

## 1 Could It Be Worth Thinking about Kant on Labour?

In a groundbreaking 1993 article on sex and marriage, Barbara Herman laid the foundation for feminist Kant scholarship that uses Kantian arguments to address a range of feminist quandaries;<sup>1</sup> inspired by Herman's willingness to open new Kantian doors, I ask what happens when we examine Kant's theory of labour, which runs through his political, anthropological, historical, and moral arguments.

Kant's theory of labour provides a framework to think beyond and between established divisions in Kant scholarship, illuminating elements of Kant's political arguments with implications for contemporary Kantian and feminist scholarship, as well as for debates about Kant's theory of race. This project develops an intersectional analysis of Kant (Crenshaw 1989) which invites dialogue across established methodological silos within Kant scholarship. As race and gender have moved towards the centre of Kantian scholarship in the last decade, they have remained strikingly distinct, with work on sex/gender taking up Kant's discussions of sex, marriage, caregiving, and citizenship, and work on race/racism focusing on his anthropological, geographical, and cosmopolitan texts.<sup>2</sup> This has led to an emerging discourse on the difficulty of intersectional approaches to Kant, which reflects Kant's own careful insistence on categorical thinking.<sup>3</sup>

Just as Herman's analysis of Kant and marriage invited contemporary feminists to attend to (surprising) resources within Kant's philosophy, my analysis of Kant's account of labour maps resources in Kant relevant to contemporary materialist, intersectional, decolonial, and social reproduction feminist theorizing, as well as to contemporary Black radical thought. By identifying patterns of institutionalized inequality within Kant's political thought, I develop an account of the intersectional political economy embedded in Kant's account of Right,<sup>4</sup> revealing foundational Kantian resources for theorizing patterns of dependency and oppression that challenge frameworks found in Locke, Hegel, and Marx.

<sup>1</sup> The genealogy of these arguments is expertly summarized in Varden 2020, especially pp. 20–6. Examples of these arguments can be found in Altman 2010, Denis 2001, Hay 2013, Kleingeld 1993, Langton 2009, Nussbaum 1995, O'Neill 1989, Papadaki 2007, Pascoe 2013, 2015, and 2018, Sabourin 2021, Schaff 2001, Schapiro 1999, and Varden 2006b, 2006a, and 2020.

<sup>2</sup> Where scholars have taken up these questions together, it is often by way of drawing a parallel. See, for example, Mendieta 2011, Mills 2005, Pateman, and Mills 2007, Kleingeld 2007 and 2014a.

<sup>3</sup> For engagements with the problem of intersectionality in Kant, see Huseyinzedegan 2018, Kleingeld 2019, Pascoe 2019a, Huseyinzedegan and Pascoe Forthcoming.

<sup>4</sup> I draw on Nancy Folbre's (2021) conceptualization of intersectional political economy. This argument is elaborated in Section 7.

I develop Kant's theory of labour across his political, anthropological, historical, and moral texts, building on recent work developing the role of non-ideal theory in Kant's practical philosophy. To map the emergence of Kant's theory of labour and its relation to the development of his thinking about race, gender, sex, slavery, and colonialism, I go beyond the texts published in his lifetime, examining recently published notes and drafts in order to illuminate the ways that his evolving theories of race, coloniality, and slavery, his account of sex and marriage, his analysis of parenthood and servitude, his treatment of contract and trade, and his development of the relationship between citizenship and enlightenment intersect and generate one another. My holistic analysis shows that Kant's thinking about labour, slavery, citizenship, the family, and sex developed in interlinked ways over several decades, culminating in his development of a 'new phenomenon in the juridical heavens', a 'trichotomy' of Right that thinks beyond the public/private divide by insisting upon a third sphere, organized by 'the right to a person akin to the right to a thing' (MM 6: 276; RDL 20: 460). This third dimension of Private Right is explicitly developed as a response to Kant's thinking about both sex and slavery, grounding his claim that slavery is inconsistent with right. Because work on Kant's account of slavery generally focuses on his arguments about race and colonialism, while his account of domestic right focuses on marriage, sex, and gender, the links between these arguments have been under-examined. But Kant himself understood the trichotomy framework as a critical innovation in juridical philosophy, which shaped not only his understanding of domestic and slave labour, but also his famous distinction between active and passive citizenship, as well as the limits of public reason and civil equality.

Kant's theory of labour provides a vantage point for revealing the *structural* intersections of racism and sexism in his political thought, taking up the challenge Dilek Huseyinzadegan lays out in her 'For What Can the Kantian Feminist Hope?' (2018) by examining the continuities 'between our problems and Kant's' (10). In Kant's theory of labour, I find both complicity with emergent global patterns of patriarchy, white supremacy, and capitalism, as well as innovative theorizations of these problems that may offer critical resources to contemporary intersectional and materialist feminist theorizing. This approach takes Kant's racist and sexist thinking as an integral part of his philosophical system but understands these dimensions of his thinking as instructive since, as Huseyinzadegan puts it, 'we all know 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' (16).

Kant's thinking about labour presents us with a set of contradictions we have not resolved: contradictions between, on the one hand, an egalitarian

vision of independent citizens and meritocratic pathways by which workers (and, perhaps, women) may ‘work their way up’ to full political participation, and on the other, deeply ingrained practices of enclosed economic dependency that make caregiving and reproductive labour precarious and insecure, and that shape and perpetuate stark raced, gendered, classed, and global inequalities. Contemporary scholarship that seeks to address inequality by drawing on Kantian accounts of dependency, poverty, and redistributive justice, then, must carefully attend to these patterned exclusions in order to avoid repeating them, and existing Kantian frames that take up race/racism and gender/sexism *separately* (or at best, as analogous problems) must learn to resist reinscribing patterns of erasure that treat dependencies as single-axis problems, which allows for *personal*, rather than *structural*, remedies. Tracking this problem requires new strategies within Kant scholarship to think beyond single-axis frameworks of oppression.

Thus, the genealogy of this project reaches beyond Kant scholarship, orienting its attention to labour – and in particular, to caregiving and other unwaged labour – through materialist and intersectional feminisms, which have long engaged in analyses of labour to identify patterns of exploitation and entitlement in liberal and legal theory.<sup>5</sup> It draws on intersectional feminism and twenty-first century work on global migration and care chains in order to identify domestic and caregiving labour as a global political problem that refuses to be contained by the ‘restraining walls’ (MM 6: 248) of the household. And it recognizes this analysis as particularly trenchant in the wake of a global pandemic in which the absence of adequate juridical frameworks for conceptualizing domestic and caregiving labour has become readily apparent; as the line between ‘essential’ and exploitative labour has blurred, these conceptual gaps have shaped starkly gendered and raced impacts.

At the same time, my analysis will locate the limits of labour-based analysis, building on arguments from the Black radical tradition that challenge the categories of exploited and alienated labour for conceptualizing enslavement and global conquest, thinking beyond Marxist (and Lockean) frames. I read Kant’s linked analyses of slavery, sex work, and domestic labour through these arguments in order to map the edges of Kant’s account of labour, the places where labour slides beyond exploitation and into subjection, objectification, and fungibility. Kant’s practical philosophy, I argue, is particularly instructive for identifying these slides, both because of his explicit embrace of these moves in his anthropological and historical work, and because of the ways his analysis of

<sup>5</sup> From, for example, the wages for housework movement to the contemporary domestic workers alliance, to Pauli Murray and Kimberlé Crenshaw’s trenchant uses of labour discrimination practices to ground first ‘Jane Crow’ and then intersectionality, which I discuss in Section 7.

labour does not exhaust the strategies available for addressing these slides in his moral and political philosophy. In making this argument, I build on Charles Mills' insight (2017) that Kant's philosophical system provides normative resources that Marx's lacks, showing that Kant, likewise, provides us with resources for theorizing unwaged labour that go beyond what we inherit from Marx (Pascoe 2017).

Thus, I argue neither that a labour analysis is sufficient for addressing normative inequality in Kant's practical philosophy, nor that it is sufficient for theorizing historical or contemporary practices of enslavement, extraction, or exploitation. Rather, I show that Kant's theory of labour sheds light on the normative structures of inequality built into his philosophy of Right, with implications for modern liberal frames that inherit from Kant. Kant's theorization of inequality takes race- and gender-based divisions of labour to be intertwined and mutually constitutive, revealing the ways that Kant's theorization of justice is explicitly white and male, organized against a raced and gendered backdrop of 'dependency' that places the labour of women, of non-whites, and in particular, of non-white women, outside the frame of justice.

This genealogy requires me to ask what it would mean not only to make Kant *useful* to feminist, decolonial, radical Black, and intersectional theorizing, but also to hold Kant *accountable* to these modes of theorizing. This means, as Patricia Hill Collins has put it, 'invoking concrete experience as a criterion of meaning' (1989: 769). Kant's thinking about the contradictions of labour are grounded in his own experiences, first as a tutor working within another's household, and later as a professor who employed a manservant of his own. Perhaps for this reason, his theorizing of labour is nuanced in ways that his thinking on race, gender, and sex often is not. But his thinking about labour cannot, and should not, be estranged from his prolific thinking about race, gender, sex, and class: holding Kant *accountable* to contemporary theorizing about race, gender, sex, and class means refusing to excise his practical philosophy from his anthropological, historical, and geographical work. While I treat the *Rechtslehre* as the final form of Kant's political philosophy, I explore *how* Kant arrived at these arguments through his long interrogation of the institutions that make moral life possible, which were informed and filtered through the development of his social theory and his engagement in contemporary debate. In doing so, I resist interpretive practices that compel me to read Kant as if his account of independence and public reason necessarily applied to me by, for example, setting aside his remarks about gender. In this, I am oriented by Tiffany Lethabo King's articulation of the training we are given as philosophers to identify *with* canonical figures like Kant, to locate ourselves

in the text, and to offer slight adjustments that put ourselves – whether one is a woman, is Black, is Indigenous – at the centre of the text, as if the relevant mechanisms for ‘working one’s way up’ applied to us (King 2017: 172). Rather, I want to think against and press on this training by refusing to acquiesce to the desire to find my own liberation in Kant’s theory of freedom, attending instead to the structure and limits of Kantian independence. Reading Kant in this way, I will show, requires us to attend to the ways that his social theory is embedded in his account of Right.

I make this argument in seven moves. In Section 2, I develop Kant’s theory of labour in the *Doctrine of Right* in order to examine the role labour plays in the patterns of exclusion built into the Kantian state. In Section 3, I turn to Kant’s defence of the ‘trichotomy’ of Right in the drafts and Appendix of the *Doctrine of Right*, illuminating this argument as a critical and innovative feature of his political thought (VMM 20: 451). In Section 4, I explore Kant’s early notes on political philosophy in order to map the development of his arguments about slavery and sex, which lead him to the framework of ‘the right to a person akin to the right to a thing’. I argue that the linkage between marriage and slavery in these notes suggests that Kant’s rejection of slavery in the *Doctrine of Right* may have as much to do with his theory of labour as it does with his changing thoughts on race. In Section 5, I explore the relationship between Kant’s political theorization of labour and his anthropological accounts of race and gender, tracing a taxonomy of his thinking about labour, laziness, and leisure that reveals how his account of labour is consistent and continuous with his anthropological arguments and how, for Kant, gender is always raced. In Section 6, I examine the limits of Kant’s account of labour, showing how sex work and slavery are critical exceptions to his account of enclosed domestic labour. I consider Kant’s arguments about slavery and servitude in light of the politics of the historical process of emancipation and Reconstruction, showing how Kant’s theory of labour maps strategies for embedding ongoing relations of racialized dependent labour after the abolition of slavery. In Section 7, I argue that Kant’s theory of labour, with its nuanced and innovative account of domestic labour, provides a starting point for intersectional interrogations of Kantian philosophy that disrupt practices of theorizing about race and/or gender within Kant scholarship in ways that render women of colour invisible. In the concluding section, I argue that Kant’s theory of labour disrupts moves that distinguish between Kant’s systemic account of justice and his non-systemic discussions of domination and oppression, by showing how rightful (raced and gendered) inequality is embedded in his theory of the state.

## 2 Kant's Theory of Labour

Kant's interest in economics, from his emphasis on cosmopolitan trade to his study of Adam Smith, is apparent not just in his political and historical writings, but in moral texts like the *Groundwork*, where a Smithian division of labour frames the distinction between rational and empirical philosophy (GMS 4: 388), and the concept of *market price* is introduced to refine his definition of dignity (GMS 4: 434; Maliks 2014: 109; Fleischacker 1991). The market and its regulation were more than metaphors: economic realities and the institutions that organize everyday life were critical elements of Kant's empirical accounts of how juridical law and social context shape freedom (Fleischacker 1996; Flickshuh 2002). Thus, recent scholarship has foregrounded Kant's interest in economics and trade, examining Kantian economic justice within the state, from poverty relief to the state's duty to 'secure each person's right to access and participate in the public marketplace on equal terms' regardless of the economic system in place (Varden 2008: 342), as well as the role of global trade in Kant's cosmopolitanism.<sup>6</sup> Kant scholarship has also addressed labour, examining how employment contracts are needed to prevent us from using one another as a mere means (O'Neill 1989), exploring how Kant's theory of justice can counter the problems of exploitation (Wood 2017) and domination (Ripstein 2010), and exposing the role labour plays in Kant's account of citizenship (Pascoe 2015; Shell 2016; Hasan 2018; Basevich 2020; Moran 2021), his account of property acquisition (Ripstein 2010; Kirkland Forthcoming), and his account of contracts (Byrd 2002; Pallikkathayil 2010). My arguments in this section build upon this scholarship in order to develop a comprehensive account of the final form of Kant's theory of labour in the *Doctrine of Right*.

Kant's theory of labour is located at the intersection of innate and acquired right. Innate right is the right to humanity in our own person, expressed as freedom and innate equality. Kant describes it as the 'original right' to 'being one's own master', by which he means 'independence from being bound to others to more than one can in turn bind them' (MM 6: 237–8). Right (*Recht*) is repetitive the 'sum of the conditions' under which our reciprocal rights to this independence can be protected 'in accordance with a universal law of freedom' (MM 6: 230). Innate right, then, poses three puzzles for a Kantian account of labour. First, labour arrangements must respect the innate equality of employers

<sup>6</sup> For recent examinations of Kant's views on poverty relief and economic justice, see Allais 2015, Hasan 2018, Holtman 2018, Kleingeld 2014a, 2014b, Loriaux 2020, Sanchez Madrid 2018, Varden 2006b and 2020. I address Kant's arguments about poverty relief in Section 6.

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*.

Kant solves these problems by theorizing labour relations as features of acquired right, which delineates relationships to things and persons, mapped through the institutions of Private Right. While Kant argues that labour is not a question of property right, since a person 'cannot be the owner of himself (*sui dominus*) (cannot dispose of himself as he pleases) – still less can he dispose of others as he pleases' (MM 6: 270), one's right to own the product of one's labour plays a key role in Kant's theory of labour, along with contracts (rights *against* specific persons) and domestic or status relations (rights *to* persons akin to our rights to things). As a question of acquired right, Kant's account of labour goes beyond questions of innate freedom and equality to consider the material conditions and relations of independence, as well as their implications for one's standing as a citizen in Public Right.

Kant's most straightforward analysis of labour is found in his account of contract right. Employment contracts are delineated in his 'Dogmatic Division of All Rights That Can Be Acquired by Contract'. Here, he recognizes three kinds of contracts to let and hire: contracts to lease or lend an object or property; contracts of 'letting work on hire' or labour contracts; and contracts 'empowering an agent' (MM 6: 285 ). All three are onerous contracts, in which each party acquires rights against the other.<sup>7</sup> The logic of letting and hiring labour is closely tied to that of letting and hiring objects, despite Kant's insistence that one's labour is not an object over which one can dispose. The 'letting work on hire' contract corresponds to a contract in which I hire someone to work in my factory or shop – a working day arrangement – while the 'empowering an agent' contract is a managerial contract, in which I contract to hire someone to manage my factory or shop to my specifications (Byrd 2002). In the first case, I contract for your labour, paying you a wage for your time or your product in a relation akin to Marx's conception of labour-value. In the second case, I contract for your full faculties to fulfil a limited set of

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<sup>7</sup> These rights are framed as *specific*, although Onora O'Neill, in her account of Kantian employment contracts (1989), points out that employment contracts tend, in practice, to establish fairness by generalizing rather than establishing specific or individual contracts.

my ends, as determined by our employment contract. In the latter case, I may pay you an honorarium or salary as opposed to a wage.<sup>8</sup>

Contracts to let and hire, or to empower an agent, are consistent with innate equality because they are organized by a united will, which treats contracting parties *as if* they were equal in laying out the terms of the contract (even if the contract lays out a hierarchical relationship) (MM 6: 271).<sup>9</sup> And, they are consistent with my right to humanity in my own person, including my right to be 'my own master' in that what I rent out, in either case, is my labour, skill, or faculties, rather than my *person*. To make this distinction clear, Kant (and his critics) point to sex work and slavery (see Section 3) in order to make clear that we cannot rent out our person.

Kant develops his account of labour to ensure that rightful labour relations are consistent with innate right, but he concedes that some of these labour relations produce relations of dependency with political consequences. In his discussion of Public Right, Kant argues that the three requirements of citizenship are lawful freedom, civil equality, and civil independence. The first two derive from innate right: from one's right to be one's own master and not be bound by another in ways one could not reciprocally bind that other. But civil independence concerns acquired right and the material conditions of existence and preservation, or the attribute of 'owing his existence and preservation to his own rights and powers as a member of the commonwealth, not to the choice of another among the people' (MM 6: 314). Civil independence determines civil personality, or the right to represent oneself and participate in politics as an active citizen; passive citizens are those who have innate freedom and civil equality but lack civil independence.

The justification for this distinction was a pragmatic one that borrowed from the Abbe Sieyès' interpretation of Rousseau, which sought to establish a model of direct democracy in which voting rights were limited to property owners and taxpayers (Maliks 2014: 83–5). Kant's treatment of the distinction diverges from the French discourse in several ways: while Sieyès limited active citizenship to the 'third estate' in order to limit the power not only of the peasants, but of the

<sup>8</sup> Kant teases out the distinction in the *Feyerabend Lectures* (1784), where he distinguishes between wage labour, through which 'I grant another the use of my powers for a determined price' (Fey 27: 1361) so that my employer can 'determine the labour and can coerce it' (Fey 27: 1362), and an honorarium, 'which one of course cannot coerce' since it describes payment for a contract empowering another to act on my behalf, or on behalf of an institution, such as a professor, lawyer, or tutor (Fey 27: 1363). These examples suggest that the 'contract empowering an agent' category includes not just managerial contracts, but a wider range of contracts that organize others' rights to represent my interests, including lawyers, estate agents, doctors, and so on.

<sup>9</sup> I develop a full account of this argument in Pascoe 2013 (199), where I argue that because such contracts are designed to manage inequality, employees and employers are equal *in relation to the contract*, even if the contract sets out a relationship of inequality.



nobility and the clergy, Kant tied it to civil independence. This was, in part, motivated by a concern that those who owe their livelihoods to others could not be trusted to vote independently (Williams 2006) and could not reliably outsource their labour in order to participate in public affairs (Moran 2021). In making this distinction, Kant reconfigured the property requirement that had predominated since Locke,<sup>10</sup> arguing in *Theory and Practice* that an active citizen must be

‘one’s own master (*sui iuris*), and thus that one has some *property* (which also includes any skill, trade, fine art, or science) that provides for one. That is to say that in those cases where he must earn his livelihood from others, he earns it 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’ (TP 8: 295).<sup>11</sup>

By redefining ‘property’ to include a skill or a trade, Kant’s distinction between active and passive citizenship turned primarily on labour relations, and thus, on one’s location in market relations (Maliks 2014: 109).

Kant deploys a range of examples to illustrate the distinction, although he admits that it is ‘somewhat difficult to determine the requirement for laying claim to the class in which one is one’s own master’ (TP 8: 295 n). The hairdresser who cuts my hair is dependent, while the wigmaker, who sells me a wig, is independent; the woodcutter who cuts my wood sells me his labour, while the tailor who transforms my fabric into clothing sells me his skill in the form of a final product. The wigmaker and the tailor would own the wig or the suit if I failed to pay them for it, and so what they sell me is the *product*, not their labour; they enter into a contract with me for trade, not for the use of their powers (TP 8: 295 n; MM 6: 314). In the *Doctrine of Right*, Kant emphasizes that this distinction is dependent on socio-economic context: a blacksmith in India ‘who goes into people’s houses to work on iron with his hammer, anvil, and bellows’ is dependent, while the European blacksmith ‘who can put the products of his work up as goods for sale to the public’ is independent (MM 6: 314).

<sup>10</sup> Kant likewise rejects the Lockean argument that one’s labour transforms one’s right to property, explicitly arguing that ‘working, enclosing, or in general transforming a piece of land can furnish no title of acquisition to it . . . whoever expends his labour on land that was not already his lost his pains and toil to who was first’ (MM 6: 268–9). See Sections 5 and 6 for further discussion of Locke.

<sup>11</sup> Kant’s account of active and passive citizenship evolved between the early drafts for *Theory and Practice* (1792–3) and its final form in his *Doctrine of Right* (1797). In the early drafts, Kant argued that ‘the independence that is required to be a citizen of the state is the rightful condition of not standing under another’s orders’ (VTP Stark 245) so that ‘a citizen is a human being in society who has his own rightful independence, i.e., can be considered as himself a member of the universal public legislative authority’ (VTP 23: 137). Rafeeq Hasan has argued that Kant develops a more sophisticated and egalitarian account of the distinction in the *Doctrine of Right* (Hasan 2018: 925).

Labour is at the heart of Kant's account of civil independence in the *Doctrine of Right*, where citizenship is configured through the distinction between *independent labour*, in which one sells the *product* of one's labour and retains civil independence, and *dependent labour*, in which one rents out one's labour through either wage labour or managerial contracts, making one a dependent labourer and, thus, a passive citizen.<sup>12</sup> This has, as Rafeeq Hasan (2018) and Kate Moran (2021) have convincingly argued, more to do with structural features of the labour market than with wealth or property: the European blacksmith can access the raw materials of his trade without entering into contracts producing dependency, while the Indian blacksmith cannot. Likewise, we can imagine a wigmaker who is independent and yet struggles to keep her business running, while a wealthy athlete who owns property remains tied by a contract to dependency on his franchise (Moran 2021). Thus it is labour, rather than property alone, that determines civil independence: a labourer who owned his own home might yet be dependent because of the conditions of his labour.<sup>13</sup>

Because the citizenship distinction attends to the material conditions of civil independence, Kant insists that the distinction between active and passive citizenship is rightful because 'this dependence on the will of others and this inequality is, however, in no way opposed to their freedom and equality *as human beings*' (MM 6: 315). Civil independence justifies political inequality. But this political inequality is made consistent with innate right by a requirement of civil equality, namely, that 'it follows that, whatever sort of positive laws the citizens might vote for, these laws must still not be contrary to the natural laws of freedom and of the equality of everyone in the people corresponding to this freedom, namely, that anyone can work his way up from this passive condition to an active one' (MM 6: 315). This right 'to work his way up' to civil independence is a requirement of civil equality, which marks passive citizenship as a transitional state consistent with innate right, or our 'equality as human beings'.<sup>14</sup>

<sup>12</sup> Not all contracts empowering an agent produce dependence, as Kant notes in the *Feyerabend* lectures: while the manager of my factory is dependent upon me, the lawyer or doctor I pay (who may have other clients) is not dependent upon me in the same way: as an expert who is paid for his qualifications and skill, the standing of the lawyer or doctor is more akin to that of an independent labourer, even though our contract may take the form of empowering him as an agent to represent my interests in certain contexts. In the *Feyerabend*, Kant notes that contracts empowering an agent that do not produce dependency are paid through honoraria, rather than wages (Fey 27: 1363).

<sup>13</sup> Kant makes a similar point in rough notes for *Theory and Practice*, where he troubled the reliance on property ownership for determining citizenship, noting that those who own land but use it only for subsistence farming 'are not citizens of the state' because they 'do not contribute to the commonwealth' (VTP 23: 137).

<sup>14</sup> We see a variation of this argument in his account of marriage, where he squares the 'natural equality' of the married couple with the 'natural superiority of the husband to the wife' (MM 6: 279). The husband's superiority, moreover, is not merely 'natural'; it is institutionally organized,