Kant and the care [Versorgung] of the poor: a juridical reading[1]

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Abstract

L'articolo discute due visioni del concetto di assistenza [Versorgung] dei poveri nella *Dottrina del Diritto* di Kant. La prima questione discussa è: perché lo stato deve prendersi cura dei poveri? Per discuterla si richiama l'attenzione al modo in cui il *Leviatano* di Hobbes si rispecchia in Kant e alle riflessioni kantiani su Hobbes. Si afferma che certe determinazioni metafisiche della legge possono essere spiegati a partire dalla posizione naturalizzante di Hobbes, in particolare da certi aspetti della natura umana. Questo approccio ci permette conciliare il testo con la cosiddetta interpretazione strumentale o prudenziale, ma in maniera peculiare. La seconda questione centrale è: perché Kant esclude i poveri dalla cittadinanza attiva? Per rispondere si ricorre alle distinzioni fatte da Kant in *Contro Hobbes*, ossia quelle di libertà, uguaglianza e indipendenza. Ciò permette situare il pensiero kantiano sulla proprietà, sulla disuguaglianza e sulla differenza tra cittadinanza attiva e passiva. Questa strategia chiarirà perché la povertà può essere interpretata in termini di libertà e uguaglianza, ma non di indipendenza. Questa posizione opera una distinzione tra i principi della libertà e dell'indipendenza che altri filosofi, come quelli della Scuola di Toronto, non sono riusciti a realizzare.

Parole chiave: Kant, Hobbes, povertà, cittadinanza, indipendenza, libertà.

This article takes two looks at the concept of the sustenance [Versorgung] of the poor in Kant's *Doctrine of Right*. The first question addressed is: why does the state have to care for the poor? To this end, attention is drawn to a mirroring of Hobbes's *Leviathan* in Kant and to Kant's reflections on Hobbes. It is argued that certain metaphysical determinations of law may be explained by Hobbes' naturalized position, particularly some aspects of human nature. This approach enables us to align the text with the so-called instrumental or prudential interpretation, however, in a peculiar way. The second guiding question is: why does Kant exclude the poor from active citizenship? The distinctions laid out in *Against Hobbes*, those between freedom, equality, and independence, are called upon. This prepares the way to showcase Kant's thinking on

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property, inequality, and on the difference between active and passive citizenship. This strategy will clarify how the poor can be interpreted in terms of freedom and equality, but not independence. This position differentiates the principles of freedom and independence, as some philosophers, including those of the Toronto School, have failed to do.

Keywords: Kant, Hobbes, poverty, citizenship, independence, freedom.

1 Introduction

Following on from Baiasu and da Rocha,[1] six schools of thought regarding support for the poor can be outlined in Kant: a) minimalists;[2] b) ethicists;[3] c) instrumentalists or prudentialists;[4] d) egalitarianists;[5] e) normativists (Toronto School); and f) regulativists.[6] It becomes evident that considerable ink has been expended on a mere two pages of Kant's RL, 326-327 in the attempt to provide a predominantly liberal interpretation apparently averse to re-distributive justice. We need not look further than TP, AA 08: 291-2 on inequality. This is because, from a formal point of view, the law focuses on the means rather than the ends,[7] so that a single human being can become the owner of the entire planet, since the very nature of property rights is *excludendi alios,* with clear implications for exclusion, even in the spatial sense, as Ripstein has pointed out.[8] Still, in the forementioned two pages of RL, Kant supports aid for the poor, not by way of charity, but through taxation, therefore, with clearly re-distributive purposes.

This article offers two arguments regarding the sustenance [Versorgung], or aid for, the poor in RL. The first question is: why does the state have to care for the poor? To answer this question, it identifies in Kant a mirroring of Hobbes's *Leviathan*. It goes on to argue that Kant's position reflects important aspects of the Hobbesian perspective. The hypothesis is that certain facets, which might make up the metaphysical determinations of law, may be explained by Hobbes' naturalized position, especially those dealing with certain forms of human nature. This movement will enable a reading aligned with the so-called instrumental or prudential interpretation, nevertheless, now interpreted in a peculiar way.

The second query looks at why Kant excludes the poor from active citizenship. Kant's distinction between freedom, equality, and independence from *Against Hobbes* is called upon. This enables us to perceive the coherence of Kant's positions on property, inequality and on the distinction between active and passive citizenship. Such a strategy interprets the situation of the poor in terms of freedom and equality, but not independence. The major advantage of this position consists of differentiating

between the principles of freedom and independence, something that many, such as those of the Toronto School, have failed to do.

2. Property and poverty in Kant

Kant's postulate of practical reason says that "It is possible for me to have any external object of my choice as mine." (MS, AA 06: 246). Two aspects of the Kantian doctrine of possession and property are worthy of mention.

The postulate is, first of all, a permissive law *(lex permissiva)* of practical reason "which gives us an authorization that could not be got from mere concepts of right as such, namely to put all others under an obligation, which they would not otherwise have, to refrain from using certain objects of our choice because we have been the first to take them into our possession." (MS, AA 06: 247). It is distinct from other authorizations like "being *his own master (sui iuris),* as well as being a human being *beyond reproach (iusti),*" (MS, AA 06: 238), and communicating his thoughts. These authorizations do not require permissive law, for they derive from the mere concept of right as such.

Secondly, property is the creation of a civil constitution "by which what belongs to each is only secured, but not actually settled and determined. Any guarantee, then, already presupposes what belongs to someone (to whom it secures it)." (MS, AA 06: 256). Kant, thus, takes a situation that predates the civil constitution, possession, and gives it juridical status as property.[9] Kant recognizes the problematic nature of this "and how it came about that many human beings [...] were thereby reduced merely to serving him [large landowners] in order to be able to live?" (TP, AA 08: 296) So, unlike other authorizations, this one raises special problems and necessitates a *lex permissiva*.

Property is, therefore, a problematic institution. This is the context in which the issue of care for the poor arises, both those arguments in favor and against. Critics argue that such care is inconsistent with a minimalist interpretation of Kantian doctrine. Proponents base their position on diverse grounds. The letter of the text offers up at least two arguments.

a) The first assertion is based on beneficence and on the united will of the people:

> To the supreme commander there belongs indirectly, that is, insofar 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 organizations providing for the poor, foundling homes and church organizations, usually called pious or charitable institutions. (MS, AA 06: 325-6, own emphasis).

One of the duties of each human being is to: "*preserve* yourself in the perfection of your nature," (MS, AA 06: 419), which obviously includes self-preservation, and "beneficence is the maxim of making others' happiness one's end." (MS, AA 06: 452). So, self-preservation is a duty to oneself, an end that everyone must have, while the simultaneous duty exists to take the ends of others as our own. The argument is that public welfare mandates beneficence, as a necessary contribution to the duty of self-preservation that every human being has.[10] All of us have an obligation to take the ends of others as our own. On the other hand, as rational beings, we all have the duty to preserve ourselves. Now, the best way to do so is by establishing social rights via coercion of law, rather than by way of each individual's voluntary efforts. According to this reading, property has consequences regarding self-preservation, in that it may lead to poverty, which threatens self-preservation. Therefore, it is counterbalanced by social laws emphasizing the duty of beneficence.[11] In fact, Kant mentions "[…] those who are unable to provide for even their most necessary natural needs [nothwendigsten Naturbedürfnissen]." (MS, AA 06: 236). In this sense, *the duty of the people* can be interpreted to include the duty of beneficence.

It can be argued, however, that beneficence is not a juridical duty and cannot, therefore, be coerced. The essence of this duty therefore lies outside the scope of right.[12] Nevertheless, popular will can decide to settle the problem of poverty because *volenti non fit iniuria*:

> The legislative authority can belong only to the united will of the people. For since all right is to proceed from it, it *cannot* do anyone wrong by its law. Now when someone makes arrangements about *another,* it is always possible for him to do the other wrong; but he can never do wrong in what he decides upon with regard to himself (for *volenti non fit iniuria).* Therefore only the concurring and united will of all, insofar as each decides the same thing for all and all for each, and so only the general united will of the people, can be legislative. (MS, AA 06: 313-4).

Thus, the united will of the people can decide to institute potential external manifestations of the duty of beneficence, such as paying taxes to help the poor.

b) An alternative argument appeals to reasons of state. Since the duty of beneficence is one of virtue, its exercise cannot be allocated to the responsibility of civil servants, nor can it be obligatory. LeBar interprets *the duty of the people* as referring to the obligation to preserve the civil union.[13] It is only in this light that beneficence finds a place in Kant's system of law, namely, as a means of ensuring the preservation of the people. *Against Hobbes*, reads:

> If the supreme power gives laws that are directed chiefly to happiness (the prosperity of the citizens, increased population and the like), this is not done as the end for which a civil constitution is established but merely as means for *securing* a *rightful condition,* especially against a people's external enemies. A head of state must be

> authorized to judge for himself and alone whether such laws pertain to the commonwealth's flourishing, which is required to secure its strength and stability both internally and against external enemies, not in order, as it were, to make the people happy against its will but only to make it exist as a commonwealth. (TP, AA 08: 298-9).

In *Toward Perpetual Peace,* Kant expresses his concern with stability when he talks about anarchy and revolutions, saying:

> Thus political wisdom, in the condition in which things are at present, will make reforms in keeping with the ideal of public right its duty; but it will use revolutions, where nature of itself has brought them about, not to gloss over an even greater oppression, but as a call of nature to bring about by fundamental reforms a lawful constitution based on principles of freedom, the only kind that endures. (VAZeF, AA 08: 374 fn)

Kant's writings do not distinguish the relationship between the universal principle of right (MS, AA 06: 230) from the postulate of practical reason with regard to rights. (MS, AA 06: 250). Inspired in the Lockean doctrine of property, in order for the postulate to be compatible with the principle of right, it "would require that every citizen was guaranteed a minimum income."[14] Mulholland asserts that Kant´s position on the postulate

> […] works only if the acquisition of rights to external objects does not interfere with other's innate right to freedom. But *prima facie* it would interfere with others' innate rights, as is evident from the title to acquire land through first possession. Moreover, if all land is acquired by a few, this would interfere with persons' rights to use what they need for survival.[15]

In fact, Kant's appeals to help the poor rest upon reasons of state:

> 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 (Von Staatswegen)* the government is therefore authorized to constrain the wealthy' to provide the means of sustenance to those who are unable to provide for even their most necessary natural needs. (MS, AA 06: 326. Own emphasis).

c) Other arguments appeal to the Kantian corpus, including that based on liberty. Concerns with the most necessary natural needs of people and the preservation of civil union do appear in his work, but the philosopher adds something

new, a relation between welfare and liberty. It is worth noting that that "[…] Kant does not emphasize the furtherance of equal satisfaction of material needs and desires. Rather, welfare rights are justified through reference to freedom."[16] Mulholland affirms that "Once the general acquisition of land jeopardizes the individual's capacity to exercise freedom, a case can be made for interference with the actual distribution of property."[17]

There are at least two moments in the *Doctrine of Right* where Kant observes that the lack of property may endanger liberty. One immediately preceding the key quotation studied here, is when Kant presents the second consequence of the nature of the civil union. He argues that government cannot maintain the poor itself, through ownership of land, and suggests that this could be done by way of taxation. The reason for the prohibition is that it would establish no limits to the discretion of government in determining the extension of those properties, "[…] so that the state would run the risk of seeing all ownership of land in the hands of the government and all subjects as *serfs (glebae adscripti),* possessors only of what is the property of another, and therefore deprived of all freedom *(servi).*" (MS, AA 06: 324). This implies a potential threat to *honestas juridia.* (MS, AA 06: 236).

The second quotation relates to the concepts of active and passive citizenship. (MS, AA 06: 315). Being an active citizen requires "[…] acting from his own choice in community with others," (MS, AA 06: 314), and excludes "[…] 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). These people lack civil personality, and their existence is, as it were, only inherence." (MS, AA 06: 314).

Kant explicitly names property as a condition for independence:

> He who has the right to vote in this legislation is called a *citizen (citoyen,* i.e., *citizen of a state,* not of a town, *bourgeois).* The quality requisite to this, apart from the *natural* one (of not being a child or a woman), is only that of *being one's own master (sui iuris),* hence having some *property* (and any art, craft, fine art, or science can be counted as property) that supports him. (TP, AA 08: 297)

It is interesting to note that Kant appears to name two different consequences of the same fact. He limits the amount of property that can be held by government yet he excludes from active citizenship those private persons who do not possess property.

Kant also establishes a clear connection between economic aspects and the duty to oneself merely as a moral being. Kant is concerned with the moral self-esteem as a duty of the human being to himself, because of the dignity of humanity in each of us. (MS, AA 06: 435-6). His advice is to avoid contracting debt for which you cannot give full security: "Be thrifty, then, so that you will not become destitute."

(MS, AA 06: 436). Becoming destitute implies a type of servility which inhibits moral self-esteem.

Notwithstanding, none of the arguments based on freedom are sufficient, because they do not extend to those devoid of freedom, neither the sick nor the mentally disabled who cannot express their will.[18]

Arguments such as these justify the right of the State to care for the basic needs of the poorest people, although Kant fails to say exactly why.[19]

3. Hobbes

Leviathan is structured as described in the table at the end of chapter IX. Science is divided into two major keys, Natural Philosophy and Civil (Political) Philosophy. The latter deals with "1. Of consequences from the institution of Commonwealths, to the rights, and duties of the body politic or sovereign. 2. Of consequences from the same, to the duty and right of the subjects." Roughly speaking, it can be said that this is dealt with in Part II of *Leviathan*, Part I being concerned with Natural Philosophy, including *Ethics*, as the consequences of the passions, and the *Science of the just and unjust*, as the consequences of language (speech). In Part II Hobbes deals with the following: the consequences of the rights of subjects in Chap. XXI; the authority of law in Chapters XXV-XXVI; the right to punish and the justification of punishment in Chap. XXVIII; and poverty in Chapters XXVII and XXX. It is worth noting that theft by starvation appears in Chapter XXVII, which addresses the efficacy of punishment. Chap. XXX points out that poverty can be remedied by war, if, in the extreme case, colonization is no longer sufficient.

The similarities between this structure and that of RL are not difficult to perceive. The General Observation, which follows §49 of RL, is named *On the effects with regard to rights that follow from the nature of the civil union.* Five such effects are listed: a. Authority/obedience; b. Taxation; c. Poverty; d. The right to punish; and e. The basis of punishment. If this topological mirroring is accepted, the next step is to establish the deeper connections between said similarities. This work posits that the so-called metaphysical aspects of Kant's doctrine of law can be understood in terms of Hobbes's naturalized perspective, and especially so in the case of poverty. To this end, Hobbes's rationale is presented below, first the textual evidence, then the commentary.

Chapter XXX of *Leviathan* argues that those unable to maintain themselves by their own labor ought to be supplied in their natural needs by the laws of the State, and not by charity:

> And whereas many men, by accident unevitable, become unable to maintain themselves by their labour; they ought not to be left to the Charity of private persons; but to be provided for, (as far-forth as the necessities of Nature require),

> by the Lawes of the Common-wealth. For as it is Uncharitablenesse in any man, to neglect the impotent; so it is in the Soveraign of a Common-wealth, to expose them to the hazard of such uncertain Charity.[20]

Hobbes mobilizes two arguments for ascribing this duty to the sovereign. One is that failing to do so would be uncharitable. The other must be inferred from his final solution for poverty namely, war. Hobbes suggests that "The multitude of poor, and yet strong people still increasing, they are to be transplanted into Countries not sufficiently inhabited." But after this step fails, "when all the world is overcharged with Inhabitants, then the *last remedy* of all is Warre; which provideth for every man, by Victory, or Death."[21]

Of greatest import to this work is where, in Chap. XXVII, the efficacy of threats of punishment to determine people's conduct is addressed in addition to theft by starvation: "When a man is destitute of food, or other thing necessary for his life, and cannot preserve himself any other way, but by some fact against the law; as if in a great famine he take the food by force, or stealth, which he cannot obtain for money, nor charity; or in defence of his life, snatch away another man's sword; he is totally excused." He will respect neither the civil, nor the natural law, but will exercise his natural right to everything. Hence it follows that poverty generates strife and that a sovereign should therefore create laws to relieve poverty in order to diminish the possibility of war and instability.

The preceding quote is reminiscent of something already established in Chap. XIV and taken up again in Chap. XXI. In both, Hobbes establishes a set of rights and goods without which one cannot live, and which are non-renounceable in the social pact. Any renunciation would defy nullity and justify disobedience or even non unjust resistance. In chapter XXVII, Hobbes offers a calculation based on the weighing of their needs against potential benefits: "because when men compare the benefit of their injustice, with the harm of their punishment, by necessity of nature they choose that which appeareth best for themselves." Likewise, the calculation of obedience to the law follows this necessity of nature, since the threat of punishment competes with more fundamental fears, specifically, the fear of death by starvation. Moreover, such disobedience or resistance stems from natural causality. Therefore, for Hobbes, certain rights always remain in the state of nature, including the slave's right to resist his master, since, in irons, with bodily freedom reduced to a minimum, his life is at the mercy of his master, therefore, under real threat. In this way, no binding bond is created between master and slave, since, according to chap. XIV, "[…] of the voluntary acts of every man, the object is some good to himself."

Ripstein's analogy between the beggar and the slave may be plausible, but not for the reason he claims. What is problematic lies not in his lack of freedom of choice in general, rather in the fact that a certain lack of freedom threatens his life, namely the bodily freedom to come and go. For Hobbes, in fact, the problem with slavery is

not the absence of freedom in general, since there could be a system that orders as much work as a slave does, but without chains, as happened in early capitalism, and continues to happen today in many cases. The problem is that the slave is denied a specific freedom, which threatens his life, namely the physical freedom to come and to go. Strictly speaking, this is why the slave lacks any obligation. That is, something without which one cannot live. The same could be said of the freedom to breathe air and eat food, etc. Dependencies that do not directly threaten life do not render the laws that foster them void. The problem with the Toronto school is that Kant appears to take no issue with most dependencies, because, considering the distinctions in *Against Hobbes*, the problem with poverty is not the dependency it creates, but the threat it represents to the stability of the legal state. Strictly speaking, Kant thought that economic dependencies would eventually occur, even in a system called Stalin's solution[22] and that which Kant himself envisioned when espousing on state ownership of land (MS, AA 06: 324).

This paper argues that certain conditions, such as those indicated above, are metaphysical conditions for the possibility of a juridical state. Without meeting such conditions, there is no such thing as a legal order or the authority of law. Hart has seen this very clearly in chapter IX (The Minimum Content of Natural Law) of *The Concept of Law*. This paper advances the hypothesis that Kant replicates an argument similar to that of Hobbes, albeit in a much shorter, even implicit fashion. This is the case with the expression 'Duty of the people [Pflicht des Volks]' (TP, AA 08: 325). For a group of human beings to constitute a people in a state, Kant argues, it is enough for them to have the predicates of freedom and equality as men, according to §46 of RL. Thus, a juridical state [rechtlichen Zustande] is one of legal dependence [gesetzlichen Abhängigkeit] (§47 of RL). He also employs the Latin expression *status iuridicus* (TP, AA 08: 292). In order to constitute a people, an act of submission to protection must be performed [Unterwerfung unter den Schutz] (MS, AA 06: 326), a parlance that closely mirrors that of the last paragraph of *Leviathan*, "[...] the mutual relation between protection and obedience." This implies a series of obligations, especially those of obedience to authority, in addition to all the conditions that enable a legal order to exist.

Such is the case with levying taxes to fund a police force to maintain public order. Kant says that the purpose of taxes is for the conservation [Erhaltung] of the State. Thus, as a reason of State (*Von Staatswegen*), taxation to alleviate poverty is defended, not with the intent to ensure well-being, rather in order to meet the most necessary natural needs, which if unmet, might threaten the legality of a state. For this very reason, it has to be restricted to its underlying purpose, the maintenance of the legal order; it is, then, a minimalist justification, i.e., restricted to those necessities without which one cannot live. Therefore, no violation exists of the right or freedom of the rich.[23] Nor is the prohibition of law to consider mere wishes as necessity is infringed (MS, AA 06: 230), since it is restricted to the structural needs for the

existence a legal order, at least among humans. This leads to a legal interpretation of the support of the poor in terms of a metaphysics of morals.

4. Economic dependencies and citizenship

Kant admits the difficulty of determining what economic conditions are necessary to ensure independence: "I admit, somewhat difficult to determine what is required in order to be able to claim the rank of a human being who is his own master." (TP, AA 08: 295). To that end, he outlines the following three steps.

[1] He distinguishes between freedom, equality, and independence.

Freedom is related to humanity and is responsive to a set of fundamental rights, including innate equality. It constitutes a set of rights, some of which are non-renounceable. In *Against Hobbes,* Kant asserts a set of inalienable rights [unverlierbaren Rechte], which may not be renounced [aufgeben], even if one wanted to (TP, AA 08: 303-304). The same is repeated in *Toward perpetual peace,* where he speaks of as inalienable innate rights [unveräußerlichen Rechte] (ZeF, AA 08: 351ft.). Two observations must be made. The first is that such statements must be contrasted with the republican principle *volenti non fit injuria*. The second is that Kant's language seems rather dubious, since it can be taken in a moral sense, as something linked to humanity, to dignity, but it can also be interpreted in a more mechanical sense, as advocated elsewhere in Hobbes. In the latter sense, their renunciation finds limits in somewhat metaphysical determinations that could be understood as supporting Hobbes's naturalized philosophy of law. Such determinations cannot be disregarded either by the doctrine of law or that of virtue. Unlike morality, for which good will shines on its own, even in the face of a stepmotherly nature [GMS 394], law is imposed coercively. In this sense, morality exceeds contingencies. There is no obstacle to moral responsibility, as the gallows example in KpV §6 shows.

As a mirror of Hobbes, Kant is forced to admit determinations of human nature regarding legal responsibility, since it depends on external causality. This can be seen in the state of necessity, in which the fear of certain death supplants the future threat to death made by law, which is, therefore, uncertain. (MS, AA 06: 235). Here in particular, similar to Hobbes, the state of nature is restored and the legal order ceases to exist. Knowingly, according to Hobbes, determinations in this realm of rights exist that must be met in order to constitute a legal sphere. He enumerates a reasonable set of rights, the non-guaranteeing of which has the power to dismantle the legal order. They are summarized in the epithet as being those things without which you cannot live. Kant's position on the care of the poor seems analogous to that of Hobbes. Yet many differences are obvious, starting with the fact that Kant defines freedom differently from Hobbes, not in the naturalized sense of non-

interference, but in a more normative and complex sense, related to the pursuit of happiness, in conjunction with not causing harm to others. This definition, in fact, appears slightly modified on pp. 237-8 of RL. As is well known, Hobbes's definition allows him to accept many types of dependencies, excluding the bodily one.

Equality, on the other hand, is predicated on subjects. Legal structures, especially those of the rule of law, are precisely responsive to this desideratum of equality.

Finally, independence is necessary for citizenship. Kant distinguishes between active and passive citizenship and seemingly refers to the fact that, among humans, myriad dependencies exist and cannot be eliminated. More importantly, he admits that the operation of the market can lead to

> considerable inequality of financial circumstances among the members of a commonwealth (of hireling and hirer, landowners and agricultural laborers, and so forth); but he may not prevent their being authorized to raise themselves to like circumstances if their talent, their industry, and their luck make this possible for them. For otherwise he could coerce without others in turn being able to coerce him by their reaction, and would rise above the level of a fellow subject. (TP, AA 08: 293)

Kant accepts this, provided it is subsumed under the equality of subjects, even if it is incompatible with independence. The point, however, is that the idea that such dependency excludes active citizenship is deeply rooted in Kant. The first root is that the Kantian republic is representative. What is more, no republic exists that makes everyone active citizens, for example, children. The second relates to economic dependence, something not eliminable for Kant. More importantly, it would be worse if this economic dependence among private individuals were eliminated by the state, since it would turn everyone into serfs without freedom. (MS, AA 06: 324). What Kant does is remove active citizenship from most citizens who do not own enough property to maintain themselves without depending on others.

[2] He connects freedom with the satisfaction of basic needs, insofar as they are a condition for freedom. As seen above, no legal order can exist without external freedom. Basic needs affect freedom to the extent that they hinder or even prevent free acts, including the obligation to obey laws.

[3] He connects independence with property, excluding non-owners from active citizenship, as they are dependent, that is, they have to sell their bodily labor.

Despite the denial of independence for non-property-owners, Kant imagines mechanisms that would nevertheless make society quasi-just and well-ordered. His solution, however, does not involve reform or revolution, but the mechanisms of law

that govern all subjects equally, for example, by assigning only one vote for each head, or by considering the status of possessor rather than the quantity of possessions, as a condition for active citizenship (TP, AA 08: 296). He includes a series of protections arising from the principle of subjects' equality, in view of the innate right to equality of action and reaction with regard to the use of legal coercion. Protections such as these would be able to interdict, for example, "prerogative of the rank", (TP, AA 08: 293) and to adopt the notion of merit to occupy superior and inferior positions, such as those of active and passive citizenship, respectively. Given equality before the law, in the condition of subjects — whose coercion by the law can be mobilized reciprocally — the economic position in which one finds oneself is not made permanent by force of law, nor is it received by birth, but is left open to social mobility. Equality before the law allows people to acquire property so that they might become citizens. Likewise, a property owner may cease to be so. Kant is against *morgadio*, precisely for this reason.

Kant's republicanism is more related to the quality of the laws than to the procedures that legitimize them. As Habermas states,[24] the tension between rights and sovereignty is resolved in favor of rights, such as equality in the prohibition of hereditary privileges and unequal taxation. Kant calls on moral theory to support this position, making him a paradigmatic example of cognitivism,[25] which allows him to go so far as to subordinate positive law and even politics to morality.[26]

Systems that universalize active citizenship or extend it to the majorities face the problems arising from dependencies of all kinds: dependencies on the media, on redistributive policies, on economic power, etc. Of course, one can question how much alleged economic independence really contributes to fair legislation. In this regard it is possible quote Marx's (2005, p. 114-5) criticism of Hegel regarding *morgadio* as a guarantor of political virtue.[27]

This is not to suggest that modern republics should accept Kant's view. However, the problems that lead to his solution are neither eliminable by *fiat*, nor easily solvable.

Another related Kantian mirroring of Hobbes is worthy of mention. Hobbes imagines the rule of law as devoid of citizenship. According to Lebrun, Hobbes writes for readers who will read him as men rather than as citizens.[28] Kant, for his part, advocates a peculiar type of republicanism that grants citizenship a role, but not to the extent of Rousseau. Not only are the contours of his republicanism juridical rather than ethical, but the demand for economic independence is related to the distinction between active and passive citizenship, something which Rousseau most certainly cannot accept.

For Kant, few facts, if any, exclude political obligation. In contrast, Hobbes explicitly cites the case of slavery. He argues, moreover, that the non-fulfillment of basic needs excludes obligation. He lists in Chapter XIV situations created by the legal system itself that render the pact, the origin of political obligations, null and void. Nevertheless, the grounds for all such nullities — avoiding death, injury or

imprisonment — are epiphenomena of the fundamental concept of liberty in Chapter XXI which is placed under the auspices of the liberty of subjects. These liberties are absolute in the sense that one cannot live without them, examples including food, air, and medicine. Hobbes additionally equated the slave to a person in prison, who, lacking any bodily freedom, lacks as well any political obligation. Ultimately, the preservation of life lies at the base of the system of liberties. Non-renounceable rights and freedoms exist, without which one cannot live. Now, it is difficult, at this point, to agree with Pettit's position that Hobbes's work lacks any rule of law.[29] Instead, it is quite muscular from the substantive point of view. It includes everything without which life cannot be sustained, and which, from the formal point of view, includes that which is not subject to coercion, legal form, such as freedom of belief. In any case, Hobbes does not include citizenship in his rationale for the rule of law. Perhaps this is what Pettit is demanding. For Hobbes, threats of domination are not included in the rule of law. Whereas, for Pettit, Hobbes draws an unacceptable (rigged job) distinction between people's status and their actions. It is key to analyze whether a specific action is impeded or not, regardless of the person's status.[30] In fact, potential domination pollutes our social coexistence. What is more, Hobbes finds all law (*stricto sensu*) to inevitably be a fetter.[31]

Domination and dependencies of all kinds do not affect freedom but independence. Kant seems to take the position that freedom for all may be safeguarded, whereas independence cannot. The former can be guaranteed by legal equality in a juridical state. The latter, however cannot be ensured, due to its eminently contingent and multifaceted nature. This explains the exclusion of non-independent persons from active citizenship. Even so, poverty should be dealt with by the State, given its potential to negatively affect not independence but freedom —understood legally and restricted to the most elementary needs, since these would be those which affect freedom.

Unlike Hobbes, however, Kant authorizes neither disobedience nor resistance as part of a strong theory of rights. He calls, instead, for state action by the sovereign to combat poverty in terms of the most elementary needs, perhaps so as to prevent revolutions (VAZeF, AA 08: 374 fn), a position he shares with Hobbes. He justifies republican support of the poor by way of a view that the legal state is grounded on determinations of the metaphysics of morals, that is, determinations arising for creatures like humans and their circumstances.

As previously laid out, when it comes to humanity, freedom must be considered. Equality is not related to citizenship, but to the condition of subjects. Citizenship is governed by the principle of independence. Therefore, Kant might argue that a citizen without economic independence should be excluded from active citizenship. This is clear in §46 of RL. It does not follow that everyone has to be a member of the republic. Some can be mere parties. Thus, Kant's republicanism is not based on active citizenship. The touchstone of his republicanism is: "to bind every legislator to give his laws in such a way that they *could* have arisen from the united will

of a whole people and to regard each subject, insofar as he wants to be a citizen, as if he has joined in voting for such a will." (TP, AA 08: 297). This formula brings us back to the concept of the rule of law, i.e., the "natural laws of freedom and of the equality", as the aforementioned §46 states. In line with this, RL §47 makes the subject, rather than the citizen, central to the republic and he therein strengthens the concept of the legal state [rechtlichen Zustande], which, in the sites where it appears, is clearly related to the concept of law [Gesetz]. He notes, however, that

> this thoroughgoing equality of individuals within a state, as its subjects, it quite consistent with the greatest inequality in terms of the quantity and degree of their possessions, whether in physical or mental superiority over others or in external goods and in rights generally (of which there can be many) relatively to others; [...] But *in terms of right* [...] they are nevertheless all equal to one another as subjects; for, no one of them can coerce any other except through public law. (TP, AA 08: 291-2)

Indeed, for a legal contract, it does not matter whether the person buying bread is rich or poor. The contracts of purchase and sale are the same. In the same sense, it does not matter what name is listed as the owner of Amazon in order for the right of ownership to be guaranteed. It could be any of us. That goes as well for taking of possession of something. Thus, one cannot forget the Kantian position that right is not concerned merely with wishes, nor is it a *matter* of choice (MS, AA 06: 230). If the right to property were to include non-formal determinations, for example, its social function, as proposed by the Brazilian Constitution, Article 5, subsection "XXIII - property shall observe its social function", indeterminacy problems would be insurmountable, opening space for political and legal discretion hardly defensible under the RL.

For Kant, the elements of the rule of law which emphasizes liberty and equality before the law, but not independence, in conjunction with the directive to consider the united will of the people, are capable of excluding certain legislative acts, as those that institute privileges of birth, such as "that a certain class of *subjects* should have the hereditary privilege of *ruling rank*", (TP, AA 08: 297), or one that institutes a tax with unequal rates for persons in the same economic circumstances, because no one could consent to such legislation.

In summary, Hobbes looked at poverty from the viewpoint of the destabilizing consequences for the *Leviathan*, that is, for its legal structure. Our intent is to demonstrate that Kant mirrors this same way of thinking, at least in part. This formulation can be seen to be repeated even in Rawls's contractualism. It is worth remembering that the second principle of justice should improve the lives of the less-advantaged. Moreover Rawls[32] did not fail to mention the destabilizing consequences of potential economic and social inequality, especially by way of the concept of excusable envy. The Kantian expression "most elementary natural needs" can be

argued to account for one of the conditions of possibility of a juridical state (rechtlichen Zustand, *status iuridicus*). Since the non-fulfillment of such needs leads directly to subjects' disobeying juridical norms, *Kant manages to defend support for the poor in terms of their most elementary needs, as a pre-condition to the possibility of a juridical status, not as a condition of citizenship*. His position leads us to induce that this would imply greatly enlarging the needs to be met, not only up the point of the support for freedom, but extending as far as the point of independence, which is hardly attainable. He, therefore, stopped at something more basic and more effectively achievable, whether in terms of urgent needs, the basis of a minimum of freedom, or that which is achievable in formal legal terms by way of equality, a basis that makes independence accessible to all, at least formally, in terms of the legal law that is equally applicable to all as subjects.

Today's more inclusive conceptions of citizenship may be out of alignment with Kant. This does not mean, however, Kantian republicanism lacks coherence, nor does it suggest that the problems he pointed out have been solved by more inclusive conceptions.

The question that remains for philosophy is why it is so difficult to ground rights that meet basic needs without recourse to the subterfuge of justifying them on the basis of other values considered more fundamental, such as social stability.

[1] S. Baiasu, *Kant's Justification of Welfare*, in «Diametros», 39, 2014, p. 1-28; I. R. P. P. da Rocha, *Justiça redistributiva em Kant*, M. A. Thesis, UFPR, 2022.
[2] R. Nozick, *Anarchy, State, and Utopia*, Basic Books, New York 1974; A. Faggion, *Kantian Right and Poverty Relief*, in «Ethic@», 13/2, 2014, pp. 283-302.
[3] A. D. Rosen, *Kant's Theory of Justice*, Cornell University Press, Ithaca 1996; D. J. Volpato Dutra, *Propriedade e ajuda aos pobres na doutrina do direito de Kant*, in M. L. Borges, J. Heck (eds.), *Kant: liberdade e natureza*. EDUFSC, Florianópolis 2005.
[4] M. LeBar, *Kant on Welfare*, in «Canadian Journal of Philosophy», 29/2, 1999, pp. 225-250.
[5] A. Pinzani, *Beati Possidentes? Kant on Inequality and Poverty*, in «Ethic@» 16/3, 2017, pp. 475-492; A. Pinzani, *El misterio de la pobreza: ¿Cómo puede una Doctrina Metafísica del Derecho ayudarnos a entender la realidad social?*, in «Con-Textos Kantianos», 15, 2022, pp. 199-220.
[6] J. Waldron, *Kant's Legal Positivism*, in «Harvard Law Review», 109, 1996, pp. 1535-1566; J. T. Klein, *Considerações sobre a justificação de Kant acerca da propriedade privada*, in «Veritas», 64/2, 2019, pp. 1-38, 2019. S. Baiasu, *Kant's Justification of Welfare*, cit. and da Rocha, *Justiça redistributiva em Kant*, cit. review writings regarding these six interpretations.
[7] A. Ripstein, *Force and Freedom: Kant´s Legal and Political Philosophy*, Harvard University Press, Cambridge (MA) 2009, p. 384.
[8] Ivi, p. 12.
[9] Cf. A. Pinzani, *Beati Possidentes? Kant on Inequality and Poverty*, cit.
[10] Cf. A. D. Rosen, *Kant's Theory of Justice*, cit.
[11] M. LeBar, *Kant on Welfare*, cit., p. 239.
[12] Ivi, p. 230.
[13] Ivi, p. 232f.
[14] Ivi, p. 245.
[15] D. L. Mulholland, *Kant's System of Rights*, Columbia University Press, New York 1989, p. 317.
[16] Ivi, p. 318.
[17] Ivi, p. 317.
[18] M. LeBar, *Kant on Welfare*, cit., p. 248.
[19] E. J. Weinrib, *Propter Honoris Respectum: Poverty and Property in Kant's System of Rights*, in «Notre Dame Law Review», 78, 2003, p. 810.
[20] T. Hobbes, *Leviathan, or Matter, Form, and Power of a Commonwealth Ecclesiastical and Civil*, Oxford University Press, Oxford 1998, ch. XXX.
[21] Hobbes, *Leviathan or Matter, Form, and Power of a Commonwealth Ecclesiastical and Civil*, cit., ch. XXX. Interestingly, a similar rationale appears in contemporary economics including the work of renowned Brazilian economist Netto, "The concentration of wealth is inevitable, but from time to time it is just relieved by peaceful or violent redistribution." (D. Netto, *Lições da história*, in «Carta Capital», June 10, 2014, accessed on June 12, 2014).
[22] A. Pinzani, *El misterio de la pobreza: ¿Cómo puede una Doctrina Metafísica del Derecho ayudarnos a entender la realidad social?*, cit., p. 216.
[23] L. Davies, *Kant on Welfare: Five Unsuccessful Defences*, in «Kantian Review», 25/1, 2020, p. 1.
[24] J. Habermas, *Between Facts and Norms. Contributions to a Discourse Theory of Law and Democracy*, Polity Press, Cambridge 1996, p. 100.
[25] J. Habermas, *The Inclusion of the Other*, MIT Press, Cambridge (MA) 1998, p. 8.
[26] Habermas, *Between Facts and Norms. Contributions to a Discourse Theory of Law and Democracy*, cit., p. 106.
[27] K. Marx, *Crítica da filosofia do direito de Hegel*, Boitempo, São Paulo 2005.
[28] G. Lebrun, *Hobbes et l'institution de la Verité*, in «Manuscrito», 6/2, 1983, p. 123 and 126f.
[29] P. Pettit, *Made with Words. Hobbes on Language, Mind, and Politics*, Princeton University Press, Princeton 2008, p. 125.

[30] P. Pettit. *Made with Words. Hobbes on Language, Mind, and Politics*, cit. p. 140.
[31] T. Hobbes, *De Cive*, Clarendon, Oxford 1983, ch. XIV, §III.
[32] J. Rawls, *A Theory of Justice*, [Revised Edition], Oxford University Press, Oxford 1999, p. 468.