kant says that the inequality of active and passive citizens is rightful if we can expect that any individual has the right to "work his way up" to active citizenship. As long as the barber can become a wigmaker, as long as the textile factory worker can become an independent producer of artisanal hand-woven scarves, then there is nothing troubling in denying full political rights to those who find themselves in conditions of dependency. And, by the same token, as long as women can become heads of household, and thereby qualify as active citizens, then there is no gender trouble in Kant's account of passive citizens as dependents who can work their way up.

Except that it would seem that, even if an individual factory worker could start selling his artisanal hand-woven scarves on Etsy, we will still need factory workers. Kant's scheme entails only that each can work his way up, not that all can work their way up. Even if some women become—as a few did in Kant's day—heads of household, someone will still need to do all that domestic labor. Someone will need, even, to feed her, clean up after her, and help raise the kids. And as long as domestic labor is defined in terms of (political or economic) dependency on the head of household—even if that head of household is a woman—then someone will find herself in a state of dependency, standing in the position of the passive citizen. And this is far from a historical problem: as the dual earner household becomes the norm and catapults women into the public sphere, our reliance on precarious domestic laborers has only increased.²⁸

So the contemporary move to defend Kant from charges of sexism on the grounds that women, too, can work their way up, tends to account only for exceptional cases, for women who have managed somehow to turn over their domestic obligations to someone else, and to stand in the position of the head of household.²⁹ As long as reproductive labor is largely invisible and undercompensated, it will tend to be done by those with few other choices, for whom accepting a position of precarious dependency is the only way to make a living.³⁰ Understood in this way, Kant's woman problem is in fact a class problem, one tied to the valuation of service and reproductive labor in the just state.

The link between domestic labor and dependency means that, even if growing numbers of women are indeed "working their way up," this remains a problem for women. After all, Kant himself worried in the *Anthropology* that "when refined luxury has reached a high level, the woman appears demure only by compulsion and makes no secret of wishing that she might rather be a man"

(7:307). His requirement that active citizenship is attainable only to those who work their way up produces precisely this result. (We've had much discussion of this lately, as the two women most recently appointed to the Supreme Court were women who had no children, whose success in the political sphere is partly a the result of having refused to participate in domestic labor like childrearing. We don't have these conversations about men, who have, on numerous occasions, been appointed to the Supreme Court while also having raised children).³¹ Kant's worry clearly reflects a belief that there is something essentially domestic about women: because women have to actually have the babies, Kant thinks, they are more concerned with their safety, and thus with the domestic work that ensures their wellbeing (7:306).

Of course, this belief in the essential domesticity of women is not incommensurable with a normative claim that women, too, have an obligation to try to "work their way up" and achieve independence and majority in the political sphere. Just because women tend, on Kant's account, to be naturally preoccupied with domestic activities does not preclude them from deploying their reason, exercising their autonomy, and achieving independence and political equality with men. Women's embodied nature and natural domestic proclivities might, on Kant's account, present a greater challenge to achieving full political majority, but there is no reason to believe that it is not possible.

Except that, once again, someone will have to do the domestic work. It may be her husband, or the nanny she hired on Craigslist, or working wives may do it themselves, between eleven and two, after everyone else is in bed. (Here we might ask whether Kant might have produced quite so many masterpieces if he'd been the one responsible for mending his shirts and making himself a cup of tea at 5 am.) The distinction between active and passive citizenship is not, then, a mere historical curiosity: it remains the case that domestic labor occurs, overwhelmingly, on a black (or gray) market, and that illegal and undocumented workers make up a significant percentage of domestic workers.³² For those illegal and undocumented workers, the relationship they have with their employers likely looks strikingly like the "right to a person akin to a right to a thing" Kant envisioned, a relationship characterized by political dependency on the part of the employee and an ability to coerce and "make use of" that employee on the part of the employer.

And this is not, I think, the only problem. Part of Kant's domestic problem is that he normatively defends a distinction between wage labor and domestic labor such that the latter is both politically invisible and legally precarious, receding into the enclosed and juridically defined household. By defining domestic workers (and with them, wives) as passive citizens, Kant ensures that domestic labor will remain largely politically invisible, and that political agents will tend to be those who have managed to outsource their domestic obligations to others. Far from being a temporary, nonideal solution to dependency, the inequality of those who do domestic labor is built into the Kantian conception of the state. As a result, the devaluing of domestic labor is reinforced, and public policies to support domestic laborers, provide public support for domestic

obligations, and defend the rights of those within the domestic sphere to set and work toward their own ends become increasingly unlikely. Rethinking the structure of the domestic sphere is therefore critical both to solving Kant's "woman problem" and to working toward a vision of the state in which everyone has access to full participatory citizenship.

Standing With Others: Citizenship and Solidarity

I have pointed to the exceptionalism present in Kant's claim that mapping political inequality onto a division of labor between the public and domestic spheres is just as long as any person can "work his way up" to independence and active citizenship. The trouble, though, is not with Kant alone (and, indeed, it is hard to know whether we could have expected better from Kant) but also with the questions contemporary critics have been asking about Kant. When we ask whether individual women might "work their way up" in Kant's sense, we reaffirm the value of political exceptionalism that underlies his account of rightful political inequality. Instead, feminist critics of Kant ought to look carefully at the institutions that organize labor and rights in the *Rechtstaat* and critically examine how labor is valued, and how it organizes access to the public sphere. When we approach Kant in this way, it becomes clear that gender justice requires more than merely allowing women achieve active citizenship.

But this does not mean we ought to abandon Kant, whose story about justice offers a powerful reminder that the structure of the market shapes access to political participation.³³ The troubling distinction between active and passive citizens reveals the degree to which the valuation of labor shapes liberalism's conception of whose voices should and should not have weight in public discourse. As Kant's arguments are increasingly held up as an example of proto-welfare state liberalism, his account of rightful inequality offers an instructive model of the ways in which the illusion of independence obscures the messy interdependency required to socially reproduce oneself. Feminist criticism of Kant would do well to challenge the illusion of independence assumed in Kant's story of the active citizen, and focus instead on the interdependency between productive and reproductive laborers that this illusion obscures. Once this story is made visible, then what is needed is not an account of who is free to "work his way up" but a story about interdependence that highlights the common interests of the domestic worker and the public person and emphasizes the necessity of cooperation and empathy between the productive and reproductive laborer. In other words, we need an account of the various kinds of solidarity required to overcome the systemic devaluing of domestic labor and the labor of care and the subsequent disenfranchisement of domestic workers by revealing the common interests of those who work outside the home with those who work within it.

Kant, of course, did not think in terms of solidarity. Rather, his account of citizenship draws on the idea of fraternity so popular during the French Revolution, which emphasized the allegiance between equals united in a shared project. For

Kant, fraternity presupposes the liberty, equality, and independence of active citizens.³⁴ Within the household, another form of association exists: the paternalism, or noblesse oblige, of the head of household toward the wife, children, and servants he protects, provides for, and politically represents, and they allegiance they owe him in turn. Both the fraternal relations of the public sphere and the familial relations of the domestic sphere are mapped onto institutionally ordered distinctions between active and passive citizenship, which are in turn organized in terms of independent and dependent forms of labor, and public and domestic spaces.

There are a number of solutions to the injustice present in Kant's distinction between dependent and independent labor. First and foremost, we must challenge the distinction between labor conditions in the public and domestic spheres and rethink the dependency relations that organize domestic labor. This might mean that all workers should take on an equal burden of productive and reproductive labor, so that no workers are forced to specialize in undervalued domestic work. Or, we might work to dissolve the barrier between public and domestic work, so that all work is equally visible and valued, and all work equally paid and protected.³⁵ At minimum, if the society in which we find ourselves values productive and reproductive labor differently, we must do more than ask who has the right and capacity to "work their way up" out of drudgery and dependency.

A starting point for challenging the exceptionalism present in Kant's story of active and passive citizenship is to encourage solidarity across the public/domestic divide, based on recognition that those who appear "independent" remain dependent on the labor of care.³⁶ This solidarity should involve, as Carol Gould has put it, "a sort of standing with others based on an empathic understanding of their concrete social situation."³⁷ Unlike the fraternity between active citizens in the public sphere, this is a cooperative association across difference: it arises between active and passive citizens, across the public, market, and domestic spheres. Such a sense of solidarity requires us to challenge the political invisibility of those who engage in dependent labor, rather than simply having a duty to develop their own capacities and to work their way out of tutelage. This challenge must involve a recognition that the rights of domestic workers is a public problem requiring a shift in public policy, rather than a problem to be solved simply household by household through moral pressure on domestic employers.

For those turning to Kant for a model of welfare state liberalism, this challenge should involve a willingness to rethink the "right to a person akin to a right to a thing" that organizes dependency relations within the domestic sphere. I am therefore skeptical of the claim that formalizing the distinction between domestic labor and wage labor will enhance the rights and protections of those who work within the domestic sphere, or that the rubric of domestic right creates the conditions for the state to enforce rightful relations within the domestic sphere.³⁸ Institutionalizing the split between domestic and wage labor seems instead to encourage the privatization of reproductive labor in ways that are troublingly complementary to the neoliberal project, creating conditions in which those who labor within domestic spaces to find themselves with limited

legal protections, and those who find themselves in legally enshrined dependency relations have a difficult time exercising political rights, particularly when those rights involve the support of domestic projects like family planning and child rearing. As contemporary debates about the minimum wage, health care, paid family leave, and access to childcare and eldercare make clear, a lack of solidarity between those who perform independent and dependent labor produces a political and economic environment in which illusions of independence in the public sphere must be maintained, and the precariousness of domestic labor can be pushed aside in public discourse.

Thus, in Kant's time and our own, the emphasis on the normative role of the domestic sphere in organizing labor, rights, and obligations will tend to systematically limit women's rights to full and equal citizenship. A truly egalitarian conception of justice must rethink dependency relations and the public/domestic spaces onto which they are mapped. The feminist response to Kant should challenge the valuation of labor at the root of the active/passive distinction, undermine the illusions of independence that bolsters the Kantian account of the public sphere, and encourage solidarity between productive and reproductive laborers. It should recognize that even if we dissolve the gender difference in the ways that the "women will work their way up" model suggests, the division of labor will map itself onto other forms of inequality: it will hew to class, to race, to immigration status or a language barrier. A feminist criticism that asks only whether women can leave domestic work behind, like men, to enter the public domain, like men, and operate as independent citizens and heads of household, like men, does not challenge the unjust division of labor and rights assumed at the root of Kant's vision of a "just" society. Rather, Kant's particular blindness about the position of domestic servants, which is so instructively replicated by many of his contemporary critics, deserves interrogation especially as Kantian political philosophy is increasingly held up as a model of welfare state liberalism. By complicating the traditional reading of Kant's woman problem with an analysis of domestic labor and servitude, I have argued that neo-Kantian liberalism must develop an account of feminist political solidarity in order to overcome the invisibility of domestic labor.

A previous version of this paper was presented at the standing Kant group at the European Consortium for Political Research in Bordeaux on September 5th 2013. Many thanks to Howard Williams and Mitch Stripling for their comments, to Helga Varden for the long chats in Bordeaux, and to Sibyl Schwarzenbach, Linda Martin Alcoff, and Carol Gould for their support and feedback.

Notes

¹ Cf. Mason Cash, "Distancing Kantian Ethics and Politics from Kant's Views on Women," *Minerva: An Internet Journal of Philosophy* 6 (2002): 1–21; Carol Hay, *Kantianism, Liberalism, and Feminism: Resisting Oppression* (New York: Palgrave Macmillan, 2013): 52; Susan Mendus, *Kant: "An Honest but Narrow-Minded Bourgeois"* (Chicago: Chicago University Press, 1992); Howard Williams, *Kant's Political Philosophy* (Oxford: Basil Blackwell, 1983): 179–81.

- ²Cf. Kevin E. Dodson, "Kant's Socialism: A Philosophical Reconstruction," *Social Theory and Practice* (2003): 525–38; Helga Varden, "Kant and Dependency Relations: Kant, on the State's Right to Redistribute Resources to Protect the Rights of Dependents," *Dialogue* 45, no. 2 (2006): 257–84; Ernest J. Weinrib, "Poverty and Property in Kant's System of Rights," *Notre Dame Law Review* 78 (2002): 795.
- ³Cf. Dodson (2003); Sarah Williams Holtman, "Kantian Justice and Poverty Relief," *Kant-Studien* 95, no. 1 (2004); Pauline Kleingeld, "Patriotism, Peace and Poverty: Reply to Bernstein and Varden," *Kantian Review* 19, no. 2 (2014): 267–84; Reidar Maliks, *Kant's Politics in Context* (Oxford: Oxford University Press, 2014): 52–53; Helga Varden, "Kant's Non-Absolutist Conception of Political Legitimacy—How Public Right 'Concludes' Private Right in the 'Doctrine of Right'," *Kant-Studien* 101, no. 3 (2010): 331–51; Helga Varden, "Patriotism, Poverty, and Global Justice: A Kantian Engagement with Pauline Kleingeld's *Kant and Cosmopolitanism*," *Kantian Review* 19, no. 2 (2014): 251–66; Jacob Weinrib, "Kant on Citizenship and Universal Independence," *Australian Journal of Legal Philosophy* 33 (2008).
- ⁴Tamar Schapiro, "What Is a Child?," *Ethics* 109, no. 4 (1999): 721, 734–36; Varden (2006): 272; Weinrib (2008): 25.
- ⁵What "full political participation" means in this context is itself a complicated question, and Kant is not entirely consistent on this point. Generally speaking, he seems to point to a distinction between those who have the opportunity to *frame* laws and those who are merely *subject* to them, although he does not consistently attach this to a right to vote. In *Theory and Practice*, Kant does not describe a direct right to vote, describing instead the *hypothetical* consent of citizens to laws, suggesting that active citizens are those who *would* consent to laws (8:297). In *The Doctrine of Right*, he ties active citizenship directly to the right to vote, saying "the only qualification for being a citizen is being fit to vote" (6:314). In this article, I will generally assume the *Doctrine of Right* definition, that active citizenship is tied to the right to vote. For further discussion of Kant's conflicting claims about the nature of active citizenship, see Ronald Beiner, "Paradoxes in Kant's Account of Citizenship," in *Kant and the Concept of Community*, ed. Charlton Payne and Lucas Thorpe (Rochester, NY: University of Rochester Press, 2011): 212.
- ⁶Throughout this article, I refer to Kant's works in the Prussian Academic pagination. All references to *The Doctrine of Right* refer to Mary Gregor's translation in *Immanuel Kant: The Metaphysics of Morals* (Cambridge: Cambridge University Press, 1996).
- ⁷Reidar Maliks argues that this comment about passive citizenship was clear criticism of Sieyès's account, although Kant ultimately found no better solution. Maliks (2014): 104–05.
- ⁸"This dependence upon the will of others and this inequality is, however, in no way opposed to their freedom and equality as *human beings*" (*The Doctrine of Right* 6:315). This definition hinges on a legal definition of independence, so that passive citizens may be said to lack legal independence, but not moral autonomy. For an excellent discussion of legal independence in Kant, see Howard Williams, "Liberty, Equality and Independence" in *A Companion to Kant*, ed. Graham Bird (Malden, MA: Wiley-Blackwell, 2006): 367. See also Maliks (2014): 108.
- ⁹All references to Kant's political works, including *On the Common Saying: This May Be True in Theory, But it Does Not Hold in Practice* and *Towards Perpetual Peace* refer to the David Colclasure translation in *Towards Perpetual Peace and Other Writings on Politics, History, and Peace*, ed. Pauline Kleingeld (New Haven: Yale University Press, 2006).
- ¹⁰For an excellent discussion of Kant's pragmatic concerns, see Williams (2006).
- ¹¹Although Kant's argument was, by comparison, progressive, it is arguably more difficult to envision universal suffrage given the Kantian framework in which rights are attached to labor, than it is in a Lockean framework where rights are attached to property. One could imagine a state in which we simply granted every person property rights to a square foot of land, thus ensuring that all citizens could vote. It is more difficult to imagine an economy in which no one finds themselves laboring in conditions of dependence as Kant defines it.
- ¹²Maliks argues that Kant's conception of the independent citizen drew on Adam Smith's man of business, and that Smith's account of the dependency of servants and employees in the market economy therefore informs Kant's account. Maliks points out that Kant, like Smith, likely

assumed that the free market economy would only lead more workers to achieve independence and thus active citizenship. Maliks (2014): 109. As I will argue, however, if Kant was hopeful that the new economic order would produce fewer employees and more men of business, he does not assume that it would require fewer wives or domestic servants.

¹³ Schapiro (1999): 721.

¹⁴ Kant did develop an account of such transitional statutes in *The Doctrine of Right*, such as allowing hereditary privileges to gradually phase out (6:329). He does not, however, include passive citizenship in this category. See also Maliks (2014): 77 for a discussion of permissive laws and the right to citizenship.

¹⁵ Weinrib argues “the state creates and solidifies dependency relations and so has a duty to create the institutional conditions that enable universal independence.” Weinrib (2008): 25. See also Varden (2006): 272.

¹⁶ “Far from being able to demand that all others treat them in accordance with the law of natural freedom and equality as passive parts of the state, it does not follow that they also have the right to manage the state itself as active members of it, the right to organize it or to cooperate for introducing certain laws. It follows only that, whatever sort of positive laws the citizens might vote for, these laws must still not be contrary to the laws of natural 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 to an active one” (6:315).

¹⁷ Ronald Beiner points out that Kant does not raise the question of why women would marry if doing so would preclude them from active citizenship. That Kant did not even raise this possibility suggests that he did not imagine that women could attain this status at all. Beiner argues that Kant never concedes that women have a civil personality to give up in marriage. Beiner (2011): 215. Reinar Maliks argues that “it is more likely that Kant rejected female suffrage because he had a very low opinion of women.” Maliks (2014): 109. See also Okin, Susan Moller, “Women and the Making of the Sentimental Family,” *Philosophy and Public Affairs* (1982): 65–88 and Hannelore Schroeder, “Kant’s Patriarchal Order,” in *Feminist Interpretations of Immanuel Kant*, ed. Robin May Schott (University Park: Penn State Press, 1997).

¹⁸ Cf. Hay (2013): 52; Mendus (1992): 166–190; Varden (2006): 257–84.

¹⁹ All references to Kant’s *Anthropology* use Robert Louden’s translation in *Anthropology from a Pragmatic Point of View* (Cambridge: Cambridge University Press, 2006).

²⁰ Kant develops his account of the wage labor contract without the Lockean notion of property in the person, which he rejects. Rather, Kant distinguishes between “selling what is his” and “granting others the right to make use of his powers” (8:295), arguing that the former allows the worker to earn his livelihood from others while retaining his independence (since he serves no one but the commonwealth). In his table of permissible contracts in *The Doctrine of Right*, Kant claims that the wage labor contract involves granting the use of one’s powers for a specified price; given the temporal elements of Kantian contract, it would also seem that this contract limits which powers I grant to another, and for how long. The domestic labor contract, on the other hand, is a status agreement, granting a right to a person akin to a right to a thing. Rather than granting an employer access to a specific set of my powers for a specified time for a specified price, the domestic labor contract creates a relationship between employer and employee, such that the domestic servant has agreed to “do whatever is permissible for the welfare of the household” (6:360–361). For further discussion of the status of servants, see Jordan Pascoe, “To Love, Honor, and Contract: Engagement and Domesticity in Kant’s Rechtslehre,” *WSQ: Women’s Studies Quarterly* 41, no. 3 (2013): 195–209.

²¹ I use “market realm” and “market sphere” to distinguish Kant’s account of the private realm from the public and domestic realms. The marketplace is the sphere of private right, where contracts about property, employment, trade, and so on, take place. I avoid the term “private” here in order to emphasize the distinction between the marketplace and the household in Kant’s political philosophy, since the “private sphere” has often, in 20th and 21st century thought, been used to describe domestic spaces.

- ²²For an excellent account of the crucial role that this domestic form of right plays in making justice possible, see Helga Varden, “Kant’s Non-Voluntarist Conception of Political Obligations: Why Justice Is Impossible in the State of Nature,” *Kantian Review* 13, no. 2 (2008): 1–45.
- ²³Susan Mendus also makes this point. See Mendus (1992): 170–71.
- ²⁴In an 1808 version of this law, which likely drew on Kant’s account of citizenship, Königsberg laws distinguished between “citizens” and “the protected” where citizens meant property owners or business owners who met a certain income requirement. “Among those eligible for citizenship were ‘unmarried persons of the female sex’ who resided in the city, otherwise met the qualifications, and chose to make an application.” Marion Gray notes that the 1808 law was “a continuation of an old-regime practice of regarding widows and daughters as the bearers of their deceased husbands’ or fathers’ status. Under the new law, as under the old, marriage always eliminated females from the possibility of citizenship.” In 1809, the first year of application for this status under the new law, 24 out of 443 applicants were women, and all but one of those women were listed as “widow and property owner.” Marion Gray, *Productive Men, Reproductive Women: The Agrarian Household and the Emergence of Separate Spheres During the German Enlightenment* (Oxford: Berghahn Books, 2000): 241–43.
- ²⁵The head of household has a range of coercive rights over members of the household not usually granted to employers in the market realm: heads of household may coercively retrieve erstwhile servants and spouses (even before a hearing to determine their case), and Kant explicitly gives domestic employers the right to “make use of” his subordinates as he sees fit, though he warns that this must not amount to “using them up” (6:283).
- ²⁶Kant defines the domestic realm as a whole as “a society of unequals” “under the head of the household” (6:283), and argues that while the head of household should not behave as though he owns his servants, he does have the right to retrieve them if they should run away “even before the reasons that may have led them to run away and their rights have been investigated” (6:284). He argues that the domestic employment contract is distinct from standard employment contracts in that it involves “a giving up of their persons into the possession of the head of the house, a lease” (6:360).
- ²⁷Domestic right has also been defended as an essential element of the neo-Kantian state by those seeking a Kantian defense of same sex marriage. See Helga Varden, “A Kantian Conception of Rightful Sexual Relations: Sex, (Gay) Marriage, and Prostitution,” *Social Philosophy Today* 22 (2006): 199–218; Donald Wilson, “Kant and The Marriage Right,” *Pacific Philosophical Quarterly* 85, no. 1 (2004): 117.
- ²⁸While this division of labor is no longer formally mapped onto the active/passive distinction Kant lays out, there remain plenty of unofficial ways that domestic and care laborers remain in legally and economically precarious positions. Immigration policies and the widespread use of undocumented domestic labor, along with the continued invisibility of so much of the labor of care, reproduce the conditions of passivity that Kant describes. Cf. Virginia Mantouvalou, “Human Rights for Precarious Workers,” in *Comparative Labor Law and Policy Journal*, 34, no. 122 (2012): 133–66; Lynn May Rivas, “Invisible Laborers: Caring for the Independent Person,” in *Global Woman*, ed. Barbara Ehrenreich and Arlie Russell Hochschild (New York: Owl Books, 2002): 70–84.
- ²⁹It makes little difference whether we assume there can be one head of household or two, jointly—though Kant himself is quite clear that one is enough—since someone still has to do the washing.
- ³⁰In addition to the precariousness of their employment, domestic laborers also need to find help to fill the care gap created by their own employment outside the home, creating what Arlie Hochschild has called a “global care chain.” Arlie Russell Hochschild, “Global Care Chains and Emotional Surplus Value,” in *On the Edge*, ed. Will Hutton and Anthony Giddens (London: Vintage, 2001): 131.
- ³¹Cf. Lisa Belkin, “Judging Women,” *The New York Times*, 18 May 2010: MM11.
- ³²United Nations, *The World’s Women 2010: Trends and Statistics* (New York: United Nations, 2010): 76. The International Labor Organization found this year that more than half the world’s

workers find themselves in vulnerable or precarious employment, a substantial proportion of whom engage in domestic and reproductive labor. International Labor Organization, *World of Work Report 2014* (Geneva: International Labor Organization, 2014).

- ³³ Wendy Sarvasy and Patrizia Longo make a similar point in their excellent article about Kantian cosmopolitan rights and Filipino migrant workers. Sarvasy and Longo, however, are predominantly focused on the Kantian rights in an international context, and admit that the problem of state rights for domestic workers in Kant requires further attention. Wendy Sarvasy and Patrizia Longo, "The Globalization of Care," *International Feminist Journal of Politics* 6, no. 3 (2004): 392–415.
- ³⁴ Cf. Williams (2006). Sibyl Schwarzenbach argues that this ideal of fraternity, tied as it is to equality, liberty, and independence, is a particularly masculine relationship. Sibyl Schwarzenbach, *On Civic Friendship: Including Women in the State* (New York: Columbia University Press, 2010.)
- ³⁵ Cf. Susan Moller Okin, *Justice, Gender, and The Family* (New York: Basic Books, 2008): 181–83.
- ³⁶ This is, of course, an old insight, dating back to Durkheim's account of solidarity as the interdependence created by the division of labor in industrialized societies.
- ³⁷ Carol Gould, *Globalizing Democracy and Human Rights* (Cambridge: Cambridge University Press, 2004): 66.
- ³⁸ Cf. Varden (2006): 272–73.