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2001

Resurrecting Kant's *Rechtslehre* for a Global Age

**Flikschuh, Katrin. *Kant and Modern Political Philosophy*.
Cambridge: Cambridge University Press, 2000. Pp. x + 216. cloth: US\$54.95**

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The central claim of this careful and methodical reinterpretation of Kant's *Rechtslehre* by Katrin Flikschuh is that "the absorption of Kant's political philosophy within contemporary liberalism is only partial at best," due at least in part to the general lack of attention that has been paid to this last of Kant's major works. Beginning with a thorough examination of the *Critique of Practical Reason*, and challenging previous interpretations, including those by John Rawls and Jürgen Habermas, Flikschuh's argument centres on two significant premises. First, that political thought has mistakenly taken a determinedly positivist orientation in the last century at the expense of metaphysics. Second, that historic difficulties in interpreting the obscure and often confused arguments in the *Rechtslehre*, leading ultimately to the development of the "senility thesis," can be resolved both internally and with respect to his other writings through an examination of the reorganized text published by Bernd Ludwig. From observations made in the Sahel zone of Burkina Faso, Flikschuh also remarks that three aspects of the experience significantly shaped her reinterpretation of the *Rechtslehre*: the importance of the constraints of nature in relation to human agency, the idea of human finitude and the unavoidable interdependence between individuals, and the role of metaphysics in political thinking as it pertains to the idea of external freedom.

Whereas the conception of the "free and equal moral person" has undoubtedly influenced modern liberal philosophies, leading to social and distributive justice theories, Flikschuh argues that the problem with a selective focus on Kant's moral conception of freedom to the exclusion of his practical metaphysics and political philosophy has resulted in tensions in liberal thinking between absolute and rational freedom. As an alternative, she proposes that they be considered as two points within a larger metaphysical framework, thereby rejecting the contemporary paradigm that metaphysics is outdated and, while still relevant to private ethics, deserving of no place within the public framework of a modern plural society. Kant's political and economic ideas of individual freedom of choice, she insists, must be viewed within the construct of his metaphysics wherein freedom is positioned as an idea of pure practical reason. Further, metaphysics in general is unavoidable if one accepts that all agency is based on some manner of assumption and presupposition which is ultimately derived and constrained by metaphysical principles, facilitating consistency in thinking the particular. The implication from this line of argument is that, in the absence of a metaphysical framework of beliefs about the public world and a system of necessary principles (which, based on the work of Stephan Körner, Flikschuh argues, are more accessible as regards the *Rechtslehre* in the context of a "categorical framework"), the possibility of inconsistency, if not injustice, increases. Interestingly, while

the treatise is not an examination of politics itself, the philosophical proposition translates well as a theory toward explaining the growth of philosophical inconsistency and pragmatism extant in politics in the last century alongside the death of ideology.

Flikschuh goes on to demonstrate that one can adopt aspects of Kant's metaphysics, *viz.* his political philosophy, without a reliance on transcendental idealism due to the fact that a commitment to metaphysical truth is a commitment derived from reason and is not parallel to, although frequently conflated with, a commitment to religious faith. The metaphysics of justice, educed from the juxtaposition between claims of freedom and constraints in nature, in the manner of thesis and antithesis, are then reconciled from the perspective of political agency via acts of practical political judgment, specifying the necessary conditions for lawful freedom within the constraints of empirical reality. This synthetic approach, which Flikschuh terms "non-compatibilist," forms the "categorical framework" found in the *Rechtslehre* and also represents the fundamental separation of Kant's work from contemporary liberal thought.

Based on the well-researched historical claims of Bernd Ludwig (1988), Flikschuh identifies a clear theme in the analogy of law-like causal determination (causality as a law-governed order that the limits of human understanding impose on nature) and the "law-likeness" of freedom as an idea of reason, where freely determined action is only understandable as separate from the arbitrary insofar as it is also law-governed. Central to Kant's conception of political freedom is humans' ability to frame conceptions within which they are aware of the constraints of nature on their freedom, without their thoughts or actions being necessarily determined by those constraints. Freedom is also posited as a shared idea of reason, and pivotal to Kant's "cosmopolitan" conception of Right (or political justice) wherein the freedom of none is achieved until the freedom of each has been secured. The cosmopolitan perspective and orientation that Kant adopts is a large part of the reason that the author believes a revival of interest in, and understanding of, the *Rechtslehre* has such resonance given current problems of globalization and international justice. This is especially so following a period where ideas of cosmopolitan justice have been relatively unimportant in western political philosophy.

Quotes from the *Rechtslehre* include Kant's strikingly Mill-like "universal principle of Right" in which the consistency and relationship of his political philosophy to the "categorical imperative" of his ethical writing becomes clear. "Any action is right if it can coexist with everyone's freedom in accordance with a universal law, or if on its maxim, the freedom of choice of each can coexist with everyone's freedom in accordance with a universal law" (p.89). In this respect, Kant portrays the obligations of justice that individuals undertake as a consequence of their exercising external freedom. In presenting the law-like quality of freedom, he also separates himself from "classical" liberal and compatibilist ideas of free agency, which hold freedom and free agency to be law-less and therefore not necessarily consistent.

The innate right to freedom of each by virtue of their humanity, however, also means that humans are independent from the arbitrary will of others and are capable of interaction on an equal footing, each having the capacity for freedom of choice and action through reason. "Right" regulates the form of external relations with regard to those choices, each of which has the potential to influence or affect another. Such interconnectivity creates the flow by which the universal principle of Right does not just affirm the innate right to freedom, but "legislates" that any action is Right if it can coexist with everyone else's external freedom. The universal principle of Right, therefore, acts as a principle of self-legislation but, realized as an external freedom, can also be externally enforced in the defence and interest of freedom.

The detailed and intricate argumentation that forms the first half of the book comes together and becomes particularly pertinent to the final chapters' analysis of principle from the perspective of property rights. Here we find Kant's conception of a *lex permissiva* as an interim step or postulate of pure practical reason *en route* to resolving the rights conflict presented by acts of unilateral acquisition. Given that the idea of intelligible possession requires the presupposition of freedom as a practical capacity, it also suggests

rightful possession of an object as a simple subject/object relationship. If we accept Kant's cosmopolitan conception of Right, however, and the terms of his universal principle of Right, then "rightful" possession is only possible when it is acknowledged by all others affected, including those with whose freedom the exercise of an instant of external freedom must be compatible.

From the universal principle, we come to Kant's "postulate of Right" where the provisional permission of unilateral acquisition necessarily leads to a reflective acknowledgment that freedom of choice or action instantaneously creates obligations of justice. Obligation stands as a direct corollary of freedom. Together with his formation of the idea of a general united will, Kant joins an interpretation of the idea of "original possession in common." Flikschuh is careful to ensure that the reader understands how Kant's conception of the idea of original possession in common is differentiated from its possible attribution to a natural law perspective, devoting considerable space to its exploration. For Kant, original possession in common is at the core of the question of property rights and derives from the fact that each of us has no control over, or choice in, where or when we are born. Being therefore blameless, but having still occupied a pre-existing space, we derive our place on earth from what was, at least conceptually, someone else's. That being the case, our arrival in and occupation of property, even while absent of any exercise of will and entirely blameless, still entails an obligation to others. As external to the self, it cannot be considered part of one's innate right but is an acquired right, and, in so being, requires justification. Flikschuh describes the resulting idea of original possession in common as "omnilateral," serving a bridging function between our independence and interdependence. With the idea of the general united will, it constitutes the acknowledgment of the necessary nature of public law as regulator in accordance with the legitimate claims of each to a place on earth.

In her final chapter, Flikschuh focuses and sees great poetry and symbolism in Kant's repeated references in *Rechtslehre* to the earth's spherical surface as a representation of our finite space. This is not just from the dimension of the factual importance of rightful possession and the fairest means of dividing up limited resources but as a conception of the human condition, our interdependence, and the metaphysical significance of our historical and political responsibility to the future. The relevance of Kant's *Rechtslehre* to global economic and political conditions relates to the balancing of individual freedom with the acknowledgment of its ensuing obligations and human finitude. The *prima facie* legitimacy in individuals' desire for, pursuit, and possession of objects does not extend to a licence for its unconstrained maximization.

Such critically enlightening metaphysical perspectives have an invaluable role in helping us to better understand and address issues of global politics, international relations, and justice, perhaps today more than ever. They are indispensable as we move into the twenty-first century, and, as Flikschuh convincingly demonstrates, have both a legitimate and necessary place in political thinking. From start to finish, her study leads us through a comprehensive and attentively logical series of propositions, arguments, demonstrations, and conclusions that are both satisfying and convincing. Kant enthusiasts and scholars will appreciate the attention to detail, but this study is also highly recommendable to anyone with a practical interest in international relations, international law, political philosophy, and politics. It constitutes a welcome addition to the literature.

Works Cited

Ludwig, Bernd. 1988. *Kants Rechtslehre*. rev. ed. Hamburg: Felix Meiner Verlag.