

### III. THE SUBVERSIVE KANT

#### The Vocabulary of "Public" and "Publicity"

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IMMANUEL KANT IS often thought of as a timid philosopher who never dared to defy the political authorities.<sup>1</sup> It is a fact of his career that he apparently meekly submitted to a rebuke from the civil authorities in 1793 and promised never to write on religious matters again. Most of his political works were written in the form of light occasional pieces; none was written as a revolutionary manifesto.

This article argues, however, that Kant's writings on politics were indeed subversive. There was a thread of common vocabulary that tied many of them together. That vocabulary, in Kant's day, was clearly associated with attacks on the contemporary political system.

The vocabulary in question here is a complex of terms associated with "public" political life. The first section of this article deals with Kant's distinction between "public" and "private," and the second explores what was known as "publicity." A survey of contemporary literature reveals that Kant derived his usage of these terms from the German literary and political writers of his day. He used it against the lawyers to subvert the language of absolutism and to solve problems that the natural lawyers had answered inadequately.

#### *PUBLIC VS. PRIVATE*

The famous "What is Enlightenment?" of 1784 was one of Kant's earliest political essays. The key to his message is his stand on the meaning of the terms "public" and "private." The private use of reason "is that which a person may make of it in a particular civil post or office with which he is entrusted," he writes. In contrast, the public use of

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reason is a matter of writing and publishing. Kant explains: "by the public use of one's reason I mean that use which anyone may make of it as a *Gelehrter* ["man of learning" or "scholar"] addressing the entire reading public." This is the "public in the truest sense of the word."<sup>2</sup>

Kant's use of "public" to refer exclusively to writers and the reading public is striking today, and it would have been in Kant's day, too. We are accustomed to thinking of a career in civil service as part of our "public life," and any writing that we might do evenings and weekends as our own private affair. As many scholars have noticed, Kant turned this meaning around.<sup>3</sup> We shall explore sources for this alternative usage below.

"Public" as a noun in German (*Publicum* or *Publikum*) derived its meaning directly from roots in the Latin which already possessed a dual tradition. On the one side, the Latin *publicus* took its earliest meaning from *populus*, or "the state, as far as it rests on a natural community of human beings," as one modern commentator puts it.<sup>4</sup> But it also meant that which was out in the open, not in one's house, or of general effect or use in society. Thus streets, plazas, the theater, and viaducts were called "public."<sup>5</sup> "Public" as an adjective in German (*öffentlich*), which translates more literally as "open," became associated with *Publicum* through this latter meaning.

Cicero was the first of the Roman lawyers to make a consistent distinction between *ius publicum* (public law) and *ius privatum* (private law) such that the former referred to laws handed down by the Senate and the latter to private contracts and wills.<sup>6</sup> Following his lead, in the law of the Empire *publicus* often referred to the power of the magistrate, as in *imperium publicum*, *clementia publica*, *servus publicus*, and so forth. Magistrates possessed *potestas publica* and were *personae publicae*. Ulpian's definition of public law ran: *publicum ius in sacris, in sacerdotibus, in magistratibus consistit*.<sup>7</sup> But *publicus* still could be applied to anything outside of the house, or of general use, such as *lux publica*, *dies publica*, and *verba publica*.<sup>8</sup>

In the Middle Ages the wider meaning of "public" as anything out in the open prevailed in Germany. The "fundamental significance of the public element in the legal process was thought to be the bringing of the evil of a misdeed out into the light so that it could be punished," as a modern scholar summarizes it.<sup>9</sup> A trial could be "public" simply because it was out in the open, and it was believed that torture could be relied on to bring secrets out into the open. But increased attention to Roman Law, which had been rediscovered in Italy in the twelfth century and

began to receive significant attention in Germany by the fifteenth century, led to a narrowing of the meaning of "public."<sup>10</sup>

In the 1600s the Germans, especially legal writers writing in Latin, began a process which has been described as a narrowing of the meaning of *publicus* and *öffentlich* to *stättlich*, or having to do with the state.<sup>11</sup> In 1614, for example, Johannes Althusius referred to state power and the power of officials as branches of *potestas publica*.<sup>12</sup> The wider meaning of *publicus* as anything outside of the house or out in the open faded. A "public trial" now only meant a trial in a state court. "Public war" had once meant any openly declared and openly pursued war. Now, following Grotius, it came to mean only war between legal sovereigns, whether openly declared and pursued or not.<sup>13</sup>

By the eighteenth century the process of reduction of "public" to "pertaining to the state" had reached a high point among legal writers. Schütz's translation of Grotius in 1707 rendered *aut privatis aut publicis personis* as "either private persons or those who hold public offices [*öffentlichen Ämtern*]."<sup>14</sup> Zedler's dictionary, in volumes published in the 1740s, defined "public persons" (*öffentliche Personen*) as "in law, the rulers and magistrates, and also others in public offices and public service . . ." and "the public" (*das Publicum*) as "in law, properly what belongs to the prince or the higher authorities and not to mere private persons."<sup>15</sup> For some writers the concept of the public as pertaining to the state followed state power in reaching out to absorb much of the wider meaning that "public" had once had. In 1762 the jurist Georg Wiesand wrote that *res publicae*, including everything from rivers, forests, and salt licks to light and water, belong to the prince.<sup>16</sup> They were "public" not because they were out in the open or of general use but because the prince claimed to own them.

In view of this conceptual history, one modern commentator calls Kant's usage "a provocative change in the current legal terminology."<sup>17</sup> It is true that it amounts to a clear rejection of these jurists' association of public and prince. But the wider meaning of "public" had not died out entirely, and Kant could draw on other conceptual resources than those of the mainstream of jurisprudence. Zedler was careful to note that princely aggrandizement of the word occurred especially "in law," as we have seen. Some of his definitions retained the wider reference: *öffentliche Güter* are defined as "pertaining to the assembled people or to the whole community," and an *öffentliches Gericht* is one that is intended to promote the general welfare.<sup>18</sup>

But rather than a change in the current legal terminology, Kant's usage is better characterized as a wholesale rejection of the lawyers'

usage and acceptance of the usage of the growing number of books and literary periodicals written by “general writers” for “the whole nation,” as Friedrich Just Riedel put it in *Letters on the Public* of 1768.<sup>19</sup> They had done the most to recover and extend the association between the “public” and the “people” in a wider sense.

When, in 1725, Gottsched was already appealing to the “public” (*öffentliche*) judgment of this readers in *Die Vernunftigen Tadlerinnen*,<sup>20</sup> he was not appealing to any prince but to women readers. Lessing wrote of his readers as *das Publikum* in his introduction to the *Briefe, die neueste Literatur betreffend* of 1759.<sup>21</sup> Friedrich Nicolai’s introduction to the first volume of the *Allgemeine deutsche Bibliothek* in 1766 was addressed to “lovers of the newest literature . . . in many cities” as the German *Publici*.<sup>22</sup>

In 1768 Riedel was already complaining that “the word *Publikum* sounds in my ears from all sides,” although some listeners do not know what it is and others doubt if it exists.<sup>23</sup> He analyzed suggested meanings of the word which included “the critics,” “other authors,” “professionals,” “youths,” and so forth, and concluded that “men and women of taste” made up the real public.<sup>24</sup> Significantly, all of the plausible meanings he examined were elements of the reading public.

The preface to the first issue of Wieland’s *Der Deutsche Merkur* in 1773 referred often to the taste and judgment of the entire class of educated men as the *Publikum*.<sup>25</sup> The editors of the *Berlinische Monatsschrift*, the journal that published Kant’s “What is Enlightenment?,” had thanked *das Publikum* in anticipation in the introduction to the first issue in January 1783.<sup>26</sup> By November of 1784, after Kant had sent his manuscript to the publisher but before it was published, Schiller explicitly contrasted the prince with the reading public in announcement of *Rheinische Thalia*: “I write as a citizen of the world, who serves no prince . . . . The public [*Das Publikum*] is everything to me, my education, my sovereign, my confidante.”<sup>27</sup>

In 1784 the public and freedom of the press had already been the subject of journalistic attention by the time Kant was writing. In April of that year Wilhelm Wekhrlin’s *Das graue Ungeheur* celebrated freedom of the press as “the most beautiful present that heaven in its mercy has made to the human race.”<sup>28</sup> That same month, several months before Kant sent his article off to the journal, an unsigned article on freedom of the press appeared in volume three of the *Berlinische Monatsschrift*. It used Frederick’s own early writings to support an argument for freedom of the press. Among other points that Kant followed up, it raised the issue of the propriety of an army officer’s criticism of his superior’s

orders.<sup>29</sup> Like the other journals, it appealed to the "judgment of the public."<sup>30</sup>

The authors and journals reviewed above were only a part, if an influential part, of a developing literary tradition associated with reading societies, the stage, published exchanges of letters, and so forth. Many had no intention of promoting political radicalism through their language. But, as one modern commentator observes, mushrooming literary reading societies "opened and widened the space for a public life free from the control of the state and the family."<sup>31</sup> That could not help but be subversive to the prevailing absolutism. Kant's language in "What is Enlightenment?" represents a contribution to this movement and probably would not have been conceivable without it.

### *Liberty to Publish for All Gelehrten*

Kant's terminology served to introduce a subversive doctrine. As a "private" military officer, a man must follow orders, Kant concedes. As a "private" citizen (*Bürger*), he must pay taxes, and as a "private" clergyman, he must teach what his church requires. But "as a member of a complete commonwealth or even of cosmopolitan society," he may publicly criticize these private responsibilities in writing. For example, as a "*Gelehrter* addressing the real public (i.e., the world at large) through his writings, the clergyman making public use of his reason enjoys unlimited freedom to use his own reason and to speak in his own person."<sup>32</sup> This is a call for full freedom of the press.

Kant's theory is a "two hats" doctrine in which each individual can play two roles in society. It may have been suggested by a letter to him from Freiherr von Zedlitz, the enlightened Prussian Minister of Education, in 1778. Men "can be judges, advocates, preachers, and physicians only a few hours each day; but in these and all the remainder of the day they are men, and have need of other sciences," he wrote, appealing to Kant to suggest means of bringing this home to university students.<sup>33</sup> We do not have Kant's answer to von Zedlitz at the time, but "What is Enlightenment?" can be taken as his answer.<sup>34</sup>

The three examples of men who can wear two hats that Kant gives require some explanation. Clergymen and officers were *Beamten*, or civil servants. Like Kant himself, as a professor, they were directly dependent on the prince for their livelihood. *Bürger* translates roughly as "town-dwelling citizen-taxpayer"; the standard example was the merchant. Since there is no good English equivalent, we shall use the

German term, which is the same in singular and plural. Unless they lived in one of the free cities, German *Bürger* also had obligations to their prince. According to cameralist theory, their economic activities were a privilege granted by the state, so they, too, were dependent on the prince. Kant's project was to give all of these dependents a sphere of independence.

Kant's choice of examples reflects a shrewd assessment of the roles and needs of the German *Gelehrten*. He does not bother with the court writers, who are hopelessly dependent on their Maecenases. The *freie Schriftsteller* who made their living by their pens did not especially need Kant's help: he remarks only that freedom to express their opinions "applies even more to all others who are not restricted by any official duties."<sup>35</sup> It was the bulk of German *Gelehrten*, the middle ground of *Beamten* and *Bürger*, who needed Kant's help. These were the men who ran the prince's state and operated his economy. They were undoubtedly the bulk of Kant's own readers. If they were to function as enlighteners, they would need some measure of independence.

Kant was very generous in his definition of *Gelehrten*. He drew on a respected tradition to the effect that greater liberty could be granted to men of learning as long as their disputes did not seep down to the many. Playing on the prestige and legitimacy of the *Gelehrten*, he extended their privileges to the widest practical circles. If soldiers, clergymen, and *Bürger* all qualify as *Gelehrten*, then hardly any official or male head of an urban household, which is to say hardly any full member of society by eighteenth-century standards, would not qualify. "Everyman a part-time man of learning" would have been a radically leveling slogan in Kant's day.

Most of Kant's discussion in "What is Enlightenment?" focuses on the clergy and matters of religion. He probably felt that this would meet the least opposition from Frederick the Great's censors, and he was probably right. Kant mentions once that the officer should be free to publish observations "on the errors in the military service" and that the *Bürger* should be free to publish "his thoughts on the impropriety or even injustice of . . . fiscal measures."<sup>36</sup> He even goes so far as to suggest that Frederick "realizes that there is no danger even to his legislation if he allows his subjects . . . to put before the public their thoughts on better ways of drawing up laws, even if this entails a forthright criticism of the current legislation."<sup>37</sup> For the rest, the principles he established in respect to clergymen would carry over, *mutatis mutandis*, to officers and *Bürger*. But even Kant's one mention each of criticism of the army,

taxes, and legislation probably sounded enormous in some quarters.

"What is Enlightenment?" was not the only work in which Kant presented this theory. In 1793 he published a long article in the *Berlinische Monatsschrift* under the title "On the Old Saying: That may be True in Theory but it Won't Work in Practice." In that article Kant wrote that subjects of a state had absolutely no right to rebel against their superiors. But the *quid pro quo* for this passivity was that "the citizen must be free to inform the public of his views on whatever in the sovereign decrees appears to him as a wrong against the community, and he must have this freedom with the sovereign's own approval" (8: 304).<sup>38</sup>

"Freedom of the pen—within the bounds of respect and affection for the constitution one lives under . . . is the sole shield of popular rights," Kant asserts. Such freedom also benefits the sovereign: without it, the sovereign would be deprived "of any knowledge of matters which he himself would change if only he knew them. Hence, to limit this freedom would bring him into contradiction with himself."<sup>39</sup> But this appeal to the prince's self-interest hardly disguises what he loses by freedom of the press.

### *Freedom to Publish for Philosophers*

In "What is Enlightenment?" Kant staked a great deal on the power of a free press to bring about enlightenment. However, things got worse for the reading and writing public. Frederick died in 1786, and with his death came a new king, a religious mystic totally opposed to enlightenment. In 1788 Frederick William II asserted in a cabinet order that "press freedom has degenerated into press impudence, and the book censors have fallen completely asleep." He became convinced that the "licentiousness of the so-called *Aufklärer*, who think themselves superior to everything," was a threat to the state.<sup>40</sup> His new minister, Wöllner, issued an Edict on Religion in 1788 that guaranteed freedom of conscience for the Prussian subject "so long as he keeps any peculiar opinion to himself and carefully guards himself from spreading it or persuading others," and a new tougher censorship edict followed.<sup>41</sup>

A few years later, Kant's *Religion Within the Limits of Reason Alone* ran afoul of the king and his minister. Kant managed to circumvent the theological censor in Berlin by obtaining approval from the philosophical faculty at Jena; but this ploy was transparent, and Wöllner issued a stern warning to Kant, threatening "unpleasant measures."<sup>42</sup>



Kant wrote to Frederick William promising not to write on religion again. This letter was published in the Preface to *The Conflict of the Faculties* of 1798, after Frederick William's death.

In the letter Kant claimed a much narrower privilege for the interchange of ideas than he did in "What is Enlightenment?" He begins with the classic disclaimer that the argument of *Religion within the Limits of Reason Alone* was "not at all suitable for the public; to them it is an unintelligible, closed book, only a debate among scholars of the faculty [*Facultät-Gelehrten*] of which the people take no notice." It will cause no harm. But the university faculties must remain free "to judge it publicly," Kant asserts, attempting to retain his subversive use of the word "public."<sup>43</sup>

The clergymen that Kant had championed as part-time men of learning are now disenfranchised. Those "who are appointed to teach the people (in the schools and from the pulpits) . . . are bound to uphold whatever outcome of the debate the crown sanctions for them to expound publicly; for they cannot think out their own religious belief by themselves, but can only have it handed down to them . . . by the competent faculties (of theology and philosophy)." Already the language is changing; it is not the written product of their evening reflections but their official duties that qualify as "public." The strategy is obviously that of the sacrificial lamb: "Accordingly I censured the temerity of raising objections and doubts, in the schools and the pulpits and in popular writings, about the theoretical teachings of the *Bible* and the mysteries these contain (for in the faculties this must be permitted)."<sup>44</sup>

At this point it is clear that Kant is reverting to the narrower definition of *Gelehrten* as scholars. *The Conflict of the Faculties* begins with a distinction between "scholars proper" and "intelligentsia" (*Litteraten*). The latter "are instruments of the government" who may "be called the men of affairs or technicians of learning. As tools of the government (clergymen, magistrates, and physicians) they . . . are not free to make public use of their learning as they see fit."<sup>45</sup> The divorce of prince and public is gone, and in its place there is a distinction between the "civil community," subject to government supervision, and a narrowly construed "learned community." The privileges of free debate are reserved for the latter.<sup>46</sup>

Kant makes further use of the traditional division of the four faculties of the university into three "higher" faculties (theology, law, and medicine) and one "lower" faculty (philosophy). The "higher" faculties are distinguished from the "lower" by virtue of the government's interest



in their teachings, Kant writes. "Now the government is interested primarily in means for securing the strongest and most lasting influence on the people, and the subjects which the higher faculties teach are just such means. Accordingly, the government reserves the right itself to sanction the teachings of the higher faculties, but those of the lower faculty it leaves up to the scholars' reason." Although it sanctions the teachings of the higher faculties, Kant clarifies, the government does not have any interest in intervening in "scholarly discussions" or "the teachings and views that the faculties, as theorists, have to settle with one another."<sup>47</sup> A new "two hats" theory emerges for the scholars of the higher faculties: they have to teach what they are told, but they can debate freely among themselves.

The philosophy faculty, however, can claim full freedom. It has "the public presentation of truth as its function" and "must be conceived as free and subject only to laws given by reason, not by government."<sup>48</sup> But lest this sound too ambitious, Kant supplies mitigating considerations. The people as a whole will not pay any attention to the arcana of philosophy, "agreeing that these subtleties are not their affair." The reading public of the philosophers is evidently composed of only the government and the higher faculties, who must "put up with the objections and doubts" that the philosophers bring forward.<sup>49</sup> The philosophers' communication with the larger public is mediated by the higher faculties. New doctrines will only reach the people as a whole through the higher faculties, with the government's sanction.

Kant appeals directly to the prince's interests for freedom for philosophers. By definition, he argues, the truth cannot be established by command, and the government cannot control the philosophers "without acting against its own proper and essential purpose." Indeed, the government must rely on the philosophy faculty to expose errors espoused by the other faculties. Without the philosophy faculty's "rigorous examinations and objections, the government would not be adequately informed about what could be to its own advantage or detriment."<sup>50</sup>

On the one hand, Kant characterizes the higher faculties as potential tyrants. Were it not for philosophers, the other faculties "could rest undisturbed in possession of what they have once occupied, by whatever title, and rule over it despotically." The "businessmen of the higher faculties" will set themselves up as "miracle-workers," offering panaceas to the public and obtaining the "passive surrender" of the public, "unless the philosophy faculty is allowed to counteract them publicly."<sup>51</sup> This

appeal to the public harks back to the theory of "What is Enlightenment?"

But on the other hand, in case the princes are not entirely unsympathetic to the potential despotism of the higher faculties as long as they control them, Kant also characterizes the higher faculties as potential Jacobins. The "government cannot be completely indifferent to the truth of" the teachings that it authorizes. The doctrines of the higher faculties can "stir up political struggles" and sow "the seeds of insurrection and factions." Without philosophical oversight, "self-appointed tribunes of the people . . . can steer the judgment of the people in whatever direction they please . . . and so win them away from the influence of a legitimate government."<sup>52</sup>

Kant's hopes for the effects of freedom of the press among university scholars and especially philosophers reaffirm his hopes in "What is Enlightenment?" even if the scale of participation is reduced. Progressive improvement can be expected: "the higher faculties (themselves better instructed [by philosophers]) will lead . . . [government] officials more and more onto the way of truth." A "constant progress of both ranks of the faculties toward greater perfection . . . [will] prepare the way for the government to remove all restrictions that its will has put on freedom of public judgment." Political effects will follow: "the government may find the freedom of the philosophy faculty, and the increased insight gained from this freedom, a better means for achieving its ends than its own absolute authority."<sup>53</sup> Political freedom will follow freedom of the press for philosophers.

### *Philosophers as Advisors to Rulers*

*Toward Perpetual Peace*, which appeared in 1795 after the bulk of Part One of *Conflict* was written but before it was published, also called for a special public role for philosophers. It consisted of proposed preliminary and definitive "articles for a perpetual peace among nations." In a supplement a "secret article" asserts that "The maxims of the philosophers on the conditions under which public peace is possible shall be consulted by states which are armed for war."<sup>54</sup> To put it less awkwardly, rulers should consult philosophers on matters of war and peace.

This is a secret article, Kant writes, because rulers might think it beneath their dignity to consult mere subjects about such important

matters. The ironic humor of the need for a "secret" article in the midst of a philosophy of publicness should not be lost on the reader. It is an implicit criticism of princely vanity.

This article can remain "secret," according to Kant, because all that rulers have to do is allow philosophers "to speak freely and publicly . . . and they will indeed do so of their own accord if no one forbids their discussions."<sup>55</sup> The rulers do not have to publicly admit to requesting the philosophers' advice; they can simply overhear—or read—the philosophers' discussions.

The reason why the ruler should allow the philosopher to speak publicly is the standard one of self-interest: the philosophers "throw light on their affairs." As in *Conflict*, Kant disparages the tendency of the higher faculties of law, theology, and medicine to use their worldly power to interfere with philosophy. No danger should be expected from allowing the philosophers to speak freely because they are "by nature incapable of forming seditious factions or clubs."<sup>56</sup>

### GERMAN "PUBLICITY"

Another term that was closely related to "public" was also growing in importance in Germany in the last decades of the eighteenth century. Writers of the *Aufklärung*, enthusiastic about the potential for enlightenment in the process of communication with the literate public, termed that process "publicity" (*Publicität*). This was not what we understand by "publicity" in the twentieth century; it was concerned only with merchandising ideas. It was closely related to *Publizistik*, another relatively new term which translates best as "political journalism." "Publicity" was the medium of political journalism.

Zedler's dictionary, published in the 1740s, did not even have an entry for the word; but in April of 1784, several months before Kant wrote "What is Enlightenment?" Wilhelm Wekhrlin was using the term in his periodical, *Das graue Ungeheur*. It was a function of freedom of the press. Wekhrlin wrote:

What must it have been like in the times before printing presses existed! Tyrants had no bridles, the people no refuge. Vice could grow impudent, without becoming red with shame. Virtue knew no means of sharing its suffering, or gaining the sympathy of society. The laws had no critics, morals had no supervisor, reason was monopolized. Providence spoke: let the human race become free! And "publicity" appeared.<sup>57</sup>

"Publicity" would "bring the abuse of power before the judgment seat of the public," Wekhrlin asserted.<sup>58</sup> Writers are "born advocates for mankind."<sup>59</sup> They are the "natural organ of public righteousness"; one cannot expect *Beamten*, "for whom injustices are profitable, to take great pains against them," he argued.<sup>60</sup> And as for criticism of "publicity" from the authorities, "it is not books which corrupt human society, but actions."<sup>61</sup> Wekhrlin was proud of the power of "publicity": the "so-called writing craze [*Schriftstellerey*] is the reason why the judgment of the public has such overwhelming power today," he wrote.<sup>62</sup> He later referred to himself as a "priest of publicity."<sup>63</sup>

Kant's correspondent and friend, Johann Erich Biester, one of the editors of the *Berlinische Monatsschrift*, often wrote of the role of his periodical in "publicity." "Candidness was ever its character; the spread of freedom of thought . . . was its goal; the undoing of the chains of untruth, the recovery of the right to one's own investigations and one's own thinking were often, in different disguises, its object," he wrote. "Publicity" was its "chief aim."<sup>64</sup>

In 1785, a year after Kant's "What is Enlightenment?" appeared, August Ludwig von Schlözer's *Letters from Eichstadt in Vindication of Publicity* hailed writers as "unpaid servant[s] of civil society" and "advisor[s] to the nation."<sup>65</sup> A minor poet, Eulogius Schneider, went so far as to write a "Hymn to Publicity."<sup>66</sup> "Publicity" as a liberating ideal reached a high point in Freiherr von Knigge's 1792 work, *Josephs von Wurmbbrand*, written in the first flush of elation at the success of the French Revolution. Publicity will bring the misuse of power and the subterfuges of the powerful "before the judgment seat of the public, of the whole people," he wrote, echoing Wekhrlin.<sup>67</sup>

Among other probable sources of the term for Kant, Schlözer, already mentioned above, published *Allgemeine StatsRecht und Stats-Verfassungslere* [General Public Law and Constitutional Law], a textbook on politics, in 1793. In it he argued that reforms in Germany would have to include the legalization of "publicity," since without it "no community spirit, and no trust of the people in their representatives, is thinkable."<sup>68</sup> In another connection he described the work of the periodical that he published as "general publicity."<sup>69</sup> Like Kant, Schlözer gave a great deal of credit to the freedom of the press that made "publicity"—communication with the "public"—possible.<sup>70</sup> Like Kant, he argued that the freedom "to think aloud" benefits the ruler.<sup>71</sup> But unlike Kant, he approved of a right to resistance against usurpers and tyrants: in such cases "pure appeals to the public seldom help."<sup>72</sup>

The reaction to the French Revolution in Germany was profound and far-reaching, and often enough writers and "publicity" were blamed for social and political unrest. Johann Georg Heinzmann published an *Appeal to my Nation: Concerning the Pestilence of German Literature* in 1795, and included Kant and Kantianism among the radicals responsible for such unrest. "The truly enlightened public," he wrote, "among whom true virtue, true morals/manners, and highmindedness reigns, is certainly not the so-called reading public."<sup>73</sup> But Heinzmann was swimming against the stream of belle-lettristic and political writers of his times, while Kant had made their language his own.

"Publicity" was an important element in Kant's *Toward Perpetual Peace* of 1795. Where the foregoing writers had meant no more than that the term implied communication with the public, Kant supplied a philosophical dimension. "Publicity" was the "formal attribute" of public right (or public law), he wrote.<sup>74</sup>

"Publicity" is required by public law for conceptual reasons. Justice, Kant writes, "can only be conceived of as publicly knowable." Since law or right "can only come from justice," law or right must accordingly be publicly knowable. This is a "readily applicable criterion which can be discovered a priori within reason itself."<sup>75</sup>

Following the pattern of his works on morality, Kant articulated two "transcendental" principles of public right. "All actions affecting the rights of other human beings are wrong if their maxim is not compatible with publicity" is the negative formula. "Like any axiom, it is valid without demonstration," Kant asserts. If public admission of a maxim immediately stirs up opposition, that must be because "it is itself unjust and thus constitutes a threat to everyone," Kant argues. On the other hand, the affirmative formula is that "all maxims which require publicity if they are not to fail in their purpose can be reconciled both with right and with politics."<sup>76</sup> Kant is saying that virtually by definition any purposes or actions which can be carried out only with full disclosure and public support are going to be legitimate.

Kant uses the principle of publicity to decide contested issues like the right to rebellion, the binding effect of treaties, the justification of preemptive strikes, and the rights of strong countries. In each of these cases he takes a question that had been debated by natural lawyers in other terms and uses the principle he has borrowed from the language of political writers, "publicity," to resolve it. In each case he believes he is elaborating a systematic politics of reason, in contrast to the undisciplined compromises of the natural lawyers.

Kant's predecessors in the natural law tradition had generally opposed the right of rebellion but recognized a handful of exceptions. Grotius had recognized seven exceptions to the prohibition of rebellion, ranging from cases in which a ruler seeks to destroy his people to cases where the ruler shares power with a senate and tries to infringe the senate's power.<sup>77</sup> Pufendorf admitted five of these cases.<sup>78</sup> Wolff distinguished rebellion from civil war and allowed the latter as just resistance to the ruler of a state.<sup>79</sup> Vattel, perhaps the most liberal on this issue of the well-known natural lawyers, recognized an open-ended right of a nation to depose a tyrant.<sup>80</sup> None of these writers had established an overarching principle behind their conclusions, and their arguments had something of an *ad hoc* quality. As Vattel, put it, although it is clear that no one should obey commands that are clearly contrary to natural law, "it is a more difficult matter to decide in what cases a subject may not only refuse to obey but even resist the sovereign and meet force with force."<sup>81</sup>

Kant's principle of "publicity," on the other hand, makes short work of the right of rebellion. If it "were publicly acknowledged, it would defeat its own purpose," he argues. Kant does not mean that it would defeat the purpose of rebellion, but that implicit in the purpose of setting up a right of rebellion is that there should be a state in the first place, and the division of authority created by a right of rebellion makes the existence of the state as a state "impossible." In this Kant was evidently following Hobbes. His point was that a right of rebellion means that there is no final authority short of violence.<sup>82</sup>

On the other hand, Kant points out, the ruler has no need to keep secret his right to punish rebellion. If he has the power—and he must by definition, or he is not the ruler—then he has nothing to fear from making his intentions public. Therefore, according to Kant, his maxims must be legitimate.<sup>83</sup>

Kant's argument does not entirely deny comfort to the rebellious, however. It is "perfectly consistent with this argument that if the people were to rebel successfully, the head of state would revert to the position of a subject . . . [and] he would not be justified in starting a new rebellion to restore his former position."<sup>84</sup> There is no right to rebellion; but, as Hume had acknowledged, a successful rebellion creates its own rights. The rights of a successful rebellion can be publicly admitted without inordinately encouraging rebellions, Kant thinks, because the rebel still has to acknowledge that what he is doing is not yet right, and only success will save him from punishment.

In matters of international relations the principle of publicity also provides solutions. The natural lawyers had followed the authority of the Roman lawyers Pedius and Ulpian in elaborating a distinction between personal and real treaties to defeat claims that a king who signs a treaty does not bind his country.<sup>85</sup> Kant simply argued that if a ruler's intention that his signature would not bind his country was made public, other countries would not rely on his engagements.<sup>86</sup>

Grotius had held that a state does not have the right to invade another solely because the other is growing in strength and may someday threaten its neighbors, and Pufendorf agreed.<sup>87</sup> Wolff agreed but added that if any such nation should "manifestly be considering plans for subjecting other nations to itself, these ought to provide for their common security by alliances, and the slightest wrong gives them the right to overthrow the growing power by armed force."<sup>88</sup> Vattel agreed that of itself, the growth of another nation could not justify an invasion, but the responsibility for defense of a country was a heavy one and required extreme caution. One could not afford to wait until it was too late. The "first appearances [of a desire of domineering on the part of a neighboring country] may be taken as a sufficient proof" and justify countermeasures.<sup>89</sup> Obviously, the right to invade in such cases could virtually be taken for granted.

Kant's approach was different. If a right to invade growing countries were to be made public, it would be counterproductive. Countries that were growing would anticipate such measures by alliances with their neighbors in accordance with the principle of "divide and conquer," he wrote.<sup>90</sup> Therefore no such right could be legitimate.

A third question that Kant raised was the right of a larger state to annex a smaller state to round off its territories. The natural lawyers mentioned above did not address the issue directly, although it would perhaps fall under their proscriptions of the right to go to war for pure utility or advantage.<sup>91</sup> Grotius specifically criticized the German tribes cited by Tacitus who went to war for better lands.<sup>92</sup> If the justification for such annexation is security, presumably it would have been treated much as the invasion of growing states discussed above. But for Kant, again, the resolution is easy, in accordance with the principle of publicity. If the maxim of annexation of smaller states were made public, smaller states would immediately unite to resist the larger states or ally themselves with other larger states for defense. Such a response would defeat the purpose of the right to annexation, and thus that right cannot be just.<sup>93</sup>



"Publicity," it turns out, is also the key to the rightful organization of the international system. Politics and morality "can only be in agreement within a federal union" of states, Kant wrote. A federation provides a state of lawfulness without which no right can exist, without on the other hand stifling freedom, he argued. Again, like all of the conclusions drawn from the principle of publicity, this is "necessary and given a priori through the principles of right."<sup>94</sup>

"Publicity" is explicitly tied in with Kant's theory of the special role of philosophers. The "subterfuge of a secretive system of politics could . . . easily be defeated if philosophy were to make its maxims public, if only they dared allow the philosopher to expose his maxims through publicity."<sup>95</sup> That is, if philosophers are given free rein in their "publicity," injustice will not prevail.<sup>96</sup>

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When Kant's writings are studied, it is usually from within the disciplines of philosophy or natural law. Kant "answers" Hume or improves on Grotius. When political matters are raised, Kant is found to be in dialogue with Rousseau or Hobbes, across the years and linguistic boundaries. This study, however, has examined contemporary German belle-lettres and political journalism as a context for Kant's political vocabulary. Names like Friedrich Just Riedel, Wilhelm Wekhrlin, and August Ludwig von Schlözer have appeared. We have found that Kant turned to their usage in developing a political vocabulary that was subversive for its time.

Kant's "What is Enlightenment?" reads like an occasional piece, a light-hearted, nontechnical paean to the values of the *Aufklärung*. Upon our contextual reading, however, we begin to see that its defense of freedom of expression and the public realm of the *Gelehrter* implicitly undermined absolutism and the conceptual tools of the lawyers who defended it. Kant's later use of the concept of "publicity" in *Toward Perpetual Peace* served some of the same subversive purposes, after events had forced him to reduce his reliance on the reading public.

Kant's usage was not merely an uncreative adoption of the usage of the men of letters and journalists of his time. He went beyond them by integrating their vocabulary into his systematic analyses of reason and its rights and giving it the cover of his philosophy. "Public" and "publicity" became such effective weapons for him precisely because he could use them in such a presumptively innocuous and noncontroversial

way. Although it appeared on the surface that he was writing unobjectionable occasional pieces or elaborating schemes for perpetual peace based on abstract principles, he was actually subtly appropriating and legitimizing the vocabulary of opposition to the ruling princes.

## NOTES

1. E.g., among many, Arnulf Zweig, "Introduction" to *Kant: Philosophical Correspondence 1759-99*, ed. by Arnulf Zweig (Chicago: University of Chicago Press, 1967), 20-21.

2. Immanuel Kant, "An Answer to the Question: 'What is Enlightenment?'" in *Kant's Political Writings*, ed. by Hans Reiss (Cambridge: Cambridge University Press, 1970), 55-56. Hereafter, citations to Kant appear with the volume number of the standard Academy edition (*Kants Gesammelte Schriften*, ed. by Royal Prussian Academy of Sciences, Berlin, 1902-1938) followed by a colon and the page number. Translations have been borrowed from the Reiss edition and *The Strife [Conflict] of the Faculties*, trans. by Mary J. Gregor (New York: Abaris Books, 1979).

3. Most scholars, however, merely remark on this unusual usage, perhaps with an exclamation point (e.g., Susan Meld Shell, *The Rights of Reason* [Toronto: University of Toronto Press, 1980], 171). None that I have found has drawn out its implications.

4. Hans Mülleians, *Publicus und Privatus im Römischen Recht und im Alteren Kanonischen Recht unter besonderer Berücksichtigung der Unterscheidung Ius publicum und Ius privatum* (Munich: Hüber, 1961), 5.

5. Lücian Hölscher, "Öffentlichkeit" in *Geschichtliche Grundbegriffe: Historisches Lexikon zur Politisch-sozialen Sprache in Deutschland*, ed. by Otto Brunner, Werner Conze, and Reinhart Koselleck, 4 (Stuttgart, 1978), 420.

6. Mülleians, *Publicus und Privatus*, 13.

7. Hölscher, "Öffentlichkeit," 427.

8. Hölscher, "Öffentlichkeit," 420.

9. Hölscher, "Öffentlichkeit," 417.

10. Hölscher, "Öffentlichkeit," 418-419.

11. Hölscher, "Öffentlichkeit," 422-426.

12. Hölscher, "Öffentlichkeit," 424.

13. Hölscher, "Öffentlichkeit," 423.

14. Hölscher, "Öffentlichkeit," 426.

15. Johan Heinrich Zedler, *Grosses Vollständiges Universal-Lexikon* (Leipzig and Halle; rpt. Graz, 1961), see under "Öffentliche Personen" and "das Publikum."

16. Hölscher, "Öffentlichkeit," 424.

17. Hölscher, "Öffentlichkeit," 445.

18. Zedler, *Universal-Lexikon*, see under "öffentliche Güter" and "öffentliches Gericht."

19. Friedrich Just Riedel, *Briefe Über das Publikum*, ed. by Eckart Feldmeier (1768; rpt. Vienna: Wiener Neudrucke bd. 4, 1973), 115.

20. Johann Christoph Gottsched, *Die vernünftige Tadlerinnen*, in vol. 1 of *Gesammelte Schriften*, ed. by Eugen Reichel (Berlin, 1902), 1.
21. Gotthold Ephraim Lessing, *Werke*, ed. by Paul Stapf (Munich: Tempel Klassiker, n.d.), 2: 7.
22. Friedrich Nicolai, ed. *Allgemeine deutsche Bibliothek* (1766), 1: Preface (n.p.).
23. Riedel, *Briefe*, 12.
24. Riedel, *Briefe*, 113-114.
25. Christoph Martin Wieland, ed. *Der Deutsche Merkur* (Frankfurt and Leipzig, 1773-1789), 1: Preface (n.p.).
26. Johann Erich Biester and Friedrich Gedike, eds. *Berlinische Monatsschrift* (Berlin, 1783), 1: Preface (n.p.).
27. Paul Hocks and Peter Schmidt, *Literarische und politische Zeitschriften 1789-1805* (Stuttgart: Metzler, 1975), 18.
28. Wilhelm Wekhrlin, ed. *Das graue Ungeheur* (1784-87), 2: 196.
29. *Berlinische Monatsschrift*, 3: 327.
30. *Berlinische Monatsschrift*, 3: 326.
31. Rolf Engelsing, *Der Bürger als Leser* (Stuttgart: Metzler, 1974), 263.
32. Kant, *Schriften*, 8: 37-38.
33. Kant, *Schriften*, 10: 219.
34. In a recent article Eberhard Günter Schulz cites two edicts from the Prussian Ministry of Education that also may have inspired Kant's distinction ("Kant und die Berliner Aufklärung," in *Akten des 4. Internationalen Kant-Kongresses, Mainz 1974*, Teil II, 1: Sektionen, ed. by Gerhard Funke [Berlin: de Gruyter, 1974], 69). However, they did not go as far as Kant in characterizing official sermons as "private".
35. Kant, *Schriften*, 8: 41.
36. Kant, *Schriften*, 8: 37-38.
37. Kant, *Schriften*, 8: 41.
38. Kant, *Schriften*, 8: 304.
39. Kant, *Schriften*, 8: 304.
40. Helmut Kiesel and Paul Münch, *Gesellschaft und Literatur im 18. Jahrhundert* (Munich: Beck, 1977), 123.
41. Mary J. Gregor, "Translator's Introduction" to *The Strife of the Faculties*, ix-x. This is an appropriate place to point out that many accounts of Kant's attitude toward the public, including Jürgen Habermas's otherwise valuable discussion in *Strukturwandel der Öffentlichkeit* (Berlin and New York: Luchterhand, 1962), treat "What is Enlightenment?" and *The Conflict of the Faculties* as if they present the same theory, neglecting the differences between these works and the reasons for them.
42. Kant, *Schriften*, 7: 6.
43. Kant, *Schriften*, 7: 8.
44. Kant, *Schriften*, 7: 8-9.
45. Kant, *Schriften*, 7: 18.
46. Kant, *Schriften*, 7: 34.
47. Kant, *Schriften*, 7: 19, 34.
48. Kant, *Schriften*, 7: 33, 27.
49. Kant, *Schriften*, 7: 29, 28.
50. Kant, *Schriften*, 7: 27, 34.
51. Kant, *Schriften*, 7: 28, 31.
52. Kant, *Schriften*, 7: 32, 35.

53. Kant, *Schriften*, 7: 29, 35.
  54. Kant, *Schriften*, 8: 368.
  55. Kant, *Schriften*, 8: 369.
  56. Kant, *Schriften*, 8: 369.
  57. Wekhrlin, *Ungeheur*, 2: 124.
  58. Wekhrlin, *Ungeheur*, 2: 195.
  59. Wekhrlin, *Ungeheur*, 2: 190.
  60. Wekhrlin, *Ungeheur*, 2: 192.
  61. Wekhrlin, *Ungeheur*, 2: 195.
  62. Wekhrlin, *Ungeheur*, 2: 123.
  63. Jürgen Wilke, *Literarische Zeitschriften des 18. Jahrhunderts (1688-1789)*. Teil II: Repertorium (Stuttgart: Metzler, 1978), 156.
  64. Norbert Hinske, ed., *Was ist Aufklärung? Beiträge aus der Berlinischen Monatsschrift* (Darmstadt: Wissenschaftliches Buchgesellschaft, 1981), 318 ff.
  65. Hans-Wolf Jäger, *Politische Kategorien in Poetik und Rhetorik der zweiten Hälfte des 18. Jahrhunderts* (Stuttgart: Metzler, 1970), 19.
  66. Jäger, *Politische Kategorien*, 69.
  67. Adolph Freyherr von Knigge, *Josephs von Wurmbrand...politisches Glaubensbekenntnis...*, ed. by Gerhard Steiner (1792; rpt. Frankfurt: Insel, 1968), 94.
- It is worth noting that the entries for the English word "publicist" in the *Oxford English Dictionary* suggest that the word was borrowed from the German about this time. The earliest uses noted are from Burke in 1792 and Henry Crabb Robinson in 1801, both referring explicitly to German affairs.
68. August Ludwig von Schlözer, *Allgemeines StatsRecht und StatsVerfassungsLere* (Göttingen: Vandenhoeck, 1793; rpt. 1970), 165.
  69. Schlözer, *StatsRecht*, 189.
  70. Schlözer, *StatsRecht*, e.g., 153-154, 173, 200.
  71. Schlözer, *StatsRecht*, 108.
  72. Schlözer, *StatsRecht*, 106.
  73. Johann Georg Heinzmann, *Appell an meine Nation: Über die Pest der deutschen Literatur* (Bern, 1795; rpt. 1977), 53.
  74. Kant, *Schriften*, 8: 381.
  75. Kant, *Schriften*, 8: 381.
  76. Kant, *Schriften*, 8: 381, 386.
  77. Hugo Grotius, *Of War and Peace*, trans. by Clement Barksdale (London, 1655), Section I.LXXII.
  78. Samuel von Pufendorf, *The Law of Nature and Nations*, trans. by Basil Kennet, 3rd ed. (London, 1717), Section VII.VIII.
  79. Christian Wolff, *Jus Gentium Methodo Scientifica Pertractatum (1764)*, trans. by Joseph H. Drake, (Oxford: University Press, 1934), Section 1012.
  80. Emer de Vattel, *The Law of Nations or the Principles of Natural Law (1758)*, trans. by Charles G. Fenwick (Washington: Carnegie Foundation, 1916), 3: 23, cf. 3: 25.
  81. Vattel, *The Law of Nations*, 3: 26.
  82. Kant, *Schriften*, 8: 382, cf. 6: 319 ff.
  83. Kant, *Schriften*, 8: 382-383.
  84. Kant, *Schriften*, 8: 383.

85. Grotius, *Of War and Peace*, Section II.LXf.; Vattel, *The Law of Nations*, 3: 170; Gottfried Achenwall, *Ius Naturalis, Pars Posterior* (Göttingen, 1763), cited from vol. 19 of *Kants Gesammelte Schriften*, Prussian Academy edition (Berlin: de Gruyter, 1934), Section 240.

86. Kant, *Schriften*, 8: 383-384.

87. Grotius, *Of War and Peace*, Sections II.XIV, II.CXVIII; Pufendorf, *The Law of Nature*, Section VIII.VI.5.

88. Wolff, *Jus Gentium*, Section 650.

89. Vattel, *The Law of Nations*, 3: 249; cf. Achenwall, *Ius Naturalis*, Section 265.

90. Kant, *Schriften*, 8: 384.

91. Pufendorf, *The Law of Nature*, Section VIII.VI.5; Wolff, *Jus Gentium*, Section 645; Achenwall, *Ius Naturalis*, Section 264.

92. Grotius, *Of War and Peace*, Section II.CIX.

93. Kant, *Schriften*, 8: 383.

94. Kant, *Schriften*, 8: 385.

95. Kant, *Schriften*, 8: 386.

96. Kant reaffirmed the importance of "publicity" in "An Old Question Raised Again: Is the Human Race Constantly Progressing?" written two years later. "Publicity" is the only way in which a people can present its grievances to its rulers. "A ban on publicity will therefore hinder a nation's progress," Kant writes (7: 89). Thus Kant manages to insert the subversive notion of publicity into a doctrine that purports to call for no more than reform from the top down.

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