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DISCUSIÓN

Employment, status, hierarchy: on Jordan Pascoe, *Kant's Theory of Labour*

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ENG **Abstract:** This article responds to Jordan Pascoe's *Kant's Theory of Labour*, with its twin focus on labour and intersecting forms of injustice. I open with some admiring remarks as to why her project proves so fruitful and insightful. In the following sections, I offer a friendly amendment to Pascoe's account, focussing on paid work in democratic states. Like Pascoe, I believe that employment relations stand in basic tension with Kantian innate equality. However, I also believe that her account underplays this tension. To make this case, I offer two reservations about the typology of paid work which Pascoe draws from Kant. First, this typology does not accommodate professional work, although Kant considers this in several places. Second, it ignores the distinctive legal form of employment, which is hierarchical. This brings employment closer to Kant's account of domestic right than to his account of contract. Assuming that employment hierarchies are essential to organising people's social contributions, I suggest this hierarchy requires formal counterbalancing measures. From an intersectional perspective, such measures are especially important, as labour organisers everywhere have shown.
Keywords: employment, status/domestic right, authority, inequality, intersectionality

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1. Kant, the unsurprising theorist of labour

In *Kant's Theory of Labour*, Jordan Pascoe makes a bold and innovative contribution[1]. Before Pascoe's book, it would have seemed strange to see Kant as a theorist of labour. What could we learn about labour from the thinker who emphasises humanity's capacity for pure reason, or who tells us that people should *not* use others merely as means? In retrospect, as with so many major contributions, labour seems an obvious and vital focus point.

Of course the thinker who cautioned that people must not *only* be means[2] for one another realises that people are everywhere means for each other: why else make the point? No surprise that the thinker who knows that people are means for one another thought a great deal about labour. *Of course* the philosopher of *finite* rational beings knows that people must apply themselves — simply to live, never mind to do our duty by one another. No surprise that he recognises human beings as "the only animal which must work" (*Pedagogy* 9:471, quoted p. 25). *Of course*, finite rational beings must deliberately learn how to act as means to a range of ends ("develop their talents"). To treat others as ends-in-themselves, they must expend effort and thought by acting as means to their ends[3]. No surprise that Kant sees people who do not apply themselves as "lazy"

1 In this article, simple page numbers refer to *Kant's Theory of Labour* (Pascoe 2022). I refer to Kant's works by the usual <volume number>:<page number> in the standard Academy edition. Citations from volume 4 are the *Groundwork of the Metaphysics of Morals* (1785); volume 6 is the *Metaphysics of Morals* (1797). Translations rely on the Cambridge edition (with occasional amendments), except where I cite a further edition.

2 I say "only as means" because I think the familiar translation, "mere means", has come to obscure Kant's point. "*Bloß*" (only or mere) does not point *away* from our role as means for one another. In fact, we have duties to act as means for others; we rely on others who act as means for us. Rather, it points to the other aspect of his famous formula, that people are ends-in-themselves. That is, "not only as means" implies *ends as well as means* for one another. — I remain very grateful to Pauline Kleingeld for highlighting this phrase to me, in Kant's formula of the realm of ends: "these beings' relation to one another, *as ends and means*..." (4:433, my emphasis; see also Mieth & Williams 2022 & 2023).

3 My thanks to Martin Sticker for this way of putting the point.

(pp. 25ff): they fail in their duties to become "useful human being[s]" (4:423) and to be "useful member[s] of the world" (6:446). Last but not least: *of course* finite beings are tempted to increase their powers of action by dominating others — that is, by using them *only* as means (Kleingeld 2024, p. 166). No surprise that the principal site of domination, exploitation, and instrumentalisation is *labour* — be it paid or unpaid, consenting or coerced.

With the benefit of hindsight — that is, with the benefit of Pascoe's contribution — it is also clear that labour provides an ideal lens for an intersectional reading.

Many scholars have explored different forms of injustice in Kant's thought. Deliberately or tacitly, Kant's account of right recognises unjust structures that remain important to the present day: in the household, in markets for goods and services, in access to means of subsistence and production, across borders at once created and breached by colonialism. Sometimes Kant treats structural problems in a scant or ambiguous way: for example, people's formal equality as property-holders does not address the vulnerability of those who own little or are mired in debt. Sometimes, Kant rationalises injustice: for example, in his theory of race or attitudes to homosexuality. Sometimes, his legal categories solidify injustice: domestic right and "passive citizenship" reinforce women's subordination and a range of further injustices. Too often, he ascribes laziness to the powerless, rather than to those who live off other people's labour. In depth and detail, Pascoe shows how these problems intersect and interact, in ways that remain all too relevant today.

Pascoe also stresses another Kantian idea that remains relevant to contemporary debates: people can overcome disadvantage by individual effort (pp. 10f, 46ff, 53). Everyone, says Kant, should be able to "work his way up" (6:315) to full civic status. I will return to Kant's categories of citizenship below (§3). For the moment, let me just observe how Kant's careless principle resonates with familiar meritocratic ideas. The injunction to "work your way up" demands additional labour from those who already have no choice but to labour for others. It ignores the hierarchical structures that constrain people's choices and enforce their efforts. As Pascoe observes, even if it were "the case that *anyone* can work his way up, it is not possible for *everyone* to work their way up, since *someone* will have to do dependent labour" (p. 18). So Kant replaces "a hereditary class hierarchy with a class hierarchy based in labour distinctions" (p. 11 n. 15).

In different ways, then, Kant fails to honour the animating principle of his political theory. Every person has the *innate right* to "*[f]reedom* (independence from another's necessitating faculty of choice), insofar as it can coexist with the freedom of every other in accordance with a universal law" (6:237). This leads to the idea of *innate equality*: no person should be "bound to others to more than [they] can in turn bind them" (6:237f). In Kant's mature political theory, feudalism, slavery and colonialism fail this test. Still, not everyone enjoys "active" citizenship. There are "natural" sexual differences; commentators disagree whether Kant clung to his theory of heritable racial characteristics. Accidents of birth and inheritance spell privilege for some. Many people are born into the dark legacies of injustice.

On one view, civic equality is still relatively easy to achieve. Having left behind Kant's two-tier view of citizenship, modern legal systems now also outlaw discrimination. Not least, employers must not discriminate on grounds of sex and race, among other factors. This means that everyone can climb out of the "basement" of disadvantage, in Crenshaw's famous image (1989, pp. 151f, quoted Pascoe, p. 47f). Or at least: people can get out if they apply themselves properly. We do not need any further theory of injustice.

Crenshaw's analysis of intersectionality, central to Pascoe's work, insists that disadvantages intersect to create profound structural injustices, scarcely touched by these formal equalities. Seen in this light, Kant's "work your way up" principle corresponds rather too well to a simple-minded notion of meritocracy — simple-minded, that is, because it ignores the compounding effects of social disadvantages and injustices.

At the same time, we can still draw on Kant's systematicity: he does not *simply* ignore what is going on in the basement. To be sure, he fumbles and stumbles in the dark; the ideas are often wrong-headed and insulting. Systematicity is not enough for universalisation, especially if some people cannot speak or you do not think they are worth listening to.

But as Pascoe shows, Kant's missteps also point to lasting problems — problems that we still do not have ready solutions for. In Dilek Huseyinzadegan's words, "we all know [or perhaps, *should* know — GW] these contradictions exemplified in Kant's work are in fact representative of the larger contradictions of our lives today and are not so easily undone" (2018, p. 16, quoted Pascoe p. 2). How to organise and recognise the labour of child-rearing and care of dependents? How to understand and overcome structural racism? How to support people who might be willing to work but find no useful employment — not least, because so much labour is outsourced to sweatshops and carceral factories overseas? — Too often, Kant speaks from privilege; of course, he speaks from a time that is not ours. Nonetheless, his systematicity makes Pascoe's intersectional focus productive in ways that many of us did not anticipate.

2. Paid work is formally unequal; there are high political stakes here

In what follows, I would like to dwell on one specific problem: the legal ordering of paid work in democratic societies. Depending on cross-cutting forms of injustice or privilege, employment differs widely. For a few, employment is a source of status, recognition, authority, opportunity, not to mention "disposable" income. The constraints involved may be gladly accepted and seem hardly binding at all. For many, however, employment means exploitative, humiliating or dehumanising demands. You may be formally free to leave your job; materially, you have no choice but to accept poor conditions and poor treatment. For still others, even bad jobs look relatively privileged. Many people find no paid work; others lack basic legal protections. Here, I will highlight some problems of the so-called "gig economy".

To explain these diverging faces of paid work, I would like to offer a friendly supplement to Pascoe's account. Kant and Pascoe assume that employment is contractual *in form*. Social and material disadvantages, intersecting in different ways, mean that much employment is inequitable or even exploitative. Formally, however, employment has the equality of contract.

On the view I will sketch, employment is formally unequal. That is also to say: it is not purely contractual in form, as Kant understands that term. Lawyers sometimes refer to "the employment contract", where the definite article points to a category in its own right. Unlike contracts for goods and services, modern legal systems lay down a distinctive structure for employment. This hierarchical form parallels the form of right that Kant articulated for the domestic sphere. Indeed, it descends from it: historically, the master-servant relation provided the basis for employment law[4]. Although this form brings privilege and authority to some, it spells subordination for many. Overlapping forms of injustice intersect with the hierarchical form of paid work.

There are high political stakes here. Libertarian and right-wing authors often claim that states should not "interfere" in employment contracts[5]. They criticise a whole range of measures: minimum wage regulation; rights to holiday and sick pay and parental leave; health and safety standards; laws against unfair dismissal; rights to participate in unions, industrial action and workplace decision-making; rights against discrimination on grounds of race, sex and disability... All these laws can be seen as interfering in the freedom of employer and employee to strike whatever bargain they might wish[6]. On this view, the "gig economy" represents a welcome liberation from legal interference. Complex regulations designed to provide employees with some rights and protections are mere "red tape", to be abolished in favour of contractual freedom.

The stakes are even higher when we recall how many disadvantages intersect with the social and material importance of employment — so central to income, security and status in our societies. People who enjoy social privileges may find well-paid, rewarding forms of employment. The most fortunate may even negotiate especially beneficial contracts. Those who lack these privileges face a much worse situation with few decent options. Those facing multiple forms of disadvantage are frequently subject to terrible treatment and conditions. (See Elizabeth Anderson's biting reply to Tyler Cowen: 2017 pp. 131ff). Sometimes this problem is compounded by law. At least in the US, its relatively weak protections never covered all workers anyhow. As Pascoe points out, New Deal labour laws deliberately *excluded* domestic and agricultural work, traditionally non-white and often female (pp. 44f).

If we understand employment as formally unequal, we have clear Kantian grounds for resisting the "freedom of contract" view. Formal inequalities mandate formal remedies. Employees' rights and protections are not interferences in market freedom. They are, instead, basic preconditions for bringing some degree of equity to a formally unequal relationship (§7).

3. Pascoe's three-fold account of Kantian labour

Kant sets out three forms of acquired right. The first two were traditional: property, as regards things; contract, as regards other people's actions. The third is Kant's innovation: domestic right concerns one person's status vis-à-vis another person. As Kant also says, it is a "right to a person akin to rights to things" — *auf dingliche Art* (6:276): *thing-like*, even though a person can never be used as a thing.

As Pascoe points out, this permits Kant to theorise hierarchical social relations *without* relegating some people to the status of property — or, I would add, admitting that they would be used *only as means* (cf. p. 34). People must never be slaves or bondsmen, *Sklaven* and *Leibeigene*[7]. Nor may they be wives under couverture, stripped of legal personality. Nonetheless, people may be enclosed in the household, subject to the rule of master or husband. We should therefore view Kant's "rejection of rightful slavery" with a suspicious eye. For Pascoe, it is also "a careful defence of enclosed dependent labour" (p. 39).

This thing-like right to a person is always a *domestic* matter for Kant[8]. It takes three forms. There is the parent-child relation, whereby parents work so that children can develop their own capacities. (Recall Kant's

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4 See Tomlins 1995, and the books he discusses there; Deakin & Wilkinson 2005, Ch. 2 The Origins of the Contract of Employment. See also Carole Pateman's *The Sexual Contract* (1988) for a wonderful development of these connections.

5 See Epstein 1983 for a classic example of this line of thought, which he later developed in many more articles and books.

6 Let me note and endorse a point Pascoe makes in her reply to this article (§ III). In the US, employers' duties include health care insurance; public authorities have no such duties to most unemployed persons. This gives employment a semi-feudal aspect. Obeisance to the feudal lord brought some protection against arbitrary violence and dispossession. For many people, submitting to an employer's authority is the only route to health care — a protection that can be just as vital. Important as employers' duties are, they may not displace *public* duties to uphold personal and social security.

7 I set aside Kant's dismaying exception: that crimes may be punished with bondsmanship (6:333) or "carceral slavery" (p. 39f).

8 Byrd and Hruschka suggest an alternative view: Kant's table of contracts (6:285f) allows for contracts that concern another person's status (that is, the form laid down in domestic right): "I can transfer possession of my choice with respect to performing certain acts, meaning I can submit to someone else's (an employer's) directions... [Or] I can transfer my person, meaning I can enter into community with another through which I have duties of loyalty and duties of care... In a business relation, a mandatory's acceptance of a mandate is essentially the same as the mandatory's transferring his person to a community with the client" (2010, p. 255, my emphases, referring to 6:285, items B.II.β and B.II.γ respectively).
Byrd and Hrushka illustrate these cases as follows. For *choice*: "I may transfer the use of my labor in the sense that I come and operate a machine" (255) in the other party's factory. Regarding *my person*: I may become an agent or "mandatory", by agreeing "to act on [the other party's] behalf to the full extent of my abilities to run her factory" (256; likewise Byrd 2002, pp. 127f). I would rather stress the commonality of these cases. Both are employment relations, respectively manual and managerial. In both cases, the relation is hierarchical, because one party gains the authority to direct the other party's actions and goals, and to judge how far their performance is satisfactory.
To emphasise the point, let me highlight Byrd and Hruschka's phrase, "possession of my choice". In contracts for goods or services, I transfer *actions* — duties to pay or deliver, for example. In case of employment, Byrd and Hruschka's "choice" is correct

abiding gratitude to his own parents: 13:461, as quoted by Kuehn 2001, p. 31.) Then there are marriage and domestic service. Wives and servants work — sometimes to care for children, and always so that the head of household can present himself as independent. In the case of servants, there is a contract for paid work. But this overlays a distinct form of right, based on the head of household's authority.

By contrast, Kant frames non-domestic employment only as a matter of contract right (6:285f), including "letting of work on hire" and "empowering an agent". Pascoe follows Kant's suggestion. Outside the household, worker and employer "are equal in relation to the contract, even if the contract sets out a relationship of inequality" (p. 8 n. 9). I will return to this claim below.

In addition, Kant distinguishes forms of work in terms of whether they are compatible with civic independence. Notoriously, Kant upholds two tiers of citizenship: active versus passive. Alongside women and servants, Kant consigns many non-domestic workers to the status of passive citizens:

> a shop clerk, a day labourer, or even a barber are merely *operant*, not *artifices* (in the wider sense of the word) and not members of the state, and are thus also not qualified to be citizens. ("Theory and Practice" 8:295n)

As Kant puts it in the *Doctrine of Right*, these people "have to be directed or protected by other individuals": servants, apprentices, "all womanhood", private tutors, and more depend "upon the will of others" (6:315). These people are passive in the double sense that they are "directed" by another and excluded from civic participation — voting, for example.

By contrast, a school teacher, wig-maker or tailor qualify as active citizens. So does:

> an artist or craftsman, who makes a work that belongs to him until he is paid for it... The latter, in pursuing his trade, thus exchanges his property with another (*opus*), the former [shop clerks and so on — GW], the use of his powers, which he grants to another (*operam*). (8:295n)

Active citizens owe their "existence and preservation not to the faculty of choice of another among the people, but to [their] own rights and powers as a member of the commonwealth" (6:315, my emphasis).

Kant's distinction is untenable. No modern commentator accepts it and no modern legal system retains it. The "civil and material independence" of Kant's active citizens is, as Pascoe says, an "illusory ideal" (p. 53).

In material terms, the active citizen's independence is an illusion because it depends on other people's labour — not least, the wives and servants and many others who Kant relegates to the status of passive citizens. In the master's house, or in his fields and factories, some people must work as the master's tools. These people are not passive at all; it is just that someone else has claimed possession of their active powers.

In civic terms, the passive citizen's dependence is less a material fact than a legal tautology[9]. Passive citizens cannot be civilly independent because they are civilly dependent: because legal systems disenfranchise them, because the lawful deprivation of property and civil rights leaves them no choice but to labour as means for others' ends. By contrast, law ascribes civil independence to "active" citizens who depend on the laborious activity of law's "passive" citizens. Some people's civil equality betrays everyone's innate equality. Kantian right creates an illusion that betrays its own ideal.

But however untenable we find Kant's view, he certainly held it. On Pascoe's account, it leads Kant to a three-fold typology of labour. There are independent workers (active citizens), dependent workers outside the household (passive citizens), and domestic workers (also passive citizens).

Pascoe aligns these with Kant's three forms of acquired right. First, corresponding to *property right*, there are independent labourers who own the products of their labour (craftsmen, for example). Second, corresponding to *contract right*, there are "dependent labourers" who contract out their labour — or "the use of [their] powers". Third, in accordance with *domestic right*, there are domestic labourers — wives and servants, enclosed within the household.

I would like to suggest a different configuration. I agree with Pascoe that Kant's framing is apt for two categories of work. First, domestic labour is a special case, although (with Pascoe, but not Kant) I would stress that it calls for legal protections rather than civic disqualification. Second, Kant's craftsmen and tailors are independent contractors or sole-traders. In modern law, they count as *self*-employed — workers but not employees. Typically, they contract with many people or organisations to sell a product or a service. As such, their activity fits within the more straightforward category of contract[10]. Formally, these legal relations are equal, even if broader power relations create problems of inequity and even exploitation. These independent

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and significant: I do not transfer specified actions; rather, the other party now *chooses my actions for me*. This also carries into the managerial case: my choice is determined by the employer's ends.

In addition, nothing in Kant's discussion of domestic right suggests that he extends this form beyond the household — that is, I do not see textual grounds for Byrd and Hruschka's view. Still, I am arguing that Kant *should* have taken this step (see also Castro 2013, Ripstein 2009, pp. 73ff). Simply, this is how we should understand employment in all its forms, not just domestic servitude.

9 Kant comes close to stating this tautology in his draft for "Theory and Practice": "The set of capacities which makes this [civil] independence possible rests upon one who, regarding his subsistence, has within himself *a part of the state's powers* that rests upon his free choice (a household)" (Stark 245, as translated in Kant 2016, p. 192, my emphasis; quoted by Pascoe 2024). In other words, civil independence depends upon a grant of legal power to govern others who enable your subsistence.

10 I have a smaller disagreement with Pascoe here: I don't think we can map the three forms of acquired right to the three forms of labour. This is not only because employment exceeds the bounds of contract and domestic right may involve contract. We also need both property and contract to frame the activity of independent labourers. The wigmaker or tailor, for example, work on their own materials, or at least use their own facilities, and they produce something that is their property. But selling this to customers is of course a matter of contract.

contractors were a minority in Kant's day, and they are an even smaller minority now. This leaves all those people who "contract out" their labour, outside the home, within a given place of work.

4. Where does professional work fit?

First, let me note another type of work that does not fit Pascoe's threefold schema: professional work. Think of the offices Kant mentions in "What is Enlightenment?" — army officer, civil servant and priest — as well as his own position as a professor[11]. Or recall the school teacher already mentioned. Kant plainly thinks that these workers are "qualified to be [active] citizens" (8:295n).

But these workers are not independent labourers and they do not make a product to sell. In Kant's words (8:37f), professionals act as "passive members", "parts of a machine", carrying out "*einen fremden Auftrag*" — someone else's commission or purposes. Most famously, they make "private use" of their reason. It is hard to dispute that they grant the use of their powers to another[12]. They do not exchange their property — an *opus.* What matters is their activity — "*operam*".

According to the *Feyerabend* lectures (27:1362f), Kant finesses this issue as follows. Unlike barbers and day labourers, professionals' activity goes beyond what can be coerced. So payment takes the form of an honorarium, rather than a wage. As Pascoe suggests (p. 8), a salary might also be seen in this light: Kant elsewhere contrasts a wage (*Lohn* or "*merces*": 6:234, 6:285) with a salary (*Besoldung*: 6:328, 20:466) or official income (*Einkünfte eines Amts*: 23:137). Money changes hands, but the contract should be considered more in the spirit of a "gentleman's agreement". It involves matters of honour and "conscientiousness" that go beyond a rule (27:1363) and stand above ordinary contract[13].

In my view, this distinction is self-serving. Iris Young (1990) has offered a powerful critique of how a similar hierarchy — between waged and salaried work, manual and managerial work — continues to structure our workplaces. (See also Anderson 2017, pp. 37, 134.) This is one reason paid work can look so different, depending on intersecting forms of privilege and disadvantage. To varying degrees, professionals and managers exercise independent judgment and authority over others. They can live comfortably, even if their work is demanding and their hours long. There are opportunities for promotion, home ownership, a liveable pension. We know how important parental advantage — if not in-born, then at least something that people are born into — is for the education and opportunities that allow some people to gain these roles. By contrast, so-called "unskilled" work (waged, manual, care, service, tipped) brings fewer rewards and opportunities, and greater subjection to authority.

These differences make huge differences to people's lives and life-chances. But let me underline the common structure. It is not just domestic servants or "dependent labourers" who grant others the use of their powers. This is also true for highly paid managers and professionals: the employer makes use of their powers and sets their ends. By this criterion, all of them lack "independence".

5. Employment as a status relation

Second, and more importantly, I want to suggest that we should conceptualise employment using terms from domestic right, not just contract. Although we, like Kant, recognise contracts of employment, the deeper form of this relationship involves a legal *status*. This is the other term Kant uses to express domestic right: another person's "*status* in relation to me" (6:247; also 6:259).

In other words, I don't think we can fit these forms of labour against Kant's categories of acquired right in the way that Pascoe suggests. We go wrong if we understand either manual or professional employment only in terms of contract, and disregard the status involved. This is an authority relation, with a principal-agent structure: one person acts and works on another's behalf, or most often, on behalf of an organisation.

Like domestic work, this is formally *un*equal. Wives and servants are subject to the authority of the head of the household. Employees are subject to the authority of the employer. Professionals use their reason privately, obeying the rules and serving the purposes of their employers. Manual, care and service workers do the same with their skills and powers, rational and otherwise.

In the standard terms of employment law: the employee has duties of *obedience* and *loyalty* (Deakin & Wilkinson 2005, p. 108). In return, the employer has duties of care as well, of course, as duties to pay — just as the head of the household has duties of care and protection, as well as duties to pay his servants. Let me emphasise two points here.

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11 In her Element, Pascoe only refers to professionals in passing; see pp. 7f, 10 n. 12, 16 n. 20. However, Pascoe 2017, p. 613 notes that Kant's assumption that most employment is purely contractual does not fit well with expectations on the contemporary "professional and creative class". They should be always on duty "because their employment contract designates a shared set of goals rather than a concrete set of tasks".

12 Perhaps Kant would like to say that professionals still use their own powers (reason), albeit "privately". He might also say that they their powers are not used by another private individual, but rather by the state (an active citizen "earns [his livelihood] only by *selling* what is *his*, not by means of granting others the right to make use of his powers, thus that he not *serve* anyone, in the true sense of the word, but the commonwealth" — 8:295). However, this does not fit the position of priests in "What is Enlightenment?": they serve an enlarged domestic society (8:38). Pascoe cites this point to argue that contract labourers, though they cannot vote (since they are, like clergy, dependent on their employers), may engage in the public use of reason (p. 18).

13 Sharon Byrd notes a related distinction (2002, p. 127 n. 32). In a legal commentary published in 1783, Ludwig Julius Friedrich Höpfner distinguished *locatio conductio operarum* ("illiberal services") from *mandatum* ("liberal services") — depending on whether the service-giver was educated in the liberal arts. As Byrd adds, Kant discusses *mandatum* at Feyerabend, 27.2,2: 1362, and in connection with book publishing at 6:289ff.

First, these duties — of obedience and loyalty, care and payment — belong to the legal framework of employment law. Specific employment contracts add material details: role, time-frame, rate of pay. They do not and may not alter the formal structure.

Here is a striking illustration, which concerns *employees'* non-contractual duties. "Working to contract" describes an employee's refusal to go "above and beyond" the duties specified in their contract. If resolved upon through the mechanisms of trade union law, it can function as a legitimate form of industrial action, short of a strike. Outside this special case, however, courts have upheld the rights of employers to sack employees who insist only on performing their contracted duties (Bell & Desmond 2006, pp. 42f.). If this undermines the employer's interests, then an employee goes against the broader duty of loyalty (loyalty, that is, to the employer's goals and interests)[14]. Dismissal is therefore legitimate.

Here is another illustration, concerning *employers'* non-contractual duties. In the "gig economy", companies like Uber frame workers as independent contractors: self-employed, *not* employees. This is to avoid the obligations they would have toward employees: for example, duties of care, holiday and sick pay, or trade union recognition[15]. Yet the corporation employs sophisticated technologies to monitor and direct these "contractors". Supposedly independent workers are effectively subject to the dictates of a large organisation. In some jurisdictions, courts have therefore — and quite rightly, in my view — insisted that the relationship is employment, giving rise to its standard protections and benefits (Rosemain & Vidalon, 2020).

Second, these duties sustain a *formal* hierarchy — just like domestic right. This is the core of my disagreement with Pascoe, who claims that inequality does not inhere in the formal structure. As noted, Pascoe describes worker and employer as "equal in relation to the contract, even if the contract sets out a relationship of inequality" (p. 8 n. 9). But this inequality is not rooted in the specific contract that employer and employee may sign. It is built into "the employment contract" itself — that is, the set of rights and duties laid down by law, rather than chosen by the parties.

6. Sharing ends

Pascoe makes a further suggestion, concerning the difference between employment contracts and those for domestic service. How far do the parties share an end?

In the domestic context, "each party's ends are *transformed by* their agreement to share ends within the household" (p. 16). Again, this involves a formal inequality, since the head of the household has the right to set these ends (p. 17), ends which "are opaque from the perspective of law" (p. 20). In slightly different terms, the head of the household has rights "*to*" the servant (p. 19) — to their person and hence to their ends, not just their deeds[16].

Outside the household, however, employment resembles other contracts — for loans or sales or services, as the case may be. None of these contracts require either party to adopt new ends; they must only perform the duties agreed in the contract. As Pascoe puts it, then, worker and employer "can each pursue their ends (be it production or pay) through a right to the other's deed... contractual agreements... *align* rather than *transform*[...] ends" (p. 16). As in other contracts, worker and employer are equal because both have rights "to" one another's *deeds*. Each retains their distinct ends. These need only "align" in the sense that the contract represents a sensible means for them to achieve their respective ends.

There is a wider issue here about how far one person can lead someone else to adopt or transform their ends. In other contexts, Kant treats this as impossible: only I can set my ends; other people can only alter the options open to me or change the incentives attached to them. Whether we should agree with Kant on this, let me stress a more practical point — one that applies equally to domestic service and other employment. Whatever their personal ends, employees are meant to act *as if* the employer's ends matter. The servant must do what is necessary for the good of the household; the employee must do what is necessary for the employer's purposes. This is the meaning of duties of loyalty and obedience. If they don't uphold the employer's ends, the worker can be sacked.

Having mentioned hierarchies in the workplace and the difference between manual and managerial work, I should add that legal systems also interpret duties of loyalty and obedience in this light. Lower-paid workers are certainly expected to do as they are told (obedience). Loyalty does not go much beyond exhibiting the right attitude and avoiding deliberate sabotage. (Although for service workers, often female or non-white, demands for the right attitude can be oppressive indeed.) By contrast, higher-paid workers are expected to show greater initiative and commitment. That is, loyalty requires much more active participation in the ends of the employer. Kant himself recognises this:

> The domestic or civil servant under express orders needs only to have understanding. The officer, to whom only the general rule is prescribed for his entrusted tasks, and who is then left alone to decide for himself what to do in cases that come up, needs judgment. The general, who has to judge all possible cases and has to think out the rules for himself, must possess reason. (7:198)

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14 They breach the contract even though they conform to it: in other words, the legal relationship exceeds that of contract. Note the contrast with Kant's discussion of equity (6:234f): if a claim is not written in the contract, then it does not have legal force (my thanks to Ewa Wyrębska for this point).

15 On recent attempts in the US to (re)draw the line between contractor and employee — the so-called "ABC test" — see Davidov & Alon-Shenker 2022.

16 I set aside Kant's repugnant view that rights "to" a servant include rights to forcibly bring them back to the household (6:282ff, p. 15).

But then, let me note three points. First, Kant himself speaks of domestic and civil servants in a single breath: both must follow orders, at least some of the time. This is the legal duty of obedience, relevant to all types of employment.

Second, in most practical contexts, someone who *only* follows express orders is not that useful. (Compare the employee who merely "works to contract".) Continually giving orders is also an onerous task — unless perhaps it can be outsourced to sophisticated technologies, as with Uber's algorithms. The capacity to judge intelligently how to serve broader ends is what makes human beings such useful tools. It is just what Kant elsewhere calls the "private use of reason". The legal duty of loyalty captures this aspect.

Third, it often makes less difference than we might hope, what the law says. Unless there are meaningful protections against wrongful dismissal, employers can decide for themselves, just how much obedience and loyalty count as satisfactory. As noted, right-wing authors often frame such protections as "interferences" in contractual freedom: Why can't an employer terminate the contract for whatever reason they might wish, as the employee can? But as Elizabeth Anderson (2017) has argued, such freedom gives enormous power to employers. They can demand whatever they want of employees; they can judge whether an employee is delivering. Some employees are better placed to resist such demands: if they have social advantages or other decent options, for example. Employees who face compounding social disadvantages often have no choice but to accept those demands. Regardless of their personal ends, they must behave as if the employer's ends are theirs.

7. Innate equality and legal equity

Near the start, Pascoe observes three fundamental puzzles that innate right poses for employment:

> First, labour arrangements must respect the innate equality of employers and labourers; second, labour relations must be consistent with the right of each to be 'his own master'; third, labour contracts must respect our rights to our bodies as the means through which we set and pursue ends in the world, which means that we cannot enter into contracts to rent out our bodies. Kant's theory of labour must show that we can contract out our labour, while retaining rights to our person. (pp. 6f)

I have suggested that we cannot properly conceive employment in contractual terms. This only deepens these puzzles.

In contracts for goods and services, the parties are formally "equal in relation to the contract". This does not mean the results will be equitable. Weaker parties must accept worse deals; stronger parties can hold out for better. Sociologists have long documented this as the "poverty premium": as David Caplovitz put it, "the poor pay more" (1967)[17]. Intersecting forms of disadvantage can make a mockery of formal equality.

The situation is even worse with employment, since its structure is not even formally equal[18]. Employees have duties of obedience and loyalty; the employer sets tasks and ends for the worker. This is true for organisational and domestic work, manual and managerial work. The employer determines how the worker should make use of "their" active powers: time, energy, skill, attitudes, and reasoning. I use scare quotes, because the legal structure makes "their" ambiguous — just as with domestic right. The employer gains rights to the fruits of those efforts — the same "usufruct [*Nießbrauch*]" (6:359) that Kant refers to in domestic right. Given how essential paid work is to most people's lives, it is hard to deny that employees are "bound to others to more than [they] can in turn bind them" (6:237f).

Social advantages and valued skills may sometimes even the scales. But most employees have little bargaining power. In the face of intersecting disadvantages, many people must put up with unsafe, humiliating, or exploitative work.

One response to these problems would be to deny that anyone should have private legal authority over another — or in other words, to deny the legitimacy of employment, domestic or otherwise. This denial would be drastic indeed. It would require a complete reimagination of labour and social contributions. This is an exercise that we hardly know how to begin with, despite some noble experiments — for example, the kibbutzim and some other cooperative forms.

So long as we accept that paid employment is legitimate or necessary or both, we face problems that should trouble Kantians deeply. Is it possible to foster equity in the face of formal inequality — not to mention many intersecting forms of social injustice?

As we know, Kant argues that courts cannot make material judgments of equity or fairness: they must rely on the letter of the law and the letter of a given contract[19]. But this is not the end of the story — especially not,

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17 As Pascoe notes in her reply, a parallel point applies when consumers meet large companies over complex "user agreements" and "boilerplate contracts". Where understanding and negotiation are impossible, formal equality becomes a "fantasy".

18 There is a further dimension to this inequality, which I have only gestured toward: most employers are organisations. Kant knows that professionals are often employed this way: church and state in "What is Enlightenment?", or a university in his own case. He could hardly foresee how far most other work would become part of large organisations. The result is that most employees must serve the purposes of an organisation, rather than a specific person (thus his shop clerk, day labourer, or barber). This aspect takes us beyond private right into public law: sometimes employment by states or their agencies, but also by different types of corporation, whose powers depend on public law frameworks (Williams forthcoming). From the point of view of equity, this is an ambiguous development. As Foucault explored, organisation means new powers to monitor, structure and discipline employees. It also creates possibilities for more impersonal, procedural and even participatory forms of governance — for example, when trade unions play a role in shaping organisational policies.

19 Note that the inequity in Kant's example of the servant's wages (6:234) does not arise just from the mismatch between written agreements and changing circumstances. It also reflects the inequitable structure of master-servant law: that wages are paid a year in arrears, in effect binding servant to master for that term.

where law sets the fundamental terms of "the" employment contract. Public right and democratic legislation can revise those terms. Not least, they can create counter-balancing duties and powers.

These can take an individual form. I have mentioned a range of workers' rights, from minimum wages to protections against discrimination and unfair dismissal. Important as they are, however, these rights are often easy to breach and hard to enforce — especially for lower-ranking employees. Kant writes that "even the least of [a prince's] servants must have a coercive right against them" ("Theory and Practice" 8:294n). Princes may have ready recourse to law; servants do not.

This inequity makes a second form even more important. Workers' rights must also be collective. Rights to participate in trade unions are the most obvious. There can be further rights to information and consultation, and to involvement in workplace decision-making. Arguably, these rights are especially important for workers without managerial authority or professional skills. Otherwise, they have little or no access to information about an employer's plans and policies. Especially in societies with widespread unemployment, these workers are usually easy to replace, hence individually powerless.

Of course, these points only scratch the surface of long political struggles and theoretical debates. I make them just to illustrate a more abstract claim. "The employment contract" stands in fundamental tension with the Kantian ideal of innate equality (if not always Kant's own ideas). The formal inequality of employment calls for formal remedies. Such remedies are not interferences in contractual freedom: they are basic requirements of equal freedom.

8. Conclusion

In closing, let me return to Pascoe's great achievement: to reveal Kant as a theorist of labour; to show us how to read him from an intersectional perspective.

We all know an early remark of Kant's:

> I used to despise the rabble which knows nothing. Rousseau has set me right. This blinding prejudice vanishes, I learn to honour human beings, and I would feel by far less useful than the common labourer if I did not believe that this consideration [i.e. the pursuit of knowledge and understanding — GW] could impart a value to all others in order to establish the rights of humanity. (20:44; Kant 2011, p. 96)

Reading this, we might feel that Kant has not quite shaken off his prejudices against "the common labourer"; his mature political theory reinforces this impression. But note also the criterion by which Kant judges himself. There is the lofty phrase we usually emphasise, "the rights of humanity". But there is also, and more simply, *usefulness*. As ends-in-ourselves, we must make ourselves useful as means. Kant is a theorist of labour.

No doubt, Kant the man — like so many of us — bristled with prejudices that reflect wider injustices and dishonour his moral aspirations. Given his systematicity, we can trace those prejudices through his anthropological theories and categories of right. Some people get more rights and privileges because their contributions are deemed more valuable or "independent". Others are consigned to a lower level, or even the basement: silenced, spoken for, instructed, used, excluded. Nevertheless: Kant's prejudices and theoretical missteps reflect continuing problems in our social orders, laying the ground for Pascoe's intersectional reading.

However clearly we recognise these intersecting injustices, we still do not know how to overcome them. Which relationships and structures enable people to be useful, that is, to act as means to our own and others' ends, without domination and disrespect? How can we recognise and reward people's usefulness in all its diversity? — from care work and emotional labour to civic virtue and public reasoning; from manual labour to the professions to organising and dividing labour. How can we make sure that people are not relegated to social uselessness? How to overcome the mechanisms that allocate privilege and disadvantage by race, gender, sexuality and more? How to confront the sweatshops and prison-factories which supply so much labour to the "developed" societies I have focussed on here?

As this suggests, employment is certainly not the only structure we must worry about. But for most people, it is the only route to a life above the breadline and a recognised social status. For those with many social advantages, employment can offer much more; the formal inequality is offset by pay, privilege, recognition, and even power. For those labouring under material and social disadvantages, the picture is harsher. Employment's formal inequality intersects with other inequalities: a recipe for powerlessness if not exploitation and humiliation. My modest disagreement with Pascoe aims to make this formal inequality theoretically visible. Employees and employers are not the legal equals implied by Kant's theory of contract; they meet on the much more uneven ground of a status relation. The formal inequality demands formal remedies and political contestation.

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