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Reason, Normativity and Law: New Essays in Kantian Philosophy. Ed. by **Alice Pinheiro Walla** and **Mehmet Ruhi Demiray**. Cardiff: University of Wales Press, 2020. 304 pages. ISBN 978-178683512-3.

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The question of Kant's general theory of normativity has become a budding trend in Kant scholarship. In an attempt to specify a general theory of normativity in Kant, one of the most difficult questions concerns the particular normativity of

the legal and political realm. Some commentators have suggested that legal and political normativity is reducible to moral normativity, while others have insisted that the legal and political realm cannot be a normative realm at all. This volume seems to take the less simplistic view that legal and political normativity is a specific kind of normativity, distinct from and yet situated within a wider theory of normativity. As the editors point out in their introduction, this volume attempts to express this point-of-view by beginning from general theories of normativity which explore the commitments a normative theory would need to express, proceeds to specific features and problems that a legal and political normativity contains, to the application of such a theory to contemporary real world problems which demonstrates the usefulness of this approach. Therefore, despite significant disagreements among authors, the volume reads very much like a cohesive statement with an intentional direction from beginning to end.

The first part of the volume begins with two essays, by Michael Lyon and Sorin Baiasu, which frame the debate between competing theories of practical normativity.

Lyons' contribution attempts to reframe the realism/constructivism debate by arguing that constructivists, in order to have a coherent account of normative force that does not collapse into subjectivism, must adopt some realist assumptions. This is because, following Enoch's famous Schmagency objection, if the constructivist maintains that practical reason is somehow dependent on actual agents' constructions or conceptions of practical reason, then "any agent seems completely at liberty to disagree with the conception of practical reason that others might be assenting to" (33). In other words, if the constructivist maintains her claim that practical reason is constituted by the activity of actual agents, then it will collapse into "'moral isolationism', where one's agent's conception of what ought to be done is no better than any others" (34). Constructivists must adopt "independent truth makers", such as the principle of not using others as mere means, in order to ground the universality of Pure Practical Reason. Lyon, by defining realism as a spectrum with varyingly strong and weak metaphysical commitments, shows that constructivism can be compatible with these realist commitments. The constructivist can (and should) "recognize the need to accept moral truths with enough independence to merit the realist label" (35) while also maintaining their "opposition to metaphysically burdensome metaethics" (35). Lyon's essay is a smart introduction to the volume that gives an overview of some of the metaethical debates surrounding Kant's normative ethics. Baiasu continues his own quest to encourage constructivists to go philosophically below the surface. By this he means that constructivists of all stripes, but particularly a constitutivists like Korsgaard, have been historically unwilling to engage in "deep" metaphysical discussions. Without supplementing metaphysics, the constitutivist approach remains unable

to explain the "necessary link" between constitutive elements of agency and commitments to normative standards (39). In this paper, Baiasu addresses a potential alternative account of the connection between agency and normativity, advanced by Connie Rosati, which claims to be distinct from constitutivism. If successful it may be a "naturalist" alternative to Korsgaard which stays philosophically on the surface. Rosati claims that normativity depends on agency because only agents can participate in normative phenomena, like normative judgements in normative discourse. Baiasu points out that this claim is a claim about the dependence of normative *phenomena* on agents and not about the dependency of normativity itself on agency (50). However, Rosati also claims that "normative properties are relational properties, which essentially include a reference to agency" (49). For Rosati, this means that an accurate account of normative properties relies on an account of an ideal autonomous agent (with all her autonomy-making properties and motives). Yet, as Baiasu argues, the aspect of the explanation of normative properties that depends on agency has nothing to do with normativity (52). The explanation is dependent on agency in the same way other, normatively indifferent properties would be and so leaves normative properties mysterious. At the end of paper, the reader is left wondering why this leads to the conclusion that "the tendency to stay philosophically on the surface must be critically overcome" (54)? It may be that a naturalist account of the sort that Rosati presents is incomplete, but this need not suggest that the solution need be a more robust metaphysics.

Sophie Møller's essay continues the focus on general theories of normativity, now in the shape of the normativity of theoretical reason, by advancing an interpretation of the practical aspects of the structure of theoretical reason in the *Critique of Pure Reason*. The current debate, as Møller describes it, is whether to emphasize the political or legal aspects of the practical dimensions of Kant's theoretical reason. On the one hand, interpreters such as O'Neil and Shell argue that the structure of theoretical reason is primarily political in that it "relies on the possible consensus of a community of thinkers" (62). On the other, Kaulbach emphasizes the fundamental "transcendental-juridical relationship" between a subject and a thing which is shared by both theoretical and legal pursuits. Møller distinguishes her view from both the political interpretations and Kaulbach's legal interpretation. Against the political interpretation, she argues that the political aspects "rely on an inherently legal concept of reason, which establishes the lawful framework within which reason can become political" (78). Thus, Møller's view emphasizes the legal aspects as a fundamental condition of the political. Against Kaulbach, Møller insists that the fundamental legal aspect lies in the lawful structure of theoretical reason which constitutes a community of reasoners. Møller emphasizes the political aspects of this view by a fascinating discus-

sion of the "polemic use of reason" and the "Discipline of Pure Reason" section of CpR. Here, reason takes on the role of correcting dogmatic claims and resolving conflicts about knowledge claims. In fact, in the last sentence Møller claims that the theoretical-juridical relationship is "incomplete until it is integrated into a community" (78). Yet, the nature of this "incompleteness" remains vague. Does Møller mean that concepts, outside the community of reasoners, would have a provisional status as in the *Doctrine of Right*? How does the community of reasoners "complete the acquisition of concepts?"

The narrowing in focus continues with Sarah Holtman and M.E. Newhouse's essays which explore the relative symmetry and asymmetry between the normative force of ethical duties and juridical duties.

Holtman's essay blends an inquiry into the moral failings of two characters from Kazuo Ishiguro's *The Remains of the Day*, a subservient butler and an anti-Semitic aristocrat, with an argument for understanding Kantian justice as "a construction giving voice to central elements of Kant's ethics in what we can term the circumstances of justice" (86). The central element that Holtman focuses on is the particular perspective that the Kingdom of Ends formulation of the CI reveals: "to look with reverence upon one's own capacity and that of others to make content-laden, non-contingent commitments that eschew bases in force and honor rational agents as end-setting ends in themselves" (90). Thus, Holtman argues that Kantian justice is this perspective applied to conditions where the "self-governing capacity" of each faces inevitable risk of undue interference. Both of Ishiguro's characters fall short of the standards of Kantian justice by failing to respect the capacity in themselves (subservient butler) and others (racist aristocrat) to make their own commitments and their innate right to not be interfered with in so doing. However, one might worry that Holtman's Rawlsian view reduces justice to application of the moral standard in reaction to particular circumstances. There is a question of whether such a view can be attributed to Kant, who maintained the necessity of public justice through a coercive state was a result of the structure of external obligation in general. Newhouse aims to answer Marcus Willaschek's well-known insistence that juridical laws cannot be categorical imperatives, creating a paradox between normative obligations and rights. Willaschek's own solution to the paradox is that we can find normatively binding ethical reasons, outside of the juridical command, to obey the law for its own sake. However, Newhouse suggests that this is insufficient to tame the paradox because juridical laws, in order to be respected as law, have to "move us to obey unconditionally" (111). Thus, in order to dissolve the paradox, we need to find an unconditionally binding reason to obey juridical laws which allows us to represent the juridical law as a categorical imperative. Newhouse locates this unconditional binding reason in the idea of punishment. Newhouse argues that

though Willaschek is right to represent statutory commands connected with external incentives as hypothetical imperatives, he misses that because punishment is a state of external un-freedom, we also have a unconditional rational reason to avoid it, and so to obey statutory commands. Furthermore, Newhouse argues that Willaschek is wrong to insists that juridical commands, if they are to be categorical imperatives, must be done "for the sake of the duty itself". Newhouse argues that his recursive feature is unique to ethical commands and we have little reason to think that this is a requirement of categorical imperatives in general. Thus, juridical commands can be represented as categorical imperatives insofar as they are connected with "external incentives incompatible with our external freedom" (120). Newhouse presents a unique and well-argued response to Willaschek's paradox. Yet, one might wonder how Newhouse makes the inference from our unconditional duty to avoid punishment to an unconditional duty to obey statutory law. It seems Newhouse's account makes obeying statutory law simply the best means of avoiding punishment, making obeying the law conditional on the avoidance of punishment. Wouldn't this mean that, obeying juridical laws can be represented as a categorical imperative *only* when it is the only means to avoid punishment, and not when, say, there is no chance of getting caught?

The next three essays focus on normative puzzles particular to legal and political normativity, namely, the normative of pre-juridical private rights (Christoph Hanisch) and human rights (Matté Scholten and Ruhi Demiray).

Hanisch advances a novel view of the pre-juridical normativity in Kant's conception of provisional private rights. Hanisch employs the help of Enoch's taxonomy of reason-giving, focusing on a specific type of robust reason-giving (equesting), in order to draw an analogy with Kant's account of private right. Hanisch's main claim is that pre-juridical normativity in Kant can be understood as conditional reasons that are triggered when certain non-normative and normative conditions of practical reason-giving are met. Hanisch claims that this conception of pre-juridical normativity can thread the needle between natural law and legal positivist interpretations. This is because conditional reasons are "there" and obligate us before they are triggered, but they remain "normatively inert" until triggered by the proper non-normative and normative conditions. This gives an account of pre-juridical rights in which they are both "justified" prior to a positive lawgiving and are also dependent for their normative force on a positive lawgiving. Thus, the source of legal normativity cannot be located wholly in substantive natural laws nor positive law-giving. Interestingly, Hanisch argues briefly that this extends not only to acquired rights but also to innate rights. All rights have this conditional and normatively inert status prior to the civil condition. The essay is full of interesting and bold trailheads for further thinking, yet it is very light on actual engagement

with Kant's text. Such an engagement with fundamental passages would have given credence to Hanisch's theory as an interpretation of Kant and not simply an interesting account of pre-juridical normativity.

The main claim of Scholten's essay, investigating the normativity of human rights, is that human rights cannot be derived from a notion of dignity, on Kantian assumptions. Scholten's essay points to Willschek's Externality Thesis, which is the claim that the concept of right has only to do with practical relations of external actions. Furthermore, rights are analytically connected with authorizations to coerce and coercion is permissible under the Universal Principle of Right. Yet, Scholten argues, the Categorical Imperative as expressed in the Formula of Humanity explicitly condemns coercion of the sort that right analytically implies. Therefore, the Universal Principle of Right cannot be directly derived from the Categorical Imperative; ethics and right occupy separate normative domains. By an obvious extension, Scholten insists that we cannot ground human rights on ethical notions of human dignity. Scholten's essay is largely a gesture to Willaschek, who makes almost identical arguments. Yet, the application to dignity as the foundation of human rights remains unconvincing as a result of Scholten's curiously brief discussion of human rights and the concept of dignity. Scholten thinks that anyone who embraces human rights must endorse the externality thesis but argues this only by an appeal to the differences between ethical and juridical duties. Demiray accepts this normative gap, rejecting ethical foundations of human rights, but argues that we can nevertheless find a normative foundation for human rights in innate right. Demiray argues that human rights, as fundamental norms that justify political authority in the modern age, can find justificatory basis in Kant's innate right to freedom. He insists that the innate right is not a fundamental norm, but a grammar, "conformity to which makes speech act intelligible" (182). Against the charge that this makes innate right an empty formal standard, Demiray attempts to show that we can make necessary inferences to substantial rights from the innate right because "the ability to set and pursue one's own ends in life would be impossible without such rights [...]" (183). Yet, this sounds suspiciously like a fundamental norm and not a "grammar". Demiray does not tell us how necessary inferences from a formal standard can give us *substantial* rights, as opposed to more specific formal standards. If the innate right is just a grammar *for* legitimate legal norms, it seems it can rule out norms, but not, by itself, establish substantial legal norms. Demiray's paper, however, is a well-argued and productive argument for a normative foundation of human rights without deferring to moral normativity.

The final three essays narrow the focus even further and attempt to show how an account of legal and political normativity could have purchase in the particular problems that politics is meant to address. Specifically, Kantian accounts

of political and legal normativity are applied to territorial rights (Alice Pinierho Walla) and forcible dispossession of territory (Sylvie Loriaux), as well as European asylum law (Domenica Dreyer-Plum).

Loriaux leverages Kantian political theory to address the apparent tension between recognizing that acquisition of a territory by force is wrong, generating a duty to rectification, and simultaneously recognizing the "moral right to rule" of existing states over territory that has been forcefully dispossessed. Loriaux does so by arguing, on the one hand, that state's territory should be understood as an "external object whose acquisition must satisfy certain conditions in order to be rightful" (194). If we can understand state's territory as an external object distinct from the state, then wrongful dispossession is similar to theft, where a duty to restitution of dispossessed property follows. However, as Loriaux is quick to point out, this duty runs up against two important observations: that many existing states were the result of a long history of territorial wrongs and that many of us think that the current distribution of territories should not be entirely redistributed meaning that current legitimacy claims of states are valid. This endorsement of the status quo in the face of territorial wrongs might be justified by appealing to prescription of land over time, the changing circumstances of fair access to natural resources, or the "priority of force over law and justice". This last tactic Loriaux identifies as the most Kantian approach. She argues that Kant allows for the use of force to establish a civil condition. Thus, the acquisition of land by force (even grave territorial wrongs) does not affect the legitimacy of the existing states. Furthermore, non-rectification of territory is "authorized and even required" due to the risk it might pose to settled rule of law. Yet, Loriaux does not tell us how the use of force to establish a constitution can be used when speaking about territorial wrongs committed by already established states or why rectification of portions of land would be a threat to the rule of law. Walla's essay also takes up the topic of territorial rights in a rich chapter that attempts to place territorial rights in systematic relief against Kant's legal theory. Walla, like Loriaux, argues against a (limited) symmetry between territorial rights and property rights. In this case, Walla points out a symmetry between the necessity to justify individual acquisition and territorial rights insofar as, for both, we need a system of law to justify them fully. This implies that, for Kant, state's territorial rights need full justification under a global rule of law. Walla's point stems from the idea that public authority is the condition under which individual acquisition can be made compatible with universal freedom. On a domestic scale, we are necessitated to enter a civil condition for this reason. Similarly, internationally, a state of provisional territory rights calls for the implementation of a international civil condition. Walla's essay presents an original and provocative reading of territorial rights that challenges contemporary approaches.

In the last essay, Dreyer-Plum compares the requirements of cosmopolitan right in Kant's philosophy to Kantian inspired EU refugee policy. Dreyer-Plum suggests that the Kantian cosmopolitan right and the right to hospitality is a legal condition, not reliant on state or international law, between "citizens of the world and other states" (239). This means that the state has an obligation to respect everyone's innate right, irrespective of state membership, and that the visitor has the right, in cases where she is in danger, to hospitality from the host state. This points to a Kantian ground for a non-refoulment principle in which states cannot return refugees where their life or freedom is in danger. Dreyer-Plum then wonders whether the EU asylum policies live up to this ideal. She convincingly argues that while the EU has adopted the Kantian ideal, they have implemented that ideal in a way that undercuts it. EU policies effectively undercut the ability for visitors to claim their right to hospitality through strict visa regulations, irregular entry controls, heterogenous policies between member states, and policies that undermine the asylum application itself. This all points at a failure of EU states to effectively implement the ideal of Kant's cosmopolitan right. While Dreyer-Plum's conclusion is convincing, one wonders if her position would be committed to the claim that states have the obligation not only to respect the innate rights of others, but also an obligation to remove obstacles to claiming an asylum right. It seems that there is a difference between the states obligation to receive asylum seekers and the obligation to make this process as easy as possible.

Overall, this volume contains original and challenging essays. The most fruitful essays in the volume focus on defining a normativity specific to the legal and political realm. In this regard, it is a very helpful collection for those who are interested in Kant's legal and political philosophy or in how Kant's philosophy can be useful as an alternative to contemporary notions of legal and political normativity. By addressing standard questions with regard to juridical normativity while asking new, provocative questions, the volume gives a clear picture of how the normativity question gets unique expression in Kant's legal and political philosophy, and points to ways in which this unique form of normativity can be developed to tackle contemporary questions.