Heritages of Radical Enlightenment. Kant's contribution to the affirmation of social rights

Alberto Pirni[1*]
[1]Sant'Anna School of Advanced Studies, 33 Piazza Martiri della Libertà, 56127 Pisa, Italy

Abstract. The idea of "social right" is undoubtedly part of what has been called "the Radical Enlightenment", of which Kant has been one of the main and more fruitful intellectual voices. The paper's first focus is devoted to framing the particular status that social rights possess and have possessed in the light of their intellectual genealogy and their intrinsically problematic content. Next, the paper examines how Kant related to this broader picture, analysing the text dealing with the question of rights most directly, namely the first part of the *Metaphysics of Morals*. The paper explores thus the foundation of social rights as understood by Kant (hinted at in the *Metaphysics of Morals*), and turns to the work which is more conceptually connected to the former: the *Groundwork of the Metaphysics of Morals*. It is in this context, within the discourse related to the fundaments of the moral and juridical community, that promising traces can be found of a "latent foundation" for social rights, that is destined to have an influencing ethical and political future and shall be analysed critically and in-depth.

Keywords: Kant, social rights, social sphere, community, kingdom of ends

1 Introduction: Framing the interpretative viewpoint

When approaching a "classic" author as universally important as Kant, scholars are accustomed to adopt a twofold strategy: on the one hand, investigating reasons and motivations behind specific theoretical results or concepts he developed; on the other, connecting specific parts of his fundamental achievements to contemporary issues or challenges, by rehabilitating their orientation value for our agency. The present essay tries to move along both paths, aiming at investigating the internal logic of the complex expression of "social rights" as well as at rehabilitating its grounding as a turning point, which must "illuminate" and motivate the moral and political agency even for the present times.

In doing this, the interpretive attempt presented here lies within a larger framework: this is a study devoted to investigating the systemic linkage between the *Groundwork of the Metaphysics of Morals* and the same *Metaphysics of Morals* within the Kantian path. The focus on the two Kantian works – and the coeval and correlative materials, in terms of other essays, "Reflections" (*Reflexionen*) and "Lectures" (*Vorlesungen*) – is meant to legitimise a

* Corresponding author: alberto.pirni@santannapisa.it
ORCID: 0000-0002-7134-4535

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comprehensive hermeneutical attempt which can be introduced as a communitarian interpretation of Kant's moral and juridical thought. In order to ground this thesis, I have found in the concept of a "kingdom of ends" (*Reich der Zwecke*) the focal point whose internal theoretical structure (together with the argumentative path surrounding it and the consequent implications and applications disseminated by Kant within a wide series of works) seems to offer the scholar the possibility of confirming that linkage between the two works as well as legitimising the "critical" communitarian perspective in robust and effective terms.[1]

In dealing with the present topic, the essay attempts to provide a comprehensive overview of one of the less explored issues within both the political philosophy and the philosophy of law in Kant, namely the traces and the "groundwork" of the social rights' sphere.

As we know, the roots of the idea are traced back to the end of the eighteenth century. The first explicit articulation of the concept of social right – namely the first demand that each member of a society be granted the legitimate "right" to ask their authorities for help – was enunciated in the twenty-first article of the *Declaration of Rights*, the preamble to the "Jacobin" Constitution of 24 June 1793: "Society owes maintenance to unfortunate citizens, either by procuring work or by assuring the means of existence to those who are not able to labour" (*cf*. De Búrca *et al*., 2005; García *et. al*., 2014).

These succinct lines enshrined a fundamental principle that would henceforward lie at the heart of every political and legal theory on social rights: the State must be able to guarantee sustenance to all members who cannot (or who can no longer) maintain themselves through their own means and abilities. Notwithstanding, the history and the status of social rights are not quite so clear and uncontroversial. Social rights are a complex assemblage that intersects at various points with some of the most important concepts in modern philosophy and jurisprudence, most notably *liberty*, *equality* and *solidarity*, as well as the (*welfare*) *state* and the idea of *citizenship*. The complexity of these conceptual intersections has placed the category of social rights in "a precarious balance" on account of the uncertainty of what these concepts should cover and where their boundaries should lie (Casadei, 2012, pp. 27-32).

"Rights in a precarious balance", signifies that they are difficult to uphold conceptually for at least three distinct, albeit connected, reasons. *Firstly*, one can cast doubt on the relationship between rights to freedom and social rights. Some thinkers have perceived a structural or even "ontological" difference between these two typologies, arguing that the latter infringes heavily upon the exercise of the former. *Secondly*, the "cost of rights" is no trifling matter: the implementation and defence of any possible combination of social rights entail important decisions on how and where to allocate public resources, inevitably limiting other possible allocations and political choices. *Thirdly*, the "justiciability" of social rights, or the extent to which they can be realised in practice and actualised at a *constitutional* level, is not entirely clear. This uncertainty derives from the existence of extremely varied approaches to social, educational and sanitary assistance, and from the diversity of institutions within the State that are supposed to deal with such topics and the social policy as a whole.

2 Kant and social rights: A preliminary exploration

Starting from the impossibility of reconstructing the entire debate related to this issue, we would like to make clear in which sense the Kantian contribution to the point might be considered as one of the constitutive parts of that systemic linkage between the *Groundwork* and *The Metaphysics of Morals* alluded to above. Let us then start from this last work, in which the core of any possible programme of social rights emerges in clear terms.

[1] I have developed this interpretative path in Pirni (2000; 2006).

There are several points in *The Metaphysics of Morals* where the author seems to be aware of the "precarious balance" of the *social state* or the social condition as a whole. As a preliminary framing – which we cannot here explore more in depth – that condition is considered as a sort of *tertium genus* and middle point between the *state of nature*, on the one hand, and the *civil state*, on the other.[2] As for the present context, we must limit our attention to the end of the "First Section" of "Public Law", a transitional passage wedged between Public and Private Law in the "Doctrine of Right".

Here Kant develops a "General Remark on the Effects with Regard to Rights that Follow the Nature of the Civil Union". In section C of this paragraph, Kant lingers on what we would call a draft of social rights that would need to be instituted within the civil state, all the way from the sovereign downwards. "The supreme commander, as undertaker of the duty of the people, has the right to tax them for purposes essentially connected with their own preservation. Such are, in particular, the relief of the *poor*, *foundling asylums*, and *ecclesiastical establishments*" (*MS*, AA 06: 325-326; tr. A.P.; *cf*. Kant, 2012, p. 85). The supreme commander's right to taxation is affirmed on the grounds that he has taken upon himself the task of satisfying the duties of the people, i.e. the aspects of private law which the natural/social state contains but does not protect. Such a "commander", however, exercises this right with a specific purpose (indeed, it could be deemed a sort of forerunner to the "purpose-tax" which exists in modern states): the maintenance of the poor, orphans and places of worship (albeit within clear limits, which I shall not discuss here).

Kant offers a contractualist, but nevertheless innovative, justification (which surprisingly makes no mention of rights to freedom) for this core of social rights: "The general will of the people has in fact united itself into a society [*Gesellschaft*], which has to be perpetually maintained; and for this purpose it has submitted itself to the internal authority of the State, in order to maintain the members of this society even when they are not able to maintain themselves. By the fundamental principle of the State, the government is justified and entitled to compel those who are able, to furnish the means necessary to preserve those who are not themselves capable of providing for the most necessary natural needs. The wealthy have thus acquired an obligation to the commonwealth, since they owe their existence to an act of submitting to its protection and care, which they need in order to live; on this obligation the State now bases its right to contribute what is theirs to maintaining their fellow citizens. This can be done either by imposing a tax on the property or commerce of citizens, or by establishing funds and using the interest from them, not for the needs of the State […], but for the needs of the people" (*MS*, AA 06: 326; tr. A.P.; *cf*. Kant, 2012, p. 101).

The preservation of society is the ultimate end for which single individuals have united. "To preserve and maintain society" means to preserve and maintain each of its members. It is from this principle that the State derives its right to demand of its wealthy members to help those who cannot secure the means for their own maintenance. The legitimacy of this demand is based on the fact that even the wealthy have entrusted themselves to the protection and care of the State, which guarantees them an important series of rights, but also expects to be compensated economically. Kant goes so far as to suggest that the poor be protected with state funds whose interest could be used to this end, with voluntary contributions or indeed with legal taxes (*current contributions*), "the only ones that are conformable to the right of the State" (*ibid.*; tr. A.P.), which cannot abandon its commitment *vis à vis* anyone who has to live as a fellow citizen.

[2] From this point of view, of particular relevance is § 41, "Transition from What is Mine or Yours in a State of Nature to What Is Mine or Yours in a Rightful Condition Generally" (*MS*, AA 06: 306-307; Kant, 2012, pp. 84-85), together with the section entitled "On the Division of Morals as a System of Duties in General" (*MS*, AA 06: 242; Kant, 2012, pp. 33-34).

The proposal for the maintenance of children left in orphanages is equally interesting. The State has the right to impose responsibility for this rise in population upon the people and, to this end, to tax "elderly unmarried people of both sexes generally (by which I mean wealthy unmarried people), since they are in part to blame" for the unhappy outcome, namely, "for there being abandoned children" and for not having contributed, in their turn, to creating families in which they would have been raised up. All the same, Kant admits that this is "a problem which has not yet been solved in such a way that the solution offends against neither rights nor morality" (*MS*, AA 06: 327; tr. A.P.; *cf*. Kant, 2012, p. 101).

Thus, Kant appears adamant about introducing a reference to social rights within state law – that would be a sort of practical experiment to try out the principle of *public* or *redistributive justice*. He remains reluctant, however, to use the term "social rights" and at any rate discusses them in a part of the work that is of lesser importance (but that is still revealing of the double 'citizenship' that they possess in the public sphere and the private one, as well as of the not already systematically consolidated place. In this sense, Kant's treatment of the subject appears to be in a decidedly "precarious balance" in relation to the rest of *The Metaphysics of Morals*.

3 The grounding context

Starting from this awareness, I would like to argue that a certain foundation for the legitimacy of social rights can, in fact, be found in Kant. Thus, the main thesis we are going to present affirms that Kant does offer an early discourse on social rights, and that this discourse can be found within the *Groundwork of the Metaphysics of Morals*, a text whose very purpose was to provide the foundations for the later work.

As is well known, Kant's 1785 text was intended as the first part of *The Metaphysics of Morals* and as an exposition of the general underlying principles of that work as a whole. According to the author's intentions, therefore, the *Groundwork* should be regarded as a meta-ethical work, namely as a foundation for the philosophical domain which he considers the science of the "laws of freedom" (*GMS*, AA 04: 387; Kant, 2010, p. 1). Thus, the *Groundwork* constitutes a preliminary theoretical stage to the *Metaphysics of Morals*, a project which Kant would only manage to complete in 1797, though the idea itself had originated in the mid-1760s and is evidenced in many of Kant's correspondences.[3]

Concerned as it is to determine the structures in which reason manifests itself in practice, the *Groundwork* moves beyond the distinction between *ethics* and *right* that is so explicitly drawn up in *The Metaphysics of Morals*, concentrating instead on the definition and elaboration of those principles that would apply in both spheres of pure practical reason.

By highlighting the peculiarity of the 1785 work, I am not arguing that Kant had not yet conceived of the distinction between *morality* and *legality*, between "internal legislation" and "external legislation", and ultimately between ethics and right, which would lie at the heart of the *Metaphysics of Morals* (Capasso and Pirni, 2021). This distinction is, in fact, apparent in the *Course on Natural Law*, which was held by Kant in the summer term of 1784, i.e. at exactly the time when he was completing the *Groundwork* (whose production lasted from the

[3] See the following letters by Kant to Johann Heinrich Lambert (31 December 1765; *Br*, AA 10: 56), to Johann Gottfried Herder (9 May 1768; *Br*, AA 10: 74), again, to Lambert (2 September 1770; *Br*, AA 10: 97), to Marcus Herz (7 June 1771; *Br*, AA 10: 123; and another one datable to around end 1773; *Br*, AA 10: 145), to Moses Mendelssohn (16 August 1783; *Br*, AA 10: 346-347), to Heinrich Jung-Stilling (datable after 1 March 1789; *Br*, AA 13: 495). On this point see Beck (1960, pp. 5-18) and Ludwig (1998, pp. xiii-xxvi).

autumn of 1783 to the summer of 1784) (*V-NR/Feyerabend*, AA 27: 1326).[4] *Ethics* and *law* differ in terms of the motivation that underlies the same actions, be it pure intention or coercion. Nevertheless, the "nature of the obligation" remains identical in the case of both virtuous and juridical duties.

Moreover, the idea of the obligation (*Verpflichtung*) makes an important reappearance in the "Introduction to the Metaphysics of Morals". Here Kant resumes and also develops the meta-ethical line of reasoning inaugurated in the *Groundwork*. In Section IV of the Introduction, whilst discussing those "concepts [that are] common to both parts of *The Metaphysics of Morals*", Kant defines an obligation as "the necessity of a free action under the categorical imperative of reason" (*MS*, AA 06: 222; Kant, 2012, p. 15).

It is worth drawing attention to Kant's remarks concerning the syntactic formulation of the imperative in the "Introduction to the Doctrine of Right", and in particular to his definition of the "universal law of right": "Act externally in such a way that the free exercise of your *arbitrium* [*deiner Willkür*] can be able to coexist with the freedom of everyone in accordance with a universal law" (*MS*, AA 06: 231; tr. A.P.; *cf.* Kant, 2012, p. 24) (*cf*. Goyard-Fabre, 2004, pp. 64-70, 120-149). This is the formula of what has been called "the categorical imperative of the law".[5] Thus, by focussing on the categorical imperative, the *Groundwork of the Metaphysics of Morals* furnishes Kantian thought with a key idea, which the author himself would implement in both an ethical and juridical context.

4 The communitarian outcome of the categorical imperative

Let us then focus on the "Second Section" of the *Groundwork*, where the concept of the categorical imperative is expounded.[6] In this context the reader "encounters" the expression "kingdom of ends" (*Reich der Zwecke*). After having elucidated the *principle of universalisation* and the idea of *man as an end in himself*, Kant condenses the first two formulations into a single one by articulating the principle of *autonomy*, which emphasises the self-legislating capacity of subjects considered from a universal point of view. The kingdom of ends "derives" from and encompasses the principle of autonomy, thus reifying in itself all the other formulations that make up the categorical imperative (*cf*. Pirni, 2006, pp. 28-36; Mordacci and Pirni, 2014). It is a sort of additional, and therefore more comprehensive, synthesis that completes the individual dimension of the imperative, raising it to a supra-individual, communitarian and social plateau. "By a *kingdom* I understand a systematic union of various rational beings through common laws. Now since laws determine ends in terms of their universal validity, if we abstract from the personal differences of rational beings as well as from all the content of their private ends, we shall be able to think of a whole of all ends in systematic connection (a whole both of rational beings as end in themselves and of the ends of his own that each may set himself), that is, a kingdom of ends, which is possible in accordance with the above principles" (*GMS*, AA 04: 433; Kant, 2010, p. 41). As I have argued elsewhere (Pirni, 2000, pp. 21-36, 61-80), the *kingdom* represents a community of rational beings placed in a systematic connection that is mediated through shared laws *(gemeinschaftliche Gesetze*), a totality (*Ganzes*) in which all freely obey the law

[4] See also Kant's courses on Moral Philosophy (*V-Mo/Collins*, AA 27: 271-272, *V-Mo/Mron II*, 29: 611-619; *V-PP/Powalski*, AA 27: 131-133, *passim*).

[5] This last expression is by Otfried Höffe (1994, pp. 11-29 and 126-149; 1999). Equally, one can find at least three explicit references to the juridical role of the categorical imperative in the same work (see *MS*, AA 06: 318, 336-337, 371).

[6] For a "classic" comprehensive framing see Paton (1947). Among the most recent studies are Höffe (1989), Horn and Schönecker (2006), Timmermann (2007) and Allison (2012).

that is given to them (and which they simultaneously share with all others) and abdicate their own particularity, thus recognising the autonomy of all other subjects.

Besides, if the totality of all ends can be considered separately from "the personal differences between rational beings and the content of their private ends", this does not immediately negate these ends. The problem here is merely a matter of subordination. First, one has to recognise the *kingdom of ends* as a teleological and moral whole in which each rational being has to find his place. The totality of ends that is formed in this way will include all rational beings insofar as they are ends in themselves and grant to each of them permission to pursue their own ends as long as they are compatible with the moral law.

5 A twofold grounding

But in what sense and to what extent can the *kingdom of ends* be understood as the complete foundation not only for a communitarian structure, but also more specifically a juridical community? To help answer this question it is worth recalling that the categorical imperative is applied in two different spheres in the *Groundwork*. In fact, the *kingdom of ends* gives rise to another formulation of the imperative: "Act according to the maxims of a member of a merely possible *kingdom of ends* legislating in it universally" (*GMS*, AA 04: 439; tr. A.P.; *cf*. Kant, 2010, p. 46). Thus, in keeping with the entire theoretical configuration of the *Groundwork*, the kingdom of ends must be understood as the origin of both ethical and juridical norms and, therefore, as their source of legitimacy within Kantian thought.[7]

This thesis, however, needs to be bolstered with a closer reading of the *Groundwork*. All members of the *kingdom of ends*, as rational beings, possess the dual quality of being both ends in themselves and agents capable of generating their own ends. Respect for any rational being *qua* end in himself implies respect for his freedom of action, and a tendency to consider and promote all attempts to develop and perfect his intellectual freedom, those predispositions and moral qualities that nature has granted him – especially when they can translate into concrete actions.

This moral obligation to treat all rational beings as ends gives rise to a juridical problem, namely, how to determine the extent to which respect for one person's liberty of action does not infringe on another person's exercise of liberty. This is the problem of right.

In order to discover the fullest definition of the concept of right, we are used to turn to the "Introduction to the Doctrine of Right" (*Rechtslehre*).[8] Kant, however, had already come up with a perfectly satisfying definition for it in the "Course on Natural Law" which he held in the summer term of 1784, precisely at the time that he was completing the *Groundwork*: "Right is the limitation of freedom, through which liberty can exist alongside all other liberty according to a universal rule" (*V-NR/Feyerabend*, AA 27: 1320; tr. A.P.).

Kant's speculation occurs in a space where interiority and exteriority are bound together and fuse *systematically*, once again precipitating a continuity between spheres that could easily be considered distinct. The moral respect that one owes to the internal freedom of others is the same as the respect that is owed to the exercise of this freedom, to the actions of others, which in turn occur in a world of social relations, a sphere of shared exteriority, a juridical community, in which individual action is not framed in self-referential terms, but rather includes and respects all possible others.

[7] Other scholars could agree with the thesis of the kingdom of ends' double sphere of application. I refer firstly to Pasini (1974), Quattrocchi (1975, pp. 146-157) and Taylor (1985).

[8] "Right, therefore, is the sum of the conditions under which the *arbitrium* [*Willkür*] of one can be united with the *arbitrium* of another, according to a universal law of freedom" (*MS*, AA 06: 231; tr. A.P.; *cf*. Kant, 2012, p. 24; see also *TP*, AA 08: 289-290).

6 Conclusion: Kant's moral concreteness

The *kingdom of ends* presents itself as the necessary context for the actualisation of the law and, at the same time, as a framework offering concrete guidelines for the conduct of a moral life. It therefore justifies itself as the proper scenario for the full and effective realisation of the human condition.

In what terms does the existence of concrete "content" within the *kingdom of ends* make this concept in some way "intermediary" in relation to both the ethical and the juridical community? The justification of this intermediary character corroborates the ground-breaking nature of Kant's 1785 work and also helps us understand the social sphere, even if this remains a latent aspect of Kantian thought at best. What then are the *moral contents or values* that one can spot in the *kingdom of ends* and that relate to the pursuit of those social rights that were mentioned at the outset?

The treatment of the human being as *an end in himself* and a *person* constitutes the primary and most patent value enshrined in the kingdom. Only within the *kingdom of ends* does the human being have to consider every other human "always as an end in himself" and can therefore expect to be considered as such by everyone else. This first fundamental value entails two additional (and interconnected) ones: *self-determination*, namely the free pursuit of individual ends, which is justified within this communitarian structure only insofar as it is combined with mutual *respect* and recognition of the other's *dignity*.

The recognition of the *dignity* of each rational being, that is the recognition of humanity as "capable of morality" (*GMS*, AA 04: 435; Kant, 2010, p. 42), furthermore implies an element of *solidarity*, mutual assistance in the pursuit of individual happiness which, as Kant suggests, consists in the promotion of humanity in each man and the development of his rational nature. The promotion of humanity, which occurs in the context of a forever-changing relationship among human beings, also implies the value of *responsibility*, acknowledgement of the fact that my actions affect not only me but also all other rational beings with whom I engage in "systematic connection".[9]

It is this set of values that the *kingdom of ends* succinctly expresses – and that Kant implicitly refers to when he invokes "communitarian laws" (*gemeinschaftliche Gesetze*) in his definition of the kingdom. In this sense the "laws" are no more than a bond shared by a social group and intended to preserve and promote a specific set of values. At the same time, this reference to the laws inevitably brings to mind the *law* of the imperative. Corresponding to a state of obedience towards the law of morality, these values are imposed by practical reason upon all rational beings and, as such, are constitutively shared by all rational beings. The *kingdom of ends* turns out to be a *community of moral content* insofar as it implies a commonality of fundamental values.

This duplicity allows us to perceive the *kingdom of ends*' dual nature as both an *ideal* and a *practical idea* (*GMS*, AA 04: 433, 436). It takes us back to the passage in the *Critique of Pure Reason* where Kant asserts: "as the idea gives the rule, so the ideal serves as the archetype for the complete determination of the copy" (*KrV*, A 569 / B 597; tr. A.P.). The *kingdom of ends* as an *idea* "gives the rule", i.e. it proposes the final and most comprehensive formulation of the imperative ("Act according to the maxims of a member of a merely possible *kingdom of ends* legislating in it universally" – *GMS*, AA 04: 439; tr. and italics A.P.; *cf*. Kant, 2012, p. 46). In this regard, it presents itself as a "constitutive structure" which ought to guide and determine the conduct of the rational being on account of its moral authority and the continual invocation of shared values. On the other hand, as an *ideal* image of the community, the *kingdom of ends* represents the archetype of perfection and becomes a

[9] About this specific point see first Paton (1947, pp. 207-222 and 266-278) and Chiereghin (1991, pp. 76-101).

regulative model for all concrete relations between rational beings (*cf*. Rigobello, 1974; 1975; Cunico, 2018, pp. 113-134).

The *kingdom of ends* finally reveals itself as a theoretical structure that imposes on the common – *critical* – reason the necessity of "not leaving anyone behind". The same communitarian structure it creates is in charge of delivering this command as a practical and realistic claim – and not just as an utopic or rhetorical one. Any being that is capable of reason is called to pursue her/his individual goals, but with a sole limitation: in accordance to the moral law. This means that every person has to consider any other not just and only as a *means* to reach her/his own goals – or as an "obstacle" that can be misrecognised or avoided, rather as an *end* in itself that has to be respected over any other contextual consideration. In this sense, then, the kingdom of ends grounds the moral legitimacy of social rights, and commands the implementation at all levels, by ensuring to the juridical one the role of finalising the foundational process and implementing it in the form of a shared norm that is protected by the State.

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