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Review

Kant's Political Theory: Interpretations and Applications

Elisabeth Ellis (ed). University Park: Penn State University Press, 2012. 256pp.

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For a long time in Anglo-American political philosophy "Kant's political philosophy" meant not Kant's own developed political thought, but an application of his *moral* theory to political issues. Thankfully, Kant's legal and political thought is experiencing a renaissance in the English-speaking world after a long period of neglect. Not only Kant's short political writings such as *Toward Perpetual Peace*, "On The Common Saying: This May be True in Theory but it Does Not Hold in Practice," and "An Answer to the Question: What is Enlightenment" are being rediscovered; also the *Doctrine of Right*, the first part of the *Metaphysics of Morals* of 1797 and a notoriously difficult work not least due to editorial complications in Kant's time, is receiving growing attention in the Anglo-American Kant scholarship. Elisabeth Ellis' volume is a fine example of this development.

Despite the title (Kant's *Political* Theory), the volume also focuses on themes of Kant's legal thought, and not only on his political theory (in fact, the political aspects of

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Kant's theory are hard to keep apart from his legal philosophy). Ellis' anthology brings together analyses of central themes of Kant's legal and political philosophy as well as less explored specialized themes such as Kant's views on education, freedom of speech, and intellectual property. One of the strengths of the volume is its well-balanced combination of interpretative Kant scholarship with historical analyses. As some of the articles show, it is often this historical awareness that enables a new understanding of Kant's texts, away from mainstream interpretations.

In her essay, Onora O'Neill questions whether Kant can be considered a social contract theorist. She spells out the connection between the idea of a social contract and Kant's universal principle of right and argues that consent must be understood as a *modal* requirement that a law or policy must fulfill. It is neither the actual consent nor the hypothetical consent of idealized rational beings: the criterion is instead the *possibility of universal consent*. A constitution reflects the social contract *if it could be consented to*. Because this criterion seems too minimal for deriving any concrete requirements, O'Neill goes on to show how possible consent has nevertheless substantive implications:

> If the idea of social contract is that of a constitution that could secure universal consent, then any constitution that exemplifies it must require the *freedom of individuals*, without which the possibility of genuine consent or dissent is undermined, at least for some, and universal consent becomes impossible. Second, it requires their *common dependence on or subordination to law*: if anyone were above or outside the law…the possibility of genuine consent or dissent is undermined, at least for some, and universal consent becomes impossible. Third, it must endorse the *legal equality* of citizens, since the subordination of some individuals to others…would once again undercut freedom, and with it the possibility of genuine consent and dissent (…). (33)

O'Neill seems to be equivocating on the notion of possible consent: not as logically possible consent, as she seemed to suggest at first but as consent that can be achieved or "made possible." She, therefore, confuses what one could in *principle* consent to with the *conditions* for enabling actual consent.

O'Neill's interpretation of the role of coercion in Kant's *Doctrine of Right* is also problematic. She argues that right "might or might not require coercive powers" and

that the need for coercion is a remedial measure given the limitations of human nature "in our world" (37). The idea that right is necessary regardless of human nature is correctly stressed in Arthur Ripstein's essay. This essay provides an excellent reconstruction of the main tenets of Kant's legal philosophy in the *Doctrine of Right* and addresses some common misunderstandings of the theory. Ripstein also explains why Kant would not have objected to resistance against the Nazi government despite his notorious rejection of a right to revolution. As opposed to despotic governments which regardless of their imperfections could still count as a *defective* version of a general will, the Nazi government is *barbaric*, that is, as the mere employment of force without law and freedom, a condition *even more defective* than the state of nature. Therefore, to resist barbarism with the aim of establishing a proper civil condition amounts to *doing right* (if not one's positive *duty*). Ripstein's argument is based on the distinction between the state of nature and a barbaric pseudo government. However, this distinction is not required for his argument. The state of nature is a condition in which there can be only unilateral coercion, whether it is a peaceful or a violent state, due to the lack of an omnilateral condition of public justice, that is, a government that can *represent* its people. While the *status naturalis* is an idea of reason and might never have historically existed, barbarism can be understood as a concrete situation of lawlessness, that is, a historically given *violent* state of nature.

Thomas W. Pogge's influential 1998 article reprinted in the volume discusses the relation between Kant's *Doctrine of Right* and Kant's moral theory. Using Rawls' distinction between a free standing theory and comprehensive doctrines, Pogge argues (against Rawls) that Kant's legal theory is in fact a free-standing liberal theory. While Kant's moral theory entails the *Doctrine of Right* as the only possible legal theory compatible with transcendental idealism and critical philosophy, the *Doctrine of Right* can nevertheless stand independently of Kant's moral theory, despite Kant's own suggestions of the contrary. Although appealing, Pogge's interpretation has some internal difficulties which need to be solved if the independence thesis is to be made plausible.

As Pogge puts it, Kant teaches us the rules of the *Rechtslehre* game, that is, which conduct options or "moves" are permissible and which are not. However, Pogge thinks that Kant still needs to give us a reason "for paying any attention to these norms" (86). Pogge then offers a prudential argument why "persons tend to benefit on balance from the existence of a juridical condition" (ibid.). Although this might be true, the

problem is that prudential reasoning cannot account for the *duty* to leave the state of nature. Kant's own argument relies in the recognition that to remain in the state of nature is to *wrong* others in the utmost degree. The problem with the lawless state of nature is, therefore, not merely a prudential problem.

Further, as Pogge recognizes, Kant's assumption that domains of external freedom must be *equal* seems hard to justify independently of his moral theory. If we accept the independence thesis, Kant would seem to be smuggling equality through the back door, "either by equivocating on the word 'universal' or by illicitly appealing to morality while pretending not to do so" (92). Pogge looks for a possible argument in the principle of publicity of *Perpetual Peace*, but ignores that a possible answer can be found in the *Doctrine of Right*. The problem of right starts with a plurality of individuals who must share the surface of the earth and whose agency is necessarily interconnected. The legal starting point of the *Rechtslehre* game is thus automatically a situation of equality: the equal claims to all individuals to a place on the earth, as formulated in Kant's notion of an original common possession of the earth (*ursprünglicher Gemeinschaft des Bodens*, RL VI: 262).

Louis-Philippe Hodgson defends the "extreme" view that Kant's political thought commits us to the realization of a federal world state with coercive powers. In contrast to Michaele Ferguson, who argues that the social unsociability characteristic of our humanity paradoxically *prevents* the full realization of our humanity (164), Hodgson believes that one can fully realize the ideal set by external freedom *in this world* (128). Hodgson's argument is based on the assumption "that states are entitled not to depend on one another's choices" (109) and that it is unproblematic to extend the right to coerce at individual level to the international domain, an assumption which Kant himself was reluctant to endorse. While the world state seems to be the natural conclusion to adopt, given what Kant has to say about the possibility of peremptory right, it would be valuable to take Kant's reluctance more seriously. Why did he not commit himself openly to the world state? This question, however, is set aside in the article.

Robert S. Taylor provides an interpretation of Kant's *An Answer to the Question: What is Enlightenment* as a key to understanding Kant's "theory of enlightened absolutism." As he argues, although freedom of speech can be seen as in the short-term interest of the enlightened monarch, the limitations imposed on free speech, while initially protecting the "seed" of intellectual self-government, will ultimately undermine

absolutism and pave the way towards a republican government. According to Taylor, Kant's main concern was to show that such a development towards self-government is possible without violations of right or revolutions. Also related to the question of intellectual freedom, John Christian Laursen's essay situates Kant's views on book piracy within the debate on intellectual property in the eighteenth century and explains why Kant did not make an explicit point in favor of freedom of the press, as he does for the contractual relations threatened by book piracy. The point for freedom of the press and thought is implicit in Kant's innate right.

Ian Hunter refutes the widely accepted view according to which the censorship of Kant's writings on religion amounted to an anti-Enlightenment attitude from the Prussian state. This essay provides a careful reconstruction of the historical philosophical background in which Kant's writings were embedded and provides a warning against reading Kant solely "from Kant's own perspective". However Hunter's reduction of Kant's thought to an attempt to reproduce Kant's own philosophical "persona" is surprising. This view does not take into account how Kant's critical philosophy, which pervades the entire Kantian system, evolved from a rejection of Leibniz-Wollffian rationalism and underwent a long period of revisions in order to become internally consistent. To reduce Kant's thought to the reproduction of his "persona" is thus to ignore the theoretical commitments of the critical project itself, which ultimately shaped Kant's political project.

As Mika LaVaque-Manty argues, education plays an important role in enabling persons to behave well in society and setting themselves ends in general. Kant rightly recognized the importance of education, including physical education. Although instructive, LaVaque-Manty's essay "Kant and Education" conflates Kant's notion of autonomy as self-legislation (*Selbstgesetzgebung*) with an empirical notion of autonomy as giving oneself directives, such as moving one's own body. The latter kind of autonomy is the one furthered by education. While empirical autonomy can in fact facilitate or come to bear on the *exercise* of moral autonomy, it is by no means responsible for the development of moral autonomy as a rational capacity in the first place.

Kant's Political Theory: Interpretations and Applications is a useful and thought provoking read, no less for the proposed interpretations than for the applications of Kant's theory. It is a welcome addition to the growing secondary literature on Kant's

legal philosophy. Its articles will certainly stimulate many further discussions on Kant's legal and political philosophy.