

KANTIAN RIGHT AND POVERTY RELIEF

ANDREA FAGGION¹
(State University of Londrina, Brazil)

Abstract: I have two goals in this paper. First, I want to determine whether Kant's justification for state programs for poverty relief in The Doctrine of Right is based on 1) Kantian duties of virtue, 2) Kantian duties of right, or instead merely on 3) instrumental arguments regarding the preservation of a State as such. I claim that the last alternative is the correct one. Second, I will argue, against Kant himself, that even his merely instrumental arguments for public programs for poverty relief are ruled out by his doctrine of right. My conclusion is that, perhaps surprisingly, the only genuinely Kantian way to provide poverty relief is privately, just as Libertarians have argued.

Key-words: Kant. The Doctrine of Right. Poverty Relief.

Introduction

The philosophical controversy that we are concerned with arises from this passage in The Doctrine of Right:

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 organizations providing for the poor, founding homes, and church organizations, 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 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. 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. [...] it will do this by way of coercion, by public taxation, not merely by voluntary contribution... (Kant, 1996, p. 468; *MM*, 6.325-326)²

Kant makes his point clearly: according to him, the State is allowed to coerce wealthy citizens to help poor citizens to fulfill their basic needs. This point is beyond all dispute. Nonetheless, the reasoning behind this assertion is not at all clear. Above all, we need to establish which duty it is that the government has "taken over" from the people. The purpose of this paper is to understand the nature of this duty, in order to understand and critically evaluate the reasons why a government would be entitled to impose taxes on the wealthy in order to help the poor.

In the first section, I consider the possibility that, according to Kant, the supreme commander is entitled to coerce the wealthy in order to discharge their duty of virtue. In the second section, I examine the principle of external lawgiving as the possible reason behind that duty enforced by the State. In the third section, I analyse a reading according to which the State would have its own duty of virtue. And in the last part of the paper, I unpack and criticize an instrumental reading of the passage at *MM*, 6.325-326.

Individual Duties of Virtue

I choose to handle these questions by offering the weakest interpretation of the passage first. Indeed, I do not even think that any Kantian scholar has actually advocated this particular reading, but I do believe that it is important to consider and discard it in order to understand the point properly. Hence, let us consider for a moment that Kant might be saying that the State has the right to impose an individual duty of virtue³ on each citizen.

The obvious problem with this suggestion is that a duty of virtue is an ethical duty. Such a duty goes beyond the mere obligation to perform an act. We are talking about an obligation to make the morally permissible ends of someone else our own end. But, evidently, the State cannot constrain the wealthy to adopt a certain type of end: "*coercion* to ends (to have them) is self-contradictory" (Kant, 1996, p. 514; *MM*, 6.381). This is why duties of virtue are exclusively a matter of internal lawgiving or self-coercion.

At this point, one can say that even though the agent cannot be coerced to adopt ends, she can be coerced to perform the external actions conform to a duty of virtue⁴. Indeed, if a duty of virtue commands an external action as well, and not only the mere adoption of an end, it is an external duty. Thus, according to this hypothesis, the State would be authorized to coerce the wealthy to perform acts in accordance with their external duties of virtue.

There is an important problem with this solution. The moral principle that prescribes (even external) duties of virtue is still necessarily a principle of internal lawgiving⁵. I take this internal principle to be essentially the categorical imperative, whose autonomy formula is "the idea of the will of every rational being as a *will giving universal law*" (Kant, 1996, p. 82; *GM*, 4.432)⁶, i.e., the idea of the agent's own pure practical reason as the source of the authority.

The categorical imperative implies autonomy analytically, because, if the agent were to take the authority of this imperative as an external authority, then he would not act from duty, but at the most in accordance with duty, once she will be coerced by other to act. But if the agent does not act from duty, the maxim of her action cannot become universal, because it

will not "contain the very *same determining ground* of the will in all cases and for all rational beings" (Kant, 1996, p. 159; *CPrR*, 5.25)⁷, which means that this maxim will fail the universality test of the categorical imperative. In other words, her maxim will be valid only for those possessing the same empirical motivations, for instance, the fear of ending up in jail. This is the reason why I believe that the categorical imperative should not be considered as a principle for right or external lawgiving in narrow sense, where it is not required acting from duty⁸, but only as an ethical principle, even though I am fully aware that Kant has treated the categorical imperative generally as: "The supreme principle of the doctrine of morals..." (Kant, 1996, p. 380; *MM*, 6.226).

According to the considerations advanced above, it is essential to point out that the government is not authorized to impose actions in accordance with the categorical imperative *on account* of this principle, since it would amount to treating the principle of autonomy as a principle of heteronomy⁹. However, note that in the passage quoted in the introduction of this paper, Kant is talking about a duty that the supreme commander has the *right* to impose on the citizens. Hence, in order for it to be possible that the government has the right to impose an action prescribed by the principle of internal lawgiving, a principle that does *not* concern to its legislation but only to the autonomy of the agent, a different principle of external lawgiving should prescribe the same external action.

Now, all duties prescribed by the principle of external lawgiving, according to Kant, are indirectly also ethical duties (Kant, 1996, p. 385; *MM*, 6.220-221), while the opposite is not true, since ethics "has its special duties as well" (Kant, 1996, p. 385; *MM*, 6.220) and it thereby "goes beyond" the principle of external lawgiving (Kant, 1996, p. 513; *MM*, 6.380). Consequently, if one wants to know which external duties the supreme commander is authorized to impose on the citizens, it seems to be reasonable to leave aside the principle of internal lawgiving and its duties of virtue for one moment, and examine the principle of external lawgiving and its requirements.

This being so, I move on now to the examination of the content of the principle of external lawgiving, i. e., the moral principle that does not imply autonomy, so that we can find out whether it authorizes the external coercion that Kant mentions in the text quoted at the outset. After that, I will be ready to come back and consider an unusual (and stronger) way of reading the passage in *MM*, 6.325-326 with regard to duties of virtue.

Individual Duties of Right

According to Sarah Williams Holtman, the duty that the supreme commander "has taken over" from the people "is the duty to do justice" (Holtman, 2004, p. 92, n. 11). Hence, the reasons lying behind Kant's assertions in the passage we are analysing are to be found in a richer account of those duties of right prescribed by external lawgiving, i.e., "one demanding that we meaningfully acknowledge and seek to promote the independence of individual citizens" (Holtman, 2004, p. 88). Holtman argues "in particular, that the scope of Kantian justice is much broader than most have thought" (Holtman, 2004, p. 88). Consequently, before being in a position that allows us to appreciate Holtman's arguments, we have to understand what "most have thought" about the Kantian duties of right and why this would not be enough to justify a juridical duty for relieving poverty.

According to Kant himself, "[t]he doctrine of right dealt only with the *formal* condition of outer freedom (the consistency of outer freedom with itself if its maxim were made universal law), that is, with *right*" (Kant, 1996, p. 513; *MM*, 6.380). Two adjectives should catch our attention here: "formal" and "outer". A formal condition is a condition that abstracts away from the matter of choice, i.e., from the object of choice. It is only required to know whether the choice is coerced or not when one chooses its objects, whatever they are. Furthermore, the only coercion that matters here is the *external* coercion imposed by the choice of another, since outer freedom is the "independence from being constrained by another's choice" (Kant, 1996, p. 393; *MM*, 6.237). The central concept of "outer freedom" must be examined in some length.

I would like to suggest here that the concept of "outer freedom", by being negative and external, should be considered as an empirical concept¹⁰. In addition, I would also like to claim that even the concept of "internal freedom" that matters to strict right in the Kantian sense can perfectly be taken as requiring a merely empirical capacity: the capacity to be persuaded to do or dissuaded from doing, i. e., a capacity for choice of means, and not of final ends. These empirical concepts of "internal freedom" and "outer freedom", as one can see, imply neither the capacity for autonomy nor what Kant calls "transcendental freedom", which is freedom in the strictest sense (Kant, 1996, p. 162; *CPrR*, 5.29).

It seems to me that it must be so in a doctrine of strict right, because it must be known by empirical means 1) whether the agent is free and, therefore, juridically imputable, and 2) whether the freedom of one person is hindered by another person¹¹. On the other hand, internal ethical freedom, construed positively as a capacity for autonomy and negatively as a transcendental capacity to adopt final ends without empirical determinations, is neither observable nor can suffer any type of external hindrance from others. This is why, in my

reading, this kind of freedom does not matter to strict right. Now, let us examine this point more closely.

In the Introduction to the *Metaphysics of the Morals*, Kant says:

The faculty of desire in accordance with concepts, insofar as the ground determining it to action lies within itself and not in its object, is called a faculty *to do or to refrain from doing as one pleases*. Insofar as it is joined with one's consciousness of the ability about its object by one's action it is called *choice*... (Kant, 1996, pp. 374-375; *MM*, 6.213)

Then Kant defines "free choice" as that "choice which can be determined by pure reason" (Kant, 1996, p. 375; *MM*, 6.213). This concept does involve autonomy. However, in the first place, it is important not to confuse this concept of "free choice", which is obviously internal, with the concept of "outer freedom" we have seen above¹². Indeed, according to my suggestion, even regarding internal freedom, strict right requires only an empirical concept, namely the capacity for the choice of means, which is determined by hypothetical imperatives. It does not require a capacity that is determined by pure reason.

Here is the rationale for my claim: 1) There is, as Kant points out, a two-way logical connection (a reciprocity) between positive¹³ and negative¹⁴ internal ethical freedom; but there is no such a connection between internal ethical freedom and external juridical freedom. I mean that the same choice, at the same time, can be externally free (which is observable) and internally determined by sensible impulses in the adoption of her final ends (which is unobservable), or externally coerced and internally undetermined by sensible impulses. 2) I am also suggesting that the agent can be juridically imputable without the addition of internal freedom as defined by Kant (Kant, 1996, p. 375; *MM*, 6.213) and construed by me as internal ethical freedom.

In defending these hypotheses, I disagree with Katrin Flikschuh, according to whom "...such a move appears to land Kant with two conceptions of freedom - one ethical the other political - threatening the overall coherence of Kant's conception of human agency" (Flikschuh, 2000, p. 83). In my view, there is no such threat. Kant does not need to operate with the same concept of "freedom" in his doctrines of strict right and ethics in order to have a coherent moral philosophy. Kant can operate with two different sets of concepts of "freedom", because the requirements of obligation in ethics are different from those of strict right. In a few words, ethics requires everything that right requires, and much more. Because ethics requires much more, *especially because it requires one to act from duty and not only in*

accordance with duty, that strong internal concept of "freedom" (i.e., the concept of "freedom" as an internal capacity to adopt final ends without empirical determinations, therefore, the capacity to be determined by pure reason) is a presupposition only for ethics¹⁵.

To sum up, ethics requires a capacity to act from duty. This capacity implies autonomy. Autonomy implies and is implied by internal negative (transcendental) freedom for adoption of final ends. The requirement of such a capacity to act from duty is absent from strict right, since duties of right are external duties which do not need to be discharged from duty or autonomously or without empirical determinations in the adoption of final ends. Thus, it is not as if, on my interpretation, Kant were saying that human beings are necessarily autonomous regarding ethics and necessarily heteronomous regarding right. My point is merely that external duties can be accounted for by a mere *empirical* freedom, i. e., the freedom to choose means, because, as Williams says, "I can act simply out of self-interest if I wish (something that cannot be tolerated at all under the categorical imperative)" (Williams, 1983, p. 68)¹⁶. After all, if strict right allows a person to act simply out of self-interest if she wishes, a being incapable of acting otherwise except out of self-interest is still able to bear duties of right.

The core of my overall interpretation is the derivation of some important consequences from the distinction between strict right and ethics, even when these consequences seem not to have been realized by Kant himself. But the relevant differences between right and ethics started to emerge at the very moment Kant first introduced his concept of "right". In that context he says that the right has to do only with external relations of one person to another. Following on directly from that, he specifies that such a relation is a relation between choices, and not a relation of one's choice to the mere wish or need of the other. Finally and as result of this, he also asserts that in the right no account at all is taken of the matter (end or object) of choice, which he makes very clear with an example: "it is not asked, for example, whether someone who buys goods from me for his own commercial use will gain by the transaction or not" (Kant, 1996, p. 387; *MM*, 6.230).

Now, in addition to the external and formal character of right, we have to pay attention to the fact that Kant also said that the doctrine of right deals with the *consistency* of outer freedom with itself if its maxim were made universal law¹⁷. This being so, it is safe to say that, for Kant, strict right does not exist to suppress or even limit outer freedom from the outside, but only to avoid outer freedom to destroy itself when the maxim of one choice is taken as a universal law.

This conception of "right" seems to have an immensely strong implication, namely, *the only coercion that right is able to authorize is the coercion of coercion*¹⁸. Furthermore, there seems to be no exception to this rule: "If then my action or my condition generally can coexist with the freedom of everyone in accordance with a universal law, whoever hinders me in it does me *wrong*" (Kant, 1996, p. 387; *MM*, 6.230-231). In other words, the universal principle of right, i.e., the principle of the external lawgiving says this: "Any action is *right* if it can coexist with everyone's freedom in accordance with a universal law, or if on its maxim the freedom of choice of each can coexist with everyone's freedom in accordance with a universal law" (Kant, 1996, p. 387; *MM*, 6.230). To sum up, then, an action is *right* and, therefore, cannot be hindered in accordance with the law if it does not amount to a coercion itself. Certainly, this is a key point for my overall interpretation.

At this point, we are able to understand what "most have thought" about Kantian duties of right. This is that the principle of external lawgiving would not authorize the State to require good actions, but merely to prevent hindrances to choice¹⁹. Therefore, the question is why right would authorize the supreme commander to coerce some people to help others with their basic needs, which clearly determines a relation of one's choice to the matter of the other's choice. In order to show that Kant should be read as asserting that the State is requiring the wealthy to obey a duty of right in the passage that motivates this paper, Holtman needs to show that there is in fact an analytical implication between not relieving poverty and coercing the poor. Let us see if she can succeed.

To make her point, Holtman does not appeal directly to the concept of "outer freedom" as the only innate right and the central concept in the doctrine of right. She instead grounds her point on the last of the three principles of the civil condition, which are also described by Kant as essential attributes of the citizen: the independence of the citizen or her quality of being her own master (*sui iuris*)²⁰. This choice is easy to understanding, once Kant formulates this concept (and only this concept) in economical terms: this independence requires some property (Kant, 1996, p. 295; *TP*, 8.295).

Thus, Holtman infers that the State is supposed to relieve poverty, because an individual who lacks means to preserve her own existence will be i) more likely to suffer illegitimate coercion²¹ and ii) less capable of reaching enlightenment. Moreover, according to Holtman, ii) implies that the individual will be unable to a) develop "her own values and larger life plan", which amounts to being unable to be her own master; and also unable to b) "determine what laws appropriately respect freedom" (Holtman, 2004, pp. 97-98). Holtman

concludes that "[t]he independence that characterizes the Kantian citizen, then, must encompass those capacities or characteristics that make possible appreciation of, commitment to, and wise choice within the constraints of the dictates of justice" (Holtman, 2004, pp. 98). Therefore, we have to consider whether that Kantian concept of "independence"²² really supports these points made by Holtman.

In the first place, one should note that Kant himself is not connecting civil independence and enlightenment. In fact, his account of the requisites for independence is much more modest. It is only:

having some *property* (and any art, craft, fine art, or science can be counted as property) that supports him - that is, if he must acquire from others in order to live, he does so only by *alienating* what *is his* and not by giving others permission to make use of his powers - and hence [the requisite quality is] that, in the strict sense of the word, he serves no one other than the commonwealth. (Kant, 1996, p. 295; *TP*, 8.295).

Kant is willing to admit that it is difficult to determine exactly who fulfills this requirement²³. In any case, it is easy to see that his standard is much lower than the one that Holtman thinks to be necessary for civil independence.

Moreover, civil independence, according to Kant, is a requirement only for active citizenship, i.e., the capacity for self-representation; it is not a natural right. In other words, civil independence determines only who is qualified to vote or not, so that some citizens' lack of independence is "in no way opposed to their freedom and equality as *human beings*" (Kant, 1996, p. 458; *MM*, 6.315). Likewise, these dependent citizens are still "able to demand that all others treat them in accordance with the laws of natural freedom and equality" (Kant, 1996, p. 458; *MM*, 6.315).

Therefore, it seems to me that the Kantian concept of "civil independence" is not able to provide the richer Kantian concept of "duties of right" that Holtman is looking for. All things considered, although Holtman had promised a reading of our polemical passage based on the concept of "right", she ends up with an ethical reading of Kant's doctrine of right, since she develops the concept of "civil independence" in the direction of a "special" duty of virtue: "It is [...] a species of the virtue of justice itself, the internalization of our commitment to justice. We might call it the virtue of civic respect and concern" (Holtman, 2004, p. 105). Nevertheless, this result is expressly forbidden by Kant:

it cannot be required that this principle of all maxims [the principle of right or external lawgiving] be itself in turn my maxim, that is, it cannot be required that *I make it the maxim* of my action; for anyone can be free so long as I do not impair his freedom by my external action, even though I am quite indifferent to his freedom or would like in my heart to infringe upon it. That I make it my maxim to act rightly is a demand that ethics makes on me. (Kant, 1996, p. 388; *MM*, 6.231)²⁴

Kant could not be clearer on this point. There is no such thing as a "virtue of justice" ... or, at least, not in the doctrine of strict right. And as if one still needed more in order to be convinced that the Kantian concept of "right" does not involve that enlightened internalization of justice that Holtman connects to the supposed duty for poverty relief, Kant then delivers more: "When one's aim is not to teach virtue but only to set forth what is *right*, one need not and should not represent that law of right as itself the incentive to action" (Kant, 1996, p. 388; *MM*, 6.231)²⁵.

Leaving aside Holtman's attempt to establish a connection between the concept of "civil independence" and a species of duty for a moral education towards the internalization of right, one can make an even stronger objection against her reading: poverty relief cannot be a duty of right, considered as a duty to help people to become independent citizens, because, for Kant, there is no obligation bearing on State or on active citizens as individuals to turn passive citizens (citizens without civil independence) into active citizens or even to help them in this process. Again, Kant is very clear: right requires of active citizens only that they *do not prevent* passive citizens from becoming active too (Kant, 1996, p. 459; *MM*, 6.315)²⁶.

Concerning this last point, I want to emphasize the relevance of the understanding of the negative character of duties of right²⁷. In fact, it takes us back to the first point made by Holtman: the idea that the poor are more suitable to suffer illegitimate coercion so that there would be a duty of right for improving their situation. Not only is this point based on empirical remarks alien to the moral doctrine of right, but also it leads to a confusion in the core of duties of right. The duty is to not coerce actions that are consistent with freedom in accordance with universal laws. This duty does authorize the coercion of coercion, but not to require one (i.e., the wealthy) to protect others (i.e., the poor) from coercion by requiring that one improves the empirical condition of another in order to make the latter stronger in order to fight against illegitimate coercion herself. In order to not be an obstacle, one does not have to remove, or help to remove, obstacles. Indeed, the acknowledgment of the perhaps subtle difference between a duty to not coerce and a duty to make all the possible efforts to prevent

coercion amounts to an acknowledgment of the fact that one does not prevent anyone from making her own choices when one chooses not to collaborate with her in any way.

This being so, my overall conclusion about Holtman's arguments is that she fails to deliver a reading of the passage in *MM*, 6.325-326 that does not turn Kant's doctrine of right into a doctrine of ethics. On the whole, I believe the same fate is reserved for any attempt at explaining a duty related to collaboration as a duty of right. Thus, I come back to a reading of *MM*, 6.325-326 based on the concept of "duties of virtue".

State's Duty of Virtue

Allen Rosen has claimed that the State "has taken over" the duty of virtue or beneficence from the people. Unfortunately, Rosen does not think it is necessary to argue for this reading, since he takes it to be obvious: "the duty he [Kant] has in mind [in *MM*, 6.325-326] is benevolence²⁸; no other duty fits the description" (Rosen, 1996, p. 179)²⁹. Accordingly, the State would have its own duty of virtue, a duty "to ensure the well-being of its citizens" (Rosen, 1996, p. 174) that should be observed in external lawgiving. This implies that what was seen above as *the* universal principle of right is turned by Rosen into just *one more* principle of right (Rosen, 1996, p. 177).

Given this account, Rosen believes it possible to reject a reading according to which public coercion (like any form of coercion) would be permitted only in order to prevent one person from interfering with the lawful liberty of another so that governments would be forbidden from taxing some citizens merely for the benefit of others: "Kant *never* says that the use of coercion is justified *only* by the first principle of law" (Rosen, 1996, p. 188).

Now, if what we have seen in the first two sections of this paper corresponds accurately to the basic views of Kant's doctrine of strict right, then Rosen's reading amounts to a serious misunderstanding of the Kant's own understanding of the concept of "right". In the main, as we saw above, Kant was seeking a principle according to which coercion could be used in agreement with freedom, once right is the same as the authorization to use coercion (Kant, 1996, pp. 387-388; *MM*, 6.230-232). This being so, in § D of the Introduction of the Doctrine of Right, Kant claims that what removes an obstacle of freedom, in fact, agrees with freedom. Therefore, coercion is analytically authorized when it means it is the coercion of coercion ("a *hindering of a hindrance to freedom*" Kant, 1996, p. 388; *MM*, 6.231). Thus, if a second or third principle of right, or whatever Rosen thinks they are, does not agree with what Rosen calls the first principle of right, then there will be no agreement between the use of

coercion and freedom in accordance with universal laws. Furthermore, according to Kant, freedom is our *only* innate right (Kant, 1996, p. 393; *MM*, 6.237), and not one right of ours among others of equal relevance³⁰. On the basis of these considerations, one can entertain serious doubts regarding the existence of an authorization for the State to "force individuals to perform *actions* that may assist it in fulfilling its own duty of benevolence" (Rosen, 1996, p. 192).

Added to this line of objection, we should also consider whether the State is a type of agent that "is capable of having its own moral duties as any other moral agent" (Rosen, 1996, p. 191). This is something that is hard to accept, because the concept of a "duty of virtue" implies the voluntary adoption of a final end and the voluntary adoption of a final end, in its turn, implies the notion of a person with free choice³¹ acting according to maxims as internal or subjective rules. But how is this possible for a State? Should the lawmaker act from duty? It is impossible to consider a State to be the type of moral agent that can self-impose maxims to itself³². In short, Rosen must be wrong and a State cannot bear its own duties of benevolence (or beneficence).

Likewise Holtman, who believes in a "virtue of justice", by asserting that, according to Kant, the State can have "responsibilities beyond those required by strict justice" (Rosen, 1996, p. 193), Rosen turns the Kantian State into an ethical State in which the principle of external legislation ends up being the categorical imperative applied by an entire people: "If no one can rationally will the maxim of never helping others *as a law of nature*, however, then neither can an entire people rationally will *as a law of political society* that the state should allow them to perish rather than supply their basic needs" (Rosen, 1996, p. 201).

In the first place, even conceding that Rosen has correctly read the Kantian argument in the *Groundwork* (Kant, 1996, p. 75; *GM*, 4.423), the passage above contains a *non sequitur* as LeBar has already pointed out: "Willing to be helped and willing that others be forced to help are two different things" (LeBar, 1999, p. 243). In other words: "Rejecting public welfare does not entail willing that others not provide aid when it is needed" (LeBar, 1999, pp. 243-244). As regards to that, it is essential to keep in mind that what is at issue here is always the authorization for the State to *coerce* citizens to help others. This debate is not about good reasons to *convince* people to help others. Rosen does not pay attention to this distinction: therefore, according to my view, he completely misses the point that the doctrine of strict right is a doctrine of legitimate heteronomous legislation. Indeed, he reconstructs Kant's doctrine of right as a doctrine of collective autonomy, as is clear in this passage:

In a Kantian republic, governments are popularly elected and the policies they adopt, including those concerned with social welfare and taxation, are not, if honestly presented at election time, coercively imposed on an unwilling citizenry. Popularly elected republican governments rule with the consent of the people, according to Kant, even if they are elected only by a simple majority. [...] if taxation policies [...] emerge from an electoral process of this sort, they are not, given Kant's assumption, coercively imposed on an unwilling population. On the contrary, they can be represented [...] as voluntary restrictions imposed by a people on its own freedom. (Rosen, 1996, p. 204)³³

In short, while Kant, according to my reading, solves the problem of legitimate external coercion by asserting that coercion of coercion is an affirmation of external freedom in accordance with universal laws, Rosen removes that problem from the doctrine of right by asserting that there is no external coercion at all in a real popular democracy. So unless I am misunderstanding Rosen's views, one can say that, according to Rosen's reading, the Kantian doctrine of strict right is merely the Kantian doctrine of ethics considered for a *macro*-subject: namely, the State.

In the last part of my paper, I will work out a reading of the passage in *MM*, 6.325-326 that, from my point of view, retains the Kantian distinction between strict right and ethics. This is the reading of the doctrine of right that Rosen has called "minimalist", because it portrays the State as a mere "night watchman".

The Instrumental Argument

If the authorization for the State to impose taxes on the wealthy in order to relieve poverty is not based neither on a duty of right nor on a duty of virtue, then only one way of justification is left open by Kantian philosophy: the instrumental one. In other words, programs of poverty relief would be merely instrumental to the security of the State³⁴. Thus it seems to me that Mark LeBar's "minimalist" account of the duty that the State "has taken over" from the people is much more plausible than Rosen's:

In Kant's view people in the state of nature have a duty to leave that state to establish and maintain conditions of right in civil society (*MM* 264, 307, 312; *TP* 300n). [...] [T]he duty which the ruler "takes over" is that of preserving the civil constitution. In the state of nature the obligation to establish civil society rests wholly on the people themselves; after the commonwealth is created its political structure offers a new and more direct agency for upholding it, so the ruler can plausibly be said to "take over" that duty. (LeBar, 1999, p. 235)

In this way, after we discharge our duty to leave the state of nature, the State so founded is obliged to preserve the juridical order. In addition, programs of poverty relief are supposed to be a means for this. Certainly, Kant makes this point in a much more explicit way in *Theory and Practice*:

If the supreme power makes laws directed primarily towards happiness (the prosperity of citizens, increasing population, and so on), this does not happen because it is the purpose of establishing a civil constitution.

Instead, it is merely a means for securing the state of right, especially against the people's external enemies. The nation's leader must be authorized to be the sole judge as to whether such laws are in the interest of the commonwealth's prosperity, which is necessary to secure its strength and stability against both internal and external enemies. The purpose is not, as it were, to make the people happy against their will, but only to make them exist as a commonwealth (...for unless the people are prosperous, the nation will not possess strength sufficient to resist external enemies or to maintain itself as a commonwealth). (Kant, 1996, p. 298; *TP*, 8.298-299).

In this passage, Kant seems even to anticipate, for instance, predictions about a legion of *les misérables* disrupting a social order designed to preserve the right of private property. Hence, in order to, and *only* in order "to maintain itself as a commonwealth", the State is authorized to tax the wealthy to relieve poverty³⁵.

Like LeBar and Kersting, we should be well aware that it is not possible to derive a right to be relieved of poverty from the Kantian concept of "right", since "such a right [to welfare] 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 what we are entitled to as a matter of freedom" (LeBar, 1999, p 247)³⁶. Therefore, asserting that poverty relief is a means for maintaining civil society amounts to asserting that poverty relief is just a cause that brings about a desired effect, and not that the concepts of "poverty relief" and "civil society" are analytically connected: "It is not possible to derive logically principles of the welfare state from the basic concepts of the entirely legally formulated Kantian idea of justice, from the conceptions of liberty and equality. Logical and conceptual justification arguments and instrumental and empirical justification arguments should not be confused" (Kersting, 1992, p. 164, n. 7)³⁷.

On balance, I think that we have finally reached a coherent interpretation of the passage in *MM*, 6.325-326, i.e., an interpretation that makes sense inside the framework of Kantian doctrine of right. The apparent problem with this interpretation is that not only have

we found that the obligation to relieve poverty cannot be derived from the Kantian principle of right, because, according to this principle, the wealthy are not supposed to provide for the poor, but we have also found that it is not possible to extend coercion beyond the principle of right³⁸ and, at the same time, maintain that agreement with freedom in accordance with universal laws. Therefore, coercion to poverty relief is inconsistent with freedom in accordance with universal laws³⁹.

To be sure, one can immediately reply to me that, as seen above, such a coercion is a hindrance to freedom with the purpose of maintaining freedom in civil society. Consequently, this would be an authorized exception to the principle according to which reason only authorizes coercion of coercion. But then one has to consider that this exception will make an empirical rule - poverty relief allegedly being a means to assure a juridical order - overrule the moral principle of right on its own behalf⁴⁰.

At the end of the day, according to the instrumental reading of *MM*, 6.325-326, Kant is advocating that the end justifies the means. In fact, as a result of this reading's assumptions, in order to maintain civil society, the nation's supreme commander would be authorized to carry out any kind of coercion. After all, why would coercion to poverty relief represent the only kind of exception to the principle of right allowed for the government if the justification for the exception were to be the end to be reached? In short, if the purpose is to assure the maintenance of civil society, torture, for instance, could be a means for this as well. Indeed, many tyrannies have appealed to the idea that coercion beyond coercion of coercion is necessary in order to preserve a free society. The military government in Brazil would be only one example.

Accordingly, it seems to me that an easy way to know which instrumental laws a lawmaker is allowed to make in order to protect civil order is to determine whether the law (as a means) does not contradict the end it is supposed to attain: namely, the protection of external freedom. In other words, the means cannot violate freedom in order to protect it.

Conclusion

All things considered, we have not found any good reasons supporting Kant's assertions in *MM*, 6.325-326. Moreover, it is necessary to admit that my account of Kant's concept of "right" in the narrow sense does not only preclude any kind of public program for poverty relief, but it nevertheless limits the power of the supreme commander in all directions. As Rosen has pointed out:

A state unable to do more than enforce strict justice would bear little resemblance to a modern political state. It would be unable to build roads or airports, provide public sanitation or health and educational services, manage disaster relief efforts, or perform any of the myriad other functions of a modern government. (Rosen, 1996, p. 193)

However, I do not think this amounts to a good objection against the reading I am proposing. On the contrary, I believe Rosen's concern with the difference between such a Kantian State and an actual modern State is misplaced. One has to keep in mind the "formalism of Kant's normative philosophy" that Kersting has described with accuracy: "Kant's state is a *Rechtstaat* and nothing else: its ground, its form and its purpose is right. It doesn't exist for the good life [...]. According to Kant, the state serves justice alone; its very nature can be conceived and grasped only by the language of right and freedom" (Kersting, 1992, p. 154).

Since I am willing to go beyond Kersting by objecting even to the coherence between the Kantian doctrine of right and instrumental laws that extend the power of States beyond the principle of right, it seems to me that it is not at all impossible to consider certain basic elements in Kant's doctrine of strict right to be, in effect, proto-Libertarian.

Notes

¹ Professor of the Department of Philosophy and of the Graduate Program in Philosophy at the State University of Londrina, Londrina, Paraná. Professor of the Graduate Program in Philosophy at the State University of Maringá, Maringá, Paraná. E-mail: andrefaggion@gmail.com

² Abbreviations used for the titles of Kant's works: *Critique of Practical Reason* = *CPrR*; *Groundwork of the Metaphysics of Morals* = *GM*; *On the Common Saying: That May Be Correct in Theory, But It Is of No Use in Practice* = *TP*; *The Metaphysics of Morals* = *MM*.

³ Namely, the duty of beneficence (Kant, 1996, p. 571; *MM*, 6.452).

⁴ For instance: "There is, however, no problem in transitioning from basic positive duties seen as ethical duties of virtue to basic positive duties seen as juridical duties of right. What one needs to do is to describe the duties in question as requirements of outer social performance rather than inner intentional plans" (Gilbert, 2010, p. 400).

⁵ "...even though they are external duties (obligations to external actions), are still assigned to ethics because their lawgiving can be only internal" (Kant, 1996, p. 385; *MM*, 6.220).

⁶ In the Doctrine of Virtue, Kant says that the "touchstone for deciding whether or not something is a duty of virtue" is the question: "How could a maxim such as yours harmonize with itself if everyone, in every case, made it a universal law?" (Kant, 1996, p. 510; *MM*, 6.376). Compare it to the first formula of the categorical imperative: "There is, therefore, only a single categorical imperative and it is this: *act only in accordance with that maxim through which you can at the same time will that it become a universal law*" (Kant, 1996, p. 73; *GM*, 4.421).

⁷ The categorical imperative establishes that "the mere lawgiving form of maxims is the only sufficient determining ground of a will" (Kant, 1996, p. 162; *CPrR*, 5.28).

⁸ "...just as right generally has as its object only what is external in actions, so strict right, namely that which is not mingled with anything ethical, requires only external grounds for determining choice; for only then is it pure and not mixed with any precepts of virtue. Only a completely external right can therefore be called strict (right in the narrow sense)" (Kant, 1996, p. 389; *MM*, 6: 232).

⁹ "What essentially distinguishes a duty of virtue from a duty of right is that external constraint to the latter kind of duty is morally possible, whereas the former is based only on free self-constraint" (Kant 1996: 515; *MM*, 6.383).

¹⁰ I completely agree with Howard Williams on this point: "It is important not to confuse Kant's concept of moral autonomy (freedom in the formal sense) with his concept of political liberty (freedom in the empirical sense)" (Williams, 1983, p. 69). The very same point had also been made by Schopenhauer (1958, p. 529). More recently, Williams has regretted how his reading has inspired Libertarians readings of Kant (see Williams, 2013). However, the "close affinities" (2013, p. 270) that Williams admits to hold between Kant and Libertarians are enough for my points in this paper.

¹¹ "They [juridical laws] are [...] positive laws which only apply to the observable, empirical relationship of one person to another. These laws refer only to a person's overt doings. [...] The freedom which right affords is not intended to be a constructive freedom; it is not a freedom to act in a certain way; it is simply a freedom not to be hindered from acting in whatever way we wish provided we do not impair the freedom of others to act in that way as well" (Williams, 1983, p. 68).

¹² See the quotation from *MM*, 6.237.

¹³ "The positive concept of freedom is that of the ability of pure reason to be of itself practical" (Kant, 1996, p. 375; *MM*, 6.214). This is autonomy.

¹⁴ "Freedom of choice is this independence from being *determined* by sensible impulses; this is the negative concept of freedom" (Kant, 1996, p. 375; *MM*, 6.213). This is transcendental freedom.

¹⁵ In favour of Flikschuh's reading, one must admit that Kant himself seems to want only a concept of "freedom" to unify the doctrine of morals, and this concept would be a pure rational concept (see, for instance, Kant, 1996, p. 376; *MM*, 6.221). Nevertheless, it does not seem to me that strict right cannot be made independent from ethics, since, as I am suggesting, only ethics requires a pure rational concept of "freedom" discovered through the consciousness of the moral law (Kant, 1996, pp. 380 and 395; *MM*, 6.226 and 239).

¹⁶ Hence, Flikschuh must be wrong when she says that outer freedom qualifies as freedom, because it is "freedom of choice and action in accordance with the categorical imperative" (Flikschuh, 2000, p. 85). Acts of outer freedom qualify as free acts, because they are not under observable coercion of others. Such a negative and external sense of freedom does not require a decision about the internal law of action, since it can be a natural law or the pure practical reason law (categorical imperative).

¹⁷ Here is another point that makes possible to think the independence of strict right from the categorical imperative. To be certain, the categorical imperative is seen by Kant as a command to fulfill also duties of right. This is not at issue. But strict right can perhaps receive an independent justification, when one keeps in mind that it assures the consistency of outer freedom with itself. If outer freedom is an innate right, as Kant thinks it is (Kant, 1996, p. 393; *MM*, 6.237), then the validity of strict right follows analytically as its condition of consistency. Then the new question is if one needs the categorical imperative to found the right to outer freedom. From what I know, Kant has never considered the point, but there is a long liberal tradition that makes it possible at least to think the right to outer freedom as independent from the categorical imperative.

¹⁸ Kant speaks explicitly in these terms when he establishes the authorization to use coercion which is connected to the right: "Resistance that counteracts the hindering of an effect promotes this effect and is consistent with it. Now whatever is wrong is a hindrance to freedom in accordance with universal laws. But coercion is a hindrance or resistance to freedom. Therefore, if a certain use of freedom is itself a hindrance to freedom in accordance with universal laws (i.e., *wrong*), coercion that is opposed to this (as a *hindering of a hindrance to freedom*) is consistent with freedom in accordance with universal laws, that is, it is right. Hence there is connected with right by the principle of contradiction an authorization to coerce someone who infringes upon it" (Kant, 1996, p. 388; *MM*, 6.231).

¹⁹ Certainly, this is a minimalist reading of the Kantian concept of "right". But we have good reasons to believe that this was exactly how Kant himself thought of the concept of "right": "The law of a reciprocal coercion necessarily in accord with the freedom of everyone under the principle of universal freedom is, as it were, the *construction* of that concept, that is, the presentation of it in pure intuition a priori, by analogy with presenting the possibility of bodies moving freely under the law of the *equality of action and reaction*" (Kant, 1996, p. 389; *MM*, 6.232).

²⁰ The three attributes of the citizen are: lawful freedom, civil equality and civil independence (see, for example, Kant, 1996, pp. 457-458; *MM*, 6.314 and Kant, 1996, pp. 291; *TP*, 8.290).

²¹ One can find a quite similar reading in Gilibert (2010, p. 404).

²² It should be noted that my point here is completely exegetical. I intend to analyse if the Kantian concept of "civil independence" supports Holtman's claims about it. Thus, it is not my intention to evaluate the coherence between the economic requirement contained in the concept of "civil independence" presented by Kant and the more basic elements of the Kantian doctrine of right.

²³ See the note attached to the passage quoted.

²⁴ One more time, I believe Williams is catching correctly the Kantian point: "There is nothing to prevent an evil person from acting legally although he may never act virtuously" (Williams, 1983, p. 62, see also p. 68).

²⁵ I am not saying that, for Kant, an enlightened society is not an aim at all or that internalization of justice is not desirable. I am just saying that, according to Kant, these goals belong to ethics and, therefore, they are not the government's business.

²⁶ This being so, I disagree with Paul Guyer's attempt to found an alleged government's right to regulate the acquisition of property. According to Guyer, there is a "key step in the argument, which Kant does not explicitly state but which he clearly presupposes..." (Guyer, 2000, p. 238), and this is supposed to be such a step: "It will be in our interest to agree freely to a property claim when the system of property rights within which such a claim is being made promises all of the participants in it some reasonable level of access to its benefits" (Guyer, 2000, pp. 238-239). This seems to be what Guyer wishes Kant were saying. However, Kant really says that active citizens should not prevent passive citizens from acquiring property. Nothing else. Thus, one can legitimately understand that, according to Kant, it is rational to agree freely to a property claim when the system of property rights within which such a claim is being made promises all of the participants to be *allowed* to acquire property too. In other words, Guyer seems to mistake a requirement for formal equality for a requirement for material equality: "...one has a right to property as an exercise of one's freedom, but only under the condition that one is willing to concede an analogous right to others" (Guyer, 2000, p. 282). Indeed, the united will of the people agrees on property claims because such claims are available to each one (formal equality), but this does not imply that one bears the duty to help other to acquire her own property (material equality) as Kant makes plain in the context of his discussion of the duties of active citizens toward passive citizens (see also Kant, 1996, p. 292; *TP*, 8.291).

²⁷ It is in order here to note the connection between the concept of "negative duties" and the negative concept of "outer freedom" as the content of our only innate right. Interpreters who intend to introduce positive duties of right in a Kantian view need to assume a positive concept of "political freedom", i.e., a concept which goes beyond the mere absence of constraint by another choice.

²⁸ Benevolence, according to Kant, is "satisfaction in the happiness (well-being) of others" while beneficence is "the maxim of making others' happiness one's end" (Kant, 1996, p. 571; *MM*, 6.452). Hence, "beneficence" seems to be the more appropriate concept to be used here.

²⁹ In order to avoid a distortion of Rosen's view, we should note that, even though it sounds paradoxical, according to him, individuals still keep their own duty of virtue after the government has taken over it from them: "...the ruler's duty of benevolence is derived from, without reducing or eliminating, private citizens' duties of benevolence" (Rosen, 1996, p. 179).

³⁰ In fact, in Rosen's reading, the so-called "first principle of law" seems to bear no relevance at all: "As a republican, Kant does of course believe that there must be constitutional limits on the powers of the state; nowhere, though, does he suggest that this [the first principle of law] is one of them" (Rosen, 1996, p. 188). Hence, basically, Kant would have formulated what he calls "the universal principle of right" for no reason at all. It would be completely useless or discovered to be ignored by the State.

³¹ Since we are talking about an ethical duty, her choice must be free in a transcendental sense, i. e., her ends must be independent of empirical determinations.

³² I completely agree with LeBar on this point (LeBar, 1999, p. 235). In general, my reading of Kant's doctrine of right is quite close to LeBar's reading.

³³ There are some similarities between Rosen's reading and Gilabert's. According to the latter, "the Contractualist Standard that says that a legal norm is right if and only if it could be rationally accepted by all those bound by it" (Gilabert, 2010, p. 405) "involves a limitation of the scope of application of the Principle of Right" (Gilabert, 2010, p. 409). According to my view, it is exactly the opposite: the principle of right determines what could be rationally accepted by all. In other words, the principle of right would be a Kantian succedaneum for the Rawlsian veil of ignorance, for instance.

³⁴ Since this seems to have been a more orthodox reading a couple of decades ago, many Kant scholars have adhered to it. In this paper, I am particularly interested in Mark LeBar (1999) and Wolfgang Kersting (1992).

³⁵ "...if social tensions, class conflicts and economic inequality threaten to undermine the firmness of the legal order and destabilize the rule of law then it's necessary, if only for public justice's own sake, to launch appropriate welfare state programmes" (Kersting, 1992, p. 164, n. 7).

³⁶ "As a matter of freedom we are entitled to have others not preventing us from preserving ourselves; it does not follow that we are entitled to be provided for by them. Kant's account of innate right establishes the former..." (LeBar, 1999, p. 248).

³⁷ Rosen notes, correctly, that instrumental justifications depend on empirical (likely to be controversial) premises (Rosen, 1996, p. 193, n. 48).

³⁸ Even though, Gilibert suggests an entirely different line of argument, he is well aware that: "This line of argument [like mine] [...] calls for a minimal state focused on preventing force and fraud (that is, violations of negative duties)..." (Gilibert, 2010, p. 402). Gilibert is concerned with a limitation of the scope of the principle of right, on which I disagree, exactly because he understands very well what he calls "the test of the Principle of Right": "a citizen's liberty not to assist others is perfectly consistent with the liberty of anyone else not to assist others. Failing to assist others is not to harm them. Since coercive taxation would hinder a liberty that is consistent with a like liberty of everyone else (the liberty not to assist others), it would in fact unduly harm those who are taxed, and it would therefore go against the Principle of Right" (Gilibert, 2010, p. 403).

³⁹ "The presumption against the constraints represented by taxes on the wealthy is overruled by the necessity of such constraints to "maintain perpetually" the conditions of right which make wealth possible and secure - indeed to make external freedom at all possible - and it is that necessity which generates the obligation to submit to taxation..." (LeBar, 1999, p. 242).

References

Flikschuh, Katrin (2000) *Kant and Modern Political Philosophy*. Cambridge: Cambridge University Press.

Gilabert, Pablo (2010) "Kant and the Claims of the Poor". *Philosophy and Phenomenological Research*, LXXXI/2, 382-418.

Guyer, Paul (2000) *Kant on Freedom, Law, and Happiness*. Cambridge: Cambridge University Press.

Holtman, Sarah Williams (2004) "Kantian Justice and Poverty Relief". *Kant-Studien*, 95, 86-106.

Kant, Immanuel (1926) *Kant's Gesammelte Schriften*. Berlin und Leipzig: Walter de Gruyter & Co..

_____ (1996) *Practical Philosophy*. Trans. Mary J. Gregor. Cambridge: Cambridge University Press.

Kersting, Wolfgang (1992) "Kant's Concept of the State". In Howard Lloyd Williams (ed.), *Essays on Kant's Political Philosophy* (Chicago: University of Chicago Press), pp.143-165.

LeBar, Mark (1999) "Kant on Welfare". *Canadian Journal of Philosophy*, 29/2, 225-249.

Rosen, Allen D. (1996) *Kant's Theory of Justice*. New York : Cornell University Press.

Schopenhauer, Arthur (1958) *The World as Will and Representation*, vol. 1. Trans. E. F. J. Payne. New York: Dover Publications.

Williams, Howard (2013). "Kant and Libertarianism". In: Baiasu, Sorin; Timmons, Mark (Ed.) *Kant on Practical Justification: interpretative essays*. Oxford University Press, pp. 269-283.

_____ (1983) *Kant's Political Philosophy*. Basil Blackwell: Oxford.

Recebido / Received: 18/04/2014
Aprovado / Approved: 24/11/2014