

Sorin Baiasu

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KANT'S JUSTIFICATION OF WELFARE¹

– Sorin Baiasu –

Abstract. For several decades, theorists interested in Kant's discussion of welfare have puzzled over Kant's position on the issue of the redistribution of goods in society. They have done this both in order to clarify his position and as a source of inspiration for current conceptual problems faced by contemporary political philosophers who attempt to reconcile the ideal of equal freedom with the asymmetric interference necessary for redistribution and social provision.

In this paper, I start with Kant's brief discussion of welfare in *Rechtslehre* and I identify four claims that Kant clearly asserts as characteristic for his view. I then outline five main interpretative directions in the literature, I evaluate and rank them. The most accurate view of Kant's justification of welfare, which I call the "genuinely Kantian" position is, however, unable to explain the nature of the duty of welfare that it asserts. By going back to Kant's text, I suggest one solution. This solution, together with some further questions, can be seen as initiating a new interpretative direction in the literature.

Keywords: Kant, justification, normativity, welfare, innate right, civil condition, duties of right and duties of virtue.

1. Introduction

Philosophers interested in Kant's discussion of welfare continue to puzzle over Kant's position on the issue of the redistribution of goods in society. The attempt to solve this problem is significant in the current political context: most political campaigns will involve debates over social provision; whether a party promises to reduce taxes and decrease social provision or, on the contrary, to increase redistribution and put compulsory contributions up, it is important to

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understand on what basis a policy of redistribution is formulated. Kant seems to square the circle many contemporary political theorists have tried to square in their accounts of social provision for the needy. On the one hand, Kant grounds his political philosophy in freedom and, more specifically, in the equal freedom of all members of society; on the other hand, however, he seems to justify a policy of redistribution, which interferes with the freedom of those who are financially better-off and from whom goods will be taken in order to be given to the worst-off.

Whether or not Kant's account is successful, a re-examination of the relevant issues will be instructive. Once Kant's position is identified, an evaluation of his account can either suggest a solution to the conundrum of reconciling freedom and social provision, or present those problematic aspects of Kant's account that must be avoided, or offer a bit of both. Interpretative debates concerning Kant's view of welfare have been very helpful in clarifying his arguments. Although any attempt to identify a general trend in the literature on this topic will not be completely satisfactory, in this paper, I focus on what seem to be the five main directions along which commentators have formulated their views.

Some of the claims Kant makes in his discussion of redistribution seem to be clear and I will assume four of them as given. These four claims can be regarded as a test for how successful an account of Kant's position on welfare is: the more claims an account is able to incorporate, the better (more accurate) it will be. In the paper, I focus mainly on what currently seems to be the most successful direction in the literature (I call it the 'genuinely Kantian' view of redistribution, a direction represented by, among others, Ernest Weinrib and Arthur Ripstein²) and I raise some objections to the way the genuinely Kantian view conceives of the relation between the state and the beneficiaries of a policy of redistribution.

I conclude that Kant's comments on redistribution suggest a solution to the problem of the relation state-recipients of welfare, a solution that is able to address the objections I formulate and to initiate what could perhaps be seen as a new direction for the discussion of Kant's account of redistribution and of the most important issues related to social welfare.

² According to Arthur Ripstein, Kant's position must be distinguished from those of "recent political philosophy, including political philosophy that characterises itself as 'Kantian'" - Ripstein [2009] p. 267. Hence, one reason for calling this view 'genuinely Kantian' is to distinguish it from the more standard views in the literature that are called 'Kantian', for instance, John Rawls's Kantian constructivism. A second reason for using this label, however, is to mark the impressive effort made by Ripstein, Weinrib and the other genuinely Kantian philosophers to stay accurate to Kant's text.

2. Kant on Welfare: Four Claims

In the *Doctrine of Right*,³ Kant's comments on welfare are confined to a few paragraphs.⁴ They are part of Subsection C of the General Comment "On the

³ In citing Kant's works the following abbreviations are used: *KrV* - *Critique of Pure Reason* (*Kritik der reinen Vernunft*); *KU* - *Critique of Judgement* (*Kritik der Urteilskraft*); *TP* - *On the Common Saying: That May Be Correct in Theory, but It Is of No Use in Practice* (*Über den Gemeinspruch: Das Mag In Der Theorie Richtig Sein, Taugt Aber Nicht Für Praxis*); *ZEF* - *Toward Perpetual Peace* (*Zum ewigen Frieden*); *MS* - *The Metaphysics of Morals* (*Die Metaphysik der Sitten*), comprising *RL* - the *Metaphysical First Principles of the Doctrine of Right* (*Metaphysische Anfangsgründe der Rechtslehre*) and *TL* - the *Metaphysical First Principles of the Doctrine of Virtue* (*Metaphysische Anfangsgründe der Tugendlehre*). Pagination references in the text and footnotes are to the volume and page number in the German edition of Kant's [GS] *Gesammelte Schriften* [1900-]. References to the *Critique of Pure Reason* follow the A (first edition), B (second edition) convention. I am using the translations listed in the Bibliography.

⁴ The most important part of the discussion on redistribution is the following:

To the supreme commander there belongs *indirectly*, that is, insofar as he has taken over the duty of the people, the right to impose taxes on the people for its own preservation, such as taxes to support organisations providing for the *poor*, *foundling homes* and *church organisations*, usually called charitable or pious institutions.

The general will of the people has united itself into a society which is to maintain itself perpetually; and for this end it has submitted itself to the internal authority of the state in order to maintain those members of the society who are unable to maintain themselves. For reasons of state the government is therefore authorised to constrain the wealthy to provide the means of sustenance to those who are unable to provide for even their most necessary natural needs. The wealthy have acquired an obligation to the commonwealth, since they owe their existence to an act of submitting to its protection and care, which they need in order to live; on this obligation the state now bases its right to contribute what is theirs to maintaining their fellow citizens. This can be done either by imposing a tax on the property or commerce of citizens, or by establishing funds and using the interest from them, not for the needs of the state (for it is rich), but for the needs of the people. (Since we are speaking here only of the right of the state against the people) it will do this by way of coercion, by public taxation, nor merely by *voluntary* contributions, some of which are made for gain (such as lotteries, which produce more poor people and more danger to public property than there would otherwise be, and which should therefore not be permitted). The question arises whether the care of the poor should be provided for by *current contributions* - collected not by begging, which is closely akin to robbery, but by legal levies - so that each generation supports its own poor, or instead by *assets* gradually accumulated and by *pious* institutions generally (such as widows' homes, hospitals, and the like). Only the first arrangement, which no one who has to live can withdraw from, can be considered in keeping with the right of a state; for even if current contributions increase with the number of the poor, this arrangement does not make poverty a means of acquisition for the lazy (as is to be feared of religious institutions) and so does not become an *unjust* burdening of the people by government.

As for maintaining those children abandoned because of poverty or shame, or indeed murdered because of this, the state has a right to charge the people with the duty of not knowingly letting them die, even though they are an unwelcome addition to the population. Whether this should be done by taxing elderly unmarried people of both sexes generally (by which I mean *wealthy* unmarried people), since they are in part to blame for there being abandoned children, in order to establish foundling homes, or whether it can be done rightly in another way (it would be hard to find another means for preventing this) is a problem which has not yet been solved in such a way that the solution offends against neither rights nor morality." *RL* 6, pp. 325-327.

effects with regard to rights that follow from the nature of the civil union".⁵ Not surprisingly, this is a general comment in Section I (The right of a state) of Part II (Public Right) of the *Rechtslehre*.

What Kant says there clearly indicates that, for him, redistribution is an effect that follows from his account of the nature of the civil union. Moreover, this "effect" is a "right", whereby the state is "authorised" to tax the wealthy, in order "to provide the means of sustenance to those who are unable to provide for even their most necessary natural needs"; this right or authorisation is "a right of the state against the people", a right exercised "by way of coercion", and not "merely by voluntary contributions"; moreover, the poor should be provided for "by legal levies", not "by assets gradually accumulated", for such an arrangement "does not make poverty a means of acquisition" and "so does not become an *unjust* burdening of the people by the government".⁶

These claims already suggest clearly several features of Kant's position on welfare. *First*, Kant regards redistribution as following from his political philosophy, more exactly, as a consequence of his account of the nature of civil union. Hence, his brief discussion of redistribution that has puzzled so many commentators should not be understood as an afterthought without systematic connection with his political theory more generally.⁷

Secondly, it seems clear that Kant has in view a *right* or *authorisation* of the state to take from the wealthy in order to give to the poor. As a right or authorisation, this principle cannot be justified instrumentally, but needs to have the necessity characteristic for moral norms, specifically for juridical norms. An instrumental justification of authorisation is contingent on the end to be achieved; rights and duties are *necessary*.

Thus, according to Kant, philosophy can be divided into two main parts – a theoretical (mainly to do with 'is' claims) and a practical part (mainly to do with 'ought' claims).⁸ Moreover, the practical part has also two subparts: the technically

⁵ *RL* 6, pp. 318–337.

⁶ All quotations are selections from the passage above – *RL* 6, p. 318 and pp. 325–327.

⁷ According to some commentators, without a duty of the state to provide for the poor, Kant cannot justify the legitimacy of the state. Later in this paper, we will see how this argument is supposed to function. At this juncture, I mention one objection to this claim: According to this objection, the state may be unjust if it does not provide for the poor, but it does not lose its legitimacy; the only legitimate state, the objection continues, is the ideal republican state and all existing states *must* be considered legitimate – Pinheiro Walla [2014]. I think this is an important reminder of Kant's sensitivity to concrete realities, but the claim that provision for the poor is necessary for legitimacy refers to the ideal republican state, not to existing states. This is the model towards which 'real' and imperfect states must aim.

⁸ When he introduces this distinction at *MS* 6, p. 217, he makes reference to the *KU*. One place where this distinction is explicitly discussed is at *KU* 5, pp. 171–173. The distinction between these

practical (mainly to do with hypothetical 'oughts') and the morally practical (about unconditional or categorical 'oughts').⁹ The morally practical doctrine has in its turn two components, legal philosophy and ethics, which Kant distinguishes by reference to different types of lawgiving or norm-giving and which corresponds to the distinction between the two parts of the *MS*: the Doctrine of Right and the Doctrine of Virtue, respectively.

Kant defines several notions that are "common to both parts of the *Metaphysics of Morals*."¹⁰ For instance, for Kant, duty "is that action through which someone is bound" and "it is a matter of obligation"; obligation "is the necessity of a free action under a categorical imperative of reason", and, to make the necessary character of a duty (and its corresponding right) very clear, "an imperative is a practical rule by which an action in itself contingent is *made* necessary".¹¹ Hence, if Kant is right and the state is *authorised* to take from the wealthy and redistribute to the poor, then this right or authorisation is not defined instrumentally, but it is a *necessary* legal principle.

Thirdly, we have seen that, for Kant, the right of the state is exercised by way of coercion, rather than being satisfied merely by voluntary contributions. This suggests that we are dealing with a legal, rather than an ethical, right. As I have mentioned, Kant distinguishes between ethical and juridical lawgiving or norm-giving. It should be mentioned that, by norm-giving, he has in mind a norm (which "represents an action that is to be done as objectively necessary") and an incentive ("which connects a ground for determining choice to this action subjectively with the representation of the law" or norm).¹²

Hence, in giving a norm or in norm-giving, we do not only provide a norm which represents a duty, but also connect this duty to a ground which determines us to act in such a way that the duty is fulfilled by the performance of the action represented by the norm. Now, the distinction between ethical and juridical norm-giving is drawn in Kant's account by reference to this incentive. Ethical norm-giving has duty as incentive, whereas juridical norm-giving admits also incentives other than the idea of duty.

In other words, ethical norm-giving specifies as ground for the determination of the will the justification of the validity of the norm; the action is performed by observing the norm, because the norm is right, and the norm is

parts of philosophy as a distinction between 'is' and 'ought' claims is already in the *First Critique* [A633/B661].

⁹ *MS*6, p. 218.

¹⁰ *Ibidem*, p. 222.

¹¹ *Ibidem*.

¹² *Ibidem*, p. 218.

right, as shown by its justification. By contrast, juridical norm-giving allows as incentive both duty and any other motive which leads to the performance of the action. For instance, juridical norm-giving is compatible with the action's being performed on the norm as a result of fear (given by the threat of punishment, if the norm is broken or not complied with). What this implies is that we can have juridical norm-giving which has duty as an incentive, but we cannot have ethical norm-giving which does not have duty as an incentive.

It must also be noted that, in order for a duty to allow enforcement, it must have certain specific features. One such feature is externality: juridical duties represent outer actions. For instance, for Kant, we cannot coerce persons to be benevolent. Benevolence, as "satisfaction in the happiness (well-being) of others"¹³, is not the same as the appearance of satisfaction suggested by a smiling face.

Moreover, certain duties may refer to external actions, but if these actions cannot be monitored, a law enforcing the duty would be ineffective. For instance, a person's private sphere is an area where her actions are not publicly monitored. If such actions are relevant for the application of a duty, the duty cannot be applied as a law, since it would not be possible to determine whether it was observed or broken.

One example Kant gives, under the heading of "ambiguous right"¹⁴, is that of equity.¹⁵ Consider a bankrupt trading company, in which the founding partners were supposed to share equally in profits; and, yet, one of them had done more than others and lost more when the company became bankrupt. The judge cannot ascertain whether this is indeed the case (say, because the way in which one partner worked harder than the other could not be monitored and evidenced or, when monitored and evidenced, because there are no public pre-established rules translating such additional hard work into benefits) and, hence, cannot rely on equity to distribute losses.

Finally, there may be cases in which the duty refers to an external action which can be monitored, and, yet, cannot be enforced. Again under "ambiguous right", Kant discusses the case of "the right of necessity".¹⁶ In a shipwreck, in order to save her own life, a person shoves another, whose life is equally in danger, off a plank on which he had saved himself. On Kant's account, the action is not unculpable, but it is unpunishable.

¹³ *TL* 6, p. 452.

¹⁴ *RL* 6, p. 233.

¹⁵ *Ibidem*, p. 234.

¹⁶ *Ibidem*, p. 235.

This is because the role of punishment is to provide the incentive sufficient to outweigh the temptation to break the rule. Yet, in this case, the incentive to break the rule is the fear of certain death, whereas the incentive not to break the law is given at most by uncertain capital punishment.¹⁷ Because juridical norm-giving, as opposed to ethical norm-giving, is enforceable, and because in the case of the shipwreck the norm of not taking the life of an innocent human being cannot be enforced, we cannot regard it as a law for such cases.¹⁸

The quotation above and the shorter selected quotes seem therefore to support four important claims. Thus, first, it seems clear that Kant regards policies of redistribution as an implication of his account of civil union; secondly, his justification of the state's authorisation to redistribute goods from the wealthy to the poor is not instrumental on the basis of a contingent end, but moral in character and leading to a norm which is morally necessary; thirdly, the state's authorisation (for instance, to tax the wealthy) is enforceable (through penalties and hefty fees) and, hence, is a legal or juridical right; *fourthly*, Kant's concern is not to increase welfare overall, but to make possible justice, that is, a rightful condition – thus, he is concerned about not burdening the people with unnecessary costs and about not allowing the process of redistribution to be abused.

Call these claims the claims to compatibility, morality, enforceability and responsibility-based justice.

3. Commentators on Kant on Redistribution: Five Views

In the growing literature on this topic, one can find examples of interpretations that reject the four claims identified in the previous section. There are those (call them 'minimalists') who maintain that Kant's comments on welfare are incompatible with his legal philosophy and, hence, that there is no room for redistributive policies in his political theory¹⁹. It follows that minimalists are

¹⁷ Ibidem, pp. 235–236.

¹⁸ I do not think this is a complete list of necessary conditions for legal norms. For instance, Gregor mentions another one: a norm may concern external action, but if this action only affects the author of the action, then it is not a legal norm: "Law has to do only with the relations of one person to another in so far as their actions, as physical events in time, can have an influx on one another" – Gregor [1963] p. 35.

¹⁹ The label seems to have first been introduced by Allen Rosen: The minimalist interpretation holds that "the proper function of the state, according to Kant, is to protect individual liberty, to enforce contracts, and to prevent fraud, but involves little else. The minimalist interpretation further holds that Kant disapproves of social welfare legislation, except insofar as it may be instrumentally necessary to ensure the stability of the state – for instance, during times of revolutionary upheaval or economic crisis" – Rosen [1993] p. 173. He includes in this category Mary Gregor [1963], Bruce Aune [1979], Jeffrie Murphy [1994], Morris Cohen [1950], Howard

unable to account for any of the four claims identified above. Since they reject Kant's comments on redistribution as incompatible to Kant's political philosophy more generally, they will not be able to explain why Kant's justification is non-instrumental, juridical and non-egalitarian either.

A second direction of interpretation is offered by those ('instrumentalists' is the term often used in the literature to designate this specific type of justification) who accept that Kant's account of redistribution is part of his political philosophy, but regard the justification Kant provides as instrumental.²⁰ In other words, on this account, Kant justifies non-instrumentally several elements of his political philosophy, for instance, civil condition and the institutions that protect external

Williams [1983] and Harry van der Linden [1988]. I find this way of presenting the minimalist position unsatisfactory. If we think of Leslie Mulholland's account [1990], we have an interpretation which states that, for Kant, the proper function of the state is to protect individual liberty, but denies that Kant disapproves of social welfare legislation, except as instrumentally necessary to ensure the stability of the state. One might say that a minimalist needs a commitment to *both* liberty and denial of non-instrumentalist social welfare in Kant. But, then, Gregor's account cannot be counted among the minimalist: her claim that "It is not the business of juridical laws [...] to prescribe as duties acts of benevolence to others" can only be read as a denial of non-instrumental social welfare, when one takes social welfare to be non-instrumentally justifiable only through a duty of benevolence, in the way Rosen does – Gregor [1963] p. 36; Rosen [1993] for instance, p. 198. Williams also does not fit this label: he does acknowledge the emphasis Kant puts on autonomy, but regards social welfare as justified non-instrumentally: "Thus the right to intervene in society on behalf of the poor derives not from the *a priori* principles of justice, but rather from the precepts of Kant's pure moral philosophy" – Williams [1983] pp. 197–198. On the definition of minimalism that I use, the commentator who most clearly falls under it is Murphy: "it is by no means clear that this view [Kant's view on welfare] is consistent with his general theory" – Murphy [1994] p. 124. As noted by Alexander Kaufman [1999] p. 6, two other clear cases of minimalism are Wilhelm von Humboldt [1969] and Friedrich Hayek [1976].

²⁰ A clear case of an instrumentalist account seems to be found in Mark LeBar [1999]. As we will see, however, this is less clear than LeBar's own claims suggest. (See n74 below.) An account which is usually classed as minimalist is that of Wolfgang Kersting [1992a]. According to Kersting, "Kant's legal and political equality lacks all economic implications and social commitments; it cannot be used to justify the welfare state and to legitimize welfare state programmes of redistribution" – [1992a] p. 153. But what Kersting denies is not an incompatibility between Kant's political philosophy and redistribution; rather, he denies a non-instrumentalist account of redistribution: "Within the framework of the Kantian metaphysics of justice there is place for an argument of a derivatively and instrumentally legal necessity of welfare state politics which counts welfare state structures among the circumstances of the realization of justice" – [1992a] p. 164 n7. Interestingly, in the same year, Kersting publishes a text that claims Kant justifies redistribution on the basis of freedom – [1992b] pp. 356–357. For justifications of redistribution based on freedom, see n23 below. Several of the authors identified as minimalists are sometimes also counted by LeBar [1999] p. 233 n8 among instrumentalists: Gregor [1963], Aune [1979] and Williams [1983]. Yet, whereas Gregor does say that welfare legislation "is only in the nature of a means to an end", she further explains this as follows: "It is a means to the preservation of civil society and so to the realization of the State's essential purpose. This purpose, outer freedom, can be realized independently of the citizens' benevolence toward one another..." – [1963] p. 36. Hence, the end is not "extrinsic" (to use Arthur Ripstein's term) to civil condition and, hence, not instrumental. Moreover, as we have seen, Williams also is a non-instrumentalist. As I have mentioned, I think Kersting's position [1992a] is correctly identified as instrumentalist.

freedom; yet, there are certain purposes, for instance, the well-being of the citizens and the stability of the state, that are extrinsic to the civil condition and can justify policies and legislation, such as a welfare law. This kind of interpretation is able to account for one of the four claims mentioned above, namely, for the claim to compatibility (which asserts that Kant's comments on redistribution are part of his political theory).

A third direction of interpretation (which can be called 'ethicist') acknowledges the compatibility between Kant's justification of redistribution and his political philosophy, as well as the morally normative, non-instrumental character of this justification. Yet, this approach understands redistribution as based on a duty of virtue, rather than as a duty of right. For instance, one argument can be that citizens have beneficence as a duty of virtue, but the state needs political institutions to enforce such a duty effectively.²¹ Hence, along this interpretative line, the first two of the four claims mentioned above (namely, compatibility and morality) are correct.

Furthermore, there are those (I call them 'egalitarians', for want of a better term) who acknowledge that Kant grounds welfare in a just, rightful condition, but regard justice as egalitarian.²² In other words, according to interpretations following this hermeneutic line, Kant does not argue for redistribution on the basis of some extrinsic good (stability or overall happiness), but on reasons intrinsic to justice. Hence, nor does Kant justify redistribution on ethical grounds. Yet, the juridical duties he considers result from a commitment to equality, which is the main ingredient in the principles of justice. This approach can account for three of the four claims with which I have started this section: compatibility, morality and enforceability.

²¹ Ripstein identifies Williams [1983] and Rosen [1993] as ethicists about Kant's account of welfare – Ripstein [2009] p. 271 n5. As we have seen above [n19], this fits the definition of the ethicist position provided in this paper. LeBar includes Murphy [1994], but, as we have seen (again, n19 above), Murphy is one of the few authors advocating minimalism. He does offer a justification of welfare, but he does not attribute it to Kant.

²² Here Rawls's case is most clear: he acknowledges his account is egalitarian and his theory "Kantian" – Rawls [1999]. He is not concerned with an unjust burdening of the people by the government through taxation, in the way Kant is, since to talk about an "unjust burdening" we need to assume it is possible to determine what each person is due independently from the principles of justice; according to Rawls's egalitarian principles, equality is the default position unless an unequal distribution will favour the worst off. There is no other distribution by reference to which we can evaluate the results of the egalitarian distribution. The discussion which justifies this position is offered by Rawls in his famous §§17 and 48.

Finally, we can also find interpretations (let us call them 'genuinely Kantian') that succeed in incorporating all four initial claims.²³ Genuinely Kantian accounts offer a plausible interpretation of Kant's account of redistribution and, as they succeed in accounting for the four claims rejected by minimalism, instrumentalism, ethicism and egalitarianism, they avoid the limitations of these interpretative directions. From the perspective of the genuinely Kantian interpretations, failing to account for one or more of the four claims I mentioned above can easily be seen as a serious omission that ignores textual evidence to the contrary. It is, however, unclear that genuinely Kantian positions in their turn would not have similar problems. The next two sections will focus on this.

4. Genuinely Kantian Interpretations

Two relatively recent genuinely Kantian interpretations have been put forward by Ernest Weinrib and Arthur Ripstein.²⁴ I will focus here mainly on Ripstein's presentation.²⁵ I find the two very similar as far as the claims and interpretative moves relevant for my purpose here are concerned, but I will refer to some differences later.²⁶

²³ It may seem that I have ignored one important type of interpretation: on some readings, there is a distinct kind of justification of redistribution which is based on freedom, more exactly, on the external freedom of the members of society. Kaufman - [1999] p. 35 n1 - ascribes this position to Kersting [1992a and b], Mulholland [1990], Thomas Pogge [1988], Weinrib [1987] and Williams [1983]. He also formulates an argument which is meant to show how redistribution cannot be justified on the basis of freedom - Kaufman [1999] pp. 4-6. This is also LeBar's conclusion in the discussion of Mulholland: "As a matter of freedom we are entitled to have others not prevent us from preserving ourselves; it does not follow that we are entitled to be provided for by them" [1999] p. 248. As we will see, Weinrib thinks this conclusion is correct, but he attributes it to Mulholland's claim to a right to welfare. In fact, a reading of Kant as putting strong emphasis on external freedom and on the state's function to protect this freedom is compatible with all five directions of interpretation I presented above. Not surprisingly, therefore, among those mentioned by Kaufman, we find representatives of instrumentalism, ethicism and genuine Kantianism; a justification based on freedom is, however, compatible also with minimalism - Murphy, for instance, acknowledges the importance of external freedom in Kant's legal philosophy (see discussion at 1994: 108-114). Kersting [1992b] does not offer a sufficiently developed reconstruction of Kant's argument to enable us to identify his position.

²⁴ Weinrib [2003] and Ripstein [2009].

²⁵ Interpretations along the genuinely Kantian direction can also be found in Mulholland [1990], Kaufman [1999], Sarah Holtman [2004], Helga Varden [2006] and Williams [2013]. Kaufman seems initially to read Kant's justification of welfare to rely on a stronger requirement of freedom than that imposed by the protection of external freedom. For instance, according to him, such a justification can rely on an "argument that economic inequality is inherently a hindrance to [external] freedom" - Kaufman [1999] p. 33. Yet, he then traces back this stronger requirement to the innate right to freedom and even to "the rightful condition of civil society united under a general will" as a "necessary condition for the validity of definitive right-claims to external property" - Kaufman [1999] pp. 33-34.

²⁶ According to Ripstein, Weinrib's interpretation of the justification of welfare, as an issue of public right, is "related but somewhat different" to his own - Ripstein [2009] p. 277 n16. It is not

It seems clear from the beginning of his chapter on redistribution that Ripstein rejects the minimalist view and tries to reconstruct Kant's justification of a duty of the state to tax the rich in order to provide for the poor.²⁷ For him, Kant does justify the state's authorisation to redistribute goods in a society, in order to provide for those unable to provide for themselves, and this justification is not only compatible with Kant's political philosophy, but it is necessary if Kant's account is to work.

Moreover, Ripstein dismisses the instrumentalist account by a distinction between Kant's view on a legitimate use of state power and "recent political philosophy, including political philosophy that characterises itself as 'Kantian'" that advances "more robust ideas of material equality".²⁸ According to Ripstein, on Kant's account, the ground for the state's duty to support the poor is "immanent in the requirements of a rightful condition", whereas for the more recent accounts which emphasise material equality, it is "extrinsic".²⁹

Ripstein rejects a justification that makes the value of a redistributive policy dependent on a further goal (for instance, as I have just mentioned, that of material equality), a goal independent from the framework of legal principles that constitutes the rightful condition. He attributes to Kant an account of law "as something other than a tool for achieving independently desirable moral outcomes".³⁰ According to him, "the key to Kant's argument for the state focuses on the need for a united legislative will", which makes possible the rightful condition.³¹

As defined above, ethicists claim that, in Kant, the state's power to redistribute goods in a society is based on a duty of beneficence. Against this, Ripstein argues along the lines of Kant's distinction between ethical and juridical norm-giving that "duties of virtue can never be coercively enforced, because they can only be discharged by acting on the appropriate maxim".³²

clear in what sense the two accounts are different and Ripstein does not elaborate on this. But, concerning the question of the justification of welfare as a whole, they clearly choose to develop different issues, which are related to the question; moreover, in Weinrib, there is a clear rejection of a right of the needy to welfare. As far as these differences are concerned, they are not of consequence to my argument here, which will apply equally to both.

²⁷ Ripstein [2009] Ch. 9, esp. pp. 267–286.

²⁸ *Ibidem*, p. 267.

²⁹ *Ibidem*.

³⁰ *Ibidem*, p. 268.

³¹ *Ibidem*, p. 272.

³² *Ibidem*, p. 269.

When an action is politically enforced, the action “carries no moral worth”.³³ Therefore, the state’s power to redistribute “cannot be traced to some antecedent obligation on the part of the wealthy to bring it about that the needy receive more than they have”.³⁴ Instead, as we have seen, Ripstein argues for the state’s duty as “freestanding”, as “something the state needs to do to be in a rightful condition”.³⁵

I have noted that Kant is not happy to defend merely a legal duty of redistribution; he is also concerned that the system of redistribution be not abused. Therefore, he favours a system of contributions through legal levies, as opposed to a system funded by gradually accumulated assets. Two grounds are offered by Kant and both are related to the attempt to avoid the unjust burdening of the people by the state and the abuse of the system: through contributions, “each generation supports its own poor”, and, moreover, “this arrangement does not make poverty a means of acquisition for the lazy”.³⁶

Ripstein mentions only the first reason, but this is sufficient to indicate that he is not simply assuming an egalitarian ideal as part of the rightful condition.³⁷ On an egalitarian account, like Rawls’s, redistribution is justified by the value of equality or the improvement of the situation of the worst off. The limits on taxation are not set by reference to what individuals do – hence, Kant’s worry that the system is abused by the lazy or that some people are unjustly burdened does not arise.

On the contrary, Ripstein’s interpretation takes into consideration an important aspect of Kant’s account, an aspect which “reflects his more general conception of each person as responsible for his or her life”.³⁸ Hence, it is clear that Ripstein’s account parts company with an egalitarian view of the justification of redistribution, in addition to the minimalist, instrumentalist and ethicist views.

How is this account developed and defended? First, as we have seen, for Ripstein, key to Kant’s argument is the need for a united legislative will. This need stems from the fact that, in order to be legitimate, any power the state has must be supported by a claim to speak and act for all its citizens. As Kant puts it, “the

³³ *Ibidem*.

³⁴ *Ibidem*, pp. 270 and 274.

³⁵ *Ibidem*, p. 270.

³⁶ *RL* 6, p. 326.

³⁷ Ripstein [1999] p. 282.

³⁸ *Ibidem*, p. 286.

touchstone of any public law's conformity with right" is that that law "could have arisen from the united will of a whole people".³⁹

Unilateral decisions are taken in the interest of the party that makes the decision. The use of a power of the state to enforce a unilateral decision makes all those against whom it is enforced mere means to the end of the decision-making party. This, however, goes against the duty each person has not to make herself mere means to the ends of others, but always be at the same time an end. It is this duty that Kant calls "rightful honour" and that is at the basis of the requirement of a united legislative will for the legitimate use of political power.⁴⁰ Hence, again, any exercise of state power requires support from an omnilateral standpoint.

According to Ripstein, one way in which the general will is undermined is through relations of dependence. When a citizen depends on another for her existence, she cannot set and pursue her own ends without the agreement of the person on whom she depends. This goes against her rightful honour. In principle, such a situation of systematic dependence may reduce a person to the mere means for the ends of another and, hence, because rightful honour is a duty of right, it will make her juridically vulnerable.⁴¹ This implies that "institutions that give effect to a system of equal freedom must be organised so that they do not systematically create a condition of dependence".⁴² Yet, the problem of poverty is precisely a problem of dependence: "the poor are completely subject to the choice of those in more fortunate circumstances".⁴³

The crucial element that Weinrib's and Ripstein's accounts introduce is a clear presentation of the difference between the private and civil condition and how the relation of dependence between persons changes from one condition to the other. For Kant, in the state of nature, there is no positive or statutory right, no right proceeding from the will of a legislator. Hence, every person in the state of nature begins with some innate rights, that is, with some rights for which no act is necessary.⁴⁴

In fact, Kant thinks there is only one innate right:

³⁹ *TP* 8, p. 280. To be sure, the united legislative will is not an actual universal agreement of the citizens of a state, but it is for Kant "only an idea of reason" – *TP* 8, p. 297.

⁴⁰ Ripstein [2009] p. 272. "Rightful honor (*honestas iuridica*) consists in asserting one's worth as a human being in relation to others, a duty expressed by the saying, 'Do not make yourself a mere means for others but be at the same time an end for them'" – *RL* 6, p. 236.

⁴¹ This is a situation of dependence in principle or juridical vulnerability, since in fact it may happen that all my projects are generously supported by those who have the means and there is no instance in which I have to wait for another's approval in order to realise my aims.

⁴² Ripstein [2009] p. 272.

⁴³ *Ibidem*, p. 274.

⁴⁴ *RL* 6, p. 237.

Freedom (independence from being constrained by another's choice), insofar as it can coexist with the freedom of every other in accordance with a universal law, is the only original right belonging to every man by virtue of his humanity. – This principle of innate freedom already involves the following authorizations, which are not really distinct from it (as if they were members of the division of some higher concept of a right): innate *equality*, that is, independence from being bound by others to more than one can in turn bind them; hence a human being's quality of being *his own master (sui iuris)*, as well as being a human being *beyond reproach (iusti)*, since before he performs any act affecting rights he has done no wrong to anyone; and finally, his being authorized to do to others anything that does not in itself diminish what is theirs, so long as they do not want to accept it – such things as merely communicating his thoughts to them, telling or promising them something, whether what he says is true and sincere or untrue and insincere (*veriloquium aut falsiloquium*); for it is entirely up to them whether they want to believe him or not.⁴⁵

The innate right to freedom is, for Kant, a right to independence from the external constraints imposed by others in accordance with a universal law. This leads to the equal spheres of maximum freedom that the Principle of Right also commands. As parts of this innate right to freedom, Kant also mentions innate equality (independence from being asymmetrically bound by others), legal autonomy (the quality of a person to be her own master), being assumed innocent (before having done anything that can potentially affect rights, a person has to be considered as not having done anything wrong) and an authorisation to do anything that, assuming they do not accept it, does not diminish what belongs to others.

If this is the only innate right persons have, then, in the state of nature, where there are only innate rights, persons are only forbidden to interfere with this right. Hence, using something that is not in the physical possession of a person is not wrong, since an innate right to independence will extend over external objects which are not in the physical possession of a person, only if the person has acquired rights over the object. Yet, acquired rights are only possible in the civil condition.

Hence, one way in which, in the civil condition, the situation of private dependence changes is due to the fact that property rights become conclusive. This means that a person is entitled to exclude another from objects of which the first is

⁴⁵ Ibidem, pp. 237–238.

not in physical possession. The second respect in which private dependence changes in the civil condition is that the condition of public lawgiving (including that which makes acquisition of property binding on others and makes rights to external objects of choice enforceable) is a united will. Anything that cannot be the object of agreement cannot give rise to enforceable private rights, including enforceable property rights.⁴⁶

Kant's central claim, thinks Ripstein, is that the dependence of one person upon another, which is inherent in a situation of private charity is inconsistent with the persons' sharing a united will. In general, an arrangement in which a person's entitlement to use anything is left to the discretion of others is incompatible with a person's rightful honour, and, hence, with this person's sharing a united will with others.⁴⁷ Yet, this is precisely the situation for the poor propertiless and this is what grounds the state's obligation to redistribute goods in society in order to provide for the poor.

This short presentation of Ripstein's interpretation of the justification of redistribution in Kant shows that his interpretation is able to offer an account of the justification of welfare, which is hermeneutically better than the four interpretative directions outlined above. Whereas minimalism is unable to account for any of the four claims Kant clearly makes about redistribution, instrumentalism can account for one, ethicism, for two and egalitarianism, for three. The genuinely Kantian position can account for all four claims. Let me now focus on what seems to me to be a problem with the genuinely Kantian interpretation of redistribution.

5. The Nature of the Genuinely Kantian Duty of Redistribution

First, whereas Weinrib and Ripstein talk about the *state's duty* to support the poor, Mulholland explicitly argues for the existence of a *right of the poor* to welfare. Ripstein does not discuss this difference, but Weinrib offers some brief comments on the issue. For him, Kant cannot recognise a right to welfare, since "a right is always accompanied by the authorisation to coerce and the state is the ultimate repository of legitimate coercive power".⁴⁸ If a right implies an authorisation to coerce and if the right of the poor is against the state, then the poor can in fact demand that the state be coerced to provide for them. Since there is no further authority to coerce the state, the state being the ultimate source of

⁴⁶ Ripstein [2009] p. 277.

⁴⁷ Ibidem, p. 278.

⁴⁸ Weinrib [2003] p. 818.

legitimate power,⁴⁹ “Kant can recognise no right against the state”.⁵⁰ For Weinrib, the poor benefit not because they have a right, but because they are the “beneficiaries of a duty”.⁵¹

Secondly, Weinrib approvingly cites LeBar, who claims that, from the innate right, there can emerge no right to welfare.⁵² A right to welfare, LeBar claims, “would require not merely that others not interfere with our efforts at self-preservation, but that they actually provide for us, and this is more than we are entitled to as a matter of freedom”, which, LeBar thinks, is the basis of Mulholland’s justification.⁵³

In other words, if Mulholland’s account is based on freedom, as an entitlement we have not to be prevented by others from preserving ourselves, this entitlement to non-interference cannot yield also a right to being provided for by the state.⁵⁴ Weinrib agrees LeBar’s objection is correct, and “no right of welfare can emerge from innate right”.⁵⁵ Moreover, on Weinrib’s account, LeBar concludes with an endorsement of instrumentalism as a result of his criticism of Mulholland’s non-instrumentalist approach.⁵⁶

Recall the following elements of the genuinely Kantian interpretation: in the private condition, since rights are not conclusive, a person can use anything that is not in the physical possession of someone else, in order to provide for herself, to survive and develop; in the civil condition, persons can be prevented from using things owned by others (even things owned which are not in their physical possession) and they may even be forced to leave a specific place, if that place is the property of another person; this condition of the propertiless indicates a systematic situation of dependence, which is incompatible with the united legislative will, the very presupposition of the civil condition, in particular of the

⁴⁹ For the idea that other states or federations might coerce a state, see n60 below.

⁵⁰ Weinrib [2003] p. 818.

⁵¹ *Ibidem*.

⁵² Weinrib [2003] pp. 818–819 n86. In fact, Mulholland talks about “a positive right to welfare”, and claims that “needy members of the community have the right to welfare” – Mulholland [1990] p. 395.

⁵³ LeBar [1999] p. 247.

⁵⁴ *Ibidem*, p. 248.

⁵⁵ Weinrib [2003] p. 820 n86.

⁵⁶ *Ibidem*. The issue is further complicated by Weinrib’s claim that “Mulholland’s conclusion is understandable in the sense that in a modern polity the duty could be juridically recognised and enforced only if it was constitutionally expressed through the explicit and implicit positing of a correlative right” – *ibidem*. Weinrib needs therefore a distinction between two types of right – one which is correlative with a duty, but cannot exist, because it is a right against the state; a second one, which is also correlative with a duty, but is accepted in order for the duty to be recognised and enforced in a modern polity. For the purpose of my argument here, the possibility of such a distinction is not a major issue.

legitimacy of the laws that regulate the civil condition as well as of the use of political powers; given that a civil condition is not possible without the united legislative will and given that the civil condition is meant to guarantee the mutually compatible freedoms of individuals to form and pursue purposes without interference, it follows that the civil condition must incorporate provisions for the poor, so that their situation of systematic dependence cannot arise.

Assuming with Weinrib and Ripstein that the poor do not have a right to welfare, the question is whether a duty of the state to provide for the poor without a corresponding right will be sufficient to prevent situations of dependence from happening in the civil condition. This is an objection that Weinrib formulates and discusses:

Does it [the public duty to support the poor] not merely replace possible dependency on the actions of others with an equally unsatisfactory dependency on the state?⁵⁷

A civil condition is a situation where property rights are conclusive. A person without property can in principle be excluded from any place, if all land is owned. Her existence depends on the willingness of the owner to allow her on his property, and the owner does nothing legally wrong, if he is not willing to allow her to stay.

On Weinrib's account, however, Kant distinguishes between being dependent for one's existence on an individual or on particular individuals and being dependent on the state. As we have seen, when I depend on others, the others have no legal obligation to provide for me. They do have an ethical obligation, but this is based on an imperfect duty of beneficence and, again, given the latitude imperfect duties allows, I would still be dependent on a particular person's willingness to help me.

By contrast, on the genuinely Kantian interpretation, the state does have at least a legal duty to help me, which means that I am owed that which the state has a duty to provide. In addition, according to Weinrib, this duty has no latitude. So, the answer to the objection is the following:

The poor receive support from the state because it is owed to them as members of the commonwealth. Because the state is under a duty, it has no discretion to withhold the support; and having no private interest of its own, it also has no

⁵⁷ *Ibidem*, p. 820.

motivation to withhold support. The receipt of state support thus does not make the needy subservient to the will of others.⁵⁸

This answer seems to offer a justification of welfare, which preserves also the coherence of Kant's argument. Although Kant cannot accept for the needy a legal right to welfare, Weinrib claims that the duty of the state to provide welfare is sufficient to address the problem of dependency. This sufficiency is discussed by comparison: unlike the imperfect ethical duty of beneficence, the duty of the state to provide for the needy "has no discretion to withhold the support"; moreover, the provision of support does not depend on the choice of a private individual, so the needy are not "subservient to the will of others".⁵⁹

But what kind of duty is this duty of the state that, according to Weinrib and Ripstein, addresses the problem of the dependence of the poor and, hence, the problem of the possibility of civil condition? It seems first that it is not an enforceable duty. Thus, as Weinrib notes, "a right is always accompanied by the authorisation to coerce and the state is the ultimate repository of legitimate coercive power"; therefore, to the state's duty to provide welfare for the poor there does not correspond a right to welfare against the state, since such a right cannot be enforced – there is no higher repository of legitimate coercive power beyond the state.⁶⁰

By definition, as we have seen in the previous discussion of Kant's distinction between ethical and juridical norm-giving, a duty which is part of juridical norm-giving is a duty which can be enforced. If this duty to providing welfare is not enforceable, then presumably it can only be part of ethical norm-giving. This may be one (and good) reason why many Kant commentators attribute to Kant a view of welfare as based on a duty of beneficence.⁶¹

The duty of the state to welfare that Ripstein and Weinrib propose includes no discretion on the part of the duty-holder to withhold support. Since a duty of

⁵⁸ Ibidem.

⁵⁹ Ibidem.

⁶⁰ One can think of international and cosmopolitan structures of power, but, if we can talk about them in this way, their scope of application is different.

⁶¹ The assumption here is that, if the fulfilment of a duty cannot be enforced, then it cannot be a juridical duty or cannot be part of juridical norm-giving. Pinheiro Walla [2014] argues against this: for her, there are juridical duties which cannot be enforced – they belong to the category of wide rights. Kant regards rights based on equity as wide rights. As we have seen, for Kant, equity may lead to right claims which cannot be enforced, since a judge would lack the necessary information for ascertaining how much it is due. However, the starting point for the doubt concerning a right to welfare and, hence, also for the enforceability of a duty to provide for the poor was that there was no higher authority than the state who could enforce such a right and duty. Even if such a right and duty could be ascertained, they could still not be enforced.

beneficence is imperfect and allows various dimensions of latitude when acting on the duty,⁶² the state's duty to welfare, as an owed duty (that is, as a duty that would address the problem of dependence in civil condition) can only be a perfect duty.

Moreover, on Weinrib's account, the state does not have motivation to withhold support, since it has no private interest to defend; however, without a private interest to defend, the state can only be motivated by the universal interest of humanity and, hence, the state will discharge this duty with an ethical motivation and, hence, as an ethical duty. This would still meet the condition of independence. The needy will not depend on the will of a person who has discretion to withhold support; their status as rational agents able to contribute to the formation of the united legislative will is not affected by the need for support, since this support is necessarily provided to them (in contrast to the conditional support enjoyed by an imperfect duty). Hence, beneficiaries of this support are not subservient to another person.

The duty to welfare is a duty to others – it formulates an obligation to provide for other agents in order to preserve their status as free rational beings. Bringing all these conclusions together, it seems that Weinrib's and Ripstein's accounts imply that, if Kant's account is to be consistent, the duty to welfare must be a perfect duty of virtue to others. But, if this is correct, then the next question is whether Kant's doctrine of virtue has the resources necessary for deriving such a duty, that is, *this specific* duty.

Interestingly, in the *TL*, Kant discusses such duties negatively – that is, he discusses the vices that are the result of the failure to fulfil perfect duties of virtue to others. The three vices mentioned are: arrogance, defamation and ridicule.⁶³ It seems unlikely that failure to fulfil the duty of providing for the needy and poor would lead to similar vices, but Kant does not claim his discussion is exhaustive. The duty to welfare and the perfect duties to others seem to have a common root. Recall that the duty to welfare is required for the preservation of non-dependence in the circumstances of the civil condition. Both Weinrib and Ripstein trace the

⁶² I do not mention here the difference between the distinction between wide and narrow duties, on the one hand, and, on the other, the distinction between perfect and imperfect duties. According to a particularly clear reading of this difference, for instance, perfect duties of virtue also allow latitude in the way an agent acts on a maxim, but such a latitude is reduced in comparison with the latitude allowed by imperfect duties of virtue – Denis [2001] pp. 30–36. The reason why I do not problematize and discuss the notion of latitude here is that I think in fact Kant takes the duty to welfare to be a narrow duty and, hence, a duty of right, although the duty-bearer is not the state or the supreme commander.

⁶³ *TL* 6, pp. 464–468.

requirement of non-dependence back to Kant's duty of rightful honour. Recall that, according to Kant:

Rightful honor (*honestas iuridica*) consists in asserting one's worth as a human being in relation to others, a duty expressed by the saying, „Do not make yourself a mere means for others but be at the same time an end for them.” This duty will be explained later as obligation from the right of humanity in our own person (*Lex iusti*).⁶⁴

Rightful honour implies a duty not to make oneself a mere means for others, a duty which can be derived from a right of humanity in a person. This is how Kant clarifies, in §38 of the *TL*, the basis of the duties of virtues toward other human beings arising from the respect due them or what I have called the perfect duties of virtue to others:

Every human being has a legitimate claim to respect from his fellow human beings and is *in turn* bound to respect every other. Humanity itself is a dignity; for a human being cannot be used merely as a means by any human being (either by others or even by himself) but must always be used at the same time as an end. It is just in this that his dignity (personality) consists, by which he raises himself above all other beings in the world that are not human beings and yet can be used, and so over all *things*. But just as he cannot give himself away for any price (this would conflict with his duty of self-esteem), so neither can he act contrary to the equally necessary self-esteem of others, as human beings, that is, he is under obligation to acknowledge, in a practical way, the dignity of humanity in every other human being. Hence there rests on him a duty regarding the respect that must be shown to every other human being.⁶⁵

Both duties stem from the requirement imposed by the Formula of Humanity not to treat others (including oneself) merely as a means, but always at the same time as an end. Being treated merely as a means for someone else's ends is exactly what dependence consists in. What may seem like an important difference is that the duty to welfare is a positive duty of assistance, whereas the three duties discussed by Kant in the *TL* are duties which forbid certain attitudes (arrogance, defamation and ridicule). Not being arrogant seems to imply no positive attitude towards the other.

⁶⁴ Ibidem, p. 236.

⁶⁵ Ibidem, p. 462.

Nevertheless, this is less serious than it may seem. As I have mentioned, in discussing these three vices and the associated duties, Kant does not claim to be exhaustive, so there may well be some duties of assistance falling under the same category. In fact, as Houston Smit and Mark Timmons note, Kant does make suggestions about positive duties of assistance that fall under the same heading.⁶⁶ These require some actions that one must undertake towards others, rather than simply the omission of certain acts and attitudes.⁶⁷

In this way, a good, or at least a relatively plausible, case can be constructed in support of the ethicist position discussed above. Moreover, for those who put emphasis on Kant's distinction between ethical and juridical norm-giving and, hence, do not accept a justification of welfare on the basis of ethical considerations, the instrumentalist position may seem more convincing. Finally, those who think that both the ethicist and the instrumentalist solutions leave inconsistencies in Kant's system may prefer to exclude Kant's paragraphs on welfare as unclear and may construct their own (minimalist) account of justification of redistribution.

There is a further argument in support of the ethicist interpretation. As we have seen, for Kant, "all duties, just because they are duties, belong to ethics".⁶⁸ He also says that, "while there are many directly ethical duties, internal lawgiving makes the rest of them, one and all, indirectly ethical".⁶⁹ As we have seen, juridical norms are the norms, which can be enforced politically and on the basis of which society and its institutions are organised. Kant's claim, therefore, is that all norms, including the political norms which are expressed by the laws of a rightful condition, ought to be performed, in the sense that, even in the absence of all political coercion, they are morally right.

The implication here is that in a just society all laws can be turned into ethical duties. Ethical norms are derived from the moral law. Political norms, insofar as they are associated with internal lawgiving, should also be derivable from the moral law. As political norms, however, they are derived from the Principle of Right, because the Principle of Right makes explicit reference to external actions.

So even if we were to accept that the duty of welfare has little to do with the perfect duties of virtue towards others from the *RL*, there would still be a question concerning the kind of duty that the *indirectly* ethical duty of welfare would

⁶⁶ Smit, Timmons [2013] p. 264.

⁶⁷ *TL* 6, pp. 463–464.

⁶⁸ *MS* 6, p. 219.

⁶⁹ *Ibidem*, p. 221.

represent. And this would again give some support to the ethicist interpretation, making it understandable, if not equally convincing.

Nevertheless, the reason why I think the genuinely Kantian position on the duty to welfare is untenable is the following: In the long quotation I gave at the beginning of this article, Kant does *not* talk about a *duty* of the state to provide for the poor, but about the *right* and *authorisation* to take from the wealthy. For his claim concerning such a duty, Weinrib seems to rely only on the first lines of the long quotation I gave above:

To the supreme commander there belongs indirectly, that is, insofar as he has taken over the duty of the people, the right to impose taxes on the people for its own preservation, such as taxes to support organisations providing for the poor, foundling homes and church organisations, usually called charitable or pious institutions.⁷⁰

This sentence has been the topic of some contention having been variously interpreted to support different accounts of the meaning and justification Kant gives to welfare. Weinrib's and Ripstein's interpretations are in this respect similar to Rosen's, who also attributes to Kant the view that the state has a duty to provide for the needy and poor.

Rosen rejects the ethicist view, according to which this duty is ultimately justified on the basis of the individual citizens' ethical duty of beneficence, and defends a *sui generis* ethicist view that the state has its own duty of benevolence:

The state cannot force any individual to accept a duty of benevolence, because this duty requires the voluntary adoption of an end from the motive of duty. Nevertheless, such a prohibition does not imply that the state may not have its *own* duty of benevolence, for in Kant's view the state is a moral person, and is thus as capable of having its own moral duties as any other moral agent.⁷¹

⁷⁰ *RL* 6, pp. 325–326: "Dem Oberbefehlshaber steht indirect, d.i. als Übernehmer der Pflicht des Volks, das Recht zu, dieses mit Abgaben zu seiner (des Volks) eigenen Erhaltung zu belasten, als da sind: das Armenwesen, die Findelhäuser und das Kirchenwesen, sonst milde oder fromme Stiftungen genannt". What seems clear, and I think is also clear from the English translation, is that the supreme commander has a right in virtue of having taken over a duty. Hence, Kant does not say that by taking over the duty of the people, the supreme commander becomes its duty-bearer.

⁷¹ Rosen [1993] p. 191.

To be sure, Rosen talks here about the state's *imperfect* duty of beneficence⁷², whereas both Weinrib and Ripstein would think of a *perfect* duty to provide for the poor as a condition for the united legislative will and, hence, of the civil condition. As LeBar notes in response to Rosen, for Kant, the state is a moral person in relation to other states and, moreover, a more natural interpretation would be to regard the state as taking over the duty of the people to leave the state of nature, and form and maintain a civil condition.⁷³ Be that as it may, as I have mentioned, I think there are grounds to reject the idea of a duty of the state to welfare altogether.

Consider the way Kant talks about welfare: according to him, to “the supreme commander there belongs [...] the *right to impose taxes* on the people for its own preservation”; for “reasons of state the government is therefore *authorised to constrain the wealthy*”; “on this obligation [of the wealthy to the commonwealth] the state now bases its *right to contribute what is theirs* to maintaining their fellow citizens”; “we are speaking here only of *the right of the state against the people*”; “only the first arrangement [current contributions collected by legal levies] [...] can be considered in keeping with *the right of a state*”.

As it can be seen, Kant does not talk about welfare in terms of duties or rights; he only talks about the state's right or authorisation to tax the wealthy. To this right, there corresponds a duty or obligation of the wealthy to pay taxes. If this is correct, then we no longer need to worry about the ethicist interpretation I mentioned above, according to which the state's duty to provide for the needy were a perfect duty of virtue towards others. If there is no duty of the state, then we no longer need to be worried about its corresponding right or about the normative status of this duty.

⁷² In fact, he talks about a duty of “benevolence”, which is clearly distinguished by Kant from beneficence in the *TL*. Thus, according to Kant, “beyond benevolence in our wishes for others (which costs us nothing) how can it be required as a duty that this should also be practical, that is, that everyone who has the means to do so should be beneficent to those in need? - Benevolence is satisfaction in the happiness (well-being) of others; but beneficence is the maxim of making others' happiness one's end, and the duty to it consists in the subject's being constrained by his reason to adopt this maxim as a universal law” - *TL* 6, p. 453. However, *pace* Pinheiro Walla [2014], I think Rosen has in mind here practical benevolence, which for Kant is the same as beneficence - *ibidem*, p. 452.

⁷³ LeBar [1999] p. 235. There is a longer discussion of Rosen's interpretation in LeBar, who considers and rejects also Rosen's textual evidence from Kant's *ZEF*. For the purpose of my argument, it is not necessary to address this further issue. I should also mention here Pinheiro Walla's interpretation, according to which the state does not have a duty to provide for the poor, since Kant in fact talks about the supreme commander's enforcing the duty of the people to pay taxes - Pinheiro Walla [2014]. I find this discussion illuminating in places, but it is not directly relevant for my argument here.

At this juncture, supporters of the instrumentalist and minimalist views may intervene in order to argue that their interpretations are more convincing. If there is an obligation to provide welfare, then perhaps this can best be justified instrumentally – welfare is needed for the preservation of the state.⁷⁴ Or, for those who see instrumentalism as incompatible with Kant's philosophy, minimalism can be obtained by simply dismissing the few passages about welfare as a mistake.

While I think the first three interpretative directions (minimalism, instrumentalism and ethicism) are quite strong, Ripstein's and Weinrib's genuinely Kantian views are more convincing ways of reconciling the various claims he makes. This leaves us with the question of exactly what we take such accounts to justify – if it is neither a right to welfare the needy have, nor a duty to providing for the poor by the state, but only a right or authorisation of the state to tax, we may as well think that the problem of dependence is not yet solved.

I think a possible solution is suggested by Kant in the final part of the long quotation given at the beginning: “the state has a *right to charge the people* with the duty of not knowingly letting them [abandoned children] die”⁷⁵. If the state can charge the people with such a duty, then it can charge them with a more general duty to provide for the needy and poor. In this case, there will be a right to welfare on the part of the needy and this would clearly solve the problem of dependence. Corresponding to this right, there will also be a duty on the part of the people to provide for the poor, and this would be a duty of right. Such a right can be enforced, which also offers an answer to Weinrib's problem concerning the status of the state as ultimate repository of political power.

⁷⁴ LeBar is usually interpreted as defending an instrumentalist position. As we have seen, this is how Weinrib reads him. This reading is justified by some of LeBar's claims – for instance, that “the rationale for welfare he [Kant] offers is that it is instrumentally necessary for the security and the stability of the state” – [1999] p. 225. We can here distinguish between some minimal conditions for the existence of a state, conditions that will need to be fulfilled even in the case of a state that is unstable and insecure, on the one hand, and, on the other, conditions that will also bring about stability and security. On Ripstein's account, for instance, the former will be intrinsic to the requirements of a rightful condition, whereas the latter, extrinsic – Ripstein [2009] p. 267. Yet, at the very end of his essay, LeBar concludes that “the sole admissible justification for welfare is the one Kant explicitly provides: it can be justified only as a means of securing the conditions of right” – [1999] p. 249, and this is intrinsic to the requirements of right. Judging on this, LeBar's position is as instrumentalist as Ripstein's – that is, not at all.

⁷⁵ *RL* 6, pp. 325–326. This last quotation seems to talk about the duty of the state not to let abandoned children die, but in fact it says that the state charges people with that particular duty. Thus, Kant says: “Was die Erhaltung der aus Noth oder Scham ausgesetzten, oder wohl gar darum ermordeten Kinder betrifft, so hat der Staat ein Recht, das Volk mit der Pflicht zu belasten, diesen, obzwar unwillkommenen Zuwachs des Staatsvermögens nicht wissentlich umkommen zu lassen – *ibid.*, p. 327. As I suggest later on, I think this may indicate the status of the relation between the state and provision of welfare.

Various questions will certainly remain: who is the 'people' to whom the state has the right to charge with that duty? Given that, for Kant, any duty of right is indirectly a duty of virtue, what kind of duty of virtue is the duty corresponding to the juridical duty to providing welfare?⁷⁶ If the people or some part of the people is now bearing a duty to provide for the poor, then they also bear a duty to maintain the civil condition, in which case is it not inadequate to charge part of the people with such a duty?

Such questions will have to form the topics of further research.

Conclusion

I began this paper with the formulation of a tall order: To see whether Kant has managed to solve the conundrum of reconciling external freedom and social provision for the needy. I examined five interpretative directions in the literature and evaluated them on the basis of a test. The test consisted in the attempt to determine for how many of the four claims Kant clearly makes in his short discussion on welfare the various types of interpretation could account.

I have concluded that while minimalism cannot account for any and, hence, provides the most inaccurate reconstruction of Kant's position, instrumentalism accounts for one, ethicism, for two, egalitarianism, for three, and the genuinely Kantian view, for all four, being the most accurate of the various interpretations on offer. We have seen that, on the genuinely Kantian account of the justification of welfare, there is at least a duty or obligation of the state to redistribute in order to help the poor and needy.

The question, however, is whether to such a duty there can correspond a right to welfare. On Weinrib's account, such a right is explicitly rejected, since it cannot be enforced. But in the same way in which this right cannot be enforced, the fulfilment of duty cannot be enforced either. The implication is that the state's duty to provide for the poor must be an ethical duty, a claim that blurs the distinction between the genuinely Kantian account and ethicism. Moreover, since Kant seems to reject ethicism too, a better account seems to be egalitarianism. Yet, given Kant's concern for external freedom and individuals' responsibility, the next

⁷⁶ One question that can be raised here concerns the compatibility of Kant's claims in the *Metaphysics of Morals* with those in *Reflexionen*. For instance, in *Reflexion* 8000, Kant says that support from the poor follows not from the rights of the poor as citizens, but from their needs as men – *GS* 19, p. 578. LeBar identifies here a tension with Kant's view that needs are contingent. In fact, the implication of Kant's claim that needs are contingent is not that needs may play no normative role, but that particular needs do not. The fact that support from the poor does not follow from the poor's rights as citizens is also to be expected, since such support is justified as a condition of the poor's rights.

alternative is instrumentalism. An argument for minimalism starting from Kant's requirement that there be an *authorisation* and *right* of the state to tax the wealthy becomes also more plausible.

I have argued that the claim to a duty of welfare without a corresponding right introduced by the genuinely Kantian account must be replaced by a claim to a right by the state to charge the people with a duty to provide welfare, a duty to which a right to welfare becomes possible. This modifies the nature of the duty to welfare offered by, and succeeds in answering the objections I raised to, the genuinely Kantian position. The resulting position offers a clearer picture of how Kant solves the conundrum of reconciling freedom and welfare, and suggests a few further questions for further investigation.

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