

11 Politics, freedom, and order: Kant's political philosophy

Kant's practical philosophy in its entirety comprises ethics and philosophy of right,¹ moral theology, moral anthropology, and the philosophy of history, and combines them into one impressive theoretical structure. The theory of the self-legislation of pure practical reason developed in the *Groundwork of the Metaphysics of Morals* (1785) and *Critique of Practical Reason* (1788) stands at the center of this system. Through this theory Kant provides an entirely new theoretical foundation for justification in practical philosophy. In the previous history of practical philosophy foundations and first principles were sought in objective ideas, in a normative constitution of the cosmos, in the will of God, in the nature of man, or in prudence in the service of self-interest; but Kant was convinced that these starting-points were without exception inadequate for the foundation of unconditional practical laws, and that human reason could only concede absolute practical necessity and obligatoriness to norms that arose from its own legislation. We are subject to the laws of reason alone: With this recognition Kant frees us from the domination of theological absolutism and the bonds of teleological natural law, and likewise elevates us above the prosaic banalities of the doctrine of prudence. Human beings may and must obey only their own reason; in that lies their dignity as well as their exacting and burdensome moral vocation.

In the *Metaphysics of Morals* of 1797 Kant systematically elaborated this theory of autonomous and self-ruling reason and developed a material ethics and a philosophy of right. Besides its foundational part and the realm of the systematic differentiation of the pure legislation of reason into right and ethics, the principles of private and public right on the one hand and the rationally based ends of human

action on the other, Kant's practical philosophy also includes anthropology and philosophy of history. Human nature and history constitute the domain for the empirical application of the principles of morality and right. They contain the conditions of realization without attention to which pure practical reason remains powerless, and which must therefore be considered by a practical philosophy that is concerned with the realization of its own principles.

When one looks for political philosophy in the structure of Kant's practical philosophy one finds it in the realms of philosophy of right and the philosophy of history. Kant revoked Machiavelli's separation between morals and politics, and by integrating political philosophy under the authority of pure practical reason re-created the old unity of morals and politics in a revolutionary new conceptual framework and on the basis of a revolutionary new theory of justification. The presentation of Kant's political philosophy requires a task of reconstruction, requires that the arguments and doctrines of his philosophy of right that are essential for political philosophy be put in their internal foundational nexus so that the systematic backbone of the political philosophy can be made clear; that is, it is requisite for us to reconstruct the path of Kant's argument from the concept of right through the foundation of property to the *a priori* principles of the republic of reason. However, Kant's political philosophy also carefully reflects the empirical conditions for the realization of the norms of the rational theory of right and develops an astonishing pragmatism, engaging with relations of political power as they are given in order to discover and exploit possibilities for change free of force and oriented toward principles. This non-Machiavellian but principled pragmatism about reform, which is aimed at a republicanism of relations of domination, is embedded in a philosophy of history that, encouraged by the sympathetic reaction to the French Revolution throughout Europe, expected the historical development of states to be a nonlinear but nevertheless unstoppable progress in right. The utopian vanishing point on the horizon of this practical philosophy of history is the highest political good, perpetual peace.

This brief description of the themes of Kant's political philosophy suggests the course and division of the following exposition. In more detail, I will deal with the elements of the concept of right (Section I); Kant's foundation of private property and his critique of Locke's

labor theory of property (II); the connection of the natural condition,² property, contract, and state in Kant, in comparison with Hobbes and Locke (III); Kant's *contractus originarius*, the *a priori* principles of the civil condition, and the procedural concept of justice that is grounded on that (IV); the connection between Kant's prohibition of revolution or resistance with his principle of publicity and right-improving reformism (V); and finally, in Section VI, his theory of perpetual peace.

I. ELEMENTS OF THE CONCEPT OF RIGHT

Kant shares the conviction, common to all variants of natural right theory, that there is an objective, timelessly valid and universally binding principle of right, which is accessible to human knowledge, which draws an irrevocable boundary between that which is right and that which is not that obligates everyone, and which contains the criterion with the assistance of which the correctness of human actions can be judged. But in distinction from all his predecessors, in the determination of the concept and principle of right he appeals neither to empirical human nature nor to the nature of a teleological worldview that includes reason, but solely to the legislative reason, purified of all anthropological features and excluding all elements of nature, of a metaphysics of freedom. In the philosophy of right and in the political philosophy that is grounded upon it, exactly as was already done in moral philosophy, the way is thereby barred to every application of natural purposes, human needs and interests, and substantive ethical considerations in Kant's argument. Only the properties of reason itself are available to make determinate the nonempirical concept of right: lawfulness, universality, formality, and necessity. As far as its structure and potential value as a criterion are concerned, the principle of right cannot be distinguished from the categorical imperative: Like the latter, it must contain a universalization argument.

Kant's concept of right states: "Right is . . . the totality of conditions, under which the will [*Willkür*] of one person can be unified with the will of another under a universal law of freedom" (*Morals*, 6:230).³ The following principle of right correspondingly holds for human actions: "Every action is right which, or the maxim of which, allows the freedom of the will of each to subsist together with the freedom of everyone" (6:230). Because human beings live

with others of their kind in space and time, enter into external relations with others of their kind, and influence the actions of others through their own, they are subject to reason's law of right. Kant's concept of right concerns only the external sphere of the freedom of action. Only the effects of actions on the freedom of action of others are of interest to it. Inner intentions and convictions are excluded from the sphere of justice just like interests and needs. That means that no claims of right can arise from one's neediness. Right does not help powerless needs. For Kant a community of right is not a community of solidarity among the needy, but a community for self-protection among those who have the power to act.

The inner world of thoughts, intentions, convictions, and dispositions does not fall under the authority of rational norms of right, and consequently can never be a legitimate realm for control by positive laws. A state that employs the instruments of right for purposes of a politics of virtue and moral education, which punishes unpopular political and ethical convictions and seeks to form people and their thoughts with its laws, oversteps the boundaries of legitimate lawful regulation to which every governmental legislation is confined by the intrinsic meaning of the rational concept of right itself.

Kant's law of right from reason is a universal formal law of the freedom of action. Indifferent to all elements of content in human actions, it is concentrated solely on the question of the formal compatibility of the external freedom of one person with that of others, and thereby limits individual action within the boundaries of its possible universalization. Just as the moral law brings inner freedom into harmony with itself and functions as a principle of consistency for the inner world through its exclusion of all non-universal maxims, so the law of right brings external freedom into harmony with itself and functions as a principle of consistency for the outer world through its hindrance of all non-universalizable uses of the freedom of action.

Because Hegel accused the categorical imperative of being a tautology, both the moral and juridical principles of the Kantian legislation of reason have been repeatedly reproached as empty. But that is a misguided criticism, which fundamentally misunderstands the criterial character of the principles of Kant's practical philosophy and looks at them as if they were meant to be premises from which substantive conclusions could be deductively derived. But a statute

book can no more be derived from the universal principle of right than a specific canon of duties can be derived from the categorical imperative. Nevertheless both principles contain criteria that are capable of making important distinctions: Just as the categorical imperative helps to identify parasitic ways of acting,⁴ so can the principle of right make every politically inequitable distribution of freedom recognizable as not right. To be sure, the criterial potential of both principles is decidedly less than Kant thought. If no empirical examples of obviously inequitable distributions of freedom in the framework of historical organizations of domination lie to hand, if one directly asks the principle of right how the domain of mutually compatible individual spheres of freedom is to be determined *a priori*, then Kant's principle is an unclear criterion. In any case it does not seem sufficient to base the determination of the right solely on the criterion of formal compatibility. One can take it as a necessary condition of right that different ways of employing freedom not exclude each other. But that cannot convince us that all mutually compatible uses of freedom will be blessed by reason as allowed by right. Certainly the *a priori* framework that is alone philosophically relevant according to Kant takes into account only the formal criterion of compatibility. But if distinctions drawn from this criterion do not suffice, then a relativization of the *a priori* perspective through the addition of empirical considerations is required.⁵

According to Kant right, as the law of external freedom, as the order of coexistence of symmetrical freedom for human beings who live in spatial relations, defines the domain that each may consider his own, occupy as he pleases, and defend against injuries to its boundaries. For right is analytically connected with the authorization of coercion: The authorization of coercion as permission for the defense of universally compatible domains of freedom is a constituent of the concept of right, connected to it "according to the law of contradiction" (6:231). Thus the law of right can also be represented as a universal principle of coercion in the sense of "completely mutual coercion agreeing with the freedom of everyone according to universal laws" (6:232). The order of freedom of rational right and the reciprocal mechanism of coercion demonstrate the same structural characteristics of equality, symmetry, and mutuality. Mutual coercion is the external medium through which the order of freedom of rational right is represented, through which it obtains reality. The

justification of defense against deeds that are not right is the philosophy of right's counterpart to the moral necessitation of the categorical imperative.

At the center of Kant's system of practical philosophy is the insight that the unconditional obligation and absolute validity that according to him must be attributed to practical principles could not be grounded if the laws of freedom, the internal laws of freedom of morality as well as the external ones of right, are anchored in theoretical reason and understood in analogy with the categories that are formative for perception as rules of unity of the synthesizing understanding for the internal and external employment of the will. No theory of unconditional obligation could be constructed on the basis of a will connected to understanding alone, on the foundation of instrumental reason. That the concept of right contains coercion as an element valid *a priori*, that persons who themselves lack insight can therefore legitimately be coerced into obedience to the law of right, is not, as many interpreters have asserted,⁶ incompatible with Kant's characterization of the law of right as an unconditionally obligatory law of pure practical reason. This law has the status of a synthetic *a priori* practical proposition; and on account of its practical necessity it must presuppose the validity of Kant's doctrine of the fact of reason and the ensuing thesis of the reality of transcendental freedom. The justification of Kant's philosophy of right depends on his moral philosophy. Thus the claim to validity of his political philosophy is also connected to the emphatic concept of reason in his moral philosophy and to the reality of transcendental freedom. The fate of the justification of Kant's philosophy of right and his political philosophy therefore lies precisely where Kant's moral philosophy is most vulnerable. If the concepts of pure practical reason and transcendental freedom should prove to be conceptual chimeras and ethical ghosts, then the whole theory of unconditional practical obligation would also collapse. And the crash of the categorical imperative would then bring down with it the universal law of right with all the corollary principles of the theory of property and political philosophy that depend upon it; the structure of the Kantian practical philosophy, in which reason is dominant, would sink completely into empiricism. Only prudence, which Kant found contemptible, would remain as a basis for the reconstruction of political philosophy, and the meaner task of calculating foundations for the philosophy of right and political phi-

losophy would have to be cashed out with the small change of hypothetical imperatives, good grounds, and shared needs.

II. KANT'S FOUNDATION OF PRIVATE PROPERTY

The universal law of right, the categorical imperative of reason in the realm of right, limits the freedom of action of everyone in accordance with the criterion of mutual compatibility and assigns to each person an equally large parcel of freedom in which, as far as right is concerned, he can do what he pleases. With respect to the use of objects this universal law of right implies a further principle of the philosophy of right, which Kant designates as the "permissive law of practical reason" (§2, 6:247) or the "juridical postulate of practical reason" (§2, 6:246), and which says that it must be possible in principle for everyone to have a right of property in any object of the external world and thereby to possess the authority to exclude everyone else from the use of this thing.

The right of reason grounded in freedom demands private property. The position of radical communism, which advocates the necessary numerical identity of the physical and the rightful possessor of an object and can find a criterion for the legitimate application of the juridical predicate "mine" only in the sensible possession of objects, is for Kant diametrically opposed to right. Kant developed two anti-communistic arguments. The first argument, which is found primarily in his literary remains,⁷ uses the idea for the refutation of idealism and establishment of realism in the second edition of the *Critique of Pure Reason*, although to the opposite end, namely to the end of a juridical refutation of realism and foundation of idealism, for by making the empirical criterion of physical possession absolute, communism becomes a variant of realism in the philosophy of right. Just as a dogmatic idealist like Berkeley must concede that the inner experience, which is all that he accepts, has its real ground in external experience and things that are independent of consciousness, so the communist who purports to understand only an empirical concept of possession must be taught that the internal and innate possession, which is all that he concedes, is dependent on the external possession, which he denies, dependent on the purely juridical possession of external things, which is independent of physical occupancy. The point of this anchoring of private property in an innate human right is that the

right to property has the status of a generally necessary right. If the original right of freedom finds its external guarantee in property, then every human must have a right to property grounded solely in the right to freedom, which must be ascribed to him merely on the basis of his humanity. Obviously this conception of the right to property calls for a positive politics of distribution by the state.

Kant's second anticommunistic argument is found in section 2 of the *Doctrine of Right*. Here Kant first argues that the things of the world possess no rights, but rather that everything that the human will can ever possess and employ for any end whatsoever is subjected to it. The human being is the lord of the world; the world as the totality of usable nonhuman things is at his disposition. Further, the free will in its use of things can be limited only by the formal law of the right of reason. According to Kant, any juridical regulation that would organize the domination of the will over things on empirical grounds would be opposed to reason, right, and freedom. This would also apply to the communistic regulation of property, which would limit the freedom of the will in its use of things to the duration of the empirical possession of things.

We must keep the radical, aprioristic parsimony of Kant's argument before our eyes. Naturally every intention for the use of objects that goes beyond the end of fundamental self-preservation and tries to plan for the future remains an illusion in a communistic regulation of the use of objects. But it is not its consequence of a fundamental inhibition of civilization that leads Kant to his rejection of communism. Likewise it is not the civilizing efficiency of the domination and exploitation of nature in the framework of an order of private property that leads Kant to argue for the right to exclusive use of things. The ground for his rejection of communism is solely its incompatibility with the pure right of reason that limits the freedom of the will in action as well as use only through formal laws. But by means of this argument Kant at the same time places himself in opposition to the entire tradition of the philosophy of property. From Aristotle to Locke theories of property were always embedded in pragmatic contexts and connected with considerations of human ends, and the needs and ends of natural human beings were always the grounds for the authorization or limitation of the right to property; the conception of a teleologically unqualified freedom of the will not bounded by the needs for preservation and the life-interests of natural human beings would

have been profoundly alien to every philosopher prior to Kant. Kant's metaphysics of right, on the contrary, has no regard for human interests and needs. The deontological universalism and anticonsequentialism of pure practical reason is noticeable at every stage of its systematic development and at every step of Kant's argument. The Kantian right to property in the end is also supported solely on considerations of the formal theory of freedom.

Kant's refutation of communism has three positive consequences:

1. Every thing can in principle become and remain the private property of someone.
2. Everyone is allowed to bring masterless things into this possession and to rightfully possess them – that is, to exclude all others from their use in accordance with right.
3. Everyone is obligated so to behave toward others that rights to property can be constituted and an order of private property be established.

Kant's foundation of private property therefore implies the authorization for original acquisition. To be sure, it is at first difficult to see how such an original acquisition can possibly be rightful: Empirical acts of appropriation cannot constitute any right, and unilateral acts of will cannot generate any sort of obligation. If all obligations arose either naturally or through contract or promise, then there would be no way for original acquisition to give rise to any obligation. Kant's solution of this difficulty about *acquisitio originaria* in the theory of right consists in the apparently paradoxical construction of a noncontractualistic theory of consensus, which shares the anticontractualism of Locke's theory of property but, as in the contractualistic foundation of property in Grotius and Pufendorf, is at the same time convinced of the need for consensus in the authorization of exclusion inherent in a right to private property, and which therefore contradicts Locke's thesis that first possession is sufficient to constitute property. Locke's theory of original acquisition through labor is forbidden to Kant for two reasons: first, because empirical actions cannot generate rights, regardless of what features they have; and second, because unilateral acts of will of whatever kind, whether sheer acts of power or expenditures of labor, cannot generate obligations for others. But Pufendorf's contractualism is also excluded for Kant: the voluntarism of such a contract lies beneath the metaphysi-

cal level of unconditional practical obligation to which Kant's philosophy of legislative practical reason is oriented. If it is an *a priori* presupposition of this legislative reason that everyone is obligated to do what is requisite to make relations of property possible, then the individual right to property cannot be left up to the mere choice to make contracts. The systematic point of the Kantian construction of the noncontractualistic theory of consensus is that the two ideas of reason, the idea of the original common possession and of the *a priori* united will of all, make it possible for the philosophy of right to interpret the empirically first occupation of a piece of land as an act of appropriation on the part of the universal will of the ideal collective possessor of everything that may originally be acquired in general and thereby to ground an indissoluble obligation for all others whose freedom of action is affected by this first appropriation to agree with it for the sake of the erection of a juridical condition and the establishment of a public system of legislation and rights. Kant therefore connects the authorization of appropriation with the obligation to subject the right of property thereby created to juridical confirmation through the institutionalized legislation of all. To be sure the *prima occupatio* is legitimate, but in contrast to Lockean property grounded in labor, the possession that begins with it is juridically incomplete. It is only the first move in the game of the normative justification of rights, the rules of which prescribe the second move of the universal agreement of all who are affected by this occupation. This argument rests on the systematically important insight that no empirical act, whatever valuable anthropological or economic properties it may have, can constitute a right and thereby an authorization for the limitation of the freedom of others.⁸ Locke's conception of property as grounded in labor founders on this insight; but so does every other theory of original acquisition not needing consensus. Nozick's entitlement theory of justice also cannot be maintained against Kant's theory of property.

III. THE NATURAL CONDITION – PROPERTY – THE STATE

"From private right in the natural condition there now arises the postulate of public right: In relation to an unavoidable coexistence with others, you should make the transition from the state of nature

to a juridical state, i.e., one of distributive justice" (§42, 6:307). Kant understands the *status naturalis* as a condition of natural private right. The natural condition is for him not an anthropological thought-experiment, but one in the philosophy of right. It forms a laboratory for theory, in which the qualification of reason's juridical principles of property for the conflict-free organization of the social use of things can be tested. On the basis of a negative outcome the right of reason itself demands to be made positive, concrete, and institutionalized in a system of distributive justice, which by means of a legislature, judiciary, and executive can determine the property of each in accordance with obligations of right. In other words, in the Kantian philosophy the state is not demanded by prudence and utility, but is called for by reason itself and thus equipped with the property of juridical necessity.

The reason why Kant's philosophy also joins in the chorus of modern political philosophy singing "*ex eumdem-e-statu-naturali*"⁹ lies in the indeterminacy of the rational principles of right for the appropriation and use of things. "The indeterminacy in regard to the quantity as well as the quality of the externally acquirable object" (§15, 6:266) is the price that must be paid to ground property in the theory of freedom rather than in a connection to purposes and the limits of appropriation. Locke's conception allows for a sufficiently stable order of property in the natural condition, but Kant, on the contrary, must argue for a concretization and differentiation of the implications of rational right through positive right because in the natural condition chaos rules with respect to the concept of right – each person attempts with equal right to fill the emptiness of the natural laws of property with his own interpretation. The result is a war for the monopoly of interpretation over equally justified but incompatible opinions about property and the right of reason. In order to avoid this, reason erects the "postulate of public right": It is juridically necessary to put a universal legislative will in the place of the competing multiplicity of private representations of right and to hand over to it the task of making the natural right to property concrete through unequivocal and adequately determined positive laws.

No philosopher ever connected property and the state as closely as Kant did. For Hobbes property is an institution created by the state, grounded in the sovereign decision of political power. In the frame-

work of Hobbes's political philosophy the question of the practical truth of property makes no sense, for it can be seen only under the guise of the security of peace within the state, as an instrument employed by the leviathan state in its strategy of pacifying the natural condition. In Hobbesian theory the political dimension of the state itself is conceived and grounded entirely independently from property. In Locke's liberal theory things are reversed: Property is not the instrument of the state, but the state is the instrument of property, instituted only for its security. From a juridical and conceptual point of view the Lockean state is external to the concept of property; this concept already attains juridical completion under natural conditions. But in Kant a justificatory interconnection of both property and the state, which sets both conceptions into a relation of mutual systematic dependence, replaces the independence of the state from property in Hobbes as well as the independence of property from the state in Locke. The political and the public dimension is revealed only in the need to create harmony between what is appropriated on the basis of the claim of property on the one hand and the necessity of making the natural private right positive and concrete through universal legislation on the other. Property forms the justificational basis of the state, and the state forms the justificational complement of property.

IV. THE *CONTRACTUS ORIGINARIUS* AND THE A *PRIORI* PRINCIPLES OF THE CIVIL CONDITION

In classical modern political philosophy the path from the natural condition to the civil, juridical, political condition, or the state, leads through the contract of each person with every other. The contract is the place for a simultaneous socialization and establishment of domination. Modern contractualism is the expression of a revolution in the theory of legitimation, in which the traditional teleological and theological justifications in political philosophy have been deprived of power by the sovereign will of the individual. Domination in the modern world is only to be justified through consensus and the freely willed self-obligation of the citizen.

Where, as in the case of Kant, the transition from the natural to the civil condition is conceived of as juridically necessary and commanded by practical reason, and where it is a duty to leave the state of

nature rather than something that is merely prudent and in the interest of each person, then, naturally, the presuppositions of a voluntaristic foundation for the state and a recourse to individuals who bind themselves by a contract for the purposes of its legitimation no longer hold. Individuals are already bound *a priori* by their reason to leave the natural condition. Kant has no further use for the idea of a contract in the theory of the legitimation of the state.¹⁰ The voluntarism of the Hobbesian, Lockean, and Rousseauian contract in the theory of legitimation lies beneath the metaphysical level of unconditional practical necessity of Kant's philosophy of right and politics. Kant employs a contract that is conceived as a practically necessary principle of reason and thus stripped of all connotations of voluntarism in order to illustrate the form of the rational state, the state "in the Idea, how it ought to be according to pure principles of right, which serves every real union in a commonwealth as a guideline (*norma*)" (§45, 6:313). Kant therefore transforms the cardinal concept in the theory of legitimation in modern political philosophy into a fundamental norm for both the juridical state and political ethics:

The act by means of which the people constitutes itself into a state, or properly only the idea of that act, according to which the lawfulness of the state can alone be conceived, is the *original contract*, according to which everyone . . . in the *people* surrender their external freedom, in order to immediately regain it as members of a commonwealth, i.e., of the people considered as a state. (§47, 6:315)

If history were made by reason alone, then the *contractus originarius*, which has no wish to hide its derivation from the Rousseauian *contrat social*, would be precisely the path taken by humans forming themselves into a society, for only a political organization born out of the contract would agree with the rational concept of right. But history is generally determined by force and injustice, and the history of the origin of states in particular is a history of usurpation and subjection. Kant's contract forms a rational constitution that is equally obligatory for all forms of domination that have arisen from force; as the normative structure of the only juridical condition that can be outlined according to concepts of right, it formulates the ideal of the state of right and political ethics according to which every historical state must be unremittingly measured in its organization as well as exercise of domination. Every empirical

legislator is bound by the contract of rational right: He must consider himself to be and behave as a representative of the subject of the contract, the universally united will of all, and that means “that he must give his law as if it *could* have risen from the united will of an entire people” (*Theory and Practice*, 8:297). The norm of the contract is obviously the counterpart to the categorical imperative in political ethics, as it were the categorical imperative of political action. Just as the categorical imperative as a moral principle allows for the evaluation of the lawfulness of maxims, so does the original contract as the principle of public justice serve to measure the justice of positive laws. The application of the norm of a contract requires nothing more than a thought-experiment that is a variant of the test of universalizability that is familiar in moral philosophy. The legislator must examine whether every citizen could subscribe to the law in question. A law will not be acceptable to all if the limitation of freedom that it entails would not affect everyone in the same way, if it distributes freedoms and obligations inequitably, and if the freedom that it makes possible is not universally possible. Public laws would contradict the principle of the contract if they injured the conditions that are constitutive of the state of right grounded in reason, if, therefore, they established relationships lacking the formal characteristics of equality, freedom, and mutuality.

The form of political justice that can be known by means of the contract is procedural. For Kant (and here he follows Rousseau), it is not the agreement of the laws of a commonwealth with material norms of justice that qualifies them as right, but the way in which they arise. The original contract is the model of a procedure of advice, decision, and consensus that guarantees the justice of its results because these are supported by universal acceptance. Kant's proceduralism in the theory of justification makes the democratic formation of the will in a contractual community into the rule for tests of justice. But what is decisive – and here is the difference between Kant's political philosophy and the politicoethical conception of “discourse ethics” that it has inspired in Jürgen Habermas and Karl-Otto Apel – is that for Kant this procedure of a genesis through a democratic plebiscite can be simulated and replaced by the thought-experiment of universalizability. By this means Kant makes it possible for nondemocratic rulers to provide just laws without having to give up power.

The contract is the valid rational constitution of every political community; its structural characteristics are the principles of the form of the right in them. "The civil condition . . . considered merely as the condition of right, is grounded *a priori* on the following principles: 1. the freedom of all members of society, as human beings. 2. The equality of each member with every other, as subject, the self-sufficiency of each member of a commonwealth, as citizen" (*Theory and Practice*, 8:290). According to Kant, the norms of behavior in a positive order of right can concern only the formal criterion of the compatibility of domains of freedom that differ in their content. The political consequence of the right of freedom is the right to be subjected only to laws that are capable of receiving universal assent. Political paternalism and the right of freedom are thereby shown to be incompatible. Kant's political philosophy is decidedly antipaternalistic, rejecting every form of the politics of care for happiness and moral education. This antipaternalism is the political counterpart to the anti-eudaemonism of Kant's moral philosophy. Kant's fundamental insight in the theory of justification, that the goal of universal validity can be reached only if we reject substantive and material aims and restrict ourselves to formal and negative criteria, is manifest in both. All theories of individual and social ethics that are focused on the concept of happiness must capitulate before the ideal of absolute obligation and timeless validity in the theory of justification.

The principles of freedom and equality are two sides of the same coin. Just as freedom requires legislation, so does the principle of equality demand universal laws. The contract's prohibition of any special juridical privileges on the basis of logical grounds alone is sufficient to account for political equality. To be sure, Kant's principle of equality becomes ineffective where requirements of right come to an end; it implies equality before the law and equality of access to all social and political positions, but no economic egalitarianism. The principle of equality is indifferent to the economic structure of society; it does not make the advancement of social equality and economic justice a political goal. Kant's concept of the state of right completely dispenses with a social component. But that is not to say that there is no coherent argument by means of which Kant's philosophy of right can be connected with the principle of the welfare state. The Kantian state is, to be sure, limited to the functions of

the realization of right and the protection of freedom, but when one considers the dangers that threaten right, freedom, and the dignity of humans from a marketplace unsupervised by a social state and from radical libertarianism's politics of minimal state restriction, then one sees that the philosophy of right must require a compensatory extension of the principle of the state of right through measures toward a social and welfare state in the interest of the human right of freedom itself. Kant's philosophy of right is thoroughly compatible with the concept of a social state in the service of freedom.¹¹ But this extension of Kant's philosophy of right by no means revokes its pervasive antipaternalism.

After freedom and equality, self-sufficiency is Kant's third *a priori* political principle. The human being is free and equal *qua* human being, but not self-sufficient as a human being, for the self-sufficient person is someone who has "some sort of property" (*Theory and Practice*, 8:295). Insofar as self-sufficiency defines the citizen and the rational legal competence to be a colegislator is granted to the citizen only as a possessor of property, a contingent economic factor becomes decisive in the assignment of a rational right. In contradiction to his declared goal of a critical foundation for right and politics free of all empirical features Kant elevates a contingent factor to the rank of an *a priori* principle of justification. Kant is guilty here of a serious theoretical error, which by means of an offence against all of the methodological and systematic principles of Kantian philosophy transforms the rational state, which make all humans into citizens, into a state of property owners, which degrades those without property into second-class political beings. But that this political privileging of the lucky owners (*beati possidentes*) is due to prejudice, not argument, is shown by the following consideration. The persons who come together into a commonwealth by means of the original contract are identical with the occupants of the natural condition, who join together in a contract for the purpose of establishing a civil condition and a system of public justice; and these are in turn identical with all of those who feel themselves constrained in their freedom by the acts of appropriation by first occupants, therefore with all of those who are affected by the application of the natural principles of the right to property. The systematic context of Kant's fundamental argument therefore makes it quite clear that the third *a priori* political principle cannot be that of a self-sufficiency require-

ment that excludes from political participation all those who happen to be without property, but must rather be the potential of property to affect all in principle.¹² For precisely this is the message of Kant's philosophy of property: Everyone's right to freedom is affected by property claims. Consequently political philosophy insofar as it is grounded in the philosophy of property must also recognize the equally justified participation of all in public legislation, which makes the natural laws of property concrete and detailed. Rational right cannot justify placing those who have no possession of property under political tutelage.

V. REPUBLICANISM, REFORM, AND THE PROHIBITION OF REVOLUTION

Kant's political philosophy is characterized by a twofold task. As a metaphysics of right, it derives the purely rational principles of political coexistence from the universal law of rational right and the *a priori* laws of property: freedom, equality, and contract are revealed to be principles upon which an ideal state is based and which determine the political position of citizens and the organization of just domination in an order of reason. This ideal state stands entirely under the auspices of right, right is its foundation and its only purpose; any political objective that, whether directly or indirectly (for example, by employing means of the welfare state), goes beyond the task of ensuring right is illegitimate from the Kantian perspective. (The usefulness of Kantian political philosophy in the context of the contemporary discussion of political philosophy is therefore largely dependent on the answer to the question of to what extent a theory of public goods can be reconstructed as a theory of the insurance of right and – negative – freedom.) Kant's political philosophy, however, is not only a metaphysics of right. It also reflects the problem of the realization of the rational principles of rightful order in history, and in this context becomes a philosophy of compromise and reform.¹³

In Hobbes the contract lends domination within the state a legitimacy compatible with modern individualism but does not establish any normative principles for the limitation of domination. In Rousseau, on the contrary, the contract serves as the mystical founding event of a community of the good life and establishes a theory of just domination. Given Rousseau's concept of material

self-determination, just domination can be realized only as the self-government of all, only in the form of democracy as plebiscite. According to Hobbes, as long as the state exists at all then it is whatever it should be. Without any normative or critical distance, his theory agrees with whatever form of state it may come across. Rousseau's social contract, however, can never be connected to any actual political reality. The ideas of a community of life and feeling that are concentrated in it are in irreconcilable opposition to the world of modern politics; they have great critical power, but at the same time they have the lack of obligatoriness characteristic of all dreams and utopias.

As a philosophy of compromise and reform, Kant's political philosophy forms a pragmatic synthesis of Hobbes's sense of political reality and Rousseau's ideal of justice. It neither banishes reason into a utopia beyond the historical world nor identifies it with whatever political reality may be encountered. Kant understands that the realization of right, freedom, and reason can take place only in the historical world and under the conditions of the historical world. A normative political philosophy that is concerned with its own realization must therefore pragmatically engage the extant relations of domination in order to find in them a starting point for nonviolent change, for their republicanization and their reform in accord with the principles of right. The politics of reform are an eternal compromise of transition, and a political philosophy of reform must be simultaneously firm in its principles and pragmatically prudent.

Compromise and reform belong together. Only in that way can right founded in reason come to an understanding with actual political power in order to lead it toward a republicanization of its exercise of domination through public criticism and a philosophical effort at persuasion. Republicanism means a republic in alien form, a simulation of democracy and contract in the exercise of power in states that have arisen in violence and have not been legitimated by democracy. To rule in a republican manner means to grant laws as if they arose from a legislative assembly of the united will of all, and to exercise domination as if a division of powers existed. Kant's concept of republicanism unites experience, prudence, and hope. It gives the citizens the effects of a republic and leaves power to the autocratic rulers, and at the same time assumes that illegitimate domination which has arisen from force cannot

resist the spirit of republicanism over the long run and will some day freely give way to a proper republic, a “democratic constitution in a representative system” (23:166). But if the ruler proves to be unwilling to reform and to be influenced through public criticism by citizens and intellectuals – indeed, even if he destroys critical publicity through intrusive measures of censorship – Kant’s philosophy can only recommend that the citizens who are so limited in their right to freedom wait for better times, for forceful resistance and revolution are not allowed.

Legalized injustice and a lack of right in the state do not constitute a rightful ground for giving up political obedience. For Kant, a rightful legitimation of resistance and rebellion is impossible; the traditional right of resistance is for him a self-contradictory construction, which on the one hand makes the people the judge in their own affairs contrary to the logic of pacification, and on the other hand implies the institution of a lawless condition, the reinstatement of the natural condition. With every form of resistance, whether it be insurrection, mutiny, or revolution, violence breaks into the order of the state; the continuity of the order that guarantees the possibility of coexistence will be broken. Revolution in particular – which, for obvious reasons, forms the empirical background of Kant’s remarks about the right to resistance – is the sin *par excellence* against the rightful state. Progressive violence is unthinkable for Kant. The “state revolutionaries,” who, “if constitutions are deformed,” believe themselves justified “in reforming them through violence and being unjust once for all so that afterward justice may be all the more secure and blooming” (§62, 6:353), may be driven by the clearest motives of improving right, yet their behavior cannot be justified. An improvement in right can come about only in a way that is itself right, only through reform and republicanism. Improvement in the sphere of political right thus follows different conditions than improvement in the moral realm. The field of morality stands under the law of either-or, an enemy to all compromise; improvement is possible here only as a revolution, as conversion, a leap, and a new beginning. The field of politics, on the contrary, stands under the law of continuity (*lex continui*). The preservation of continuity is the presupposition of any advance in right and justice.

From a contemporary point of view, there are two ways in which Kant’s critique of the right to resistance can be misunderstood. On

the one hand, Kant's prohibition of resistance does not imply any duty of obedience to a regime that practices state-terror and murders entire groups of the population. A condition that is dominated by mass murderers does not deserve the title of a condition of right. Unjust laws and a constitution with important rights lacking are one thing; terror, violence, and mass-murder, however, are something else. Kant's prohibition of resistance is in the first instance a prohibition of revolution, aimed at the importation of the violent French revolution. One cannot use it to argue for the illegitimacy of resistance against the totalitarian systems of domination of the twentieth century and the mass murder of the Nazis.

Kant's critique of resistance is also misunderstood if one uses it to attack the legitimacy of civil disobedience. Civil disobedience and resistance are two distinct forms of political opposition, the concepts of which must be sharply distinguished. Thanks to Rawls and Dworkin, the theory of civil disobedience has recently become a firm part of contemporary political philosophy. It may be appended without the least difficulty to Kant's philosophy of right as an appendix to the ethics of democracy or the republic.

VI. THE HIGHEST POLITICAL GOOD

The progression of the argument in Kant's political philosophy that we have been following thus far has led from the exposition of the rational concept of right through the rational laws of property to the unfolding of the *a priori* criteria for the constitution of a perfectly just order. In history, this path of thought corresponds to an evolutionary republicanization of forms of domination that have arisen through violence, working toward the establishment of a true republic, by which Kant means a political order characterized by parliamentary democracy, popular representation, and the division of powers. Nevertheless, neither the normative guidance of political philosophy nor the work of reform in history is finished with the attainment of a real republic.

Kant interprets the transition from the natural condition to the civil condition of right and the state as the transition from provisional to peremptory relations of right, thus as the transition from a condition in which right is insecure and conceptually indeterminate and incomplete into one in which right is secured and completely

determinate, and therefore one in which all willfulness and violence has been banished from human social relations. For humans to attain this completely rightful condition, they must not only give up the natural condition among individuals, but also overcome the international natural condition, the condition of external lawlessness between states. In view of the unavoidable interdependence of states, "the problem of the erection of a perfect civil constitution . . . is dependent on the problem of the lawful external relation among states and cannot be solved without [a solution to] the latter" (*Universal History*, 8:24). According to Kant, political philosophy must therefore build the theory of the republic into a theory of the international order of right, and the conception of the reformist improvement of right must be enriched with the dimension of a world-historical politics of peace. While Hobbes, Locke, and Rousseau were satisfied with overcoming the interpersonal natural condition and allowed the authority of political philosophy to end at the border of the state, Kant took political philosophy beyond the borders of states and saw its foremost object in the "highest political good" (§62, 6:355) of a just order of world peace.

Given the logical interdependence of the solution of the problem of a just order both within and between states, the idea of the peaceful confederation of states as well as the idea of the republic is anchored in the innate human right to freedom. The individual right to a perfect civil constitution can only be satisfied through an "internally as well as externally perfect constitution of the state" (*Universal History*, 8:27), through a republican "human state" (*Perpetual Peace*, 8:349) or a confederation of republics. Kant's concept of human right obviously goes far beyond the ideas of liberal theory of fundamental rights; insofar as it comprises the conditions of a completely determinate and secure relation of right, it reaches to the utopian dimension of a secured membership in a world republic. If the normative implications of the right that pertains to every human being as such are completely developed, then this right is revealed to be in the end a right to peace and justice both within and between states.

An essential condition of an enduring condition of peace among states is that all states become republics. The internal organization of domination and external political behavior having been firmly

clamped together, a constitution must be sought that is pacifist and opposed to war on structural grounds.

Now in addition to the clarity of its origin in the pure spring of the concept of right, the republican constitution also has the prospect for reaching the desired outcome, namely perpetual peace, the ground of which is this. – If (as cannot be otherwise in this constitution) the agreement of the citizens of the state is requisite in order to decide whether or not there shall be war, then nothing is more natural than that those who must decide to bring the terrors of war upon themselves . . . will think very seriously before starting such a bad game. (*Perpetual Peace*, 8:351)

Kant's concept of peace between nations is noticeably different from Hobbes's model of peace. While Kant will attain peace by overcoming the natural condition among states by means of right, a Hobbesian seeks a strategy for merely managing the natural condition among states. His concept of peace is built on the same elements that also support the individual occupant of the natural condition in his strategy for survival: They can all be brought under the title of armed distrust, whose maxim of rationality is to be found in the acknowledgment of the justifiability of the distrust of the others. The key idea is to stave off war by making any breach of the condition of the absence of war so expensive that no one will rationally be able to find any profit in it. The key thought is therefore the balance of terror, for the stabilization of which a readiness for defensive armament is always necessary which, in turn, in order not to run the risk of being too late, necessarily tends toward a readiness for offensive armament; thus the balance of terror itself drives a spiraling arms race. Kant does not base the order of peace on a balance of terror, but on an order of right. Kant's concept of peace is a secularized version of the traditional connection of *pax* and *iustitia*, peace and justice, which characterizes classical as well as medieval political thought. It asserts a connection between justice within the state and peacefulness between states, and organizes peace as a system for the regulation of conflicts according to the standard of requirements of justice that are acknowledged on all sides.

Perpetual peace, the transformation of all states into constitutionally peace-loving republics, is "of course an unrealizable idea" (§61, 6:350). Kant does not expect that a stable world federation that can

always ward off war can ever be attained. Nevertheless, perpetual peace is a necessary guiding idea for politics. Without the doctrine of the highest political good Kant's political philosophy would remain without its keystone. In the demand for perpetual peace practical reason is not being fantastic, but consistent. Just as the subjection of politics to the idea of the republic is practically necessary, so the subjection of politics to the idea of perpetual peace is also a duty. Both demands, the internal political demand of eventual republicanism and the external political demand of the unremitting effort to establish peace, are grounded in one and the same innate human right. The rightful legislation of pure practical reason categorically demands that we work for perpetual peace

and the constitution which seems most fit for that (perhaps the republicanism of all states separately and together), in order to lead to it and to make an end to the abominable making of war, which has hitherto without exception been the ultimate purpose of . . . all states. And if the complete fulfillment of this intention always remains a pious wish, yet we do not deceive ourselves with the maxim of unremittingly working toward it; for this is duty . . . One can say that this universal and enduring establishment of peace constitutes not merely a part but the entire final purpose of the theory of right within the limits of reason alone. (§62, 6:354–5)

NOTES

- I Kant's noun *Recht* is a perennial problem for translators. The term, Kant's German equivalent for the Latin *ius*, does not connote the moral or legal claim of a particular person or group of persons to a particular benefit or cluster of benefits, as does the contemporary English noun "right" (which, unlike *Recht*, can naturally be used in the plural); rather, like a mass term, it connotes a total situation of external lawfulness (as contrasted to inner morality). For this reason, it is often translated as "justice"; but that can be misleading too, given the compensatory or punitive connotation of many contemporary usages of that English term. For these reasons, I have preferred to follow the precedent of Hegel translators and translate *Recht* by the singular noun "right"; the occasional awkwardness of this translation can serve to remind the reader that Kant's concept of right does not straightforwardly correspond to any single concept in traditional British political philosophy. I will also typically translate the adjective *recht* by the adjective "right," although I will not be able to preserve this correspondence in all derivatives of the

- terms. Thus, "*rechtlich*" sometimes has to be translated as "juridical," not "rightful." "Just" and "justice" translate "*gerecht*" and "*Gerechtigkeit*" respectively. [Note by Paul Guyer, who translated this essay.]
- 2 *Naturzustand*. Following Hobbes's usage, this is usually translated into English as "state of nature." But because the German term "*Zustand*" is clearly distinguished from the term for a political entity, i.e., "*Staat*," using "state" to translate both confuses a distinction that is clear in the German. In order to preserve this distinction, I will adopt the nonstandard translation of "*Naturzustand*" as "natural condition" [P.G.].
 - 3 Unless otherwise indicated, citations are to Part I of the *Metaphysik der Sitten*, the *Metaphysische Anfangsgründe der Rechtslehre* (*Metaphysical Elements of the Doctrine of Right*), and are located solely by volume and page number of the text in the *Akademie* edition, as well as section number where appropriate. Other Kantian works will be cited by the short titles used throughout this collection. Kant's term *Willkür* is sometimes translated as "faculty of choice" or "elective will," to distinguish it from the *Wille* as the capacity for actually making choices as opposed to the source of rational principles for choice. Because Kant uses the former term almost exclusively in the passages here cited from *Theory of Right*, I have preferred the more natural English translation "will" [P.G.].
 - 4 See Wolfgang Kersting, "Der kategorische Imperativ, die vollkommenen und die unvollkommenen Pflichten," *Zeitschrift für philosophische Forschung* 37 (1983): 404–21.
 - 5 See Peter Koller, "Zur Kritik der Kantischen Konzeption von Freiheit und Gleichheit," in Wolfgang L. Gombocz, Heiner Rutte, and Werner Sauer, eds., *Traditionen und Perspektiven der analytischen Philosophie* (Vienna: Verlag Holder, Pichler, Tempsky, 1989), pp. 54–69.
 - 6 E.g., Hermann Cohen, *Kants Begründung der Ethik nebst ihren Anwendung auf Recht, Religion, und Geschichte*, 2d ed. (Berlin: 1910), p. 403.
 - 7 Kant's *handschriftliche Nachlaß*, or literary remains in his own hand, includes extensive sketches and drafts of the *Metaphysik der Sitten*; the drafts for the *Rechtstehre* to which the author refers are found at 23:207–370 [P.G.].
 - 8 One therefore completely misinterprets the systematic point of Kant's theory of property if one treats *prima occupatio* as an alternative to Locke's conception of first mixing one's labor with an object. It is not possible to play a morally honorable form of property grounded in labor against a morally inferior kind of property grounded in occupation because both labor and occupation are empirical actions, which may serve as signs but which cannot ground a right or call forth normative effects. Kant is not "the most influential philosopher to argue for the

derivation of property rights from first occupancy" (A. Carter, *The Philosophical Foundations of Property Rights* [New York, 1989], p. 79). For the contrast between Locke's and Kant's theory of property see Reinhardt Brandt, "Menschenrechte und Güterlehre. Zur Geschichte und Begründung des Rechts auf Leben, Freiheit, and Eigentum," in Johannes Schwartländer and Dietmar Willoweit, eds., *Das Recht des Menschen auf Eigentum* (Kehl am Rhein, Strassburg: Engel Verlag, 1983), pp. 19–31; Wolfgang Kersting, "Transzendentalphilosophische und naturrechtliche Eigentumsbegründung," *Archiv für Rechts- und Sozialphilosophie* 67 (1981): 157–75; "Freiheit und intelligibler Besitz. Kants Lehre vom synthetischen Rechtssatz a priori," *Allgemeine Zeitschrift für Philosophie* 6 (1981): 31–51; and "Eigentum, Vertrag und Staat bei Kant und Locke," in M. Thompson, ed., *Locke und Kant* (Berlin: Verlag Duncker & Humblot, 1991).

- 9 "The state of nature is to be left" [P.G.].
- 10 See Wolfgang Kersting, "Kant und der staatsphilosophische Kontraktualismus," *Allgemeine Zeitschrift für Philosophie* 8 (1983): 1–26.
- 11 "The antithesis between the state of right and the social state belongs among the numerous erroneous contrasts with which Kant-interpretation is always burdened." Volker Gerhardt, "Die republikanische Verfassung. Kants Staatstheorie vor dem Hintergrund der Französischen Revolution," in *Deutscher Idealismus und Französischen Revolution*. Schriften aus dem Karl-Marx-Haus Trier 37 (Trier, 1988): 24–48, p. 45; see also Gerhardt's review of my *Wohlgeordnete Freiheit* in *Allgemeine Zeitschrift für Philosophie* 11 (1986): 79–84, which I have here taken to heart.
- 12 This idea is taken over from Brandt, "Menschenrechte und Güterlehre" (see note 8).
- 13 That Kant's political philosophy is a philosophy of reform according to principles has been emphasized in Claudia Langer, *Reform Nach Prinzipien: Untersuchungen zur politischen Theorie Immanuel Kants* (Stuttgart: Klett-Cotta Verlag, 1986).