

A right to sovereign earnings capacity: On the traces of the “revolutionary” Immanuel Kant

On April 22, 2024, Europe commemorates the 300th birthday of the German philosopher Immanuel Kant. Some see the author of [“To Eternal Peace”](#) (1795) still as a beacon of hope for a “revolutionary” turn in global relationships, in particular related to the [Israel-Palestine](#) conflict. In his book “Radical universalism: beyond identity,” the Israeli-American philosopher [Omri Boehm](#) calls for a return to Immanuel Kant and his idea of freedom and equality as a metaphysically binding moral principle. Although Boehm’s return to metaphysics (and even more to the prophets of the Old Testament) can be doubted, the reminder of human rights, e.g., “that all men are created equal, that they are endowed ...with certain unalienable rights” (American declaration of independence on July 4, 1776) must be the starting point in dealing with the current miserable situation of terror and wars. In the following essay, I argue that the commemoration of Kant could serve for another reminder: Kants triad “freedom, equality, independence,” which has been taken up only on the fringes of [academic mainstream](#), could inspire an urgent modernization of the employment relationship, both at national and European level. Yet, again, with the caveat that Kants own view should not be taken literally as an “absolute truth” but as a reasonable starting point for reflecting on persistent inequalities on the labour market.

Where does European labour market policy stand today?

European labour market policy has repeatedly received new impetus from the crises of recent years, particularly within the framework of the [European Pillar of Social Rights](#): These include efforts for [European unemployment reinsurance](#), the guidelines for a [European minimum wage](#), and the [guidelines for work reconciliation and private life](#), and more recently even [European social bonds](#) in

the context of its COVID-19 programme “Support to mitigate Unemployment Risks in an Emergency (SURE). In brief: The [EU has now become a strong player](#) in labour market policy, however, driven from one crisis to the other and not by an organizing principle.

The more recent developments – the geopolitical conflicts accompanied by brutal or threatening wars, the ecological and demographic crisis, the never-ending flow of refugees and the waves of migration triggered by poverty – are already shifting the focus of labour market policy without solving existing structural problems, e.g., from combating unemployment to addressing the [shortage of skilled workers](#), or from the inclusion of people with disabilities or political refugees to the forced deportation of unrecognized [asylum seekers, refugees, or migrants](#).

The political responses to this explosive situation are often presented as TINA (‘there is no alternative’), mostly pointing the finger at tight budgets and reacting increasingly in panic to the pressure from anti-European right movements. Although the many action plans are often correct in details, a fundamental line or sustainable purpose – in the Kantian sense – is missing in these programmes. The current ‘Zeitenwende,’ however, could be used as a window of opportunity to revitalize Kant’s legal-philosophical concept of independence. The focus would be on the right to sovereign earnings capacity, which would breathe new life into traditional institutions of the welfare state: apart from [expanding unemployment insurance](#) to a proper [employment insurance](#) or transforming the legal minimum wage to a true [“living wage”](#), the right to education would be bolstered by a youth and life-long-learning guarantee.

Kants Triad of Freedom, Equality, and Independence

The aging Kant was literally enthusiastic about the French Revolution, seeing in the ideas of the revolution the opportunity to realize the principles of the Enlightenment. There was only one point where he disagreed with the revolutionary triad “Liberté, égalité, fraternité.” Fraternity or (today) solidarity

seemed to him to be too vague and legally not suitable for being transformed into enforceable individual rights.

In his “Metaphysics of Morals” Kant provides the reasons for his enthusiasm. In §46 he explains why only the “generally united will of the people” can be legislative. However, only “citizens” are authorized to do this. Their necessary attributes in turn are the triad: civil freedom (“not to obey any law other than that which they have determined”), civil equality (“not to have any superiors among the people ... as only those who have the moral ability to bind others equally legally”), and civil independence (defined as “his existence and preservation not depending on the arbitrariness of another, but on his own rights and powers as a member of the community). Only these attributes enable people to vote politically and qualify from the “passive” to be an “active citizen.”

In his treatise “On the Common Say: This may be correct in theory, but it is not suitable for practice,” Kant takes up the idea of independence again and makes it clear which people he already believes are suitable as active citizens: “The only quality required for this, apart from the natural one (that it is not a child, not a woman), is ... that he is his own master (*sui juris*), and therefore has some kind of property (including any art, craft, or fine art, or science can be counted), which feeds him” Kant's view that women are far from civil independence is, from today's perspective, of course reactionary; yet Kant's demand for freedom and equality for *all* people was already revolutionary back then, leading Kant – for instance – to a sharp condemnation of slavery. Furthermore, according to Kant, laws should not exclude the possibility of “working your way up from this passive citizen to an active one.”

Kant's conclusion that citizens in a private authority relationship per se are denied the right to vote is also questionable from today's perspective. Why a tenured professor (like Kant) should be eligible to vote, but not his colleague at a private university or even at a commercial research institute, can no longer be explained today. On this important point, [Kant contradicted himself](#). A private employment

relationship regulated by labour law does not affect the independence that Kant had in mind. For him too, independence was not limited to the economic aspect (private ownership of land or means of production). Kant's "civil independence" also included – as his examples from crafts, art, and science show – professional sovereignty, i.e., an individual earnings capacity that gives everyone not only a decent minimum of economic independence, but also the freedom to terminate their private employment relationship and pursue the better alternative.

Towards a youth and life-long-learning guarantee

From the Kantian revolutionary perspective, it makes therefore sense to expand the long-established right to education (including compulsory schooling in the sense of Kantian reciprocity of rights and duties) to a right to vocational education and life-long-learning. Apart from the structural change towards digitisation and a green economy, four critical facts are urging policy responses: (1) a large part of the educational poverty is still "inherited;" (2) almost one in five young adults has no vocational training; (3) many teenagers and young adults are neither in employment nor in training; (4) the unmet need for skilled workers is growing despite persisting high (especially long-term) unemployment.

Ensuring sovereign earnings capacity requires, first, equal opportunities in the transition from school to work, a right already firmly established in Principle 1 of the European Pillar of Social Rights. However, rights remain 'patient paper' if capacities for their implementation are not available or underdeveloped. Moreover, as diversity among individuals increases, transformation of rights into reality requires capacities to be continuously diversified at 'local' levels (firm, community, region) to effectively guarantee equality of rights, which means "capacitating services" in the apt wording by [Maurizio Ferrera](#). In his criticism of John Rawls' theory of justice, the economist [Armatya Sen](#) made the theoretical background quite explicit: Rawls' equality principle (the same level of essential goods for all such as food, health, housing, education) alone is not enough to guarantee equal opportunities for self-realization. Natural (e.g. through birth),

acquired (e.g. chronic illnesses), accidental (e.g. accidents) or life-planned limitations (e.g. parenthood) in earnings capacity require compensation through suitable means to achieve the desired goals. In their book “Capacitas” (2009), the legal scholars [Simon Deakin](#) and Alain Supiot expand on this approach and define capacity (capacitas) in Kant’s sense as the ability to acquire enforceable rights (legal capacity) and to exercise them (capacity to act).

In concrete terms, using the example of youth guarantee, this means to provide a variable set of education and training services especially for disadvantaged youth, e.g., early advice and information on skill requirements, transparency of career paths, horizontal as well as vertical mobility options between occupations, and – for instance for youth with disabilities – even the adaption of work- and training places to the circumstances of the disability, e.g. the obligation of companies to employ disabled people at all and/or to provide supporting devices such as digital Braille readers or the financing of personal assistance in the event of mobility restrictions.

Thus, in modern labour law, it is not only important to ensure that all workers are made fit to the labour market, but also to ensure that the [labour market is made fit to everyone](#) who wants to work. This also includes the greatest possible inclusion in the labour market for it is above all participation through professional work that give workers – in the sense of Kant's civil independence – the power and voice to be organized collectively and to improve the working conditions, e.g. wages, reduced or variable working hours, education, and training options.

Both at national and European level, however, today's youth policy focuses too much on higher education and neglects vocational training that would offer disadvantaged young more realistic opportunities to achieve a certified occupation establishing individual or collective power on the labour market. A youth guarantee through better [governance of sustainable transitions](#) would help Europe's young people to start successfully into their working life and to gain sovereign earnings capacity. The [European Union](#) could adopt successful

principles of transition policy (in particular the dual learning approach) from other member states such as Austria, Denmark, and Germany, and even the (still) relatively successful [Germany could learn from Switzerland](#), as the Swiss governance system is a model of multilevel capacity building.

Recently, the European Commission has set up an ambitious [Action Plan](#) to address skill and labour shortages. It recommends to “activate” the untapped potential outside the labour market, which means the 21 percent of today’s population aged 20-64 in “inactivity.” The intention is to increase labour market participation by addressing those population groups that are currently underrepresented. A promising instrument to address both goals, labour as well as skill shortages, would be a life-long-learning guarantee because the gap between high and low educated people is (and has been persistently) high. In 2022, the [employment rate for people aged 20-64 years](#) who had attained a high level of education was 86.0 percent in the EU, much higher than the rate for those who had only completed a low level of education, which was 57.2 percent. However, the Commission’s recommendation shows little emphasis on capacity building, both in legal as well as in implementation terms. [ETUC](#) rightly criticizes that the Action Plan falls short of ensuring that every worker has access to quality and inclusive training as a fundamental right. The right to training should be exercised during working time and should be cost-free for workers whose earnings capacity does not allow a break of the income flow due to lack of income reserves. The Commission’s goal of 60 percent participation rate in adult learning (in year 2030) will not be reached without focusing on this group with low earnings capacity. There’s also a notable absence of recommendations for companies to invest in their workers’ training, especially SME with no or small redundancy of labour force. A focus of the Action Plan on upgrading low educated people would also mitigate the need to “attract talent” outside Europe to address labour shortages.

Beyond Kant: Nudging solidarity through procedural regulation

Freedom, equality, independence: these were Kant's three pillars of a true civil society. Why independence and not solidarity ('fraternité'), the glue of a social community that is so much talked about today? On closer inspection, this surprising departure from the usual triad turned out to be inspiring for a fundamental reform of the traditional employment relationship: here an independent "employer," there a dependent "employee." For Kant, otherwise an admirer of the French Revolution, solidarity had no legal potential, which means at the end of the day "the possibility of external coercion" (Metaphysics of Morals 1797 - Introduction to Legal Theory, § D). With this, Kant practically anticipated the widely quoted dictum of the German constitutional lawyer [Ernst-Wolfgang Böckenförde](#): "The free, secularized state is alive of conditions that he himself cannot guarantee."

Even if this 'dictum' might be true in the strict sense, it neglects the many possibilities to "nudge" solidarity through procedural regulation, especially through [covenants](#) that underlie the Swiss 'miracle' of successfully governing school to work transitions. Covenants, i.e. undersigned, yet flexible agreements of partners with different or even antagonistic interests, seem to be the institutional arrangements that Kant had in mind when writing his pamphlet "To Eternal Peace" in which he hinted to the paradoxical solution: There is only one way in which war between independent nations can be prevented; and that is by the nations ceasing to be independent and to engaging in a federal union. In analogy, sovereignty of earnings capacity presupposes the willingness – or with Kant even the duty – of employers and employees to give up their individual independence in favour of free *and* equal cooperation through mutually binding employment relationships.

*Günther Schmid is Professor a. D. of Political Economy at Free University Berlin and Director Emeritus at Social Science Centre Berlin (WZB).
Emails: guenther.schmid@wzb.eu; gues@guentherschmid.de;
Websites: www.guentherschmid.eu; www.childdevelopmentfund.com;
wzb.eu/de/personen/guenther-schmid*