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American Reconstruction and the Abolition of Second Slavery: On Pascoe's Intersectional Critique of Kant's Theory of Labour

Elvira Basevich

University of California, Davis, CA, USA
Email: ebasevich@ucdavis.edu

Abstract

To highlight the promise of Jordan Pascoe's *Kant's Theory of Labour*, my comments concern the diagnostic and prescriptive dimensions of the book's excellent intersectional critique of dependent labour relations. The diagnostic dimension of Pascoe's critique establishes that the organisation of dependent labour relations is a neglected problem of Kantian justice. The prescriptive dimension offers solutions to this problem but is underdeveloped. To enhance the book's prescriptive dimension, I draw on the noted Africana philosopher W. E. B. Du Bois for guidance. For Du Bois, a constitutional republic ought to strive for the abolition of a 'second' slavery following the abolition of *de jure* black chattel slavery with the end of the American Civil War. Given Du Bois' call for meaningful Emancipation, I argue that philosophers should reinterpret the Kantian normative ideal of freedom as universal independence to uproot the postbellum conditions of second slavery.

Keywords: race; labour; class; care work

1. Introduction

Jordan Pascoe's *Kant's Theory of Labour* is a triumph. Pascoe raises a question in Kant's political philosophy that continues to puzzle: why does Kant's model of civil independence lock domestic and wage labourers – predominantly women and women of colour – in 'enclosed dependence'? Pascoe develops an innovative answer to this question. Not only does she propose an alliance among Kant scholars, feminist philosophers, and critical race theorists to diagnose the problem of dependent labour relations. But Pascoe makes good on the claim that it is precisely *Kant* who could help feminist philosophers and critical race theorists develop an intersectional critique of labour (2017, 2022). She details gender and racial divisions in nascent capitalist and colonial labour markets and links those historical divisions of labour to key conceptual distinctions in Kant's theory of justice – namely, the concept of domestic right – to map enclosed dependence inside and outside the household. Pascoe extends Kant's concept of domestic right to analyse black freedmen's (i.e., ex-slaves') domestic and agricultural labour during American Reconstruction.

Pascoe compels philosophers to contend with the structural organisation of dependent labour relations as an *indispensable* component of a Kantian theory of justice. She sketches a social theory of an intersectional political economy and simply gets it right: there is no tenable way to give a normative theory of freedom without understanding and redressing the divisions of labour that carve out independence for some labour groups at the cost of dependence for others. Pascoe thus *systematically* theorises the structural domination of labourers, as she tracks its theoretical implications for the advance of justice in a Kantian system of public and cosmopolitan right.

To highlight the promise of the framework, my comments concern the diagnostic and prescriptive dimensions of Pascoe's critique of dependent labour. By the term 'diagnostic', I follow Lea Ypi (2012: 59–60) to mean a description of a social conflict that challenges one to clarify – and, as the case may be, redefine – a requirement of justice. By the term 'prescriptive', I mean an action-guiding directive that should count as a requirement of justice on a Kantian framework in that its adoption promotes labourers' *universal* independence (*Selbständigkeit*). I take the latter to be a *prescriptive* basis for assessing the inevitably interdependent relations among productive and reproductive labourers. The ideal of universal independence of free and equal civic fellows is in the spirit – if not to the letter – of Kant's theory of justice (Basevich 2022). The diagnostic dimension of Pascoe's critique is quite persuasive. But in evaluating its prescriptive dimension, I ask Pascoe for guidance: how ought Kant scholars to theorise the inclusion of historically denigrated and exploited labourers within a system of public right? And if Kant cannot offer solutions to the problem of living together as free and equal civic fellows, perhaps the noted Africana philosopher W. E. B. Du Bois can.

Du Bois calls for the establishment of ex-slaves as independent labourers in the aftermath of the American Civil War. After the passage of the Reconstruction Amendments, which legally abolished slavery, Du Bois cautions that black Americans were threatened by a 'second' slavery as wage labourers who remained subservient to white-controlled capital for subsistence. For Du Bois, a constitutional republic ought to strive for the abolition of this second slavery, just as it had once strived for the abolition of black chattel slavery and colonial practices. Inspired by Pascoe's instructive account, I suggest that if Du Bois is right that freedmen ought to strive for *meaningful* Emancipation with the end of the Civil War, philosophers should reinterpret the Kantian normative ideal of freedom as universal independence to uproot the postbellum dominance of white-controlled capital that introduced a second slavery. The prescriptive task is to define the measures that could have realised labourers' universal independence, then as now. In uplifting black freedmen, the measures would have to uplift all wage labourers dependent on white-controlled capital. Kant had little useful to say on the topic and not just because of anachronism. Pascoe illustrates that Kant's mature system of public right (*Rechtslehre*) condones enclosed dependence as consistent with the requirements of justice. Today, we can with the aid of Du Bois challenge Kant's theory, to pull apart the joints of structural domination in an intersectional political economy. As I detail in a forthcoming article (Basevich 2024), philosophers should turn to Du Bois to reconceptualise a Kantian ideal of public right in the light of complex racial realities. Kant's mature political theory does not redress the plight of ex-slaves nor propose to incorporate them on an

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equal civic footing into any modern polity. In contrast, Du Bois' critique of Radical Reconstruction develops the idea of an 'abolition democracy' that abolishes both a 'first' and a 'second' slavery to establish the universal independence of all civic fellows as self-determining agents in the political and economic realm.

2. The diagnostic dimension

Pascoe shines in diagnosing why dependent labour relations trouble Kant's theory of justice. In this section, I highlight some key components of her diagnosis in the historical context of American Reconstruction.

Pascoe states that her chief concern is to 'develop an account of the intersectional political economy embedded in Kant's account of Right, revealing foundational Kantian resources for theorising patterns of dependency and oppression' (2022: 1; subsequent citation simply by page number). Kant provides a novel 'trichotomous structure of right', that of property, contract, and domestic right, in which domestic right is '"a *stella mirabilis*", a new phenomenon in the juristic sky', (pp. 19–21; *MM*, 6: 358). What is special – and perverse – about domestic right is that it admits dependent labour relations under the purview of an ideal of public right at all. A domestic labourer 'agrees to give another a right *to* their labour in the domestic sphere'. They sink into 'enclosed dependence, through which they grant their employer (or husband) the right to use them as a person – which is to say, the right to their ends, as well as their agency in fulfilment of his ends, so long as he does not "use them up"' (p. 19). Unlike contract right, a domestic labourer struggles to draw boundaries on the householder's 'rightful' claim to her labour, which threatens to 'use her up'.

Domestic right contrasts with contract right in that the former is a claim *to* a person (e.g., their ends and their agency to fulfil those ends), whereas the latter is a claim *against* a person (e.g., a specified term of service for a wage or salary). Unlike contract right, domestic right does not define discrete ends by specifying the price and time constraints for selling one's labour power. Contract right ensures that I can rent my labour power without renting *myself*. In contrast, domestic right establishes a claim to *the person* by positing 'a right to a person akin to the right of a thing'. A domestic labourer caters to the household, *as if* a domestic worker were a mere animated thing for householders to enjoy. A domestic worker is thus permanently 'enclosed' in the household, like a prehistoric insect crystallised in amber.

Of her book's many innovations, Pascoe explains that Kant's formulation of domestic right is his answer to why slavery and sex work contradict right (cf. Beever 2013). Slavery sells *persons* as mere things with a price on a market; it is not their labour power that is sold, but their very selves. So too there can be no rightful form for the selling of sex because the 'use' of one's sexual organs for a price is somehow akin to the 'use' of one's very person for a price. Slavery and sex work violate the innate right to freedom, which permits persons to enter wage contracts only under specified constraints to achieve convergent ends. It might be the case that the ends of the contracting parties do not converge, in which case one's contracted labour is 'a mere means' for another's material gain and constitutes exploitation (p. 24). But Pascoe brilliantly demonstrates that for Kant the chief juridical problem with slavery and sex work is not that they *exploit* persons but that they *waste* them.

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In taking 'possession' of a person, one 'uses them up … as a *thing*, not merely as a means' (p. 23).

So why is Kant peculiarly well suited for diagnosing enclosed dependence in an intersectional political economy? Kant's formulation of domestic right appears to give legitimate juridical form to the subservience of black freedmen and black, Latinx, and immigrant women and girls, since they constitute the reserve of domestic labourers. 'Kant's final and decisive rejection of rightful slavery', writes Pascoe, 'is a careful defence of enclosed dependent labour' (p. 39). The enclosed dependence of black labourers in the postbellum USA resembles the structure of domestic right in that:

> The rightful frame for the right to a person akin to the right of a thing carves out a space between enslavement and wage labour, a category that protects the exclusivity of independence and civil equality while ensuring ongoing entitlement to the labour that reproduces this independence. (p. 42)

The abolition of slavery makes use of the juridical structure of domestic right to create a 'new' category of labourers who are *meant* to sink into enclosed dependence. The 'emancipation' of 'free' wage labour thus begins an era of freedmen's second slavery.

The powerful idea of enclosed dependence, like that of Du Bois' concept of second slavery, illustrates that a denigrating system of social values and practices – characteristic of domestic right and buttressed by a constitutional republic – informs the development of contract and property right in civil society. The idea of domestic right is 'new' in that it is not an unavoidable by-product of economic inequality but a complex and dynamic system of social values and practices that organises the dependent labour relations that create economic realities in the first place. The idea of second slavery showcases the 'domestication' or 'feminisation' of black labourers as a group. The perceived value of freedmen's labouring activities – whether exchange value or social and cultural value – was disrespected in the same fashion that a household denigrates the domestic labour of wives and servants, even as it parasitically consumes it (Caraway 2006). 'Just as marriage is posed as the rightful alternative to sex work, it is domestic labour that is marked as slavery's other, rather than contract labour' (p. 38). Hence, black freedmen were locked in enclosed dependence, *as if* they were dependent labourers in the 'household' of the republic.

Pascoe notes, however, that ex-slaves were not 'wards' of the state. Rather, 'emancipated' wage labourers were coerced into *private* dependence on white-controlled capital. The legacy of slavery informs the desire to 'possess' black persons, characterising whites' reluctance to pay them a wage at all, afford meaningful employment opportunities, or give public space for black interests inside and outside the workplace. Such coercive measures were meant to 'rouse' freedmen from a 'natural indolence', a holdover of antebellum anti-black social values and practices (p. 41). Pascoe adds that black women and women of colour are still overwhelmingly driven into care work. They remain subservient to the emotional needs of white households at the cost of being unavailable to care for their own children, as well as suffering sustained abuse by employers.

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3. The prescriptive dimension

The diagnostic picture is bleak. And yet, Pascoe asks 'how we would need to theorise Kantian independence differently in order to make it possible to work toward a more just conception of the state' (p. 52). The prescriptive task remains to counteract the logic of domestic right in reference to black freedmen and, especially, caregivers. Pascoe's question echoes Du Bois' call for a 'meaningful' Emancipation to 'complete' the 'unfinished' process of abolishing slavery (Kirkland 2022: §7; 1993: 160). Du Bois' critique of Reconstruction affirms that ex-slaves' innate right to freedom should have been embedded into a restructured juridical and economic order, complete with a new set of acquired rights and civic privileges (Du Bois 1998; Basevich 2018, 2020, 2024). I wonder which interventions Pascoe would support to *stop* the perverse logic of domestic right. In this section, with the aid of Du Bois, I make two suggestions for rethinking contract and property right towards true emancipation.

3.1 A defence of contract right

One might suppose that an uncontroversial point of departure for mitigating the poor treatment of wage labourers – and all those subject to the logic of domestic right – is to defend their contract rights. In the Reconstruction era, whites perceived every dollar paid to black freedmen as a dollar stolen from them (Du Bois 1998). White capitalists resented having to pay ex-slaves a wage at all. Disagreement about whether labourers in a rapidly industrialising capitalist economy should receive wages at all was an impetus for the US Civil War. Further, the historian Tara Hunter notes that after the Civil War, southern states passed Black Codes legislation that criminalised the mobility of black labour and shielded the illicit power of white householders to assault black women and girls employed as domestic workers (1997: 29–34). In light of these gross abuses by employers, Du Bois invokes the ideal of contract right for freedmen (1998: 149–55).

Recall that on Kant's view, labourers have legally enforceable rights *against* their employer; that right protects against wage theft and physical abuse. A contract should provide guardrails against employers by specifying the hours and conditions under which a labourer is expected to work. However, labourers should be able to appeal to the state to compel employers to fulfil their end of the contract. In other words, freedmen should have had the right to cancel labour contracts (i.e., quit), fight for the payment of their wages, and basic labour protections, including physical safety. In fact, Du Bois praised the role of the US federal government in enforcing the payment of wages through the Freedmen's Bureau and the right of black employees to sue for wage theft. He also supported the right to unionise and strike, even if the state has not codified it as a legal right (2007: ch. 2). To be sure, given the treatment of migrants at the US/Mexico border and in manufacturing and agricultural industries and the continued enslavement of incarcerated persons, black and brown labourers cannot take their contract rights for granted, for it is an ideal that the state has yet to protect for them (cf. Pascoe pp. 39–40).

Pascoe demonstrates that domestic right seeks to waste rather than exploit persons, 'carving out a space between enslavement and wage labour'. But it is unclear what it would mean for black freedmen to exit this liminal state between being wasted and being exploited by white-controlled capital. One can delineate legal

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protections for all wage labourers and social mechanisms for their enforcement, such as unions and strikes, in the face of government neglect. That is, one can bring black freedmen under the purview of contract right because all labourers should be protected against workplace abuses. Public political culture in the USA appears more invested in expressing sadistic cruelty that destroys black and brown communities than in 'merely' exploiting them for profit (cf. Beltrán 2020). Du Bois' analysis of Reconstruction speaks to both lines of inquiry, as he considers whether the ideal of contract right is enough to counteract what Pascoe identifies as the logic of domestic right. It strikes me that a Kantian defence of contract right, one that presupposes that all subjects are equal before the law, is a good avenue for building a positive normative theory of racial justice. In any case, this is what Du Bois' critique of Reconstruction suggests to begin the process of dismantling the structural conditions of second slavery.

3.2. Exploitation and the limit of contract right

Still, that the ideal of contract right has yet to be realised for all does not mean that its realisation is sufficient to abolish enclosed dependence. An explanation of why contract right is necessary but insufficient would *strengthen* Pascoe's account of the potential value – or lack thereof – of Kant for theorising justice, given her diagnoses. Du Bois concludes that, though necessary, contract right cannot advance the independence of black freedmen because they are *exploited*. Pascoe agrees that exploitation follows domestic right, but I invite her to expand her analysis of contract and property right to tackle head-on the problem of exploitation.

Pascoe suggests that contract right is itself a non-exploitative ideal because contracting parties align their ends with one another. But Kant claims that, as a purchaser of labour power, contracted labourers are supposed to 'add to my external belongings' and 'enrich' me (cf. *MM*, 6: 274). A wage contract makes an employer rich while meeting basic labour protections for employees. Contacting parties 'align' their ends in that an employer must follow labour laws (assuming that they exist and are meaningful) and pay wages. As Pascoe shows, however, improved wages and workplace conditions or job mobility alone cannot abolish enclosed dependence – or a second slavery. Ends would have to converge on a deeper – and yet unspecified – level to establish a form of universal independence robust enough to end the exploitation of politically marginalised and propertyless groups. So, what would it take to make contract right non-exploitative? Unfortunately, Kant never explains how to achieve universal independence in productive and reproductive labouring activities, nor does he require the state to intervene in exploitative labour markets to redistribute assets and capital (cf. *MM*, 6: 314).

Du Bois can redress exploitative wage contracts. In a Kantian register, he posits that all productive and reproductive labouring activities *should* be 'self-directed' (1999: ch. 7; cf. *MM*, 6: 315). Contracting parties should not fall prey to the undue power of another to manipulate their purposive ends. Black freedmen, like all labourers, should be able to set their 'purposive' ends in the production (and reproduction) process without being 'constrained by another's choice' (Vrousalis 2022: 449). Accordingly, black freedmen were *not* content to be domestic servants writ-large in the postbellum republic. Nor did they ask to become public wards of the

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state, supplanting a private enclosed dependence with public dependence on social welfare programs (Du Bois 2007: ch. 2). To counteract their private dependence on white-controlled capital, they demanded assets and human capital, namely, a publicly funded education. As would-be yeoman farmers, freedmen lobbied for direct control of fertile lands and farming implements. Du Bois adds that in a rapidly industrialising republic that supplanted the rustic ideal of yeoman farmsteads, democratic control and co-ownership of industrial assets would have secured freedmen's independence, which, in turn, should have served as a social basis for exercising equal political power in an interracial 'abolition' democracy (1999: ch. 6; Basevich 2024).

And so, I wonder: Is a Kantian system of public right amenable to Du Bois' recommendations for the redistribution of assets and capital to shore up labour's independence and political power? If so, how? Specifically, I invite Pascoe to consider in more detail the connection between contract right, property right, and exploitation. So much of her rich critique of enclosed dependency stresses that Kant's original system of right can rationalise marginalised groups' loss of power. But Du Bois challenges philosophers to envision the redistribution of assets and capital that would mitigate black freedmen's exploitation and support their equal command of political power. Ultimately, he defends a worker-led, international 'abolition' democracy to end the enclosed dependence of all groups in the productive (and reproductive) labour processes that comes with the entrenchment of capitalist free market economies.

On a Duboisian rereading, then, for contract right to stand as a non-exploitative ideal, no single person or group should have unilateral control of assets and capital (Du Bois 1999: ch. 6), nor use their economic power to dictate a government that appears democratic in name only. In effect, a democracy that preserves the structural conditions of second slavery in the organisation of labouring activities is not a real democracy, just as much as its juridical emancipation of slaves does not deliver real freedom. The lack of political power signifies the lack of economic independence. A group without access to assets and capital cannot exercise meaningful political power. Cooperative and reciprocal labour relations are the 'real basis of democracy' (Du Bois 1998: 538).

4. Conclusion

Kant's justification of contract and property right appears amenable to my Duboisian recommendations. Pascoe suggests that Kant's defence of the right to property is 'political': that right is not the 'outcome of labour' but a reflection of one's relation to the state and one's civic fellows (p. 33). 'Property ownership is the result of one's standing in a rightful state, and the organisation of labour is a mechanism of establishing one's standing in a rightful state. Thus it is not one's labour on the land that makes it yours but one's standing in the state' (p. 31). Kant links his justification of private property to that of constitutional republics as such, within which one can make sense of the distinction between 'mine' and 'thine'. Unlike contract right, whose focus is the joint commitment of two contracting parties, the right to possess property exclusively is subject to the public adjudication of a general will as people reinterpret what should count as a right and privilege of civic fellowship. If one claims a right to exclusive possession of highly socially valuable assets, which are

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indispensable for labouring activities, one owes an explanation to one's civic fellows that respects their fundamental right to freedom. One's explanation must satisfy the normative standard that all persons should enjoy a free, equal, and independent institutional standing. Kant thus regards property as a 'political institution': its 'ownership turns on the state's recognition and authorisation of one's right to own property' (p. 36).

As it turns out, a Kantian theory of justice *is* well suited for theorising justice if one makes good on the fundamental connection that Du Bois discerned between labourers' command of assets and their substantive freedom in the Reconstruction era. Ideally, black freedmen should have been re-embedded into a restructured juridical and economic order without falling back into enclosed dependencies. To achieve this, Du Bois rethinks contract and property right as part of a reworked system of public right that redistributes assets and human capital and de-authorises the unchecked political power of white-controlled capital to control workers' purposive ends.

Finally, Pascoe captures that independent productive labourers are parasitic on access to care workers (i.e., dependent reproductive labourers). Note that justice necessitates the advance of the universal independence of all labourers, including reproductive labourers. The same reasoning that warrants the redistribution of assets in a cooperative productive process also warrants the redistribution of *reproductive assets* and *their community control*. Reproductive assets are those resources necessary for the emotional, physical, and personal development of children and dependents. It is not enough to simply dole out resources. Access to more resources can worsen enclosed dependence because it can either leave women in the role of primary unpaid caregivers, who use their additional resources to take better care of dependents in their homes, or it incentivises households to hire outside help in a 'care-chain' economy.

Du Bois intimates that reproductive labour must be subject to public scrutiny and community control (1999: ch. 7). Community members can, say, establish and run kindergartens, day-cares, and public hospitals in under-resourced neighbourhoods, and it would take care work outside the private homes of both employers and wage labourers. Community control of reproductive assets enables a caregiver to redirect her purposive ends in *a reproductive labour process under the purview of a democratic will formation.* Those legitimate public ends that inform the purposive agency of caregivers and shape public willing include their right to (1) exit affluent white households as domestic workers, (2) care for their own and neighbourhood children as respected public authorities with political power to decide how to run care-based community centres, or (3) give up caregiving altogether to pursue another calling. Of course, society cannot do without reproductive labour itself, just as it cannot abolish the productive process. Mandates about gender parity in care work are called for, perhaps as a condition for the redistribution of reproductive assets or as a stipulation about what community control should entail. In any case, Pascoe's phenomenal book stresses the importance of theorising what independent reproductive labour might look like in the hands of the oppressed and excluded. Even if Kant had failed to countenance this theoretical task, we must follow Pascoe to carry it out.

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