

**OXFORD**

UNIVERSITY PRESS

Great Clarendon Street, Oxford, OX2 6DP,  
United Kingdom

Oxford University Press is a department of the University of Oxford.  
It furthers the University's objective of excellence in research, scholarship,  
and education by publishing worldwide. Oxford is a registered trade mark of  
Oxford University Press in the UK and in certain other countries

© Reidar Maliks 2014

The moral rights of the author have been asserted

First Edition published in 2014

Impression: 1

All rights reserved. No part of this publication may be reproduced, stored in  
a retrieval system, or transmitted, in any form or by any means, without the  
prior permission in writing of Oxford University Press, or as expressly permitted  
by law, by licence or under terms agreed with the appropriate reprographics  
rights organization. Enquiries concerning reproduction outside the scope of the  
above should be sent to the Rights Department, Oxford University Press, at the  
address above

You must not circulate this work in any other form  
and you must impose this same condition on any acquirer

Published in the United States of America by Oxford University Press  
198 Madison Avenue, New York, NY 10016, United States of America

British Library Cataloguing in Publication Data

Data available

Library of Congress Control Number: 2014941598

ISBN 978-0-19-964515-2

Printed and bound by  
CPI Group (UK) Ltd, Croydon, CR0 4YY

Links to third party websites are provided by Oxford in good faith and  
for information only. Oxford disclaims any responsibility for the materials  
contained in any third party website referenced in this work.

## *Acknowledgements*

I gratefully acknowledge the support of my academic advisors in writing this book. Nadia Urbinati and Thomas Pogge were the generous and inspiring directors of the Columbia University dissertation that was its distant ancestor. Quentin Skinner's support was crucial in my decision to take a turn to Contextualism, and I have benefited greatly from membership in his research network on *Freedom and the Construction of Europe*. Mark Philp persuaded me to stay on that path and I benefited very much from his advice during a junior research fellowship at Oriel College, Oxford.

Many people have read and commented on my work in its earlier stages. Most did so a long time ago and might not recognize the result. Many thanks to Stefan Bird-Pollan, Lars Christie, Theodore Christov, Daniel Cordes, Thomas Donahue, Christel Fricke, Dagmar Førland, Martin van Gelderen, Paul Guyer, Istvan Hont, Pablo Kalmanovitz, James Ingram, David C. Johnston, Claudio Lopez-Guerra, Leif Maliks, Jakob Maliks, Kjartan Koch Mikalsen, Scott Morrison, Isaac Nakhimovsky, Frederick Neuhouser, Nedim Nomer, James Ingram, Philip Pettit, Véronique Pouillard, T. J. Reed, Christian Rostbøll, Philipp Schink, Alexander Schmidt, Annie Stilz, Nick Tampio, Jens Timmermann, Jeff Turco, Daniel Viehoff, Jeremy Waldron, Tim Waligore, and Lea Ypi. I am grateful to Ariel Zylberman, who generously commented on the entire final draft and thereby saved me from numerous errors, and to three anonymous reviewers at Oxford University Press who gave constructive suggestions for improvements. Many thanks to Fred Rauscher for giving me permission to quote from his unpublished translations of Kant's *Naturrecht Feyerabend* and political philosophy *Nachlaß*.

Chapters have been presented at numerous workshops and conferences. In 2010 at the UK Kant society annual meeting in Oxford; the Centre for Political Ideologies at Oxford; the 'State of the State Workshop' in Bremen; the XI International Kant Congress in Pisa; the 3. Internationales Workshop Klassische deutsche Philosophie at Jena; the Cambridge Seminars in Political Thought and Intellectual History; and the *convegno* on 'Free Citizens and the State' in Florence. In 2011 chapters were presented at the Centre for the Study of Social Justice and at the seminar on 'Re-imagining Democracy 1750–1850', both at Oxford. In 2012 chapters were presented at the CSMN colloquium at the University of Oslo and at the Concepta Research training Seminar in St. Petersburg. In 2013 chapters were presented at the PPPE seminar at CSMN, and at the Nordic Conference for Eighteenth-Century Studies, both in Oslo. In 2014 chapters were presented at the Kantian Political Philosophy Workshop at the University of Copenhagen, and at the conference on 'Kant

and Republicanism', co-organized by the Cluster of excellence 'Formation of Normative Orders' and Hamburg University. Many thanks to the organizers and participants at those events.

I wish to acknowledge the support of the State of the State fellowship at the University of Oxford, in particular the financial support of the Volkswagen Foundation and the administrative support and good cheer of Sara Hobolt and Lothar Probst. I am grateful to the Provost and fellows of Oriel College for their generosity and collegiality during my fellowship there. Some of the work was undertaken during a fellowship at the ERC project MultiRights at the University of Oslo, I am grateful to Andreas Føllesdal for support during this period. The Department of Philosophy, Classics, History of Art and Ideas at the University of Oslo provided a supportive environment during the final stretch of the writing. I would like to express appreciation to the Warner Fund at the University Seminars at Columbia University for their help in publication. The ideas presented have benefited from discussions in the University Seminars on Political and Social Thought. Many thanks to Katherine Irene Pettus and Helen Belgian Cooper for expert copy-editing, and to Dominic Byatt at OUP, whose faith in the project and understanding during the process has been vital. I am grateful to my wife Véronique and my daughters Amélie and Louise for their generosity and love during these years. This book is dedicated to them.

Several chapters incorporate reworked published material, which is here used with permission from the publishers: 'The State of Freedom: Kant and His Conservative Critics', in *Freedom and the Construction of Europe. Volume II: Free Persons and Free States*, edited by Quentin Skinner and Martin van Gelderen (Cambridge University Press, 2013), pp. 188–207; 'Kant, the State, and Revolution', *Kantian Review*, 18 (2013): 29–47; 'Kant and the Debate over Theory and Practice', in *Kant und die Philosophie in weltbürgerlicher Absicht: Akten des XI. Kant-Kongresses 2010*, edited by Stefano Bacin, et al. (Berlin: De Gruyter, 2013), pp. 741–753; 'Revolutionary Epigones: Kant and his Radical Followers', *History of Political Thought*, 33 (2012): 647–671; 'Liberal Revolution: The Cases of Jakob and Erhard', *Hegel Bulletin*, 63 (2011): 216–231. Extracts from *Immanuel Kant, Practical Philosophy*, translated by Mary Gregor are quoted with permission from Cambridge University Press.

# *Contents*

<i>Abbreviations</i>	ix
Introduction: Kant in the Public Sphere	1
1. Before the Revolution	16
Debates about State Legitimacy	17
Kant on Moral Agency in History	22
The Debate with Herder	29
The Path to the Principle of Right	32
2. Freedom and Equality	39
The French Revolution in the German Public Sphere	41
Kant's Initial View of Equal Freedom	49
Conservative Critics	55
Kant's Final View	60
3. Political Rights	80
Debates about Citizenship	83
Kant's Initial View of the Right to Vote	90
Radical Critics	95
Kant's Final View	101
4. Resistance and Revolution	112
Debates about Resistance to Despotism	114
Kant's Initial View of Resistance and Revolution	120
Radical Critics	123
Kant's Final View	130
5. War and Peace	144
Debates about War	147
Kant's Initial View on the Right of Nations	151
Debating <i>Perpetual Peace</i>	158
Kant's Final View	162
Conclusion: After the Revolution	168
<i>Bibliography</i>	173
<i>Index</i>	191

## *Abbreviations*

The following abbreviations are used to indicate the titles of Kant's writings. References to volume and page number are to the edition of *Kant's gesammelte Schriften* by the Royal Prussian (later German) Academy of Sciences (Berlin: Georg Reimer; from 1990, published by Walter de Gruyter & Co). The abbreviation AA indicates a volume from the Akademie-edition.

- A *Anthropology from a Pragmatic Point of View*, translated by Robert B. Louden, in *Immanuel Kant, Anthropology, History, and Education*, edited by Günter Zöller and Robert B. Louden (Cambridge: Cambridge University Press, 2007).
- C *Immanuel Kant, Correspondence*, edited and translated by A. Zweig (Cambridge: Cambridge University Press, 1999).
- CB 'Conjectural beginnings of human history', translated by Allen W. Wood, in *Immanuel Kant, Anthropology, History, and Education*, edited by Günter Zöller and Robert B. Louden (Cambridge: Cambridge University Press, 2007).
- CF *The Conflict of the Faculties*, translated by Mary J. Gregor and Robert Anchor, in *Immanuel Kant, Religion and Rational Theology*, edited by Allen W. Wood and George Di Giovanni (Cambridge: Cambridge University Press, 1996).
- CPJ *Critique of the Power of Judgment*, translated by Paul Guyer and Eric Matthews, edited by Paul Guyer (Cambridge: Cambridge University Press, 2000).
- CPR *Critique of Pure Reason*, translated and edited by Paul Guyer and Allen W. Wood, *The Cambridge Edition of the Works of Immanuel Kant* (Cambridge: Cambridge University Press, 1998).
- F *Naturrecht Feyerabend. Kant's Course Lecture on Natural Right, 1784*. Unpublished translation by Frederick Rauscher.
- G *Groundwork of the Metaphysics of Morals*, translated by Mary Gregor, in *Immanuel Kant, Practical Philosophy*, edited by Mary Gregor (Cambridge: Cambridge University Press, 1996).
- IUH *Idea for a Universal History with a Cosmopolitan Aim*, translated by Robert B. Louden, in *Immanuel Kant, Anthropology, History, and Education*, edited by Günter Zöller and Robert B. Louden (Cambridge: Cambridge University Press, 2007).
- LE *Lectures on Ethics*, edited by Peter Heath and J. B. Schneewind, translated by Peter Heath (Cambridge: Cambridge University Press, 1997).

- MM *The Metaphysics of Morals*, translated and edited by Mary Gregor, in *Immanuel Kant, Practical Philosophy* (Cambridge: Cambridge University Press, 1996).
- NM *Handschriftlicher Nachlass: Moralphilosophie*, unpublished translations by Frederick Rauscher.
- O *Observations on the Feeling of the Beautiful and Sublime*, translated by Patrick Frierson: *Observations on the Feeling of the Beautiful and Sublime and Other Writings*, edited by Patrick Frierson and Paul Guyer (Cambridge: Cambridge University Press, 2011).
- PP *Toward Perpetual Peace*, translated by Mary Gregor, in *Immanuel Kant, Practical Philosophy*, edited by Mary Gregor (Cambridge: Cambridge University Press, 1996).
- Rel. ‘Religion within the boundaries of mere reason’, translated by George di Giovanni, in *Immanuel Kant, Religion and Rational Theology*, edited by Allen W. Wood and George di Giovanni (Cambridge: Cambridge University Press, 1996).
- RGH ‘Review of Gottlieb Hufeland’s Essay on the principle of natural right’, translated by Mary Gregor, in *Immanuel Kant, Practical Philosophy*, edited by Mary Gregor (Cambridge: Cambridge University Press, 1996).
- RH ‘Review of J. G. Herder’s *Ideas for the philosophy of history of humanity. Parts 1 and 2*’, translated by Allen W. Wood, in *Immanuel Kant, Anthropology, History, and Education*, edited by Günter Zöller and Robert B. Louden (Cambridge: Cambridge University Press, 2007).
- TP ‘On the Common Saying: That May Be Correct in Theory, but It Is of No Use in Practice’, translated by Mary Gregor, in *Immanuel Kant, Practical Philosophy*, edited by Mary Gregor (Cambridge: Cambridge University Press, 1996).
- TB ‘On turning out books’, translated and edited by Allen W. Wood, in *Immanuel Kant, Practical Philosophy*, edited by Mary Gregor (Cambridge: Cambridge University Press, 1996).
- WE ‘An Answer to the Question: What Is Enlightenment?’, translated by Mary Gregor, in *Immanuel Kant, Practical Philosophy*, edited by Mary Gregor (Cambridge: Cambridge University Press, 1996).
- WO ‘What does it mean to orient oneself in thinking?’, translated by Allen W. Wood, in *Immanuel Kant, Religion and Rational Theology*, edited by Allen W. Wood and George di Giovanni (Cambridge: Cambridge University Press, 1996).

Yet, how much and how correctly would we think if we did not think as it were in community with others to whom we communicate our thoughts, and who communicate theirs with us!

Immanuel Kant, *What does it mean to orient oneself in thinking?*

# Introduction: Kant in the Public Sphere

An 1832 oil painting by Gustav Taubert called ‘Everyone Reads Everything’ shows a number of serious men—so far no women—poring over journals in a Berlin cafe. The composition allows half of them to sit on the left and half on the right, perhaps evoking the spatial metaphor of political division, which originated with the seating in the French National Assembly after the 1789 revolution. The large windows on the left of the painting illuminate the pensive face of one young man who is looking out. A portrait of Frederick William III of Prussia, who ascended the throne in 1797, the year Immanuel Kant (1724–1804) published his final treatise on legal and political philosophy, hangs on the right. The image illustrates the German public sphere, which had started to develop in the latter half of the eighteenth century. That Kant had idealized it is well known, but that he intentionally developed his own philosophy in public discourse has not been fully appreciated. This book explores how the public sphere helped shape his philosophy, and how Kant in turn helped shape the public sphere. The aim is to shed new light on his legal and political philosophy, and to illuminate a founding moment of modern philosophy.

Although Kant’s legal and political philosophy has been neglected compared to the rest of his practical philosophy, a considerable literature exists on some of its most original and puzzling features. Most scholars agree that its core is a right to freedom, but disagree about its nature and the significance of the state. Controversies have centred on three issues: Kant’s justification of the right to freedom, his commitment to equality, and his view of the authority of the state. Debate on the first issue has often focused on how external freedom of choice, the focus of Kant’s legal and political writings, connects with internal freedom of will, or autonomy, developed in his writings on individual moral agency. Kant defines external freedom as ‘independence from being constrained by another’s choice’, and argues that people have a right to such freedom compatible with the equal freedom of others according to a universal law, defined by the legal rights and duties of a republican constitution.<sup>1</sup> To what extent such freedom follows

<sup>1</sup> Kant, *The Metaphysics of Morals*, 6:237. The title of this book will be abbreviated *MM*. A full list of abbreviations, along with explanations of page references and use of translations, is found in the preceding pages of this book. Where nothing else is stated, translations are by me.

from freedom in the internal sense and the theory of practical reason this relies on, is controversial and a significant literature has resulted on the complexities of linking the political and the moral domains.<sup>2</sup>

The second issue addresses Kant's commitment to equality, in particular his restrictive view of citizenship rights. Even though Kant argues that the right to freedom includes legal equality, he denies that women and the poor can have a right to vote. This poses the question of how Kant could justify a society where many have no hand in making those laws to which they must submit. It also raises the wider question of whether Kant's brand of republicanism is truly committed to democracy.<sup>3</sup> The third question, about Kant's theory of state authority, centres on his defence of the sovereignty of the state. He denied that there can be a right to resist the state or to change the constitution by violent revolution, a prohibition that applies even to fairly unjust states.<sup>4</sup> Moreover, while he insists that states must secure international peace through international law, he denies that an international organization should have coercive authority to enforce the law.<sup>5</sup> By contrast to a liberal tradition, Kant seems to worry less about government abuses of power than he does about defending public authority and state sovereignty.

On all these issues Kant's views have surprised his followers, generating debate and alternative 'Kantian' views. Even though Kant scholarship has become increasingly sophisticated, it is understandable that interpreters still disagree about the nature of Kant's legal and political philosophy. Apart from the intrinsic complexity of his thought, his texts are terse, polemical, and rely on specialized concepts mixed with the natural law tradition. The text of the *Doctrine of Right*, his most extensive discussion of legal and political ideas, poses extra difficulties due to printing errors that were not corrected in Kant's time.<sup>6</sup> The fact that many of his essays, pamphlets, and books are responses to interlocutors in long forgotten debates accounts for some of the obscurity. As R. G. Collingwood observed, to understand the meaning of a text we need to know the question it attempts to answer.<sup>7</sup> Since Kant's questions are often not stated as such, or are posed by his interlocutors, discerning them is a historical enterprise. This book seeks to better understand Kant's answers by unearthing

<sup>2</sup> See for example the essays in *Kant's Metaphysics of Morals: Interpretative Essays*, edited by Mark Timmons (Oxford: Oxford University Press, 2002).

<sup>3</sup> Jacob Weinrib provides an overview of the debate in 'Kant on Citizenship and Universal Independence', *Australian Journal of Legal Philosophy*, 33 (2008): 1–25.

<sup>4</sup> Arthur Ripstein provides the most extensive discussion of this question; see *Force and Freedom: Kant's Legal and Political Philosophy* (Cambridge, MA: Harvard University Press, 2009).

<sup>5</sup> See the essays in *Perpetual Peace: Essays on Kant's Cosmopolitan Ideal*, edited by James Bohman and Matthias Lutz-Bachmann (Cambridge, MA: MIT Press, 1997).

<sup>6</sup> Bernd Ludwig, "The Right of a State" in Immanuel Kant's *Doctrine of Right*, *Journal of the History of Philosophy*, 28 (1990): 403–415.

<sup>7</sup> R. G. Collingwood, *An Autobiography* (Oxford: Clarendon Press, 1939), p. 39.

his interlocutors' questions and highlighting the political events that caught his attention.

The traditional view holds that Kant's legal and political philosophy was settled long before the French Revolution.<sup>8</sup> It is true that although he published almost all of his essays, pamphlets, and books on legal and political philosophy after that cataclysmic event, his pre-1789 notes and lectures outlined his basic view of right. These notes reveal the influence of Jean-Jacques Rousseau, whom he read in the 1760s, and Gottfried Achenwall, the legal scholar and social scientist whose textbook Kant used for teaching natural law. Yet, Kant's thinking underwent important developments in the 1790s. He continued developing an increasingly sophisticated theory connecting individual rights and private property, and explored notions of justice during political transitions. Some concepts, such as citizenship and the right to vote, were barely mentioned before the revolution, while others such as cosmopolitan right were inventions of the 1790s. We can appreciate these developments better by reading Kant in the context of the debates and events that followed the French Revolution. Public debates about pressing issues such as hereditary privilege, the right of revolution, and the nature of citizenship led Kant to consider issues that transcended the natural law theory he had espoused in the preceding decades.

Although some authors have been more attentive to Kant's post-revolution theoretical development,<sup>9</sup> few have attempted to support their claims by systematically excavating the intellectual context in which he was immersed.<sup>10</sup> The

<sup>8</sup> Christian Ritter argues that all the basic ideas were in place by the 1760s and that Kant's mature legal and political thought should not be considered part of the critical project. While few are willing to draw that conclusion, many, including Frederick Beiser and Peter Burg, claim that Kant's thinking was basically complete prior to the Revolution. See Ritter, *Der Rechtsgedanke Kants nach den frühen Quellen* (Frankfurt am Main: V. Klostermann, 1971); Frederick Beiser, *Enlightenment, Revolution, and Romanticism: The Genesis of Modern German Political Thought, 1790–1800* (Cambridge, MA: Harvard University Press, 1992); Peter Burg, *Kant und die Französische Revolution* (Berlin: Duncker und Humblot, 1974).

<sup>9</sup> See for example Wolfgang Kersting, *Wohlgeordnete Freiheit: Immanuel Kants Rechts- und Staatsphilosophie* (Frankfurt am Main: Suhrkamp, 1993); Ferenc Fehér, 'Practical Reason in the Revolution: Kant's Dialogue with the French Revolution', in *The French Revolution and the Birth of Modernity*, edited by Ferenc Fehér (Berkeley: University of California Press, 1990); Gareth Stedman Jones, 'Kant, the French Revolution and the Definition of the Republic', in *The Invention of the Modern Republic*, edited by Biancamaria Fontana (Cambridge: Cambridge University Press, 1994); Pauline Kleingeld, *Kant and Cosmopolitanism: The Philosophical Ideal of World Citizenship* (Cambridge: Cambridge University Press, 2012).

<sup>10</sup> Notable exceptions include Dieter Henrich, 'Über den Sinn vernünftigen Handelns im Staat', in Kant, Gentz, Rehberg: *Über Theorie und Praxis*, edited by D. Henrich (Frankfurt am Main: Suhrkamp, 1967); Alexis Philonenko, *Théorie et praxis dans la pensée morale et politique de Kant et de Fichte en 1793* (Paris: Librairie Philosophique J. Vrin, 1968); Reinhard Brandt, 'Das Problem der Erlaubnisgesetze im Spätwerk Kants', in *Immanuel Kant: Zum Ewigen Frieden*, edited by Otfried Höffe (Berlin: Akademie Verlag, 1995); and Beiser, *Enlightenment*. Sharon Byrd and Joachim Hruschka have recently situated Kant within the context of Kant's predecessors in natural law theory. See Byrd and Hruschka, *Kant's Doctrine of Right* (Cambridge: Cambridge University Press, 2010).

story of Kant's involvement in debates on political philosophy is, unlike that of Hobbes' or Machiavelli's, '*terra incognita*',<sup>11</sup> a 'large unplowed field'.<sup>12</sup> While this tradition of scholarly reticence may reflect unease about treating a highly systematic thinker as a political being, Kant was hardly aloof from political controversy. He was the leading German philosopher of the period, and wrote political essays and monographs at a time when freedom and republicanism were contentious topics with serious implications for an as yet unconsolidated Prussian state. Kant's followers and critics snatched up his essays as soon as they came out and he was driven into the public debate again and again to defend his principles, which both radicals and conservatives appropriated to support their own arguments.

The public sphere mattered to Kant for two reasons. First, he was committed to the view that enlightenment presupposes the public use of reason, and that philosophers have an important role to play in it. It is difficult for single individuals to free themselves from prejudice, but once a people is allowed to reason in public, those few who think for themselves will disseminate 'the spirit' of critical thinking.<sup>13</sup> As a result, an enlightened population will be able to contribute to public deliberation on law and politics. There are two sites of deliberation: a legislature, where the people's representatives evaluate and decide on binding laws, and a public sphere, constituted by classrooms, reading rooms, cafes, and dinner parties (these were the venues of Kant's life) where participants aim only at the pursuit of truth. The binding decisions of the legislature, which represent society's official view of justice, are fully just only insofar as they can pass the test of the public sphere.

Second, by publishing his essays in widely read journals, such as the *Berlinische Monatsschrift*, Kant ensured rapid distribution and public debate that would help him refine his concepts. He describes the process in a 1797 letter to Fichte:

My choice of the journal *Berliner Blätter* for my recent essays will make sense to you and to my other philosophizing friends [...] For in that paper I can get my work published and evaluated [*beurtheilt*] most quickly, since, like a political newspaper, it comes out almost as promptly as the mail allows.<sup>14</sup>

Throughout the decade Kant returned to the same ideas in his publications, developing them with increasing complexity. The 'philosophizing friends' who evaluated his work were professors at other universities, writers and

<sup>11</sup> Ian Hunter, 'Kant's Political Thought in the Prussian Enlightenment', *Kant's Political Theory: Interpretations and Applications*, edited by Elisabeth Ellis (University Park, PA: Penn State University Press, 2012).

<sup>12</sup> Sharon Byrd and Joachim Hruschka, *Kant's Doctrine of Right*, p. 20.

<sup>13</sup> Kant, 'What Is Enlightenment?', WE, 8:36. See also the essays collected by James Schmidt in *What Is Enlightenment? Eighteenth-Century Answers and Twentieth-Century Questions* (Berkeley: University of California Press, 1996).

<sup>14</sup> Kant, C, 12:221. *Berliner Blätter* was the successor to *Berlinische Monatsschrift*.

publishers, and civil servants. Several were former students who had attended his lectures in Königsberg—by the 1790s, Kant was a renowned teacher and there were Kantians at all the important German universities.<sup>15</sup> While they differed in political persuasions and allegiances, most had been impressed by his 1780s theory of the categorical imperative, the idea of an individual's free moral agency. The 1790s were good years to experiment with developing a philosophy in public. Although eighteenth-century Germans often are portrayed as apolitical or excessively obedient,<sup>16</sup> the late-eighteenth-century Prussian public sphere was the site of an intense political debate about the nature and limits of the state. In connection with a planned legal overhaul, Frederick II took the unprecedented decision to open the public sphere to debate on law and the state. Prussia's middle class, which had to a large extent been excluded from public office and political participation, eagerly grasped the opportunity to engage in critique.<sup>17</sup> The subsequent debate pitted the modern principles of freedom and meritocracy against the values of order and tradition. Kant could reasonably expect to receive useful feedback on the political philosophy he published throughout the 1790s.

Although there was a tighter censorship regime in Kant's Prussia in the wake of the French Revolution, the target of Frederick William II (who ruled between 1786–1797) and his minister of religious affairs Johann Christoph von Wöllner was primarily religious literature. Prussians had access to full coverage of the events of the French Revolution, and even in the area of religion, censorship was only marginally successful, since Frederick II's openness to free speech had left the legacy of a politicized public sphere and supporters of the enlightenment in high public office.<sup>18</sup> This may explain Kant's relative equanimity the one time he was subject to censorship. After *Religion within the Boundaries of Mere Reason* was published, Frederick William wrote to Kant in 1794 to express his displeasure at Kant's misuse of his philosophy to 'distort

<sup>15</sup> For an overview, see Karl Vorländer, *Immanuel Kant: Der Mann und Das Werk* (Hamburg: Meiner, 1992), pp. 239–265.

<sup>16</sup> See for example T. C. W. Blanning, *Reform and Revolution in Mainz, 1743–1803* (London: Cambridge University Press, 1974); Charles Ingrao, 'The Problem of "Enlightened Absolutism" and the German States', *Journal of Modern History* 58, suppl. (1986): 161–180; and Wolf Lepenies, *The Seduction of Culture in German History* (Princeton, NJ: Princeton University Press, 2006). For a critique, see Beiser, *Enlightenment*, and Florian Schui, *Rebellious Prussians: Urban Political Culture under Frederick the Great and his Successors* (Oxford: Oxford University Press 2013).

<sup>17</sup> See Hans Rosenberg, *Bureaucracy, Aristocracy, and Autocracy: The Prussian Experience, 1660–1815* (Cambridge, MA: Harvard University Press, 1958); Jürgen Habermas, *The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society*, translated by Thomas Burger (Cambridge, MA: The MIT Press, 1991); Reinhart Koselleck, *Critique and Crisis: Enlightenment and the Pathogenesis of Modern Society* (Cambridge, MA: MIT Press, 1988); T. J. Reed, *Light in Germany: Scenes from an Unknown Enlightenment* (Chicago: Chicago University Press, forthcoming).

<sup>18</sup> Christopher M. Clark, *Iron Kingdom: The Rise and Downfall of Prussia, 1600–1947* (Cambridge, MA: Belknap Press of Harvard University Press, 2006), pp. 270–272.

and disparage' Christianity. Kant responded that he had done no such thing, yet declared '*as Your majesty's most loyal subject [...] I will hereafter refrain altogether from discussing publicly, in lectures or writings, on religion.*'<sup>19</sup> Frederick William II passed away in 1797, and the year after Kant continued publishing on religion and revealed that he had chosen his expression carefully 'so that I would not renounce my freedom to judge in this religious suit *forever*, but only during His Majesty's lifetime.'<sup>20</sup> Kant's pride at his artful use of language indicates a measure of serenity in the face of censorship. Many years before this incident, Kant had, in a letter to Moses Mendelssohn, insisted on his integrity: 'Although I am absolutely convinced of many things that I shall never have the courage to say, I shall never say anything I do not believe.'<sup>21</sup>

Arthur Ripstein has recently pointed out that Kant's concept of freedom as independence bears striking similarity to the classical republican tradition. The republican tradition traced its roots mostly to Roman law, and emphasized freedom as the juridical status of independence from arbitrary power.<sup>22</sup> The similarity is not a coincidence, since Kant's context was the revival of republicanism in German political philosophy before and after the French Revolution. This republicanism has not gained much attention, despite the great interest in republicanism in recent decades, which has focused on the Italian and Anglo-Saxon traditions.<sup>23</sup> As Hans Erich Bödeker has shown, German republican thinkers sought individual freedom and constitutional limits on monarchy, and during the 1780s they increasingly came to demand political freedom, which was understood as the right to participate in political decision-making.<sup>24</sup> Authors who explicitly connected to republican ideals were part of a larger trend that emphasized freedom, which scholars usually refer to as a liberal tradition, even though the term was not used at the time.<sup>25</sup> These new ideas of the centrality of freedom developed in the context of a philosophical public sphere dominated by a divergence between two powerful forces.<sup>26</sup> On the one hand was natural law theory, whose champions included Christian Wolff (1679–1754). His proto-utilitarian perfectionism legitimized the absolutist Prussian monarchy and its paternalistic attempts at furthering

<sup>19</sup> Kant added his letter to the Foreword to the *Conflict of the Faculties*, *CF*, 7:10.

<sup>20</sup> Kant, *CF*, 7:10. <sup>21</sup> Letter to Moses Mendelssohn, 8 April 1766, C, 10:69.

<sup>22</sup> Quentin Skinner has influentially brought this tradition to the attention of scholarship: see for example 'States and the Freedom of Citizens', in *States and Citizens: History, Theory, Prospects*, edited by Q. Skinner and B. Sträth (Cambridge: Cambridge University Press, 2003).

<sup>23</sup> As argued by Jürgen Heideking and James Henretta in their edited volume *Republicanism and Liberalism in America and the German States, 1750–1850* (Cambridge: Cambridge University Press, 2002).

<sup>24</sup> Hans Erich Bödeker, 'The Concept of the Republic in Eighteenth Century German Thought'. In Heideking and Henretta, *Republicanism and Liberalism*.

<sup>25</sup> See for example Fritz Valjavec, *Die Entstehung der politischen Strömungen in Deutschland 1770–1815* (München: R. Oldenbourg, 1951), pp. 61–62.

<sup>26</sup> See the essays in *Rethinking Leviathan: The Eighteenth-Century State in Britain and Germany*, edited by John Brewer and Eckhart Hellmuth (Oxford: Oxford University Press, 1999).

the material and spiritual wellbeing of subjects. On the other hand were conventionalist defences of the late feudal estate society, whose supporters included Justus Möser (1720–1794). His conservatism sought to preserve the old estate system, with its hierarchical social stratification resting on unequal privileges, against the unification imposed by absolutist rulers. By contrast to these justifications for authority, liberals emphasized that the state's task was restricted to establishing equal freedom through law, liberating individuals from the paternalism of absolutist monarchs and feudal hierarchies.

The French Revolution was thrown into this unstable mix. The political event of the era, the revolution was the backdrop against which Kant composed his political philosophy. He was excited about the French Revolution, and saw it as a laboratory that would be the true test of an ideal constitution.<sup>27</sup> He surveyed the events like a scientist with a hypothesis, eagerly awaiting news about the revolution and bringing it up in conversation with friends. He had a lot of stock in the experiment, since his own principles resembled those of the *Declaration of the Rights of Man and the Citizen* proclaimed by the revolutionaries in 1789. The resemblance was noted, and some commentators saw the revolution as a vindication of Kant's enlightenment values. His student Friedrich Gentz's December 1790 letter to Christian Garve contained a typical statement: 'The Revolution constitutes the first practical triumph of philosophy, the first example in the history of the world of the construction of government upon the principles of an orderly, rationally-constructed system.'<sup>28</sup>

Kant's students were eager to know his opinion of the revolution. His 1780s moral theory had been a huge success, and some of his followers wrote to request the treatise on the philosophy of law and the state that he had been promising for years.<sup>29</sup> Karl Leonhard Reinhold, author of the influential *Letters on the Kantian Philosophy*, demanded a basic principle for determining the boundaries of positive law and natural right.<sup>30</sup> Others started developing their own 'Kantian' theories, which appealed directly to the categorical imperative. Theodor Schmalz based a theory of right on the duty to treat others as ends in themselves, and Johann Gottlieb Fichte based his defence of freedom

<sup>27</sup> Reinhold Bernhard Jachmann, *Immanuel Kant geschildert in seinen Briefen an einen Freund*, excerpted in *Immanuel Kant in Rede und Gespräch*, edited by Rudolf Malter (Hamburg: Felix Meiner, 1990), pp. 349–350. Likewise Theodor Gottlieb von Hippel, *Sämtliche Werke 14: Hippel's Briefe*, excerpted in Malter, *Immanuel Kant in Rede und Gespräch*.

<sup>28</sup> Cited by Klaus Epstein, *The Genesis of German Conservatism* (Princeton: Princeton University Press, 1966), p. 436.

<sup>29</sup> See letters from Heinrich Jung-Stilling, 1 March 1789, in C, 11:7–9, and from Johann Gottfried Kiesewetter, 15 June 1793, in C, 11:436. On the publishing history of the *Metaphysics of Morals*, see Manfred Kuehn, 'Kant's Metaphysics of Morals: The History and Significance of its Deferral'. *Kant's Metaphysics of Morals: A Critical Guide*, edited by Lara Denis (Cambridge: Cambridge University Press, 2010).

<sup>30</sup> Karl Leonhard Reinhold, *Letters on the Kantian Philosophy*, edited by Karl Ameriks, translated by James Hebbeler (Cambridge: Cambridge University Press, 2005).

on securing the supreme value of individual autonomy. Fichte proceeded to employ this Kantian view to defend the Revolution.<sup>31</sup>

Kant had too many other projects to complete before he could begin the promised treatise. Meanwhile, the revolution was drifting into its radical phase. First came the September 1792 massacres—mob violence in the streets of Paris—and then the rise of the Jacobin faction, which executed the king and thousands of others accused of treason. The revolution began to resemble a failed experiment. Gentz fell under the influence of Edmund Burke and distanced himself from the principles of liberty he had once defended, warning against the ‘fanaticism of freedom’, the fervent belief in a limitless liberty to do as one pleases, which had unfolded during the Revolution.<sup>32</sup> This generated scepticism about theorists in general: ‘the philosopher creates systems; the rabble forges murderous weapons from them’<sup>33</sup> As Dieter Henrich has argued, when Germans started turning their backs on the Revolution, Kant had reason to worry that they would also reject his philosophy.<sup>34</sup>

He took the floor in 1793 with the essay ‘On the Common Saying: That May Be Correct in Theory, but Is of No Use in Practice’, responding to conservative critics who argued from historical practice rather than reason. Kant declared his sympathies with the ideals of the liberal revolutionaries of 1789 and left no doubt that he despised the paternalism of enlightened absolutism and the conventionalist defences of the estate system of the old *Reich*. Since the 1760s Kant had been influenced by Rousseau’s principles of freedom and popular sovereignty, and no conservative critics of the Revolution would disabuse him of these ideals. In Prussia, this was a key moment to affirm Enlightenment ideals, because of Frederick William’s religious obscurantism and attempts to curb freedom of speech. Yet, while *Theory and Practice* was directed against conservative views, it also rejected key elements of the Jacobin philosophy that had resulted in the regime of terror. Kant rejected direct democracy and a universal right to vote, and denied that it was the government’s job to regulate society in order to make subjects virtuous and patriotic. Kant saw this as overreaching the boundaries of a republican state and as a threat to individual freedom. Unlike the apologists for the French revolution, Kant categorically rejected a right of resistance to the state. A right to resist would clear the way for anyone who claimed to uphold the

<sup>31</sup> Theodor Schmalz mused that ‘The critical philosophy has started to spread its sublime light over all parts of human science. What must it not do for natural right?’. In *Das reine Naturrecht* (Königsberg: bey Friedrich Nicolovius, 1792), p. 6. Johann Gottlieb Fichte, *Beitrag zur Berichtigung der Urteile des Publikums über die französische Revolution erster Teil Zur Beurteilung ihrer Rechtmäßigkeit* (1793); *beigefügt die Rezension von Friedrich von Gentz* (1794). Edited by Richard Schottky (Hamburg: Felix Meiner, 1973).

<sup>32</sup> Friedrich Gentz, ‘Über Politische Freiheit und das Verhältnis derselben zur Regierung’, in *Über die Französische Revolution: Betrachtungen und Abhandlungen*, edited by Herman Klenner (Berlin, 1991), pp. 405–406.

<sup>33</sup> Quoted by Ursula Vogel in *Konservative Kritik an der Bürgerlichen Revolution* (Darmstadt and Neuwied: Luchterhand, 1972), p. 90.

<sup>34</sup> Henrich, ‘Über den Sinn’. See also Frederick Beiser, *Enlightenment*.

other freedoms in order to denounce even legitimate government as despotic and seize power. Such unilateral action represented a form of paternalism that was just as bad as the paternalism of the old regime.

By defending a natural right to freedom as independence on the one hand and denying a right of revolution on the other, Kant's *Theory and Practice* essay antagonized both conservatives and radicals, who critiqued his work in journals, books, and pamphlets. Kant's conservative company of critics included Friedrich Gentz (1764–1832), Justus Möser (1720–1794), Christian Garve (1742–1798), Johann Gottfried Herder (1744–1803), and August Wilhelm Rehberg (1757–1836). This group was by no means of one mind. Herder, both a critic of the Enlightenment and a follower of Rousseau, does not fit easily into any category. Although Gentz, Rehberg, and Herder had been Kant's students, they came under the direct influence of Burke and Möser, who argued that justice must reflect traditional practice. Reason alone cannot tell us how a society ought to be organized because reason is formal and empty of content. One must proceed empirically to discern the laws that should govern a society, by observing how societies are actually organized and how people actually behave. People have no natural rights by virtue of their humanity, only the rights attached to a specific status in a hierarchical society. Freedom is therefore identical with privilege: an exception from duties that determine the status of others. It is not surprising, considering their empirical orientation, that Kant called these critics 'men of practice' rather than scholars. This designation also points to the fact that the conservatives were devoted to administration and business, not scholarship. Gentz was a Prussian civil servant, Rehberg was secretary to an aristocratic council in Hannover, Möser was (among other things) secretary of the noble estate in Osnabrück, Garve was a writer and bookseller in Breslau, and Herder was an ecclesiastical *Generalsuperintendent* in Weimar. By 1793, Gentz, Möser, and Rehberg were well known for their critique of the French Revolution. Rehberg, in particular, had gained considerable attention for his *Untersuchungen über die französische Revolution*, which was based on ideas similar to those of Burke.

Kant's largest following was among radical thinkers who defended republican ideals. In addition to Johann Gottlieb Fichte, these included Ludwig Heinrich Jakob (1759–1827), Karl Heinrich Heydenreich (1764–1801), Johann Benjamin Erhard (1766–1826), Friedrich Bouterwek (1766–1828), Johann Adam Bergk (1769–1834), and Friedrich Schlegel (1772–1829). They too were a heterogeneous group, yet they were all committed to the centrality of external freedom grounded in reason, which they used to critique arbitrary government and defend human dignity and popular sovereignty. They accepted Kant's distinction between right and virtue, and were committed defenders of individual rights based on an a priori foundation.<sup>35</sup> Democrats such as Fichte

<sup>35</sup> This distinguishes them from the German idealists, who became influential shortly thereafter, and who included Friedrich Schelling, the young Georg Wilhelm Friedrich Hegel, and Friedrich Hölderlin. These have been more studied: see, for example, Bernard Yack, *The Longing*

and Bergk are distinguished from the more moderate among them in being more willing to draw the full implications of human rights for changing society. Bergk concluded that 'there is no other lawful form of government than democratic republicanism'.<sup>36</sup> Even the moderate republicans defended a moral right of revolution against despots, however. Although on the radical side of the German political spectrum, they were not political activists and this separated them from the German Jacobins. The German Jacobins were publicists, pamphleteers, and agitators inspired by Robespierre's radical democratic vision, working to bring about revolution in Germany.<sup>37</sup> Unlike Kant's conservative critics, the radicals were largely scholars and writers. Jakob was a professor of political economy in Halle, Schlegel was a professor in Jena where he became the leader of a romantic circle, Bergk spent most of his life in Leipzig as a private scholar and political publicist, Fichte was a professor in Jena and Berlin, and Erhard divided his time between working as a physician and as a publicist.

These young men, all born between 1759 and 1772, had been influenced by the political revolutions of the time. Erhard describes how as a child he had been stirred by the American struggle for independence, which roused a love for the truly republican constitution and an appreciation for freedom.<sup>38</sup> This joy was matched only by the encounter with Kant's writings. Erhard shed tears of joy when he read *Critique of Practical Reason*, which convinced him of the possibility of human progress and individual freedom.<sup>39</sup> Not satisfied with admiring Kant from a distance, Jakob, Bouterwek, Erhard, and Fichte initiated a correspondence with him, and the latter two visited him in Königsberg. Their correspondence attests to a good deal of mutual respect and sympathy.<sup>40</sup> But while they espoused

*for Total Revolution: Philosophic Sources of Social Discontent from Rousseau to Marx and Nietzsche* (Princeton: Princeton University Press, 1986).

<sup>36</sup> Johann Adam Bergk, *Untersuchungen aus dem Natur-, Staats- und Völkerrechte. Mit einer Kritik der neuesten Konstitution der französischen Republik* (Kronberg: Scriptor Verlag, 1975), p. 202. This is a facsimile of the 1796 edition.

<sup>37</sup> See, for example, Walter Grab, *Leben und Werke norddeutscher Jakobiner* (Stuttgart: J.B. Metzler, 1973) and the critique by T. C. W. Blanning, 'German Jacobins and the French Revolution', *The Historical Journal*, 23 (1980): 985–1002.

<sup>38</sup> Erhard, 'Lebensbeschreibung', in *Denkwürdigkeiten des Philosophen und Arztes Johann Benjamin Erhard*, edited by Karl August Ludwig Philipp Varnhagen von Ense (Stuttgart: in der Cotta'sche Buchhandlung, 1830), p. 8.

<sup>39</sup> Erhard, 'Lebensbeschreibung', pp. 20–21.

<sup>40</sup> Erhard seems to have had a particularly close relationship with Kant. His feelings are best captured in a remarkable letter he wrote to Kant in 1786, when he was twenty, to confess his admiration. Playing Alcibiades to Kant's Socrates, he declared that fate had chosen the philosopher to be his leader and that Kant gave him the strength to press on through the fog of prejudice. In the sentimental style of the age, he added that he had felt united with Kant when reading the *Groundwork for the Metaphysics of Morals* and wished only to be able to learn from him in Königsberg. Shortly after his visit to Königsberg in 1791 he wrote to Kant to say that he considered him the one who had brought him up (his *Erzieher*) as much as his real father. The affection was mutual. Kant replied that 'of all the persons I so far have come to know there is no one I would more wish the daily company of than you'. See Erhard's letter to Kant on 12 May 1786, AA, 10:450. The letter from Kant has been lost, but Erhard cites it in 'Lebensbeschreibung', pp. 22 and 33.

Kantian principles, they were also enthusiastic about the events of the French Revolution and defended the right of a people to engage in Revolution. Could they defend the revolution and still retain their teacher's esteem?

Kant's public sphere extended beyond Germany. Particularly flattering was the fact that Emmanuel-Joseph Sieyès (1746–1836) was an admirer. The Abbé had been the most influential ideologue in France on the eve of the revolution, and in 1795 was involved in writing a new constitution. The fact that his views were similar to Kant's had been noted, and in February 1796 Karl Théremin, a Prussian diplomat in Paris and a member of Sieyès's circle, attempted to initiate a correspondence between the two. There was a widespread rumour in Berlin—which Kant had to publicly deny—that he had been invited to be the new legislator of France.<sup>41</sup> Konrad Engelbert Oelsner, a German publicist and associate of Sieyès, wrote the following in the introduction to his German translation of Sieyès's political writings, published in 1796:

The two most outstanding thinkers now living, Sieyès and Kant, setting out from opposite points, met at the same goal. Sieyès through a posteriori synthesis, and Kant through a priori analysis, unite in a stirring and inestimable practical result that destroys despotism forever and founds an eternally perfectible freedom. Man, they say, is never a mere means of society, still less of princes; he is an end to himself.<sup>42</sup>

The exchange of letters never took place because Kant thought it inappropriate to meddle in the politics of another country.<sup>43</sup> He drafted no laws for France, yet he recommended the translation of his books. Both he and Sieyès were of course familiar with Rousseau's view that the *true* legislator stands outside of society and provides a philosophy that shapes hearts and minds.

Following the first critiques by his 'philosophical friends', Kant published the 1795 essay *Towards Perpetual Peace*, where he for the first time systematically developed the republican ideal. Its popularity sparked another wave of critique as well as support. Kant continued to develop his ideas, and issued the *Doctrine of Right* in 1797, his long-promised treatise on law and the state comprising the first part of *The Metaphysics of Morals*. In response to critiques, Kant refined the theory still further in an appendix and other essays published the following year. There is no way of knowing exactly how significant Kant's followers and critics were to him.<sup>44</sup> Kant was an unusually rigorous and systematic thinker who would

<sup>41</sup> Alain Ruiz, 'Neues über Kant und Sieyès. Ein unbekannter Brief des Philosophen an Anton Ludwig Théremin (März 1796)', *Kant-Studien*, 68 (4) (1977): 450.

<sup>42</sup> Oelsner quoted by Isaac Nakhimovsky in *The Closed Commercial State: Perpetual Peace and Commercial Society from Rousseau to Fichte* (Princeton: Princeton University Press, 2011), p. 24.

<sup>43</sup> Ruiz, 'Neues über Kant'. See also Jachman's biography of Kant in Rudolf Malter, *Immanuel Kant in Rede und Gespräch* (Hamburg 1990), pp. 349–350.

<sup>44</sup> The books in Kant's library give some indication of authors that mattered to him, but Manfred Kuehn points out that Kant also borrowed books from Kantner's bookstore ('a central cultural institution' with 'the atmosphere of a coffeehouse'). See Arthur Warda, *Kants Bücher* (Berlin: Martin Breslauer, 1922), and Kuehn, *Kant: A Biography* (New York: Cambridge University Press, 2001), p. 160.

not be easily put off course by other thinkers and events, and the arguments he developed in the 1790s are mostly consistent with the foundation from before the revolution. He was an old man by this time, and although not yet senile, did admit that he had difficulty focusing on the writings of others.<sup>45</sup> He rarely mentioned his critics by name, and while some of the authors, such as Fichte, were famous, others, such as Bergk, were minor figures on the intellectual scene.

Yet, the fact that he did not always refer to his critics and followers in his published writings is not evidence that he did not care about what these authors—most of whom he knew personally—thought of his work. Nor does the consistency of his philosophy over time mean that the conclusions he drew in the 1790s were not influenced by the debates and events. As the writings of his radical followers must have made clear to him, it was possible to draw several conclusions for law and politics from his basic principles, and more than one set might be valid. Indeed, Kant expressed his willingness to learn from public debate in the introduction to *The Metaphysics of Morals*, where he wrote that public right was ‘currently subject to so much discussion’ that he ‘postponed a decisive judgment’<sup>46</sup> Although Kant may have felt that his powers were waning, he responded promptly and polemically to critiques such as those penned by Möser and Fichte when they irked him. He tended to see intellectual exchange in adversarial terms and invested considerable prestige in the success of his critical philosophy. As he wrote in the introduction to the *Doctrine of Right*:

The critical philosophy’s turn must finally come to laugh *last* and so laugh *best* when it sees the systems of those who have talked big for such a long time collapse like houses of cards one after another and their adherents scatter, a fate they cannot avoid.<sup>47</sup>

Kant’s conservative and radical commentators quickly generated a significant critical literature, becoming the target of Goethe and Schiller’s sceptical gaze in *Xenien* in 1797: ‘Kant and his commentators. How a single rich man can feed so many beggars! If kings build, the carters find work.’<sup>48</sup> Kant, worried that his work would be misappropriated, encouraged faithful interpreters such as Bouterwek and Johann Heinrich Tieftrunk (1759–1837) to transmit his philosophy accurately, and was upset when Fichte published his own reinterpretation (‘May God protect us especially from our friends, for we shall manage to watch out for our enemies ourselves’<sup>49</sup>). Goethe and Schiller mocked an angry Kant for hunting down twenty concepts that had recently been stolen from him that could easily be identified by the initials I. K.<sup>50</sup> Although they were

<sup>45</sup> Kuehn, *Kant*, p. 329.

<sup>46</sup> Kant, *MM*, 6:209.

<sup>47</sup> Kant, *MM*, 6:209.

<sup>48</sup> Johann Wolfgang von Goethe and Friedrich Schiller *Xenien* (Frankfurt am Main: Insel, 1986), number 53.

<sup>49</sup> Kant, ‘Public declaration concerning Fichte’s *Wissenschaftslehre*’, 7 August 1799, 12:371.

<sup>50</sup> Goethe and Schiller, *Xenien*, number 296.

not that far off the mark, Kant's debates with his followers and detractors were hardly ridiculous. They helped the elderly philosopher, who decades earlier had been influenced by Rousseau and by the natural law tradition, to develop his principles into a coherent doctrine in light of the lessons of the French experiment. By exploring the alternative paths taken by his critics, we may see the familiar philosophy in a new light and dissolve some of its ambiguities. The following study traces the process whereby Kant reinvented the ideas of freedom and equality for a post-revolutionary context. Each chapter explores the increasingly complex iteration of a key idea, allowing a diachronic view of an emerging system.

Chapter 1 introduces Kant's pre-French Revolution thought in order to contrast it with his post-1789 views. Since his main concern in the 1780s was to develop a theory of individual moral agency, he confined his remarks about political topics to shorter essays and a few pages of *Critique of Judgment*. Although these political writings are often assimilated to those published during the 1790s, there is good reason to keep them apart since they focus on the conditions for moral agency rather than the justification of the state. This explains why Kant first saw the state primarily as an institution that could enable moral autonomy, and did not initially develop a full theory of external freedom. Nonetheless, as we see from the neglected exchanges with Hufeland and Achenwall, two prominent adherents of Wolffian perfectionism, Kant had already begun to lay the foundations of his future political thought.

Chapter 2 analyses how Kant developed the concept of freedom as independence, and how it contrasted with competing views of freedom. Although Kant's concept of freedom had roots in his political reflections from the 1780s, he started developing this concept in *Theory and Practice* as a critical intervention against conservative authors like Gentz, Rehberg, and Möser, who had argued that Kant's brand of liberal philosophy precipitated the dissolution of social order in France during the revolution. These authors argued that freedom consists in exemption from duties, which came in the form of unequal privileges that were justified by their origin in traditional social practices. By contrast, Kant defended freedom as an equal juridical status of independence from the choices of others, grounded in an a priori concept of right. His conservative critics responded by rejecting Kant's rationalism as a mistaken application of metaphysics to the political domain, and a prescription for disorder and anarchy. In the years that followed, Kant sought to provide a better justification for the right to freedom, by linking the concept of moral autonomy with the concept of external freedom, and developing a theory of freedom based on property rights protected by the state. He was also driven to make his theory more pragmatic, counselling the incremental, rather than the sudden, introduction of the juridical status of equal liberty.

Chapter 3 explores Kant's theory of political rights in order to explain why his concept of republican freedom did not entail direct democracy and a universal

adult franchise. The chapter argues that Kant's view developed in the context of his radical followers' critiques of his exclusion of women and the poor from the right to vote. Some of them, like Fichte and Bergk, rejected the idea that egalitarians should accept any qualifications whatsoever for the adult franchise, while others, like Heydenreich and Schlegel, argued that Kant had identified the wrong restrictions. To avoid the impression that his philosophy was committed to direct democracy, he argued that freedom as independence requires only the rule of law, which in turn requires a republican constitution that secures the functional separation of powers between the legislative and executive. Although government should be representative, there is no requirement for every adult subject to have the right to vote.

Chapter 4 explores Kant's rejection of a right of revolution, in order to show why he believed this was consistent with his commitment to equal freedom and republicanism. Kant's rejection of a right to resistance was aimed at Achenwall, who had based the legitimacy of the state on its ability to secure the general welfare of society. Kant's argument in *Theory and Praxis* emphasized that no one can have a legal right to not obey the law because that is inconsistent with the idea of public legal authority. Kant's radical followers responded that there could be a *moral* right to revolution based on a people's right to constitute their political institutions. If a government becomes despotic, it forfeits legitimacy and the people revert to the state of nature, where they are entitled to reconstitute the state. When Kant returned to the topic in subsequent writings, his rejection of the right of resistance emphasized that a people cannot act collectively against public legal authority. The people is a politically constituted entity whose only authorized voice is public authority in the state. Yet, like his critics, he distinguished true rulers from mere holders of power, and by that he held open the possibility that the authority of a lawless ruler would dissolve.

Chapter 5 explores Kant's theory of the right of nations and cosmopolitan right, which he took to be the precondition for international peace. Kant's approach to state sovereignty parallels his understanding of individual freedom as independence. Only the equal rights and duties established under international law secure states' lawful freedom. Nonetheless, the domestic and international cases are not completely analogous. Kant denied both that states can be forced to join a system of international law, and that the law should be enforced through coercive institutions. His alternative, a voluntary federation, met with a mixed response. His radical followers assumed that he thought no supranational enforcement institutions were necessary, because the federation consists of republics, which are inherently peaceful. Kant's conservative critics thought the lack of enforcement undermined binding law, and that Kant's emphasis on justice among states was a dangerous intrusion into a delicate balance of power. Kant's final writings indicate that he envisioned a federation consisting of constitutional states, whose legal structures conditioned their ability to obey the law even in the absence of external enforcement. His

state-centric reasoning is a foundation of the liberal approach to international relations, which does not reduce state behaviour to the pursuit of power, but emphasizes the difference legal institutions make to international relations.

Kant's political philosophy was an attempt to secure the kind of equal freedom defended by the revolutionaries of 1789 within the constitution of a republican state. This philosophy was refined in the crucible of the politically charged debates going on in Germany at the time. Unlike his conservative critics, Kant argued that equal freedom is an innate right, and did not necessarily lead to anarchy even if it did mean the decline of the old estate society. Unlike his radical followers, Kant argued that there were limits to republican freedom: it neither entails direct and inclusive democracy, nor does it justify resistance to an already existing regime. Although these conclusions followed premises Kant had developed before the French Revolution, the twin fears of anarchy and despotism that the revolution set in motion had raised the stakes and focused the minds of Kant and his company of critics. As Hannah Arendt once observed, a liberal revolution's success depends on whether its protagonists can preserve liberty in a new constitution.<sup>51</sup> If this transition fails, liberation can lead to faction and civil war, or the return of dictatorship. Kant's political philosophy shows how a revolution can be peacefully consolidated if freedom is constituted within the rule of law provided by republican institutions. Kant's final years were a race against old age and illness as he attempted to construct a theory of justice and constitutionalism that would salvage the revolutionary ideals from the anarchy and despotism that had followed in the wake of the Terror.

<sup>51</sup> Hannah Arendt, *On Revolution* (New York: Penguin Books, 1963).

## 1

## Before the Revolution

Kant's significant writings on political philosophy, which are the subject of this book, were written after the French Revolution. Yet the pre-1789 philosophy helps to explain why his political philosophy developed the way it did. Kant addressed political issues during that period in several essays and books, including 'An Answer to the Question: What is Enlightenment?', 'Idea for a Universal History with a Cosmopolitan Intent', and *Critique of Judgment*, and although these writings indicated some of the basic principles of law and politics that Kant would develop in the 1790s they did so only rudimentarily, and not from a political angle. The topic of almost all of Kant's pre-1789 publications that reference political matters is individual morality. They discuss how persons living in a highly imperfect world can develop their moral capacities, and claim that this requires a free public sphere and a constitution that secures individual rights. Although Kant does not offer a justification of the state as a mere means to an end, his emphasis is on the effect it has on securing the private space for individuals to develop their moral virtue. It protects the free use of reason against religious communities that seek to oppress their members,<sup>1</sup> and secures the external freedom that allows human competitiveness and desire for recognition (what Kant calls 'unsocial sociability') to lead to a more refined culture.<sup>2</sup> The state allows persons to realize their rational potential as moral beings.

It is no accident that Kant came to this conclusion in the 1780s, given that his mission was to develop a metaphysical theory of individual morality in writings such as *Groundwork for the Metaphysics of Morals* and *Critique of Practical Reason*. His early political essays belong to this body of work, and only indirectly to his subsequently developed doctrine of right, which emphasized the state's role in constituting the lawful external liberty of citizens without much attention to the effects on individual moral development.

<sup>1</sup> Kant, *WE*, 8:38.

<sup>2</sup> This argument is made in *IUH*, 8:22, and in *Critique of the Power of Judgment*, translated by Paul Guyer and Eric Matthews, edited by Paul Guyer (Cambridge: Cambridge University Press, 2000), *CPJ*, 5:432.

Nonetheless, Kant's contemporaries saw his pre-Revolution moral writings as politically significant. A growing number of liberal and republican authors in Germany enthusiastically adopted his theory of free agency and ethical egalitarianism. These authors were largely members of the bourgeoisie who were sceptical of the Wolffian school's support for a paternalistic politics of the common good and individual virtue. Supporters of the Enlightenment (*the Aufklärung*), they contested the conventionalism of Möser, who defended the paternalism and inequality of the old *Reich*.<sup>3</sup> The liberals resented paternalism, but generally supported Frederick II's regime and did not harbour revolutionary ambitions. Although Frederick favoured the aristocracy, he protected the growing middle classes by restricting and balancing the power of the nobility and limiting the privileges of the estates.

Kant had presented Frederick II's state as a force for good in restraining human aggression, and for this he was taken to task by his gifted but antagonistic student Johann Gottfried Herder (1744–1803). Herder considered humans to be naturally sociable and at home in the traditional communities of the old *Reich*; he rejected both enlightenment and absolutism. The debate that unfolded between the two turned on the state's contribution to the ultimate moral purpose of human life. Kant's theory of right, which centred on justifying state imposed coercive law, began to take root in this period, and his lectures on natural law and debate with Johann Gottlieb Hufeland (1760–1817), a young professor in Jena, show how far along he was. Hufeland had made the mistake of enlisting Kant's theory of duty in a Wolffian perfectionist theory of state authority, and Kant's dismissive review indicated the turn towards equal outer freedom (*äußere Freiheit*) as the essence of right that his work would take after the Revolution.

## DEBATES ABOUT STATE LEGITIMACY

In the late eighteenth century, political debate in German lands centred on the nature and legitimacy of the state. The new academic discipline of *Staatszwecklehre*, which was devoted to the study of the purpose of the state, was dominated by a debate between two distinct political philosophies.<sup>4</sup> One

<sup>3</sup> Geraint Parry describes these currents well, although he neglects the rise of liberalism; see 'Enlightened Government and its Critics in Eighteenth-Century Germany', *The Historical Journal*, 6 (1963): 178–192.

<sup>4</sup> Diethelm Klippel, 'Reasonable Aims of Civil Society: Concerns of the State in German Political Theory in the Eighteenth and Early Nineteenth Centuries', in *Rethinking Leviathan. The Eighteenth-Century State in Britain and Germany*, edited by John Brewer and Eckhart Hellmuth (Oxford: Oxford University Press, 1999), pp. 71–98; Parry, 'Enlightened Government and Its Critics'; Rudolf Vierhaus, 'Politisches Bewusstsein in Deutschland vor 1789', *Der Staat*, 6 (1967):

comprised the rationalist defenders of the absolutist state, such as Samuel Pufendorf, Johann Heinrich Gottlob von Justi, Joseph von Sonnenfels, and Gottfried Achenwall, who represented the scientific ideals of the Enlightenment. Christian Wolff (1679–1754) was the most influential thinker of this school, defending the common claim that the state exists to promote human perfection and the common good. ‘The public happiness is the highest law’, Wolff wrote, echoing Cicero’s adage, which was a commonplace at the time.<sup>5</sup> Happiness, understood in eudemonistic terms, is the path that leads to the perfection of virtue. Perfection, defined as the opposite of selfishness, means honouring God and the common good. It is the core of natural law, whose primary claim is: ‘Do what makes you and your condition more perfect, and omit what makes you and your condition less perfect.’<sup>6</sup> The state’s task is to enforce this natural law, thereby making subjects into more perfect beings. An original contract, which relies on the contrast between a state of nature, where humans have unlimited freedom, and a civil condition, where the sphere of freedom is limited to activities that do not interfere with the common good and perfection, creates political obligation.

The other, more conservative, philosophical school arose as a critique of enlightened absolutism and comprised authors who defended small, traditional communities. These were thinkers such as Justus Möser, August Wilhelm Rehberg, Ernst Brandes, and Johann Gottfried Herder. The school’s leading proponent was Möser, whose influential writings reflected traditional ethics and sentiments rather than abstract principles and scientific reasoning, and whose loyalties were to the ancient estates of the old German *Reich* rather than to a centralized state.<sup>7</sup> The estates were the social orders of a territory, typically consisting of clergy, nobility, and commoners, all of whom were to different degrees represented in the courts, diets, and parliaments of the empire’s two thousand or so political units.<sup>8</sup> Möser grounded the state’s legitimacy in tradition, the product of organic, multi-generational growth, and argued that justice consists in upholding the historically developed institutions. He considered the small states and the ancient governing institutions of the old *Reich* to be the ideal form of government and an antidote to princely despotism.<sup>9</sup>

<sup>5</sup> 175–196; Johan van der Zande, ‘Statistik and History in the German Enlightenment’, *Journal of the History of Ideas*, 71 (2010): 411–432.

<sup>6</sup> Christian Wolff, *Grundsätze des Natur—und Völkerrechts worin alle Verbindlichkeiten und alle Rechte aus der Natur des Menschen in einem beständigen Zusammenhange hergeleitet werden*, Zweyte und verbesserte Auflage (Halle: in der Rengerischen Buchhandlung, 1769), p. 709.

<sup>7</sup> Christian Wolff, ‘Reasonable Thoughts about the Actions of Men, for the Promotion of Their Happiness’, in *Moral Philosophy from Montaigne to Kant*, edited by J. B. Schneewind (Cambridge: Cambridge University Press 2003), p. 338.

<sup>8</sup> See Jonathan B. Knudsen, *Justus Möser and the German Enlightenment* (Cambridge: Cambridge University Press, 1986).

<sup>9</sup> Perry Anderson, *Lineages of the Absolutist State* (London: N.L.B. Atlantic Highlands Humanities Press, 1974), p. 261.

<sup>9</sup> Beiser, *Enlightenment*, p. 291; Epstein, *The Genesis of German Conservatism*, p. 312ff.

Möser was particularly sceptical of monarchs' efforts to change society according to abstract concepts of natural right and to govern with the aid of modern bureaucracies rather than sharing power with the old estates. Although he too used the device of an original contract to justify the existing order, Möser's contract was a mutual protection pact between the original property owners, which produced a state that operated like a joint stock company, where those who own more have more rights.<sup>10</sup> Social conventions both bestow and define rights: they are not natural, they reflect existing property inequalities, and universal legal status is a fiction. Like Edmund Burke, Möser believed that theories of universal natural rights and uniform legal codes threatened this established order and invited princely despotism.

The Prussian bourgeoisie grew in size and influence throughout the eighteenth century, challenging both the absolutist state and the traditional communities. The bourgeois values favoured individual social welfare, free enterprise, and legal equality; they rejected state absolutism and were alienated from the old estate society.<sup>11</sup> Unlike their counterparts in Western Europe, the Prussian bourgeoisie was neither wealthy nor powerful, and its exclusion from politics fostered its sense of unity. They resented the nobility, who Frederick II (ruling from 1740–1786) favoured for positions in the government and the military, and disdained the noble values of glory and honour.<sup>12</sup> Preferring the rule of law and state authority, the burghers dominated the skilled trades and professions and monopolized the clergy.<sup>13</sup> Although it would be overstating the case to say that they shared an identifiable set of values, the bourgeoisie did share a critique of unlimited state power, in particular the *raison d'état* ('reason of state') that characterized eighteenth-century monarchies. The thirst for glory left them cold.

Excluded as it was from the political sphere, the bourgeoisie aired its views in the public sphere, which became the arena for moral critique of the state.<sup>14</sup> The huge increase in the number of journals and newspapers published during the 1770s heralded the expansion of the German public sphere. August Ludwig von Schlözer (1735–1809), a Göttingen historian who became the most widely read German publicist, championed the practice of journalism as a tool of government critique. He spread liberal values that encouraged the German burghers to recognize their potential, turning the public sphere into a

<sup>10</sup> Justus Möser, 'Über das Recht der Menschheit, in so fern es zur Grundlage eines Staates dienen kann', in *Deutsches Staatsdenken im 18. Jahrhundert*, edited by Georg Lenz (Neuwied and Berlin: Luchterhand, 1965).

<sup>11</sup> Fritz Valjavec, *Die Entstehung der politischen Strömungen in Deutschland 1770–1815* (München: R. Oldenbourg, 1951), pp. 61–62.

<sup>12</sup> Rosenberg, *Bureaucracy*, p. 182ff.

<sup>13</sup> Valjavec, *Die Entstehung*, pp. 82–83; Henri Brunschwig, *Enlightenment and Romanticism in Eighteenth-Century Prussia* (Chicago: University of Chicago Press, 1974), p. 121ff.

<sup>14</sup> Two influential works on the moralization of politics identify how this critique developed. See Reinhart Koselleck, *Critique and Crisis* and Habermas, *The Structural Transformation*.

site of political power that rulers ignored at their peril.<sup>15</sup> Early liberal thinkers included Karl Friedrich von Moser, Wilhelm Ludwig Wekhrlin, and Christian Friedrich Daniel Schubart. Friedrich Heinrich Jacobi (1743–1819) provided an influential defence of freedom as the central political value:

Free—in his fashion to the very highest extent—is every person and every citizen, insofar as he is not prevented from furthering his own true advantage in every way in his power. Everyone is a slave, insofar as he is prevented in any way from furthering his own true advantage.<sup>16</sup>

Jacobi condemned the arbitrary power of princes, which robbed subjects of the legal protections that created their freedoms in the first place. State authority was necessary because humans are not perfectly virtuous, but it should be limited to securing individual freedom and under no circumstances should it aim at producing moral perfection.

As Hans Erich Bödeker has shown, during the 1780s writers increasingly started demanding not just civil freedom, the protection against arbitrary interference by the government, but also political freedom, the right to participate in political decision-making. Johan Michael Afsprung (1748–1808) defined political freedom as the right ‘to a voice in determining legislation’ and argued that it was not sufficient for government to be according to law, citizens must also have a right to hold government accountable and to influence legislation.<sup>17</sup> This defence of political rights was not fuelled by a conviction that participation in rule is an end in itself, but by the conviction that it would help secure civil freedom and constitutionality. Such calls for freedom were not necessarily connected to a demand for an end to monarchy, but rather for an end to absolutism and the introduction of constitutional monarchy.

These ‘legitimacy’ debates between the defenders of enlightened absolutism, the old *Reich*, and liberal society were significant because they took place during a time when the Prussian state was not yet fully consolidated. The stereotype of Frederick II’s Prussia as the acme of absolutism notwithstanding,<sup>18</sup> the house of Brandenburg, which gained legal autonomy from the Holy Roman Empire only in 1746, had to struggle to consolidate its power against the estates and the *Junkers*, Eastern Prussia’s landed nobility.<sup>19</sup> Rather than

<sup>15</sup> Valjavec, *Die Entstehung*, p. 100.

<sup>16</sup> Friedrich Heinrich Jacobi, ‘Something Lessing Said’, in *What Is Enlightenment? Eighteenth-Century Answers and Twentieth-Century Questions*, edited by James Schmidt (Berkeley: University of California Press, 1996), p. 201. Jacobi’s essay was originally published in 1782.

<sup>17</sup> Afsprung cited by Bödeker, ‘The Concept of the Republic’, p. 37.

<sup>18</sup> See Gerhard Ritter, *Frederick the Great* (Berkeley, Los Angeles, and London: University of California Press, 1968), p. 3; G. P. Gooch, *Germany and the French Revolution* (New York: Russel & Russel, 1966), p. 4; F. L. Carsten, *Princes and Parliaments in Germany* (Oxford: Oxford University Press, 1959), pp. 439–440.

<sup>19</sup> Christopher Clark, *Iron Kingdom*, p. 243; Eberhard Weis, ‘Enlightenment and Absolutism in the Holy Roman Empire: Thoughts on Enlightened Absolutism in Germany’, *The Journal of Modern History*, 58 (1986): 181–197, in particular 189–190; James Sheehan, *German History*

crushing the nobility, Prussian kings integrated them into the state by giving them appointments in the civil and military administration, a compromise that allowed the nobility to consolidate its power.<sup>20</sup>

Prussian monarchs' attempts to establish direct rule over their territories was part of a European development towards centralization. The process had accelerated after the peace of Westphalia in 1648, which sought to put an end to religious wars by establishing state sovereignty. Jean Bodin and Thomas Hobbes, the theorists of absolutism, promoted the notion of the state as a moral person (*the persona moralis*), whose interests trumped the interests of the intermediary institutions. Bodin wrote: 'he [the prince] not only can revoke all the power of his magistrates, but in his presence, all the power and jurisdiction of all magistrates, guilds and corporations, Estates and communities, cease'.<sup>21</sup> Every theorist of sovereignty has followed Bodin in this view.<sup>22</sup> The doctrine of sovereignty consolidated authority in the ruler and defined all subsidiary powers as derivative, removing the nobility's independent power base and preventing it from forming alliances of rebellion with the people. The king was no longer one among several power holders in society: he became, in the famous phrase of Frederick the Great, 'the first servant of the subjects'.<sup>23</sup>

Frederick II was attracted to the Wolffian view because it justified a paternalistic state and allowed rulers to engage in a certain amount of what would today be called social engineering in order to promote the common good and individual virtue.<sup>24</sup> In *Anti-Machiavel* he explains how he could shore up his legitimacy by preserving the people's happiness: 'A satisfied people will never consider rebellion'.<sup>25</sup> In the Wolffian view, monarchs could intervene in

1770–1866 (Oxford: Clarendon Press, 1989), p. 59; Robert Berdahl, *The Politics of the Prussian Nobility: The Development of a Conservative Ideology 1770–1848* (Princeton: Princeton University Press, 1988); Rosenberg, *Bureaucracy*.

<sup>20</sup> Clark, *Iron Kingdom*, p. 114.

<sup>21</sup> Jean Bodin, *On Sovereignty: Four Chapters from The Six Books of the Commonwealth*, edited and translated by Julian H. Franklin (Cambridge: Cambridge University Press, 1992), p. 115.

<sup>22</sup> See for example Hugo Grotius, *The Rights of War and Peace*, edited by Richard Tuck (Indianapolis: Liberty Fund, 2005), p. 110; Thomas Hobbes, *Leviathan*, edited by Richard Tuck (Cambridge: Cambridge University Press, 1996), p. 128; Samuel Pufendorf, *On the Duty of Man and Citizen According to Natural Law*, edited by James Tully, translated by Michael Silverthorne (Cambridge: Cambridge University Press, 1991), p. 144, p. 153; John Locke, *Second Treatise*, edited by Peter Laslett (Cambridge: Cambridge University Press, 1967), §152; Jean-Jacques Rousseau, *On the Social Contract*, in *The Basic Political Writings*, edited by Donald A. Cress (Indianapolis and Cambridge: Hackett, 1987), p. 197; Emmanuel Joseph Sieyès, 'What Is the Third Estate?', in *Political Writings: Including the Debate between Sieyès and Tom Paine in 1791*, edited by Michael Sonenscher (Indianapolis, IN: Hackett Pub. Co, 2003), p. 138. Kant too subscribed to this view; more about that in the next chapters.

<sup>23</sup> Friedrich der Große, 'Der Antimachiavell', in *Deutsches Staatsdenken im 18. Jahrhundert*, edited by Georg Lenz (Neuwied and Berlin: Luchterhand, 1965), p. 156.

<sup>24</sup> See Klippe, 'Reasonable Aims', pp. 73–76; T. J. Hochstrasser, *Natural Law Theories in the Early Enlightenment* (Cambridge: Cambridge University Press, 2000), p. 168.

<sup>25</sup> Friedrich der Große, *Der Antimachiavell*, p. 157. My translation.

the economy to encourage growth in rural areas and towns, build infrastructure, subsidize the arts, promote public health, and supervise public morals.<sup>26</sup> The idea of natural law as a source of the state's justification strengthened Frederick's position vis-à-vis the nobility because it delegitimized hereditary privilege and rendered arbitrary the various intermediary institutions of the old *Reich* defended by Möser. Frederick did not consider his regime despotic. He was committed to the rule of law and, in the last decade of his rule, which ended in 1786, concentrated on creating the *Allgemeines Landrecht für die Preußischen Staaten*, whose goal was to rationalize the existing Prussian legal system.

Kant's 1780s moral writings were composed in this political context. His *Critique of Pure Reason* had brought him to public notice in 1781, and his opinion in moral matters carried weight. Although he entered the debate about the legitimacy of the state only obliquely, his moral egalitarianism, oriented toward freedom as life's purpose, had important implications for the appropriate relationship between the state and its subjects. His thought supplied Germany's growing middle classes with a metaphysical foundation for their liberal aspirations.

## KANT ON MORAL AGENCY IN HISTORY

The *Critique of Pure Reason* was devoted to the theory of knowledge, rejecting both empiricist scepticism and rationalist dogmatism to make way for a transcendental theory. As a transcendental theory, it emphasized the active aspect of knowledge: in understanding the world, humans bring to it forms of understanding and categories which endow it with meaning. Humans do not just receive sensory impressions or discover eternal truths beyond experience, but, in a certain sense, construct the reality they perceive.

Although the *Critique of Pure Reason* concerned the theory of knowledge, it showcased Kant's discomfort with the conventionalist defence of the old estate society. Institutions must be justified before the court of reason; they are not legitimate just because they reflect traditional practice. Kant expresses the *credo* of the Enlightenment as follows:

Our age is, in especial degree, the age of criticism, and to criticism everything must submit. Religion through its sanctity, and law-giving through its majesty, may seek to exempt themselves from it. But they awaken just suspicion, and cannot claim the sincere respect which reason accords only to that which has been able to sustain the test of free and open examination.<sup>27</sup>

<sup>26</sup> See Klippel, 'Reasonable Aims', pp. 80–81.

<sup>27</sup> Kant, *Critique of Pure Reason*, CPR, A xii.

Moral concepts can never be derived from experience. Doing so makes them into something that 'changes according to time and circumstance, an ambiguous monstrosity not admitting of the formation of any rule'.<sup>28</sup> Their source must be the pure ideas of reason, which can then evaluate the concepts of virtue and justice found in experience.

Kant's *Critique of Pure Reason* did not intervene directly in contemporary political debates, but presented a theory of freedom of the will, on which his ethical thought would be founded. As Kant described it, in the third antinomy, the will is an 'absolute spontaneity', which is not caused but which starts a new chain of causal effects.<sup>29</sup> This leads to an antinomy, because at the same time as we are aware of this absolute freedom, we also know that everything in the world has a cause and is, in some sense, determined. The solution, which he went on to develop in *Groundwork for the Metaphysics of Morals* (1785) and *Critique of Practical Reason* (1788), was to take a transcendental perspective, which does not provide theoretical knowledge about freedom, but which gives us reason to believe it exists. The fact that people can follow rules, rather than always acting out of desires and impulses, is evidence for its existence.

Although this was a theory of practical reason, Kant also sought to show how free will can be realized in history. He did this in the shorter essays 'Idea for a Universal History with a Cosmopolitan Purpose' and 'An Answer to the Question: What is Enlightenment?', as well as in parts of *Critique of the Power of Judgment*. Since these texts on moral freedom discuss the origins and foundations of public legal institutions, among other things, they have been seen as political works on the justification of the state. In fact, their topic is individual moral agency, and they only discuss political institutions insofar as the state has an impact upon them.

Kant's pre-Revolution writings influenced the German debates about the nature and justification of the state even though they focused on individual morality rather than political right. German liberals realized that his defence of moral egalitarianism and individual autonomy had political implications, and they saw Kant as someone who would provide a rigorous philosophical foundation for their aspirations. As the next chapter shows, the liberals, including Fichte, used Kant's principles to develop their own theories of law and politics.

Kant's claim that freedom, not happiness, is the goal of human life had obvious implications for the debate about the state. It undercut the rationale of Frederick II's paternal vision as guarantor of the people's welfare, and contradicted the most basic tenet of Wolffian perfectionism. The first sentence of the first chapter of the *Groundwork for the Metaphysics of Morals* declares that 'It is impossible to think of anything at all in the world, or

<sup>28</sup> Kant, CPR, A 315/B 372.

<sup>29</sup> Kant, CPR, A 444/B 472, A 448/B476.

indeed beyond it, that could be considered good without limitation except a good will.<sup>30</sup> Other things, such as virtues and wealth, may be good for certain purposes, but only a good will is good in itself. Since only freely willed acts can have moral value, an act is not deemed good because of its consequences. It follows that it is possible to act in a completely moral way and yet not contribute to anyone's happiness or welfare. Good intentions do not guarantee good outcomes. But then again, happiness is not the meaning of life. If it were, instinct would be a better guide.<sup>31</sup> Nature endowed humans with reason so they could develop a will that is good in itself, which lead to 'worthiness to become happy', although not necessarily to happiness.<sup>32</sup> This teleological view of human nature allowed Kant to explicate the nature of a good will, which he concludes is the same as a free will. Since only freely willed acts have moral value, someone who is not free cannot be held morally accountable for their actions. The *morality* of an act is directly related to the conscience of the agent who performs it, but its *legality* pertains to its external effects. Obedience to the law motivated by fear of punishment is not praiseworthy, unlike obedience motivated by respect.

The categorical imperative distinguishes between acts that are motivated by respect for the law and those motivated by self-interest or other agendas. The most influential formulation of the categorical imperative states: '*Act only in accordance with that maxim through which you can at the same time will that it become a universal law.*'<sup>33</sup> The categorical imperative is a test of a person's will: does he seek to exempt himself from a general rule in order to gain a particular end? Proposed policies are rational only if they can be universally approved as law, without contradiction. For example, Kant deduces the impossibility of rationally making a false promise, which renders the very idea of promising incoherent. It is *logically* incoherent because someone cannot simultaneously and coherently will both universal truth-telling and lying; it is not *empirically* incoherent in the sense that persons could not possibly will to pursue it as an end.

Although this is not the place to discuss the nature of such contradictions, it is important to note that Kant realized that his theory had practical implications for the way people ought to treat one another. He presented this as a different aspect of the same commitment to act from rules: '*So act that you use humanity, whether in your own person or in the person of any other, always at the same time as an end, never merely as a means?*'<sup>34</sup> Here, practical reasoning means hypothetically assuming the position of the other and checking

<sup>30</sup> Kant, *Groundwork of the Metaphysics of Morals*, translated Mary Gregor, in *Kant's Practical Philosophy*, edited by Mary Gregor (Cambridge: Cambridge University Press, 1996).

<sup>31</sup> Kant, G, 4:395.

<sup>32</sup> Kant, G, 4:393.

<sup>33</sup> Kant, G, 4:421.

<sup>34</sup> Kant, G, 4:429.

whether they would accept our maxim.<sup>35</sup> Again, it is impossible to universally will false promising, since that implies using another as a means.

The first formulation of the categorical imperative implies that having a good will means acting only on universalizable maxims; the second entails reciprocity among agents, which indicates a commitment to their equal standing. To this Kant adds that the person who has a good will is free in the sense of being autonomous or self-legislating. To be autonomous is to act according to a law one could have authored oneself: 'Act only so that the will could regard itself as at the same time giving universal law through its maxim.'<sup>36</sup> Laws arising from the 'outside' by definition require some interest that 'by way of attraction or constraint' forces the will to obey.<sup>37</sup> For example, the positive laws of a state are always paired with sanctions, which force recalcitrant subjects to obey. But a person acting from the categorical imperative acts out of respect for the law, not out of fear of punishment or in the interest of a happy outcome. Such a person can see himself as a co-legislator, since it is the authority of practical reason itself that imposes the law on him. Kant describes this in terms of the capacity of persons to be members of a kingdom of ends (*Reich der Zwecke*), where those who are autonomous are at once sovereigns and subjects.

German liberals took heart from Kant's *Groundwork for the Metaphysics of Morals*. Its critical attitude to conventional morality and the anti-paternalistic implications of freedom as humanity's natural end seemed to support their cause. The view of individuals as citizens of a kingdom of ends indicated a commitment to Rousseauian principles that encouraged those with democratic sympathies.<sup>38</sup> Indeed, the standard of universal law as the test of right and wrong seemed an extension of the rule of law to the inner domain.<sup>39</sup> Yet it remained a theory of moral agency abstracted from a society's constitutional design. In principle, a person can have free will regardless of whether he or she lives in a monarchy, aristocracy, or democracy. Someone can even be free

<sup>35</sup> This is Thomas Pogge's interpretation; see 'The Categorical Imperative', in *Kant's Groundwork of the Metaphysics of Morals*, edited by Paul Guyer (Totowa: Rowman and Littlefield, 1998).

<sup>36</sup> Kant, G, 4:434. <sup>37</sup> Kant, G, 4:433.

<sup>38</sup> For Rousseau, right and wrong in the political domain is not oriented to substantial moral values, but constructed by means of a process whereby citizens of a community seek to establish a general will, a norm to which everyone can see themselves as agreeing. Kant was familiar with a related mode of reasoning in Cicero's *On Duties*, which reached the German reading public via an influential translation by Christian Garve while Kant was writing *Grundlegung*. The procedural approach to moral reasoning contrasts with the Wolffian school, which begins with the specific ends to be achieved. See Rousseau, *Social Contract*, and Cicero, *On Duties*, edited by M. T. Griffin and E. M. Atkins (Cambridge: Cambridge University Press, 1991), pp. 107–108. Kant read *On Duties* in Latin as a fifth-grade pupil at *Collegium Fridericianum*; see Kuehn, *Kant: A Biography*, p. 48, p. 278ff. On Kant's debt to the Stoics, see Martha C. Nussbaum, 'Kant and Stoic Cosmopolitanism', *The Journal of Political Philosophy*, 5, 1 (1997): 1–25.

<sup>39</sup> This is Friedrich Hayek's interpretation, see *The Constitution of Liberty* (Chicago: The University of Chicago Press, 1960), p. 197.

under despotism since freedom as autonomy is a matter of conscience, over which the individual alone has control. Although Kant's work made it clear that persons should be treated as ends in themselves, which contradicted the practice of most states at the time, he did not mention rights or legal obligations. He avoided any discussion of how to legally regulate interaction or avoid private coercion, the common concerns of natural law theories. He did not justify the coercive authority of a state that has a monopoly on violence. His topic was rational self-restraint in ethics, where the source of law is practical reason, not public authority.

Yet, in the process of explaining how individuals can achieve moral autonomy in a social and political context, Kant developed ideas about the state that seemed to lend further support to the liberal cause. His shorter essays from *Berlinische Monatsschrift* in 1784, as well as parts of *Critique of the Power of Judgment*, take up this question. Although he writes about the political constitution of society in these essays, they are not systematic contributions to the doctrine of right. They explore political issues from the perspective of individual morality, and do not seek to justify the state. Unlike the doctrine of right that he developed in the 1790s, they focus on how to realize moral virtue. Human beings have a capacity for moral agency that has to be developed if they are to become fully virtuous. The essays identify enlightenment as the key precondition for moral agency. Enlightenment, in Kant's famous definition, is a form of emancipation that enables individuals to achieve moral autonomy:

*Enlightenment is the human being's emergence from his self-incurred minority.* Minority is inability to make use of one's own understanding without direction from another. This minority is *self-incurred* when its cause lies not in lack of understanding but in lack of resolution and courage to use it without direction from another. *Sapere aude!* Have courage to make use of your *own* understanding! is thus the motto of enlightenment.<sup>40</sup>

Both essays stipulate that constitutional government is a precondition for enlightenment, and both are concerned with the transition to this condition. In 'What is Enlightenment' the conscious agency of individuals seeking to reform society brings about the transition, and in 'Idea for a Universal History' providence plays that role.<sup>41</sup>

The essays were written in the context of a specific debate about whether relaxing the Prussian censorship laws would cause disorder, an issue that aroused considerable public interest at the time.<sup>42</sup> Claiming that freedom of expression would not provoke public disorder, Kant supplies the philosophical reasoning for Frederick II's statement, which he quotes approvingly: 'Only

<sup>40</sup> Kant, WE, 8:35.

<sup>41</sup> Kant, IUH, 8:17.

<sup>42</sup> On the stages of the debate, see James Schmidt, 'Introduction', in Schmidt, *What Is Enlightenment?*. See also John Christian Laursen's 'The subversive Kant' in the same volume.

one ruler in the world says: "Argue as much as you will and about whatever you will, but obey!"<sup>43</sup> Order can be preserved because in their official capacity individuals can be compelled to obey, but they can speak their minds in their capacity as human beings. An army officer may criticize the military as a member of the reasoning public, but not as member of the military. Kant calls the first kind of reasoning the *private* use of reason, whereas the second is called the *public* use of reason. If public reasoning is free, enlightenment will follow, and thereby the development of the individual's capacity for moral reasoning. Clearly addressing Frederick II, Kant's essay does not shy away from flattery:

Even with respect to his legislation there is no danger in allowing his subjects to make public use of their own reason and to publish to the world their thoughts about a better way of formulating it, even with candid criticism of that already given; we have a shining example of this, in which no monarch has yet surpassed the one whom we honor.<sup>44</sup>

He adds that there is no reason to fear unrest because the king has a 'well-disciplined and numerous army ready to guarantee public peace'.<sup>45</sup> Frederick, who was notoriously devoted to the tasks of ruling and controlling the behaviour of his citizens,<sup>46</sup> was probably aware of Kant's essay, which was the subject of a good deal of debate. Yet the statement was not merely an after-thought to appease the king, but intrinsic to Kant's view of freedom of expression. The state can absorb criticism as a form of loyal opposition rather than as treason because it has supreme coercive power.<sup>47</sup> Strong state power need not be oppressive, as traditionalists such as Möser thought, but can be sensitive to the concerns of the population precisely because it is strong.

'What is enlightenment?' is often considered a political essay because it introduces the notion of public justice, a subject Kant returns to in the 1790s: 'The touchstone of whatever can be decided upon as law for a people lies in the question: whether a people could impose such a law upon itself.'<sup>48</sup> But the essay's main emphasis is on a teleological worldview about individual moral agency in history. On two occasions the goal of enlightenment even becomes a criterion for right and wrong. First, it excludes the establishment of religious teachings as unalterable dogma: 'This would be a crime against human nature, whose original vocation lies precisely in such progress.'<sup>49</sup> Second, it underlies the rejection of revolution from the same essay:

A revolution may well bring about a falling off of personal despotism and of avaricious or tyrannical oppression, but never a true reform in one's way of thinking;

<sup>43</sup> Kant, *WE*, 8:37

<sup>44</sup> Kant, *WE*, 8:41

<sup>45</sup> Kant, *WE*, 8:41

<sup>46</sup> See Weis, 'Absolutism', p. 190.

<sup>47</sup> See in particular Robert Spaemann, 'Kants Kritik der Widerstandsrechts', in *Materialen zu Kants Rechtsphilosophie*, edited by Zwi Batscha (Frankfurt am Main: Suhrkamp, 1976).

<sup>48</sup> Kant, *WE*, 8:39.

<sup>49</sup> Kant, *WE*, 8:39.

instead new prejudices will serve just as well as old ones to harness the great unthinking masses.<sup>50</sup>

In ‘What is enlightenment?’ Kant rejects revolution because it does not bring about the right outcomes. In this view, the hallmark of justified political action is its propensity to further the development of moral autonomy, and the state is mainly instrumental to that purpose.

In ‘Idea for a Universal History’ Kant presents the same idea of moral development as nature’s hidden plan. The notion of free will—which, because it is purely rational, cannot be observed—sets the agenda.<sup>51</sup> Its effects can be observed in history, though, and the increased degree of human civilization is evidence of moral development. Nature’s plan is to develop humanity’s morality fully in the species, culminating, at the end of its historical development, in a cosmopolitan state. Nature instigates this development by means of the psychological mechanism of unsocial sociability (*ungesellige Geselligkeit*):

The human being has an inclination to become *socialized*, since in such a condition he feels himself as more a human being, i.e. feels the development of his natural predispositions. But he also has a great propensity to *individualize* (isolate) himself, because he simultaneously encounters in himself the unsociable property of willing to direct everything so as to get his own way, and hence expects resistance everywhere because he knows of himself that he is inclined on his side toward resistance against others. Now it is this resistance that awakens all the powers of the human being, brings him to overcome his propensity to indolence, and, driven by ambition, tyranny, and greed to obtain for himself a rank among his fellows, whom he cannot *stand*, but also cannot *leave alone*.<sup>52</sup>

Although Kant’s view of antagonistic social relations resembles Rousseau’s *Discourse on Inequality*, Kant sees the contribution of civilization differently:

Thus happens the first true steps from crudity towards culture, which really consists in the social worth of the human being; thus all talents come bit by bit to be formed, and even, through progress in enlightenment, a beginning is made towards the foundation of a mode of thought which can with time transform the rude natural predisposition to make moral distinctions into determinate practical principles.<sup>53</sup>

By pointing out that amoral motivations can bring about a moral result, Kant’s argument resembles that of Adam Smith in *The Theory of Moral Sentiments* more than it resembles Rousseau’s.<sup>54</sup> Without unsocial sociability and the civilization it generates, ‘all talents would, in an arcadian pastoral life of perfect

<sup>50</sup> Kant, *WE*, 8:36.

<sup>51</sup> Kant, *IUH*, 8:17.

<sup>52</sup> Kant, *IUH*, 8:20–21.

<sup>53</sup> Kant, *IUH*, 8:21.

<sup>54</sup> Adam Smith had early been a favourite author of Kant; see Michael Frazer, *The Enlightenment of Sympathy: Justice and the Moral Sentiments in the Eighteenth Century and Today* (Oxford: Oxford University Press, 2010).

concord, contentment and mutual love, remain eternally hidden in their germs; human beings, as good-natured as the sheep they tended, would give their existence hardly any greater worth than that of their domesticated beasts.<sup>55</sup> The state is needed to combat naturally selfish human inclinations and to provide a just constitution within which human culture can develop: ‘The human being is an animal which, when it lives among others of its species, has need of a master [*Herr*]. For he certainly misuses his freedom with regard to others of his kind.’<sup>56</sup>

Kant’s essay was intended to give faith in the possibility that human moral capabilities can develop within history; it was not meant as a contribution to historical studies. The projected cosmopolitan constitution does not embody an ideal of the right constitution in the sense of a Platonic idea that would guide its creation, which is why the essay is of limited significance for political philosophy. The imaginary future cosmopolitan constitution is only intended to inspire moral agency in the present, and not just in ordinary subjects. Once again, Kant’s addressee is Frederick II. Posterity will judge the past to see ‘what nations and governments have accomplished or harmed regarding a cosmopolitan aim. [...] by which they can bring their glorious remembrance down to the latest age’.<sup>57</sup> Thus Kant, like other bourgeois intellectuals of his time, is reminding his monarch that royal ambition should seek glory in the population’s moral progress rather than in military conquest and absolute power.

## THE DEBATE WITH HERDER

Although Kant had high hopes that civilization would eventually bring moral progress, his perspective is realistic: ‘out of such crooked wood as the human being is made, nothing entirely straight can be fabricated’.<sup>58</sup> Humans are social yet unsocial, and need the state as a master to break their will. Although liberal in his defence of free speech and the rule of law, Kant was quite comfortable with Frederick’s authoritarian regime during a period of transition. He anticipated that, some time in an enlightened future, persons would be capable of having more of a say in political affairs, but until then he seemed content with Frederick’s regime. This made him a target of the defenders of the traditional communities of the old *Reich*, who saw the state as a tool of oppression. Johann Gottfried Herder published this critique in

<sup>55</sup> Kant, *IUH*, 8:21. As we shall see, when Kant returns to the idea of unsocial sociability in the essay *Perpetual Peace* in 1795, he leaves moral development out of the picture and only uses the psychological mechanism to demonstrate the possibility that rational egoists can create a republic.

<sup>56</sup> Kant, *IUH*, 8:23.

<sup>57</sup> Kant, *WE*, 8:31.

<sup>58</sup> Kant, *IUH*, 8:23.

Book 9 of *Ideas on the Philosophy of the History of Mankind* (1785), which lambasted Kant's 'Idea for a History'.

Herder had been Kant's student in Königsberg from 1762 to 1764, yet he was also a protégé of Johann Georg Hamann, the philosopher and writer of mystical fragments. He resolved the tension between rationalism and mysticism in favour of sentimentalism and traditionalism and, along with Hamann and Möser, became a protagonist of the *Sturm und Drang* movement. This movement questioned what it took to be the basic tenets of enlightenment rationalism by emphasizing subjectivity expressed in communal aesthetic culture.<sup>59</sup> Herder was unfavourably inclined towards Kant at the time because his former teacher had given his previous book a bad review:

A ready but evil basic proposition about the philosophy of human history would be that 'man is an animal that needs a master and that expects the happiness of its final destiny from that master or from a connection with him.' Reverse the proposition: a man who needs a master is an animal; as soon as he becomes a human being, he no longer needs any actual master. For nature has appointed no master over our species; only beastly vices and passions make us require the same.<sup>60</sup>

States like the one Kant proposed make themselves indispensable by perpetuating beastly vices, like a doctor 'who nourishes sickness so that he may become indispensable to the miserable'.<sup>61</sup> In fact, there is no need for a coercive state: people should be left to themselves to be shaped by their community's particular norms. He seems not to have noticed that Kant saw the state's task in furthering freedom, not happiness. But for Herder that may not have made much difference, since he objected to the very principle of a centralized coercive state. He idealized the ancient institutions of the *Reich*, which in his view were sustained by a sympathy that resulted from shared traditions rather than coercive authority. He rhapsodized about the feudalism of the Holy Roman Empire during the Middle Ages:

One needs to consider, among other things, what a *period of recuperation* and *exercise* these centuries of fermentation meant for mankind through the crumbling of everything into *small attachments, divisions, and orders of mutual subordination*,

<sup>59</sup> See Isaiah Berlin, 'Herder and the Enlightenment', in *Three Critics of the Enlightenment: Vico, Hamann, Herder*, edited by Isaiah Berlin and Henry Hardy (Princeton, NJ: Princeton University Press, 2000), and Frederick M. Barnard, *J.G. Herder on Social and Political Culture* (Cambridge: University Press, 1969). Also Hans Reiss, 'Introduction to Reviews of Herder's Ideas on the Philosophy of the History of Mankind and Conjectures on the Beginning of Human History', in *Kant: Political Writings*, edited by Hans Reiss (Cambridge: Cambridge University Press, 1991).

<sup>60</sup> Johann Gottfried Herder, *Ideas on the Philosophy of the History of Mankind*, in *Another Philosophy of History and Selected Political Writings*, translated by Ioannis D. Evgrenis and Daniel Pellerin (Indianapolis/Cambridge: Hackett Publishing Company, 2004), p. 127. Translation slightly amended.

<sup>61</sup> Herder, *Ideas*, p. 127.

and the emergence of so *many, many* different parts! One thing always *rubbed up* against another then, and everything was kept in *suspense* and *vigor*. A time of *fermentation*: but it was precisely this that kept despotism at bay for so long (truly the maw by which mankind is devoured in the name of ‘tranquillity and obedience’—meaning, in reality, *death* and uniform *demolition*!) Now, is it better, is it *healthier* and *really more efficient* for mankind to produce lots of lifeless cogs for a huge, wooden, thoughtless machine? Or, rather, to *awaken* and *stir forces*?<sup>62</sup>

The huge, wooden machine of the state, propped up by proposals for enlightened morality, stared back at Herder from the pages of Kant’s ‘Idea for a Universal History’. Enlightenment itself was the problem for Herder. Without their prejudices, people would not have community: ‘Prejudice is *good* in its time: it makes men *happy*. It pushes peoples together at their *center*, making them stand firmer upon their *roots*, more flourishing in *their way*, more virile, and also happier in their inclinations and purposes’.<sup>63</sup> Enlightenment weakens the human heart and sense of community; it divides people from one another and delivers them, as atomized prey, to enslavement and despotism.<sup>64</sup> It is not surprising that people become unsociable and need a firm master when their feelings of mutual sympathy have been weakened.

Kant reviewed Herder’s *Ideas* in the November 1785 issue of the *Allgemeine Litteraturzeitung*. He objected to Herder calling his basic proposition evil, ‘even though it might have been an *evil man* who said it’.<sup>65</sup> Contrary to Herder’s claim, happiness is not the end of human life:

But what if the genuine end of providence were not this shadowy image of happiness, which each makes for himself, but rather the always proceeding and growing activity and culture that is put in play by it, whose greatest possible degree is only a product of a state constitution ordered in accordance with concepts of human right, and consequently something that can be a work of human beings themselves?<sup>66</sup>

Although it is possible to live a contented existence outside the state, like the ‘happy inhabitants of Tahiti’, such a life of ‘tranquil indolence’ is no more valuable than that of a flock of sheep.<sup>67</sup> Moral autonomy, which can only be cultivated within a firm state, gives life value. This critique of Herder is reiterated in the essay ‘Conjectural beginnings of human history’, published in *Berlinische Montasschrift* in January 1786, where Kant argues that individuals should ‘give life its worth through *actions*’, not through the pursuit of happiness.<sup>68</sup>

<sup>62</sup> Johann Gottfried Herder, *Another Philosophy of History*, in *Another Philosophy of History and Selected Political Writings*, translated by Ioannis D. Evgrenis and Daniel Pellerin (Indianapolis/Cambridge: Hackett Publishing Company, 2004), pp. 33–34, 41.

<sup>63</sup> Herder, *Another Philosophy of History*, pp. 29–30.

<sup>64</sup> Herder, *Another Philosophy of History*, p. 94.

<sup>65</sup> Kant, ‘Review of J. G. Herder’s *Ideas for the Philosophy of History of Humanity*’, *RH*, 8:66.

<sup>66</sup> Kant, *RH*, 8:64.      <sup>67</sup> Kant, *RH*, 8:65.

<sup>68</sup> Kant, ‘Conjectural Beginnings of Human History’, *CB*, 8:122.

Kant's critiques of Herder, Möser, and others who shared their conventionalism and nostalgia for the old *Reich* were a defence of moral freedom. Rather than engaging in a discourse about the relative merits of social institutions for furthering happiness, which may have been what Herder had been expecting, he simply called off the search and, like other liberals at the time, proposed a new value. Herder, instructively misquoting Kant, charged him with supporting absolutism because he defended the state. Yet, Kant had *not* said that man is an animal that needs a master who will give him 'happiness'. Had that been the case, Kant's philosophy would indeed align with the paternalism of the defenders of absolutism. But although the master imagery may call up images of absolutism, it is not the master's job to provide happiness. The master's task is only to provide external freedom, a social condition that fosters the development of moral autonomy.

## THE PATH TO THE PRINCIPLE OF RIGHT

Although Kant's 1780s work focused on moral liberty and discussed the state mainly as an enabling institution, he had been thinking about outer freedom and the justification for the state for quite some time. Indeed, he had made a few tantalizing remarks about the principles for a constitution in *Critique of Pure Reason*:

A constitution [*Verfassung*] providing for *the greatest human freedom* according to laws that permit *the freedom of each to exist together with that of others* (not one providing for the greatest happiness, since that would follow of itself) is at least a necessary idea, which one must make the ground not merely of the primary plan of a state's constitution but of all the laws too.<sup>69</sup>

This represents Kant's notion of an ideal state, which although difficult to implement in practice, is a norm for political aspirations. Comparing his ideas to those of Plato, Kant insists that the idea itself, as an archetype for the legal organization of mankind, is not derived from experience and is not undermined by adverse experiences. Because it depends on the power of freedom, humans can actualize it, at least in principle. Such a state would also simplify legislation:

It is an ancient wish—who knows how long it will take until perhaps it is fulfilled—that in place of the endless manifold of civil laws, their principles may be sought out; for in this alone consists the secret, as one says, of simplifying legislation.<sup>70</sup>

<sup>69</sup> Kant, CPR, A 316/B 373. Emphasis in the original. See also A 751/B 779.

<sup>70</sup> Kant, CPR, A 302/B 358.

Kant's wistful turn of phrase indicates that he did not foresee himself seeking out those principles any time soon. These brief statements about the kind of freedom that was protected by an ideal constitution were all he said about political freedom in the *Critique of Pure Reason*. It did not go unnoticed, however.

Gottfried Hufeland (1760–1817) was a young Wolffian philosopher in Jena who was deeply influenced by Kant. But while he agreed with *Groundwork* and the shorter essays from *Berlinische Monatsschrift*, he saw that the principles of coercive law were lacking and decided to fill this gap by building a Kantian theory of natural law. Hufeland sent a copy of his 1785 *Versuch über den Grundsatz des Naturrechts* to Kant,<sup>71</sup> and in the accompanying letter confessed his deepest admiration. Nonetheless, when he had been in doubt about a philosophical point while writing the book he had sometimes dared to depart from Kant.<sup>72</sup> Meanwhile, the editor of *Jenaer Allgemeine Litteraturzeitung* asked Kant to review the book. The review appeared in April 1786,<sup>73</sup> and in the same month he penned a cordial and encouraging reply to Hufeland, saying that he hoped that their disagreements would disappear once Hufeland considered the matter further.

Hufeland opens the book by responding to Kant's call in the *Critique of Pure Reason* to develop principles of civil law that would simplify legislation. His task is to reveal these principles. Written with unusual authority for a 25-year-old, it surveys all the current theories of natural right, from Hobbes to Eberhard, and finds that none have properly identified the general principle of right or shown how coercion can be justified. The book culminates by endorsing Kant's theory of autonomy and his renunciation of happiness as the foundation of morality. But while Hufeland agrees with these principles and confesses his pride in being influenced by Kant, he has decided not to follow the master's words blindly, but to allow himself 'perfect freedom of thought' in order to change what he finds necessary in the great man's system.<sup>74</sup> This should by no means be seen as a reproach (*Tadel*) to Kant's masterpiece.<sup>75</sup>

Although he agrees with the notion of autonomy, he disagrees about the laws we should prescribe for ourselves. Hufeland came out of the Wolffian school, and the theory he presented in 1785, although inspired by Kant, was a kind of perfectionism. He establishes a distinction between natural rights and the rest of morality, which at the time were not always distinguished, even by Wolff. Following Nikolaus Hieronymus Gundling, Hufeland's

<sup>71</sup> Gottlieb Hufeland, *Versuch über den Grundsatz des Naturrechts, nebst einem Anhange* (Leipzig: G. J. Göschen, 1785).

<sup>72</sup> Letter from Hufeland to Kant, 11 October 1785, in AA, 10:412.

<sup>73</sup> Kant, 'Review of Gottlieb Hufeland's Essay on the Principle of Natural Right', in *Kant's Practical Philosophy*, edited by Mary Gregor, translated by Mary Gregor (Cambridge: Cambridge University Press, 1996).

<sup>74</sup> Hufeland, *Versuch*, p. 226.

<sup>75</sup> Hufeland, *Versuch*, p. 229.

premise is that natural right (*Naturrecht*) is limited to rights and duties that are enforced by coercion (*Zwang*).<sup>76</sup> The problem is identifying which rights and duties should be so enforced.<sup>77</sup> Duties must be defined first, because of the definition of right: 'Right is [...] only that which is prevented by no duty'.<sup>78</sup> Since Kant's *Groundwork* is fundamentally about duties, this seems a natural place to look.

Hufeland starts by levelling a critique at the heart of the Kantian project of formalism. The method of universalization provides no goals for action, yet all action is goal-oriented. Kant believes that duty means acting out of respect for the moral law, not in order to achieve a particular end, yet 'such acts exist as little as there are natural events [*Naturgegebenheiten*] without ends.' Acts that are good in themselves are directed toward ethical ends instead of those that are arbitrarily chosen.<sup>79</sup> So Hufeland decides to provide the material ends he needs in order to formulate actual duties. The highest one, which is to seek self-perfection, should guide our actions,<sup>80</sup> but because the criteria of perfection entail reference to empirical data, it is hard to know exactly what perfection is. Hufeland gestures towards both our sentient and rational natures, and attempts to back up his claim by citing Kant's view from *Groundwork* that rational nature is an end in itself, thereby making Kant's view of moral autonomy the end, or organizing principle, around which the state's laws should be fashioned.<sup>81</sup>

Hufeland makes the duty to prevent the erosion or decline of perfection his point of departure in order to show how the duty of perfection can be the source of coercive rights. This duty aligns with the general concept of right, because it cannot possibly be right to do anything that undermines it. Since right actions may be coercively enforced, individuals are entitled to use force to prevent the decline of perfection—as well as, Hufeland later adds, to augment it.<sup>82</sup> Legislators should consult this moral foundation when seeking to translate natural rights into positive, legally established rights (*Zwangsrechte*).<sup>83</sup> Since the use of force entails limiting the perfection of others, the system needs a judge to 'rank' perfections, which means that humans must exit the state of nature, where each is the judge of his own perfection.<sup>84</sup>

It was not surprising that Hufeland would look to Kant to corroborate this theory. In his shorter essays, Kant had hinted at a similarly instrumental view of the state. A strong state enables the public use of reason, curbs unsocial sociability, and fosters the cultivation of character, all of which lead to moral perfection. But Kant never took the next step to argue that the state is justified

<sup>76</sup> Hufeland, *Versuch*, p. 14.

<sup>77</sup> Hufeland, *Versuch*, p. 173.

<sup>78</sup> Hufeland, *Versuch*, p. 222, p. 32.

<sup>79</sup> Hufeland, *Versuch*, p. 239.

<sup>80</sup> Hufeland, *Versuch*, p. 240.

<sup>81</sup> Hufeland, *Versuch*, p. 242.

<sup>82</sup> Hufeland, *Versuch*, p. 246.

<sup>83</sup> Hufeland, *Versuch*, p. 246.

<sup>84</sup> Hufeland, *Versuch*, p. 244.

because it contributes to virtue. In fact, justification of the state and its authority to coerce had only in passing been on his agenda.

In reviewing Hufeland's book, Kant went beyond his role as a theorist of individual moral agency and revealed that he had been working on his legal and political philosophy, which took him in a very different direction to that of Hufeland. Kant begins his review in *Jenaer Allgemeine Litteraturzeitung* by praising Hufeland for seeking the source of the principles of natural right in the faculty of reason itself.<sup>85</sup> It is natural that Kant should appreciate this approach since it reflects Hufeland's explicit alignment with his own work. Although Kant approves of the way Hufeland separates the domains of law and ethics, and bases law on individual rights, he is less convinced by the perfectionist foundation of natural right.

Kant's critique engages in a kind of *reductio ad absurdum*.<sup>86</sup> The first problem with perfectionism is its implication that individuals cannot cede any of their coercive rights. If they have coercive rights because they are obligated to attain perfection, every individual's rights must serve that end. Conversely, since relinquishing a right diminishes perfection, and it is wrong to diminish perfection, no right can be relinquished. For instance, a person with a right to property must use it in its entirety in service of his perfection and cannot give any of it away. Even more damaging for Hufeland's theory, it is impossible to identify what a right is and how far it extends. If perfection entails developing our rational nature, it probably means that we have a right to pursue education, but the theory cannot tell us what kind of education should be pursued or for how long. Or perhaps it doesn't entail formal education at all; a person might develop his capacity for reason by becoming a world traveller. In short, there may be an infinite number of ways to reach the goal, leaving a person's understanding in 'continual bewilderment if not in a downright impossible position, when it tries to make out how far its right might reach'.<sup>87</sup>

Kant's critique reveals a familiarity with natural right that was not evident in any of his earlier publications. But he had lectured on the topic for a long time, and had in fact already developed this kind of anti-perfectionist argument two years earlier against Achenwall, in his lectures known subsequently as the *Naturrecht Feyerabend* after the student who took the notes.<sup>88</sup> It is unlikely that Hufeland, who lived in Leipzig and Göttingen at the time, knew about these lectures, wherein Kant went beyond critique to construct an alternative theory

<sup>85</sup> Kant, *RGH*, 8:127.

<sup>86</sup> There appears to be little written on Hufeland or Kant's debate with him. The editors of the Cambridge edition give a concise analysis of Kant's review, which this account relies on. See also Douglas Moggach, 'Freedom and Perfection: German Debates on the State in the Eighteenth Century', *Canadian Journal of Political Science*, 42, 4 (2009): 1003–1023.

<sup>87</sup> Kant, *RGH*, 8:129.

<sup>88</sup> The Feyerabend lectures are published in volume 27 of the *Akademieausgabe*. See *Gesammelte Schriften*, Abt. 4., Bd. 4. *Vorlesungen über Moralphilosophie. Hälften I* (Berlin: Reimer, 1974).

of right based on equal liberty. Political institutions comprise the necessary framework for the constitution of external freedom according to law. Unlike in 'What Is Enlightenment?' and 'Idea for a Universal History', political institutions are seen not primarily in terms of their contribution to individual moral autonomy.

Achenwall had influenced Kant in several ways.<sup>89</sup> He had identified the topics of natural right, distinguished between ethics and law, and made property rights central to law itself. Both he and Kant focused on the nature of the state and sovereignty, as well as the right of nations. *Feyerabend*, which is an almost complete lecture course, shows how, after 1784, Kant followed Achenwall's identification of the domain of law. Yet Achenwall, like Hufeland, was a Wolffian, and his principle of right is based on the individual's duty to preserve his life and to avoid whatever interferes with the self-preservation of others. This is the point which Kant disagrees with.

The problem is that the principle of self-preservation belongs to a theory of virtue, not of right. To explain why this is the case, Kant expounds crucial aspects of his theory of right, which he developed further and published in the 1790s. A theory of right only secures the external freedom of action of interacting agents; its task is to regulate conflicts between the ways in which social agents use their freedom. An individual's choice to pursue a path of self-preservation is a private matter and of no concern to others. A juridical question arises only if their pursuit of self-preservation interferes with the freedom of others. Kant is claiming that the individual pursuit of self-preservation has no place in a doctrine of right, not that it is morally irrelevant. In *Groundwork*, and later in the *Doctrine of Virtue*, he argues that suicide contradicts duty, which consists in the cultivating of reason and helping others to be happy. These duties cannot be coercively enforced, however, because they are duties of virtue, not of right. Someone fulfils such a duty if they perform it out of respect for the moral law, not because they have accomplished the goal. Love for life cannot be a truly moral motive for self-preservation; because the source of duty is individual conscience, the state can never coerce people to do their duty. Right can only solve problems of social coordination.

An example illustrates the point. Consider that person A has borrowed a book from a library. She is under both an ethical and a legal duty to return the book. Imagine that she goes to the library and puts the book in the slot for returning books. If she did so out of respect for morality, she has fulfilled her ethical duty. Consider now that she was mistaken, and the slot where she put the book was in fact for garbage. From a moral point of view, she has still fulfilled her duty, since the duty was to act out of respect for the law. From the moral perspective, the rightness of the act is not inherently connected to its

<sup>89</sup> On Kant's relation to Achenwall, see Byrd and Hruschka, *Kant's Doctrine of Right*.

consequences. She has not fulfilled her legal duty, however. The legal duty is to return the property to the library. The legal perspective discounts motivation: only external actions matter.<sup>90</sup>

A doctrine of right, Kant states in *Feyerabend*, is concerned only with external aspects of individual action, and only insofar as those may interfere with the actions of others. This definition of right resembles the one alluded to in *Critique of Pure Reason*: 'Right is the limitation of the particular freedom of each by the condition under which universal freedom can exist. Right properly consists in the negative, in omission.'<sup>91</sup> He adds: 'Each one can seek his happiness however he will as long as he does not injure universal freedom.' Law is not concerned with the promotion of happiness, which is a private end. Legal relations should regulate only external interactions, not individual ends.

Kant compares the abandonment of teleological Wolffianism to the Newtonian paradigm shift in physics. Where Aristotle had explained the movements of bodies in terms of natural drives, Newton explained it by the action and reaction of bodies:

Right is nothing other than the law of the equality of action and reaction regarding freedom, through which my freedom agrees with universal freedom. If someone acts against this universal freedom and the other resists him, then this resistor acts in conformity with universal freedom and thus right. So I have a right to coerce others to follow right. All authors have failed to explain this.<sup>92</sup>

*Feyerabend* foreshadows how Kant solves the problem of justifying coercion under natural law. Coercion is justified when individuals fail to abide by an orderly regulation of universal freedom and unduly interfere with the actions of others. It can never be used to make people moral or to promote individual welfare. Its only legitimate use is to secure the freedom of interacting agents to pursue their private projects.

These thoughts had been maturing for some time. The ideal of equal freedom appears in a remark about Achenwall dating back to 1769–1770, which also references the Newtonian metaphor: *Actio est aequalis reactione*.<sup>93</sup> Here Kant adds that the 'common center of gravity' between the interacting bodies should be understood as 'the common will'.<sup>94</sup> This language echoes Rousseau, who was very much on Kant's mind in the 1760s.<sup>95</sup> Indeed, Kant's theory attempts to solve the dilemma of the general will, which *Contrat Social* had gone to great lengths to distinguish from the will of all, the aggregate

<sup>90</sup> This example is indebted to George P. Fletcher's discussion in 'Law and Morality: A Kantian Perspective', *Columbia Law Review*, 87 (1987): 533–558.

<sup>91</sup> Kant, F, 27:1334. <sup>92</sup> Kant, F, 27:1335.

<sup>93</sup> Kant, Reflection 7658, NM, 19:479.

<sup>94</sup> Kant, Reflection 6667, NM, 19:128.

<sup>95</sup> For Kant's earliest reception of Rousseau, see John H. Zammito, *Kant, Herder, and the Birth of Anthropology* (Chicago: University of Chicago Press, 2002).

preferences of a community. Yet Rousseau had not described the general will beyond saying that it should be oriented toward the common good, which by definition is what any civically minded person would choose.<sup>96</sup> But he did not say just what that common good consists in or how it should be identified. In his notes and lectures, Kant defines it as the basic respect for equal liberty that underlies the idea of consulting the people and allowing its will to rule. Equal liberty is the touchstone of the general will. Since the people as a whole can never rationally will anything that contradicts equal liberty, the general will is determined by its internal consistency, not by its orientation towards a particular *end* such as individual welfare or public prosperity. It is what everyone can agree to *without contradicting themselves*. This same logic governs the categorical imperative, which identifies the moral worth of an action. What the categorical imperative was to individual autonomy, the notion of the general will was to the principles of political constitutionalism. That analytical development, however, would only come to fruition when Kant developed his doctrine of right after the French Revolution.

## CONCLUSION

Like other liberal philosophers whose writings filled the pages of the new German journals, Kant's interest in the state during the 1780s centred on its task of securing freedom. This separated him both from the perfectionist supporters of enlightened despotism and from the conventionalist supporters of traditional estate society. The concept of freedom that mattered the most to Kant at this stage was *inner* freedom, autonomous action out of respect for the categorical imperative. Yet it became evident in the *Critique of Pure Reason* and in the essays on history and Enlightenment, that Kant had started developing a notion of the *outer* freedom of interacting persons, established through law in a state constitution.

In the 1780s, outer freedom mattered to Kant mainly because it served to protect inner freedom. He had yet to develop a full theory of positive law and a justification for the coercive power of the state, but his debates with Hufeland and Herder, as well as his lectures on natural law, reveal that he had started the work. Within a few short years, world history caught up with him and posed the question of constitution-making more urgently. The French Revolution brought the need to explain the nature and justification for outer freedom, and ultimately to show how theory is to be implemented in practice.

<sup>96</sup> Rousseau, *Social Contract*, Book 4, chapter 1, p. 204.

2

---

## Freedom and Equality

When the National Convention proclaimed France a republic on 21 September 1792, one day after the French victory over Prussia in the battle of Valmy, Kant reportedly declared with excitement ‘Now let your servant go in peace to his grave, for I have seen the glory of the world.<sup>1</sup>’ A year later he published ‘On the common saying: That may be correct in theory, but it is of no use in practice’, his first essay devoted to the justification of law and the state. The time was by all means ripe for reflecting on theory and practice. One year after the proclamation of the Republic, the Revolution was looking like a failed experiment. The Jacobins, who headed the sinister, all-powerful Committee on Public Security that had unleashed the Reign of Terror, had replaced the 1789 liberals. France was fighting both civil and foreign wars. Yet *Theory and Practice* argued for equal liberty, rejected hereditary privilege, and closely resembled the *Declaration of the Rights of Man and the Citizen*. The attacks on rationalism by Edmund Burke and the German conservatives had not deterred Kant. Yet the essay was hardly a rallying cry for an idealistic politics against all existing institutions: it defended state authority, denied that membership was voluntary, and defined an unconditional duty to obey the state. By rejecting a right to engage in resistance or revolution, Kant distinguished himself from the German radicals such as Fichte, who remained in thrall to the more extreme elements of the Revolution.

Kant’s essay left many philosophical questions unanswered. He failed to explain why persons who have the capacity for internal moral autonomy must also have a right to equal external freedom, and how coercion can legitimately secure rights. And, the title notwithstanding, he did not show how to translate theory into practice. Nonetheless, *Theory and Practice* caught the political imagination and was criticized from all sides. The following will explore the reactions it provoked. Friedrich von Gentz, August Wilhelm Rehberg, and Justus Möser were conservative critics who denied that right and wrong for a society can be founded on *a priori* principles of reason. They also insinuated

<sup>1</sup> Kuehn, *Kant*, p. 342.

that Kant's own principles had inegalitarian consequences and supported key institutions of the old regime, particularly hereditary privileges. On the other side were radicals such as Johann Gottlieb Fichte, Johann Benjamin Erhard, and Ludwig Heinrich Jakob. They agreed with Kant's rational foundation for the law and the exclusion of hereditary privilege and argued that the state's function should be limited to promoting human rights. Fichte's earliest writings went as far as arguing that obligation to the state is based on consent, and that obedience was voluntary.

Scholars have paid scant attention to Kant's debates with his conservative and radical critics, perhaps because he only rarely engaged them in print. Those who have studied the debates have focused on the critiques themselves rather than on Kant's responses.<sup>2</sup> Others have argued that Kant was really responding to canonical writers such as Hobbes.<sup>3</sup> But the textual evidence indicates that much of Kant's writing in the post-Revolutionary period was addressed to his critics, with the result that his political thought developed in significant ways. Two separate but related directions stand out. First, he attempted to show why someone committed to his view of a free person must also be committed to a republican constitution. In the process Kant developed a view of civil freedom as independence, the status of being subject only to the rule of law. Because this type of freedom can only be realized within the framework of state-created juridical rights and duties, Kant foregrounds the state, which is more than just an instrument, as radicals like Fichte had thought. This view of freedom and the state was more complex than Kant's 1780s view, which centred on creating the conditions for individual moral autonomy.

Second, the practical consequences of implementing his theory of right in the Prussian context, combined with the lesson of the French experience, drove Kant's thought in a more pragmatic direction which counselled the incremental, rather than the sudden, introduction of equal liberty. So, while on the one hand Kant maintained a strictly rationalist theory of right, on the other he thought the juridical institutions of the state could introduce freedom gradually. This chapter discusses the German political context in the wake of the French Revolution, analyzes the arguments of *Theory and Practice* and the accompanying debate, and shows how Kant revised his concept of right in the wake of these debates.

<sup>2</sup> Henrich, 'Über den Sinn vernünftigen Handelns'; Vogel, *Konservative Kritik*; Michael Stolleis, *Staatsraison, Recht und Moral in Philosophischen Texten des späten 18. Jahrhunderts* (Meisenheim am Glan: A. Hain, 1972); Beiser, *Enlightenment*; Knudsen, *Justus Möser*; Marita Gilli, *Pensée et pratique révolutionnaires: à la fin du XVIIIe siècle en Allemagne* (Paris: Annales littéraires de l'Université de Besançon, 1983).

<sup>3</sup> Patrick Riley, 'Kant against Hobbes in *Theory and Practice*', *Journal of Moral Philosophy*, 4 (2007): 194–206, and Howard Williams, *Kant's Critique of Hobbes: Sovereignty and Cosmopolitanism* (Cardiff: University of Wales Press, 2003).

## THE FRENCH REVOLUTION IN THE GERMAN PUBLIC SPHERE

Germans avidly followed the news of the French Revolution, and public opinion shifted along with the fortunes of France. The *Declaration of the Rights of Man and the Citizen*, issued by the French National Assembly in 1789, had presented a concept of freedom whose emphasis on equality contrasted sharply with the *ancien régime* and the old *Reich*: 'Men are born, and always continue, free and equal in respect of their rights. Civil distinctions, therefore, can be founded only on public utility'.<sup>4</sup> The constitution from 1791 drew a further conclusion in its first paragraph: 'All the citizens are eligible to offices and employments without any other distinction than that of virtue and talent'.<sup>5</sup> Jean-Jacques Rousseau, who was a force in the intellectual climate of the second half of the eighteenth century, had inspired much in these texts. His *Discourse on the Origin and Basis of Inequality Among Men* (1755) had argued that inequalities of wealth and power, which are virtually non-existent in the state of nature, are magnified in all societies where political power uses law to privilege the wealthy and the aristocracy. Only inequalities generated by physical strength and intellectual merit are legitimate. Inequality generates asymmetrical dependency, with lower status people depending on the arbitrary will of those with higher status, thereby consolidating a system of domination that can be maintained only by force, not by right. Rousseau predicted that the concentration of power would ultimately bring about a popular revolt against the despot: 'Force alone maintained him; force alone brings him down. Thus everything happens in accordance with the natural order'.<sup>6</sup>

Rousseau targeted inequalities of social esteem, wealth, and legal status. The latter became significant to Emmanuel Joseph Sieyès, who strongly influenced the *Declaration*.<sup>7</sup> Educated as a theologian and ordained as a priest before making a career in ecclesiastical offices, the Abbé Sieyès was a deputy to the Third Estate, the assembly representing the commoners. Faced with a financial crisis and under pressure from the nobility, who refused to be taxed,

<sup>4</sup> National Assembly of France, 'Declaration of the Rights of Man and the Citizen', in *Introduction to Contemporary Civilization in the West: A Source Book*, Volume 2, edited by Marvin Harris, Sidney Morgenbesser, Joseph Rothschild, and Bernard Wishy (New York: Columbia University Press, 1961).

<sup>5</sup> National Assembly of France, 'Constitution of 1791', in *University of Chicago Readings in Western Civilization, Volume 7: The Old Regime and the French Revolution*, edited by Keith Michael Baker (Chicago: University of Chicago Press, 1987).

<sup>6</sup> Jean-Jacques Rousseau, *Discourse on the Origin of Inequality*, in *The Basic Political Writings*, edited by Donald A. Cress (Indianapolis/Cambridge: Hackett, 1987), pp. 79–80.

<sup>7</sup> Murray Forsyth, *Reason and Revolution: The Political Thought of the Abbe Sieyès* (New York: Leicester University Press, 1987), pp. 6–7; Francois Furet, *Revolutionary France: 1770–1880*, translated by Antonia Nevill (Oxford: Blackwell Publishing, 1988), pp. 45–51; and Isser Woloch, 'In the Aftermath of the French Revolution', *The History Teacher*, 28, 1 (1994).

King Louis XVI had agreed to reconvene the Estates-General of France, which had been dormant since 1614. The Estates-General was a general assembly representing the clergy (the First Estate), the nobility (the Second Estate), and the commoners (the Third Estate). Etienne Charles Loménie de Brienne, the King's finance minister, invited views from the public on how the estates were to be constituted. In response, Sieyès composed several pamphlets, among them 'What is the Third Estate?', which argued that since the commoners really constituted the nation they should have the right to constitute a national assembly.

The essay attacked privileges and inequality not based on merit, arguing that farmers, industrial workers, tradespeople, and servants were the backbone of society. By contrast, the nobility performed no useful services to justify their holding of lucrative and honorific offices. Since individuals are by nature equal there can be no justification for inherited privilege:<sup>8</sup> 'All the relations between citizen and citizen are founded on the basis of freedom and equality.'<sup>9</sup> By claiming privileges, the nobility excluded itself from the nation.<sup>10</sup> Sieyès called the Third Estate *la nation*, and adopted Rousseau's view that the general will was the source of legitimate law. The nation's general will, expressed by its representatives in the legislature, decides on the limits of freedom by deciding what constitutes harm against an individual.

The nation seized sovereignty from both the monarch and the nobility on 17 June 1789, when the Third Estate successfully proclaimed itself the National Assembly. Sieyès personally introduced the legal motions that transformed the Estates-General into the National Assembly. News of these revolutionary events spread quickly to Germany and essays by famous protagonists such as Sieyès appeared in translation. Fichte described the mood in the spring of 1793:

The sign of the times has in general not been unnoticed. Things on which one before had not thought have become the talk of the day. Conversations about human rights [*Menschenrechte*], about freedom and equality, about the sanctity of contract, of oath taking, about the justifications [*Gründe*] and the limits of the rights of a king, replace at times the talk of new fashions and old adventure both in illustrious and simple circles. One starts to learn.<sup>11</sup>

<sup>8</sup> Emmanuel Joseph Sieyès, 'An Essay on Privileges', in *Political Writings: Including the Debate between Sieyès and Tom Paine in 1791*, edited by Michael Sonenscher (Indianapolis, IN: Hackett Pub. Co, 2003), p. 70.

<sup>9</sup> Emmanuel Joseph Sieyès, 'An Essay on Privileges', in *Political Writings: Including the Debate between Sieyès and Tom Paine in 1791*, edited by Michael Sonenscher (Indianapolis, IN: Hackett Pub. Co, 2003), p. 70.

<sup>10</sup> Sieyès, 'What is the Third Estate', p. 101.

<sup>11</sup> Johann Gottlieb Fichte, *Beitrag zur Berichtigung der Urteile des Publikums über die französische Revolution. Erster Teil Zur Beurteilung ihrer Rechtmäßigkeit* (1793). Beigefügt die Rezension von Friedrich von Gentz (1794), edited by Richard Schottky (Hamburg: Meiner, 1973), p. 5.

Middle class (*Bürgertum*) and educated Germans, whose counterparts had led the process in France, initially welcomed the Revolution.<sup>12</sup> Some, such as August Ludwig von Schlözer, the liberal publicist, thought the Revolution showed that France was seeking freedoms that wise rulers in the German states had already established through gradual reforms.<sup>13</sup> Others were simply inspired by the desire for constitutional government. Because French culture and politics had been influential in the German lands since Louis XIV's time, even conservatives welcomed the Revolution for the first few months.<sup>14</sup> But the general support did not last long and opinion gradually became polarized. Schlözer, who had wholeheartedly agreed with the critique of privilege and hereditary nobility, became concerned about ochlocracy and withdrew his support after 1790. As time went on and France struggled to establish the new regime, enthusiasm dwindled.

It was not surprising that Germans turned their back on the Revolution. What had started in the fall of 1789 as a defence of meritocracy and equal freedom, abolishing feudal privilege and creating constitutional monarchy, gradually degenerated into a dictatorial regime of terror and obscurantism.<sup>15</sup> The popular insurrection and Jacobin coup of 10 August 1792 was a 'second revolution' that produced a new National Convention which abolished the monarchy and declared a republic. Not long after proclaiming the Republic, the Convention tried Louis XVI (now known formally as Louis Capet) on charges of treason, and executed him on 21 January 1793. By then, France was at war with every major power in Europe and sought to raise an army by conscription. This led to the revolt of the Vendée region in March 1793, which was also motivated by a defence of the monarchy and the church. The ensuing counter-revolutionary war led to a hardening of political fronts in Paris, with the Jacobins, aided by popular uprisings, purging the moderates, the Girondists, from the National Convention in June of that year. Sieyès went underground and barely escaped with his life. The Committee on Public Safety, under the leadership of Maximilien Robespierre, became the *de facto* government of France in the summer of 1793.

The Committee on Public Safety oversaw the drafting of a new constitution which was ratified by popular referendum on 24 June 1793. More radical than the previous one, it defended popular sovereignty, economic and social rights, the abolition of slavery, and the right of rebellion. It never entered into force, however, as the revolutionary government—in effect the dictatorship of the

<sup>12</sup> Gooch, *Germany*; Reinhold Aris, *History of Political Thought in Germany from 1789 to 1815* (New York: Augustus M. Kelley Publishers, 1968); Valjavec, *Die Entstehung*; Vierhaus, 'Politisches Bewusstsein'.

<sup>13</sup> See Weis, 'Absolutism', p. 196.

<sup>14</sup> Valjavec, *Die Entstehung*, pp. 151–152.

<sup>15</sup> The following account of the events relies on Furet, *Revolutionary France*, and Albert Soboul, *A Short History of the French Revolution 1789–1799* (Berkeley: University of California Press, 1977).

Committee of Public Safety—was declared on 10 October 1793. Attempting to protect the Republic against internal and external enemies, the Committee on Public Safety unleashed the Reign of Terror. Thousands of suspected traitors were summarily executed at the guillotine. Robespierre justified this by the imperative of protecting the Republic against faction, which he defined as groups pursuing their private interests. The integrity of the state lay in the virtue of its citizens, and the task of the government was to make citizens virtuous. Addressing the representatives, he declared:

All that tends to excite love of country, to purify manners, to exalt the mind, to direct the passions of the human heart towards the public good, you should adopt and establish. All that tends to concenter and debase them into selfish egotism, to awaken an infatuation for littleness, and a disregard for greatness, you should reject and repress. In the system of the French Revolution that which is immoral is impolitic, and what tends to corrupt is counter-revolutionary. Weaknesses, vices, prejudices are the road to monarchy. [...] If virtue be the spring of a popular government in times of peace, the spring of that government during a revolution is virtue combined with terror: virtue, without which terror is destructive; terror, without which virtue is impotent. Terror is only justice prompt, severe, and inflexible; it is then an emanation of virtue.<sup>16</sup>

The Revolution's implosion rendered Edmund Burke's *Reflections on the Revolution* in France prophetic. Published in 1790, it had warned that ideas such as liberty and equality would wreak havoc with every existing institution and prevent the stabilization of new ones. Three years and a regicide later, the newly created French Republic spiralled into a nightmare of factionalism and civil war.

Public intellectuals in Germany condemned the Revolution. Friedrich Gentz, who at the time was a Prussian bureaucrat in Berlin, issued an influential translation of Burke's *Reflections*. August Wilhelm Rehberg, the publicist and secretary of an aristocratic council in Hannover, wrote critical essays and book reviews for the *Jenaer Allgemeine Literatur-Zeitung* from 1789, and he collected his essays in the two-volume *Investigations on the French Revolution*, published in 1792 and 1793. Along with Justus Möser, erstwhile secretary of a noble estate in Osnabrück and later chief administrator of the bishopric, he became the leading German critic of the Revolution.<sup>17</sup> The two defended the

<sup>16</sup> Maximilien Robespierre, *Report upon the Principles of Political Morality which Are to Form the Basis of the Administration of the Interior Concerns of the Republic*. Made in the name of the Committee of Public Safety, the 18th pluviose, second year of the Republic (6 February 1794). Translated from a copy printed by order of the Convention (Benjamin Franklin Bache, Philadelphia, 1794), pp. 6–7 and 10.

<sup>17</sup> Beiser provides penetrating discussions of these authors in *Enlightenment, Revolution, and Romanticism*. See also Epstein, *The Genesis of German Conservatism*; Henrich, 'Über den Sinn vernünftigen Handelns'; Vogel, *Konservative Kritik*; Michael Stolleis, *Staatsraison*; Knudsen, *Justus Möser*.

traditional *inegalitarian* conventions of the old German *Reich*, which understood freedom in the plural, as ‘freedoms’, not as a basic feature of the human condition. In Möser’s words, no one could be called ‘free’ as such, because everyone serves someone else: even a general who commands his soldiers is not free, because he serves elsewhere in a different way. Since even the prince serves, Möser wrote, he is as unfree as the commoner.<sup>18</sup> Freedom is an exemption from an obligation that compels others, and freedoms appear as a broad array of rights, privileges, and immunities that are distributed unequally according to legal status in the social hierarchy.<sup>19</sup>

Rehberg’s critique followed Möser’s and sounded a lot like Burke’s *Reflections on the Revolution in France*, to which it was indebted. Rehberg, who had initially been impressed by Kant’s moral philosophy, agreed that reason should govern individuals and their moral conduct: ‘The entire moral nature of humans relies on reason’, he said.<sup>20</sup> Yet, the laws of civil society (*die bürgerliche Gesellschaft*) should not be founded only on reason.<sup>21</sup> Reason is not enough; it cannot, for example, establish a priori principles of property, which are determined by particular historical circumstances.<sup>22</sup> Rehberg rejected the ‘illness of speculative politics’, which he associated with Rousseau, who had built an ideal constitution ‘hovering in the air’.<sup>23</sup>

A speculative system of natural right [*Naturrecht*] can be established in an armchair [*im Studierzimmer*] through the analysis of concepts. To appreciate a constitution requires knowledge of the world, humans, and civil enterprise [*bürgerlichen Geschäfte*].<sup>24</sup>

Since the function of politics is to secure the welfare of society, political arrangements will vary from place to place. Although democracy may be suitable for small cattle-herding peoples in mountainous regions (Switzerland seems to have been the model), aristocracy is a better choice for larger, more bellicose populations.<sup>25</sup> Philosophers need empirical knowledge of people and societies in order to discern moral values. Social conventions and membership of traditional estates, guilds, and towns (characteristic of the late feudal old *Reich*) determine a person’s legal status, not natural rights.<sup>26</sup> Tradition has

<sup>18</sup> Justus Möser, ‘Der Begriff “Freiheit”’, in *Sämtliche Werke, Historisch-kritische Ausgabe*, vol. VIII, edited by Akademie der Wissenschaften zu Göttingen (Oldenburg: Gerhard Stalling, 1944), p. 68.

<sup>19</sup> Andreas Klinger, ‘Die “deutsche Freiheit” im Revolutionsjahrzehnt 1789–1799’, in *Kollektive Freiheitsvorstellungen im frühneuzeitlichen Europa (1400–1850)*, edited by Georg Schmidt, Martin van Gelderen, and Christopher Snigula (Frankfurt am Main: Peter Lang, 2006), p. 449.

<sup>20</sup> August Wilhelm Rehberg, *Untersuchungen über die französische Revolution nebst kritischen Nachrichten von den merkwürdigen Schriften welche darüber in Frankreich erschienen sind*, Vol. I (Hannover, Osnabrück: Christian Ritscher, 1793), p. 12.

<sup>21</sup> Rehberg, *Untersuchungen*, pp. 16–17.

<sup>22</sup> Rehberg, *Untersuchungen*, p. 14.

<sup>23</sup> Rehberg, *Untersuchungen*, pp. 19, 55.

<sup>24</sup> Rehberg, cited by Richard Schottky in the notes to Fichte, *Beitrag*, p. 264.

<sup>25</sup> Rehberg, *Untersuchungen*, p. 54.

<sup>26</sup> Rehberg, *Untersuchungen*, p. 53.

shaped and nurtured people for centuries, and no one has the right to destroy it.<sup>27</sup> Encouraging Europeans to follow the example of France, like Thomas Paine did, was treason.

Defenders of egalitarian principles of freedom had every reason to worry: their ideals were associated with the Revolution. Natural rights theories that described humans as naturally free, equal, and independent of the command of others, such as that of Gottfried Achenwall, were dominant in Germany.<sup>28</sup> Men give up some of their natural freedom and assume obligations when they enter the civil state; the rule of law established by civic authority defines their civil liberty.<sup>29</sup> Natural rights theory combined easily with Rousseauian principles, which were influential in Germany, leading republicans such as Johann Michael Afsprung to call for political freedom, the right of citizens 'to a voice in determining legislation', as well as for civil freedom, even before the Revolution.<sup>30</sup>

Johann Gottlieb Fichte took up the defence of a rational approach to politics. He published the pamphlet *Reclamation of the Freedom of Thought from the Princes of Europe, Who Have Oppressed It Until Now* in the spring of 1793, and the first instalment of *Contribution to the Rectification of the Public's Judgment of the French Revolution* in mid-May.<sup>31</sup> These writings can be considered part of a single project to refute Rehberg and develop a theory of rights. Fichte's inspiration was Kant. He had been transformed by reading *Critique of Practical Reason* in 1790 and concluded that Kant's philosophy was even more significant than the French Revolution.<sup>32</sup> One year later Fichte travelled to Königsberg to meet the master himself. In a surprisingly frank letter to Kant, which encapsulates their relationship, he explained his reasons for seeking him out:

For you are the man to whom I owe all my convictions and principles and my character, even the striving to want to have a character. I wanted to reveal some part of myself to you, as much as time allowed, and to use you, if it were possible, to the advantage of my future career.<sup>33</sup>

Fichte rushed his *Attempt at a Critique of All Revelation* into print, which everyone thought—since it was published anonymously—was by Kant. When

<sup>27</sup> Rehberg, *Untersuchungen*, p. 80.

<sup>28</sup> See Hochstrasser, *Natural Law Theories*, and Otto Gierke, *Natural Law and the Theory of Society 1500 to 1800*, translated by Ernest Barker (Beacon Hill, MA: Beacon Press, 1957).

<sup>29</sup> Gottfried Achenwall, *Iuris naturalis pars posterior complectens jus familiae, jus publicum, et jus gentium*, Göttingen, 1763. Reprinted in AA, 19, 325–442, §§ 106, 107, 219.

<sup>30</sup> Afsprung quoted by Hans Erich Bödeker in 'The Concept of the Republic', p. 37. Advocacy for a republican constitution (the 'free state') had in fact often been combined with support for constitutional monarchy as a form of government, but during the revolution it increasingly became associated with radical democratic ideals emerging from France.

<sup>31</sup> For an introduction to these essays, see Anthony J. La Vopa, 'The Revelatory Moment: Fichte and the French Revolution', *Central European History*, 22 (1989): 130–159, and Richard Schottky, 'Einleitung', in Fichte, *Beitrag*.

<sup>32</sup> Fichte, *Beitrag*, p. 5.

<sup>33</sup> Letter to Kant on 2 September 1791, C, 11:278.

people learned it was by a 30-year-old theologian from Jena, Fichte's fame was secured. In the spring of 1793 Fichte informed Kant that he was working on a theory of right along Kantian lines. Kant responded by deplored the delays of his own projected *Metaphysics of Morals*, and by encouraging Fichte to pursue the topic: 'it would please me if you could make my work dispensable by stealing a march on me in this business'.<sup>34</sup>

Fichte's defence of the Revolution was what one might have expected Kant to publish, since the conclusions about law and politics were derived from Kant's theory of moral autonomy. Although Fichte admits that Rehberg is correct that reason is insufficient for the conclusive discernment of moral values, he argues that reason can set outer limits to right. Humans have a right to everything that is not forbidden by their self-imposed moral duty; in other words, anything that contradicts the free development of human moral agency is wrong. Without citing his mentor, Fichte reiterates the argument of Kant's enlightenment essay: 'We cannot give up the right to draw from this source [free communication] without giving up our spirituality, our freedom and personality. Consequently, we *may* not give it up: nor may the other give up *his* right to let us draw from it'.<sup>35</sup> The state is just an instrument to help people grow as moral beings; it is not an end in itself, and obedience to it is always conditional on the will of an individual.<sup>36</sup>

An individual's first obligation is to his *ethical* duty, and to autonomy: 'No one may be obliged except through himself: no human can be given a law, except by himself. If he allows an alien will to impose a law on himself, he renounces his humanity, and turns himself into an animal; and that he may not do'.<sup>37</sup> It follows that individuals can be subject only to a system of law to which they have *personally* consented. Fichte's social contract, therefore, is an actual event wherein individuals decide whether or not to join the state. They must retain the freedom to exit because it would contradict their humanity to bind themselves indefinitely to a constitution.<sup>38</sup> While this did not exactly amount to a justification for revolution, since it concerned individuals joining or leaving rather than actually overthrowing the regime, it was a form of philosophical anarchism. The notion that freedom leads to chaos was an ideology spread by sophists such as Rehberg, for whom Fichte had little respect:

You point to a gentle people, reduced to the rage of cannibals; to how they thirst after blood not water; to how they surge more avidly towards executions than

<sup>34</sup> Letter to Fichte on 12 May 1793, C, 11:434.

<sup>35</sup> Johann Gottlieb Fichte, 'Reclamation of the Freedom of Thought from the Princes of Europe, Who Have Hitherto Suppressed It', in *What Is Enlightenment?: Eighteenth-Century Answers and Twentieth-Century Questions*, edited by James Schmidt (Berkeley: University of California Press, 1996), p. 128.

<sup>36</sup> Fichte, *Beitrag*, p. 51ff.

<sup>37</sup> Fichte, *Beitrag*, p. 47. Likewise 'Reclamation', p. 124.

<sup>38</sup> Fichte, *Beitrag*, p. 51.

toward the theatre. Yet, this is not the fruit of freedom, but the result of a previous long slavery of the spirit.<sup>39</sup>

The second instalment of *Contributions*, which appeared in March 1794 (but which had been composed during the summer of 1793), addressed equality and levelled an attack on the nobility. No service they contributed could justify their hereditary privileges; there was no natural right to a privileged status, and it was inconceivable that people would agree to it in a contract.<sup>40</sup>

The issue of hereditary privilege was the subplot of the German debate on freedom.<sup>41</sup> While Möser thought hereditary privilege was perfectly compatible with liberty, those influenced by Rousseau thought that the two were mutually exclusive. The issue was particularly salient in Kant and Fichte's Prussia, where the nobility had gained an increasingly powerful position in the bureaucracy, economy, and military during the eighteenth century.<sup>42</sup> Likewise, the Duke of Rehberg's Hanover (who, after 1714, had been busy as the monarch of Great Britain) had never quite subdued the nobility, and in Möser's Osnabrück the late medieval *Ständestaat* remained largely in place.<sup>43</sup> Although the parties to the debate could not know it at the time, the powerful German nobility, which was virulently anti-democratic, would come to shape the course of German history over the next century.<sup>44</sup>

Although Kant was obviously influenced by Rousseau and Achenwall, his direct contributions to the debate prior to 1793 were limited because he had not yet connected his 1785 concept of personal autonomy to a justification of law and the state. There was no theory of individual rights or legal equality in his ethical writings, and Kant's main concern was with the categorical imperative as the test for individual duty in abstraction from society. To the extent that Kant had written about law and the state, these were chiefly seen as catalysts for individuals to develop moral virtue. Although Kant defended moral egalitarianism, he had not developed the conclusion that hereditary privilege was unjust. Yet it would not have been far-fetched to think that his writings would have resembled Fichte's in 1793, and since Fichte's pamphlets were published anonymously, people might well have thought that Kant had written them, just as they had assumed that he was the author of Fichte's previous book.

<sup>39</sup> Fichte, 'Reclamation', p. 134; *Beitrag*, p. 9.

<sup>40</sup> Fichte, *Beitrag*, p. 126.

<sup>41</sup> On that debate, see Johanna Schultze, *Die Auseinandersetzung zwischen Adel und Bürgertum in den deutschen Zeitschriften der letzten drei Jahrzehnte des 18. Jahrhunderts* (1773–1806), volume 163 of *Historische Studien* (Berlin: Verlag von Emil Ebering, 1925).

<sup>42</sup> Hans Rosenberg named the period Prussia's 'age of noble reaction'. See *Bureaucracy*, pp. 70 and 181. Also Berdahl, *The Politics*, p. 78; Wilson, *From Reich to Revolution: German History, 1558–1806* (New York: Palgrave Macmillan, 2004), pp. 243, 332.

<sup>43</sup> Epstein, *The Genesis of German Conservatism*, p. 547; Knudsen, *Justus Möser*, p. 1ff.

<sup>44</sup> Berdahl, *The Politics*, p. 3ff; Sheehan, *German History*, p. 504ff.

## KANT'S INITIAL VIEW OF EQUAL FREEDOM

When Kant eventually published *Theory and Practice* in *Berlinische Monatsschrift* in September 1793, he sided with the modern concept of a right to equal freedom. The essay is framed as a polemic against a 'worthy gentleman' who as a 'man of affairs' disparages theories and systems, as well as academics. Although scholars have speculated that Kant had Edmund Burke, Friedrich Gentz, or Christian Garve in mind,<sup>45</sup> the evidence is inconclusive and Kant likely also aimed at Gottfried Achenwall.<sup>46</sup> Although not a man of affairs, but a scholar, Kant singles him out later in the essay as one of several 'worthy men' who take a prudential approach to politics. In the introduction to his influential book *Die Staatsklugheit nach ihren ersten Grundsätzen entworfen*, Achenwall had committed himself to the view that something can be true in the abstract but false in practice.<sup>47</sup> There are always exceptions to rules due to the special conditions and circumstances in different countries, and rules apply only in so far as they contribute to the common good. Regardless of who the 'worthy gentleman' was—and it may very well be a synthesis of several writers—by 1793 the saying that 'what works in theory is of no use in practice' was common, and frequently used to disparage the French Revolution. Justus Möser, for example, published a piece in *Berlinische Monatsschrift* in 1791, claiming that the 'scholarly theory [Buchtheorie] of the rights of man' was responsible for the excesses of the French Revolution and that society should be guided by 'common practice'.<sup>48</sup>

Kant's essay may also have been aimed at others than the 'worthy gentleman'. Fichte had attempted to hijack the critical philosophy, and, as we shall see, Kant did not develop his philosophy along the lines that Fichte had expected. We do not know whether Kant read Fichte's essays prior to composing *Theory and Practice*, but he may have been aware of their content since he was a frequent target of Fichte's visits and missives.

Kant's essay is structured in three parts. The first and the third parts respond to the critiques of his theory of individual morality, as developed during the 1780s. Christian Garve, who had made the sentimentalist claim that moral action is motivated by a desire for happiness, is the target of Part One. Kant responds that happiness is good, but not a good in itself: 'I must first be sure

<sup>45</sup> These views are held respectively by Paul Wittichen, 'Kant und Burke', *Historische Zeitschrift*, 93 (1904): 253–255; Thérèse Dietrich, 'Kant's Polemik mit dem absprechenden Ehrenmann Friedrich Gentz', *Dialektik*, 17 (1989): 128–136, and Henrich, 'Über den Sinn vernünftigen Handelns'.

<sup>46</sup> See Philonenko, *Théorie et Praxis*, p. 12. Also like the worthy gentleman, Achenwall treats politics from three different standpoints (laws for individuals, states, and international relations).

<sup>47</sup> Gottfried Achenwall, *Die Staatsklugheit nach ihren ersten Grundsätzen entworfen*, Vierte Ausgabe (Göttingen, Witwe Vandenboeck, 1779), p. xxi.

<sup>48</sup> Justus Möser, 'Über das Recht', p. 290.

that I am not acting against my duty; only afterwards am I permitted to look around for happiness.<sup>49</sup> Moreover, a certain kind of happiness flows from the knowledge that one has done one's duty, a moral feeling that is the effect, not the cause, of acting virtuously. Although Garve had claimed to be more realistic than Kant because he began with the empirical observation that people tend to seek happiness, Kant turns the tables on Garve. The most ordinary moral experience being the tension between obedience to duty and the pursuit of selfish interests, critical philosophy captures moral phenomenology better than Garve's sentimentalism.<sup>50</sup>

Part Three of *Theory and Practice* answers Moses Mendelsohn's critique of Kant's notion of enlightenment and cosmopolitan history, reiterating views we explored in the previous chapter. Part Two, which concerns freedom in a constitutional state, is the most original section, and is subtitled 'against Hobbes', just as the first and third parts are 'against Garve' and 'against Mendelsohn'. But apart from one critical remark at the end, Kant never engages with Hobbes, and in fact his concepts of sovereignty and citizenship are clearly influenced by Hobbes' *De Cive*. The debate which followed the publication of *Theory and Practice* focused almost exclusively on Part Two, 'On the relation of theory to practice in the right of a state', which is the focus of this chapter.

Kant begins by setting out the proper relation between theory and practice. With regard to moral questions, principles must be established a priori, and only then implemented in practice. Just as *ought* cannot be derived from *is*, morally binding principles cannot be derived from conventions and traditions, as Möser and Burke would have it. Kant had already established this in *Critique of Pure Reason*:

For when we consider nature, experience provides us with the rule and is the source of truth; but with respect to moral laws, experience is (alas!) the mother of illusion, and it is most reprehensible to derive the laws concerning what I *ought to do* from what *is done*, or to want to limit it to that.<sup>51</sup>

Strikingly, Kant does not seek to connect the concept of moral autonomy, as he had developed it in the 1780s, with the concept of external freedom, which he presents in Part II of *Theory and Practice*. Fichte had based his entire theory of right on the view that since individuals have the capacity for autonomy they must be free to decide whether to join a state. Kant directly contradicts this on the first page of the essay. The fact that people inevitably interact with one another means that they have no right to remain outside the state. The state 'is in itself an end (that each ought to have)',<sup>52</sup> and there is an unconditional duty to

<sup>49</sup> Kant, 'Über den Gemeinspruch', 8:283.

<sup>50</sup> See Jeffrie G. Murphy, 'Kant on Theory and Practice', in *Nomos XXXVII: Theory and Practice*, edited by Ian Shapiro and Judith Wagner DeCew (New York: New York University Press, 1995).

<sup>51</sup> Kant, *CPR*, B375/A 319. Emphasis in the original.

<sup>52</sup> Kant, 'On the Common Saying: That May Be Correct in Theory, but It Is of No Use in Practice', *TP*, 8:290.

join it, unlike other societies such as corporations and churches. Moreover, the essay dispenses with the concept of moral autonomy and introduces a concept of external freedom, which makes no essential reference to the mental state of the agent. It simply concerns the exercise of arbitrary choice (*Willkür*) regardless of whether the choice is autonomous or heteronomous. External freedom is the basis of a concept of right (*Recht*): those norms of justice that can be made into the positive law of the state and coercively enforced. The noun *Recht* does not translate well as either ‘justice’ or ‘law’, but has connotations of both. Kant uses the term to describe a system of law established by the philosopher *a priori* through reasoning.

At this point Kant describes right as a *limitation* on the way individuals use their freedom in relation to one another: ‘Right is the limitation [*Einschränkung*] of the freedom of each to the condition of its harmony with the freedom of everyone insofar as this is possible in accordance with a universal law.’<sup>53</sup> The state may limit freedom only by the rule of law and for the sake of the equal freedom of others, never for the sake of public happiness, religious virtue, or even moral perfection. It nonetheless remains the case that when individuals enter the state, they give up an amount of freedom in return for the protection of their remaining freedoms.

The concept of right is an *a priori* principle, by which Kant means that it is based on reason and discerned through reflection on the concept of right, which has universal validity. Basing moral judgment only on experience—the approach of the ‘worthy gentleman’—entails registering what people actually think about right and wrong, and what ends they seek. Such an inquiry only reveals what people value at a particular time and in a particular place, not right in itself. There is no unity in the ends persons pursue, hence justice could not be universal and necessary if it was oriented teleologically towards ends. A concept of right based on equal freedom does not refer to individual ends and applies universally, regardless of particular interests.

Kant’s view contrasted with the dominant Wolffian teleological view, which based right on peoples’ desire for happiness, and social ends: ‘The public happiness is the highest law’.<sup>54</sup> Wolff specified that by *salus civitatis* he meant ‘enjoying sufficient means of subsistence, peace, and security’.<sup>55</sup> Laws were means to this end.<sup>56</sup> Kant was aware that basing justice on mutual freedom rather than a material end was unorthodox and was careful to acknowledge tradition even as he reinterpreted it:

<sup>53</sup> Kant, *TP*, 8:289.      <sup>54</sup> Wolff, *Grundsätze*, p. 709.

<sup>55</sup> Wolff, *Grundsätze*, p. 686.

<sup>56</sup> In this respect Wolff had something in common with the utilitarian philosophy that Kant’s younger contemporary Jeremy Bentham was developing. Although classical utilitarianism defines happiness differently, the laws are fundamentally a means to an end. Kant is unlikely to have read Bentham. See *An Introduction to the Principles of Morals and Legislation*, edited by James Henderson Burns and Frederick Rosen (London: Athlone Press, 1996).

The saying *Salus publica suprema civitatis lex est* remains undiminished in its worth and authority; but the public well-being that must *first* be taken into account is precisely that lawful constitution which secures everyone his freedom by laws, whereby each remains at liberty to seek his happiness in whatever way seems best to him.<sup>57</sup>

The principle of right is the source of three a priori principles for a just constitution:

The freedom of every member of the society as a human being [*Mensch*].

His equality with every other as a *subject* [*Unterthan*].

The independence of every member of a commonwealth as a *citizen* [*Bürger*].<sup>58</sup>

The first principle rejects the paternalistic government (*väterliche Regierung*) of a benevolent but arbitrary master who imposes a view of happiness on dependent subjects instead of giving them legal independence to pursue private happiness. This freedom is the essence of patriotic government (*vaterländische Regierung*). Legislation aiming at human perfection and general welfare represented a paternalistic intrusion into what Kant thought of as a private sphere.<sup>59</sup> No doubt, Kant's indictment of a politics of happiness was intended against Wolff and his followers as well as the rule of Frederick II, who had championed a similarly eudemonistic absolutism. In this critique of paternalism Kant was aligned with other liberals at the time. In an essay published in Schiller's *Neue Thalia* in 1792, Humboldt had written that 'any state interference in private affairs, where there is no immediate reference to violence done to individual rights, should be absolutely condemned'.<sup>60</sup> Yet, in contrast to Humboldt, Kant did not define rights by reference to moral perfection and avoidance of harm, but by their purpose of securing equal external freedom.

The second principle defends equal freedom: 'Every member of the commonwealth must be allowed to attain any level of rank within it [...] to which his talent, his industry, and his luck can take him.' The only legitimate exception to the rule of equal freedom is the unequal juridical status that obtains between all the subjects and the head of state, the only person entitled to use coercion. Although this principle had appeared in Kant's notes and lectures from the 1780s, he now applies it to the institution of hereditary nobility. There can be no 'innate prerogative (*angebornes Vorrecht*) of one member of a commonwealth over another as fellow subjects, and no one can bequeath to his descendants the prerogative of the *rank* which he has within

<sup>57</sup> Kant, TP, 8:298. Compare MM, 6:318, and Reflection 7683, NM, 19:489.

<sup>58</sup> Kant, TP, 8:290.

<sup>59</sup> This was not a new thought for Kant. Although not a part of his publications, he expressed it in the 1784 Feyerabend lectures and in his reflections on natural right. See Kant, F, 27:1360, and Reflection 7919, NM, 19:554.

<sup>60</sup> Humboldt's essay was later published as a chapter in *The Limits of State Action*. See *The Limits of State Action*, edited by J. W. Burrow (Cambridge: Cambridge University Press, 1969), p. 22.

a commonwealth.<sup>61</sup> Kant's meritocratic principle clashed with the Prussian practice of hereditary aristocracy defended by Möser and the supporters of the old *Reich*.

Traditional justifications for hereditary privilege included the right of noble birth and the institution's social utility. Neither of these arguments carried any weight with Kant. Since 'birth is not a *deed*' no one deserves a position simply because he has been born into a good family, and since talents are not innate, assigning social position by birth contradicts meritocracy. Hereditary privilege (*erbliche Prärogativen*) contradicts equal freedom of opportunity. The possible social benefits of hereditary privilege cannot be an argument in its favour since laws are not justified by their contribution to material welfare. It follows that hereditary privilege unjustly renders commoners dependent on the nobility. The nobility maintains its position by might, not right. But while rank cannot be passed on, property can be bequeathed to descendants:

He may bequeath anything else, whatever is a thing (not pertaining to his personality) and can be acquired as property and also alienated by him, and so in a series of generations produce a considerable inequality of financial circumstances among the members of the commonwealth (of hireling and hirer, landowners and agricultural laborers, and so forth), but he may not prevent their being authorized to rise themselves to like circumstances if their talent, their industry, and their luck make this possible for them.<sup>62</sup>

Although Kant was well aware that inherited wealth creates unequal conditions for those seeking to succeed in society, the principle of right only restricts individuals from using private coercion to benefit themselves and others. In principle at least, amassing financial resources does not limit anyone else's freedom.

Recognizing that financial status can translate into a higher legal status, the third principle grants each citizen the right, as co-legislator, to vote for his representatives. Not everyone qualifies as a citizen, however: women and children certainly do not, and a citizen must be his 'own master (*sui iuris*)', which means owning property. Kant's first two principles can be considered an attack on the traditional noble elite, but the third principle seeks to establish a new *bourgeois* elite, based on gender and financial position. The next chapter explores how this position connects to the principles of 1789 and whether it contradicts Kant's universalistic presuppositions.

Although Kant did not provide a theory of the obligation to obey the law in his 1793 essay, he made it clear that (unlike Fichte) he did not base it on consent. The notion of the original contract (*ursprüngliche Contract*) is just a thought experiment to establish what right, or justice, requires of law. It is a

<sup>61</sup> Kant, *TP*, 8:293.

<sup>62</sup> Kant, *TP*, 8:293.

rational ‘idea of reason’<sup>63</sup> what hypothetically *could* be willed by free and equal subjects, not a source of individual obligation and state authority:

If a public law is so constituted that a whole people *could not possibly* give its consent to it (as, e.g., that a certain class of subjects should have the hereditary privilege of *ruling rank*), it is unjust; but if it is *only possible* that a people could agree to it, it is a duty to consider the law just, even if the people is at present in such a situation of frame of mind that, if consulted about it, it would probably refuse its consent.<sup>64</sup>

Sieyès had used a similar thought experiment to attack hereditary privilege, explaining that it contradicts dignity and social utility.<sup>65</sup> For Kant, however, it contradicts equal liberty. Those with unmerited higher rank hinder the freedom of the industrious.

Kant was concerned that readers would mistake his contract theory as a test of the limits of legal obligation rather than a test of right. He therefore emphasized that the theory rejects a right of resistance, even against unjust rulers. If resistance were just, each person would have the right to unilaterally decide whether or not to obey the law, which would ‘annihilate any civil constitution and eradicate the condition in which alone people can be in possession of rights generally’.<sup>66</sup> In Chapter 4 we will discuss this controversial claim in more detail.

The view that Kant presented in *Theory and Practice* came as a surprise to those of his followers who expected him to define right and wrong according to what promotes or hinders moral autonomy. Right is instead the necessary condition for securing the external liberty of interacting agents, and state authority protects legal rights and duties. Nothing is said about the relation between external freedom and freedom as autonomy. The notion of self-legislation has a different content. Although individuals can be free and subject to law only insofar as they could rationally consent to it, the law’s content is limited to right, which refers only to the external relations of interacting subjects. The fact that consent is *rational* means that individual obligation does not depend on whether a person actually participates in law-making. Kant’s essay unapologetically defended a metaphysical approach to politics, whose practical consequences aligned with Sieyès’ deductive reasoning and the principles of the 1789 Revolution. Kant did not have to wait long for a response.

<sup>63</sup> Kant, *TP*, 8:297.

<sup>64</sup> Kant, *TP*, 8:297.

<sup>65</sup> Sieyès wrote ‘Can it be conceived that a nation could ever consent to humble, in this manner, 28,850,000 inhabitants for the sake of ridiculously complimenting 200,000? Can the most artful sophist point out, in a combination so anti-social, a single circumstance which contributes to the general interest?’, in Sieyès, ‘An Essay on Privileges’, p. 71.

<sup>66</sup> Kant, *TP*, 8:299.

## CONSERVATIVE CRITICS

Kant's essay was quickly picked up in the public debate, and much of the criticism came from students and acolytes who felt that his political writings betrayed the principles of morals he had established in the 1780s. They agreed with his concept of right and his rejection of hereditary privilege, but argued that Kant's principles implied support for an inclusive *demos* and a right of revolution. We will return to this critique in the next two chapters.

Kant's conservative critics—Garve, Gentz, Rehberg, and Möser—challenged his egalitarian concept of freedom and the very idea that principles should dictate politics. Apart from Garve, who was a writer and bookseller, the critics were political insiders committed to the old regime. Gentz was a Prussian civil servant with an illustrious career ahead of him, which was to include being an advisor to Metternich and secretary to the Congress of Vienna. Rehberg was secretary of an aristocratic council in Hannover, where he eventually rose to the highest rank. Möser, more than a generation older than the other two, went from being the secretary of an estate in Osnabrück in 1742 to the highest offices of the bishopric before his death. His many publications assured his stature as Germany's most eminent conservative. By 1793 all of them had published essays and books condemning the French Revolution.

Although there are many varieties of conservatism, as Klaus Epstein points out, it always involves a commitment to the *status quo* and a desire to preserve it under new circumstances.<sup>67</sup> Gentz and Rehberg were what Epstein calls 'reform conservatives', which meant that, rather than freezing the *status quo* or trying to turn back the clock, they were willing to engage in reform as long as they could preserve 'the maximum possible historical continuity'.<sup>68</sup> They still exemplify two different types of conservatism, however. Gentz championed the modern view of individual freedom, but disliked its intolerant and fanatical defenders and thought that the state should severely limit freedom for the sake of order and stability.<sup>69</sup> Rehberg was less committed to freedom and more concerned with maintaining the old estate society with its guilds, churches, and other intermediary associations. He justified authority by appealing to custom: the myriad agreements and traditions that nurture institutional development. Möser was a staunch defender of the old regime, representing the German *Kleinstaat*'s ideas of nobility, paternalistic rule, traditional beliefs, and practices. He decisively rejected the rights of man (*das Recht der Menschheit*) after the French Revolution.<sup>70</sup> In Epstein's terms, his rejection of modern liberal ideas would label him close to a reactionary. Yet, as Beiser has emphasized,

<sup>67</sup> Epstein, *The Genesis of German Conservatism*, p. 7.

<sup>68</sup> Epstein, *The Genesis of German Conservatism*, pp. 8–9.

<sup>69</sup> Gentz, 'Über Politische Freiheit', pp. 424 and 429.

<sup>70</sup> Möser, 'Über das Recht der Menschheit', p. 290.

his defence of traditionalism also led him to a frontal attack on absolutism, which resembled Herder's proto-democratic defence of self-government.<sup>71</sup>

Gentz and Rehberg were directly influenced by both Kant and the conservatives. A student of Garve and the translator of Burke's *Reflections on the Revolution in France*, Gentz had studied with Kant in Königsberg, where he had helped to proofread the *Critique of Judgment*. Rehberg became the protégé of Möser, whom he called his 'fatherly friend', while temporarily assigned to Osnabrück.<sup>72</sup> Reinhold Jachmann, a friend of Kant's, described Rehberg in a letter as Kant's 'student' in the broader sense of that term, although Rehberg had never formally studied with Kant.<sup>73</sup> He had studied Kant's ethics at Göttingen and had written a review of *Critique of Practical Reason* that, notwithstanding, endorsed Kant's foundation.<sup>74</sup> These conflicting commitments may have contributed to the two critics' uncomfortable attempts to combine basic Kantian principles with a defence of the old regime.

Christian Garve had no such qualms.<sup>75</sup> Garve's reply was based on an unapologetic empiricism, fitting for someone who fancied himself the German Hume.<sup>76</sup> Moral theory, whether for individuals or for society, should be inductively generated from experience, and although it employs abstract concepts such as duties and rights, particular historical events determine its content.<sup>77</sup> Judgment, derived partially from a sense of truth (*Wahrheitsgefühl*) and partially from the need for consistency, should supplement theory.<sup>78</sup> Rules can be bent in order to make theory fit particular circumstances. Although Garve's essay on *Theory and Practice* was published in 1800 (posthumously, since he died in 1798) and therefore too late to inform Kant's subsequent theory of right, Kant was familiar with his writings and could have imagined his reaction.

Gentz's reply to Kant appeared in *Berlinische Monatsschrift* in December 1793.<sup>79</sup> Dieter Henrich has argued that the reply sacrificed Kant's practical

<sup>71</sup> Beiser, *Enlightenment*, pp. 291–292.

<sup>72</sup> Epstein, *The Genesis of German Conservatism*, p. 557.

<sup>73</sup> Letter from Jachmann to Kant, 14 October 1790, in C, 11:225.

<sup>74</sup> August Wilhelm Rehberg, 'Rezension der Kritik der praktischen Vernunft', in *Rehbergs Opposition gegen Kants Ethik*, edited by Eberhard G. Schulz (Köln: Böhlau, 1975), p. 241. Kant polemicized against Rehberg in his book on religion from 1793. See *Religion within the Boundaries of Mere Reason*, translated by George di Giovanni, in *Religion and Rational Theology. The Cambridge Edition of the Works of Immanuel Kant*, edited by Allen W. Wood and George di Giovanni (Cambridge: Cambridge University Press, 1996), Rel. 6:7, 58, and 171.

<sup>75</sup> Christian Garve, 'Über den Unterschied von *Theorie und Praxis*, in Beziehung auf die Abhandlung eines andern Schriftstellers über denselben Gegenstand in der Berlinischen Monatsschrift', in *Vermischte Aufsätze, welche einzeln oder in Zeitschriften erschienen sind* (Breslau: bey Wilhelm Gottlieb Korn, 1800).

<sup>76</sup> See Falk Wunderlich, 'Garve', in *The Dictionary of Eighteenth-century German Philosophers*. General editors: Heiner F. Klemme and Manfred Kuehn (London: Continuum International Publishing Group Ltd, 2010).

<sup>77</sup> Garve, 'Über den Unterschied', p. 418.

<sup>78</sup> Garve, 'Über den Unterschied', p. 425.

<sup>79</sup> Friedrich Gentz, 'Nachtrag zu dem Räsonnement des Herrn Professor Kant über das Verhältniß zwischen Theorie und Praxis', in *Kant, Gentz, Rehberg: Über Theorie und Praxis*, edited by Dieter Henrich (Frankfurt am Main: Suhrkamp, 1967).

philosophy for the sake of Humean pragmatism.<sup>80</sup> Although Gentz's suggestion may not be quite that radical since he remained committed to Kant's ethics, he clearly interpreted Kant's basic principles in a way that favoured Prussian political stability. Showing deference (*Ehrfurcht*), he says that he completely agrees with his former teacher about freedom of will, but begs to differ with regard to politics. The principle of freedom is necessary, but not sufficient for political practice.<sup>81</sup> Constitution building, whose purpose is to secure the stability of the state, is a practical process that requires empirical knowledge of people and social behaviour in order to ground a new theory of implementation.<sup>82</sup> Gentz was particularly keen to reinterpret Kant's claim that since freedom entails equal rights, it excludes hereditary privilege. He points out that Kant required only the equality of *subjects* and had exempted the head of state because the sovereign has non-reciprocal coercive rights over subjects. Gentz deduces that *all* government-connected privileges are justified, including the hereditary privileges of monarchs in monarchies, senators in aristocracies such as Venice, and peers of the realm in England.<sup>83</sup> This argument neglects that it was Kant's commitment to meritocracy that led him to reject hereditary nobility and an aristocratic constitution.<sup>84</sup> Perhaps recognizing the weakness of his interpretation, Gentz adds that hereditary privileges obstruct freedom only when they are truly exclusive. They are only truly exclusive, however, if the ranks of the nobility are closed to new members.<sup>85</sup> Nobility is perfectly just if all have equal opportunity to join as a result of their talent, industry, or luck, even when the status is inherited by descendants who did nothing to merit it.

Rehberg's reply to Kant followed in *Berlinische Monatsschrift* in February 1794, and repeated much of the critique already published in his two books on the Revolution.<sup>86</sup> Like Gentz, he argued that a priori principles are insufficient to ground political practice. He went further though, claiming that empirical knowledge is essential because the principles of justice themselves are derived from the conventions of historically situated communities. The categorical imperative is too formal to reveal anything useful about actual conduct (a critique that G. W. F. Hegel, who read Rehberg as a *Gymnasiast*, later made famous<sup>87</sup>). The principle is insufficient even when Kant's second injunction to treat others as ends and never as a means is added.<sup>88</sup> Rehberg claims that this

<sup>80</sup> Henrich, 'Über den Sinn vernünftigen Handelns', p. 105.

<sup>81</sup> Gentz, 'Nachtrag', p. 101.      <sup>82</sup> Gentz, 'Nachtrag', p. 103.

<sup>83</sup> Gentz, 'Nachtrag', p. 98.

<sup>84</sup> Moreover, Kant's point was slightly different. Since rulers must have the right to use force—a right subjects cannot have—there has to be *one* juridical inequality. But this legal inequality is different from the many privileges of princes and nobles in the old regime and is not hereditary.

<sup>85</sup> Gentz, 'Nachtrag', p. 99.

<sup>86</sup> August Wilhelm Rehberg, 'Über das Verhältniß der Theorie zur Praxis', in *Kant, Gentz, Rehberg: Über Theorie und Praxis*, edited by Dieter Henrich (Frankfurt am Main: Suhrkamp, 1967).

<sup>87</sup> See G. W. F. Hegel, *Vorlesungen über die Philosophie des Rechts: Berlin 1819/1820*, edited by Emil Angehrn (Hamburg: F. Meiner, 2000), p. 224.

<sup>88</sup> Kant, G, 4:429.

is because the technical mandate is actually to respect *reason*, not *humanity*, as an end in itself because (as Kant himself had admitted) humanity is a much broader category than reason. In real life, where reason tends to be mixed with all sorts of folly and caprice, the irrational and arbitrary ways in which individuals lead their lives need not be tolerated. Sometimes humans should *not* be treated as ends in themselves.<sup>89</sup>

Rehberg radically distinguishes free will (the rational capacity for autonomy) from external freedom (the right to have one's choices protected by law). When humans seek to realize external freedom, they inevitably need material things—their own bodies and other possessions—which are categorized as private property. But property rights are not given *a priori*; there is no 'metaphysically free property'.<sup>90</sup> Humans own only their own will, and generate property rights through interpersonal contracts. Humans may be free rational agents in a kingdom of ends, but as members of a real community they are subject to the distributions of property and rights that have arisen in that particular society over the course of its particular history. By dramatically reinterpreting Kant's distinction between the inner and outer domains (which Hegel later would decry as sophism<sup>91</sup>), Rehberg revises the three principles:

The *freedom* of every member of society as *human* applies only to that which is really free in a human, that is, it applies to its will. The right to freedom does not belong to the member of the commonwealth as such, to the whole human, but only to the human *in so far he is a rational being*.<sup>92</sup>

Individuals have no right to equal freedom because they act within a material world constituted by unequally distributed property. How much property a person has, as well as the social status of his trade, determines his estate, and estate membership determines civil rights. Since estates are hierarchically organized, rights vary widely in 'scope and content', and since the distinctions are hereditary, a person's civil rights are inherent and dependent upon their forefathers' social rank.<sup>93</sup>

Rehberg's approach to citizenship is similarly conservative and conventionalist. Agreeing with Kant that citizenship must be limited to those who are their own masters, he denies that becoming one's own master is a simple matter of gaining wealth or being an industrious and self-supporting craftsman. Actual agreements among corporations and guilds establish citizenship rights; social recognition, not individual enterprise, is the decisive factor. Echoing Möser,

<sup>89</sup> Rehberg, 'Über das Verhältniß', p. 119.

<sup>90</sup> Rehberg, 'Über das Verhältniß', p. 122.

<sup>91</sup> G. W. F. Hegel, *Elements of the Philosophy of Right*, edited by Allen Wood, translated by H. B. Nisbet (Cambridge: Cambridge University Press, 1991), paragraph 48.

<sup>92</sup> Rehberg, 'Über das Verhältniß', p. 123.

<sup>93</sup> Rehberg, 'Über das Verhältniß', p. 125.

he writes: 'In truth, not one person in the world is completely his own master [*Herr*]. Everyone lives under laws that are historically created and express the privileges of institutions within the larger hierarchy of society.'<sup>94</sup>

Rehberg concluded that Kant's theory of a civil society based on a priori principles 'can work only in a world where members are entirely, metaphysically free' and 'the makers of their own sphere of action'.<sup>95</sup> Since Kant had simply adopted Rousseau's principles of justice, he should have admitted, as Rousseau had, that 'his system is fit only for a republic of gods'. Attempting to implement an a priori system of natural right among humans would lead to anarchy because perfect equality would mean sacrificing the inherited estates that sustain the existing constitutions.<sup>96</sup>

Möser died in 1793 before he had completed his reply to Kant's *Theory and Practice*, but in 1798 Biester published an excerpt in *Berlinische Blätter*.<sup>97</sup> Möser's general view was that rights depend on property, and property is unequally distributed according to an inherited social hierarchy.<sup>98</sup> It is all very well to speak, like the French, of *la nation*, but one must not forget that *la nation* comprises the original landowners, the masters, and those who came later, the tenants.<sup>99</sup> He does not rely on this view in the reply, but seeks instead to show that Kant's own theory of justice—the hypothetical social contract—can be used to defend hereditary privilege. Möser had little patience for philosophy but was a good storyteller, and he told a story about a benevolent emperor who allows his subjects in twelve different provinces to elect their duke. In the first six provinces, the people chose *not* to elect the son of the former duke and had a bad outcome. New rulers, even if they are educated, do not know the local conditions; if the new ruler is not noble, he will not be respected; if the election is democratic, there will be conflict and civil war and so on. In the other six provinces, however, the people elected the son of the former duke and lived happily ever after. Conveniently, the new ruler can use the spectacular old castle, the son assumes his father's debts, his relationships with the nobility in the neighbouring province allow him to make alliances through marriage, and the subjects see the son as legitimate because he carries on family traditions and so on. Considering these good consequences of hereditary prerogatives, Möser concludes that a people could very well choose them. This use of the social contract was not quite what Kant had in mind, as his response demonstrates.

<sup>94</sup> Rehberg, 'Über das Verhältniß', p. 125.

<sup>95</sup> Rehberg, 'Über das Verhältniß', p. 127.

<sup>96</sup> Rehberg, 'Über das Verhältniß', p. 130.

<sup>97</sup> Justus Möser, 'Über die Erblichkeit des Herrenstandes bei gewissen Familien in einem monarchischen Staate', *Berlinische Blätter* (1798), pp. 116–125. *Berlinische Blätter* was the new name for *Berlinische Monatsschrift*.

<sup>98</sup> Knudsen, *Justus Möser*, pp. 168 and 179.

<sup>99</sup> Justus Möser, 'Wann und wie mag eine Nation ihre Konstitution verändern?', in *Deutsches Staatsdenken im 18. Jahrhundert*, edited by Georg Lenz (Neuwied and Berlin: Luchterhand, 1965), pp. 276 and 278.

The conservative critique met with a robust response. August Adolph Friedrich Hennings (1746–1846), the influential political publicist and defender of the Enlightenment, published a response to Gentz in his journal.<sup>100</sup> The unknown author, who signed with the pseudonym Aletes, admitted that all theory must attend to experience in order to be effectively put into practice. Yet, he exposes as trivial Gentz's argument that hereditary nobility could be justified on Kantian grounds. The *fact* that the German nobility did play a role in the states at the time does not mean that they *ought* to do so:

What will come of our constitutional law [*Staatsrecht*], if we forever confuse pure and empirical with each other, and if our habits and institutions, which have arisen in the deepest barbarism of the middle ages, are transferred to an ideal, which we still exclusively (when it comes to theory) should create from reason; when we take to be *right* that which *has happened*, and not what *ought to happen*.<sup>101</sup>

Gentz's view that hereditary privileges are fine as long as they are initially achieved by merit still meant that rank followed birth and contradicted equality. Should an aristocratic *Dummkopf* have, from the minute he first drew breath, more privileges than thousands of hard-working subjects could ever dream of? 'Oh Reason! How horribly does not humans deform your holy laws!'<sup>102</sup> Hereditary wealth is a different matter. Since it does not involve legal privileges it does not come at anyone else's expense and it can justly be passed on to the next generation.

Kant's conservative critics defended the existing order partly because they were afraid of social chaos and partly because they were convinced that moral values grow out of tradition and convention. Since this argument echoed Edmund Burke's conservatism, and the critics knew they had to persuade Germany's many supporters of the Enlightenment, their strategy was to stake out basic Kantian principles and then conclude that they were compatible with hereditary privilege. It would have been a triumph to prove that the principles of the great man of the *Aufklärung* could genuinely accommodate—or even justify—the cornerstone of the old regime.

## KANT'S FINAL VIEW

Kant received Rehberg's essay on 9 April 1794 and wrote a letter the following day to Johann Erich Biester, the editor of *Berlinische Monatsschrift*, who had invited him to answer his critics.<sup>103</sup> Kant's letter took a swipe at Rehberg,

<sup>100</sup> Aletes, 'Wie unterscheidet sich Theorie von der Praxis?', in *Annalen der leidenden Menschheit in zwanglosen Heften* (1795), pp. 108–123.

<sup>101</sup> Aletes, 'Wie unterscheidet sich', p. 114.

<sup>102</sup> Aletes, 'Wie unterscheidet sich', p. 117.

<sup>103</sup> See letter from Biester to Kant on 4 March 1794, in Kant, AA, 11:490–492, and letter from Kant to Johann Erich Biester, 10 April 1794, in Kant, C, 11:496–497.

saying that he writes more like a lawyer than a philosopher, and lawyers always defend the powers that be. He ‘puts a sword onto the scales of justice to balance the side of rational grounds’.<sup>104</sup> Rehberg does not apply Kant’s theories to reality but resorts to trickery, Kant writes, playing with the words application (*Praxis*) and trickery (*Praktiken*):

In reading [Rehberg’s essay], I found that, as regards the infinite disparity between rationalist and empiricist interpretations of concepts of justice the answering of his objections would take too *long*; with regard to his principles of justice grounded on power as the highest source of legislation, the answering would be too *dangerous*; and in view of his already having decided in favour of the powers that be (as on page 122), the answering would be in *vain*.<sup>105</sup>

Kant concluded: ‘It can hardly be expected that a man of 70 would occupy himself with tasks that are burdensome, dangerous, and in vain’.<sup>106</sup>

But that was not the end of the discussion. Although Kant never mentioned Rehberg’s or Gentz’s names in writing again, he proceeded to compose a string of political essays that implicitly continued the debate with them.<sup>107</sup> In *Perpetual Peace*, completed in August 1795, he presents himself as a ‘theoretical politician’, who proceeds differently from ‘practical politicians’ who employ empirical principles. And he was quick to respond to Möser as soon as the latter’s critique was published in 1798. The debate can also be traced in his lectures on ‘The Metaphysics of Morals’ in 1793–1794, which were preserved for posterity by his student Johann Friedrich Vigilantus (1757–1823). Kant adopted a two-pronged strategy: first, he explained the proper relation between theory and practice, and second, he argued that because individuals cannot unilaterally secure external freedom, reason entails that equal legal status must be secured in a republican state. Putting the ideals into practice can nonetheless be delayed if doing so at once would risk the success of the transition. Kant developed some of the central elements of his political theory during the course of this debate.

It was important for Kant to refute Gentz, Rehberg, and Möser, not just because they were influential contemporaries, but because they claimed to base their reasoning on Kantian principles. He could not simply dismiss them as being on the wrong track. And, to be sure, German readers of Kant found something in the conservative critics’ reasoning that resonated. The orthodox Kantian Wilhelm Gottlieb Tafinger (1760–1813), who composed a treatise on natural law in 1794, expressed sympathy for Rehberg and Gentz’s appeal to

<sup>104</sup> Letter from Kant to Biester, 10 April 1794, C, 11:496.

<sup>105</sup> Kant’s page reference is to Rehberg’s statement cited above in footnote 89.

<sup>106</sup> Letter from Kant to Biester, 10 April 1794, C, 11:497.

<sup>107</sup> Heiner Klemme also notes this continuity. See ‘Einleitung’, in *Über den Gemeinspruch: Das mag in der Theorie richtig sein, taugt aber nicht für die Praxis*, edited by Heiner Klemme (Hamburg: Felix Meiner, 1993).

prudence.<sup>108</sup> After all, in *Critique of Pure Reason*, and in the moral writings of the 1780s, Kant had emphasized the distinction between internal autonomy and external natural causality, between humans as free in a *noumenal* sense and determined in a *phenomenal* sense. It would have been possible to conclude that freedom was just a matter of will, not essentially connected to social and political practice. In his historical writings, Kant had viewed the state as an instrument for developing moral agency. Someone might conclude that other social systems, such as paternalistic absolutism or a modernized version of the late feudal *Ständestaat*, could serve that function equally well.

Yet *Perpetual Peace* upheld the principles of 1789. The fortunes of France had changed yet again with the Thermidorian reaction, the rounding up of the Jacobins, and Robespierre going to the guillotine on 28 July 1794.<sup>109</sup> His paranoid regime of terror and virtue had finally come to an end. The liberals of 1789 were in power again, among them Sieyès, who had been lying low for a few years (when asked what he did during the Terror, he answered 'I survived'). On 5 April 1795 Prussia and France signed a peace treaty in Basle. Although the intervening years had demonstrated the dangers of rational ideals in politics, the liberals' return to power must have seemed like a vindication of the kind of principles Kant defended.

No longer advocating 'patriotic government', Kant publicly endorsed republicanism for the first time, stating that 'the civil constitution in every state shall be republican'.<sup>110</sup> The change in terminology may have been in response to Gentz, who had argued that 'patriotic government' could actually be compatible with 'paternalistic government'.<sup>111</sup> In his letter to Kant, Biester had pointed out this troublesome feature of Gentz's essay. In the 1790s 'patriotism' was an ambiguous term that could be understood both conservatively, as in Möser's *Patriotische Phantasien* where it indicated adherence to the traditional corporate society, and radically, indicating the egalitarian ideals of the Enlightenment.<sup>112</sup> But 'republicanism' was unambiguously connected with equal freedom, and by switching terms Kant clarified that paternalism was incompatible with freedom. He defined the republican constitution in much the same way as he had previously defined the patriotic constitution, giving his own definition of external freedom a more democratic dimension. External

<sup>108</sup> Wilhelm Gottlieb Tafinger, *Lehrsäze des Naturrechts* (Tübingen: in der Johann Georg Cottaischen Buchhandlung), pp. 13, 75. Tafinger corresponded with Kant in 1792.

<sup>109</sup> See Furet, *Revolutionary France*, p. 151ff.

<sup>110</sup> Kant, *Toward Perpetual Peace*, translated by Mary Gregor, in *Kant's Practical Philosophy*, edited by Mary Gregor (Cambridge: Cambridge University Press, 1996), pp. 349; see also Dann, 2002. Kant had previously used the term in a metaphorical sense to describe a spiritual community and to identify ancient republics and thinkers.

<sup>111</sup> Gentz, 'Nachtrag', p. 97.

<sup>112</sup> Rudolf Vierhaus, 'Wir nennen's Gemeinsinn', in Heideking and Henretta, *Republicanism and Liberalism*, p. 26. See also Otto Dann, 'Kant's Republicanism and Its Echoes', in the same volume.

freedom is 'the warrant to obey no other external laws than those to which I could have given my consent'.<sup>113</sup>

Although Gentz, Rehberg, and Möser defended distinct political visions, all were equally sceptical of theory dictating reality. Kant's addressee in *Perpetual Peace* is the imaginary 'practical man' from *Theory and Practice* who may well have been a composite of all the critics. Yet, Kant's description of the politically prudent man matches his description of Rehberg in the letter to Biester. He 'puts the sword into [the scales of justice]', and deals in 'trickery' to obtain his preferred outcomes.<sup>114</sup> These phrases only reappear later in his reply to Möser.

The real problem with the practical man 'who frames a morals to suit the statesman's advantage' is that he is unprincipled.<sup>115</sup> Since his principles are derived from desired ends, the practical man is 'putting the cart before the horse'.<sup>116</sup> He dogmatically decides that a particular social arrangement is good and reduces politics to the technical endeavour of finding the means to produce that outcome. Laws ought instead to be constructed from a formal principle before being implemented in reality. This formal principle is the hypothetical original contract, which defines right and wrong from the mutual consistency of choices. Hereditary privilege is a case in point. No people could agree to a society based on inherited rank because merit and birth are not co-extensive, and 'a nobleman is not necessarily a *noble* man'. (Kant adds that it would be equally absurd for the people to agree to a 'born professor').<sup>117</sup> This time, Kant is clear that his argument is based on freedom (a claim that had mainly been implicit in *Theory and Practice*): 'Since we cannot admit that any man would [*werde*] throw away his freedom, it is impossible for the general will of the people to assent to such groundless prerogative, and therefore for the sovereign to validate it'.<sup>118</sup> By 'throwing away his freedom', Kant likely means to abandon the principle of right, which prescribes that the freedom of one must be consistent with that of another. This response repudiates Gentz's attempt to argue that Kantian principles support hereditary nobility so long as there is equal opportunity to join it. Because Gentz allows status differences not based on merit, his view remains inconsistent with right.

The same idea (with some of the same wording) and the claim that practice 'must always be arranged according to theory'<sup>119</sup> appear in Kant's final essay, his response to Möser, published in a pamphlet called *On Turning out Books* in 1798.<sup>120</sup> Möser had tried to argue that Kant *malgré lui* must accept hereditary privilege because its salutary consequences showed that a people could indeed agree to it in a hypothetical original contract. Kant was not pleased. The original

<sup>113</sup> Kant, *PP*, 8:350.

<sup>114</sup> Kant, *PP*, 8:369, 373.

<sup>115</sup> Kant, *PP*, 8:372.

<sup>116</sup> Kant, *PP*, 8:376.

<sup>117</sup> Kant, *PP*, 8:351, *MM*, 6:329.

<sup>118</sup> Kant, *MM*, 6:329.

<sup>119</sup> Kant, 'On Turning Out Books', translated and edited by Allen W. Wood, in *Kant's Practical Philosophy*, edited by Mary Gregor (Cambridge: Cambridge University Press, 1996); *TB*, 8:435.

<sup>120</sup> Hans Reiss, 'Kant, Möser und Nicolai', *Möser-Forum XXXIII*, 3 (2001): 15–35.

contract represents what people *ought to* choose, not what they would *actually* choose. A people can want anything, including servitude, but they must choose according to the principle of right, not according to what makes them happy. Inherited privilege is unjust 'even if it might be customary and in many cases even useful to the state' because the premise of right is equal freedom.<sup>121</sup>

In his lectures from the same period Kant dismisses the 'stupid opinion of the empiricists' that theory cannot dictate reality because (as they claim) history gives no example that it has happened.<sup>122</sup> It may be true that a perfectly just constitution has never existed, but this is not a valid objection. Moral principles impose duties, and they apply even if they have yet to be fully realized in practice. The most pernicious effect of the purportedly sober realism of the conservative practical man is that he does not just describe the difficult circumstances of justice—he actually *creates* them. The practical man's central premise is that individuals must be managed because they are incapable of free agency. Yet, the claim that only a nation of angels could live in a republic makes people doubt their capacity for freedom and self-government:

Such a pernicious theory itself produces the trouble it predicts, throwing human beings into one class with other living machines, which need only be aware that they are not free in order to become, in their own judgment, the most miserable of all beings in the world.<sup>123</sup>

Kant's argument against the man of practice continues in *Conflict of the Faculties*, published in 1798 but written in 1795. Practical men heavy-handedly antagonize individuals by treating them as if they are incapable of freedom. If they respond by becoming stubborn and uncooperative, more coercion and manipulation are justified.<sup>124</sup>

Although Kant's conservative critics had tried to prove their points using Kantian reasoning, Kant turns the tables on them and vindicates his republican ideal by using the empiricism of his opponents against them. He argues in Mandevillian fashion that even a nation of 'devils' could create a republic if only they have understanding (*Verstand*).<sup>125</sup> Their natural self-seeking would induce them to cooperate in the face of an external threat, without morality, never mind saintliness, entering the picture. This argument revives the notion of unsocial sociability that Kant had used in the 1780s to explain the cultivation of moral agency. Although moral agency is no longer part of the equation, unsocial sociability can result in the founding of a republic.

If realism produces the trouble it predicts, idealism can be equally self-fulfilling. Kant is not about to argue that humans will become rational and autonomous the minute they are given freedom; the point is, rather, that they

<sup>121</sup> Kant, *TB*, 8:435.

<sup>122</sup> Kant, *LE*, 27:480.

<sup>123</sup> Kant, *PP*, 8:378.

<sup>124</sup> Kant, *CF*, 7:80.

<sup>125</sup> Kant, *PP*, 8:366.

will become aware of their capacity for moral autonomy and increasingly act upon it. Kant had developed this idea already in *Religion Within the Boundaries of Mere Reason* from 1793 as a response to certain 'clever men' (*kluge Männer*). The reference to cleverness indicates that he may have had in mind the cunning men of practice. These clever men argued against the introduction of civil freedom that a certain people were not yet 'ripe' for freedom. Yet:

On this assumption freedom will never come, since we cannot *ripen* to it if we are not already established in it (we must be free in order to be able to make use of our powers purposively in freedom). To be sure, the first attempts will be crude, and in general also bound to greater hardships and dangers than when still under the command but also the care of others; yet we do not ripen to freedom otherwise than through our *own* attempts (and we must be free to be allowed to make them).<sup>126</sup>

A good deal was crude about the uses of freedom in France in 1793. Yet, it was a first and unavoidably imperfect step.

Following the polemics with his conservative critics in the period 1793–1795, Kant embarked upon *The Metaphysics of Morals*, his systematic study of the entire moral domain. True to his incremental methodology, *The Metaphysics of Morals* was written and published in three stages. Part one, *The Metaphysical First Principles of the Doctrine of Right*, as well as the general introduction, was published in January 1797. *The Metaphysical First Principles of the Doctrine of Virtue* followed in August of the same year. The two parts now comprise one volume. Following a review by Friedrich Boutroux in February 1797, Kant added a set of explanatory remarks that were appended to the 1798 edition.<sup>127</sup> The *Doctrine of Right*, which is the focus of the following section, had two tasks: to define the concept of right, and to justify state authority. As such it continued the work of *Theory and Practice*, and indeed brought to fruition many thoughts that had their origins in the 1760s. However, as we shall see, Kant developed his view on freedom and its conditions in ways that would have been difficult to predict at that time.

The distinction between a *Doctrine of Right* and a *Doctrine of Virtue* is Kant's attempt to clarify what belongs essentially to the domain that can be subject to external regulation by positive and coercive law, from the domain that is not. As such, it must be considered Kant's contribution to *Staatszwecklehre*, the theory of the nature and purpose of the state. His primary challenge was to overcome the dominant Wolffian perfectionist view, which defined a government's

<sup>126</sup> Kant, *Rel.*, 6:188.

<sup>127</sup> On the publishing history of the book, see Mary Gregor's remarks in *Kant's Practical Philosophy*, edited by Mary Gregor (Cambridge: Cambridge University Press, 1996). See also Manfred Kuehn, 'Kant's Metaphysics of Morals the History and Significance of Its Deferral', in *Kant's Metaphysics of Morals: A Critical Guide*, edited by Lara Denis (Cambridge: Cambridge University Press, 2010).

task as securing the virtue and happiness of its citizens, thereby inviting paternalist state interference. In his lectures from 1793–1794, Kant notes that Alexander Baumgarten, the Wolffian whose textbook on ethics he used, had failed to distinguish *principia juris* from *principia ethicis*.<sup>128</sup> Kant was well aware of what that might ultimately lead to. Robespierre had insisted that the state should seek to make subjects virtuous by imposing a civic mindset, most notoriously through terror and the Cult of the Supreme Being.

Kant's solution was to limit legislative activity to juridical principles, those rules which secure the essentials of mutual external freedom. The introduction to *The Metaphysics of Morals* sets about to uncover them by distinguishing two types of choice. One is arbitrary choice (*Willkür*): the conscious ability to 'do or to refrain from doing as one pleases'. The other is freedom of the will (*Wille*): the ability to choose which is governed by practical reason, which corresponds to the idea of moral autonomy (restricting base desires and acting virtuously) in *Groundwork* and *Critique of Practical Reason*.<sup>129</sup> Kant also describes this as freedom of external and internal choice. Since humans, unlike animals, are not determined by natural impulses, they are capable of exercising both kinds of freedom. What Kant calls 'laws of freedom' regulate the capacity for choice:

In contrast to laws of nature, these laws of freedom are called *moral laws*. As directed merely to external actions and their conformity to law they are called *juridical laws*; but if they also require that they (the laws) themselves be the determining grounds of actions, they are *ethical laws*, and then one says that conformity with juridical laws is the legality [*Legalität*] of an action and conformity with ethical laws is its *morality* [*Moralität*]. The freedom to which the former laws refer can be only freedom in the *external* use of choice, but the freedom to which the latter refer is freedom in both the *external* and the *internal* use of choice, insofar as it is determined by laws of reason.<sup>130</sup>

*Groundwork* and *Critique of Practical Reason* do not mention juridical law—the body of domestic law that concerns enforceable rights—but explain ethical law and the 'morality' of actions in terms of having a good will, being motivated by pure practical reason, and therefore acting from the categorical imperative. Kant for the first time makes an effort to show the systematic connection between freedom of the will and the right to external freedom. Both 'internal' and 'external' freedom relate to the *same* human capacity for choice, which is the source of the innate right to equal external liberty and the reason why persons can be legally responsible for their actions. By resting agency on moral personality, which he defines as the freedom of rational beings under moral laws, Kant seeks to connect his legal and political philosophy to his critical philosophy from the 1780s.<sup>131</sup>

<sup>128</sup> Kant, *LE*, 27:539.

<sup>129</sup> Kant, *MM*, 6:213.

<sup>130</sup> Kant, *MM*, 6:214.

<sup>131</sup> Kant, *MM*, 6:214, 223. Thomas Pogge has argued that Kant's legal and political philosophy nonetheless is freestanding in the sense that it does not necessarily presuppose the critical

The *Metaphysics of Morals* distinguishes between juridical (*Doctrine of Right*) and ethical duties (*Doctrine of Virtue*). Juridical duties result from rights individuals can enforce against one other and the rights of a state over its subjects. Ethical duties concern a person's choice of ends, not the coordination of external interactions. Individuals have a duty to pursue two ends: their own perfection and the happiness of others.<sup>132</sup> Although Kant, like Wolff, supports an ideal of perfection, he confines it to the ethical realm, which is not subject to juridical sanctions. The distinction between juridical and ethical law is a matter of incentive:

All lawgiving can therefore be distinguished with respect to the incentive. [...] That lawgiving which makes an action a duty and also makes the duty the incentive is *ethical*. But that lawgiving which does not include the incentive of duty in the law and so admits of an incentive other than the idea of duty itself is *juridical*.<sup>133</sup>

Juridical and ethical duties are often identical. For example, paying taxes is a duty, both from a juridical and ethical perspective. The difference is the incentive. Since their requirement of specific *conduct* characterizes juridical duties, they can be discharged even if the action is heteronomously induced through incentives such as punishment. Ethical lawgiving, however, cannot be externally enforced. Duty, not 'pathological' incentives, motivates compliance; an individual whose action is motivated by fear of sanctions or hopes for reward fails in his ethical duty by definition. All juridical duties are incorporated 'indirectly' as ethical duties. Although the source of the duty to pay taxes is in external lawgiving, citizens should comply out of respect for the duty itself, regardless of whether they would be punished for cheating.<sup>134</sup>

Kant's separation of enforceable laws of right and unenforceable ethical laws was a principled way of separating the domains that the Wolffian school had run together. His definition of right (*Recht*) echoes his debate with Gentz, Rehberg, and Möser. Jurists care about positive law, while philosophers seek 'the immutable principles for any giving of positive law'.<sup>135</sup> Kant cannot resist making a sarcastic remark about jurists: 'Like the wooden head in Phaedrus's fable, a merely empirical doctrine of right is a head that may be beautiful but unfortunately it has no brain'.<sup>136</sup> Empiricists derive their principle of right by means of inductive generalization from what societies have historically accepted as right. But practice alone cannot reveal the criterion of obligation. A principle of right suitable for creating obligations can only come from the natural right approach, which begins by establishing a universal rational

philosophy. See 'Is Kant's Rechtslehre a Comprehensive Liberalism?', in *Kant's Metaphysics of Morals: Interpretative Essays*, edited by Mark Timmons (Oxford: Oxford University Press, 2002).

<sup>132</sup> Kant, *MM*, 6:385.

<sup>133</sup> Kant, *MM*, 6:218.

<sup>134</sup> Kant, *MM*, 6:220.

<sup>135</sup> Kant, *MM*, 6:229.

<sup>136</sup> Kant, *MM*, 6:230. Compare Phaedrus, 'The Fox and the Mask', in *The Fables of Phaedrus*, translated by P. F. Widdows (Austin: University of Texas Press, 1992).

principle, and only then uses this principle as a 'basis (*Grundlage*) for any possible giving of positive laws'.<sup>137</sup> The concept of right has three features:

1. It concerns the external relations among persons only insofar as their choices directly affect one another.
2. It concerns free choice rather than desires or need.
3. It concerns only the *formal* compatibility of choices: the subject *matter* of a person's choice, the end she seeks, is irrelevant.<sup>138</sup>

The first point emphasizes that law regulates freedom only in the external uses of choice, not in the internal domain. Positive law cannot require people to act *for the sake of duty*. Juridical duties can only regulate interpersonal conduct, not thought. Internal dispositions are relevant only to the extent that they are necessary to assess guilt or innocence when subjects break the law (determining *mens rea*, for instance). External choice is regulated only insofar as choices affect others. What someone does within the four walls of his home is irrelevant unless it affects someone else.

Two: right has nothing to do with need. Kant disagrees with Wolff and Achenwall that the purpose of right is to secure welfare or happiness; its sole purpose is to establish freedom, understood as the mutual consistency of the choices of interacting agents. The state is only justified in securing welfare if refraining from doing so would endanger the conditions of external freedom. Thus, the state can raise taxes for the poor to secure its strength and stability.<sup>139</sup>

Three: right is concerned only with the form of choice, not its matter. By matter, Kant means peoples' various ends. By form, he means the way choices are reciprocally related. Juridical law should not regulate peoples' ends, but should be limited to ensuring that how people seek their ends is compatible with how others do so: 'The end that each has may be whatever he wills'.<sup>140</sup> Kant concludes: 'Right is therefore the sum of the conditions under which the choice [*Willkür*] of one can be united with the choice of another in accordance with a universal law of freedom'.<sup>141</sup>

Once the domain of right has been defined, the rightness of *actions* can be determined. Kant's Universal Principle of Right allows us to do this:

Any action is *right* if it can coexist with everyone's freedom in accordance with a universal law, or if on its maxim the freedom of choice [*Freiheit der Willkür*] of each can coexist with everyone's freedom [*jedermann's Freiheit*] in accordance with a universal law.<sup>142</sup>

Kant had presented different versions of this principle since introducing it in the *Critique of Pure Reason*. But in *Theory and Practice* and in all earlier

<sup>137</sup> Kant, *MM*, 6:230.

<sup>138</sup> Kant, *MM*, 6:230.

<sup>139</sup> Kant, *MM*, 6:326; *TP*, 8:299.

<sup>140</sup> Kant, *MM*, 6:396.

<sup>141</sup> Kant, *MM*, 6:230.

<sup>142</sup> Kant, *MM*, 6:230.

writings he had spoken of freedom as a matter of degree and as necessarily limited by right. People are naturally free, but in society their freedom must be limited for the sake of mutual freedom. The basic idea remains the same in the *Doctrine of Right* but he no longer describes right as a limitation on freedom. The change of wording in the *Doctrine of Right* shows that he was all along really talking about two different manifestations of external freedom: natural and lawful freedom. These are both versions of freedom of choice (*Freiheit der Willkür*), the awareness that one can choose 'to do or to refrain from doing as one pleases'.<sup>143</sup> As natural, this kind of freedom to do as one pleases is limited only by one's physical power and that of others. There are degrees of freedom that reflect peoples' ability to actually achieve their goals. Kant called this 'lawless freedom' in *Theory and Practice* (and 'Polish freedom' in unpublished notes).<sup>144</sup> This kind of choice is necessarily limited by public law.

The second kind of external freedom is rightful, or lawful, freedom.<sup>145</sup> Lawful freedom is choice-making that is compatible with the equal freedom of others. It means that a person is legally independent from the arbitrary wishes of another, and lives under law.<sup>146</sup> There are no degrees of freedom here, since this type of freedom concerns juridical *status* (being 'one's own master *sui iuris*') rather than the extent of available choice. This is why Kant writes that people in the civil condition relinquish only their wild lawless freedom, whereas their 'freedom as such' remains undiminished (*unvermindert*). Dependency on law in the rightful condition is not properly described as a limitation of freedom, even though it restricts choice, since the law issues from a person's own 'law-giving will'.<sup>147</sup>

Kant's distinction of natural and lawful freedom closely follows the distinction between natural liberty (*la liberté naturelle*) and civil liberty (*la liberté civile*), which Rousseau relied on in the *Social Contract*.<sup>148</sup> Yet his use of the term *sui iuris* indicates that he also found its source in Roman law, where the free man, unlike the slave, was his own master *sui iuris*.<sup>149</sup> On this republican view, the slave was subject to the master's arbitrary will, even if the master did not interfere, gave the slave freedom to come and go, get an education, have a

<sup>143</sup> Kant, *MM*, 6:213.

<sup>144</sup> Kant, *PP*, 8:354; *MM*, 6:316; *AA*, 15.1:595.

<sup>145</sup> Kant, *MM*, 6:316.

<sup>146</sup> Kant, *MM*, 6:316.

<sup>147</sup> Kant, *MM*, 6:316. Hegel complained that because Kant conceives of freedom merely as 'shallow' choice, 'the rational can of course only appear as a limitation on the freedom in question.' Although Hegel's reference is to the definition of right from the *Metaphysics of Morals*, he misquotes and adds 'limitation' to Kant's definition, making it more like the definition from *Theory and Practice*, where Kant did indeed describe law as a limitation of freedom. Hegel therefore fails to acknowledge Kant's theory of lawful freedom. See Hegel, *Elements*, p. 58. Italics added.

<sup>148</sup> Rousseau, *Social Contract*, 1.8.

<sup>149</sup> See Skinner, 'States and the Freedom of Citizens', in Skinner and Strâth, *States and Citizens*. The Roman law heritage is also emphasized by Ripstein, who discusses the classical example of the slave, see *Force and Freedom*. See also Allen D. Rosen on lawless and lawful freedom in Kant's *Theory of Justice* (Ithaca, NY: Cornell University Press, 1993), p. 7.

family, and so on. He still lacked lawful freedom because he was subject to the arbitrary commands of his owner. His freedom of choice was not tied to his status of legal equality but to the goodwill of someone who might restrict it at any time. Even a slave who is rarely subject to physical restrictions is always dominated.

The distinction between the two manifestations of freedom illuminates Kant's theory of justified coercion:

Resistance that counteracts the hindering of an effect promotes this effect and is consistent with it. Now whatever is wrong is a hindrance to freedom in accordance with universal laws. But coercion is a hindrance or resistance to freedom. Therefore, if a certain use of freedom is itself a hindrance to freedom in accordance with universal laws (i.e., wrong), coercion that is opposed to this (as a *hindering of a hindrance to freedom*) is consistent with freedom in accordance with universal laws, that is, it is right. Hence there is connected with right by the principle of contradiction an authorization to coerce someone who infringes upon it.<sup>150</sup>

The distinction Kant makes is between arbitrary choice and lawful freedom. Arbitrary choice that contradicts a person's legal equality is wrong because it amounts to an attempt to use coercion against lawful agency. Restricting such lawlessness by means of coercion vindicates law. Thus, coercion is justified for the sake of vindicating lawful freedom.

What does the nature and extent of the freedom to which individuals are entitled consist of? Rehberg, following Möser, had claimed that although Kant was right that individuals are capable of free agency, external freedom requires property. The unequal distribution of property rights is already predetermined and must be accepted, though, since according to Rehberg there is no 'metaphysically perfect property'. Historical practices and convention, not reason, determine the extent of freedom to which individuals are entitled. Although he had to admit that the realization of freedom requires access to property, Kant could not accept this view. His challenge in the *Doctrine of Right* was to prove Rehberg wrong by establishing a metaphysical theory of property. Although his notes and lectures show that Kant had been preoccupied with the relationship between property and freedom since the 1770s, he had not published on it or attempted to systematically ground the relationship. In order to do so, he distinguished between two kinds of right: innate and acquired. Individuals have an innate right to freedom as independence:

*Freedom* (independence from being constrained by another's choice), insofar as it can coexist with the freedom of every other in accordance with a universal law, is the only original right belonging to every man by virtue of his humanity.—This principle of innate freedom [*angeborenen Freiheit*] already involves the following

<sup>150</sup> Kant, MM, 6:231

authorizations, which are not really distinct from it [...]: innate *equality*, that is, independence from being bound by others to more than one can in turn bind them; hence a human being's quality of being *his own master (sui juris)*, as well as being a human being beyond reproach (*iusti*).<sup>151</sup>

Innate rights are natural entitlements that do not come from another individual or public authority. They have limited significance, however. Although innate rights prohibit physical interference and birthright privilege, they tell individuals nothing about how to use property in their exercise of freedom, because no person has innate rights to property.

In order to explain how individuals can realize external freedom, we need to know how they acquire rights to things. There are three categories of acquired rights: rights to property, rights to contract, and what Kant calls rights to others (such as a wife, child, or servant) which are 'akin' to rights to a thing. In each of the cases, a person has something external as his or her own. Kant uses the example of an apple to illustrate possession. As long as I have the apple in my hand, what Kant calls *empirical* possession, anyone who tries to wrest it away from me infringes on my innate right to freedom. Owning an external thing, however, presupposes that it is possible for it to be mine, and for others to infringe upon my right if they take it, even if I do not hold it in my hand. Kant calls this intelligible or *noumenal* possession.

While Rehberg and Möser had based the right to possession in convention, Kant finds it in a postulate of practical reason. In his postulate Kant seeks to show that *noumenal* possession must be possible. Were it not so, individuals could neither own anything nor have the right to use it, and 'freedom would be depriving itself of the use of its choice with regard to an object of choice'.<sup>152</sup> Since external freedom is entirely formal, and can only be limited by the compatibility of everyone's choices according to a universal law, it would be arbitrary to deny this freedom to own material objects. The postulate, formulated as a duty, simply states: 'it is a duty of right to act towards others so that what is external (usable) could also become someone's'.<sup>153</sup> The postulate provides a 'permissive law' (*lex permissiva*), whereby reason permits persons to acquire property.<sup>154</sup> Such a permission is needed because ownership is not morally neutral: it alters interpersonal relations of rights and duties. Someone who claims to own a piece of land imposes an obligation on everyone else to respect his exclusive property right. Yet, obligations cannot be imposed from a merely

<sup>151</sup> Kant, *MM*, 6:237–238. See also *LE*, 27:588.

<sup>152</sup> Kant, *MM*, 6:246.

<sup>153</sup> Kant, *MM*, 6:252. For an exegesis of the postulate, see Ripstein's appendix in *Force and Freedom*.

<sup>154</sup> Kant's different uses of the term permissive law have been identified by Reinhard Brandt in 'Das Problem der Erlaubnisgesetze'. See also Brian Tierney in 'Kant on Property: The Problem of the Permissive Law', *Journal of the History of Ideas*, 62, 2 (2001): 301–312.

private perspective. Persons have an equal entitlement to freedom and any claims to right must therefore be reciprocal:

When I declare (by word or deed), I will that something external is to be mine, I thereby declare that everyone else is under obligation to refrain from using the object of my choice, an obligation no one would have were it not for this act of mine to establish a right. This claim involves, however, acknowledging that I in turn am under obligation to every other to refrain from using what is externally his; for the obligation here arises from a universal rule having to do with external rightful relations. I am therefore not under obligation to leave external objects belonging to others untouched unless everyone else provides me assurance that he will behave in accordance with the same principle with regard to what is mine.<sup>155</sup>

To illustrate a condition where such assurance is lacking Kant uses the notion of the state of nature in contrast to the civil condition. The purpose is not to describe how the state actually arose, but to expose the deficiencies of a condition where all rights are merely private claims. Absent public legal authority, the claim to own property is just a unilateral demand and there is no impartial judge to decide between conflicting claims. Vindicating a right in the state of nature can therefore only be by private coercion, which no one can be obliged to respect. As a result the state of nature is a condition where conflicting rights claims will be supported by private coercion, and no one has the security of law against violence.<sup>156</sup>

The condition of possibility of justified rights claims is a version of Rousseau's notion of the general will, which secures the reciprocity required by the concept of right:

Now, a unilateral will [*der einseitige Wille*] cannot serve as a coercive law for everyone with regard to possession that is external and therefore contingent, since that would infringe upon freedom in accordance with universal laws. So it is only a will putting everyone under obligation, hence only a collective general (*common*) and powerful will [*gemeinsamer Wille*] that can provide everyone this assurance.—But the condition of being under a general external (i.e., public) law-giving accompanied with power is the civil condition. So only in a civil condition can something external be mine or yours.<sup>157</sup>

The permissive law of the postulate of practical reason allows persons to acquire property in the state of nature, but the right is only 'provisional' (*provisorisch*) grounded in a presumption that acquisition could be widely recognized. It takes a state to make this right 'conclusive' (*peremtorisch*), such that it can be upheld in court. Kant also describes this as a distinction between natural right—'what is *right in itself*' (*an sich recht*)—and right before a court—'what is laid down as right' (*rechterns*).<sup>158</sup> Something can count as natural right if it is asserted in the state of nature, where there is no court. Even if something is

<sup>155</sup> Kant, *MM*, 6:255.

<sup>156</sup> Kant, *MM*, 6:312.

<sup>157</sup> Kant, *MM*, 6:256, 263.

<sup>158</sup> Kant, *MM*, 6:297.

right in itself, once a court exists and rules, it becomes right according to the distributive justice of the state. Hence, natural right is valid in the state of nature from the 'point of view' (*Gesichtspunkt*) of private right, whereas legislation is valid in the state from the 'point of view' of public right.<sup>159</sup> Although public right ought to track natural right, it is legitimate even when it does not. For example, if a court awards ownership of a horse to person X when the horse had provisionally belonged to person Y in the state of nature, the verdict is lawful. In the state, justice is the outcome of formal public procedures, regardless of the substance of the matter. Therefore, although the sovereign should legislate according to natural law, he has the last word in 'assigning to each what is his'.<sup>160</sup>

This view contrasts sharply with the conservative view. Rehberg and Möser claimed that the state existed to protect property rights that had been established in the distant past and passed on through generations. The state did not establish property rights; they resulted from private interaction in a society that the state existed to protect.<sup>161</sup> Kant's view also contrasts with that of Achenwall. To get a better sense of this, it helps to distinguish between two ways of justifying property, one being 'private production', the other 'public recognition'. The first, which is a feature of classical liberal and libertarian views of acquisition, maintains that labour can be a source of property rights. Achenwall supported that view,<sup>162</sup> although Locke had already made it famous through his postulate that property can be acquired through labour. On Locke's view, persons own their own body and when 'mixing' their labour with anything taken in the state of nature it becomes their property (with the famous proviso that 'enough, and as good left' remains for others).<sup>163</sup> By contrast, the 'public recognition' view emphasizes public institutions. Kant would have been familiar with this view from Pufendorf and Rousseau (the differences notwithstanding).<sup>164</sup> According to this analysis, people create the institution of property in some sort of convention where they decide on rights among themselves.<sup>165</sup> Rousseau described this as the social contract, which establishes 'proprietary ownership' via the general will, where previously there was only 'possession'.<sup>166</sup> The sovereign retains broad powers, as Pufendorf writes, to define 'the extent and nature of possessions'. It has the right of eminent domain, and can tax without consent.<sup>167</sup>

<sup>159</sup> Kant, *MM*, 6:297. <sup>160</sup> Kant, *MM*, 6:324.

<sup>161</sup> See Knudsen, *Justus Möser*, pp. 171 and 178.

<sup>162</sup> Gottfried Achenwall, *Anfangsgründe des Naturrechts*, edited by Jan Schröder (Frankfurt am Main: Insel Verlag, 1995), § 277.

<sup>163</sup> Locke, *Second Treatise*, § 33.

<sup>164</sup> Rousseau writes that 'the right of property is merely the result of convention and human institution'; see *Discourse on the Origin of Inequality*, p. 74.

<sup>165</sup> Pufendorf, *On the Duty*, pp. 84–85.

<sup>166</sup> Rousseau writes that in the state of nature 'there is no constant property'. See *Social Contract*, 1.8, 1.4. For an argument on how Rousseau influenced Kant, see Howard Williams, *Kant's Political Philosophy* (Oxford: Basil Blackwell, 1983), p. 91.

<sup>167</sup> Pufendorf, *On the Duty*, p. 166. For Rousseau, the sovereign people decides on taxation; see *Discourse on Political Economy*, pp. 132 and 138.

On this view, the state's purpose is not to protect already established property rights, since only the state itself can establish such entitlements. Kant has to adopt this view, because property rights are compatible with mutual freedom only when established by a system of public law. While he sometimes makes it sound like the state's purpose is merely to ratify provisional claims,<sup>168</sup> the state cannot be bound by such claims, or public authority would be subservient to unilateral rights claims made in the state of nature. Any claim to a right in the state of nature is merely conditional and can become a conclusive right only in the state.

In the state, individuals give up their freedom to judge in matters of right, and abide by the decisions of a sovereign who, as an impartial umpire, settles disputes over the 'mine and yours'. By contrast to his contractualist predecessors Locke and Rousseau, joining the state is not voluntary.<sup>169</sup> The civil condition 'is that condition which reason, *by a categorical imperative*, makes obligatory for us to strive after'.<sup>170</sup> The juridical duty to respect equal liberty entails submission to the rule of law created by the general will. Kant declares, through the 'postulate of public right', that 'when you cannot avoid living side by side with all others, you *ought* to leave the state of nature and proceed with them into a rightful condition'.<sup>171</sup> Although persons need not treat each other unjustly in the state of nature, it is still a condition 'devoid' of justice (*status iustitia vacuus*) because there is no judge to render a verdict in disputes about right.<sup>172</sup>

As we saw earlier in this chapter, the contrasting voluntarist view of the justification of the state was represented, among Kant's followers, by the early Fichte who, in his writings in defence of the French Revolution, argued that actual consent is a condition for obligations to the state. Those who refuse their consent will simply continue living in society, without being subject to the laws. Kant may very well have had such views in mind when he wrote that a human being in the state of nature does wrong by wanting to remain in that condition:

[He] already wrongs me just by being near me in this condition, even if not actively (*facto*) yet by the lawlessness of his condition (*status iniusto*), by which he constantly threatens me and I can coerce him either to enter with me into a civil condition of being under civil laws or to leave my neighborhood<sup>173</sup>

<sup>168</sup> Kant, *MM*, 6:312.

<sup>169</sup> See Locke, *Second Treatise*, § 97; Rousseau, *Social Contract*, 1.6. For an account of how Kant diverges from the social contract tradition, see Patrick Riley, *Will and Political Legitimacy: A Critical Exposition of Social Contract Theory in Hobbes, Locke, Rousseau, Kant, and Hegel* (Cambridge, MA: Harvard University Press, 1982). See also Onora O'Neill, 'Kant and the Social Contract Tradition', in *Kant Actuel*, edited by F. Duchesneau, G. Lafrance, and C. Piché (Montreal: Bellarmin, 2000).

<sup>170</sup> Kant, *MM*, 6:318.

<sup>171</sup> Kant, *MM*, 6:307.

<sup>172</sup> Kant, *MM*, 6:312.

<sup>173</sup> Kant, *PP*, 8:349.

Those who refuse to enter a civil condition do wrong ‘in the highest degree’ because they seek to perpetuate a condition of lawless freedom, where provisional rights are not protected, and the juridical status of being one’s own master is non-existent.

The state cannot be created out of anarchy by lawful means. In order to lawfully found a state, a community must agree through the general will. A binding general will, however, presupposes a juridical condition that only exists post-founding. This is why individuals may use coercion to bring about the founding,<sup>174</sup> just as they have a right to use private violence in the state of nature to protect their possessions and resist (*widerstehen*) those who threaten their provisional rights.<sup>175</sup> The duty to create a condition wherein individuals have rights implies that those who seek to establish sovereign authority and the constitutional state are justified in coercing those who prefer to remain in the state of nature. This is not, in Kant’s view, a limitation on their true freedom, but a limitation only on the latter’s ‘wild, lawless freedom’. As we saw earlier, this kind of freedom is incompatible with *equal* liberty, established through positive law given by the state.<sup>176</sup>

Kant’s theory of *noumenal* possession allows him to connect individual freedom with the necessity of the state in a way that clearly answers challenges of the kind posed by Rehberg and Möser. His readers would have recognized that he singled out land ownership as the first acquisition of a thing. In principle, this is because the right to a physical location is the precondition for all other possessions.<sup>177</sup> Simply put: it is no use owning a house if you have nowhere to put it. But land was also the primary source of the Prussian nobility’s wealth and power. They defended their rights as given through ancient contracts between lords and vassals, and between citizens, not by state authority. Kant acknowledged that although land is privatized through an original act of acquisition, the act itself is not sufficient to legitimize the right. By insisting that state authority alone legitimizes property rights, Kant rebutted the nobility’s key claim that generations of land ownership through private contracts gave them rightful ownership.

That this was a defence of the principles of the French Revolution becomes evident when Kant draws conclusions for the church and the noble orders in a way closely aligned with Sieyès. While in the 1780s Kant had argued that religious orders must be restricted in order to protect enlightenment, in the *Doctrine of Right*, the state’s right to regulate the church is based on the general will of the sovereign people:

The estates of a knightly order can be revoked without scruple (though under the condition mentioned above) if public opinion has ceased to favor military

<sup>174</sup> Kant, *MM*, 6:257, 312, 307.

<sup>176</sup> Kant, *MM*, 6:316, 312.

<sup>175</sup> Kant, *MM*, 6:257, 307.

<sup>177</sup> Kant, *MM*, 6:261.

honors as a means for safeguarding the state against indifference in defending it. The holdings of the church can be similarly revoked if public opinion has ceased to want masses for souls, prayers and a multitude of clerics appointed for this as the means for saving the people from eternal fire. Those affected by such reforms cannot complain of their property being taken from them, since the reason for their possession hitherto lay only in the people's opinion and also had to hold as long as that lasted.<sup>178</sup>

These 'reforms' were in fact the chief institutional changes of the French Revolution. The National Assembly abolished feudalism and noble titles on 4 August 1789, and confiscated the wealth of the clergy on 2 November 1789.<sup>179</sup>

Kant's theory clearly resembled Rousseau's theory of popular sovereignty and Sieyès constitutionalism. Its emphasis on equality and rejection of hereditary privilege was an unsubtle intervention into a source of great tension in Prussian society. In principle, Kant's doctrine called for extensive reconfiguration of society according to principles of reason. Rehberg and other conservatives worried that Kant's defence of equal liberties, if translated into law, would lead to social chaos. The anarchistic liberalism of the young Fichte, who the public associated with Kant, would have added to such fears. A sudden introduction of equal rights, either peacefully or by revolution, could severely weaken the state, whose functioning in most parts of Germany at that time depended upon the services of landowners and civil servants who were often hereditary nobles.

As Brandt has shown, Kant was aware of such problems of transition.<sup>180</sup> In December 1789, he had received a letter from Ernst Ferdinand Klein who, together with Carl Gottlieb Svarez, had the responsibility for framing the new civil constitution for Prussia, which had been commissioned by Frederick II. Klein wanted to know whether it is the duty of a legislator to abolish limits to freedom at once, or whether change can be implemented gradually. The impetus for Klein's question may have been the Revolution, but the introduction of the *Allgemeines Landrecht für die Preußischen Staaten* (which came into effect in 1794) raised similar problems, particularly for someone like Klein who was an adherent of Kant's philosophy. Klein reasoned that if a legislator tried to make too big changes at once he would fail, especially if the reforms went against public opinion. The people cannot become mature all at once and must step by step be freed from paternal authority (*der väterlichen Gewalt*).<sup>181</sup>

<sup>178</sup> Kant, *MM*, 6:324–325.

<sup>179</sup> Furet, *Revolutionary France*, pp. 71 and 81. As Kant's book *Religion within the Bounds of Mere Reason* (published in 1793) had made clear, he was sceptical with regard to organized religion. Although churches are necessary in order to spread religion to those who cannot grasp it through reason, they are easily turned into despotic means for those who wish to rule by gaining control over minds.

<sup>180</sup> Reinhard Brandt, 'Das Problem der Erlaubnisgesetze'. Brandt also called attention to Klein's correspondence with Kant.

<sup>181</sup> Letter to Kant on 22 December 1789, C, 11:117–119.

Conscious of such concerns, Kant sought to reconcile his principles with reality. Its title notwithstanding, the 'Theory and Practice' essay had not discussed the transition from theory to practice, focusing instead on the argument that practice must not be allowed to determine moral values. Kant did not begin to work out a theory of gradual transition until *Perpetual Peace*. The key is the idea of 'permissive laws' (*leges latae, lex permissiva*) that make a state provisionally just even when its constitution is unjust: 'Permissive laws of reason [...] allow a situation of public right afflicted with injustice to continue until everything has either itself become ripe for a complete overthrow or has been made almost ripe by peaceful means'.<sup>182</sup>

Kant insists that permissive laws are not *exceptions* to laws, distinguishing his position from that of Rehberg, who had justified rulers violating the letter of law in order to remain faithful to its spirit.<sup>183</sup> Law's very universality permits no exceptions. However, since 'permissive laws' are internally connected to particular contexts of implementation, their feasibility constitutes a limiting condition within the law itself. This condition means that implementation of a law can be delayed 'lest implementing the law prematurely counteracts its very purpose'.<sup>184</sup> It is clear from the idea's reappearance in the *Doctrine of Right* that Kant intended permissive laws to facilitate a transition from the institutions of the old *Reich*: '[The state] has a provisional right to let these titled positions of dignity [hereditary privileges] continue until even in public opinion the division into sovereign, nobility, and commoners has been replaced by the only natural division into sovereign and people'.<sup>185</sup> Kant saw transitional law as more than just a response to a particularly difficult situation in Prussia. All states have their origins in violent power grabs and work themselves clean through history. Since by definition a state cannot be created lawfully out of a state of nature, because there is no existing law in that condition, state sovereignty is a precondition for transition to a civil condition. Injustice (wrongdoing) must be tolerated temporarily, or there can be no transition to a just regime.

Rehberg's worry about society's dissolution resulting from the principles of equal freedom was ultimately based on a pessimistic view of humans as incapable of self-legislation. A republic would require a nation of angels. Kant's *Doctrine of Virtue*, the second part of *The Metaphysics of Morals*, contains an answer to this worry. Although that work is usually not treated as relevant to the *Doctrine of Right*, it presents a theory about how persons fortify their capacity for following duty, and therefore for being good subjects and citizens.

<sup>182</sup> Kant, *PP*, 8:327; see Brandt, 'Das Problem der Erlaubnisgesetze'.

<sup>183</sup> Rehberg, 'Über das Verhältniß', p. 130.

<sup>184</sup> Kant, *PP*, 8:347.

<sup>185</sup> Kant, *MM*, 6:329.

This ability is virtue: 'the strength of a human being's maxims in fulfilling his duty'.<sup>186</sup> Although duties of right can be fulfilled regardless of the motivation agents have (since only specific performance is required), virtue gives persons a firm disposition to respect all duties. By contrast to Aristotelian virtue ethics, Kant thinks of virtue primarily as strength in resisting feelings arising from sensible impressions, even though individuals may also develop a sense of satisfaction in acting out of respect for the law. Virtuous persons cultivate their conscience, 'an internal court' where an inner judge representing practical reason forms a verdict on their behaviour.<sup>187</sup> As a result, 'the animal is first raised into the human being'.<sup>188</sup>

This was not a new thought for Kant. He had already stated in *Groundwork* that individuals who apply a priori laws need 'judgment sharpened by experience' in order to become susceptible to reason's influence.<sup>189</sup> This idea was explored from numerous angles in the years that followed. Developing moral judgment may require a comprehensive cultivation, as he described in *Critique of Judgment*, ranging from art appreciation to the rational development of professional skills.<sup>190</sup> In *Religion Within the Boundaries of Mere Reason*, published the same year as *Theory and Practice*, a theory of religion was developed, which largely centred on its effects on removing obstacles to following duty. In that book, Jesus Christ becomes a teacher of morals and a paragon of virtue for humans to emulate, so as better to act out of respect for the moral law in the form of the categorical imperative.<sup>191</sup> In *Perpetual Peace* the security and freedom of the state provide the protection necessary for persons to pursue judgment-enhancing activities, 'greatly facilitating' the capacity for autonomy.<sup>192</sup> Life in the republic puts persons on the path to moral freedom. These examples do not indicate that Kant ever dreamed of substituting virtue for a coercive system of law (as Herder and Robespierre, in contrasting ways, had advocated). Rather, strength of virtue make persons capable of restraint and therefore better subjects and citizens, helping to secure the integrity of the republican constitution. The image of human self-transformation Kant presented was far from Rehberg's view of human nature and society as given circumstances of justice, and although the theory of virtue is not a systematic part of the *Doctrine of Right* it's duties undergird the stability of the civil condition.

<sup>186</sup> Kant, *MM*, 6:394.

<sup>187</sup> Kant, *MM*, 6:438.

<sup>188</sup> Kant, *MM*, 6:392.

<sup>189</sup> Kant, *G*, 4:389.

<sup>190</sup> Kant, *CPJ*, 5:431.

<sup>191</sup> Kant, *Rel*, 6:66.

<sup>192</sup> Kant, *PP*, 8:376. Kant added, 'it is not the case that a good state constitution is to be expected from inner morality; on the contrary, the good moral education [*Bildung*] of a people is to be expected from a good state constitution. See *PP*, 8:366.'

## CONCLUSION

Key elements of Kant's legal and political theory, such as the concept of right and the division between right and virtue, had their origin prior to the Revolution. They had been part of a debate about the purpose of the state and transition in Prussia, in which perfectionism and conventionalism represented competing paradigms. Yet the Revolution made these debates more urgent, requiring enlightened absolutism to justify itself and putting hereditary privilege under renewed pressure. The power of the nobility had been a sore point for the Prussian middle classes, and the abolition of feudalism in France on 4 August 1789 made it clear to everyone that it might soon be a thing of the past. But while the call for equal liberty had been well received in German lands, the increasingly turbulent events of the Revolution, which culminated with the Jacobin takeover in 1793, threatened the prestige of republican ideals and strengthened conservatives like Gentz, Rehberg, and Möser. The defence of the revolution by radicals like Fichte did little to persuade an increasingly sceptical public opinion.

Kant's essay on *Theory and Practice* was an intervention in this debate, which in turn generated a further controversy. By insisting that theory must have primacy to practice he repudiated the conventionalism and empiricism of the conservatives and fortified the liberal principle of equal freedom. Yet, the 'men of practice' in turn challenged Kant to consider how equal freedom can be realized in practice. Two central features of the legal and political theory he went on to develop may have been prompted by that challenge. First, he developed a view of freedom that relied on a metaphysical theory of property, which (in contrast to Rehberg and Möser) was not dependent on the conventions of particular societies. The right to property is grounded in reason and leads directly to the notion of a general will, which can only be established through public procedures in a state that treats persons as free and equal. Second, he developed a theory of gradual transition, through the notion of the permissive law, which would help institute moral ideals without the dissolution of the fabric of society. In the process of defending his liberal principles from the association with the extremists in charge in Paris, Kant managed to irritate a number of his radical followers. We shall turn to this critique in the next two chapters.

# 3

---

## Political Rights

Although the French revolutionaries had acted in the name of the Nation, the citizenship laws they wrote in the fall of 1789 split the nation into ‘passive’ and ‘active’ citizens, with only the latter having the right to vote. The distinction was based on wealth, age, and gender: only adult males who paid a minimum amount of taxes qualified for political rights. Fortunes changed fast in France, however, and the Jacobin faction, which took over in 1793, wrote a constitution that took the unprecedented step of granting universal citizenship to males over 21 years of age. In Germany, where the debate about political rights had been going on for some time, news about events in France was eagerly awaited. Radicals such as Fichte defended an inclusive republicanism that included a universal right to decide whether or not to join the state. Conservatives like Rehberg and Möser defended the principles of the old regime, tying political influence to status within the traditional economy of estate society.

Many of Kant’s followers assumed that his ethics from the 1780s implied a commitment to equal political rights. *Groundwork* had introduced the notion of a realm of ends where everyone was both citizen and subject and therefore free because they made the laws they had to obey. This concept of autonomy bore obvious resemblances to Rousseau’s republic, and it was not far-fetched to think that Kant would develop this principle of morality into a thoroughgoing democratic vision. But the theory of voting rights he presented in *Theory and Practice* in 1793 did not quite do that. He advocated representative government and restrictive citizenship rather than direct democracy and universal citizenship. Only male property owners are truly independent and therefore qualified for the right to vote. Even without the vote, women and mere labourers would still be free and not subject to domination.

Johan Adam Bergk, Kant’s most radical follower, was disappointed. Any limitations on political rights among adult subjects are unjust since they conflict with human dignity and render persons slaves. He asked rhetorically whether property ownership made for better citizenship. Does it ‘make the voter more honest, the legislator more perceptive, and the judge

more impartial?<sup>1</sup> He answered that it did not: accumulating property is an expression of selfishness, and rewarding it with privileges encourages the lower instincts. Since anyone who is physically mature and not mentally ill is capable of virtue and knowledge, even women should have the vote. Acknowledging that extending the franchise had serious consequences, Bergk reminded Kant of his commitment to justice: '*Fiat justitia, et pereat mundus!*'.<sup>2</sup>

Kant's exclusion of women and workers has continued to perplex his readers. Most scholars agree that he was convinced that the votes of the many who were economically dependent would distort the general will, given his doubts about their ability to make free and rational choices about public matters. Allen Rosen writes that 'those who depend on others for their livelihood would either be too eager to please their masters or too susceptible to pressure, particularly in an open ballot system, for their votes to be truly their own'.<sup>3</sup> If Kant shared this opinion, it raises the question of why he did not see such dependence as a form of domination that should be excluded by the right to equal freedom. How could such social inequality be allowed to persist and translate into legal inequality, where only a minority is granted a say in public affairs? Many commentators claim that it contradicts Kant's notion of an original contract, wherein free and equal persons generate the laws they must obey.<sup>4</sup> Others have emphasized that, if participation in the civic community is essential to the development of individual moral personhood, as Kant sometimes indicates, the excluded are prevented from developing their full moral status.<sup>5</sup> Some have concluded that Kant's view is incoherent and that he, like other members of Germany's bourgeoisie in the wake of the French Revolution, was motivated by fear of dispossession should the irrational masses be granted the franchise.<sup>6</sup>

<sup>1</sup> Johann Adam Bergk, *Briefe über Immanuel Kant's Metaphysische Anfangsgründe der Rechtslehre, enthaltend Erläuterungen, Prüfung und Einwürfe* (Leipzig and Gera: bey Wilhelm Heinsius, 1797), p. 180.

<sup>2</sup> Bergk, *Briefe*, p. 188. 'Let there be justice, though the world perish.'

<sup>3</sup> Rosen, *Kant's Theory of Justice*, p. 253. A similar interpretation can be found in Susan Mendus, 'Kant: "An Honest but Narrow-Minded Bourgeois"?' in *Essays on Kant's Political Philosophy*, edited by Howard Williams (Chicago: University of Chicago Press, 1992); Ingeborg Maus, *Zur Aufklärung der Demokratietheorie: Rechts—und demokratietheoretische Überlegungen im Anschluß an Kant* (Frankfurt am Main: Suhrkamp, 1992), pp. 24–25; Terry Pinkard, 'Kant, Citizenship, and Freedom', in *Immanuel Kant: Zum Ewigen Frieden*, edited by Otfried Höffe (Berlin: Akademie Verlag, 1995); Ellis, *Kant's Politics*, pp. 197–198; Robert S. Taylor, 'Democratic Transitions and the Progress of Absolutism in Kant's Political Thought', *Journal of Politics*, 68, 3 (2006): 556–570; Weinrib, 'Kant on Citizenship and Universal Independence', 1–25.

<sup>4</sup> See Manfred Riedel, 'Transcendental Politics? Political Legitimacy and the Concept of Civil Society in Kant', *Social Research* 48, 3 (1981): 588–613; Kersting, *Wohlgeordnete Freiheit*, pp. 297–305; Weinrib, 'Kant on Citizenship'.

<sup>5</sup> Ronald Beiner, 'Paradoxes in Kant's Account of Citizenship', in *Kant and the Concept of Community*, edited by Charlton Payne and Lucas Thorpe (Rochester, NY: University of Rochester Press, 2011).

<sup>6</sup> Wolfgang Kersting, 'Kant's Concept of the State', in *Kant's Political Philosophy*, edited by Howard Williams (Chicago: University of Chicago Press), p. 153.

To answer this question we must explore the relation between Kant's concept of freedom as non-domination and political participation. Kant had been interested in the notion of popular sovereignty since he first read Rousseau in the 1760s,<sup>7</sup> but there is no evidence that he had paid much attention to the right to vote. The French Revolution made voting rights more than a theoretical concern. The revolutionary era rivalry between the 1789 liberals and the 1793 radical democrats was mirrored among Kant's followers. While they all took Kant's concept of freedom from *Theory and Practice* as their point of departure, they came to different conclusions about the franchise. A radical democratic group, including Fichte, Johann Adam Bergk, and Karl Ludwig Pörschke, defended a universal franchise. A moderate group, including Karl Heinrich Heydenreich, Friedrich Schlegel, and Ludwig Jakob, saw the merits of restrictions on the right to vote, but criticized Kant's criteria for inclusion.

While Kant's followers have been largely overlooked by scholarship, they merit attention because they mattered to Kant.<sup>8</sup> Their defence of democracy and inclusion would have been on his mind as he continued publishing on legal and political philosophy during the 1790s. Kant worried about the arbitrary nature of democracy much as he did about enlightened despotism. A democratic process does not necessarily entail a reasonable outcome; it is simply the will of the majority. That is why Kant excluded those who were not in a position to reason independently about politics, and sought to establish institutional safeguards, chiefly representation and the division of powers, which would align legislation with reason. In this effort, he utilized the theory of representation, constitution, and citizenship Sieyès had made famous in 1789. Kant concluded that the exclusion itself did not contradict freedom as the legal status of non-domination because it requires only basic civil liberties and the rule of law, secured in

<sup>7</sup> See Kant, remark 6667 in NM, 19:128 and remark 7548 in NM, 19:452.

<sup>8</sup> Fichte and Schlegel have received significant scholarly attention, but it has been overlooked that they were part of a larger group of radical Kantians. Even studies on Kant and the French revolution ignore most of these young Kantians: see Burg, *Kant und die französische Revolution*, and André Tosel, *Kant révolutionnaire: Droit et politique* (Paris: Presses Universitaires de France, 1988). This silence extends beyond Kant studies to books about German political thought during the period. There is good reason to treat these authors as a group, since some of them, like Fichte and Erhard, knew each other, and since all of them were united in the effort to develop Kant's philosophy with the aim of showing its coherence with the ideals of the French Revolution. This does not mean they were always in agreement. The few studies that do exist are hard to come by and focus on single authors: see Jörn Garber, 'Liberaler und demokratischer Republikanismus. Kants Metaphysik der Sitten und ihre radikaldemokratische Kritik durch J. A. Bergk', in *Die Demokratische Bewegung in Mitteleuropa im Ausgehenen 18. Und frühen 19. Jahrhundert*, edited by O. Büsch and W. Grab (Berlin: Colloquium-Verlag, 1980), pp. 251–289; Zwi Batscha, 'Johann Benjamin Erhards Politische Theorie', in *Jahrbuch für Deutsche Geschichte*, Universität Tel-Aviv, 1 (1972): 53–75; Batscha, 'Ludwig Heinrich Jakobs frühbürgerliches Widerstandsrecht', in *Studien zur politischen Theorie des deutschen Frühliberalismus* (Frankfurt am Main: Suhrkamp, 1981); Franklin A. Walker, 'The Conservative Face of a Radical Kantian in Prussia and Russia: The Case of Ludwig Heinrich Jakob (1759–1827)', *Germano-Slavica*, XIII (2002): 3–17; Steven D. Martinson, 'Reason, Revolution and Religion: Johann Benjamin Erhard's Concept of Enlightened

a republican constitution. This view puts Kant in the classical Roman tradition of republicanism, which developed as an alternative to democracy.<sup>9</sup> Part one of this chapter explores citizenship debates raised by the French Revolution, part two presents Kant's initial view, part three discusses the ensuing critiques, and part four shows how Kant's final view attempts to strengthen the initial argument. The subsequent chapter explores another central topic for Kant and his radical followers: the justice of resistance and revolution.

## DEBATES ABOUT CITIZENSHIP

The *Declaration of the Rights of Man and the Citizen* stated that 'The nation is essentially the source of all sovereignty' and 'The law is an expression of the will of the community. All citizens have a right to concur, either personally, or by their representatives, in its formation.'<sup>10</sup> This statement was based on the Abbe Sieyès' reinterpretation of Rousseau. Rousseau's influential argument in *Contrat Social* was that individuals can be simultaneously free and subject to government authority only when the government rules according to laws made by the people. Persons are autonomous because they are both subjects and lawmakers, and citizenship is a universal status derived from membership in a people. Since everyone signs the social contract, everyone is equally entitled to the full range of civil rights, including political participation in the plebiscites that make the law.<sup>11</sup>

Conservatives had pointed out that Rousseau had admitted that popular sovereignty would work only in small states, but that France was a nation of thirty million.<sup>12</sup> Sieyès was acutely aware of this problem during the preparation for the Estates-General. Although he owed his concept of the nation as the constituent power to Rousseau, he doubted that direct democracy would be manageable. Moreover, like many others at the time, he was worried that peasants, who were subject to the authority of the nobility and clergy, 'in their present condition [are] too dependent to be able to vote freely in favour of their own order'.<sup>13</sup> In parliamentary debates he was more blunt: 'legitimate

revolution', *History of European Ideas*, 12, (1990): 221–226. Gilli, *Pensée et Pratique* is a partial exception.

<sup>9</sup> On this tradition, see Nadia Urbinati, 'Competing for Liberty: The Republican Critique of Democracy', *American Political Science Review*, 106, 3 (2012): 607–621.

<sup>10</sup> National Assembly of France, 'Declaration', § 6.

<sup>11</sup> Rousseau does not discuss women's participation in *The Social Contract*. Although it would be natural to assume they would participate, scepticism is in order considering the low opinion he expressed of women elsewhere.

<sup>12</sup> See Gordon H. McNeil, 'The Anti-Revolutionary Rousseau', *The American Historical Review*, 58, 4 (1953): 817–818.

<sup>13</sup> Sieyès, 'What Is the Third Estate', p. 109. Likewise, Gouverneur Morris defended property qualifications because the poor would easily be corrupted by the wealthy and become their instruments, and the Earl of Shaftesbury thought that men with more 'substance' would be

property ensures independence. He who exists at the expense of the property of others, is a slave.<sup>14</sup> Giving the votes to the poor would therefore indirectly be to give it to their masters. 'Everyone knows that servants are harsher and more enterprising in defending their masters' interests than their masters themselves. [...] To be plain, the mob belongs to the aristocracy.'<sup>15</sup>

Sieyès therefore concluded that direct democracy should be avoided and political rights restricted to male taxpayers. Hence, political rights were not a *human* right, but a right of the *citizen*. Since it was at least theoretically possible for all men to earn enough money to pay taxes, the inclusion was a right rather than a privilege: 'All can enjoy the advantages of society; but only those who contribute to the public establishment, are like true stockholders in the great social enterprise. Only they are true active citizens, the true members of the association.'<sup>16</sup> Sieyès' view, which conformed with his statement that the third estate is the backbone of society due to its economic power, was adopted as a law on 22 December 1789.<sup>17</sup> It was later integrated in the first post-revolutionary French constitution in 1791.<sup>18</sup> Taxpayers are 'active' citizens with the right to vote; the rest are 'passive' citizens who nonetheless enjoy equal civil rights:

In order to be an active citizen it is necessary [...] To pay, in any part of the kingdom whatsoever, a direct tax equal at least to the value of three days' labor, and to present the receipt therefor; Not to be in a position of domesticity, that is to say, a servant for wages.<sup>19</sup>

The passive citizen category was an attempt to square the circle and include workers and women as citizens without giving them the right to vote. Sieyès did not feel the need to defend the fact that women could not aspire to being active citizen since his formulation reflected public opinion at the time. Olympe de Gouges and Mary Wollstonecraft's defences of the rights of women were the exception rather than the rule, and did not represent a significant

independent from the corrupting influence of the Crown. See Bernard Manin, *The Principles of Representative Government* (Cambridge: Cambridge University Press, 1997), pp. 97 and 103.

<sup>14</sup> Speech in parliament of 27 August 1789, cited by Olivier Le Cour Grandmaison, 'Passive Citizens or the Reasonless Poor During the French Revolution, 1789–1791', in *The Languages of Revolution*, edited by Loretta Valtz Mannucci (Milano: Istituto di Studi Storici, 1989), p. 178.

<sup>15</sup> Sieyès, 'What Is the Third Estate', p. 108.

<sup>16</sup> Sieyès, quoted by William Hamilton Sewell in *A Rhetoric of Bourgeois Revolution: The Abbe Sieyès and What Is the Third Estate?* (Durham, NC: Duke University Press, 1994), pp. 176–177.

<sup>17</sup> In fact, the law involved the right to participate at several levels beyond active and passive citizenship, depending on tax contributions. After an analysis of the parliamentary debates, Grandmaison concludes that passive citizens were excluded because they were considered to be 'entirely governed by their passions and prejudices'. See Grandmaison, 'Passive Citizens', p. 191.

<sup>18</sup> Sieyès's distinction between active and passive citizens was only the latest in a long tradition in the *ancien régime*, which distinguished voting from non-voting residents of villages on the basis of taxation. See Malcolm Crook, *Elections in the French Revolution: An Apprenticeship in Democracy, 1789–99* (Cambridge: Cambridge University Press, 1996), p. 14.

<sup>19</sup> National Assembly of France, 'Constitution of 1791', chapter 1, section 2.2., p. 254.

political challenge. The French Revolution raised the question of enfranchising male workers, but basically ignored women's rights.<sup>20</sup>

The issue of the right to vote became an urgent one as the French Revolution entered its most radical phase. Robespierre took power in the summer of 1793, and the following months revealed his fervour for democracy and equality. The new constitution drafted by the Committee of Public Safety and ratified in June of that year established universal citizenship for men over 21 years of age. Although Robespierre set the constitution aside for the sake of revolutionary government, he still boasted about the democratic achievements of France. In a speech given on 5 February 1794 he said:

The French are the first people in the world that have established democracy in its purity, by holding out to all men equality and a full enjoyment of the rights of the citizen; and this is, in my opinion, the true reason why all the tyrants opposed to the republic will be vanquished.<sup>21</sup>

As France spiralled out of control under the leadership of a radical democrat and Sieyès went underground, the ideal of unrestricted citizenship became harder to defend outside of France.

In German lands, the issue of government by consent had been on the agenda in the public sphere prior to the Revolution,<sup>22</sup> and a distinction between 'civil freedom' and 'political freedom' had been established by the 1780s.<sup>23</sup> Johann August Eberhard explained the difference between the two concepts in 1784: civil freedom meant the 'right [...] to do and not to do as I please with regard to actions not specified by the laws of the state'. Political freedom meant 'participation in sovereignty'.<sup>24</sup> Germans were divided over whether citizenship should be based on civil rights, such that the rule of law alone justified government, or whether it should also include the right to elect representatives.

The debate about political rights was not usually framed as a debate about democracy. The word itself was not much in use in Germany prior to the 1790s, and democracy was generally considered an undesirable form of government. Zedler's lexicon lists democracy as 'a form of government where sovereignty [Majestät] is with the entire people'.<sup>25</sup> In its pure form everyone without exception has the vote, but in its restricted form the right to vote can be limited

<sup>20</sup> Adam Przeworski, 'Conquered or Granted? A History of Suffrage Extensions', *British Journal of Political Science*, 39 (2009): 291–321.

<sup>21</sup> Robespierre, 'Report on the Principles', p. 6.

<sup>22</sup> Valjavec, *Die Entstehung*, pp. 180–207; Bödeker, 'The Concept of the Republic', pp. 36–38.

<sup>23</sup> Bödeker, 'The Concept of the Republic', pp. 35–52.

<sup>24</sup> Eberhard cited in Bödeker, 'The Concept of the Republic', pp. 37–38. Likewise, Gottlieb Hufeland, *Lehrsätze des Naturrechts und der damit verbundene Wissenschaften* (Jena: bey Christ. Heinr. Cuno's Erben, 1790), p. 197.

<sup>25</sup> Johann Heinrich Zedler, *Grosses vollständiges Universal-Lexicon aller Wissenschaften und Künste*, band 7 (Halle und Leipzig: Verlegst Johann Heinrich Zedler, 1734), pp. 283–285.

to prominent individuals who are considered citizens. Democracies govern directly, by majority decisions in assemblies consisting of all the citizens. This directness was the problem, according to Zedler. People rarely agree, a majority of votes does not correspond to 'truth', and demagogues could easily persuade the masses to consent to sinister designs. August Ludwig von Schlözer, the publicist in Göttingen, writes that if a people is ever to participate in governing itself 'it must possess a certain culture [Cultur]'.<sup>26</sup> Like Schlözer, most liberals in Germany defended civil rights and the division of powers but were reluctant to support the extension of the franchise to the uneducated masses.

The traditional defenders of the old *Reich* and the defenders of enlightened absolutism disagreed on whether citizenship must be the privilege of a specific group in society or open to every qualified member, and whether it must include political participation. This was in reality a fault-line between two conceptions of citizenship, which Rogers Brubaker has characterized as a contrast between citizenship as a special or general membership status. This conflict aligns with John Pocock's distinction between the Greek tradition, which considered citizenship to be a fundamentally political status of ruling and being ruled, and the Roman tradition, which made it a legal status comprising rights and duties but not necessarily political rights.<sup>27</sup>

Citizenship as a special status was the view of Möser and the defenders of the old German *Reich*. In this view the citizenry is one group in society, among many other groups such as serfs, commoners, nobility, and so on. It is defined through rights and duties that include political rights to participate in government. The right to vote was an ancient privilege, granted by territorial rulers and unconnected to a universal status. Although this tradition used the imagery from the classical Greek polis, it was characteristic of self-governing city-states, such as Geneva.

By contrast, Wolffian supporters of enlightened absolutism defended citizenship as a general membership status. In this view, citizenship belongs to all male heads of households and is not a privilege tied to other social and economic groups. It rarely included political rights; Pufendorf's view of the citizen was typical: 'By a truly political animal, i.e., a good citizen, we mean one who promptly obeys the orders of those in power'.<sup>28</sup> Monarchs seeking to consolidate power in Europe's new territorial states supported this view and thereby aimed to remove the legitimacy from the nobility and self-governing towns. As Brubakers writes, 'Urban citizenship was in fact one of the archaic privilege-based institutions that territorial rulers aimed to undermine or

<sup>26</sup> Schlözer, cited by Valjavec, *Die Entstehung*, p. 177.

<sup>27</sup> See J. G. A. Pocock, 'The Ideal of Citizenship since Classical Times', in *The Citizenship Debates: A Reader*, edited by Gershon Shafir (Minneapolis: University of Minnesota Press, 1998), pp. 31–41.

<sup>28</sup> Pufendorf, *On the Duty*, p. 133.

marginalize in their efforts to construct a general state citizenship. The modern state and state citizenship were constructed *against* urban autonomy and urban citizenship.<sup>29</sup>

Justus Möser considered the citizenship of the French Revolution to be an extreme version of the absolutist view. He did not have a high opinion of the social contract in the natural law tradition, and was horrified at the French notion that everyone is an equal member of the nation. Talk of the nation disguises a fundamental division in all societies between those who were the first landowners and those who came later. Möser argued that there were two social contracts: the first among the original owners, and the second between them and everyone who arrived later.<sup>30</sup> The former are the lords of the land, the latter the tenants. Those who are not property owners are either servants who are not free (*Knechte*) or who live on the land under a contract, and therefore have no right to vote on the laws of the land.<sup>31</sup>

Möser strengthened his argument by adopting Sieyès's idea of society as a joint stock company where the citizens are stockholders.<sup>32</sup> Rather than amounting to recognition of the third estate, though, Möser's claim was a rejection of the argument that peoples' right to vote was based on their humanity. Möser used the metaphor in an egalitarian way. Large landowners and owners of movable property should be allocated votes in proportion to their wealth, a view that would stratify society into multiple layers and leave the propertyless without political rights. He does not even mention women, possibly because he assumed they could not be landowners. The propertyless would hold no shares in the social enterprise and would be mere *Schutzgenossen*: co-beneficiaries enjoying the protection of society. Rehberg, as usual, followed Möser ('the excellent author who first came up with the idea'),<sup>33</sup> and added that since property was inherited, the difference between co-beneficiaries (*Schutzverwandten*) and true citizens (*echten Bürger*) was actually hereditary: 'Of two newborn boys, one may be a future participant in legislation, a born member of the sovereign, the other a mere subject'.<sup>34</sup> Rehberg abandoned his usual criticism of the French Revolution to praise the exclusion of passive citizens, whom he considers 'too poor and too brute' to vote.<sup>35</sup> Möser and Rehberg's view on citizenship was based on the practice in the old *Reich*, which was distinguished by its emphasis on the master-servant relationship and absence of universal citizenship. Zedler reports a distinction between 'immediate subjects' (*unmittelbare Unterthanen*), who are subject only to the authority of the

<sup>29</sup> Rogers Brubaker, 'The French Revolution and the Invention of Citizenship', *French Politics and Society*, 7 (1989): 30–49.

<sup>30</sup> Möser, 'Wann und wie', pp. 276 and p. 278.

<sup>31</sup> Möser, 'Über das Recht', p. 284.

<sup>32</sup> Möser, 'Über das Recht', p. 285. See also Gierke, *Natural Law*, p. 294; Knudsen, *Justus Möser*, p. 179; and Beiser, *Enlightenment*.

<sup>33</sup> Rehberg, *Untersuchungen*, p. 50.

<sup>34</sup> Rehberg, *Untersuchungen*, p. 53.

<sup>35</sup> Rehberg, *Untersuchungen*, p. 135.

regent, and 'mediate subjects' (*mittelbare Unterthanen*), who are also subject to other masters.<sup>36</sup> In the old regime, these masters would often exercise a form of public authority, serving as judges, representing subjects in lawsuits, and even punishing them.<sup>37</sup> Lords treated subjects like minors, and servile subjects addressed their master and mistress as 'Father and Mother'.<sup>38</sup>

Möser's defence of citizenship as a special membership status was an extension of his battle against Wolff and the German natural law tradition, which used the idea of the social contract to weaken the power of the estates to benefit absolutist monarchs. As we saw in the first chapter, these rulers sought to curb the multiplicity of status divisions of the old regime and establish a single distinction between ruler and subjects. In the eighteenth century the many independent intermediary institutions of the old society had gradually been abolished or subjected to sovereign power, and the old inequalities of legal status and privilege were slowly becoming a thing of the past.<sup>39</sup> Wolff's natural law philosophy provided the justification for this development by defending citizenship as a general membership status. Persons, who are initially in the state of nature, entered an original contract to found the state in order to improve their material condition and moral perfection. The united people has original authority (*Herrschaft*), the right of the state to decide over subjects.<sup>40</sup> Only the people has the right to change the constitution (*Grundgesetze*) and decide whether to retain the authority or to give it to an individual or a group of people who would govern.<sup>41</sup> Wolff's concept of citizenship (*Bürger*) was general: it included all full members (*Glieder*) of the state, who had joined the contract to exit the state of nature.<sup>42</sup> Yet, not all were full members. Wolff, like Pufendorf and Achenwall, had developed a contract theory that restricted citizenship to those who sign the social contract. Since only 'Masters of Families' could do this, only they deserve the name citizen, while the women, children, and servants who depend on the master are protected by the state. Their rights derive from their relationship to their master.<sup>43</sup> Wolff saw society as a union of households whose citizens were only those male heads of families with full

<sup>36</sup> Zedler, *Universal-Lexicon*, p. 2254. See also Leonard Krieger, *The German Idea of Freedom: History of a Political Tradition* (Boston: Beacon Press, 1957), p. 56.

<sup>37</sup> See Berdahl, *The Politics*, p. 52. <sup>38</sup> Berdahl, *The Politics*, p. 53.

<sup>39</sup> Charles Tilly, 'War Making and State Making as Organized Crime', in *Bringing the State Back In*, edited by Peter B. Evans, Dietrich Rueschemeyer, and Theda Skocpol (Cambridge: Cambridge University Press, 1985), p. 174; and Tilly, *European Revolutions 1492–1992* (Oxford: Blackwell, 1993).

<sup>40</sup> Wolff, *Grundsätze*, pp. 687–689.

<sup>41</sup> Wolff, *Grundsätze*, p. 691.

<sup>42</sup> Wolff, *Grundsätze*, p. 687.

<sup>43</sup> See Pufendorf, *Of the Law of Nature and Nations*, anonymous translator (Oxford: L. Lichfield, 1729), pp. 651–652, and Pufendorf, *On the Duty*, p. 133, describing how 'heads of households' abandon their natural liberty and constitute the state. See also Manfred Riedel, 'Bürger, Staatsbürger, Bürgertum', in *Geschichtliche Grundbegriffe. Historisches Lexikon zur politisch-sozialen Sprache in Deutschland*, edited by Otto Brunner, Werner Conze, and Reinhart Koselleck (Stuttgart: Klett-Cotta, 1972), p. 685.

legal status, like the Roman *paterfamilias*. It is particularly significant that Achenwall shared this view, since Kant used his book to teach natural law.<sup>44</sup>

The challenge of the French Revolution was that an attempt was made to fuse the traditions, creating a citizenship as a general membership status that included the right to vote.<sup>45</sup> This led to concerns about the inclusion of workers and women, which preoccupied Sieyès, and which came to pose a problem for Kant as well. The debate about citizenship therefore had great stakes for the German lands, since it challenged both the inequalitarian order of the estate society and the authoritarian rule by enlightened monarchs. Prussia's unstable compromise between the monarch and the aristocracy, which was a combination of old and new forms of governments, of universal principles and special privileges, was doubly challenged.

This ideological climate saw the rise of the German Jacobins, who were publicists, pamphleteers, and agitators, organized in revolutionary clubs.<sup>46</sup> Their philosophical foundation combined equality and political rights, resulting in a demand for popular sovereignty. They actively worked to foment revolution in Germany and, with the help of French troops, managed to establish a short-lived republic in Mainz in 1793. Georg Forster and Georg Wedekind, driving forces behind the republic, were two young writers who founded the Mainz Society of the Friends of Liberty and Equality.<sup>47</sup> Inspired by Kant's ideals of enlightenment and cosmopolitanism, they believed that the people of Mainz should receive the conquering French armies as liberators, and welcomed them by erecting a 'tree of freedom' adorned with a red cap.<sup>48</sup> In a rousing speech delivered during the reception ceremony, Forster appealed to 'republican warriors' to sacrifice for freedom and the rights of humanity (*den Rechten der Menschheit*) and, to the sound of 'warlike music', to liberate Germany from feudalism and despotism.<sup>49</sup> Like other German Jacobins, the pair failed to gain public support, and Prussian and Austrian forces put an end to the French occupation in July 1793. Just as French radicalism abated after 1794, it also

<sup>44</sup> Achenwall, *Iuris naturalis*, paragraphs 41, 86, 89, and 110.

<sup>45</sup> Brubaker, 'The French Revolution.'

<sup>46</sup> See, for example, Walter Grab, *Leben und Werke norddeutscher Jakobiner* (Stuttgart: J.B. Metzler, 1973) and the critique by T. C. W. Blanning, 'German Jacobins and the French Revolution', *The Historical Journal*, 23 (1980): 985–1002.

<sup>47</sup> Wedekind wrote 'We must always act so that our action can become a universal law, since one man has just as many rights as another.' Cited by Aris, *History of Political Thought*, p. 47. Jachman visited Forster in 1790 and wrote to Kant that he had found Forster's private library full of books by Kant. Forster had engaged in polemics with Kant in the 1780s about the anthropological concept of race, and Jachman reports that Forster regretted the polemical tone he had assumed. See Jachman, letter to Kant, 14 October 1790 in C, 11:215.

<sup>48</sup> See T. C. W. Blanning, *Reform and Revolution in Mainz, 1743–1803* (London: Cambridge University Press, 1974), p. 276ff.

<sup>49</sup> Georg Forster, 'Rede bei der Errichtung des Freiheitsbaumes am 13. Januar 1793'. In *Von deutscher Republik 1775–1795: Texte radikaler Demokraten*, edited by Jost Hermand (Frankfurt am Main: Suhrkamp Verlag, 1975).

diminished in Germany, and in hindsight it is clear that the German Jacobins were never a serious threat to the governments of Prussia or the other German states.<sup>50</sup> Yet at the time they further destabilized an already volatile situation and added to the impression that Kant's philosophy was a source of revolutionary radicalism.

## KANT'S INITIAL VIEW OF THE RIGHT TO VOTE

There is no evidence that Kant had given serious consideration to citizenship before the revolution. To be sure, the notion of self-legislation was key to his moral writings and found expression in the idea of the kingdom of ends as well as the hypothetical original contract. Yet, these models for describing moral agency and justice did not involve a right to political participation, as someone like Fichte came to understand it. In *Theory and Practice*, Kant was concerned to give voting a role without reducing justice to the decision by a majority. The most arbitrary of decision mechanisms was direct democracy, about which Kant had considerable scepticism. In a reflection probably written before 1789, he wrote: 'Even democracy can be despotic if its constitution is without insight, like the Athenian democracy, which allowed people to be condemned solely through the majority of votes without rightful cause in accordance with prescribed laws'.<sup>51</sup> Kant also had reservations about the deliberative aspects of democracy:

I must confess that [...] reading the best speech of a Roman popular speaker or a contemporary speaker in parliament or the pulpit has always been mixed with the disagreeable feeling of disapproval of a deceitful art, which understands how to move people, like machines, to a judgment in important matters which must lose all weight for them in calm reflection.<sup>52</sup>

This scepticism notwithstanding, Kant did include in *Theory and Practice* a theory of citizenship, and it included the right to vote. Unlike many of his contemporaries, Kant refrains from describing voting as a separate kind of freedom. This indicates that he did not think that those who lack the right to vote are for that reason subject to the domination of others, most likely because they are entitled to live under the rule of law and are protected in their civil rights.

It is not entirely clear what the right to vote amounts to: for example, we are not told whether voting is public or by secret ballot. Sometimes Kant alludes to voting directly for legislation, but most of the time it seems that voting is

<sup>50</sup> See Valjavec, *Die Entstehung*, pp. 180 and 204; Bödeker, 'The Concept of the Republic', pp. 41–43 and 49.

<sup>51</sup> Kant, Reflection 8054, NM, 19:595.

<sup>52</sup> Kant, CPJ, 5:327–328.

for representatives (*Repräsentanten*). Representatives are to articulate a ‘public will’, which is thought of in Rousseauean terms as a general will, which everyone is a part of. It is not a mere aggregate of individual preferences in society, but a unity, which is to articulate the requirements of an a priori concept of justice. Representatives, who decide by the majority principle, are authorized to represent the nation as a whole and are not legally bound by the opinions of voters. In technical terms, they do not have an imperative mandate, but are to be considered trustees and free to act in the name of the people. They can nonetheless do wrong (*Unrecht*), and although there can be no coercive right against them subjects must be free to complain in the public sphere. Justice therefore requires the ‘*freedom of the pen*’, not, as in the pre-revolutionary writings, for the sake of individuals to enlighten themselves and develop as moral beings, but so as to express ‘what it is in the ruler’s arrangements that seems to him to be a wrong against the commonwealth’<sup>53</sup>

The justification for the right to vote is the ancient notion of *volenti non fit iniuria*: ‘it is only to oneself that one can never do wrong’<sup>54</sup>. Persons who collectively decide over each other are not made subject to a particular person’s arbitrary discretion. Those who are beholden to other interests than the public cannot be entitled to vote, presumably because that would diminish the chances of the procedure issuing in an outcome in line with reason. Therefore only those with the legal status of being independent are entitled to vote. This legal status is one of three, which Kant presented as a priori principles:

The freedom of every member of the society as a human being [*Mensch*].

His equality with every other as a subject [*Unterthan*].

The independence [*Selbstständigkeit*] of every member of a commonwealth as a citizen [*Bürger*].<sup>55</sup>

Each status carries distinct legal rights and duties that are best understood as a series of concentric circles: the largest (freedom) accommodates everyone as *humans*, who enjoy the right to basic freedom from paternalistic legislation. This circle includes people who are merely visiting a society and are therefore not entitled to or subject to the full range of civil rights and duties. This circle encompasses a smaller one (equality) that contains the *subjects*, who enjoy the additional right of legal equality, equal opportunity to hold office, and so on. And that circle contains the still smaller circle of *citizens*, who have the right to

<sup>53</sup> Kant, *TP*, 8:304. Kant took distance to Hobbes, who had advocated a related concept of representation but who concluded that the representative can do subjects no wrong (*iniuria*). Hobbes defined justice as the performing of covenant or agreement and since the sovereign has no covenant with subjects he can also not wrong them. By contrast, Kant defines wrong as conflict with the universal principle of right, and rulers can therefore substantially fail to be just even though formally their decisions count as the public will. See Hobbes, *On the Citizen*, edited and translated by Richard Tuck and Michael Silverthorne (Cambridge: Cambridge University Press, 1998), p. 97.

<sup>54</sup> Kant, *TP*, 8:295.

<sup>55</sup> Kant, *TP*, 8:290.

vote. Those in the first two groups are merely co-beneficiaries (*Schutzgenossen*) of the law:

He who has the right to vote in this legislation is called a *citizen* [*Bürger*] (*citoyen*, i.e. *citizen of a state*, not of a town, *bourgeois*). The quality requisite to this, apart from the *natural* one (of not being a child or a woman), is only that of being one's own master (*sui iuris*), hence having some *property* (and any art, craft, fine art, or science can be counted as property) that supports him—that is, if he must acquire from others in order to live, he does so only by *alienating* what is *his* and not by giving others permission to make use of his powers—and hence that, in the strict sense of the word, he serves no one other than the commonwealth. Here craftsmen and large (or small) landowners are all equal, namely each is entitled to only one vote.<sup>56</sup>

This dense passage, which we are going to analyse in detail, contains the basic argument that financially independent persons are equally entitled to one vote and one vote only. Kant clearly took his view from the absolutist tradition of citizenship as a general membership status, as evidenced by the key notion that the citizen 'serves no one other than the commonwealth'. This is a tacit quoting of Hobbes, who defined the citizen as one who 'serves only the commonwealth'.<sup>57</sup> Although it is not surprising that Kant should cite Hobbes considering that the entire section of *Theory and Practice* nominally engages with *De Cive*, where Hobbes' definition is to be found, it is surprising that Kant would use Hobbes' definition of the citizen, given the considerable philosophical distance between the two thinkers. Kant does not accept Hobbes' view of freedom as the absence of physical impediments, conceptualizing it rather as the legal status of not being subject to domination.

Yet, Kant and Hobbes shared a view of sovereignty as requiring a direct relation between rulers and subjects, which is not mediated by the estates, guilds, and various other institutions that claimed independent authority. Kant explicitly connects this to a conception of the citizen as a constituent member of the state, rather than as a representative of a class, as evidenced by his insistence that by *Bürger* he means *citoyen*. *Citoyen* was Rousseau's term, and it related citizenship to the common good, unlike *bourgeois*, which connoted the particular interests of the economic sphere.<sup>58</sup> Thus, someone who is

<sup>56</sup> Kant, *TP*, 8:295–296; also preparatory notes to *Theory and Practice*, V, 23:136, and comments on Achenwall's *Juris naturalis*, *NM*, 19:568, Reflection 7974.

<sup>57</sup> Hobbes, *On the Citizen*, p. 112. This statement is so close to the classical tradition's distinction between free men and slaves that Riedel mistakes it for evidence of Kant's debt to Aristotle. It is ironic, therefore, that the source of Kant's statement is Hobbes. See Riedel, 'Transcendental Politics', p. 606. Philonenko correctly identifies Hobbes as Kant's source: see *Théorie et Praxis*, p. 62.

<sup>58</sup> In *Social Contract* Rousseau laments the frequent confusion between citizens and towns-men. See Book 1, chapter 6, footnote 4. Kant was familiar with Rousseau's complaint and copied the relevant paragraph into his notebook sometime in the latter half of the 1760s. See Kant, *NM*, 19:449.

to have a say about the commonwealth should not be beholden to a particular interest but seek the good of the whole.

Kant clearly considered that the exclusion of women and workers was consistent with the notion of citizenship as a general membership status. It is difficult to know why he did not think women were capable of inclusion, and it is highly likely that this reflected Kant's considerable personal prejudices. With regard to workers the case is more straightforward since equal civil liberty and a market economy leaves it to the 'ability, industry, and good fortune' of society's members to gain citizenship.<sup>59</sup> As Kant writes in an unpublished reflection from the same period (which might have been a direct rebuttal of Rehberg's view of citizenship as a special membership status): 'Each is born a potential citizen (*Staatsbürger*); to become one he must only acquire a fortune, either in income or in things'.<sup>60</sup> That Kant was arguing against the tradition of citizenship as a special membership status is also evidenced by his view that the amount of property they own—whether they are smallholders or large landowners—is irrelevant.<sup>61</sup> This claim directly responded to the arguments of Möser and his circle: 'The number of those qualified to vote in legislation must be appraised by the number of those in the status of possession, not by the size of their possessions'.<sup>62</sup> Large landholdings inevitably raise the spectre of unjust feudal seizure: unjust barriers to ownership must be eliminated, chief among them the institution of hereditary privilege, as we saw in the previous chapter.

That independence reflects position in the market economy distinguishes Kant's view from the Roman law tradition. That this tradition was an influence is evident from Kant's identification of independence with the Roman law term *sui iuris*.<sup>63</sup> Under Roman law, only heads of households, the *paterfamilias*, had full citizenship rights. They had *status familiae*, the capacity to have and to be subject to the rights of a person *sui iuris*, in contrast to those who were subject to a *paterfamilias*, the *alieni iuris*.<sup>64</sup> The *alieni iuris*, which included slaves and children, were legally (not just economically) dependent upon a master. They were in the *potestas* of a person who is *sui iuris*. Their status of being the master of their estate, a *paterfamilias*, made someone *sui iuris*.<sup>65</sup>

<sup>59</sup> Kant, TP, 8:296.      <sup>60</sup> Kant, AA, 15:544.

<sup>61</sup> Kant writes: 'a great landowner eliminates as many smaller owners and their votes as could take his place; thus he does not vote in their name and accordingly has only one vote.' Kant, TP, 8:296.

<sup>62</sup> Kant, TP, 8:296.

<sup>63</sup> This is Manfred Riedel's thesis in 'Transcendental Politics', pp. 608–610.

<sup>64</sup> Kant knew about these categories from Achenwall. He was also familiar with the work of Theodor von Schmalz, his colleague at Königsberg, who published a textbook on Roman law the same year as *Theory and Practice* came out. See *Handbuch des römischen Privatrechts* (Königsberg: bey Friedrich Nicolovius, 1793). Quentin Skinner recently emphasized the freedom of citizens in Roman law: 'A *civis* or free subject must be someone who is not under the domination of anyone else, but is *sui iuris*, capable of acting in their own right' See 'States and the freedom of citizens', p. 13.

<sup>65</sup> See Daniel Lee, 'Roman law, German liberties and the constitution of the Holy Roman Empire', in *Freedom and the Construction of Europe, Volume 1: Religious Freedom and Civil Liberty*, edited by Quentin Skinner and Martin van Gelderen (Cambridge: Cambridge University Press, 2013).

While Kant rejects domination by the absolutist state, and the hereditary hierarchy of the old *Reich*, he is quite comfortable with individuals being subject to employers in the market economy, or a wife being subject to her husband:

Thus the welfare of one is very much dependent upon the will of another (that of the poor on the rich); thus one must obey (as a child its elders or a wife her husband) and the other directs; thus one serves (a day labourer) and the other pays him, and so forth.<sup>66</sup>

In rough notes for *Theory and Practice* Kant writes (in chilling language) that 'every servant [Knecht] is a human being who is rooted in other citizens like a parasitical plant [...] the one whose existence depends on the will of another, and who therefore has no free existence (*freye Existenz*) enjoys no vote'.<sup>67</sup> In the published version of the essay he nonetheless insists that the financially dependent are free even though they depend in this way because they enjoy civil rights, which limits their master's choice. But how to identify in practice those who qualify as independent? This gives Kant a bit of trouble since he has tied it to owning property while it seems that even men without capital (skilled craftsmen, for instance) can be financially independent. His solution is to opt for a broad definition, including manufacturers (*artifices*) as property owners. Unlike workers (*operarii*) they create something (*opus, Werk*), which is their property, theirs to sell, while workers sell themselves, their labour (*Kräfte*):

Someone who makes an *opus* can convey it to someone else by alienating it, just as if it were his property. But *praestatio operaे* is not alienating something. A domestic servant, a shop clerk, a day laborer, or even a barber are merely *operarii*, not *artifices* (in the wider sense of the word) and not members of the state, and are thus not qualified to be citizens. Although a man to whom I give my firewood to chop and a tailor to whom I give my cloth to make into clothes both seem to be in a quite similar relation to me, still the former differs from the latter, as a barber from a wigmaker (even if I have given him the hair for the wig) and hence as a day laborer from an artist or craftsman, who makes a work that belongs to him until he is paid for it. The latter, in pursuing his trade, thus exchanges his property with another (*opus*), the former, the use of his powers, which he grants [*bewilligt*] to another (*operam*).<sup>68</sup>

The difference between workers and owners hinges on the possession of property in things. Whereas the barber sells only his services, the wigmaker sells a thing. One might think the wigmaker also sells only a service, especially if the customer provides the hair, but Kant's view is likely that the wigmaker sells the *design*. The completed wig comprises two elements: the material and the

<sup>66</sup> Kant, *TP*, 8:292.

<sup>67</sup> Kant, *LE*, 23:137–138.

<sup>68</sup> Kant, *TP*, 8:296.

design. The wigmaker owns the design, which he sells to the customer. Since he trades a thing and does not merely execute a service, he is not under the thumb of an employer.<sup>69</sup> Kant had trouble drawing such empirical distinctions. He confesses: 'It is [...] somewhat difficult to determine what is required in order to be able to claim the rank of a human being who is his own master...'<sup>70</sup>

Workers are excluded only because they serve others, not because they lack intelligence or virtue. They are not their own masters. *Pace* Manfred Riedel,<sup>71</sup> this argument distinguishes Kant's republican view from the Aristotelian tradition, which excluded 'vulgar craftsmen' from citizenship because they lack the necessary virtue that would allow them to rule and be ruled in turn, not because they depend on others.<sup>72</sup> As Hannah Arendt emphasizes, the Greeks rewarded higher forms of work because they express man's higher nature and ability to fabricate things that could last. Manual labour, on the other hand, is performed out of necessity, ultimately for survival.<sup>73</sup> Kant (at least in principle) attached no particular negative value to menial tasks; serving others simply meant that since workers were not in a position to live on their incomes, they had to obey a master. Kant's conclusion, that this dependence is sufficient to make them *alieni iuris* and exclude them from citizenship, quickly attracted the discontent of his radical critics.

## RADICAL CRITICS

We have already seen how Kant's *Theory and Practice* essay became subject to debate. This debate included the topic of citizenship. Kant's conservative critics vindicated citizenship as a special membership status, while his liberal and radical critics defended the general membership status. August Wilhelm Rehberg's critique repeated his view from *Untersuchungen über die Französische Revolution* that it is misguided to set up a rational principle of inclusion in the first place, since historical practice should settle the issue. Noting the difficulties Kant had acknowledged about separating those who are truly their own masters from those who depend on others, he writes: 'The truth is, however, that on the whole no human being in the world is (entirely) his own master (*sein eigener Herr*)'.<sup>74</sup> Everyone depends on others, and the degree of

<sup>69</sup> Tieftrunk's commentary indicates that this was indeed Kant's view; see *Philosophische Untersuchungen*, p. 257.

<sup>70</sup> Kant, *TP*, 8:296. <sup>71</sup> Riedel, 'Transcendental Politics', p. 606.

<sup>72</sup> Aristotle, *Politics*, translated by C. D. C. Reeve (Indianapolis/Cambridge: Hackett Publishing Company, 1988), p. 1278a5.

<sup>73</sup> Hannah Arendt, *The Human Condition: Second Edition* (Chicago and London: The University of Chicago Press, 1998), p. 12ff.

<sup>74</sup> Rehberg, 'Über das Verhältniß', p. 125.

independence necessary for a certain legal status results from a decision, it is not given by nature: 'The craftsman becomes a citizen not because he is capable of supporting himself through his skill but only through the right of a master [*Meisterrecht*] that arose from the choice (*willkürlichen Bestimmungen*) of a guild.'<sup>75</sup> Rehberg therefore refrains from deciding on any principle of inclusion since it must result from actual historical practice. Möser gave a further rationale for why simple people should not be allowed to vote, as they cannot be trusted to make the right decisions: '*les barbares veulent toujours un royaume*'.<sup>76</sup>

Kant's radical followers took his *a priori* grounded right to freedom as their point of departure, using it as they saw fit to develop alternative conceptions of citizenship and the right to vote. Unlike his conservative critics, who were part of the civil and political administration, the radicals were university professors and independent scholars. Fichte, Erhard, and Schlegel were affiliated with the University of Jena during the 1790s: Fichte as an ambitious young professor of philosophy, Schlegel as an independent scholar and publisher, and Erhard as a student of Reinhold and writer of Kantian essays. Heydenreich and Bergk were in Leipzig, the former as a professor of philosophy, and the latter as a private scholar, political publicist, and prolific popularizer of Kant's philosophy. Jakob and Tieftrunk were both professors at the University of Halle, and Pörschke was a student of Kant's who became his close friend and colleague as an associate professor at Königsberg.

These writers can be labelled 'radical' for two reasons. First, unlike the conservative defenders of the old order, they were committed to the idea that reason requires a republican government and a constitution based on individual rights and popular sovereignty. Second, they believed that revolution was a legitimate means to bring about such a political system. They all defended the liberal principles of the *Declaration of the rights of man and of the citizen*, and some of them went further in the defence of popular sovereignty even though they stopped short of committing to the more extreme principles and methods of the Jacobins who came to power four years later. Although they shared many of the ideals of German Jacobins like Forster and Wedekind, they were not political organizers. Moreover, their commitment to the rule of law and state authority distinguished them from German idealists such as Schelling and Hegel, who a few years later sought to rouse Germany with an anarchistic vision of a society united without the state.

Kant had inspired the young radicals. We have already noted Fichte's debt to Kant, which was shared by Erhard, who travelled to Königsberg to meet with the great philosopher. Schlegel was deeply influenced by Kant's *Critique of Judgment*,

<sup>75</sup> Rehberg, 'Über das Verhältniß', p. 126.

<sup>76</sup> Justus Möser, 'Über Theorie und Praxis', in *Sämtliche Werke, Historisch-kritische Ausgabe*, vol. VIII, edited by Akademie der Wissenschaften zu Göttingen (Oldenburg: Gerhard Stalling, 1944), p. 149. 'The barbarians always want a king'.

which became the core text of his romantic circle in Jena. Heydenreich, Bergk, Jakob, Tieftrunk, and Pörschke devoted their careers to popularizing Kant's philosophy and expanding it to the legal and political domains. Since Kant had only just begun to sketch out his theory of public law in 1793, they had the space to develop their own Kantian theories. As we shall see, these theories often diverged from the view Kant developed during the 1790s.

Kant's liberal and radical followers' defence of citizenship as a general membership status distinguished them from his conservative critics. Although the radicals saw citizenship as an inherently political status that entailed the right to vote, thereby breaking with enlightened absolutism, they split over the issue of the franchise. Bergk, Pörschke, and Tieftrunk, the more progressive of Kant's followers, argued that all adult subjects of a sound mind should be allowed to vote, while Heydenreich, Schlegel, and Jakob were more cautious, saying that universality only meant that everyone *qualified* for the franchise. While the debate played out, the tide of events in France turned again. The Thermidorian reaction ushered the principle of universal political rights out with Robespierre, and reinstated Sieyès's property restrictions in the 1795 constitution. Thomas Paine reacted with consternation: 'the persons excluded by this *inequality* can neither be said to possess liberty, nor security against oppression. They are consigned totally to the caprice and tyranny of the rest.'<sup>77</sup>

Fichte's *Contribution to the Rectification of Public Opinion Concerning the French Revolution*, written in 1793 and published at the same time as *Theory and Practice*, was not written in response to Kant's essay. Since it was an attempt to develop Kantian principles, it must nonetheless have been obvious to Kant and to others that it was part of the same conversation. Fichte criticized Rehberg's conventionalist approach to citizenship, which took the hereditary nature of social status, both high and low, for granted.<sup>78</sup> Fichte argued for the universal status of citizenship, which results from the free choice of human beings to enter the state through the social contract.<sup>79</sup> Although Fichte claimed that citizens have the right to vote, he stopped short of developing a full theory of the franchise.<sup>80</sup> When he returned to the question in *Foundations of Natural Right* in 1796, he explained that everyone had the right to vote on the constitution, on the appointment of rulers, and, in extreme cases involving impeachment charges, against the executive.<sup>81</sup> Unmarried women not under paternal authority have the same right to vote as men.<sup>82</sup> The reason for this considerable

<sup>77</sup> Thomas Paine, 'Speech in the French National Convention, 7 July 1795', in *The Writings of Thomas Paine*, Vol. 3, collected and edited by Moncure Daniel Conway (New York: G. P. Putnam's Sons, 1894), pp. 283–284.

<sup>78</sup> Fichte, *Beitrag*, p. 128.

<sup>79</sup> Fichte, *Beitrag*, pp. 97 and 120ff.

<sup>80</sup> Fichte, *Beitrag*, 124.

<sup>81</sup> Fichte, *Foundations of Natural Right*, edited by Frederick Neuhouser, translated by Michael Baur (Cambridge: Cambridge University Press, 2000), pp. 16, 145, 152.

<sup>82</sup> Fichte, *Foundations*, p. 301.

inclusion is that laws are legitimate only when respecting the free choice of each, and this presupposes everyone participating in creating an empirically existing general will.

Johan Adam Bergk was by far the most radical of Kant's followers. Much like Thomas Paine, Bergk opposed any limitations on the right to political liberty since they conflict with human dignity. He developed this view in *Untersuchungen aus dem Natur-, Staats- und Völkerrechte*, published in 1796. Bergk identifies a universal duty to affirm political rights for two reasons: first, only they create a strong state, and second, because they uphold human dignity, to which everyone is morally entitled.<sup>83</sup> Political rights protect people from oppression (*Unterdrückung*) by hereditary rulers and privileged castes (*Kasten*). To be without political rights is to be a slave. Although Bergk admits that political participation presupposes knowledge and virtue, he does not exclude anyone, but argues that people have a duty to learn about human rights (*der Rechte des Menschen*) and acquire the necessary skills to hold public office.<sup>84</sup>

The year after, Bergk followed through on the logic of this argument and defended female suffrage in a critique of Kant's *Metaphysics of Morals*. Since anyone who is physically mature is capable of virtue and knowledge, women should have the vote. Men and women are equally free and independent moral beings, both sexes hold the state in common, and one half cannot exclude the other from political rights.<sup>85</sup> Tieftrunk made a similar argument in his commentary on *The Metaphysics of Morals*. While Kant was right to limit citizenship to those who are independent, there is no reason why unmarried women could not be considered independent, since as free and rational beings they have the same dignity as men: 'mere sexual difference is no reason to deny them the exercise of this right [to vote]'.<sup>86</sup>

Karl Ludwig Pörschke too defended universal citizenship. Although his *Vorbereitungen zu einem populären Naturrechte*, published in Königsberg in 1795, does not mention Kant, it must have been obvious that he contradicted his friend and teacher.<sup>87</sup> Pörschke's basic principle is that government [*Herrschaft*] of the people must be by the people.<sup>88</sup> While Kant had no problem with this view in principle, Pörschke goes on to argue that it entails universal citizenship and political rights: 'accidents of birth, wealth, employment, talent,

<sup>83</sup> J Bergk, *Untersuchungen*, pp. 48–49.

<sup>84</sup> Bergk, *Untersuchungen*, p. 49.

<sup>85</sup> Bergk, *Briefe*, p. 187.

<sup>86</sup> Tieftrunk, *Philosophische Untersuchungen*, p. 246.

<sup>87</sup> Pörschke became an associate professor at Königsberg the year before his book on natural right appeared. Kant let his students attend Pörschke's classes in preparation for his own courses. See Steve Naragon, entry on Pörschke in *Dictionary of Eighteenth-Century German Philosophers, Volume 2*, edited by Heiner F. Klemme and Manfred Kuehn (London and New York: Continuum, 2010).

<sup>88</sup> Pörschke, *Vorbereitungen*, p. 119.

education etc. do not belong to the concept of the citizen. Everyone belongs to the state in the same way, the wealthy not more than the poor.<sup>89</sup> The state exists to protect rights, and since every member of the state has rights they must also be entitled to have a say in governing.

Kant's more cautious followers were in favour of restrictions on the right to vote, but most of them disagreed with Kant's property-based inclusion principle. Karl Heinrich Heydenreich's book *Versuch über die Heiligkeit des Staats und die Moralität der Revolutionen*, published in 1794, exemplifies this critique. Heydenreich, who had been a Kantian since reading *Critique of Pure Reason* in 1785, was a writer whose books were very influential, partly because they presented difficult matters clearly.<sup>90</sup> His publications on law and the state attempted to found a political theory on Kantian premises. He interprets Kant to mean that citizenship is based on desert: citizenship is a person's reward for his contribution to the common good. On this premise, property ownership could be a partial qualification for the franchise, because the creation of wealth benefits society. It is not a necessary condition though, because there are many other ways to contribute to society. Heydenreich was thinking of soldiers, who are essential to the survival of the state in times of war. He asks Kant rhetorically: 'Should a strong, powerful person [then] not have at least as much worth to the state as a cripple with property?'

Friedrich Schlegel, the leader of the romantic circle in Jena, provided an alternative to the desert-based criterion for citizenship.<sup>92</sup> He assumes that Kant's view of the political process is epistemic, oriented toward revealing a concept of justice. Therefore, the people who are most likely to ensure the best outcome in terms of finding this a priori principle should have more political influence than the rest. The best outcome is achieved when the majority will is aligned with a rational conception of the general will. Just because someone has contributed to society, as Heydenreich proposed, does not mean that they will vote rationally. The votes of those who are more intelligent and capable of reasoning properly are to weigh more. The value of votes is to be determined according to how likely individuals are to approximate an 'absolute universality'

<sup>89</sup> Pörschke, *Vorbereitungen*, p. 321.

<sup>90</sup> Hans-Ulrich Seifert, entry on Heydenreich in *Dictionary of Eighteenth-Century German Philosophers*, Volume 2, edited by Heiner F. Klemme and Manfred Kuehn (London and New York: Continuum, 2010).

<sup>91</sup> Karl Heinrich Heydenreich, *Versuch über die Heiligkeit des Staats und die Moralität der Revolutionen* (Leipzig: im Schwickeretschen Verlage, 1794), p. 117. The Kantian Johann Heinrich Abicht expresses the same idea: 'The one who commits himself as much as he is capable of physically or morally to give his share to society [Staatsgesellschaft] in order to have an equal part in the purpose of the state [Staatszwecke], is a citizen, regardless of whether he owns land.' See Abicht, *Kurze Darstellung des Natur- und Völkerrechts zum Gebrauch bey Vorlesungen* (Bayreuth: Lübel's Erben, 1795), p. 140.

<sup>92</sup> Friedrich Schlegel, 'Essay on the Concept of Republicanism Occasioned by the Kantian Tract "Perpetual Peace";' in *The Early Writings of the German Romantics*, edited by Frederick C. Beiser (Cambridge: Cambridge University Press, 1996).

of the will'.<sup>93</sup> Assuming that this was what Kant meant, Schlegel was critical of his methodology: 'Yet it must be not *presupposed* but truly proven that an individual has no free will'.<sup>94</sup> It must be established whether someone is mentally ill, is criminally inclined, and so on: 'Poverty and *presumed* corruptibility, femininity and *presumed* weakness, are indeed not legitimate grounds to exclude someone from the right to vote'.<sup>95</sup>

By establishing a close connection between political rights and autonomous reason, Schlegel echoes a concern that also appears in the writings of Johann Benjamin Erhard, the young Kantian in Jena. Like his friend Fichte, Erhard was deeply influenced by Kant's moral writings from the 1780s, and argued that citizenship, and therefore political rights, require enlightenment. Echoing aspects of Kant's 'What is Enlightenment', he argues that only citizens who have reached maturity (*Mündigkeit*), the ability to reason without prejudice, can legislate for themselves.<sup>96</sup> Erhard does not state how to identify mature citizens, however.

Ludwig Jakob, the popularizer of Kant's writings, always tried to stay close to his views, even though he did not always understand the master. His explication of the theory of citizenship in *Philosophische Rechtslehre* (1795) reflects this problem. He interpreted Kant's inclusion principle in terms of the original rights of the co-founders of society, not their contribution to the common good or superior rationality. In Jakob's rendition, the civil condition is a union of landowners who retain the right to vote as founders of the state.<sup>97</sup> They give those with movable property and skills the right to vote because they bargain for it, threatening to leave the state unless it is granted. Since these tradesmen and businesspeople are a valuable asset, the landowners give them the franchise to retain their services. Workers and women don't have that kind of bargaining power though, and, being dependent, are likely to vote as instructed.<sup>98</sup> Interestingly, Jakob adds that civil servants should not have the vote because they too are dependent in that they are subject to a master (the government).<sup>99</sup>

To sum up: Kant's radical followers fell into two camps: one democratic, the other moderate. The democratic group, which included Fichte, Bergk, and Pörschke, argued that equal freedom and non-domination entail a universal right to vote. This argument challenged Kant's claim that citizens excluded from the franchise could still enjoy freedom. The moderate group, which

<sup>93</sup> Schlegel, 'Essay', p. 102.

<sup>94</sup> Schlegel, 'Essay', p. 102.

<sup>95</sup> Schlegel, 'Essay', p. 102.

<sup>96</sup> Johann Benjamin Erhard, *Über das Recht zu einer Revolution des Volkes und andere Schriften*, edited and with an afterword by Hellmut G. Haasis (München: Carl Hanser Verlag, 1970), pp. 80–81 and 90.

<sup>97</sup> Ludwig Heinrich Jakob, *Philosophische Rechtslehre, oder Naturrecht* (Halle: in den Rengerschen Buchhandlung, 1795), pp. 473–474.

<sup>98</sup> Jakob, *Philosophische Rechtslehre*, p. 475.

<sup>99</sup> Jakob, *Philosophische Rechtslehre*, p. 472.

included Heydenreich, Schlegel, and Jakob, accepted the restrictions on the franchise, but challenged the criteria for inclusion. They found Kant's restriction of citizenship to property owners arbitrary, and proposed substituting contribution to the public good, reasoning ability, and original property rights instead. This division among Kant's followers reflected the fact that Kant had not yet developed a theory of the institutional and political preconditions for equal freedom.

### KANT'S FINAL VIEW

How aware was Kant of his radical followers? The fact that he rarely named them in print does not mean he did not know what they were saying. Kant did not always refer explicitly to his interlocutors, even when he obviously engaged with their arguments. This should not be interpreted as indifference to, or unawareness about, their writings; it was more likely an attempt to present his works, particularly *The Metaphysics of Morals*, as systematic contributions rather than polemical interventions. It is reasonable to assume that he followed the debates since he knew all the participants, if not personally, at least by reputation. He corresponded with Fichte, Erhard, Jakob, Tieftrunk, and Pörschke, who were friends. Fichte and Erhard came to visit him in Königsberg, and Pörschke was a colleague. Kant had a copy of Pörschke's book in his library and even if he had not read it they may have discussed its content over dinner since Pörschke was a frequent guest at Kant's table. We know that Kant's followers often sent him their publications: Fichte, for example, sent him the *Foundations of Natural Right*.<sup>100</sup> Kant was not personally acquainted with Heydenreich, Schlegel, or Bergk, but would have known them as public intellectuals. Heydenreich was a celebrated contemporary writer whose name appeared frequently in Kant's correspondence. And if he had not actually read Schlegel's essay, Kant certainly knew about it, since he recorded its title and place of publication.<sup>101</sup> He was probably familiar with Bergk's writings, since he publicly engaged with him on a different matter in 1796.<sup>102</sup> It seems reasonable to assume that he was aware of the ongoing debates about citizenship and democracy, and would not have ignored his followers, particularly since it was his philosophy they were addressing.

<sup>100</sup> See Kant's letter to Fichte on December 1797, in C, 12:221.

<sup>101</sup> Kant, AA, 18:666.

<sup>102</sup> Bergk had claimed in the *Allgemeiner litterarischer Anzeiger* that Kant was the author of the philosophical passages in Theodor Gottlieb Hippel's *Lebensläufe*, and Kant felt the need to publicly deny this. See Bergk in *Allgemeiner litterarischer Anzeiger*, XXX (October 1796): 327–328, and Kant's reply in *Allgemeiner litterarischer Anzeiger*, II (January 1797): 15–16, in AA, 12: 360–1.

The political context had shifted by the time Kant set out to develop his views on citizenship and democracy in *Perpetual Peace* and *The Metaphysics of Morals*. France had survived the dictatorship of the radical democrat Jacobins, and the liberals had regained power in 1794. The Jacobin intermezzo had further discredited democracy as a constitutional form. Kant had been sceptical about democracy even before the revolution, and post-1795 he expressed this scepticism in print. He was particularly keen to distinguish republicanism, his preferred constitution, from democracy, with which it was often identified ('as usually happens').<sup>103</sup> This concern was understandable, considering that some of his radical followers equated his theory of the original contract and the general will, with democracy.

Kant understood democracy as a form of sovereignty (*forma imperii*) where the assembled people takes decisions according to majoritarian principles. As he explains in *Perpetual Peace*, democracy knows no constitutional limits, since a majority can change the law at any point in time. This echoes a standard critique of democracy in Kant's day and was much the same as Aristotle's.<sup>104</sup> Republicanism, by contrast, concerns the *form* of government (*forma regiminis*), rather than the subject of power. A form of government in which representatives express the general will, republicanism entails the constitutional separation of legislative and executive powers. *Theory and Practice* had not discussed the separation of powers, but the writings that follow identify that separation as the mechanism that secures government by law rather than decree. Since legislators do not apply the law, they have to formulate laws of general application rather than laws directed towards particular political ends (as the unprincipled 'men of practice' did).<sup>105</sup> Despotism, wherein the head of state controls both the legislative and executive, is the opposite of republicanism:

*Republicanism* is the political principle of separation of the executive power (the government) from the legislative power; despotism is that of the high-handed management of the state by laws the regent has himself given, inasmuch as he handles the public will as his private will.<sup>106</sup>

Kant concludes that democracy is despotic because it expresses the arbitrary will of a majority, is neither representative of a general will nor limited by a constitution. Even monarchy is better than democracy, because a monarch can represent the general will (Kant adds 'Frederick II, for example, at least said that he was only the highest servant of the state'<sup>107</sup>). The *Doctrine of Right*

<sup>103</sup> Kant, *PP*, 8:352.

<sup>104</sup> Aristotle, *Politics*, 1292a5.

<sup>105</sup> Rousseau had influentially argued that the law's generality presupposes that the legislator and the executive are not one and the same. An executive that makes the law can manipulate it for particular ends, thereby imposing an arbitrary will disguised as law. See Rousseau, *Social Contract*, p. 161. For a discussion, see Melissa Schwartzberg, 'Rousseau on Fundamental Law', *Political Studies*, 51, 2 (2003): 387–403.

<sup>106</sup> Kant, *PP*, 8:352.

<sup>107</sup> Kant, *PP*, 8:352.

developed this republican constitutionalism into an extensive outline of state institutions, with a separation of powers between the legislature, executive, and judiciary. While Kant's view has surface similarities to that of Montesquieu, he does not defend the separation of powers as a way to divide sovereignty.<sup>108</sup> According to Montesquieu, sovereignty was to be divided between institutions that check and balance each other, thereby protecting one institution from gaining absolute dominance, and reducing the likelihood of abuse of power. By contrast, for Kant, as it had been for Rousseau, the legislature is the sovereign authority and the other two powers are subordinate. The purpose of the separation of powers is not to restrict power but to allocate tasks functionally so that legislation can be separated from application. Kant describes this in logical metaphors:

These [authorities] are like the three propositions in a practical syllogism: the major premise, which contains the *law* of that will; the minor premise, which contains the *command* to behave in accordance with the law, that is, the principle of subsumption under the law; and the conclusion, which contains the *verdict* (sentence), what is laid down as right in the case at hand.<sup>109</sup>

The premise is that the sovereign legislature represents the sovereign people by establishing the law, which the courts apply to particular cases and the government enforces. Lawmakers are fundamentally different from judges and law enforcers because they apply the universal principle of right, which is developed through the notion of the hypothetical contract, to generate laws. Since this means that legislators reconcile the freedom of everyone in the state, legislators represent the people and the people as a whole act *through* their legislators. Judges and law enforcers, by contrast, identify and classify particular cases and apply the correct law. They do not create laws for future cases, but subsume existing cases under a given law, 'what is laid down as right'.<sup>110</sup> Subsuming existing cases under a given law requires judgment; it is not a matter of mere deductive reasoning.<sup>111</sup> But the institutional separation between legislation and application at least means that judges and law enforcers must act according to law, and not usurp the function of legislation from the organ that represents the people. Kant rejects direct democracy because an assembled people that both makes and applies the law does not respect the separation of powers and as a result law is replaced by a majority's arbitrary choice.

<sup>108</sup> Ingeborg Maus emphasizes this in *Zur Aufklärung der Demokratietheorie*, p. 30. See also Ripstein, *Force and Freedom*, pp. 174ff.

<sup>109</sup> Kant, *MM*, 6:313. See also Kant, *PP*, 8:352.

<sup>110</sup> Kant, *MM*, 6:297.

<sup>111</sup> The reason is that to judge is to distinguish whether something falls under a rule. If there were an additional rule for judgment, this rule would again need a judgment for application, leading to an infinite regress. Judgment therefore requires a certain knack, which Kant, in *Critique of Pure Reason*, called 'mother-wit' (*Mutterwitz*), 'the lack of which cannot be made good by any school'. See Kant, *CPR*, 3:A 133–134 and *TP*, 8:275.

Kant's republican constitutionalism explains why he did not reject monarchy. Like Rousseau, Kant accepts that a monarch can be part of a constitution, but only in the executive function, and therefore subordinated to a sovereign legislature. Kant has sometimes been thought of as a staunch defender of monarchy,<sup>112</sup> but it is important to realize that he rejected autocracy, government where a single person holds all power, for two reasons. First, it is despotic because the same person makes and applies the law. Since only institutions create a proper framework for law, virtuous or enlightened rulers do not solve this problem.<sup>113</sup> Second, subjects in autocracies are not citizens. Kant reaffirms the *volenti* principle, which declares that persons are free only if subject to law generated by the united will of the people. A true republic is 'a system representing the people [*ein repräsentatives System des Volks*], in order to protect its rights in its name, by all the citizens united and acting through their delegates (deputies).'<sup>114</sup>

In that a Rousseauean idea of the general will gave this claim its normative force, it raised the democratic expectations of Kant's followers. Yet, Kant situated the general will within a constitutionalism that had more in common with Sieyès than Rousseau. In a widely translated reply to Thomas Paine, Sieyès had condemned majority decisions as despotic, defined republicanism in terms of representation, and argued for its compatibility with constitutional monarchy.<sup>115</sup> Sieyès constitutional principles were also on display in Kant's revised view of the right to vote. Voting serves only an instrumental role in selecting rulers and holding them accountable, and this does not presuppose universal inclusion.

Kant's revised theory of the right to vote in *The Metaphysics of Morals* reveals his struggle to keep citizenship a general membership status while excluding those he deemed unqualified from the franchise. His first change was to the status of citizenship, making it universal rather than exclusionary: *everyone* is a citizen. Yet Kant employed Sieyès' distinction between active and passive citizenship and argued that only active citizens have the right to vote.<sup>116</sup> Clearly

<sup>112</sup> See for example Richard Tuck, *The Rights of War and Peace: Political Thought and the International Order from Grotius to Kant* (Oxford: Oxford University Press, 1999), p. 211, and Gareth Stedman Jones, 'Kant', p. 199.

<sup>113</sup> Kant vehemently rejected Alexander Pope's bon mot: 'For forms of government let fools contest / whate'er is best administer'd is best.' See Kant, PP, 8:353 and MM, 6:340. Kant associated this sentiment with the royalist and anti-revolutionary Jacques Mallet du Pan (1749–1800), who, as Kant reported in *Perpetual Peace*, had taken it as his motto. Incidentally, the name of the translator of Mallet du Pan was Friedrich Gentz.

<sup>114</sup> Kant, MM, 6:341.

<sup>115</sup> Sieyès, 'Über den wahren Begriff einer Monarchie', *Neues Göttingisches historisches Magazin*, 1 (1792): 341–349. The identification of republicanism and representation was common at the time and can be found for example in *The Federalist Papers* from 1788. See Alexander Hamilton, James Madison, and John Jay, *The Federalist Papers*, edited by Clinton Rossiter (New York: Mentor, 1999), p. 49. See Nadia Urbinati, *Representative Democracy: Principles and Genealogy*, (Chicago: University of Chicago Press, 2006).

<sup>116</sup> Kant, MM, 6:314.

uncomfortable with Sieyès' solution, he added that 'the concept of a passive citizen seems to contradict the concept of a citizen as such'.<sup>117</sup> At the end of the discussion he reverted to calling passive citizens mere associates in the state (*Staatsgenossen*), rather than citizens (*Staatsbürger*). Also in contrast to the version in *Theory and Practice*, he abandoned the unconvincing property argument that sought to explain why wigmakers but not barbers could be described as proprietors. The revised distinction between the independent citizens and subjects turns on civil independence (*bürgerliche Selbstständigkeit*), which was associated with (male) property ownership or the possession of a skill. Civil independence means:

[O]wing his existence and preservation to his own rights and powers (*Rechten und Kräften*) as a member of the commonwealth, not to the choice of another among the people. From his independence follows his civil personality, his attribute of not needing to be represented by another where rights are concerned.<sup>118</sup>

An independent man acts 'from his own choice' without 'dependence upon the will of others'.<sup>119</sup> Kant contrasts the positions of men who manage their own businesses with people who depend on others for the food and protection necessary for survival. Minors, *all* women, and domestic servants—but not civil servants (in contrast to Jakob) are in the latter category. Again, Kant risks a brief foray into the empirical domain to explain the difference between passive and active citizens:

The blacksmith in India, who goes into people's houses to work on iron with his hammer, anvil, and bellows, as compared with the European carpenter or blacksmith who can put the products of his work up as goods for sale to the public; the private tutor, as compared with the school teacher; the tenant farmer as compared with the leasehold farmer, and so forth; these are mere underlings [*Handlanger*] of the commonwealth because they have to be under the direction or protection of other individuals, and so do not possess civil independence.<sup>120</sup>

Such people serve a master other than the commonwealth in Kant's (following Hobbes') terms. 'Their existence is, as it were, only inherence [*Inhärenz*]', Kant says, alluding to a distinction between accident and substance, which he had used in the *Critique of Pure Reason*.<sup>121</sup> Again, Kant hastens to add that 'This dependence upon the will of others and this inequality is, however, in no way opposed to their freedom and equality *as human beings*'. This freedom ensures that 'anyone can work his way up from this passive condition to an active one'.<sup>122</sup>

Kant had not fundamentally changed his position. To be sure, by including *all* adult subjects in the status of citizenship, Kant formally satisfied the

<sup>117</sup> Kant, *MM*, 6:314.

<sup>118</sup> Kant, *MM*, 6:314.

<sup>119</sup> Kant, *MM*, 6:314–315.

<sup>120</sup> Kant, *MM*, 6:314–315.

<sup>121</sup> Kant, *CPR*, 3:93.

<sup>122</sup> This does not apply to women, obviously.

criterion of universality. Yet the distinction between active and passive citizens reinstated inequality among subjects and failed to convince Fichte, Bergk, Pörschke, and Tieftrunk, his most radical critics. They concentrated on the tension between the commitment to equal freedom and any exclusion from the franchise. By contrast the authors of the natural law tradition, such as Pufendorf, Wolff, and Achenwall, had no problem with such exclusions. Using the Roman law notion of the *paterfamilias*, they justified only enfranchising heads of households, claiming that the social contract was a union of *families*, not individuals. Such a union by definition excluded women and servants, not because they lacked the ability to reason or were subject to social pressure, but because they were subordinate to the principal agents of society. Although Kant had a similar view of independent masters, he could not justify the exclusions in those terms, since (like Rousseau and Hobbes) he saw the social contract as a union of individuals, not heads of families. This is why Kant's principle of independence is not tied to agency in an original contract, but to position in a market economy. But why does financial dependence warrant denying the right to political participation?

Sieyès had worried that enfranchising the most downtrodden in society amounted to giving the rich and powerful an opportunity to use them for their own ends. While Kant might have shared this concern, he could still have argued that the public should give household servants and dependent workers the legal protection and financial support that would obviate their dependent status. Rather than excluding them from the franchise because they were incapable of exercising it impartially, the state could provide the conditions that would allow them to act as full citizens. This has indeed been the view of modern Kantians, who concurred with Kant's description of social relations and their influence on agency, but thought he drew the wrong conclusions.<sup>123</sup> He should have realized that his view of freedom as an essential aspect of a person's status *qua* human being also entailed a commitment to distributive justice and political rights. In *The Metaphysics of Morals* Kant in fact defended taxation and public support for subjects who are unable to take care of themselves.<sup>124</sup> Yet, such redistribution was only for securing the basic needs necessary for survival. Kant did not conclude that it secured the financial independence that would be sufficient to make the poor their own masters and in a position to exercise political agency.

As we have seen, Fichte, Bergk, Pörschke, and Tieftrunk challenged Kant in print, claiming that the exclusion is an affront to equality: since each subject has the same human dignity and capacity for reasoning, they must all naturally be their own masters and cannot have unequal legal status. To deny the right to

<sup>123</sup> Harry van der Linden, *Kantian Ethics and Socialism* (Indianapolis: Hackett Publishing Co., 1988); Weinrib, 'Kant on Citizenship'; Ripstein, *Force and Freedom*, p. 267ff.

<sup>124</sup> Kant, *MM*, 6:326.

vote is to deny persons the exercise of political freedom through shared practices of collective self-legislation. If, like his radical critics, Kant had believed that innate freedom entailed the franchise, he would have been unable to justify *any* qualifications on adult voting rights. Yet, on Kant's view there is no intrinsic relation between voting and equal freedom.

The fact that voters are in a position to bind non-voters asymmetrically because they can elect representatives who can command others to obey, seems to contradict the 'innate equality' among subjects, which Kant deduced from the innate right to freedom.<sup>125</sup> But an inequality is problematic in so far as it unduly restricts freedom, and Kant clearly did not consider that those excluded from the franchise are subject to domination, since he stated repeatedly that they have the full range of civil liberties. To lack the right to vote does not mean that a subject becomes legally dependent on the arbitrary choice of others, since dependence is only on the laws that result from the political process. A person's freedom is not defined by the right to vote, but by living under republican government rather than despotic rule, and thereby having the juridical status of independence from the arbitrary choice of others. Representation and the separation of powers, along with the freedom to express dissent in the public sphere, aligns law with reason and an ideal general will. Voting serves only an instrumental function in holding rulers accountable, and this function does not presuppose universal inclusion. Freedom is not preserved either by the benevolence of a despotic monarch or the enlightenment of a democratic majority, but by a republican institutional structure.

Exclusion from the franchise also does not in principle contradict Kant's version of the *volenti* principle, the view that laws arising from a general will cannot wrong the people. Kant's general will is not the sum of private preferences, but a formal principle describing the unity of free persons under law. By contrast to Rousseau, Kant did not assume the *volenti* principle to necessarily imply actual participation in voting. The general will is not inherent in a democratic majority (as we have seen, democracy was derided as despotic) but ascertained and expressed by means of republican institutional structures, not political agency. A subject who enjoys civil rights protected by (well-functioning) republican institutions is therefore just as free as a subject who elects political representatives.

But why should economic independence qualify citizens as voters? As we have seen, this issue generated a variety of interpretations. Bergk assumed that Kant thought the rich were more virtuous than the rest; Heydenreich assumed property owners deserved the vote because they contributed to the state; Schlegel thought it was because they demonstrated superior reasoning. Kant's

<sup>125</sup> 'Innate equality, that is, independence from being bound by others to more than one can in turn bind them; hence a human being's quality of being his own master (*sui iuris*).<sup>125</sup> Kant, *MM*, 6:238.

critics had no problem showing that the rich are not more virtuous, deserving, or intelligent than others. But Kant's revisions indicate a slightly different view. The exclusion turned on the legal and economic constraints imposed by dependency.

The reason is that women and the financially dependent are incapable of voting impartially because they answer to masters other than the state. Married women are legally and economically dependent on their husbands, just as servants and manual labourers are dependent upon their employers. Kant supplies a new theory of right in the domestic sphere, which states that wives and household servants are legally obliged to support their masters' interests.<sup>126</sup> Manual labourers are likely not in a position to take a public stand because, as Sieyès had argued, they were afraid of offending their masters. Since Kant himself had been a private tutor residing in a household, he would have known that, although the reasoning skills of live-in servants are not necessarily inferior to those of schoolmasters (who are counted as active citizens), the former may not be economically secure enough to express an independent view. As Allen Rosen notes, Kant may have thought in terms of an open, rather than secret ballot. If wives and servants could vote, they would probably be unable to form impartial judgments and would support their husbands and masters, thereby giving them additional votes. As Kant had argued against the likes of Möser, each household should have one and only one vote. Kant assumed that the master, unlike his wife and servants, was in a position to reason impartially, as a good *citoyen*. Although he may selfishly put private interest before public good, he is not contractually or economically bound to ends other than the public good.

In this regard, voting differs from other aspects of political life such as public reasoning. In 'What is Enlightenment' Kant had argued that an individual can do his duty to his employer and still be free to dissent publicly. An army officer can be a loyal subaltern and still criticize the military in his capacity as a private person. No conflict of loyalties need exist in such cases of free speech because the subject can be loyal both to his superiors and to the public, which needs to be well informed about the workings of the military. The two loyalties are not mutually exclusive. By contrast, the distribution of political power through the vote is a zero sum game. A vote used only to advance a private interest is one vote less for the public interest, and for this reason elections must be reserved for those who are in a position to vote in the public interest. This explains why civil servants qualify as active citizens but domestic servants do not. Some critics think Kant's reasoning here was self-interested, since as

<sup>126</sup> The marriage contract establishes that 'he is the party to direct, she to obey', because of 'the natural superiority of the husband to the wife in his capacity to promote the common interest of the household'. Kant, *MM*, 6:279. Likewise, the household servant 'agrees to do whatever is permissible for the welfare of the household'. Kant, *MM*, 6:360–361.

a professor at a state university in Prussia he would benefit from the inclusion.<sup>127</sup> Yet as we have seen, serving a household is not the same as serving the commonwealth. Civil servants answer to one master only, the state. There is no conflict of loyalties. It follows that military personnel must also be active citizens, not, as Heydenreich thought, because their sacrifice had earned them the right, but because they serve only one master: the state. In practice, a soldier owes obedience to his general and only indirectly to the abstract entity of the state, but unlike the general's private servant he is in principle not subject to his superior's personal whims and desires.

But why should financially independent unmarried women be disqualified from the franchise? Some commentators think Kant excluded women from the right to own property and therefore indirectly from the right to vote.<sup>128</sup> But Kant never claimed that women should not own property, and the Prussian civil code permitted women to own land and manage estates.<sup>129</sup> It is more likely that Kant rejected female suffrage because he had a very low opinion of women. He said at one point that 'it is difficult for me to believe that the fair sex is capable of principle'.<sup>130</sup> This put unmarried women in the same category as hired labourers, as people whose dependence on others make them incapable of taking an independent stand on public affairs.

Because all adult males have the chance to become independent by improving their economic position, the market economy plays a significant role in Kant's theory of citizenship. Kant's ideal independent person resembles the man of business described by Adam Smith—one of Kant's favourite authors—in *Wealth of Nations*. Smith distinguishes between servants ('retainers and dependents') on the one hand, and men of business ('tradesmen and artificers') on the other. Since a servant in the household of a large landowner is dependent upon one person for his entire livelihood, the servant 'depends upon his good pleasure'.<sup>131</sup> By contrast, men of business, who sell their goods on the market, do not depend on any one person: 'Each tradesman or artificer derives his subsistence from the employment, not of one, but of a hundred or a thousand different customers. Though in some measure obliged to them all, therefore, he is not absolutely dependent upon any of them'.<sup>132</sup> One reason Smith promoted a market economy was because he thought it would induce large landowners to spend their money in the market rather than on servants, thereby releasing the latter from their dependence. Kant probably thought the same. By advocating civil liberty, a free market economy, and the abolition of hereditary privilege, more people could become their own masters.

<sup>127</sup> Beiner, 'Paradoxes', p. 213; Ellis, *Kant's Politics*, p. 197.

<sup>128</sup> See, for example, Weinrib, 'Kant on Citizenship', p. 10.

<sup>129</sup> Clark, *Iron Kingdom*, p. 171. <sup>130</sup> Kant, O, 2:232.

<sup>131</sup> Adam Smith, *The Wealth of Nations*, edited by Edwin Cannan (New York: The Modern Library, 2000), p. 442.

<sup>132</sup> Smith, *Wealth of Nations*, pp. 445–446.

That male workers have the chance to acquire the right to vote does not solve all problems, however. The remaining puzzle, which still lacks a satisfactory answer, is why Kant was prepared to accept that women and mere workers could be completely subservient in private relations. As contemporary Kantians have argued, it is difficult to see how their dependent position is compatible with their innate right to freedom as independence, since it renders them very much dependent on the arbitrary choices of a *paterfamilias* or an employer. That such private relations of dependence are sometimes chosen by the dependent person does not solve the problem, since, as Bergk rightly pointed out, giving up one's natural right to independence is to make oneself into a mere thing.<sup>133</sup>

## CONCLUSION

Kant's essay on *Theory and Practice* had baffled his radical followers because it defended both an egalitarian notion of a general will as the source of justice and a restrictive view of the franchise. Some of these followers, including Fichte and Bergk, sought to develop Kantian theories of democracy and universal inclusion. German Jacobins like Forster and Wedekind even defended revolutionary action in the name of these values. In the years that followed Kant took distance to democracy and sought to show that the universal right to vote is not an intrinsic feature of the republican constitution. Like Sieyès and the French liberals who had come to power after the demise of the radical democrat Jacobins in 1794, Kant understood democracy as a direct form of government where the arbitrary will or a majority decides, and which therefore is despotic and incompatible with lawful freedom. Republicanism, by contrast, secures freedom through the division of powers, which prevents the legislator from arbitrarily applying the law. This republican structure is also what explains that a person who lacks the right to vote is still free. The person who lacks the vote is not subject to the arbitrary choice of private persons, or a majority of the people, but to the laws of public legal authority.

Kant excluded women and mere labourers for similar reasons as Sieyès and the liberals of the French Revolution. Dependents are not in a position to cast impartial votes in the public interest because they answer to masters other than the state. Sieyès had been clear about the consequence: giving votes to the mob

<sup>133</sup> Bergk, *Untersuchungen*, p. 182.

is to empower the aristocracy. Kant did not conclude that the state is under a duty to prevent such dependence, nor did he conclude that it brought a lack of freedom. Voting plays a minor role for Kant because it is only one aspect of well-organized republican institutions that secure lawful freedom. Kant hoped that a market economy supported by republican institutions would gradually expand the number of active citizens. But what if instead legislators become corrupted, institutions of law disintegrate, and the head of state becomes a despot? Kant's radical followers presented a second challenge to him on the question of resistance and revolution.

# 4

---

## Resistance and Revolution

The second paragraph of *The Declaration of the Rights of Man and the Citizen* announced that resistance to oppression is among the natural and imprescriptible rights of man.<sup>1</sup> Four years later, the preface to the constitution of 1793 added: ‘When the government violates the rights of the people, insurrection is for the people, and for every portion thereof, the most sacred of rights and the most indispensable of duties.’<sup>2</sup> Considering Kant’s emphasis in the moral and historical writings from the 1780s on individual autonomy and on history as developing towards a perfect civil constitution through revolutions, one might easily think that he would support the *Declaration*. As we have seen, when Kant eventually published *Theory and Practice* in September 1793, he did in fact defend equality, liberty, and independence, confirming the values of 1789. Yet, he added a puzzling discussion that rejected a right of resistance and revolution, even when the legislature or executive infringes on the most basic principles of law and behaves ‘quite violently (tyrannically)?’<sup>3</sup>

Kant’s followers were baffled. Ludwig Heinrich Jakob, the popularizer of Kant’s thought, refused to believe it: ‘I cannot, however, imagine that he really means it that way. An unconditional suffering obedience [*leidender Gehorsam*] contradicts Kant’s moral system through and through’.<sup>4</sup> Particularly galling was the fact that Kant’s rejection of a right to resist the state was a *consequence* of a constitution based on a human right to freedom. The right to freedom should have *grounded* a right of resistance and revolution, not precluded it. What was it about Kant’s conception of a human right to freedom that excluded the right to resistance?

<sup>1</sup> National Assembly of France, ‘Declaration’, § 2.

<sup>2</sup> ‘Preface to the Constitution of 1793’, in *Introduction to Contemporary Civilization in the West: A Source Book*, Volume 2, edited by Marvin Harris, Sidney Morgenbesser, Joseph Rothschild, and Bernard Wishy (New York: Columbia University Press, 1961), § 35.

<sup>3</sup> Kant, TP, 8:299.

<sup>4</sup> [Anonymous] Ludwig Heinrich Jakob, *Antimachiavel, oder über die Grenzen des bürgerlichen Gehorsams: Auf Veranlassung zweyer Aufsätze in der Berl. Monatsschrift (Sept. und Dec. 1793) von den Herren Kant und Genz* (Halle: in der Rengerschen Buchhandlung, 1794).

Jakob's cry of surprise has echoed through history, and scholars who have analyzed Kant's views on revolution have yet to reach a consensus. It is often thought that Kant's rejection of resistance meant that he would support any existing ruler no matter how unjust, including apartheid states and mafias,<sup>5</sup> mass-murdering tyrants,<sup>6</sup> and Nazis.<sup>7</sup> Since this contradicts his commitment to freedom, it has been speculated that Kant's 'betrayal' of his radical principles was caused by his loyalty to the Prussian crown.<sup>8</sup> After all, the state was his employer and he had the greatest admiration for the edifice that Frederick II had built. Many have therefore attempted to reconstruct what they take to be a more consistent Kantian view, where his basic principles would support a right of resistance. Werner Haensel claimed in his 1926 study that Kant's denial of a right to resist is merely the assertion that there can be no *legal* right to resist, and that Kantian thought still provides a *natural* right to resist positive law. If positive law lacks 'rationality' there is no obligation to obey, and there is a right to resist the state grounded in a direct appeal to human rights, based on the 'sovereignty of reason'.<sup>9</sup> Similar interpretations are quite common.<sup>10</sup> Another group of interpreters have argued that Kant has been misunderstood and did *not* betray his radical principles. As Jeremy Waldron writes, the duty is to obey a 'state', by which Kant has in mind a constitutional regime protecting justice, and not just 'any thug who happens to wear a crown'.<sup>11</sup> He simply meant that there is no right to resist a fairly just authority, an unobjectionable view perfectly in line with his commitment to lawful freedom.<sup>12</sup>

<sup>5</sup> Christine M. Korsgaard, 'Taking the Law into Our Own Hands: Kant on the Right to Revolution', in *Reclaiming the History of Philosophy: Essays for John Rawls*, edited by Christine Korsgaard, Andrews Reath, and Barbara Herman (Cambridge: Cambridge University Press, 1997), pp. 317 and 303.

<sup>6</sup> Lewis White Beck, 'Kant and the Right of Revolution', *Journal of the History of Ideas*, 32 (1971), p. 420.

<sup>7</sup> Sarah Williams Holtman, 'Revolution, Contradiction, and Kantian Citizenship', in *Kant's Metaphysics of Morals: Interpretative Essays*, edited by Mark Timmons (Oxford: Oxford University Press, 2002), p. 227.

<sup>8</sup> Beiser, *Enlightenment*, p. 53.

<sup>9</sup> Werner Haensel, *Kant's Lehre vom Widerstandsrecht: Ein Beitrag zur Systematik der Kantischen Rechtsphilosophie*, *Kant-Studien*, Ergänzunghefte Nr. 60 (Berlin: Pan-Verlag Rolf Heis, 1926), pp. 56–57 and 69.

<sup>10</sup> Allen Rosen 'revises' Kant so that non-positive justice can provide a right of resistance to the legal system, Hans Reiss claims that 'public freedom' really has priority to unjust 'legal government'. Holtman argues that 'a rich Kantian justice' allows revolution against profoundly unjust law. See Rosen, *Kant's Theory of Justice*, pp. 171–172; H. S. Reiss, 'Kant and the Right of Rebellion', *Journal of the History of Ideas*, 17 (1956): 190, Holtman, 'Revolution', p. 230.

<sup>11</sup> Jeremy Waldron, 'Kant's Theory of the State', in *Kant: Toward Perpetual Peace and Other Writings on Politics, Peace, and History*, edited by Pauline Kleingeld (New Haven: Yale University Press, 2006).

<sup>12</sup> See also Kersting, *Wohlgeordnete Freiheit*, p. 486ff; Ripstein, *Force and Freedom*; Byrd and Hruschka, *Kant's Doctrine of Right*; and Helga Varden, 'Kant's Non-Absolutist Conception of Political Legitimacy—How Public Right "Concludes" Private Right in the "Doctrine of Right"', *Kant-Studien*, 101 (2010): 331–351.

These debates are not new. Kant's young radical followers accepted his premise of a human right to freedom but not his conclusion against revolution. Inspired by the events in France, they claimed that individuals must have a right and duty to resist despots, and that collectively a people can be justified in engaging in revolution. Although coercive resistance cannot be a feature within a constitutional state, when law is replaced by the arbitrary choice of a ruler, the bonds of society are dissolved and the people is returned to the state of nature where it may create a new constitution. This group of legal and political theorists included the authors that were discussed in the previous chapter: Ludwig Heinrich Jakob, Johann Benjamin Erhard, Karl Heinrich Heydenreich, Friedrich Bouterwek, Johann Adam Bergk, and Friedrich Schlegel, all of whom published sympathetic reviews of Kant's writing in the period leading up the completion of *The Metaphysics of Morals*. Kant's conservative critics noted his view of revolution as well, but mostly they did not contest it.

Exploring the critiques of Kant's radical followers may help us make sense of Kant's complex view on resistance and revolution as well as the basic principle of right on which it relies. They also indicate the extent to which Kant's own writings were an element of a larger debate about legitimacy and resistance in the wake of the revolution in France. In 1793 the question of a right of resistance and revolution was hardly politically innocent. This chapter's first section presents arguments about revolution and resistance that were influential in Europe prior to 1789, the second section presents Kant's 1793 view, the third section discusses the radicals' attempts to put the critical project on the right track, and the remaining section shows how Kant subsequently modified his thought.

## DEBATES ABOUT RESISTANCE TO DESPOTISM

The right of resistance defended by the *Declaration*, which was incorporated into all later constitutions, divided European spectators. Thomas Paine was a defender and supported it with an optimistic view of spontaneous collective action: 'The instant formal government is abolished, society begins to act.'<sup>13</sup> Edmund Burke and Jeremy Bentham considered it an invitation to anarchy. Analyzing the constitution of 1791, Bentham identified the problem of justifying resistance to sovereign authority:

<sup>13</sup> Thomas Paine, *Rights of Man*, edited by Mark Philp (Oxford: Oxford University Press, 1998), p. 215. Also quoted in Jürgen Habermas, *Theory and Practice*, translated by John Viertel (Boston: Beacon Press, 1974), p. 95.

But by justifying it [the Revolution], they invite it: in justifying past insurrection, they plant and cultivate a propensity to perpetual insurrection in time future; they sow the seeds of anarchy broad-cast: in justifying the demolition of existing authorities, they undermine all future ones, their own consequently in the number.<sup>14</sup>

When Bentham made his observation, in 1796, there had already been several French revolutions. The liberal revolution of 1789 had been set aside by the Jacobin revolution of 1793, which in turn had been put to rest by the Thermidorian reaction of 1794. Each faction that justified a right of revolution dug its own grave by indirectly justifying the next seizure of power. Bentham expected the cycle to continue.

To understand how the doctrine of the *Declaration* was interpreted in Prussia we must briefly explore the origin of the argument for a right of resistance. The Monarchomachs (literally the king-fighters),<sup>15</sup> members of the persecuted Huguenot minority in largely Roman Catholic France, articulated an early European theory of a constitutional right of resistance against tyrants during the religious civil wars of the late sixteenth and early seventeenth centuries. The 'academic *summa*' of Monarchomach thought was presented by Johannes Althusius (1557–1638) a German Calvinist legal theorist who lived and taught in Emden, a town in lower Saxony annexed by Prussia in 1744.<sup>16</sup> His *Politica* defends a neo-Aristotelian notion of the person as political animal in the commonwealth.<sup>17</sup> Cities and provinces, not individuals, enter into a covenant to create the commonwealth, which then enters a second compact with the ruler. This compact is the source of the ruler's legitimate authority. An unjust prince who disregards the agreement 'cease[s] to be a prince and would become a private citizen and tyrant'.<sup>18</sup> Following a traditional classification,

<sup>14</sup> Bentham, 'Anarchical Fallacies', in 'Nonsense Upon Stilts': Bentham, Burke, and Marx on the Rights of Man, edited by Jeremy Waldron (London: Methuen, 1987), p. 47. The essay was published a generation later.

<sup>15</sup> The name was given by William Barclay (1546–1608) in his defence of the rights of kings—*De Regno et Regali Potestate*—from 1600. See Quentin Skinner, *The Foundations of Modern Political Thought*, Volume 2 (Cambridge: Cambridge University Press, 1996), p. 301.

<sup>16</sup> Julian Franklin, *John Locke and the Theory of Sovereignty: Mixed Monarchy and the Right of Resistance in the Political Thought of the English Revolution* (Cambridge: Cambridge University Press, 1978), p. 4.

<sup>17</sup> Johannes Althusius, *Politica: Politics Methodologically Set Forth and Illustrated with Sacred and Profane Examples*, translated by Frederick Smith Carney (Indianapolis: Liberty Fund, 1995), p. 25.

<sup>18</sup> Althusius, *Politica*, p. 7; likewise Philippe du Plessis Mornay, *Vindiciae contra tyrannos*, in *Constitutionalism and Resistance in the Sixteenth Century: Three Treatises by Hotman, Beza, and Mornay*, translated and edited by Julian Franklin (New York: Pegasus, 1969), p. 172. Althusius often invokes the *locus classicus* of the theory of the moralized kingship, which is Augustine's trope that 'Kingdoms without justice are like criminal gangs'; *City of God*, translated by Henry Bettenson (London: Penguin, 2003), pp. 139 and 882.

Monarchomachs distinguish between tyrants by exercise (*tyrannus exercitio*), unjust rulers, and tyrants without title (*tyrannus absque titulo*), or usurpers.<sup>19</sup>

Nobles, eminent persons who act as judges, magistrates, and members of the Estates oversee the contract and hold the monarch legally accountable.<sup>20</sup> Althusius calls them 'ephors', an ancient term for the popularly elected Spartan judges who would monitor the kings.<sup>21</sup> Althusius' conception of the practice reflected what Gierke has called the dualistic system of the late feudal *Ständestaat*, where the nobles and monarchs were associate rulers and the nobility defended an independent power and authority against the monarch.<sup>22</sup> This class-based division resembled the classical mixed constitution, where the division of power between the ruler, the nobles, and the people limited government, yet the Monarchomach justification was based on the constituent authority of the people. The nobles used this notion of popular sovereignty to strengthen their position, basing their claims to legitimacy on an authorization by the people, who had 'transferred' all its power to, and exercised sovereignty 'through' the ephors.<sup>23</sup> This in no way implied support for democracy. Mornay warned that should the multitude act on its own, it would be a 'many headed monster', or a mob.<sup>24</sup>

When it reached England, Monarchomach doctrine shored up Parliament's authority against the King during the civil war of the 1640s, where the doctrine was met with royal absolutism.<sup>25</sup> Taking the King's side, Thomas Hobbes' attacked Monarchomach doctrine, denying that the sovereign's claim to legitimate authority is based on a contract with the people because the people do not exist as an entity until they are united through the sovereign. The commonwealth, an artificial moral person, acts only through its representative, the sovereign.<sup>26</sup> The sovereign's authority is based on his ability to protect the lives

<sup>19</sup> Mornay, *Vindiciae*, p. 185; Althusius, *Politica*, p. 192. Thomas Aquinas made the distinction famous: 'Authority can fail to come from God in two ways: either from the way it was acquired or from the way it has been used.' See St. Thomas Aquinas on *Politics and Ethics*, translated and edited by Paul E. Sigmund (New York: W. W. Norton, 1988), p. 66. For the history of the theory, see Mario Turchetti, 'Despotism' and 'Tyranny': Unmasking a Tenacious Confusion, *European Journal of Political Theory*, 7, 2 (2008): 159–182.

<sup>20</sup> Mornay, *Vindiciae*, p. 192; Althusius, *Politica*, pp. 6–7, 13, 92–93.

<sup>21</sup> Thucydides writes that the Spartan ephors had the power to declare kings 'public enemies' and throw them into prison. See 'History of the Peloponnesian War', in *The Landmark Thucydides*, edited by Robert B. Strassler (New York: Touchstone, 1996), p. 73.

<sup>22</sup> Gierke, *Natural Law and the Theory of Society*, p. 44ff.

<sup>23</sup> Althusius, *Politica*, pp. 101–102.

<sup>24</sup> Mornay, *Vindiciae*, p. 149. This echoed Plato's classical warning about democracy: see *Republic*, translated by G. M. A. Grube, revised by C. D. C. Reeve (Indianapolis/Cambridge: Hackett Publishing Company, 1992), p. 260.

<sup>25</sup> See Edmund Morgan, *Inventing the People: The Rise of Popular Sovereignty in England and America* (New York and London: W. W. Norton, 1988), p. 56; Franklin, *John Locke*, p. 5.

<sup>26</sup> Hobbes, *Leviathan*, chapter 16. See also Quentin Skinner, 'Hobbes and the Purely Artificial Person of the State', *The Journal of Political Philosophy* 7, 1 (1999): 1–29; Hanna Fenichel Pitkin, *The Concept of Representation* (Berkeley: University of California Press, 1967), p. 12.

of individuals by putting an end to anarchy. The Aristotelian notion that the state should be authorized to pursue a vision of the good life is itself a cause of anarchy. Since Hobbes' ethical subjectivism means that there is no chance of agreement on moral matters such as the nature of the good life, only coercion can solve disputes about right and wrong. Public authority prioritizing order and security solves disputes over public values.<sup>27</sup> The main condition for peace is sovereign authority that is above the law. A legal right of resistance leads to an infinite regress:

it setteth the Lawes above the Sovereign, setteth also a Judge above him, and a Power to punish him; which is to make a new Sovereign; and again for the same reason a third, to punish the second; and so continually without end, to the Confusion and Dissolution of the Common-Wealth.<sup>28</sup>

The dualistic Monarchomach system where such resistance is a feature of regular politics perpetuates the state of nature because it lacks a ruler to monopolize the legitimate means of coercion. Like other proponents of absolute state sovereignty, Hobbes concluded that charges of tyranny invite anarchy and are nothing more than a rhetorical device individuals use to promote private interests,<sup>29</sup> potentially resulting in anti-state riots.<sup>30</sup>

Yet, the notion of resistance as a limit to absolute power remained, and in Germany natural law authors such as Achenwall and Heinrich Gottfried Scheidemantel had at mid-century defended a right of resistance when the ruler subverted law and public prosperity.<sup>31</sup> Achenwall had, like the Monarchomachs, argued that resistance could be justified if the ruler violates a contract with the people. The people enter into a 'contract of subjection' with the ruler, whereby he gets the right to rule in return for protecting public prosperity, which Achenwall defines in economic terms as including a large population, thriving agriculture and commerce, schools and an expansive infrastructure.<sup>32</sup> If the ruler violates this commitment he becomes a tyrant

<sup>27</sup> In Reinhardt Koselleck's words, 'The need to found a State transforms the moral alternative of good and evil into the political alternative of peace and war.' See *Critique and Crisis*, p. 25. See also Harvey Mansfield, 'Hobbes and the Science of Indirect Government', *APSR*, 65 (1971), p. 107, and Habermas, *Theory and Practice*, p. 42.

<sup>28</sup> Hobbes, *Leviathan*, p. 224.

<sup>29</sup> Hobbes writes 'And because the name of Tyranny, signifieth nothing more, nor lesse than the name of Sovereignty, be it in one, or many men, saving that they that use the former word, are understood to bee angry with them they call Tyrants': Hobbes, *Leviathan*, p. 486. Likewise Bodin, *On Sovereignty*, p. 6, and Pufendorf, *On the Duty*, p. 144.

<sup>30</sup> Thomas O. Hueglin, *Early Modern Concepts for a Late Modern World: Althusius on Community and Federalism* (Waterloo, Ontario: Wilfrid Laurier University Press, 1999), p. 19. Resistance against the sovereign was nonetheless justified if Hobbes' state failed to fulfill its purpose, which was to preserve the lives of individuals. This was not based in positive law, but in the natural right (*Jus Naturale*) to self-preservation, and justified only individual resistance.

<sup>31</sup> Achenwall, *Iuris naturalis*; H. G. Scheidemantel, 'Recht des gewaltsamen Widerstandes', in *Widerstand gegen die Staatsgewalt: Dokumente der Jahrtausende*, edited by Fritz Bauer (Frankfurt am Main: Fischer Bücherei, 1965).

<sup>32</sup> Achenwall, *Iuris naturalis*, § 130.

and the people are entitled to resist and overthrow him if they judge this to be a less dangerous course of action than continued obedience. This does not mean returning to the state of nature, because political society is united by a prior agreement—the ‘contract of society’—whereby individuals give up their private right and contract to join a political society.<sup>33</sup> This contract guarantees the people’s unity in the revolution: the people are in the state of nature only with regards to the tyrant.

Like these authors, Rousseau asserts that the people constitutes society prior to the ruler through a social contract, yet he eliminates the notion of a contract of subjection. There can be no contractual relation between the people and the government, because as Hobbes had pointed out, no neutral third party exists to enforce it. Rousseau concludes that the people is sovereign (*the pouvoir constituant*) and can revoke the authority of the government unilaterally, since it is a trust and not granted contractually. Reinterpreting the classical typology of tyrants, Rousseau distinguishes between despotism and tyranny: government is despotic when it ceases to empower the general will, substituting a corporate or particular will instead: ‘The despot is someone who places himself above the laws themselves.’<sup>34</sup> Government is tyrannical when the ruler usurps power rather than gaining it legitimately. Despots are much more dangerous than tyrants because they seek to eviscerate the sovereign community by preventing the people from assembling as a legislature.<sup>35</sup> A usurper who seizes power through a *coup* can still govern by the rule of law. Yet, rather than defending a right of revolution, Rousseau institutionalizes political change through the regular constitutional assemblies where the people decide whether the constitution and the current government should continue: ‘fixed, periodic assemblies’ that are ‘lawful by their date alone’.<sup>36</sup> This obviates the question of who has the right to convoke the people, avoids unfounded calls for revolution, and makes it very clear when a prince becomes a despot: ‘The Prince could not prevent them without openly declaring himself a violator of the laws and an enemy of the state’.<sup>37</sup>

As we saw earlier, Sieyès was concerned about Rousseau’s radical democratic view. What might work for a small city like Geneva would not necessarily work for a country like France, with a population of thirty million. He proposes instead that the people should elect ‘extraordinary representatives’

<sup>33</sup> Achenwall, *Iuris naturalis*, § 11 and § 101.

<sup>34</sup> Rousseau, *Social Contract*, 3.10.

<sup>35</sup> Rousseau, *Social Contract*, 1.6 and 3.1.

<sup>36</sup> Rousseau, *Social Contract*, 3.13.

<sup>37</sup> Rousseau, *Social Contract*, 4.18. The fixed assemblies were really Rousseau’s reinterpretation of Locke’s argument for a right of revolution. Locke had argued that the authority of despots dissolves itself: since a despot ‘un-kings’ himself, power reverts to the political community. Rousseau identified the key problem with Locke’s view: how to ‘distinguish a regular and legitimate act from a seditious tumult, and the will of an entire people from the clamor of a faction.’ After all, despots justify repression with the excuse that they have to suppress rebellious faction. Rousseau solved that problem by making revolution a regular feature of politics. See Locke, *Second Treatise*, § 235, and Rousseau, *Social Contract*, 3.18.

who have a mandate to judge on their behalf and who function as a constitutional assembly.<sup>38</sup> Reviving the notion of popular agency through representation developed both by the Monarchomachs and by Hobbes, he gives the extraordinary representatives the authority to speak in the name of the nation. Such an assembly can resolve a constitutional crisis and preside over a peaceful transition, which is exactly what the delegates of the Third Estate did in 1789. The French Revolution was, in this perspective, a constitutional transition, not an illegal action against the constitution. Sieyès contrasts this with the Jacobin notion of revolution as direct popular action, which he describes as 'a general overthrow, and the complete ruin of all the links that bind men and things together in the civil order and the economic order'.<sup>39</sup> The statement in the 1793 constitution that popular insurrection is a 'sacred right' is a turn to anarchy.

Prussian rulers had reason to be worried by the *Declaration's* justification for resistance based on the rights of man, since they upheld the absolutist doctrines of Hobbes, Wolff, and Pufendorf, namely that the ruler carries the person of the state (the *persona moralis*), and that the people can only act through the king. In the words of Pufendorf, the people must endure severe rulers 'in exactly the same way that good children must bear the ill temper of their parents'; the citizen's 'only glory is obedience'.<sup>40</sup> The French Revolution was only the latest of a series of popular uprisings that challenged that kind of view. During the final decades of the eighteenth century revolts and revolutions became a feature of European politics. The American Revolution of 1776 was followed by the democratic revolution in Geneva in 1782, insurrections in Augsburg and Aachen in 1785–1786, the Dutch revolution of 1784–1787, and the revolution in Brabant in 1787–1790. As Jonathan Israel writes, 'there existed a widely diffused, revolutionary awareness'.<sup>41</sup> This made the situation volatile for Prussian rulers, who were fighting on two fronts: defending state sovereignty against the late feudal rights of the nobles on the one hand, and the doctrines of popular sovereignty on the other.<sup>42</sup> Inspired by Rousseau, Germans started thinking of constitutional change as reflecting the power of the people to consciously determine its future. A newfound sense of history projected humanity as moving in the direction of greater enlightenment and freedom. The French Revolution and the justification for a right of revolution

<sup>38</sup> Sieyès, 'What is the Third Estate?', p. 139.

<sup>39</sup> Sieyès, quoted in Forsyth, *Reason and Revolution*, p. 60.

<sup>40</sup> Pufendorf, *On the Duty*, pp. 143 and 146–147. Grotius attributed the statement to Tacitus, the author who first described the Germans. See Grotius, *The Rights*, p. 103.

<sup>41</sup> Jonathan Israel, *Democratic Enlightenment: Philosophy, Revolution, and Human Rights 1750–1790* (New York: Oxford University Press, 2011), p. 858.

<sup>42</sup> See Hella Mandt, 'Historisch-politische Traditionselemente im politischen Denken Kants. In *Materialien zu Kants Rechtsphilosophie*, edited by Zwi Batscha (Frankfurt am Main: Suhrkamp, 1976), p. 293.

and resistance in the *Declaration* of 1789 and in the Jacobin constitution of 1793 resonated with this new sense of popular self-determination.

The *Declaration* led to a high stakes debate in the German public sphere about the right of resistance and revolution. While Fichte and others among Kant's followers came out in defence of it, conservative voices were stronger. In his *Untersuchungen über die französische Revolution*, Rehberg points to the problem with the second paragraph of the *Declaration*: 'Each makes himself of course judge over what oppression [*Unterdrückung*] is, and thereby all administration of justice and civil order is cancelled [*aufgehoben*].'<sup>43</sup> Anyone disagreeing with the republic's politics could claim that the rulers were tyrants and justify their resistance by the *Declaration*'s defence of the rights of man. Rehberg's argument was bolstered by Gentz's translation of Edmund Burke's *Reflections on the Revolution in France*. No state could remain secure if the abstract principles of the rights of man would give an entitlement to resist.<sup>44</sup> Yet, revolution can be justified for the sake of ancient laws and liberties and following a calculation of consequences. For Burke this means that it is right if it is intended to preserve the ancient constitution (this was the case with the Glorious Revolution of 1688), but not if it is intended to introduce republican government. In a similar manner, Justus Möser defended a right to violently overthrow the government if a tyrant threatened customary liberties and historical institutions of property. Möser did not rule out revolution categorically, he only ruled out that it could be justified by an appeal to the rights of man and popular sovereignty.<sup>45</sup> Burke's justification of resistance had something in common with that of Achenwall. Although the basic values to be preserved differed—the ancient constitution in the case of Burke and the public prosperity in the case of Achenwall—the structure of the argument is similar. On this view, the state's purpose is to protect a basic good defined independently of the law itself and if the ruler fails to do so, his authority is forfeited. This was in fact the paradigmatic argument of the 'men of practice' who made principles of right contingent on securing material ends.

### KANT'S INITIAL VIEW OF RESISTANCE AND REVOLUTION

That Kant would reject a right of resisting the sovereign was not obvious, since his notes from between 1785 and 1789 shows that he for a period

<sup>43</sup> Rehberg, *Untersuchungen über die französische Revolution*, p. 121.

<sup>44</sup> Edmund Burke, *Reflections on the Revolution in France*, edited by J.G.A. Pocock (Indianapolis/Cambridge: Hackett Publishing Company, 1987), p. 27.

<sup>45</sup> Beiser, *Enlightenment*, p. 293.

defended a legal right of resistance, which had something in common with Monarchomach doctrine. Distinguishing between lawful and lawless resistance against the sovereign, he argued that the former is when a constitution contains a legal restriction on the sovereign, and an opposing power is set up to defend the rights of the people, for example the Parliament as in England. In that case 'it is not a revolt because the opposition is lawful' and for that reason it is not the same as anarchy.<sup>46</sup> Lawless resistance, by contrast, is when the constitution has no such power, and where resistance 'takes place by action of the mob (*per turbas*)'.<sup>47</sup> This theory of a lawful opposition to the sovereign relied on a division of powers, which he would abandon after the French Revolution; in *Theory and Practice* and all future writings two powers can never simultaneously claim coercive rights.

The theory of resistance Kant presented in *Theory and Practice* can be traced back to his lectures of the early 1780s.<sup>48</sup> The purpose is to show that the original contract is merely a moral ideal and cannot be appealed to as a justification for resisting the sovereign. Kant does not speak of revolution, but of resistance (*Widersetzlichkeit*), insurrection (*Aufstand*), and rebellion (*Rebellion*), traditional pejorative terms used to describe unruliness and disobedience. All these practices are ruled out because the state's power must be unopposable: 'Each resistance would take place in conformity with a maxim that, made universal, would annihilate any civil constitution and eradicate the condition in which alone people can be in possession of rights generally.'<sup>49</sup> A right to resist contradicts the necessity in a legal system for an unlimited sovereign authority to determine right and wrong:

The ground of this is that in an already existing civil constitution the people's judgment to determine how the constitution should be administered is no longer valid. For suppose that the people can so judge, and indeed contrary to the judgment of the actual head of state; who is to decide on which side the right is? Neither can make the decision as judge in its own suit. Hence there would have to be another head above the head of state, that would decide between him and the people; and this is self-contradictory. *TP*, 8:300

Like Hobbes, Kant concludes that the head of state must have the final authority and that the right to resist would introduce lawlessness, a return to the state of nature. He proceeds to criticize Achenwall and other 'worthy men' for

<sup>46</sup> Kant, *NM*, 19:590. Dieter Henrich appears to have been the first to draw attention to this passage in 'Über den Sinn vernünftigen Handelns'. Beiser describes it as a right of revolution, but this is not entirely accurate since the resistance is lawful and does not aim to introduce a new constitution. See Beiser, *Enlightenment*, p. 36.

<sup>47</sup> Kant, *NM*, 19:591.

<sup>48</sup> Gottfried Feyerabend recorded the most significant arguments from *Theory and Practice* in the 1784 lecture notes, and some ideas can be traced back as far as 1769. See *F*, 27:1319–1394, and *NM*, 19:5–616.

<sup>49</sup> Kant, *TP*, 8:299.

defending resistance based on a calculation of its expected benefits. This relies on two mistaken assumptions, first the 'principle of happiness', that it is the task of government to provide for the general welfare, and that its authority (its right to impose obligations by mere say-so), relies on success in this undertaking. The second mistake is the assumption that the government's authority relies on fulfilling the terms of an original contract with the people, from which the people could withdraw if it judges that it has been grossly violated. The state's authority does not rely on an actual contract, but on establishing a constitution and the rule of law. Kant finds evidence that no right to resist could be based on a contract in the 'Glorious' revolution of Great Britain of 1688. The English Parliament did not admit the contractual right of revolution because of the impossibility of constituting a counter-power to the sovereign, and pretended instead that the monarch had abdicated voluntarily.<sup>50</sup>

Kant's argument was not directed against the supporters of the French Revolution, because they had relied on Rousseau's defence of popular sovereignty, which accepted absolutism's notion of a single sovereign but substituted the people for the monarch. The premise of Kant's argument, as it had been for Rousseau, was that the relation between the people and the head of state is not contractual because there could be no neutral third party to enforce the contract.<sup>51</sup> Such contracts belonged to the old estate society where sovereign authority was not centralized and where several entities could claim independent authority. The contractual justification of a right of resistance was a remnant of the dualistic medieval and early modern systems of government that had been maintained by Althusius and the Monarchomachs.<sup>52</sup> With monarchical absolutism this view was abandoned, largely because it relied on the role of a class of nobles with independent authority to challenge the sovereign.

Kant's argument was instead against the 'men of practice' who criticized the French Revolution, but who supported a more traditional way of limiting sovereign authority. Although Achenwall had died in 1772, he was in Germany among those who had influentially defended the traditional view of contractual limits of sovereignty, and therefore it was natural that Kant would target him. But Achenwall was not the only target, since Kant had spoken of several other 'worthy men' who justified resistance in similar ways. It is not far-fetched

<sup>50</sup> This was the Whig view, according to which Parliament had the authority to declare the throne vacant and appoint a new ruler. On Locke's competing view, the authority of the ruler beyond law is dissolved (he 'un-kings' himself) and power reverts to the people. Kant seems to have shared Locke's skepticism to the Whig parliamentarians because he describes them as 'guardians' of the people. The German term *Vormünder* indicates that they treat subjects as minors and Kant used it in the same way about the people's guardians in 'What is Enlightenment?' See Locke, *Second Treatise*, § 220ff and Franklin, *John Locke*, p. 91ff.

<sup>51</sup> Rousseau, *Social Contract*, 3.16; likewise Locke, *Second Treatise*, §§ 332, 349.

<sup>52</sup> Kurt Wolzendorff, *Staatsrecht und Naturrecht* (Breslau: M & M Marcus, 1916). See also Maus, *Zur Aufklärung der Demokratietheorie*, and Kersting, *Wohlgeordnete Freiheit*.

to think that he had in mind conservatives like Burke, Gentz, Rehberg, and Möser. Their opposition to the French Revolution came not from a principle against revolution, but because they denied that the rights of man and popular sovereignty could justify it. By contrast, resistance could be defended if it was based in ancient constitutional practice, and for the sake of attractive outcomes.

As a result, Kant's rejection of resistance did not really strike at the populist arguments of the supporters of the French Revolution. The political philosophy underlying the French Revolution was the view that the people is the sovereign *pouvoir constituant* and can at any time reject the old constitution and create a new one. Unlike Achenwall's legalist theory of the people as judges of a contract, this represents spontaneous popular action, the superior legitimacy of the popular will. It did not involve an argument about a right to resist the sovereign, simply because the people was the sovereign. Because Kant had not engaged with this view, the *Theory and Practice* essay allowed the radical interpretation that the nation could legitimately assert itself through revolution. Kant's radical followers would explore the possibility that Kant's philosophy could still recognize the notion of an appeal to legitimacy against mere legality.

## RADICAL CRITICS

That Kant's rejection of resistance was interpreted as a critique of the French Revolution is evident for example in the reaction of Johann Erich Biester, the editor of the *Berlinische Monatsschrift*, where *Theory and Practice* had been published. In a letter to Kant he wrote that 'It pleased me all the more since it refuted the rumour (which I suspected from the start) that you had come out in favour of the ever increasingly repulsive French Revolution'.<sup>53</sup> Kant's conservative critics did not see themselves as targeted and did not spend much time on his rejection of a right of revolution, although both Gentz and Garve noted a disjoint between Kant's principles of 'unlimited freedom' and his conclusion of 'unrelenting despotism'.<sup>54</sup> Gentz happily agreed that a contractual limit on government is incoherent and that revolution is unconditionally prohibited. Since revolution is a consequence of abuse of power, it can best be avoided by limiting power in a system of checks and balances whereby power is divided into 'several small streams', by which Gentz has in mind the traditional system of the old *Reich*, wherein power was divided between estates, the nobility, monarchs, and the emperor.<sup>55</sup>

<sup>53</sup> Letter from Biester to Kant, 5 October 1793, C, 11:456.

<sup>54</sup> Gentz, 'Nachtrag', p. 105.

<sup>55</sup> Gentz, 'Nachtrag', p. 108.

For Kant's radical followers the rejection of resistance posed a greater problem because they believed that Kant's *a priori* grounded right to freedom should justify resistance and revolution. It would not have been unreasonable for them, even though they were outside the German intellectual mainstream, to hope that Kant would take their part. After all, his ideas of equal freedom and popular self-government (expressed in the shorter, pre-Revolution writings) seemed to align with the 1789 ideals and, like the writings of the instigators of the French Revolution, were influenced by Rousseau. As we have seen, Fichte even went ahead and wrote his own defence of the French Revolution based on Kant's moral philosophy. Kant's rejection of resistance and revolution therefore surprised his followers and they had to reconsider the consistency of their dual commitments.

In the essays and books the radicals produced in the years that followed they attempted to reconcile Kantian principles with a right of revolution based on his metaphysical conception of human dignity from the moral writings of the 1780s. They all sought to develop a theory of juridical rights, which they, in line with Kant, conceived of as protecting external freedom as independence. Pure principles discerned through human reason identify the criteria of right and wrong, not material utility or traditional conventions. A metaphysically grounded human right to freedom underlies all other rights established under positive law. Dependence on the arbitrary will of another amounts to domination, and people have the right to live in a republican constitution where they obey laws to which they could consent.<sup>56</sup> They all subscribed to the anti-paternalistic Kantian idea that the government's job should be limited to administering justice, not making subjects happy. Although they defended a moral right of resistance and revolution, there are considerable differences among them, which to a large degree follow from the view of popular sovereignty, which we explored in the previous chapter. Kant's most radical followers, Bergk, Fichte, Erhard, and Schlegel, emphasize the right of a people to act as a constituting power and source of justice in setting up a new institution. Heydenreich and Jakob emphasize the ideal and hypothetical nature of the original contract, against which a ruler's moral transgressions can be measured.

The radicals defence of a moral right to revolution set them apart from Achenwall, who had based resistance on a contractual relation between the people and the head of state, and therefore regulated by a constitution. By revolution they understand a mobilized people's use of force to rid itself of despotic

<sup>56</sup> See Erhard, *Über das Recht zu einer Revolution*, pp. 13 and 89; Jakob, *Antimachiavel*, pp. 1, 16, 98, 112, and 151; Bergk, *Untersuchungen*, pp. v, 47 and *Briefe*, p. 189; Heydenreich, *Versuch über die Heiligkeit*, p. 47; Schlegel, 'Essay on the Concept of Republicanism', pp. 97, 101; Fichte, 'Review'.

political institutions and establish a republican constitution.<sup>57</sup> Despotism is when a ruler treats subjects as slaves by making them totally dependent on his benevolence.<sup>58</sup> The problem is not just that this is detrimental to the happiness or welfare of subjects, as Achenwall had maintained, but that it denies them their natural right to freedom. To prove this point, Jakob gives examples of rulers whose domination has trivial material consequences, but who nonetheless deny subjects their freedom:

If he [the ruler] out of caprice commands a subject to limp, or to never take his hat off; if he requires an officer at assembly to dance a minuet, or of a minister to style his wife's hair, or of a professor to hold lectures on barking for his dog, or a priest to take the podium dressed like a harlequin, or a tailor no longer to use the right hand for cutting cloth but the left, and so on.<sup>59</sup>

The radicals accepted Kant's argument, which was shared by the ideologues of the French Revolution, that a state must have a sovereign authority and that no competing institutions can be authorized to use coercion against the state. The exception is Jakob, who is the only one not obviously motivated by the French Revolution, but who instead situates his critique of Kant within older debates in the natural law tradition and argues for intermediary institutions with independent authority to balance the head of state.<sup>60</sup> Apart from Jakob, the radicals defend revolution as a moral right based on the human right to freedom and actually agree with Kant that positive law cannot provide such a right. As Heydenreich writes, if the law contained a permission to arbitrarily choose when to obey, it would lose its authority and a state could not be maintained.<sup>61</sup> Erhard says that no one has a legal right (*das Recht*) to revolution because no court could decide on its justice. The court, by definition, would represent the ruler, against whom the revolution is aimed.<sup>62</sup> Revolution can only be justified when it is *morally* right (*es ist recht*):

Instead of 'who has the right' to start a revolution one must ask 'who does right' when he starts a revolution. The question belongs therefore alone in the court of morality, and the right [*das Recht*] to start a revolution cannot be positively given or taken away. The question is therefore not about legality [*das Recht*] but about legitimacy [*Rechtmässigkeit*].<sup>63</sup>

Revolution is a matter of conscience (a *Gewissenssache*), not law (a *Rechtsfrage*),<sup>64</sup> and so subjects must consult their consciences in order to establish the limits

<sup>57</sup> See, for example, Erhard, *Über das Recht*, p. 53; Bergk, *Untersuchungen*, p. 121, and *Briefe*, p. 227; Fichte, *Beitrag*, p. 113.

<sup>58</sup> Jakob, *Antimachiavel*, p. xiii.

<sup>59</sup> Jakob, *Antimachiavel*, p. 93–4.

<sup>60</sup> Jakob, *Antimachiavel*, p. 145.

<sup>61</sup> Heydenreich, *Versuch über die Heiligkeit*, p. 154.

<sup>62</sup> Erhard, *Über das Recht*, p. 41.

<sup>63</sup> Erhard, *Über das Recht*, p. 42; also pp. 44, 87.

<sup>64</sup> Erhard, *Über das Recht*, p. 51. Bergk's view is almost identical: see *Untersuchungen*, p. 120. Likewise, Schlegel, 'Essay', p. 111; Heydenreich, *Versuch über die Heiligkeit*, p. 152, and Fichte, *Foundations*, pp. 159–161.

of their obligation. Schlegel adds that a legal right to revolution would be of no value because revolutionary insurrection can only be justified when a ruler has destroyed the constitution.<sup>65</sup>

The moral principles they choose for justifying the revolution are those of Kant, and all the radicals therefore seek to show that their conclusions are in line with his premises, and that he had simply not made explicit all the implications of his view. By contrast to the 'men of practice' their arguments were therefore not based on a view of the state as a mere instrument to achieve other valuable things such as welfare or happiness. Jakob claimed that Kant's argument in *Theory and Practice* was limited to the claim against Achenwall that resistance is not permitted if it is undertaken for the sake of material well-being, and that he was not rejecting a right of resistance altogether.<sup>66</sup> Jakob pretends to not contradict his teacher, but to supply a missing piece in his theory by justifying resistance with the help of Kantian principles of justice. Resistance is justifiable if it is motivated by pure reason and formal procedure (*Form*), not material utility:

To liberate the world of a villain [*Bösewicht*] is a crime if it does not happen in a legitimate way [...]. When it comes to ethical tasks it does not depend on *what* happens, but *how* or in what way it happens; not the *material*, but the *form* must be taken into account.<sup>67</sup>

Jakob adds that resistance can only be justified if it is according to a 'maxim' of publicity: 'All justified counter-violence must be public. No one has a right to oppose others with secret violence.'<sup>68</sup> By secret violence Jakob has in mind conspiracy, poisoning, and assassination. Using these methods is to not recognize the moral nature of one's opponent, treating him as a mere thing. Erhard likewise connects to Kant by emphasizing that revolution must be motivated by a sense of 'pure right',<sup>69</sup> and Bergk says that people's duty to realize their freedom entails a duty to depose despotic rulers.<sup>70</sup> Despotism is defined in Kantian terms as arbitrary rule, by contrast to rule according to law. Bergk adds that judgments about the timing of resistance must accord with principles of right (*Recht*) rather than prudence (*Klugheit*), invoking a familiar Kantian dichotomy.<sup>71</sup> The same goes for Schlegel and Fichte, who explicitly commit themselves to Kant's view of justice, arguing that the ruler must be judged according to that standard alone.<sup>72</sup>

Yet, Kant had argued that all claims about rights must be established in the form of law, and for that reason he had concluded that it is impossible to assert moral entitlements against public legal authority. The radicals solve this

<sup>65</sup> Schlegel, 'Essay', p. 111.

<sup>66</sup> Jakob, *Antimachiavel*, p. xxii.

<sup>67</sup> Jakob, *Antimachiavel*, p. 126, cf. p. 128.

<sup>68</sup> Jakob, *Antimachiavel*, p. 121.

<sup>69</sup> Erhard, *Über das Recht*, pp. 49, 57.

<sup>70</sup> Bergk, *Untersuchungen*, p. 122. Likewise, *Briefe*, p. 228.

<sup>71</sup> Bergk, *Untersuchungen*, p. 123.

<sup>72</sup> Fichte, 'Review'.

difficulty by arguing that very despotic polities have no legitimacy and therefore cease to be states.<sup>73</sup> Resisting them is therefore not to assert moral entitlements against law, but rather to appeal to moral principles in a condition of lawlessness. The usurper, who has become 'a tiger in human skin', is just a private individual in the state of nature seeking to coerce other private individuals.<sup>74</sup> The radicals therefore strictly speaking do not justify resisting the sovereign, because the sovereign no longer exists.<sup>75</sup> Schlegel concludes that 'Absolute despotism is not even a quasistate, but rather an *antistate*' and Heydenreich writes:

As soon as the ruler [*Oberherr*] or the subjects no longer hold the basic laws of society to be holy one cannot say that there still truly is a state. The ruler, then, releases the ties of society through each intrusion [*Eingriff*] in the basic laws.<sup>76</sup>

The notion of a return to the state of nature contrasts with the traditional view, maintained by Achenwall, that failure to respect the terms of a contract of subjection leads to the dissolution of the *government*, while the state remains intact.<sup>77</sup> Kant's radical followers, by contrast, likely have in mind the constitutionalism of the French Revolution, where paragraph 16 of *The Declaration of the Rights of Man and the Citizen*, proclaimed that a community where the separation of powers is not provided for and where rights are not secure lacks a constitution.<sup>78</sup> A community without a constitution is not a state, and in that case a people is no longer bound by any existing laws and can create a new constitution from nothing. This goes beyond merely getting rid of a tyrant and returning society to an ancient constitution, and implies the nation's creation of a new constitution.<sup>79</sup> Like the French radicals they take a Rousseauian view

<sup>73</sup> Schlegel, 'Essay on the Concept of Republicanism', pp. 111–112; Heydenreich, *Versuch über die Heiligkeit*, p. 149; Bergk, *Untersuchungen*, pp. 122–125, and *Briefe*, p. 208; Fichte, *Beitrag*, pp. 112–113; Erhard, *Über das Recht*, p. 16; Tieftrunk, *Philosophische Untersuchungen* p. 366ff.

<sup>74</sup> Tieftrunk, *Philosophische Untersuchungen* p. 365.

<sup>75</sup> Once again Jakob is the exception. See for example his 'general law' of resistance: 'Each subject is obligated to actively resist the sovereign [*Souverain*] when he attempts to use force to do something the subject is obliged to prevent, or, in general, when he attempts to coerce the subject to do something contradicting his duty.' Jakob explicitly connects to feudal era justifications of resistance against sovereigns such as the Magna Carta. See Jakob, *Antimachiavel*, p. 42 and p. 137.

<sup>76</sup> Heydenreich, *Versuch über die Heiligkeit*, p. 154. Likewise Tieftrunk: 'If a government in a State sinks so low that it perverts all right and abolishes the human entitlements [*Befugnisse der Menschheit*], which no man can give up without losing his sense of dignity, then the civil bond is broken by the ruler himself. [...] If there is only violence, there is no longer a state.' See Tieftrunk, *Philosophische Untersuchungen* p. 366. Erhard writes that 'What contradicts reason can be no law for humans, it is the speech of a fool or the threat of a robber.' Erhard, *Über das Recht*, p. 16. C. E. Merriam, Jr. identified this feature among some of Kant's followers, see *History of the Theory of Sovereignty since Rousseau* (Kitchener, Ontario: Batoche Books, 2001), p. 26.

<sup>77</sup> Note, however, that Achenwall too considered societies that come together for pillage and plunder unworthy of being called states. Achenwall, *Iuris naturalis*, § 89.

<sup>78</sup> National Assembly of France, 'Declaration', § 16.

<sup>79</sup> On the modern concept of revolution, see Hannah Arendt, *On Revolution*; Jürgen Habermas, *Theory and Practice*; Reinhart Koselleck, *Futures past: on the semantics of historical times* (Cambridge, MA: The MIT Press, 1985).

of the people as the constituent power, which could easily be seen as congruent with Kant's Rousseau-inspired thought. Yet the radicals were more favourably disposed to popular political participation than Kant, who, as we have seen, limited the right to citizenship—and hence the right to vote—to male property owners.

Kant's most radical followers think of the actual popular will as the source of justice, as Bergk writes: 'the majority view confirms justice in a state'.<sup>80</sup> By using the word 'nation' for the people, Bergk makes the connection to the French Revolution: 'the nation's conscience that the revolution is legitimate [*rechtsmäßig*] must be taken to be holy by all external observers. It may err in choosing means to execute the revolution, but the undertaking is not immoral'.<sup>81</sup> Schlegel states that '*the will of the majority* should be the surrogate of the general will' and that it comes into play when the despot destroys the existing constitution.<sup>82</sup> Erhard and Fichte say similar things, with the latter echoing Rousseau when he writes that whatever the populace decides by majority vote is just, in accordance with the general will.<sup>83</sup> He revives Althusius' notion of a council of ephors guarding the constitution, but he does not commit to a divided sovereignty because the people retains supremacy. Thus, if the ephors become corrupt the people is entitled to rise up:

The people are never rebels, and applying the expression *rebellion* to the people is the most absurd thing that has ever been said; for the people, both in fact and as a matter of right, is the highest authority, above which there is no other; it is the source of all other authority, and is accountable only to God. When the people assemble, the executive branch loses its power, both in fact and as a matter of right.<sup>84</sup>

After establishing that a nation is morally entitled to rise against illegitimate government, the radicals must still solve tactical questions. A majority that could credibly claim to act as the people—it need not be unanimous—would need to act collectively. All the young Kantians choose the same strategy, arguing that popular enlightenment is the necessary condition for revolution. Until persons become aware of their rights as human beings and as members of a nation they will not realize that they are oppressed and cannot act together as a people. Physical deprivation alone is not a sufficient condition: it must be combined with an understanding of the causes of deprivation and the injustice of oppression.<sup>85</sup>

Erhard's theory of oppression is representative, and seems to take its point of departure from Etienne de La Boétie, whose *On Voluntary Servitude* he

<sup>80</sup> Bergk, *Untersuchungen*, pp. 125, 118.

<sup>81</sup> Bergk, *Untersuchungen*, p. 120.

<sup>82</sup> Schlegel, 'Essay', p. 102.

<sup>83</sup> Fichte, *Foundations*, p. 153, 'Review', and Erhard, *Über das Recht*, p. 93.

<sup>84</sup> Fichte, *Foundations*, p. 160.

<sup>85</sup> See for example Bergk, *Untersuchungen*, p. 137, and Erhard, *Über das Recht*, p. 55.

had translated into German in 1793. La Boétie's pessimistic thesis is that people accept tyranny and lack the will to withdraw their support because they have become accustomed to servitude and have forgotten how to be free, not because they are afraid.<sup>86</sup> It is pessimistic because he sees no way out of the oppression: people are incapable of breaking the spell of dogma. For Erhard, Kant's theory of enlightenment solves the conundrum. Kant starts from the same premise as La Boétie: that people are in a condition of self-incurred minority, due to their laziness and 'a lack of resolution and courage to use [their own understanding] without direction from another'.<sup>87</sup> This can be overcome by a free public sphere, which will eventually make people capable of liberty, at which point (Kant hopes) the ruler will give it to them. Erhard also hopes that the ruler will give people their freedom, but if he fails to do so, revolution is justified and is facilitated by *Aufklärer* who lead the people out of its minority by spreading the idea of liberty and generating a 'feeling' for right.<sup>88</sup> 'Only in a country of patriots can a moral insurrection take place', Erhard claims, meaning 'patriot' in the sense of someone who is enlightened about their rights and duties.<sup>89</sup> Bergk, Schlegel, and Fichte draw similar conclusions. Bergk emphasizes that, since Kantian principles are not utilitarian or welfare-based, they are rational and can transport people beyond the world of the senses, giving them unity and courage.<sup>90</sup> Fichte writes that if a revolution fails, it is because the nation is immature, and the instigators should blame themselves for their inaccurate assessment of the spiritual condition of their people.<sup>91</sup>

In sum: Kant's radical followers agreed with him that there can be no legal right to resist despots but they argued that resistance can be a moral right, as well as duty, and that it comes into play when a ruler ceases to be legitimate by replacing law with naked will. A despotic ruler dissolves the legal bonds of society and the people is returned to the state of nature and entitled to act collectively to create a new republican constitution. This argument had little in common with Achenwall and the 'men of practice' and much in common with the ideas that had instigated the French Revolution. The radicals supported this argument with Kantian principles: the primacy of human dignity, non-consequentialism in justice, and popular sovereignty. To top it off, they enlisted Kant's treasured notion of enlightenment in the revolutionary venture. What would Kant think? The young radicals must have awaited his

<sup>86</sup> Etienne de La Boétie, *The Politics of Obedience: The Discourse on Voluntary Servitude*, translated by Harry Kurtz, edited by Murray N. Rothbard (Montreal: Black Rose Books, 1975 [1576]), p. 55.

<sup>87</sup> Kant, *WE*, 8:35.

<sup>88</sup> Erhard, *Über das Recht*, pp. 93–94.

<sup>89</sup> Erhard, *Über das Recht*, p. 59. Vierhaus discusses this view of patriotism in 'Politisches Bewusstsein'.

<sup>90</sup> Bergk, *Briefe*, p. 229.

<sup>91</sup> Fichte, *Foundations*, p. 161; Bergk makes an identical point in *Briefe*, p. 207.

promised *magnum opus* on law and politics, *The Metaphysics of Morals*, with great interest.

## KANT'S FINAL VIEW

Although there is no way of knowing to what extent Kant read his radical critics, it is reasonable to assume that he was aware of the ongoing debate. Resistance and revolution had few defenders in Germany after the Jacobin takeover, and these were written by Kant's own followers and clearly directed at him. Moreover, since Kant wanted his ideas evaluated in the public sphere, he would have been on the lookout for these kinds of efforts. Kant returned to the subject of resistance in all his following essays on legal and political philosophy as well as in *The Metaphysics of Morals*, and he firmly maintained his rejection of a right to resistance and revolution, although he developed his political thought in ways, which indicate that he took arguments by the radicals seriously. In these writings he finally addresses the French Revolution and the justice of direct action by the people outside of public political institutions. Most of his argument aim to support the idea that rights and popular sovereignty can only be claimed within the institutions of a republic.<sup>92</sup>

In these writings Kant discusses revolution in two separate respects: from the juridical perspective of the doctrine of right, and from the perspective of moral progress in history. We will return to the historical view. The juridical argument against resistance and revolution in *The Metaphysics of Morals* comes in the context of a more developed theory of authority and obligation than the sketch provided in *Theory and Practice*. As we saw in Chapter 2, the later work developed the postulate of public right to explain that entering the civil condition is a duty. The civil condition is the presupposition for a claim to

<sup>92</sup> It is worth pausing to note one argument Kant does *not* use when revisiting the issues of a right to resistance and revolution. He does not argue that external oppression is not a serious problem because humans' capacity for transcendental freedom means that they can maintain inner freedom even when externally oppressed. Given Kant's faith in transcendental freedom and limited concern for worldly happiness, he may have been expected to use this argument, as did Karl Ludwig Pörschke, Kant's student and later colleague in Königsberg. In his 1795 book on natural right, Pörschke defended Kant's argument along that line: 'the civil slave shall and may be morally free'. This reasoning had more of a lineage to Martin Luther's theology than to Kant, however. Luther did not particularly care about external liberty since he believed that 'Christian freedom' was inward righteousness, requiring only faith in the gospel. By contrast, Kant made it very clear in *The Metaphysics of Morals* that human dignity requires external freedom. At the beginning of the book he says that 'rightful honor' requires that individuals who interact with one another enjoy civil freedom. See Karl Ludwig Pörschke, *Vorbereitungen zu einem populären Naturrecht* (Königsberg: bey Friedrich Nicolovius, 1795), p. 337; Martin Luther, 'The Freedom of a Christian Man,' in *The Protestant Reformation*, edited by Hans Joachim Hillerbrand (New York: Harper & Row, 1968), pp. 17, 24; Kant, MM, 6:236–237.

right being public and in line with the rule of law and not merely a unilateral imposition of a private view on justice. Although persons are under an obligation to seek to establish republican government, they cannot do so by means that contradict the postulate. Since a revolution is the destruction of the existing constitution and a return to the state of nature, it cannot be justified even if the end is valuable, because the ends never justify the means.

Kant's radical followers had argued that individuals have a *moral* right to resist, not based in established public law, and that in the extreme case despotic rulers forfeit their legitimacy. Kant does not acknowledge the notion of a state that has dissolved, and continues the discussion of resistance with the presupposition of an actually existing state. The trouble is not just that it would lead to anarchy if everybody were entitled to enforce his private vision of right and wrong against the state; the problem is that private individuals cannot unilaterally decide what is right and wrong. Jakob had emphasized that the principles justifying resistance must be formal and universal (and therefore 'Kantian'), providing 'objectivity' to a unilateral decision.<sup>93</sup> Yet in *The Metaphysics of Morals*, Kant emphasizes that a necessary condition for all appeals to justice within a political community is that it is publicly established and executed.<sup>94</sup> A body of law (*das Recht*) must establish any claim to a right (*ein Recht*), and law in turn presupposes republican institutions, in particular the separation between the legislative and executive power. Individuals cannot unilaterally resort to violence in defence of their rights and at the same time treat others as equals, because that requires coercion to be legitimized by a procedure in which all have been included. To take the law into one's own hands is, as Christine Korsgaard has emphasized, a form of paternalism, because a person imposes his view on others. For this reason, only publicly promulgated law can authorize the use of force; private individuals within the state can never unilaterally resort to force. In *Perpetual Peace* Kant had already developed this idea and concluded that the test of the justice of resistance is whether it could be defended publicly, and concludes that it cannot because (as he had argued in *Theory and Practice*) it is inconsistent to want a public legal system and yet to deny its absolute sovereignty.<sup>95</sup>

Yet, the radicals had argued that the people faced with a despot finds itself in the state of nature and, acting collectively as a nation, is entitled to create a republic through revolution. The people could constitute itself independently of a legal system, much as Thomas Paine had written, 'The instant formal government is abolished, society begins to act.'<sup>96</sup> This was not a matter of individuals taking the law into their own hands, but reflected Rousseau's theory of the

<sup>93</sup> Jakob, *Antimachiavel*, p. 24.

<sup>94</sup> This view of Kant's theory of justice has been developed in more detail by Thomas Pogge, 'Kant's Theory of Justice', *Kant-Studien*, 79 (1988): 407–433, and by Korsgaard, 'Taking the Law'.

<sup>95</sup> Kant, PP, 8:382.

<sup>96</sup> Paine, *Rights of Man*, p. 95.

people as the constituent power, which had also influenced Kant. As we have seen, he reaffirms that sovereignty belongs to the general will of the people in *The Metaphysics of Morals*,<sup>97</sup> but that although the people is in principle sovereign, it cannot act collectively against the government. Majority decisions by the assembled people are an insufficient foundation for binding collective action because it must always be possible to understand a public decision as the general will, which is the source of the decision's legitimacy. Unless the general will is unanimous, some people (the dissenters) are subject to a law to which they could not consent, meaning they will not be free. Conversely, a majority cannot be entitled to overthrow the existing constitution: 'a public declaration of resistance requires unanimity in a people'.<sup>98</sup>

The need for unanimity does not mean, however, that Kant would justify a revolution if the people on the street spontaneously and unanimously agreed to it. The reason is that only a public legal authority can pronounce a unanimous decision in the form of law. This unanimity is a 'mechanical unanimity' wherein one view stands for the view of all; it is not an actual agreement.<sup>99</sup> It is the outcome of a constitutional procedure wherein the legislature creates law, the government executes it, and the judiciary rules on particular cases. Contra both Rousseau and the radicals, and more in line with Sieyès, the general will is a fiction that is co-extensive with public legal authority. The majority's wish is no more than blind desire unlimited by law: it is the attitude of the mob and as such a return to the state of nature.

The radicals had attempted to defend the feasibility of revolution (and to avoid the suspicion of defending mob rule) by using Kant's theory of enlightenment to show that once a people developed a sense of justice, it could act collectively to create a constitution. Kant shows that such views rely on a mistaken view of justified collective agency. A people is unified by the civil constitution 'by which a multitude becomes a people', not by customs or by a sense of justice.<sup>100</sup> The people can only act through the constitutional order, mediated by its representatives, meaning that the people cannot act *against* that very same authority:

For, since a people must be regarded as already united under a general legislative will in order to judge with rightful force about the supreme authority (*summum imperium*), it cannot and may not judge otherwise than the present head of state (*summum imperans*) wills it to.<sup>101</sup>

There is no unanimity without the 'mechanical unanimity' of the present head of state. Enlightenment cannot be the basis for legitimate collective action because a binding view of justice presupposes a republican constitution with coercive power to secure that view. Since people attempting to act against a

<sup>97</sup> Kant, *MM*, 6:313–314.

<sup>100</sup> Kant, *PP*, 8:352.

<sup>98</sup> Kant, *MM*, 6:320.

<sup>101</sup> Kant, *MM*, 6:318.

<sup>99</sup> Kant, *CF*, 7:80.

state have no legitimate head to univocally speak for them, they are (by definition) a mob. If the mob kills the king it is 'as if the state commits suicide' because the people only exist as such through the sovereign's legislation.<sup>102</sup>

Although Kant and the radicals shared the Rousseauian notion of the people as a constituent power, by insisting that it can only act through institutions, Kant aligned himself with Sieyès's moderate interpretation of this doctrine. Sieyès wrote that 'a nation is made one by virtue of a common system of law and a common representation'.<sup>103</sup> As we have seen, Hobbes maintained the same argument yet Sieyès's inspiration might just as well have been the Monarchomachs who insisted that the people acts only through its intermediaries: 'the people cannot act except through the officers to whom they have transferred their authority and power'.<sup>104</sup> While Sieyès insists that the nation is the *pouvoir constituant*, it can only exercise sovereignty through representatives. This is what the French people did when their representatives assembled in the third estate decided to change the constitution in 1789. This was not really revolution as spontaneous collective action, like Kant's radical followers had imagined revolution, but more like an extraordinary constitutional crisis resolved by duly constituted representatives.

As we have seen, Kant openly admired Sieyès, and although Kant did not take up the offer in 1795 to engage in correspondence with him, he admitted to having been honoured by the attention of the 'famous' and 'commendable' Sieyès.<sup>105</sup> Kant's writings echo Sieyès's theory of the popular constituent power, where the people is sovereign only through their parliamentary representatives. *The Metaphysics of Morals* explains that this means that the legislators can depose the executive, be this a king or an elected ruler.<sup>106</sup> Therefore, Kant drew the surprising conclusion that the French Revolution had been a perfectly legal constitutional transition.<sup>107</sup> Louis XVI was initially the sovereign representative of the people, but when he convoked the Estates-General in order to take advice on how to solve the crisis posed by state debt, he allowed that assembly to represent the people. Sovereignty was then automatically transferred to the Estates-General, which, in line with Sieyès's interpretation of the doctrine of the constituent power, could do as it pleased: keep the existing constitution or create a new one. It decided on the latter:

A powerful ruler in our time therefore made a very serious error in judgment when, to extricate himself from the embarrassment of large state debts, he left it

<sup>102</sup> Kant, *MM*, 6:321. Kant mentions the execution of Louis XVI, but, as Bergk was quick to point out, that is a mistake since the monarchy had been abolished on 20 September 1792 and the new sovereign was the National Convention. Technically Bergk was right: the person executed on 21 January 1793 was not Louis XVI but Louis Capet, a regular French subject. See Bergk, *Briefe*, p. 212, and Furet, *Revolutionary France*, p. 117ff.

<sup>103</sup> Sieyès, 'What is the Third Estate?', pp. 138, 99.

<sup>104</sup> Mornay, *Vindiciae*, p. 151.

<sup>105</sup> Ruiz, 'Neues über Kant', p. 450. See Introduction.

<sup>106</sup> Kant, *MM*, 6:317.

<sup>107</sup> Kant, *MM*, 6:341.

to the people to take this burden on itself and distribute it as it saw fit; for then the legislative authority naturally came into the people's hands [...] The consequence was that the monarch's sovereignty wholly disappeared (it was not merely suspended) and passed to the people.<sup>108</sup>

In his preparatory notes to *The Metaphysics of Morals*, Kant is even clearer: 'The king otherwise represented the people; here he was negated because the people themselves were present'.<sup>109</sup> Not only was the constitutional transition legitimate, there was no right to counter-revolution. This did not depend on the justice or injustice of the transition since subjects must obey any lawful regime regardless of its age or how it came into being. Once a constitution is in place, subjects must obey the new regime. Although this was a new argument in *The Metaphysics of Morals*, it was implied by *Theory and Practice*'s rejection of a right to resistance. If a regime's illegitimate origins could justify resistance, no regime would be secure since the fact (*Factum*) of violence characterizes the birth of every state.<sup>110</sup> Consistency required Kant to deny a right to resist even a revolutionary regime, a view which by implication denied the justice of both the Jacobin takeover and the Vendée revolt.

Kant's second perspective on revolution in the writings of the latter half of the 1790s was of it as a motor in the political progress in history, a view he developed in the *Conflict of the Faculties*. In that essay he denies the justice of revolution but concludes that the enthusiastic support for the French Revolution from onlookers is a sure sign of humanity's progress towards a republican future.<sup>111</sup> Evidence of humanity's development is the event of a new mode of thinking:

It is simply the mode of thinking of the spectators which reveals itself *publicly* in this game of great revolutions, and manifests such a universal yet disinterested sympathy for the players on one side against those on the other [...] Owing to its universality, this mode of thinking demonstrates a character of the human race at large and all at once; owing to its disinterestedness, a moral character of humanity, at least in its predisposition, a character which not only permits people

<sup>108</sup> Kant, *MM*, 6:317. One problem with Kant's interpretation is that Louis XVI did not delegate power to 'the people' but to the entire Estates-General, where the people only constituted the Third Estate and the nobility and clergy had supremacy. The people only gained sovereignty when the Third Estate successfully claimed to be the National Assembly on 17 June 1789, followed by the tennis court oath three days later when the pledge was given to write a new constitution. Because this contravened the rights of the two other estates, it must, on Kant's premises, be called a revolution—not against the King, but against the nobility and clergy. For Kant's interpretation of the events in France, see Henrich, 'Über den Sinn vernünftigen Handelns', p. 32.

<sup>109</sup> Kant, *NM*, 19:595–596.      <sup>110</sup> Kant, *MM*, 6:318 and 372.

<sup>111</sup> Since Kant originally wrote the essay in 1795 but did not publish it until 1798, we can assume that it represents Kant's view over a period of several years. By contrast to the *Metaphysics of Morals*, Kant does not in this essay interpret the events in France as merely a constitutional transition.

to hope for progress towards the better, but is already itself progress insofar as its capacity is sufficient for the present.<sup>112</sup>

This view of the moral consequences of revolution contrasted with Kant's view prior to 1789. As we saw in Chapter 1, he had thought that a revolution will never bring about 'a true reform in one's way of thinking' and that 'new prejudices will serve just as well as the old ones to harness the great unthinking masses'.<sup>113</sup> What had made him change his mind was the sympathy the French Revolution had aroused among the onlookers. Kant's young 'philosophizing friends' were among these sympathizers, and in that sense it is no exaggeration to say that Kant attached great historical importance to his radical followers, since they revealed a moral disposition of humanity. That he really had them in mind is indicated by his reference to Erhard two pages later. At that point he cites Erhard's support for republicanism as a harbinger of humanity's progress: 'This occurrence is the phenomenon, not of revolution, but (as Mr Erhard expresses it)—a phenomenon of the evolution of a constitution in accordance with *natural right*'.<sup>114</sup>

Although it is odd that Kant cites Erhard as a defender of evolution rather than revolution, it is not a direct misinterpretation, since Erhard had written that cases of the ruling elite voluntarily relinquishing power are evidence of evolution. To understand Kant's words we have to see that Erhard plays two roles in the text. Kant reads Erhard first as a philosopher, whose defence of evolution is his most valuable philosophical argument. Second, Kant reads Erhard as an individual, as a harbinger of a widespread European attitude that indicates what lies ahead. From this perspective, Erhard's support for revolution signals humanity's republican future, which confirms Kant's underlying moral conviction. From this historical perspective, Kant was pleased with the French Revolution and all the agitation and sympathy it aroused, because it gave reason to believe that universal freedom was not a vain hope. The young radicals showed Kant that revolution is more than rebellion, the futile actions of people too immature to be governed. It is an idealistic endeavour whose aim is to realize humanity's higher aspirations, a view Kant had not seriously considered before writing *Conflict of the Faculties*. Although there is no way of knowing how he arrived at his insights into revolution and its onlookers, he described both in the young radicals', and specifically in Erhard's, own terms.

In sum: Kant was able to have his cake and eat it too; to reject the right of revolution, yet approve of the events of 1789 both from a juridical and a historical perspective. By contrast to *Theory and Practice*, which had mainly argued that a right to resist contradicts the notion of unrestricted sovereignty in a legal system, *The Metaphysics of Morals* to a greater extent confronts the notion of a people's moral right to revolution. This shift of emphasis is likely the result

<sup>112</sup> Kant, *CF*, 7:85.

<sup>113</sup> Kant, *WE*, 8:36.

<sup>114</sup> Kant, *CF*, 7:87.

of a wish to address the claims to legitimacy made by the revolutionaries in France and their German supporters. He elided one question, though: what if Louis XVI had not called the Estates-General, but had increased the level of repression? Kant had after all re-issued his blanket rejection of revolution in the starker terms. He had even added that 'All authority is from God', which he called 'a practical principle of reason: the principle that the presently existing legislative authority ought to be obeyed, whatever its origin'.<sup>115</sup> Although Kant's use of religious language is new, the argument is essentially the same as that of *Theory and Practice*. As a result, he was seen as maintaining his insistence on obedience to the most terrible despots and was immediately taken to task when *The Metaphysics of Morals* came out.

Friedrich Bouterwek appears to have been the first to review the *Doctrine of Right*. He was a young Kantian who attempted to develop a critical philosophy. Educated a jurist, he gained early fame as a novelist but went on to teach Kant's philosophy at Göttingen, where he popularized the critical philosophy in print and published a book in 1794 that defended cosmopolitanism as a moral ideal. In a 1792 letter to Kant, Bouterwek describes himself as his grateful pupil (*Ihr dankbarer Schüler*) and explains that he will be the first to lecture on Kant's *Critique of Pure Reason* in Göttingen, making it clear that this will take some courage.<sup>116</sup> Always happy to have his philosophy disseminated, Kant replied 'I always wished but dared not hope for a poetic mind that would have the intellectual power to explain the pure concepts of the understanding and make these principles more readily communicable.' He confesses to having enjoyed Bouterwek's poetry, and continues: 'Your linguistic dexterity and mastery can help to overcome the evil to which Councillor Kaestner calls attention: the frequent misuse of new terminology by disciples who have no grasp of its meaning'.<sup>117</sup>

Bouterwek's review of the *Doctrine of Right* was published anonymously in the *Göttingische Anzeige* of 18 February 1797. It was positive overall, and he praised Kant for, among other things, grounding the theory of right in the notion of universal freedom rather than on the moral idea of humanity as an end in itself ('as in the systems of natural right according to Kantian ideas').<sup>118</sup> He approved of the notion of coercion as a limitation on a limitation of

<sup>115</sup> Kant, *MM*, 6:319. No doubt Kant had Paul's letter to the Romans in mind: 'Let every person be subject to the governing authorities. For there is no authority except from God, and those that exist have been instituted by God. Therefore he who resists the authorities resists what God has appointed, and those who resist will incur judgment.' See Paul, 'The Letter to the Romans', in *The Holy Bible*, Revised Standard Version (New York: Meridian, 1974), chapter 13, verse 1.

<sup>116</sup> Letter of 17 September 1792, *AA*, 11:368–370.

<sup>117</sup> Kant, letter to Bouterwek of 7 May 1793, *C*, 11:431–432.

<sup>118</sup> Bouterwek, 'Rezension von Kants Metaphysische Anfangsgründe der Rechtslehre', in *Göttingische Anzeigen von gelehrten Sachen unter der Aufsicht der Königl. Gesellschaft der Wissenschaften*, 18 February 1797. Reprinted in *AA*, 20, 445–453.

freedom: ‘how clever and how fitting!’ (*Wie sinnreich und wie treffend!*<sup>119</sup>). But the praise ends when he comes to Kant’s theory of authority and obedience:

So far as we know, no philosopher [...] has yet admitted that most paradoxical of all paradoxical Kantian propositions: the proposition that the mere *idea* of sovereignty [*Oberherrschaft*] should constrain me to obey as my lord whoever has set himself up as my lord, without my asking who has given him the right to command me. Is there to be no difference between saying that one ought to recognize sovereignty and supreme authority and saying that one ought to hold *a priori* as his lord this or that person, whose existence is not even given *a priori*?<sup>120</sup>

Fichte revealed the identity of ‘the modest reviewer’ to Kant in a letter dated 1 January 1798.<sup>121</sup> The review must have had an effect on Kant, coming as it did from a devoted follower who was also a jurist. He decided to answer and composed a longer defense, which appeared as an appendix to the 1798 edition of the *Doctrine of Right*, and to all future editions.

Kant was generally pleased with the review,<sup>122</sup> but did feel the need to explain his rejection of a right to resist. He reproduced the above paragraph (with the exception of the word ‘Kantian’), and commented: ‘Now granting the *paradox* here, I at least hope that, once the matter is considered more closely, I cannot be convicted of *heterodoxy*’. Kant was not using ‘paradox’ as a technical term, only to mean that a view is surprising, and by heterodox he usually means an unorthodox teaching. So, he is saying that although his view on resistance and revolution might be surprising, it is not that extreme or unusual. It may be doubted that he succeeded in convincing his readers of this, however, because his arguments are clothed in highly technical language.

Kant begins his defence by innocently restating his position: ‘there is a categorical imperative, *Obey the authority who has power over you* (in whatever does not conflict with inner morality)—this is the offensive proposition called in question’.<sup>123</sup> It is not an accurate restatement, however, because the limiting clause about ‘inner morality’ is nowhere to be found in the *Doctrine of Right*. ‘Inner morality’ likely means ethical duties, which Kant defined as requiring the internal incentive of acting from the idea of duty.<sup>124</sup> If a tyrant commands a subject to lie, for example, the virtuous subject will not use force to resist the ruler, but simply refuse to comply. So, Kant’s view seems to be that the categorical imperative functions as a limiting condition on the duty to obey statutory law. This is significant, because it means that the duty not to resist is not identical to an unconditional duty to obey. Kant’s view seems to condone a form of civil disobedience, which is different from a right to resist because individual conscience cannot be a source of rights. Only publicly authorized

<sup>119</sup> Bouterwek, ‘Rezension’.

<sup>120</sup> Bouterwek, ‘Rezension’.

<sup>121</sup> See letter from Fichte to Kant, 1 January 1798, C, 12:230.

<sup>122</sup> Kant, letter to Tieftrunk, 13 October 1797, C, 12:207.

<sup>123</sup> Kant, *MM*, 6:371.

<sup>124</sup> Kant, *MM*, 6:219.

law can create rights. Since Kant would have been familiar with the notion of a conscientious refusal from his reading of Pufendorf as well as Luther, it was not an unorthodox reading.<sup>125</sup>

It was unfair of Kant to tacitly introduce a new premise into his original argument from the *Doctrine of Right*, although he may have thought it was implied in that work. To understand why that should be the case, we must turn briefly to his 1793 *Religion Within the Boundaries of Mere Reason*, which first mentioned the idea of conscience setting limits to obedience, along with the notion that authority comes from God:

As soon as something is recognized as a duty, even if it should be a duty imposed through the purely arbitrary will of a human lawgiver, obeying it is equally a divine command. Of course we cannot call statutory civil laws divine commands; but if they are legitimate, their *observance* is equally divine command. The proposition, 'We ought to obey God rather than men' means only that when human beings command something that is evil in itself (directly opposed to the ethical law), we may not, and ought not, obey them.<sup>126</sup>

This statement shows that Kant is committed to a non-voluntarist view of divine commands. God commands obedience to law if the law is moral; command alone does not give law moral value. God is 'a moral ruler of the world' in the sense that his commands are assumed to be identical to the categorical imperative.<sup>127</sup> It follows that Kant's argument is conditional: *if* civil law is legitimate by a given ethical standard, *then* people should obey it as if it were a divine command. If it is not legitimate, then disobedience should be considered a divine command. This clarifies Kant's statement in the *Doctrine of Right* that 'All authority is from God': divine command compels obedience only to legitimate law, not to any ruler who happens to have superior power. Kant therefore affirms the primacy of individual moral judgment in the face of political authority.

He went still further, spelling out a very important condition of his argument against a right to resistance. The argument is limited to cases where a polity approximates 'a perfectly *rightful constitution*'.<sup>128</sup> A perfectly rightful constitution exists as an ideal—a thing in itself: no empirical reality can measure up to it. If an observer can identify a constitution as a polity, it means that to at least some extent it measures up to the ideal and should not be resisted:

If then a people united by laws under an authority exists, it is given as an object of experience in conformity with the idea of the unity of a people *as such* under a powerful supreme will, though it is indeed given only in appearance, that is,

<sup>125</sup> Martin Luther, 'On Governmental Authority', in Hillerbrand, *The Protestant Reformation*, p. 60. Pufendorf writes that 'Citizens ought to obey the civil laws, so far as they are not openly repugnant to divine law.' This does not license resistance, but passive disobedience. See Pufendorf, *On the Duty*, p. 156.

<sup>126</sup> Kant, *Rel*, 6:100.

<sup>127</sup> Kant, *Rel*, 6:99.

<sup>128</sup> Kant, *MM*, 6:371.

a rightful constitution in the general sense of the term exists. And even though this constitution may be afflicted with great defects and gross faults and be in need eventually of important improvements, it is still absolutely unpermitted and punishable to resist it.<sup>129</sup>

Kant, it seems, had never intended to deny that there is a right to resist an imposter who sets himself up as a sovereign but who lacks a legitimate claim to authority. His argument in the *Doctrine of Right* (and before) is simply that there can be no right to resist *legally constituted* authorities. After all, Kant had specifically claimed that 'a people already subject to civil law' has no right to resist: they cannot refuse to obey the law, the civil constitution, or the commonwealth (*bürgerliche Verfassung*, and *gemeine Wesen*).<sup>130</sup> The prohibition is mostly against resisting either the supreme legislative power or the sovereign (*oberste gesetzgebende Macht* and *Souverän*), which in Kant's political theory are identical because the legislature is the locus of sovereignty.<sup>131</sup> When he prohibits resisting the ruler, or executive (*Regierung*), this was indirectly a rejection of a right to resist the sovereign legislature that appointed the executive.<sup>132</sup> It follows that, much as his radical critics had claimed, some rulers who claim to be the legitimate authorities of a state are in fact only ruling by force and not according to law, thereby perpetuating the state of nature. The right of resistance is moot in these cases because there is no civil authority for the people to resist.

But how could the distinction be made between legitimate authority and the state of nature? *Conflict of the faculties* indicates that the answer has to do with a view of the state inherited from Plato:

The idea of a constitution in harmony with the natural right of human beings, one namely in which the citizens obedient to the law, besides being united, ought also to be legislative, lies at the basis of all political forms; and the body politic which, conceived in conformity to it by virtue of pure concepts of reason, signifies a Platonic *ideal* (*respublica noumenon*), is not an empty figment of the brain, but rather the eternal norm for all civil organization in general, and averts all war.<sup>133</sup>

This ideal is contrasted to the *respublica phaenomenon*, the real world constitution, which approximates the self-legislating republic only gradually as history progresses. Kant had already connected his ideal to Plato in *Critique of Pure Reason* where he praised the notion of an ideal republic whose features

<sup>129</sup> Kant, *MM*, 6:372.

<sup>130</sup> Kant, *MM*, 6:318–319, 372–373; *TP*, 8:299–300; *PP*, 8:383; *CF*, 7:302.

<sup>131</sup> Kant, *TP*, 8:298–301, 304; *PP*, 8:383; *MM*, 6:301fn, 318, 320, 340, 371, 373, 465. Kant also frequently denies a right to resist the head of state (*Staatsoberhaupt*), which means the three branches of government considered as a unity: *MM*, 6:338.

<sup>132</sup> Kant, *TP*, 8:299, 302; Kant, *MM*, 6:340; this is pointed out by Peter Nichols in 'Kant on the Duty Never to Resist the Sovereign' *Ethics*, 86 (1976): 217.

<sup>133</sup> Kant, *CF*, 7:91.

are not derived from experience, but which should be the standard against which all appearances are measured.<sup>134</sup> To see political institutions in the world as imperfect copies of ideas 'is an endeavour that deserves respect and imitation'.<sup>135</sup> A polity that entirely fails to 'copy' the ideal republic is not just a bad state; it is not a state at all. Kant never explicitly drew that conclusion, but that it nonetheless was his view is strengthened by the fact that it was the conclusion of his radical followers. Once Kant's specialized language is unpacked, the reply to Bouterwek shows that his claims were not heterodox at all. He did not deny people's right to resist self-appointed illegitimate rulers, contrary to what almost everyone, including several of the young radicals, had thought. Resistance is justifiable when there is no state at all, in which case persons are under an obligation to create a civil condition, by force if necessary. Subjects may not, however, take up arms against legitimate rulers to speed up the introduction of republicanism, because ends cannot justify unrightful means.

Why did Kant not develop this consequence of his view of the state? One possibility is that he was worried about the Prussian censorship, which had previously reprimanded him for his religious publications. With the exceptions of Tieftrunk and Jakob, his radical followers published their writings outside of Prussia, and may have felt less constrained by public authority. Yet, Kant may also have been uncertain about how to resolve a difficult problem with the notion of restrictions on political legitimacy. The notion that a state can fail to properly realize the *respublica noumenon* such that it no longer is a state raises the difficult question of judgment. Who is entitled to decide? People form the civil state, where the sovereign is the only judge of law, of right and wrong, in order to end the state of nature, where individuals execute their private judgments about right and wrong. If individuals cannot judge the law in the civil state, how can they judge whether the state is legitimate or not?

Although Kant did not address this difficult issue directly, his radical critics were probably right that his theory provides an answer. First of all, Kant's theory presupposes that individuals are able to identify whether they are in a state of nature or in a civil condition. According to the postulate of public right, which requires individuals to enter the civil condition, 'When you cannot avoid living side by side with all others, you ought to leave the state of nature and proceed with them into a rightful condition, that is, a condition

<sup>134</sup> Kant, CPR, A 316ff.

<sup>135</sup> Kant, CPR, B375/A 319. Kant's affinity to Plato had been noted by Karl Morgenstern (1770–1852), a philologist at Halle and one of Kant's young admirers. Morgenstern had written a book called *De Platonis Republica* in 1794, a commentary driven by a philosophical faith in idealism. He praised Kant for continuing the Platonic legacy, and Kant responded by suggesting that Morgenstern might be the man to write the history of philosophy according to the evolution of ideas, as Kant had suggested in the *Critique of Pure Reason*. See Letter from Kant to Morgenstern, 14 August 1795, AA, 12:36. Morgenstern is remembered by posterity for coining the term *Bildungsroman*.

of distributive justice.<sup>136</sup> This duty is incoherent if individuals cannot identify whether or not they are in the state of nature or a civil condition. Second, no authority can confirm this information. Since the sovereign's verdict is only authoritative when he or she *is* in fact the sovereign, which is the very question at stake, no authority can decide if the state has been dissolved or not.<sup>137</sup> Nor can the people as a whole judge, Locke's famous claim that 'the people shall be judge' notwithstanding.<sup>138</sup> Both Locke and Rousseau claimed that the people can make a collective judgment because it is united through a referendum that pre-dates the investiture of the sovereign.<sup>139</sup> As we have seen, although Kant was also committed to the idea of popular sovereignty, collective decisions are valid only when they result from universally binding procedures, which imply the existence of positive law and sovereignty. In the absence of law, the people is merely an uncoordinated multitude. Nor can intermediary associations like the military, churches, or political parties engaging in elite negotiation provide an authoritative judgment. Even if these associations could exist in the state of nature, they would have no authority over individuals. Although it is theoretically possible to set up an international or cosmopolitan entity such as the United Nations to certify legitimate states, Kant rejected such intrusions into national sovereignty, for reasons we shall explore in the next chapter.

In the absence of legitimately established authorities, individuals have the responsibility to judge in the light of reason. Kant had in fact explored that idea in his lectures from 1794, where Vigilantus recorded him as saying: 'It must be known, in fact, from reason alone, that (*in statu civili*) a sovereign of the legal constitution is present in the assumed subject [the lawgiver] before I can determine myself to obedience.'<sup>140</sup> The first thing to decide is whether the ruler provides legally promulgated rights secured by a judicial system, so that persons can enjoy lawful freedom.<sup>141</sup> If there is no lawful freedom yet force, the condition qualifies as what Kant in *Anthropology from a Pragmatic Point of View* (also published in 1798) defined as barbarism.<sup>142</sup> The second thing to decide is whether an unjust ruler is actually seeking to move the state towards constitutionalism, since the *res publica phaenomenon* can only be achieved gradually. Since individuals in the state of nature have the right to use coercion to force others to join a state if they refuse to do so voluntarily, they are entitled to enforce their judgment if they determine that coercion, not law, is

<sup>136</sup> Kant, *MM*, 6:307. <sup>137</sup> See Ripstein, *Force and Freedom*, p. 342.

<sup>138</sup> Locke, *Second Treatise*, § 240.

<sup>139</sup> Locke, *Second Treatise*, §§ 220, 240; Rousseau, *Social Contract*, 4.14 and 4.17.

<sup>140</sup> Kant, *LE*, 27:529; compare *MM*, 6:224.

<sup>141</sup> Kant, *MM*, 6:306ff.

<sup>142</sup> Kant, *Anthropology from a Pragmatic Point of View*, translated by Robert B. Louden, in *Anthropology, History, and Education, The Cambridge Edition of the Works of Immanuel Kant*, edited by Günter Zöller and Robert B. Louden (Cambridge: Cambridge University press 2007), p. 331. Kant associated barbarism with the Turks (sometimes 'the tropical Turks'): see Reflection on anthropology 1368, and *AA*, 15:773. The significance of barbarism has been emphasized by Pogge in 'Kant's Theory of Justice' p. 417, and by Ripstein in *Force and Freedom*, pp. 336ff.

the rule in the 'state'.<sup>143</sup> Kant describes this entitlement to use force as permission (*Erlaubnis*), a provisional right (*ein Recht*), and authorization (*Befugnis*). A person may (*durfen*) force others and is not bound (*verbunden*) to respect their desires to remain in a state of nature.<sup>144</sup> As we have seen, rights are only provisional in the state of nature because there is no public law to guarantee them. Forcing recalcitrant persons to join the state is consistent with justice, because coercion is rightful when used to hinder a hindrance to freedom.<sup>145</sup> It is wrong ('in the highest degree') to refuse to enter the civil state because the state of nature conflicts with the innate right to freedom and is therefore incompatible with equal liberty.

The argument that individuals are always responsible for judging whether the polity is truly a state or not does not strictly speaking amount to a right of revolution because it applies only in cases when individuals are in the state of nature, where there is of course no state to overthrow. It might, however, lead to factional struggle over whether a state deserving obedience really exists. Yet, individuals who wrongly deny the existence of the rule of law challenge the stability of the state, not its authority, which derives from providing lawful freedom. This response would not do much to still the fear of Burke, Rehberg, and the other men of practice, who feared the destabilizing consequences of the intrusion of ideal principles of natural right in politics. No doubt Kant's repeated insistence on the seriousness of the crime of rebellion was intended to counter such worries. Faced with inappropriate denials of legitimacy, the state's appropriate public response is to punish disobedient subjects as rebels, treating them as equal to other lawbreakers, despite their noble motives.

## CONCLUSION

Kant's rejection of a right of resistance was likely aimed at Achenwall and other 'men of practice' who argued that resistance is justified by reference to a contract, an ancient constitution, and the welfare of the people. Yet, the ensuing critiques Kant received mainly came from his radical followers who took his argument to be directed against the French Revolution. Like the critics of Kant today, Kant's radical followers were dismayed at his rejection of a right of resistance and revolution. Their question revealed a larger issue for someone such as Kant who defended the view that rights only can become conclusively valid within the public legal system of a state. Such a state-centred view of rights makes rightful resistance to the state impossible, and as a result many have thought that it leaves individuals with no option but to obey tyrants or

<sup>143</sup> Kant, *MM*, 6:256.

<sup>144</sup> Kant, *MM*, 6:256–257, 307–308, 312–313.

<sup>145</sup> Kant, *MM*, 6:231.

to engage in civil disobedience and suffer the consequences. But, while Kant was indeed committed to this view of right, all his radical critics argued that this is compatible with a theory of a limit to the legitimacy of the state when it becomes mere rule by arbitrary will. The ensuing debate with Bouterwek indicated that Kant did not think obedience is owed to 'any thug who happens to wear a crown'. To be sure, Kant insisted on obedience to rulers who behaved very unjustly. Yet, he also supported the view that rulers who completely fail to provide for lawful freedom have no authority. In these cases, the state dissolves and society reverts to the state of nature, where persons have not just a right but also a duty to enter the civil condition, with force if necessary.

Kant's debate with his radical followers indicates that his view was a little different from the natural rights theory Burke and Bentham had accused of anarchism. The reason is that Kant does not primarily think of rights as pre-political limits on the state, which can be appealed to in resisting its authority. Rather, rights can be conclusively constituted only within the state. Rights require a procedure that admits reciprocity with those who are under duty, and this presupposes equal legal status. Kant's philosophy is alien to a moral right of resistance against public legal authority. He nonetheless remained committed to the view that a people subject to coercion without law and freedom are in the state of nature and therefore entitled to create a new constitution. Revolutions pose a moral problem because of the unilateral use of violence justified by moral principles. A parallel to that problem, which brings into view the difficulties of normative principles in non-ideal circumstances, is the resort to war by states in international relations. We shall now turn to explore this issue, which was very much on Kant's mind in the 1790s.

## 5

## War and Peace

The French revolutionaries despised the European system of international relations. In the old regime, war and the glory of conquest were essential attributes of sovereignty, only limited by an unstable balance of power among monarchs and princes, whose *raison d'état* led them to break the treaties whenever they could get away with it. In 1790, Jean Francois Reubell, the deputy of the third estate and a friend of Sieyès, proclaimed 'we no longer wish to have anything to do with dynastic pacts or ministerial wars, conducted without the nation's consent but at the cost of the nation's blood and the nation's gold'.<sup>1</sup> Yet this did not seem to rule out that war could be waged by the nation and for the sake of liberty. Addressing the National Assembly in Paris in 1791, General Dumouriez advocated a final great war that would destroy despotism forever and secure freedom in Europe.<sup>2</sup> In 1792 Jean-Baptiste du Val-de-Grâce, baron de Cloots, a Prussian Francophile from Kleve who took the name Anarcharsis Cloots after renouncing his aristocratic title and joining the Jacobins, produced the treatise *La république universelle*. He considered France 'humanity's fatherland' and proposed a just war that would introduce a world republic, led by France, and with Paris as the capital.<sup>3</sup> Presenting his book to the National Assembly, he famously claimed to speak in the name of humanity.<sup>4</sup>

Considering Kant's commitment to cosmopolitanism one might have expected him to join Anarcharsis' quest for a world republic. His moral universalism means that the duty to treat others as ends does not stop at national borders. Indeed, his 1780s historical writings present a teleological view of history whose goal of individual moral perfection is secure only in a future global federation of states with a constitution and coercive power to enforce it. The reasoning is by analogy: just as individuals should leave the state of

<sup>1</sup> Cited in T. C. W. Blanning, *The Pursuit of Glory: Europe, 1648–1815* (London: Penguin books, 2007), p. 617.

<sup>2</sup> A. Dietze and W. Dietze, 'Introduktion', in *Ewiger Friede? Dokumente einer deutschen Diskussion um 1800*, edited by A. Dietze and W. Dietze (Leipzig: Gustav Kiepenheuer Verlag, 1989).

<sup>3</sup> Cited by Dietze and Dietze, 'Introduktion', p. 56. See also Kleingeld, *Kant and Cosmopolitanism*.

<sup>4</sup> Tuck, *The Rights of War*, pp. 223–224.

nature, so states should leave the international anarchy and unite among themselves. Authors have therefore often concluded that Kant is an advocate of a world state.<sup>5</sup> Yet in *Theory and Practice* he rejects a cosmopolitan constitution because it may lead to despotism, and proposes instead a federation. In *Perpetual Peace*, Kant's first sustained attempt to justify the right of nations (*ius gentium*), he denies that the federation should have coercive powers to uphold the right of nations and he denies that states can be forced to join it. By contrast with ordinary law, there should be no coercive institution to secure the law of nations.

Friedrich Gentz found this incoherent.<sup>6</sup> A voluntary federation fails to solve the assurance problem among cooperating states that are prone to pursue their national interest. Law needs an external guarantor; if it relies only on the good will of its members, it is built on sand.<sup>7</sup> Assurance requires a supreme power authorized to coerce member states, just as individuals need to submit to state authority if they are to exit the state of nature. As Hobbes said, 'covenants, without the sword, are but words'.<sup>8</sup> Kant should have either advocated a world state or abandoned the idea of international law altogether. Gentz's preference was for the latter: the relative peace resulting from the traditional European balance of powers.

Gentz's critique has yet to find an answer that commands general assent among scholars of Kant, and commentators are still debating why Kant's international federation, unlike the state, should not have coercive powers. The majority view is that Kant's rejection of international enforcement institutions was incoherent, since law requires impartial coercive institutions.<sup>9</sup> States will not be able to exit the international state of nature if the law of nations is only

<sup>5</sup> Hedley Bull influentially claimed that Kant, unlike Hobbes, envisioned a 'cosmopolitan society' replacing the international state system, and Fernando Tesón argued that Kant saw human rights as the basis of international law, whose function is 'to benefit, serve, and protect human beings, and not its components, states and governments'. See Bull, *The Anarchical Society: A Study of Order in World Politics* (New York: Columbia University Press, 1977), p. 25, and Fernando R. Tesón, 'The Kantian Theory of International Law', *Columbia Law Review*, 92, 1 (January 1992), p. 54.

<sup>6</sup> Friedrich Gentz, 'Über den Ewigen Frieden', in *Ewiger Friede? Dokumente einer deutschen Diskussion um 1800*, edited by A. Dietze and W. Dietze (Leipzig: Gustav Kiepenheuer Verlag, 1989).

<sup>7</sup> Gentz, 'Über den Ewigen Frieden', p. 384.

<sup>8</sup> Hobbes, *Leviathan*, chapter 17.

<sup>9</sup> This view is held by Kenneth N. Waltz, 'Kant, Liberalism, and War', *The American Political Science Review*, 56, 2 (June 1962): 331–340; Matthias Lutz-Bachmann, 'Kant's Idea of Peace and the Philosophical Conception of a World Republic', in *Perpetual Peace: Essays on Kant's Cosmopolitan Ideal*, edited by James Bohman and Matthias Lutz-Bachmann (Cambridge, MA: MIT Press, 1997); Jürgen Habermas, 'Kant's Idea of Perpetual Peace: At Two Hundred Year's Historical Remove', in *The Inclusion of the Other: Studies in Political Theory*, edited by Ciaran Cronin and Pablo De Greiff (Cambridge, MA: MIT Press, 1998); Thomas Pogge, 'Kant's Vision, Europe, and a Global Federation', in *Globale Gerechtigkeit. Global Justice*, edited by Jean-Christophe Merle (Stuttgart-Bad-Cannstatt: Frommann-holzbog, 2005); Otfried Höffe, *Kant's Cosmopolitan Theory of Law and Peace*, translated by Alexandra Newton (Cambridge University Press, 2006), pp. 193–195.

self-enforced. On this view, Kant's reluctance to endorse international coercive institutions was empirically based: since larger political units increase the space between subjects and rulers, they increase the likelihood of despotic rule. On a version of this view, Kant never gave up the ideal of a coercive federation, but simply allowed for gradualism in the implementation of the ideal. States cannot be forced to join a federation since their right to give themselves their own law must be respected.<sup>10</sup> A minority view holds that Kant's voluntary federation was not an incoherent position adopted as a compromise given the difficult circumstances of justice, or a temporary solution prior to a coercive federation. The federation is not coercive because it consists of republican states that already have legitimate constitutions.<sup>11</sup> This renders the analogy to the state of nature between individuals imperfect. Constitutional states, unlike private individuals, have no property outside their borders to secure against attack. As legitimate public entities they operate according to the rule of law, and their only reason for declaring war is self-defence. Therefore, their cooperation requires no external coercive enforcement.

To answer the question posed by Gentz, we must consider the difference republicanism makes to international relations. Kant based his theory of the right of nations on Rousseau's reflections on perpetual peace, which in turn bore the influence of Charles-Irénée Castel de Saint-Pierre (1658–1743), the French author of a proposal for peace through a league of nations with an international court. Pessimistically, Rousseau believed it was impossible to form a coercive federation because princes seek glory through conquest, refuse to acknowledge any higher authority, and benefit from continual warfare because it gives them an excuse to raise taxes.<sup>12</sup> This pessimism was based on an observation of how power politics and *raison d'état* characterized international relations within the European system of a balance of powers, which had developed in the wake of the wars of the seventeenth century. Kant believed that republican constitutions would obviate these obstacles to international peace under the rule of law. His radical followers who, unlike Gentz, were not worried about the assurance problem, took up this claim, arguing that despotic rule led to warfare: 'a state that is internally unjust must necessarily aim at robbing its neighbors', Fichte wrote, expressing a common view.<sup>13</sup> It followed

<sup>10</sup> Georg Cavallar maintains this view. See 'Kant's Society of Nations: Free Federation or World Republic?', *Journal of the History of Philosophy*, 32 (1994): 461–482, and *Kant and the Theory and Practice of International Right* (University of Wales Press, 1999), p. 113. See also Ellis, *Kant's Politics*, p. 93; Kleingeld, *Kant and Cosmopolitanism*, p. 51.

<sup>11</sup> Ripstein, *Force and Freedom*, p. 228ff; Kjartan Koch Mikalsen, 'In defense of Kant's league of states', *Law and Philosophy*, 30 (2011): 291–317.

<sup>12</sup> Rousseau, 'Judgment of the Plan for Perpetual Peace', in *The Plan for Perpetual Peace, on the Government of Poland, and Other Writings on History and Politics: The Collected Writings of Jean-Jacques Rousseau Volume 11*, edited by Christopher Kelly, translated by Christopher Kelly and Judith Bush (Lebanon, NH: Dartmouth College Press, 2005), p. 60.

<sup>13</sup> Fichte, 'Review', p. 321.

that establishing a just constitution would end this dynamic. Although relations between republics have to be regulated by the right of nations, the fact that the republics themselves are law-abiding renders external enforcement inessential.

The first part of this chapter situates Kant within the eighteenth-century debate on the problem of war and the solution that would create perpetual peace, a debate which was developed by Saint Pierre and Rousseau. The second part presents Kant's first justification for the law of nations. The third part discusses the reception of the essay by Kant's followers and critics, and the fourth part shows how *The Metaphysics of Morals* supplied an original solution to the dilemmas posed by Saint Pierre and Rousseau.

## DEBATES ABOUT WAR

Absolutist rulers in the seventeenth century posited the sovereign state as the institutional innovation that would end wars and rebellions.<sup>14</sup> The 1648 Peace of Westphalia ended thirty years of European religious wars by establishing state sovereignty and the rule against foreign interference in domestic affairs. Disagreements over religion were no longer excuses for just wars. The sovereign state also solved the problem of rebellions, a by-product of the late feudal dualistic system, which, as we saw in the previous chapter, based the ruler's authority on a contract with the nobility, allowing for a right of resistance when they judged that the terms of the contract had been violated. Hobbes' theory of the state is the purest expression of the new settlement. Rulers cannot base legitimacy on either religious or moral grounds because disagreements about values risk the return of the wars of religion. He also denied that rulers could claim legitimacy on the basis of pacts with other parties such as the nobility or the estates, since that would divide sovereignty and lead to situations that could only be solved by war. Instead, Hobbes linked legitimacy to authority, the ability to guarantee order, an end that could be universally endorsed. Hobbes saw the state as a moral (artificial) person, which those in power represent,<sup>15</sup> and which in the international domain behaved much like the noblemen of the feudal era, who accepted no superior authority and solved conflicts through duels, alliances, and treaties. War became the ultimate way to claim the state's rights against other states.

If state sovereignty solved the problem of internece war and rebellion, it released external wars. To a large extent this was endemic to the new order:

<sup>14</sup> See Carl Schmitt, *The Nomos of the Earth in the International Law of the Jus Publicum Europaeum*, translated by G. L. Ulmen (New York: Telos Press, 2003); and Tilly, 'War Making'.

<sup>15</sup> Quentin Skinner, 'Hobbes and the Purely Artificial Person'.

wars were seen as ways to solve conflicts because sovereign states could accept no higher authority, and since the new order was not governed by any shared values or interests (apart from sovereign equality and *raison d'état*) conflicts could not be solved by reference to a shared agenda. So, states systematically resorted to war, much like the nobility formerly had resolved their disagreements outside the law courts by duelling. Like duels, the wars were regulated, waged within the framework of the European balance of power, a precarious system of alliances that ensured that no state was strong enough to create a universal monarchy.<sup>16</sup> Although the wars were limited, and regulated to some extent by the shared European order, they could also result in serious bloodletting. The Prussian march into Silesia might have been a moment of glory, but the Seven Years War came with large human costs.

Theorists who thought of the sovereign state as a moral person, and as a solution rather than a problem, had to find a way to defend it. Supporters of the Westphalian settlement included the realists and the legalists, the two dominant schools of the law of nations.<sup>17</sup> Thomas Hobbes and Samuel Pufendorf, who defended the realist view, claimed that in the absence of a superior coercive power, international relations were characterized by anarchy even when states signed treaties and set up the law of nations. Such covenants are not proper law, and just as individuals were in the state of nature prior to the founding of the state, states in the international sphere enjoy a natural freedom unrestricted by law.

Christian Wolff and the Swiss philosopher and diplomat Emer de Vattel (1714–1767), who defended the legalistic view, maintained that European states form a kind of society, which Wolff called the *Civitas maxima*, and Vattel the *Société universelle*, *Société naturelle*, and *Société des nations*.<sup>18</sup> This society of mutual aid was based not just on the natural law of nations, but also on positive law developed from convention and custom.<sup>19</sup> Although not a product of consensus or enforced by a superior authority, it is legitimate and binding law. What Vattel called *European international law* generated a considerable literature. He had many followers who saw Europe as a community with a form of constitution, among them Achenwall. Neither school of thought saw peace as an end in itself, however. Both supported the notion of the balance of power

<sup>16</sup> Schmitt, *The Nomos of the Earth*, pp. 167ff; Edward Vose Gulick, *Europe's Classical Balance of Power* (New York: W. W. Norton & Company, 1967). See also Daniel Deudney, *Bounding Power: Republican Security Theory from the Polis to the Global Village* (Princeton: Princeton University Press, 2007).

<sup>17</sup> See Heinhard Steiger, 'Völkerrecht', in *Geschichtliche Grundbegriffe*, edited by Otto Brunner, Werner Conze, and Reinhart Koselleck, vol. 7 (Stuttgart: Klett-Cotta, 1978): pp. 245–313.

<sup>18</sup> Steiger, 'Völkerrecht', p. 115; Theodore Christov, 'Vattel's Rousseau: Jus Gentium and the natural liberty of states', in *Freedom and the Construction of Europe. Volume II: Free Persons and Free States*, edited by Quentin Skinner and Martin van Gelderen (Cambridge University Press, 2013).

<sup>19</sup> Steiger, 'Völkerrecht', p. 118.

and regulated, cabinet-run wars. Peace was a by-product of this arrangement that lasted only until the next conflict. So, it was a novelty when the Abbé Saint Pierre, in his 1713 book *Projet pour rendre la paix perpétuelle en Europe*, presented a proposal for a perpetual peace that would break with the traditional European system of balanced powers by establishing a coercive federation to enforce the law of nations. Saint Pierre's essay generated a large number of other attempts in France to construe a perpetual peace, and in 1766 the Académie Française offered a prize competition on plans for universal peace.<sup>20</sup> In 1756 Rousseau had written an abstract of Saint Pierre's large work, which was published in 1761, as well as a critical essay, which was published posthumously in 1782. Although he endorsed Saint Pierre's plan, he thought it impossible to realize in practice. Kant was familiar with Rousseau's views and wrote *Perpetual Peace* as an attempt to solve the same problem.<sup>21</sup>

Rousseau's précis of Saint Pierre starts from Hobbesian premises and diagnoses the international domain as a state of nature.<sup>22</sup> Wars are terrible because of their human losses and because the right of the stronger is an unjust way to settle conflicts.<sup>23</sup> Rousseau, like Vattel and unlike Hobbes, acknowledges a form of society in the international state of nature. Like many of his contemporaries, he thought Europe was united in a republic of sorts, an informal customary society held together by remnants of Roman law, religion, and politics that distinguished Europe from 'the Turk'. The reason this Republic of Europe cannot achieve peace is that it relies on a balance of power system held together by pacts and treaties that are easily broken because no power stands above the sovereign states as guarantor. To attain perpetual peace the European society of nations needs a constitution and higher court, 'with compulsory and coercive force to constrain all members to submit to deliberations'.<sup>24</sup> He describes this as a permanent confederation that guarantees the independence of member states and prevents any sovereign or association of sovereigns from dominating all of Europe.

Rousseau's précis was optimistic that princes would give up the glory of conquest and endorse it because it would benefit them in so many ways: securing their power, protecting commerce, cutting military budgets, allowing the countryside to flourish, and so on.<sup>25</sup> But Rousseau rejected this optimism in

<sup>20</sup> Dietze and Dietze, 'Introduktion', p. 40.

<sup>21</sup> It is not clear whether Kant knew Rousseau's critical essay, the 'Judgment of the Plan for Perpetual Peace'. He would in any case have been familiar with similar skepticism, which was common in the German public sphere. See Dietze and Dietze, 'Introduktion', pp. 47ff.

<sup>22</sup> Jean-Jacques Rousseau, 'Abstract of Monsieur the Abbé Saint-Pierre's Plan for Perpetual Peace', in *The Plan for Perpetual Peace, on the Government of Poland, And Other Writings on History And Politics, The Collected Writings of Jean-Jacques Rousseau Volume 11*, edited by Christopher Kelly, translated by Christopher Kelly and Judith Bush (Lebanon, NH: Dartmouth College Press, 2005).

<sup>23</sup> Rousseau, 'Abstract', p. 47.

<sup>25</sup> Rousseau, 'Abstract', p. 43.

<sup>24</sup> Rousseau, 'Abstract', p. 36.

'Judgment of the Plan for Perpetual Peace', also composed in 1756, denying that princes care about the common good. They seek power, care more about territory than the welfare of the population or the strength of the economy, and recognize no superior authority that could force them to be just. Moreover, despots benefit from war since it gives them a pretext to increase domestic oppression for the sake of higher taxes (just as domestic oppression allows them to prepare for war). If they waver in their commitment to glory, their ministers will pander to their lowest interests and encourage them to start new adventures. So, although Saint Pierre's plan for peace is noble and attractive, it could only be introduced by force, and Rousseau can think of no one strong enough to bring a whole continent into the fold.<sup>26</sup>

In the post-revolutionary era, France became the leading candidate for the task. To be sure, the new nation had first seemed pacific. On 22 May 1790 the National Assembly declared that it renounced any war of conquest and that it would 'never use its forces against the liberty of any other people'.<sup>27</sup> Yet, partly for reasons of national interest and partly for more idealistic motives, France found itself at war with Europe's great powers by 1793. The Girondists had assumed that war would unite the country, and they rightly expected to be able to harvest the patriotic sentiment. Military leaders such as Dumouriez and opinion leaders such as Anacharsis Cloots justified the largely defensive wars against Europe's monarchs in terms of the liberating mission of the republic. The declaration of the republic of Mainz, where the German Jacobins in 1793 had welcomed the French troops as liberators, confirmed the fears of German rulers that the wars threatened their territorial integrity. The Prussian king and the Habsburg monarch joined forces in an attempt to contain the revolution, and their coalition was sometimes defended in terms of maintaining Europe's balance of power.

Fichte responded in his *Contribution to the Rectification of the Public's Judgment of the French Revolution*. In his view, the balance of power was a way for monarchs to secure their position as absolute rulers domestically, justified by the need to command power in the face of foreign threats.<sup>28</sup> The claim that the demise of the system would lead to either a war of all against all or an oppressive universal monarchy was false, because if only republican government was instituted, ordinary people's desire for peace would set the agenda. Fichte saw the French Revolution as heralding emancipation from the oppressive 'political machine of Europe' with its constant warfare.<sup>29</sup> Meanwhile, the French forces successfully occupied areas along the Rhine, in Spain, and the

<sup>26</sup> Rousseau, 'Judgment of the Plan for Perpetual Peace', p. 60.

<sup>27</sup> Blanning, *The Pursuit of Glory*, p. 617. This became incorporated in title 6 of the 1791 constitution. See also Dietze and Dietze, 'Introduktion', pp. 50ff.

<sup>28</sup> Fichte, *Beitrag*, p. 58. See also Nakhimovsky's excellent study of Fichte, *The Closed Commercial State*, p. 18.

<sup>29</sup> Fichte, *Beitrag*, p. 61.

Low Countries, and Prussia eventually signed a separate peace treaty with France on 5 May 1795. That peace treaty provided the context for Kant's *Perpetual Peace*.

## KANT'S INITIAL VIEW ON THE RIGHT OF NATIONS

All Kant's writings on peace reveal that he was consumed by the question of how the right of nations could be realized through a federation of nations. But his early writings, including *Idea for a Universal History* and the third part of *Theory and Practice*, see this federation largely as a framework that provides individuals with the security needed for moral virtue, while the later writings, starting with *Perpetual Peace*, consider the right of nations as an end in itself.

The early writings were part of an ongoing debate between Kant and Moses Mendelsohn, who denied the possibility of moral progress in history. Kant's counterargument was premised on the claim that moral agency requires the rule of law, and that domestic law depends on the establishment of an international federation with coercive powers. Kant predicted that this would come about because mutual aggression would eventually force rulers and subjects to realize that their interest lay in reciprocally establishing the rule of law. This teleological story was an attempt to convey a plausible future for humanity that would allow individuals to trust their ability to act as moral agents. It was not a justification of law, nor was it meant to predict the future. Its purpose was to encourage subjects to act morally and provide rulers with the incentive to be remembered as benefactors of human development, thereby, against Mendelssohn, showing that moral progress is plausible.<sup>30</sup>

Because Kant is interested in war and peace in these essays mainly from the perspective of the contributions to individual morality, he reasons about armed conflict not just from the perspective of right, but in terms of consequences for moral dispositions:

Even war, if it is conducted with order and reverence for the rights of civilians, has something sublime about it, and at the same time makes the mentality of the people who conduct it in this way all the more sublime, the more dangers it has been exposed to before and which it has been able to assert its courage; whereas a long peace causes the spirit of mere commerce to predominate, along with base

<sup>30</sup> The coercive federation in these writings has some commonalities with the postulates of practical reason in the *Critique of Practical Reason*, which aim to make it more reasonable for individuals to act morally.

selfishness, cowardice, and weakness, and usually debases the mentality of the populace.<sup>31</sup>

Kant nonetheless concludes that, on balance, the conditions for developing moral agency are better in a time of peace.

This perspective is evident in *Idea for a Universal History*, where Kant presents a teleological vision wherein constant warfare eventually brings peace. The underlying idea is again that of 'unsocial sociability', which had earlier played a part in the teleological story of the creation of the state. It now drives heads of state to pursue constant war in the international condition of 'savage freedom' unlimited by law. Continuous warfare and preparation for war will eventually drive states to unite in a 'great federation of nations (*Völkerbund*)', which he also calls a *Foedus Amphictyonum* alluding to the ancient Greek defensive league aimed at establishing peace.<sup>32</sup> Attributing the concept to Saint Pierre and Rousseau, Kant writes that its 'united might' makes it a coercive federation.<sup>33</sup> Individuals can only be secure in their domestic rights and perfect themselves as moral individuals in a condition of international peace.

The third essay of *Theory and Practice* reiterates this focus on the relationship between legally ordered international relations and individual moral perfection. Although framed as a moral as well as a teleological argument—states *should* enter a 'cosmopolitan constitution'—moral perfection is still the goal. Like *Idea for a Universal History*, the constitution involves 'public laws accompanied by power to which each state would have to submit'.<sup>34</sup> This will put an end to the volatile European balance of powers:

An enduring universal peace by means of the so-called *balance of power in Europe* is a mere fantasy, like Swift's house that the builder had constructed in such perfect accord with all the laws of equilibrium that it collapsed as soon as a sparrow alighted upon it.<sup>35</sup>

Aware that Saint Pierre and Rousseau had been considered naïve because they had expected the grand federation to arrive too quickly, Kant attributes the charge of naivety to the men of state such as Gentz who deny that theory can be implemented in practice.<sup>36</sup> The fact that states will not voluntarily submit to the federation is no reason to renounce the moral duty to strive for it.

By contrast to these earlier writings, which discussed the right of nations mainly from the perspective of moral virtue, *Perpetual Peace* was Kant's first sustained attempt to justify the law of nations as an end that must be pursued for its own sake. The essay has several targets. As we saw earlier, *Perpetual Peace* continues the polemics against the 'men of practice' who first decide on ends and then choose whatever means it takes to achieve them. The other

<sup>31</sup> Kant, *CPJ*, 5:263.

<sup>32</sup> Kant, *IUH*, 8:24.

<sup>33</sup> Kant, *IUH*, 8:24.

<sup>34</sup> Kant, *TP*, 8:311–313.

<sup>35</sup> Kant, *TP*, 8:312.

<sup>36</sup> Kant, *TP*, 8:312.

target is the common practice in the Westphalian system of relying upon natural law theory to justify aggressive foreign policy:

Hugo Grotius, Pufendorf, Vattel, and the like (only sorry comforters)—although their code, couched philosophically or diplomatically, has not the slightest *lawful* force and cannot even have such force (since states as such are not subject to a common external constraint)—are always duly cited in *justification* of an offensive war, though there is no instance of a state ever having been moved to desist from its plan by arguments armed with testimony of such important men.<sup>37</sup>

Moral arguments can always be used to justify selfish policies. States can only end this hypocritical practice by committing themselves to a legal framework that gives moral arguments binding force. This premise is a constant throughout Kant's writings on the right of nations:

Nations, as states, can be appraised as individuals, who in their natural condition (that is, in their independence from external laws) already wrong one another by being near one another; and each of them, for the sake of its security, can and ought to require the others to enter with it into a constitution similar to a civil constitution, in which each can be assured of its right.<sup>38</sup>

Since Kant, like Rousseau, takes the domestic analogy for granted, he concludes that, just as individuals created states in order to transcend the state of nature, states in the international condition of anarchy should create international law in order to maintain peace. By peace he means not simply the secession of hostilities but a lawful condition where controversies are settled by impartial arbitration according to law.

Although *Perpetual Peace* is the model for this framework, it is thoroughly perplexing. The essay is presented as an ironic treatise with preliminary and conclusive articles that resemble the 1795 Franco-Prussian Treaty of Basle.<sup>39</sup> The six preliminary articles of the mock treaty are:

1. No treaty of peace shall be held to be such if it is made with a secret reservation of material for a future war.
2. No independently existing state (whether small or large) shall be acquired by another state through inheritance, exchange, purchase or donation.
3. Standing armies (*miles perpetuus*) shall in time be abolished altogether.
4. No national debt shall be contracted with regard to the external affairs of a state.

<sup>37</sup> Kant, *PP*: 355.

<sup>38</sup> Kant, *PP*, 8:354.

<sup>39</sup> That this was Kant's intention was recognized at the time: see Karl Heinrich von Gleichen, 'Versuch eines Entwurfs zu einem ewigen Frieden, in *Ewiger Friede? Dokumente einer deutschen Diskussion um 1800*', edited by A. Dietze and W. Dietze (Leipzig: Gustav Kiepenheuer Verlag, 1989), p. 203.

5. No state shall forcibly interfere in the constitution and government of another state.
6. No state at war with another shall allow itself such acts of hostility as would have to make mutual trust impossible during a future peace; acts of this kind are employing *assassins* (*percussores*) or *poisoners* (*venefici*), *breach of surrender*, *incitement to treason* (*perduellio*) within the enemy state, and so forth.<sup>40</sup>

Articles 1, 5, and 6 are strict laws of prohibition (*leges strictae*), whereas the highly idealistic articles 2, 3, and 4 are permissive laws (*leges latae*); their implementation can be postponed if that increases the likelihood of a successful implementation. The strict laws are recognizably the traditional categories of the law of war: *ius post bello*, *ius ad bello*, and *ius in bello*, which Kant will take up again when returning to the right of nations in the *Doctrine of Right*.

The preliminary articles convey the key principle of the Westphalian order: equal state sovereignty. The Westphalian order created a stark separation between domestic and foreign affairs: by decreeing that one state's domestic sphere was of no concern to other states, it instituted a form of inter-state religious neutrality. Kant emphasizes that although subjects of one state may find another country's domestic policy 'scandalous', it must nonetheless be tolerated. He had made a similar point in the 1784 *Feyerabend* lectures: 'Only harm is a just cause for war. [...] One cannot wage war for the sake of religion, for no one is harmed through religion.'<sup>41</sup> Three definitive articles that specify three kinds of law follow the preliminary articles. First, the right of states, which presupposes republican government; second, the right of nations, institutionalized through a federation; and, finally, cosmopolitan right, which does not entail new institutions, but merely requires states to respect the right of individuals to visit any state.

The notion of a treaty to establish perpetual peace is puzzling for a number of reasons. First, the six articles for peace are presented with little attempt to explain their origin or justification. The form of the essay invites the assumption that they are the articles of a fictitious international peace treaty, which, unlike ordinary treaties, is intended to end war once and for all, not just to end a particular war. Since Rousseau had suggested a similar approach to exiting the international state of nature, wherein a congress of states endorses specific articles,<sup>42</sup> it is reasonable to assume that they are the laws of an international society, as well as laws regulating its creation. It is odd, however, that Kant should propose a peace treaty to establish perpetual peace when a major premise of the essay is that treaties cannot create a lasting peace. Peace treaties are fundamentally unstable because there is no independent party to enforce them in the absence of international law and an international sovereign. They

<sup>40</sup> Kant, *PP*, 6:343–347.

<sup>41</sup> Kant, *F*, 27:1393.

<sup>42</sup> Rousseau, 'Abstract', p. 37.

are just as futile as a contract between two people who have no third party to enforce performance.

The preliminary articles only make sense when read alongside the institutional commitments in the three definitive articles. There is no point in states signing a peace treaty unless there is an institutional structure to establish publicly the principles of peace and to apply the law in particular cases. Without it, a state in conflict with another state would be both judge and part in a case. International institutions are needed to provide the impartiality that can secure the mutual freedom of states and protect them from war. Indeed, by qualifying peace as ‘perpetual’ Kant meant that it relies on non-voluntary state-like institutions, its non-voluntariness being the quality that distinguishes the state from other kinds of societies. *Theory and Practice* defined the state as a perpetual association that trumps and outlasts the many subordinate, temporary, voluntary societies and corporations that exist for specific purposes.<sup>43</sup> States should give up their wild and lawless freedom to form a universal ‘state of nations (*Völkerstaat*)’, a *civitas gentium*.<sup>44</sup> In sum: Kant’s use of the domestic analogy seems to imply that international law should be coercively enforced.

This was the type of institution he had defended in the shorter essays on morals written in 1784 and 1793. Surprisingly, however, *Perpetual Peace* denies that the right of nations should be coercively enforced. He presents two possible international organizations. The first is the ‘state of nations’ (*Völkerstaat*) from *Theory and Practice*. It would be a sovereign state with coercive authority over member states, which he now also calls a world republic (*Weltrepublik*). The second is a ‘federalism of free states’ (*Föderalismus freier Staaten*), also called a ‘pacific league’ (*Friedensbund*), a *foedus pacificum*, which would lack coercive power over its members. The former is rejected, and the latter is proposed as a ‘negative surrogate’:

This league does not look to acquiring any power of a state but only to preserving and securing the *freedom* of a state itself and of other states in league with it, but without there being any need for them to subject themselves to public laws and coercion under them (as people in a state of nature must do).<sup>45</sup>

By contrast to the state of nature among individuals, states cannot be forced to join the pacific league:

What holds in accordance with natural right for human beings in a lawless condition, ‘they ought to leave this condition,’ cannot hold for states in accordance with the right of nations (since, as states, they already have a rightful constitution internally and hence have *outgrown* the constraint of others to bring them under a more extended law-governed constitution in accordance with their concepts of right).<sup>46</sup>

<sup>43</sup> Kant, *TP*, 8:289.

<sup>44</sup> Kant, *PP*, 8:357.

<sup>45</sup> Kant, *PP*, 8:356.

<sup>46</sup> Kant, *PP*, 8:355–356. Emphasis added.

Kant at times explains the choice of the federation over a world republic with empirical considerations: the reluctance states have to join international commitments, and the danger posed by the concentration of power. For example, he writes that a fusion of all states by one power would be worse than inter-state warfare, since 'as the range of government expands laws progressively lose their vigour, and a soulless despotism, after it has destroyed the seed of good, finally deteriorates into anarchy'.<sup>47</sup> One might think that the worry Kant has in mind was the republican universalism advocated by the likes of Anarcharsis Cloots, which might be used to justify imperialist military expansion. Yet, as we see in the previous quote, Kant also rejects a coercive world state on a more principled ground: states have 'outgrown' coercion because they are constitutional entities, presumably with a separation of power and popular representation. These republican polities are able autonomously to govern themselves by law, and they do not engage in wars of aggression:

The republican constitution does offer the prospect of the result wished for, namely perpetual peace; the ground of this is as follows. When the consent of the citizens of a state is required in order to decide whether there shall be war or not (and it cannot be otherwise in this constitution), nothing is more natural than that they will be very hesitant to begin such a bad game, since they would have to decide to take upon themselves all the hardships of war (such as themselves doing the fighting and paying the costs of the war from their own belongings, painfully making good the devastation it leaves behind, and finally—to make the cup of troubles overflow—a burden of debt that embitters peace itself, and that can never be paid off because of new wars always impending).<sup>48</sup>

The claim is that republics, which authorize citizens to legislate through their representatives, will only declare war in self-defence, since war is disastrous for ordinary citizens who prefer to live tranquil lives dedicated to the pursuit of happiness and prosperity.<sup>49</sup> By contrast, despots can decide on war on a whim and for no significant cause, 'as upon a kind of pleasure party', since they do not suffer the consequences.<sup>50</sup> The pacific nature of republics is not just an empirical prediction about how persons behave given their self-interest, however. It results from the purpose of the republic, which is to secure equal freedom among members. Republican states have no mandate to pursue material ends such as territorial expansion or glory. Their mandate is limited to securing formal relations of freedom among subjects.

<sup>47</sup> Kant, *PP*, 8:367.

<sup>48</sup> Kant, *PP*, 8:350–351.

<sup>49</sup> Michael Doyle has influentially emphasized this argument within the liberal school of international relations: see 'Kant, Liberal Legacies, and Foreign Affairs', in *Philosophy & Public Affairs*, 12 (Summer 1983): 205–235. The notion that *doux commerce* leads to peace was influential in the eighteenth century and is the subject of a book by Albert Hirschman: see *The Passions and the Interests: Political Arguments for Capitalism Before its Triumph* (Princeton: Princeton University Press, 1977).

<sup>50</sup> Kant, *PP*, 8:350.

Kant is aware that Saint Pierre and Rousseau had been mocked for the lack of realism in their plans for a perpetual peace. But for Kant there are two crucial differences, which renders his proposal more realistic: first, his theory of the pacific league is intended for republics, and, second, the example of the new French Republic indicates that universal republicanism is no mere dream:

For if good fortune should ordain that a powerful and enlightened people can form itself into a republic (which by its nature must be inclined to perpetual peace), this would provide a focal point of federative union for other states, to attach themselves to it and so to secure a condition of freedom of states conformably with the idea of the right of nations; and by further alliances of this kind, it would gradually extend further and further.<sup>51</sup>

Finally, Kant adjusts what is otherwise a strictly state-centric view by introducing what he calls cosmopolitan right. Billed as a third level of law, cosmopolitan right regulates how foreign states should treat subjects of another state.<sup>52</sup> Its only principle is that individuals must have the right to visit foreign countries, although they have no right to settle there without permission. Although Kant (a native of a port city) was aware of the benefits this would hold for trade, cosmopolitan right is not justified by advantageous material consequences, but by humanity's common possession of the earth's surface. Kant is well aware, though, that Europeans have claimed the right to visit other countries as a subterfuge for colonization. Francisco de Vitoria, the Spanish theologian often thought of as the father of international law, claimed that natural law provided Spaniards with a right not just to travel to other countries, but to dwell in them, and that they were justified in going to war to enforce that right.<sup>53</sup> For Kant, respect for the sovereignty of peoples entailed separating the right to visit from the right to settle:

If one compares this with the *inhospitable* behaviour of civilized especially, commercial, states in our part of the world, the injustice they show in *visiting* foreign lands and peoples (which with them is tantamount to *conquering* them) goes to horrifying lengths. When America, the negro countries, the Spice Islands, the Cape, and so forth were discovered, they were, to them, countries belonging to no one, since they counted the inhabitants as nothing.<sup>54</sup>

Kant concludes that states are perfectly entitled to restrict visits from other nations and commends Japan and China on their wisdom in denying Europeans a right to settle. Cosmopolitan rights create a small dent in this otherwise state-centred vision by establishing the right of individuals to cross

<sup>51</sup> Kant, *PP*, 8:356.

<sup>52</sup> Kant, *PP*, 8:358.

<sup>53</sup> Francisco de Vitoria, *Political Writings*, edited by Anthony Pagden and Jeremy Lawrence (Cambridge: Cambridge University Press, 1991), p. 282.

<sup>54</sup> Kant, *PP*, 8:358. See also Sankar Muthu's influential *Enlightenment Against Empire* (Princeton: Princeton University Press, 2003).

borders, which is also significant for peace: 'this way distant parts of the world can peaceably enter into relations with one another'.<sup>55</sup>

It is the *spirit of commerce*, which cannot coexist with war and which sooner or later takes hold of every nation. In other words, since *the power of money* may well be the most reliable of all the powers (means) subordinate to that of a state, states find themselves compelled (admittedly not through incentives of morality) to promote honourable peace and, whenever war threatens to break out anywhere in the world, to prevent it by mediation, just as if they were in a permanent league for this purpose; for, by the nature of things, great alliances for war can only rarely be formed and even more rarely succeed. In this way nature guarantees perpetual peace through the mechanism of human inclinations itself.<sup>56</sup>

If only commercial republics are established, and international trade is allowed to flourish, the right of nations does not have to be secured through a federation with coercive powers. This is the case because, as Montesquieu had already argued, commercial republics pursue not glory through territorial conquest, but wealth through trade. But whereas Montesquieu had seen the foundation of cooperation in mutual needs,<sup>57</sup> for Kant it merely serves as an incentive to heed the call of reason to enter a condition of freedom under law.

In sum: *Perpetual Peace* signalled Kant's abandonment of the federation with enforcement power defended in earlier writings. This change can be partially explained by a shift of focus from the conditions for the cultivation of moral agency to the conditions for public right, which led Kant to explore the right of nations in greater detail. In *Perpetual Peace* Kant explored constitutionalism, which constrained republican states to be inherently law-abiding and non-aggressive. His earlier essays had adopted the *ancien régime* world of states that Saint Pierre and Rousseau took for granted. Having discarded that premise, Kant drew different, more optimistic, conclusions. His theory of the right of nations reflects the common sentiment of the early stages of the French Revolution: despotism is the cause of war; republicanism is the cause of peace.

### DEBATING PERPETUAL PEACE

Kant's essay was an immediate success and went through several editions shortly after its initial publication.<sup>58</sup> The essay generated a small cottage

<sup>55</sup> Kant, *PP*, 8:358.

<sup>56</sup> Kant, *PP*, 8:368.

<sup>57</sup> Montesquieu had written that 'the natural effect of commerce is to lead to peace. Two nations that trade together become mutually dependent: if one has an interest in buying, the other has one in selling; and all unions are based on mutual needs.' Cited in Hirschman, *The Passions*, p. 80.

<sup>58</sup> Oliver Eberl and Peter Niesen, *Immanuel Kant: Zum ewigen Frieden und Auszüge aus der Rechtslehre* (Berlin: Suhrkamp Verlag, 2011), pp. 307ff.

industry of writings on perpetual peace. Unlike Kant, some authors advocated the creation of a federation with a judiciary and enforcement authority, and omitted the distinctively Kantian connection between republicanism and peace.<sup>59</sup> Ludwig Heinrich Jakob realized that the essay might be seen as deeply idealistic, and his review defended Kant against the anticipated critique by the 'men of practice', such as Gentz and Rehberg.<sup>60</sup> He explained that Kant was making a normative argument, clarifying the duties of states, regardless of the difficulties of implementation. Even self-interested states are obliged to do what justice requires. They have a duty to seek perpetual peace through law, even if they are strong enough to secure independence where no legal order exists. States' respect for the duty to comply, not a legal enforcement mechanism, secures the federation's authority.

This was not likely to satisfy the men of practice. Kiesewetter wrote to Kant shortly after the publication of *Perpetual Peace*, saying that Gentz disliked the essay and might contest it in writing,<sup>61</sup> but Gentz's essay did not appear until 1800, five years later. The gist of his essay is that Kant's voluntary congress is incoherent because it fails to solve the assurance problem. A legal constitution needs an external guarantor since the mere moral duty of member states is not going to prevent them from pursuing national interest against the law of nations.<sup>62</sup> Since a legal union presupposes coercion, which in turn implies a supreme power, Kant's view is inconsistent with the idea of law. Gentz proposes instead to restore the classical European balance of power, which approximates the Kantian idea of law-governed relations, but without any centralized formal institution. This had worked as a natural federal constitution of Europe (a *naturliche Föderativverfassung*) since the peace of Westphalia, and although the system did not end wars, it did limit them.<sup>63</sup> This system is not the same as the state of nature because it was a natural constitution that rendered treaties provisionally valid.<sup>64</sup> Although states had not abandoned war, they had at least banished *internal* wars, because wars between states defuse humans' instinctual enmity, which was responsible for internece conflict. This amounts to civilizational progress, and allows Gentz to conclude gnomicly that without war, there would be no peace on earth ('*ohne Krieg wäre kein Friede auf Erden*').<sup>65</sup>

<sup>59</sup> For example Karl August Joseph Hocheim, 'Europäische Republik der Fürsten, Staaten und Völker', in *Ewiger Friede? Dokumente einer deutschen Diskussion um 1800*, edited by A. Dietze and W. Dietze (Leipzig: Gustav Kiepenheuer Verlag, 1989), p. 205.

<sup>60</sup> Anonymous [Ludwig Heinrich Jakob], 'Über Theorie und Praxis in Kants Schrift 'Zum ewigen Frieden', in *Annalen der Philosophie und des philosophischen Geistes von einer Gesellschaft gelehrter Männer* (Berlin: Zweiter Jahrgang, 1796), pp. 436–443.

<sup>61</sup> Letter from Kiesewetter, 5 November 1795, AA, 12:47.

<sup>62</sup> Gentz, 'Über den Ewigen Frieden', p. 384.

<sup>63</sup> Gentz, 'Über den Ewigen Frieden', p. 385.

<sup>64</sup> Gentz, 'Über den Ewigen Frieden', p. 388.

<sup>65</sup> Gentz, 'Über den Ewigen Frieden', p. 389.

Kant's radical followers, by contrast, argued that republicanism fundamentally changes international relations.<sup>66</sup> Like Kant and the leaders of the French Revolution, they believed that despotism provoked warfare, and that republicanism would overcome the lawlessness of international affairs. Theirs was a radical view because it made international peace contingent upon domestic constitutional transition. Bergk was voicing shared opinion when he identified monarchs who rule by whim and arbitrary choice (*Laune und Willkür*) and court immorality and intrigue, which interfere with public decision making, as a cause of war.<sup>67</sup> Bergk supported Kant's idea of a *Völkerbund*, an impartial tribunal to judge interstate disputes.

Although Bergk does not deny that states' national interests frequently clash, he argues that in republics, the fact of publicity means that decisions reflect the perspective of the majority. Since ordinary people have nothing to gain from war, with its high human and financial costs, their representatives will reject aggressive warfare. 'Prudence (*die Klugheit*) thereby rejects what wisdom (*die Weisheit*) condemns'.<sup>68</sup> Moreover, the spirit of morality cultivated in republics will also lead them to reject war. Kant had been wrong, in *Critique of Judgment*, to claim that peace and the commercial spirit lead to selfishness, cowardice, and weakness. The constitution of a free nation fosters the development of all human potential because peace allows people to engage in all kinds of activities and private pursuits.<sup>69</sup> The resulting moral development also leads to rejection of offensive warfare. Since morality and prudence both dictate peace, Bergk concluded that 'Perpetual peace will no longer be a phantom when only republics (*Freystaaten*), organized by wisdom and prudence, appear next to each other'.<sup>70</sup>

Schlegel was profoundly impressed by Kant's thesis that republics are peaceful and that the only path to perpetual peace is for all states to become republican.<sup>71</sup> Emphasizing the moral cultivation republicanism brings, he envisions a fraternity of all republican states, constituting Kant's federation for peace. Since the federation is among republican states, which do not engage in mutual hostilities, the assurance problem does not arise. Fichte, likewise insisted that the federation must be voluntary and lack coercive power. In his review of *Perpetual Peace* and in his *Foundations of Natural Rights*, both published in 1796, he followed Kant's outline for the right of nations. In the review he argued that it should be conceived as a 'state of nations'. Yet, Fichte does not

<sup>66</sup> Johann Adam Bergk, *Untersuchungen aus dem Natur-, Staats- und Völkerrechte*, p. 203, Schlegel, 'Essay on the concept of republicanism', p. 208, and Fichte, 'Review of Immanuel Kant', p. 321.

<sup>67</sup> Bergk, *Untersuchungen*, p. 203.

<sup>68</sup> Bergk, *Untersuchungen*, p. 203.

<sup>69</sup> Bergk, *Untersuchungen*, p. 208.

<sup>70</sup> Bergk, *Untersuchungen*, p. 204.

<sup>71</sup> Schlegel, 'Essay', pp. 108–109.

admit to challenging Kant's proposal and simply claims that Kant had taken the federation of nations as just an intermediary step:

just as individuals unite in a civil state, so these warring states must unite in a state of nations [*Völkerstaat*], in which their conflicts will be decided in accordance with positive laws.—This, anyway, is the decision of pure reason, and the federation of nations [*Völkerbund*] proposed by Kant for the preservation of peace is no more than an intermediary condition, through which humanity well may have to pass on its way to this great goal.<sup>72</sup>

Much as Fichte denied that individuals can be forced to join a state, he also holds that states cannot be forced to join the federation. Instead, states establish legal relations of mutual recognition through voluntary contracts enforced by the international confederation, which comprises independent states:

But no state can be coerced to join this confederation, for a state can exist in a rightful relation even without this confederation. A state posits itself as existing in a rightful relation with adjoining states simply by recognizing them and entering with them into a contract of the kind described above.<sup>73</sup>

The confederation is tasked with judging when a state fails to respect the independence of other states, and it is authorized to use the united force of the members to destroy the rogue state.<sup>74</sup> There is reason to be optimistic about states wanting to join the confederation, because it provides security. The United States of America and 'the great European republic of states'—'which places a dam before the outbreak of barbarian peoples into the workshop of civilization'—are proof that it can work in practice.<sup>75</sup> These federations show how to guarantee the security of the member states in the face of internal and external threats, and how the resulting peace paves the way for domestic justice, laying the foundation for republicanism and international peace: 'Perpetual peace will automatically result among those states that have been established upon these [republican] principles, because they can only lose from war.'<sup>76</sup>

In sum: Kant's radical followers all agree that the main cause of war is the thirst for glory through conquest by the despotic rulers of the old regime. Republican state constitutions, by contrast, lead to peace. Their argument was mainly about the empirical dispositions of individuals within

<sup>72</sup> Fichte, 'Review', p. 319. Kleingeld emphasizes this passage in *Kant and Cosmopolitanism*. See also Nakhimovsky, *The Closed Commercial State*, pp. 69ff.

<sup>73</sup> Fichte, *Foundations*, p. 329. Fichte is not worried that centralized power will lead to abuse: 'But the confederation cannot knowingly and intentionally pronounce an unjust verdict without letting the entire world see that it is unjust; and one can, I hope, count on its having some shame.' See Fichte, *Foundations*, p. 330.

<sup>74</sup> Fichte, *Foundations*, p. 330. Jakob, too, had argued that states must be free to decide whether to leave the state of nature. States do no harm by merely refusing to participate.

<sup>75</sup> Fichte 'Review', p. 321.

<sup>76</sup> Fichte 'Review', p. 321.

republican institutions: self-interest and morality lead self-legislating nations to peaceful relations with other states. They idealistically assumed that this vitiates any need for enforcement of the laws of the federation of republics. By contrast to Gentz' realism, peace is not the result of balancing powers, but of radical transformations of state constitutions and the moral agency of citizens.

### KANT'S FINAL VIEW

*The Metaphysics of Morals* was Kant's final discussion of the right of nations. Although there is no indication that he responded directly to the reviews of *Perpetual Peace*, Kant tackles the dilemma of a coercive federation. The biggest change compared to *Perpetual Peace* is the development of a more systematic theory of just war. In this endeavour Kant expands on the six preliminary articles from *Perpetual Peace* and he adds material from his 1780s lectures on natural law. These principles follow the traditional natural law division of the right of declaring war, the right of war, and post-war right. Just as the equal freedom of individuals underlies domestic law, equal state sovereignty underlies these principles of international right. Among other things, states may not 'divide [a state's] territory among themselves and make the state effectively disappear from the earth', Kant writes, a comment that can be seen as describing the 1795 Russian, Prussian, and Austrian partition of Poland.<sup>77</sup>

The first part of the right of nations is the right of declaring war.<sup>78</sup> The rationale for war is exclusively defensive, but in a broad sense. A weaker power may attack pre-emptively if threatened by another state's growing power. Kant argues that neighbouring states have a right to ensure a balance of power. The second part of the right of nations is the law of war.<sup>79</sup> Kant is particularly adamant that *punitive* war is a contradiction in terms since states are equal and independent and punishment entails the superiority of one state. Nor may states subjugate other states and take their territory. Law's only task is to secure the formal conditions for inter-state interaction, not to further states' material aims. Furthermore, Kant rules out a number of common practices, such as the use of spies, snipers, poisoning, and assassination, not because they are intrinsically immoral, but because they destroy the trust between nations that is essential for relations during peacetime. Finally, the third part of the right

<sup>77</sup> Kant, *MM*, 6:349. The third partition of Poland brought the country out of existence on 24 October 1795.

<sup>78</sup> Kant, *MM*, 6:346.

<sup>79</sup> Kant, *MM*, 6:347.

of nations is post-war right.<sup>80</sup> Since war cannot be punitive, states cannot use peace negotiations to demand compensation by arguing that the opponent had fought an unjust war. Likewise, a state cannot be occupied and its citizens may not be enslaved.

States ought to abandon the international state of nature, where the right of nations only can be provisionally valid, and enter a lawful condition through a universal association of states (*Staatenverein*).<sup>81</sup> Once again he presents the notion of a state of states only to abandon it, seemingly for empirical reasons:

But if such a state made up of nations [*Völkerstaat*] were to extend too far over vast regions, governing it and so too protecting each of its members would finally have to become impossible, while several such corporations would again bring on a state of war.<sup>82</sup>

Here Kant adds a problem Rousseau had not considered: regional confederations just reproduce the problem of lawlessness at the level of regions. The task of creating a state of nations with coercive power is doomed, yet the duty to seek perpetual peace remains. Kant again settles for the option of a non-coercive congress of states:

Such an *association* of several states to preserve peace can be called a *permanent congress of states*, which each neighbouring state is at liberty to join. Something of this kind took place (at least as regards the formalities of the right of nations for the sake of keeping the peace) in the first half of the present century, in the assembly of the States General (*Generalstaaten*) at the Hague. The ministers of most of the courts of Europe and even of the smallest republics lodged with it their complaints about attacks being made on one of them by another. In this way they thought of the whole of Europe as a single confederated state which they accepted as arbiter, so to speak, in their public disputes. [...] By a *congress* is here understood only a voluntary coalition of different states which can be *dissolved* at any time, not a federation (like that of the American states) which is based on a constitution and can therefore not be dissolved.<sup>83</sup>

This congress is similar to the non-coercive federation of *Perpetual Peace* in being voluntary, yet extracting states from the international state of nature. It has some similarities to Vattel's theory of the republic of Europe, but it is not held together by a balance of power or by a shared culture, but by an agreement to submit to international rules. Kant provides very little detail about

<sup>80</sup> Kant, *MM*, 6:348.

<sup>81</sup> Kant, *MM*, 6:350.

<sup>82</sup> Kant, *MM*, 6:350.

<sup>83</sup> Kant, *MM*, 6:350–351. The States General was the term for the federal government in the United Provinces, consisting of delegates from each of the seven confederated provinces. Although not formally a forum for the European courts, it played a significant role in European diplomacy, and was the site of the so called Hague concert in 1710 between the Holy Roman Emperor, England, and the Dutch Republic, who agreed that the Swedish provinces in Germany would remain neutral during what became known as the Great Northern War. See Eberl and Niesen, *Immanuel Kant*, p. 371.

this congress, but it is clear that it includes no legislative or executive authority and that it adjudicates on the basis of an international convention.<sup>84</sup> Since it is voluntary it has no sovereignty over member states, yet it decides disputes by a kind of lawsuit, rather than by war.

Kant's congress of states did not convince realists such as Gentz who believed that right in the international sphere implied sovereign, coercive authority. Yet, was Gentz' critique on target? According to Gentz' premises, its lack of a guarantor doomed Kant's surrogate union. But Kant did not agree with the realist premise that all states fundamentally pursue their national interests in international relations. What distinguishes Kant's theory is that a state's domestic constitution influences its international behaviour, and, specifically, that republicanism is particularly peaceful. Whereas despotic states recognize no limits in the pursuit of their interests, republican states ideally pursue no aggressive foreign policies since their purpose is exclusively to secure the formal principles of freedom among citizens. *The Metaphysics of Morals* reiterates the idea that republics presuppose citizen consent to declare war, and Kant builds on *Perpetual Peace* to show how republics are oriented exclusively by the rule of law.

By contrast to his radical followers, Kant relies less on the mental dispositions of citizens of republics, and more on their institutional structure. Although republicanism enables moral cultivation, his argument is not that virtue suffices to make non-coercive international law recognized and effective.<sup>85</sup> Kant's theory does not rely on the enlightenment of either a ruler or the people, but on the lawful constitution of republics. Constitutional states are governed by law, and can therefore comply with the verdicts of an international court in the absence of an enforcement mechanism. Since the division of powers directs republican states to establish general laws based on equal freedom, national legislatures will be committed to the principles of equal sovereignty that entail their respect for the sovereignty of other states. Similar claims cannot be made about individuals in the state of nature because political institutions do not restrict their behaviour. Although they may be able to reason about right, they will be unable to separate general laws from particular interests since there is no functional separation of powers. They will, therefore, be unable to unilaterally pursue right. It was for the same reason that Kant rejected direct democracy, since it lacks a separation between the legislative and executive powers. As Arthur Ripstein has argued, states that have instituted the rule of law can respect the sovereign equality of other states because they pursue only public objectives, which do not include aggressive foreign

<sup>84</sup> See Eberl and Niesen, *Immanuel Kant*, pp. 240ff.

<sup>85</sup> Pace Amanda Perreau-Saussine who assumes that Kant held moral enlightenment to be what makes non-coercive international law effective. See 'Immanuel Kant on international law', in *The Philosophy of International Law*, edited by John Tasioulas and Samantha Besson (Cambridge: Cambridge University Press, 2010).

policy.<sup>86</sup> The freedom of such states does not intrinsically threaten the freedom of other states, so they are not victims of the savage freedom characteristic of the state of nature among individuals who lack coercive international institutions. Kant's congress of states was a congress of *republics*, and this explains his claim that it could be voluntary.

This also brings out the crucial distinction to Rousseau, who, following Saint Pierre, thought of the federation as one of ordinary states. Since Rousseau observed that princes in the pursuit of glory and the interest of state drive states into aggressive warfare, he rejected the possibility of perpetual peace. In contrast to Rousseau, Kant had witnessed the creation of a republic in one of the great states of Europe, making him optimistic about its success throughout the continent. As Kant wrote in *Perpetual Peace*, once a republic like France has been created it will be a 'focal point' for a federation of states, which will gradually extend 'further and further'.<sup>87</sup>

But did not the new French republic, which had been engaging in aggressive warfare for years, disprove Kant's theory of republican peace? Not necessarily. After all, the thesis is not that republics never engage in war, but that they will not do so by the arbitrary wish of a master. But Kant was quite aware that this could appear utopian, and, fearing the derision that had greeted Saint Pierre's and Rousseau's proposals, he closes the *Doctrine of Right* with a rear-guard defence targeting the men of practice who appeal to experience to discredit plans for perpetual peace. Kant's counterargument is that they cannot prove that perpetual peace is *impossible*. Since it cannot be disproven and is theoretically possible, nations have a moral duty to attempt it.<sup>88</sup> As Jakob had explained, Kant's commitment to peace is moral: it is a goal nations are obliged to strive for. This commitment distinguishes Kant from Rousseau and Saint Pierre, who had advocated a confederation based on a utilitarian calculation. Perceiving obstacles that would make the endeavour hard, Rousseau simply allowed states to give up on the idea. Kant, on the other hand, was convinced that states were under a moral obligation to establish lawful relations and abolish the senseless violence and domination that characterized eighteenth-century Europe. That this was a tall order did not exempt it from being a duty.

Commentators have sometimes argued that because Kant's theory of the right of nations was grounded in the political and cultural context of eighteenth-century Europe there is reason to doubt its claims to universal validity.<sup>89</sup> As we have seen, his views were indeed influenced by a number of

<sup>86</sup> Ripstein, *Force and Freedom*, pp. 228–229. Likewise, see Tuck, *The Rights of War and Peace*, p. 219.

<sup>87</sup> Kant, PP, 8:356.

<sup>88</sup> Kant, MM, 6:354.

<sup>89</sup> Ian Hunter comes to this conclusion based on the premise that normative theory can be valid only within a local practice. It is not clear why that relativistic premise should be adopted, however. See 'Kant's regional cosmopolitanism', *Journal of the History of International Law*, 12 (2010): 179ff.

philosophical theories of international law, including those of Saint Pierre and Rousseau, and it was developed in a European context of intense speculation on the notion of peace through law. Yet, the fact that Kant's philosophy arose at a particular time and place in response to a regional predicament cannot make it less valid as a normative ideal for international relations. As Kant's radical and conservative followers realized, his philosophy must be assessed on the strength of its arguments. Attention to context can nonetheless make us aware of some of the peculiarities of his thought. Kant's theory of the right of nations is situated at a juncture between the traditional balance of power system dominated by the notion of *raison d'état* that came in the wake of the peace of Westphalia, and the notion of law-governed and peaceful international relations, which in the twentieth century resulted in the introduction of the United Nations and the prohibition on war as a means of dispute resolution. Aspects of the two different paradigms are clearly seen in Kant's dual commitment to state sovereignty on the one hand and international law on the other. One reason his solutions are worth paying attention to is that this political condition of conflicting commitments is one from which states have yet to emerge. For that reason, theorists of international law and politics still return to Kant for inspiration.<sup>90</sup>

## CONCLUSION

Kant's philosophy of international relations attempts to reconcile the fact of state sovereignty with the need for international law. In this endeavour he develops a theory that, contrary to common views of his philosophy, does not abandon the state in favour of a cosmopolitan constitution guided by human rights. He also resists the Hobbesian temptation of unfettered state sovereignty. The resulting right of nations has sometimes been seen as an anomaly because it features law without proper assurance. Yet, as the reception by Kant's radical followers indicates, Kant's theory was about republican states, whose international behaviour is constrained by the rule of law created by their domestic constitutions.

The question Kant sought to answer was not a new one. Rousseau had posed it too, but ended up drawing a pessimistic conclusion since his theory was based on states ruled by princes in the pursuit of glory and territory, who would not submit to higher judges. Kant, by contrast, was moved by the example of France's republican constitution to envisage a future of republican states

<sup>90</sup> For an overview, see Andreas Follesdal and Reidar Maliks, *Kantian Theory and Human Rights* (New York: Routledge, 2014).

cooperating voluntarily to sustain an international rule of law. The guarantor in Kant's congress of states was the constitutional republic itself, a new form of polity based on the rule of law. It was this political form—not natural sociability, balance of power, or the cultural, religious, and political remnants of the Roman Empire in Europe—that would civilize international relations and ensure compliance with the norm.

## Conclusion: After the Revolution

Kant was a systematic thinker who developed his legal and political philosophy out of a concept of external freedom he had conceptualized prior to the French Revolution. Yet, he was also a political being who happened to live through eighteenth-century Europe's most cataclysmic political event. Although his original concept of freedom predated the French Revolution, Kant built it into a complete theory of law and the state during the turbulent years that followed in its wake. This book has attempted to shed light on how Kant's philosophy developed in the context of the debates the Revolution provoked in the German public sphere, and to contribute to excavating the neglected German republican tradition. It has often been emphasized that the 1790s brought challenges to the Enlightenment and its belief in the authority of reason.<sup>1</sup> Yet, the many writings by Kant's radical followers show that the period also saw the rise of a significant republican current that upheld the values of the Enlightenment.

The French Revolution polarized the German public sphere and sharpened pre-existing divisions. Conservatives like Rehberg criticized the Revolution's philosophical foundation, the notion of abstract natural rights, while defenders like Fichte sought to uphold Enlightenment principles, appealing to a Kantian notion of personal autonomy such as the one that underwrote the rejection of the *ancien régime*. When Kant took the floor in 1793, conservative predictions regarding the outcome of the events of 1789 appeared prescient: France was in turmoil and could not consolidate the Revolution. Each new faction that seized power by extra legal means unwittingly provided the justification for the next faction to do the same. Jeremy Bentham's 1796 words captured the situation: 'But by justifying it [the Revolution], they invite it: in justifying past insurrection, they plant and cultivate a propensity to perpetual insurrection in time future; they sow the seeds of anarchy broadcast'.<sup>2</sup> Although Kant could not have read Bentham's essay, which was published decades later, he would have been familiar with its observations and tone.

<sup>1</sup> Beiser, *Enlightenment*, Henrich, 'Über den Sinn', Valjavec, *Die Entstehung*.

<sup>2</sup> Bentham, 'Anarchical Fallacies', p. 47.

Kant too had worried about the anarchy that resulted when factions took unilateral action against authority in the name of justice. But instead of joining Bentham, Burke, and the German conservatives in giving up the idea of a human right to equal freedom based on reason, he sought an alternative perspective. Humans' natural right to equal freedom does not entail a right to coercive anti-state action to demand that freedom. Respect for equal freedom requires the reciprocal development and defence of rights, and these processes require public legal institutions. The essence of external freedom is the independence that comes with the juridical status of being subject only to the rule of law. This means that the state is not just an instrument to protect rights; it is the condition for their being constituted in the first place. Only a republican constitution with separation of powers, representative government, and a free public sphere can conclusively protect rights. Yet, citizens of imperfect states, by contrast to those subject to barbaric rule who remain in a lawless condition, must pursue political transformation through public procedures.

Kant's critics envisioned different futures for the European states: conservatives such as Rehberg, Gentz, and Möser, defended the remnants of the late feudal social structure; radicals such as Fichte, Erhard, Jakob, and Bergk demanded transition to a modern commercial republic. This was often seen in stark terms as a choice between, on the one hand, freedom as unequal privilege in a system where the monarch held supreme power in a social structure divided into the estates of the nobility, clergy, peasants, and townsmen, and, on the other hand, equal freedom and representative government based on universal citizenship and popular sovereignty. While the French Revolution brought this controversy to the fore, in Prussia this dilemma also played out around the reform of the general laws for the Prussian states, the *Allgemeines Landrecht*. When promulgated in 1794, it compromised between traditional and modern values, preserving peasant serfdom where customary, and instituting equal civil rights elsewhere.<sup>3</sup> In light of these debates and events, Kant's critics highlighted alternative conclusions that could be drawn from his foundation. Some of his followers were sensitive to questions that were only slowly about to enter the public sphere. Bergk, who defended the equal political rights of women and labourers, sought to show that Kant's notion of freedom as independence had egalitarian implications unsuspected by their author. These demands for emancipation would become the flashpoints of the political struggles of the nineteenth century, when the full implications of the commitment to equal freedom gradually came to justify a more inclusive citizenship.

<sup>3</sup> Reinhart Koselleck, *Preussen zwischen Reform und Revolution. Allgemeines Landrecht, Verwaltung und soziale Bewegung von 1791 bis 1848* (Stuttgart: Klett, 1967); Mack Walker, 'Rights and Functions: The Social Categories of Eighteenth-Century German Jurists and Cameralists', *Journal of Modern History*, 50 (1978): 234–251.

While Kant's radical followers had tried to contribute systematically to his legal and political philosophy, the post-Kantian period saw developments that departed more fundamentally from his foundation. Two groups made their influence felt immediately after Kant published *The Metaphysics of Morals*, developing his philosophy in different—and, in some respects, opposing—directions. The first was a group of theology students and poets known to posterity as the German Romantics. Among them were the friends Friedrich Wilhelm Schelling (1775–1854), Friedrich Hölderlin (1770–1843), and Georg Wilhelm Friedrich Hegel (1770–1831), all classmates at the Tübingen seminary during the French Revolution. Excited by both Kant's critical philosophy and events in France, they disliked *The Metaphysics of Morals'* distinction between virtue and right, and saw its state as a governance machine for treating people as merely natural beings. A society based on individual rights estranges persons from their community and from the culture that nourishes their natural virtue. The Romantics' earliest manifesto, set out in a 1797 collaborative manuscript, was anarchistic: 'We must [...] go beyond the state! For every state must treat free human beings as if they were cogs in a machine; but that it should not do; therefore it should cease to exist.'<sup>4</sup> The Romantics cared about moral virtue ('freedom and equality of the spirits!') rather than external liberty under law.<sup>5</sup> In a way, they echoed Kant's 1780s historical essays, which emphasized the cultivation of moral virtue. Yet, their uptake of Kant was coloured by the aesthetics of Schlegel and Schiller, who saw the cultivation of virtue and communal fellow feeling as an alternative to politics. The young Hegel dreamt of a society that transcended coercive law: 'Love reconciles, without consideration of what is [juridically] right [...] it even demands the cancellation of "right," which grew out of division and injury, it demands reconciliation [*Versöhnlichkeit*].'<sup>6</sup>

The second development was a turn to positivism. Gustav Hugo (1764–1844), a legal scholar in Göttingen, was profoundly impressed with *The Metaphysics of Morals*. But while he respected the attempt to create a metaphysics of law, his real interest was in Kant's rigorous development of the idea of positive law.<sup>7</sup> In his *Philosophie des Positiven Rechts*, which went through four different editions between 1798 and 1819, Hugo approached positive law with the rigour of a scientist: empirically, comparatively, and historically. He studied how law arose in different times and places, paying particular attention to the anthropological

<sup>4</sup> G. W. F. Hegel, F. W. J. Schelling, and Friedrich Hölderlin, 'The Oldest Systematic Programme of German Idealism', in *The Early Writings of the German Romantics*, edited by Frederick C. Beiser (Cambridge: Cambridge University Press, 1996), p. 4.

<sup>5</sup> Hegel, Schelling, and Hölderlin, 'The Oldest Systematic Programme', p. 5.

<sup>6</sup> G. W. F. Hegel, *Frühe Schriften*, volume 1, in *Werke in 20 Bänden*, edited by Eva Moldenhauer and Karl Markus Michel (Frankfurt am Main: Suhrkamp, 1986), p. 328.

<sup>7</sup> See Jürgen Blühdorn, "Kantianer" und Kant. Die Wende von der Rechtsmetaphysik Zur "Wissenschaft" Vom Positiven Recht', in *Kant-Studien*, 64, 1–4 (1974).

and sociological conditions that allow law to shape human behaviour.<sup>8</sup> His followers Adam Müller (1779–1829) and Friedrich Carl von Savigny (1779–1861), who founded the historical school of law, abandoned the idea that the philosophical study of law will reveal its rational foundation. They saw law as the reflection of national spirit based on custom. Müller, who was among the leading conservatives of the restoration that followed the Napoleonic wars, attributed the failure of the French Revolution to the notion that individuals can appeal to 'chimerical' natural rights outside the state.<sup>9</sup> Savigny contrasted the dangerous idea of the 'arbitrary decision of a legislator' with customary law that develops through a process of popular belief (*Volksglaube*).<sup>10</sup> He praised Justus Möser for attending to the incremental development of law in society.

The Romantic circle and the historical school, each of which had appropriated separate aspects of Kant's thought, began to converge once the Revolution (which the Romantics had celebrated) had receded from public imagination.<sup>11</sup> They united around scepticism towards legislation and the view of law as the product of a nation's history. As the old *Reich* dissolved under Napoleon's 1806 invasion of Germany, these authors started conjuring up visions of a feudal state organized in estates consisting of peasants, bourgeoisie, nobility, and clergy. Thus the doctrines that originated in Kant's writings were deployed to defend a counter-revolutionary agenda. By the early nineteenth century the legacy of Kant's conservative critics had apparently won the day. The Congress of Vienna decided Europe's fate in 1815, restoring the pre-Napoleonic balance of power. Friedrich Gentz, who by that time was the trusted advisor of Clement von Metternich, the foreign minister of the Austrian empire and the strong man of Europe, was Secretary to the Congress. The prospects for Kant's ideal republic looked dim for some time to come.

When dusk fell on the ideological battlefield of the French Revolution, Kant's principles were once again blamed for the excesses of the French Revolution. Hegel's influential 1820 *Philosophy of Right* claimed that the problem with Kant's universal principle of right was its grounding in a concept of freedom as arbitrary choice, which implied that individuals were free only insofar as they were not subject to coercion. Since a meaningful life was one based on maximizing individual choice, the state could be seen only as limiting this freedom. Combined with the appeal to equality, this awakened a desire to destroy not just the inegalitarian hierarchies of the old estate society, but

<sup>8</sup> Blühdorn, 'Kantianer' und Kant, p. 388.

<sup>9</sup> Adam Müller, 'Elements of Politics', in *The Political Thought of the German Romantics*, edited by H. S. Reiss (Oxford: Oxford University Press, 1955), pp. 143–172.

<sup>10</sup> Carl von Savigny, 'On the Vocation of our Age for Legislation and Jurisprudence', in *The Political Thought of the German Romantics*, edited by H. S. Reiss (Oxford: Oxford University Press, 1955), p. 206.

<sup>11</sup> Carl Schmitt, *Political Romanticism*, translated and with an introduction by Guy Oakes (Cambridge: MIT Press, 1986), p. 115.

any institutions of authority put in its place: 'This is why the people, during the French Revolution, destroyed once more the institutions they had themselves created.'<sup>12</sup> Hegel took it upon himself to reconcile the modern principles of individual freedom with traditional social institutions, justified by a principle of reason inherent in a history that culminated with the modern state. This state sought to integrate some of the institutions such as guilds and estates, championed by Kant's conservative critics, with those Kant and the radicals defended, such as a free market and representative government.

It is unlikely that Kant would have approved of Hegel's attempt at reconciliation and, as we have seen, he was particularly keen to defend his principles against the charge that they were responsible for the perpetual revolution in France. It would not take long, however, before his philosophy and the ideals of 1789 were again in ascendancy. By the time the young men had found their seats in the Berlin Café Taubert painted in 1832, the French Revolution had again stimulated liberal and republican ideals in the German public sphere. French citizens who were enraged by the repressive regime of Charles X carried out a revolution in 1830, demanding liberalization and political inclusion. It sparked unrest in German states and although the insurrections that followed were dispelled, a flood of liberal and republican books and journals spread over Germany, precipitating the revolution of March 1848.<sup>13</sup> That spring, the middle classes led the popular revolts against their governments, demanding civil equality, freedom of speech, political inclusion, and a united Germany. Although the revolution eventually disintegrated, most German governments were forced to give concessions, and a step towards a free society had been taken. Kant would have recognized the difficulties but also the promise. Creating a perfect constitution was the most difficult task because 'out of such crooked wood as the human being is made, nothing entirely straight can be fabricated'.<sup>14</sup> To do this would be the latest task solved by the human species, after the end of 'many transforming revolutions'.<sup>15</sup>

<sup>12</sup> Hegel, *Philosophy of Right*, p. 39.

<sup>13</sup> Sheehan, *German History*, p. 615.

<sup>14</sup> Kant, *IUH*, 8:23.

<sup>15</sup> Kant, *IUH*, 8:28.

# Bibliography

## Primary Sources

- Abicht, Johann Heinrich, *Kurze Darstellung des Natur- und Völkerrechts zum Gebrauch bey Vorlesungen* (Bayreuth: Lübel's Erben, 1795).
- Achenwall, Gottfried, *Iuris naturalis pars posterior complectens jus familiae, jus publicum, et jus gentium* (Göttingen, 1763). Reprinted in AA 19:325–442.
- Achenwall, Gottfried, *Anfangsgründe des Naturrechts*, edited by Jan Schröder (Frankfurt am Main: Insel Verlag, 1995).
- Aletes, 'Wie unterscheidet sich Theorie von der Praxis?', *Annalen der leidenden Menschheit in zwanglosen Heften* (1795): 108–123.
- Althusius, Johannes, *Politica: Politics Methodologically Set Forth and Illustrated with Sacred and Profane Examples*, translated by Frederick Smith Carney (Indianapolis: Liberty Fund, 1995).
- Augustine, *City of God*, translated by Henry Bettenson (London: Penguin, 2003).
- Aquinas, Thomas, *St. Thomas Aquinas on Politics and Ethics*, translated and edited by Paul E. Sigmund (New York: W. W. Norton, 1988).
- Aristotle, *Politics*, translated by C. D. C. Reeve (Indianapolis/Cambridge: Hackett Publishing Company, 1988).
- Bentham, Jeremy, *An Introduction to the Principles of Morals and Legislation*, edited by James Henderson Burns and Frederick Rosen (London: Athlone Press, 1996).
- Bentham, Jeremy, 'Anarchical Fallacies'. In 'Nonsense Upon Stilts': *Bentham, Burke, and Marx on the Rights of Man*, edited by Jeremy Waldron (London: Methuen, 1987).
- Bergk, Johann Adam, 'Bewirkt die Aufklärung Revolutionen?', *Deutsche Monatsschrift* (1795): 268–279.
- B—gk, [Johann Adam], 'Der verfasser der Lebensläufe Nach aufsteigender Linie des Buchs: über die Ehe u.s.w. betreffend', *Allgemeiner literarischer Anzeiger*, XXX, Oktober (1796): 327–328.
- Bergk, Johann Adam [Anonymous], *Untersuchungen aus dem Natur-, Staats- und Völkerrechte. Mit einer Kritik der neuesten Kantituation der französischen Republik* (Kronberg: Scriptor Verlag, 1975). Facsimile of 1796 edition.
- Bergk, Johann Adam, *Briefe über Immanuel Kant's Metaphysische Anfangsgründe der Rechtslehre, enthaltend Erläuterungen, Prüfung und Einwürfe* (Leipzig and Gera: bey Wilhelm Heinsius, 1797).
- Bodin, Jean, *On Sovereignty: Four Chapters from the Six Books of the Commonwealth*, edited and translated by Julian H. Franklin (Cambridge: Cambridge University Press, 1992).
- de La Boétie, Etienne, *The Politics of Obedience: The Discourse on Voluntary Servitude*, edited by Murray N. Rothbard, translated by Harry Kurtz (Montreal, New York: Black Rose Books, 1975).
- Bouterwek, Friedrich, 'Rezension von Kants Metaphysische Anfangsgründe der Rechtslehre'. In *Göttingische Anzeigen von gelehrten Sachen unter der Aufsicht der*

- Königl. Gesellschaft der Wissenschaften, 18 February 1797. Reprinted in AA 20, 445–453.
- Burke, Edmund, *Reflections on the Revolution in France*, edited by J.G.A. Pocock (Indianapolis/Cambridge: Hackett Publishing Company, 1987).
- Cicero, *On Duties*, edited by M. T. Griffin and E. M. Atkins (Cambridge: Cambridge University Press, 1991).
- Erhard, Johann Benjamin, *Über das Recht zu einer Revolution des Volkes und andere Schriften*, edited and with an afterword by Hellmut G. Haasis (München: Carl Hanser Verlag, 1970).
- Erhard, Johann Benjamin, 'Lebensbeschreibung'. In *Denkwürdigkeiten des Philosophen und Arztes Johann Benjamin Erhard*, edited by Karl August Ludwig Philipp Varnhagen von Ense (Stuttgart: in der Cotta'sche Buchhandlung, 1830).
- Friedrich der Große, *Der Antimachiavell*. In *Deutsches Staatsdenken im 18. Jahrhundert*, edited by Georg Lenz (Neuwied and Berlin: Luchterhand, 1965).
- Fichte, Johann Gottlieb, *Beitrag zur Berichtigung der Urteile des Publikums über die französische Revolution erster Teil Zur Beurteilung ihrer Rechtmäßigkeit* (1793); beigefügt die Rezension von Friedrich von Gentz (1794), edited by Richard Schottky (Hamburg: Meiner, 1973).
- Fichte, Johann Gottlieb, 'Reclamation of the Freedom of Thought from the Princes of Europe, Who Have Hitherto Suppressed It'. In *What Is Enlightenment?: Eighteenth-Century Answers and Twentieth-Century Questions*, edited by James Schmidt (Berkeley: University of California Press, 1996).
- Fichte, Johann Gottlieb, 'Review of Immanuel Kant, *Perpetual Peace: A Philosophical Sketch* (Königsburg: Nicolovius, 1795)'. *The Philosophical Forum*, 32, 4 (2001): 311–321.
- Fichte, Johann Gottlieb, *Foundations of Natural Right*, edited by Frederick Neuhouser, translated by Michael Baur (Cambridge: Cambridge University Press, 2000).
- Forster, Georg, 'Rede bei der Erreichung des Freiheitsbaumes'. In *Von Deutscher Republik, 1775–1795: Texte radikaler Demokraten*, edited by Jost Hermand (Frankfurt am Main: Suhrkamp Verlag, 1975).
- Garve, Christian, 'Über den Unterschied von *Theorie und Praxis*, in Beziehung auf die Abhandlung eines andern Schriftstellers über denselben Gegenstand in der Berlinischen Monatsschrift'. In *Vermischte Aufsätze, welche einzeln oder in Zeitschriften erschienen sind* (Breslau: bey Wilhelm Gottlieb Korn, 1800).
- Garve, Christian, 'Über den Unterschied von *Theorie und Praxis*, in Beziehung auf die Abhandlung eines andern Schriftstellers über denselben Gegenstand in der Berlinischen Monatsschrift'. In *Vermischte Aufsätze, welche einzeln oder in Zeitschriften erschienen sind* (Breslau: bey Wilhelm Gottlieb Korn, 1800).
- Gentz, Friedrich, 'Über Politische Freiheit und das Verhältnis derselben zur Regierung'. In Edmund Burke, Friedrich von Gentz, and Hermann Klenner, *Über die französische Revolution: Betrachtungen und Abhandlungen* (Berlin: Akademie Verlag, 1991).
- Gentz, Friedrich, 'Nachtrag zu dem Räsonnement des Herrn Professor Kant über das Verhältniß zwischen Theorie und Praxis', in *Kant, Gentz, Rehberg: Über Theorie und Praxis*, edited by Dieter Henrich (Frankfurt am Main: Suhrkamp, 1967).
- Gentz, Friedrich, 'Über den Ewigen Frieden'. In *Ewiger Friede? Dokumente einer deutschen Diskussion um 1800*, edited by A. Dietze and W. Dietze (Leipzig: Gustav Kiepenheuer Verlag, 1989).

- Gleichen, Karl Heinrich von, 'Versuch eines Entwurfs zu einem ewigen Frieden'. In *Ewiger Friede? Dokumente einer deutschen Diskussion um 1800*, edited by A. Dietze and W. Dietze (Leipzig: Gustav Kiepenheuer Verlag, 1989).
- Grotius, Hugo, *The Rights of War and Peace*, edited by Richard Tuck (Indianapolis: Liberty Fund, 2005).
- Hamilton, Alexander, Madison, James, and Jay, John, *The Federalist Papers*, edited by Clinton Rossiter (New York: Mentor, 1999).
- Hegel, G. W. F., *Frühe Schriften*, volume 1 in *Werke in 20 Bänden*, edited by Eva Moldenhauer and Karl Markus Michel (Frankfurt am Main, Suhrkamp, 1986).
- Hegel, G. W. F., *Vorlesungen über die Philosophie des Rechts: Berlin 1819/1820*, edited by Emil Angehrn (Hamburg: Felix Meiner, 2000).
- Hegel, G. W. F., *Elements of the Philosophy of Right*, edited by Allen Wood, translated by H. B. Nisbet (Cambridge: Cambridge University Press, 1991).
- Hegel, G. W. F., Schelling, F. W. J. and Hölderlin, Friedrich, 'The Oldest Systematic Programme of German Idealism'. In *The Early Writings of the German Romantics*, edited by Frederick C. Beiser (Cambridge: Cambridge University Press, 1996).
- Heydenreich, Karl Heinrich, *Versuch über die Heiligkeit des Staats und die Moralität der Revolutionen* (Leipzig: im Schwickerstschen Verlage, 1794).
- Herder, Johann Gottfried, *Ideas on the Philosophy of the History of Mankind*. In *Another Philosophy of History and Selected Political Writings*, translated by Ioannis D. Evrigenis and Daniel Pellerin (Indianapolis/Cambridge: Hackett Publishing Company, 2004).
- Herder, Johann Gottfried, *Another Philosophy of History*. In *Another Philosophy of History and Selected Political Writings*, translated by Ioannis D. Evrigenis and Daniel Pellerin (Indianapolis/Cambridge: Hackett Publishing Company, 2004).
- Hippel, Theodor Gottlieb von, *Sämmtliche Werke 14: Hippel's Briefe*, excerpted in *Immanuel Kant in Rede und Gespräch*, edited by Rudolf Malter (Hamburg: Felix Meiner, 1990).
- Hocheim, Karl August Joseph, 'Europäische Republik der Fürsten, Staaten und Völker'. In *Ewiger Friede? Dokumente einer deutschen Diskussion um 1800*, edited by A. Dietze and W. Dietze (Leipzig: Gustav Kiepenheuer Verlag, 1989).
- Hufeland, Gottlieb, *Versuch über den Grundsatz des Naturrechts, nebst einem Anhange* (Leipzig: G. J. Göschen, 1785).
- Hufeland, Gottlieb, *Lehrsätze des Naturrechts und der damit verbundene Wissenschaften* (Jena: bey Christ. Heinr. Cuno's Erben, 1790).
- Humboldt, Wilhelm von, *The Limits of State Action*, edited by J. W. Burrow (Cambridge: Cambridge University Press, 1969).
- Jachmann, Reinhold Bernhard, *Immanuel Kant geschildert in seinen Briefen an einen Freund*, excerpted in *Immanuel Kant in Rede und Gespräch*, edited by Rudolf Malter (Hamburg: Felix Meiner, 1990).
- Jakob, Ludwig Heinrich von [Anonymous], *Antimachiavel, oder über die Grenzen des bürgerlichen Gehorsams: Auf Veranlassung zweyer Aufsätze in der Berl. Monatsschrift (Sept. und Dec. 1793) von den Herren Kant und Genz* (Halle: in der Rengerschen Buchhandlung, 1794).
- Jakob, Ludwig Heinrich von, *Philosophische Rechtslehre, oder Naturrecht* (Halle: in den Rengerschen Buchhandlung, 1795).

- Jakob, Ludwig Heinrich von [Anonymous], 'Über Theorie und Praxis in Kants Schrift 'Zum ewigen Frieden', *Annalen der Philosophie und des philosophischen Geistes von einer Gesellschaft gelehrter Männer*, Zweiter Jahrgang (1796): 436–443.
- Jacobi, Friedrich Heinrich, 'Something Lessing Said'. In *What Is Enlightenment?: Eighteenth-Century Answers and Twentieth-Century Questions*, edited by James Schmidt (Berkeley: University of California Press, 1996).
- Hobbes, Thomas, *Leviathan*, edited by Richard Tuck (Cambridge: Cambridge University Press, 1996).
- Hobbes, Thomas, *On the Citizen*, edited and translated by Richard Tuck and Michael Silverthorne (Cambridge: Cambridge University Press, 1998).
- Locke, John, *Second Treatise*, edited by Peter Laslett (Cambridge: Cambridge University Press, 1967).
- Luther, Martin, 'The Freedom of a Christian Man'. In *The Protestant Reformation*, edited by Hans Joachim Hillerbrand (New York: Harper & Row, 1968).
- Luther, Martin, 'On Governmental Authority'. In *The Protestant Reformation*, edited by Hans Joachim Hillerbrand (New York: Harper & Row, 1968).
- Mornay, Philippe du Plessis [Brutus], *Vindiciae contra tyrannos. Constitutionalism and resistance in the sixteenth century; three treatises by Hotman, Beza, and Mornay*, translated and edited by Julian Franklin (New York: Pegasus, 1969).
- Möser, Justus, 'Über das Recht der Menschheit, in so fern es zur Grundlage eines Staates dienen kann'. In *Deutsches Staatsdenken im 18. Jahrhundert*, edited by Georg Lenz (Neuwied and Berlin: Luchterhand, 1965).
- Möser, Justus, 'Wann und wie mag eine Nation ihre Konstitution verändern?'. In *Deutsches Staatsdenken im 18. Jahrhundert*, edited by Georg Lenz (Neuwied and Berlin: Luchterhand, 1965).
- Möser, Justus, 'Über die Erblichkeit des Herrenstandes bei gewissen Familien in einem monarchischen Staate', *Berlinische Blätter*, 1, 1798.
- Möser, Justus, 'Der Begriff "Freiheit"'. In *Sämtliche Werke*, Historisch-kritische Ausgabe, vol. VIII, edited by Akademie der Wissenschaften zu Göttingen (Oldenburg: Gerhard Stalling, 1944).
- Möser, Justus, 'Über Theorie und Praxis'. In *Sämtliche Werke*, Historisch-kritische Ausgabe, vol. VIII, edited by Akademie der Wissenschaften zu Göttingen (Oldenburg: Gerhard Stalling, 1944).
- Müller, Adam, 'Elements of Politics'. In *The Political Thought of the German Romantics*, edited by H. S. Reiss (Oxford: Oxford University Press, 1955), pp. 143–172.
- National Assembly of France, 'Constitution of 1791'. In *University of Chicago Readings in Western Civilization, Volume 7: The Old Regime and the French Revolution*, edited by Keith Michael Baker (Chicago: The University of Chicago Press, 1987).
- National Assembly of France, 'Declaration of the Rights of Man and the Citizen'. In *Introduction to Contemporary Civilization in the West: A Source Book*, Volume 2, edited by Marvin Harris, Sidney Morgenbesser, Joseph Rothschild, and Bernard Wishy (New York: Columbia University Press, 1961).
- National Assembly of France, 'Preface to the Constitution of 1793'. In *Introduction to Contemporary Civilization in the West: A Source Book*, Volume 2, edited by Marvin Harris, Sidney Morgenbesser, Joseph Rothschild, and Bernard Wishy (New York: Columbia University Press, 1961).

- Paine, Thomas, *Rights of Man*, edited by Mark Philp (Oxford: Oxford University Press, 1998).
- Paine, Thomas, 'Speech in the French National Convention, July 7, 1795'. In *The Writings of Thomas Paine*, vol. 3, Collected and Edited by Moncure Daniel Conway (New York: G. P. Putnam's Sons, 1894).
- Paul, 'The Letter to the Romans'. In *The Holy Bible*, Revised Standard Version (New York: Meridian, 1974).
- Plato, *Republic*, translated by G. M. A. Grube, revised by C. D. C. Reeve (Indianapolis/Cambridge: Hackett Publishing Company, 1992).
- Phaedrus, *The Fables of Phaedrus*, translated by P. F. Widdows (Austin: University of Texas Press, 1992).
- Pörschke, Karl Ludwig, *Vorbereitungen zu einem populären Naturrecht* (Königsberg: bey Friedrich Nicolovius, 1795).
- Pufendorf, Samuel, *On the Duty of Man and Citizen According to Natural Law*, edited by James Tully, translated by Michael Silverthorne (Cambridge: Cambridge University Press, 1991).
- Pufendorf, Samuel, *Of the Law of Nature and Nations*, anonymous translator (Oxford: L. Lichfield, 1729).
- Rehberg, August Wilhelm, 'Über das Verhältniß der Theorie zur Praxis'. In *Kant, Gentz, Rehberg: Über Theorie und Praxis*, edited by Dieter Henrich (Frankfurt am Main, Suhrkamp, 1967).
- Rehberg, August Wilhelm, 'Rezension der Kritik der praktischen Vernunft'. In *Rehbergs Opposition gegen Kants Ethik*, edited by Eberhard Günter Schulz (Köln: Böhlau, 1975).
- Rehberg, August Wilhelm. *Untersuchungen über die französische Revolution nebst kritischen Nachrichten von den merkwürdigen Schriften welche darüber in Frankreich erschienen sind* (Hannover, Osnabrück: Christian Ritscher, 1793).
- Reinhold, Karl Leonhard, *Letters on the Kantian Philosophy*, edited by Karl Ameriks, translated by James Hebbeler (Cambridge: Cambridge University Press, 2005).
- Robespierre, Maximilien, 'Report upon the principles of political morality which are to form the basis of the administration of the interior concerns of the Republic. Made in the name of the Committee of Public Safety, the 18th pluviose, second year of the Republic (February 6th, 1794)'. Translated from a copy printed by order of the Convention (Philadelphia: Benjamin Franklin Bache, 1794).
- Rousseau, Jean-Jacques, *On the Social Contract*. In *The Basic Political Writings*, edited by Donald A. Cress (Indianapolis/Cambridge: Hackett, 1987).
- Rousseau, Jean-Jacques, *Discourse on the Origin of Inequality*. In *The Basic Political Writings*, edited by Donald A. Cress (Indianapolis/Cambridge: Hackett, 1987).
- Rousseau, Jean-Jacques, *Discourse on Political Economy*. In *The Basic Political Writings*, edited by Donald A. Cress (Indianapolis/Cambridge: Hackett, 1987).
- Rousseau, Jean-Jacques, 'Abstract of Monsieur the Abbé Saint-Pierre's Plan for Perpetual Peace'. In *The Plan for Perpetual Peace, on the Government of Poland, And Other Writings on History And Politics, The Collected Writings of Jean-Jacques Rousseau Volume 11*, edited by Christopher Kelly, translated by Christopher Kelly and Judith Bush (Lebanon, NH: Dartmouth College Press, 2005).
- Rousseau, Jean-Jacques, 'Judgment of the Plan for Perpetual Peace'. In *The Plan for Perpetual Peace, on the Government of Poland, And Other Writings on History*

- And Politics, The Collected Writings of Jean-Jacques Rousseau Volume 11*, edited by Christopher Kelly, translated by Christopher Kelly and Judith Bush (Lebanon, NH: Dartmouth College Press, 2005).
- Savigny, Carl von, 'On the Vocation of our Age for Legislation and Jurisprudence'. In *The Political Thought of the German Romantics*, edited by H. S. Reiss (Oxford: Oxford University Press, 1955).
- Schlegel, Friedrich, 'Essay on the Concept of Republicanism occasioned by the Kantian tract "Perpetual Peace"'. In *The Early Writings of the German Romantics*, edited by Frederick C. Beiser (Cambridge: Cambridge University Press, 1996).
- Scheidemantel, H. G., 'Recht des gewaltsamen Widerstandes'. In *Widerstand gegen die Staatsgewalt: Dokumente der Jahrtausende*, edited by Fritz Bauer (Frankfurt am Main: Fischer Bücherei, 1965).
- Schmalz, Theodor, *Das reine Naturrecht* (Königsberg: bey Friedrich Nicolovius, 1792).
- Schmalz, Theodor von, *Handbuch des römischen Privatrechts* (Königsberg: bey Friedrich Nicolovius, 1793).
- Sieyès, Emmanuel Joseph, 'What is the Third Estate?' In *Political Writings: Including the Debate between Sieyès and Tom Paine in 1791*, edited by Michael Sonenscher (Indianapolis, Ind: Hackett Pub. Co, 2003).
- Sieyès, Emmanuel Joseph, 'Über den wahren Begriff einer Monarchie', *Neues Göttingisches historisches Magazin*, 1 (1792): 341–349.
- Sieyès, Emmanuel Joseph, 'An Essay on Privileges'. In *Political Writings: Including the Debate between Sieyès and Tom Paine in 1791*, edited by Michael Sonenscher (Indianapolis, Ind: Hackett Pub. Co, 2003).
- Smith, Adam, *The Wealth of Nations*, edited by Edwin Cannan (New York: The Modern Library, 2000).
- Tafinger, Wilhelm Gottlieb, *Lehrsäze des Naturrechts* (Tübingen: in der Johann Georg Cottaischen Buchhandlung, 1794).
- Tieftrunk, Johann Heinrich, *Philosophische Untersuchungen über das Privat—und öffentliche Recht. Erläuterung und Beurtheilung der metaphysischen Anfangsgründe der Rechtslehre vom Herrn Prof. Imm. Kant. Zweiter Theil* (Halle: in der Rengerschen Buchhandlung, 1798).
- Thucydides, *History of the Peloponnesian War*. In *The Landmark Thucydides*, edited by Robert B. Strassler (New York: Touchstone, 1996).
- Vitoria, Francisco de, *Political Writings*, edited by Anthony Pagden and Jeremy Lawrence (Cambridge: Cambridge University Press 1991).
- Wolff, Christian Freyherrn von, *Grundsätze des Natur—und Völkerrechts worin alle Verbindlichkeiten und alle Rechte aus der Natur des Menschen in einem beständigen Zusammenhange hergeleitet werden*, Zweyte und verbesserte Auflage (Halle: in der Rengerischen Buchhandlung, 1769).
- Wolff, Christian, *Reasonable Thoughts About the Actions of Men, for the Promotion of Their Happiness*. In *Moral Philosophy from Montaigne to Kant*, edited by J. B. Schneewind (Cambridge: Cambridge University Press, 2003).
- Zedler, Johann Heinrich, *Grosses vollständiges Universal-Lexicon aller Wissenschaften und Künste*, vol. 7 (Halle und Leipzig: Verlegst Johann Heinrich Zedler, 1734).

## Secondary Sources

- Adickes, Erich, *German Kantian Bibliography: Bibliography of Writings by and on Kant which have appeared in Germany up to the end of 1887* (New York: Burt Franklin, 1970).
- Anderson, Perry, *Lineages of the Absolutist State* (London: N.L.B. Atlantic Highlands Humanities Press, 1974).
- Arendt, Hannah, *On Revolution* (New York: Penguin Books, 1963).
- Arendt, Hannah, *The Human Condition: Second Edition* (Chicago: University of Chicago Press, 1998).
- Aris, Reinhold, *History of Political Thought in Germany from 1789 to 1815* (New York: Augustus M. Kelley Publishers, 1968).
- Barnard, Frederick M., *J. G. Herder on Social and Political Culture* (Cambridge: Cambridge University Press, 1969).
- Batscha, Zwi, 'Johann Benjamin Erhards Politische Theorie', *Jahrbuch für Deutsche Geschichte*, Universität Tel-Aviv, 1 (1972): 53–75.
- Batscha, Zwi, 'Ludwig Heinrich Jakobs frühbürgerliches Widerstandsrecht'. In *Studien zur politischen Theorie des deutschen Frühliberalismus* (Frankfurt am Main: Suhrkamp, 1981).
- Bauer, Fritz (ed.), *Widerstand gegen die Staatsgewalt: Dokumente der Jahrtausende* (Frankfurt am Main: Fischer Bücherei, 1965).
- Beck, Lewis White, 'Kant and the Right of Revolution', *Journal of the History of Ideas*, 32 (1971).
- Beiner, Ronald, 'Paradoxes in Kant's Account of Citizenship'. In *Kant and the Concept of Community*, edited by Charlton Payne and Lucas Thorpe (University of Rochester Press, Rochester, N.Y., 2011).
- Beiser, Frederick, *Enlightenment, Revolution, and Romanticism: The Genesis of Modern German Political Thought, 1790–1800* (Cambridge, MA: Harvard University Press, 1992).
- Berlin, Isaiah, 'Herder and the Enlightenment'. In Isaiah Berlin, *Three Critics of the Enlightenment: Vico, Hamann, Herder*, edited by Henry Hardy (Princeton, NJ: Princeton University Press, 2000).
- Berdahl, Robert, *The Politics of the Prussian Nobility: The Development of a Conservative Ideology 1770–1848* (Princeton: Princeton University Press, 1988).
- Blanning, T. C. W., *Reform and Revolution in Mainz, 1743–1803* (London: Cambridge University Press, 1974).
- Blanning, T. C. W., 'German Jacobins and the French Revolution', *The Historical Journal*, 23 (1980): 985–1002.
- Blanning, T. C. W., *The Pursuit of Glory: Europe, 1648–1815* (London: Penguin Books, 2007).
- Blühdorn, Jürgen, ‘“Kantianer” und Kant. Die Wende von der Rechtsmetaphysik Zur “Wissenschaft” Vom Positiven Recht’, *Kant-Studien*, 64, 1–4 (1974).
- Bödeker, Hans Erich, 'The Concept of the Republic in Eighteenth Century German Thought'. In *Republicanism and Liberalism in America and the German States, 1750–1850*, edited by J. Heideking and J. Henretta (Cambridge: Cambridge University Press, 2002).
- Bohman, James, and Lutz-Bachmann, Matthias, eds., *Perpetual Peace: Essays on Kant's Cosmopolitan Ideal* (Cambridge, MA: MIT Press, 1997).

- Brandt, Reinhard, 'Das Problem der Erlaubnisgesetze im Spätwerk Kants. In *Immanuel Kant: Zum Ewigen Frieden*, edited by Otfried Höffe (Berlin: Akademie Verlag, 1995).
- Brewer, Johan and Hellmuth, Eckhart, eds., *Rethinking Leviathan. The Eighteenth-Century State in Britain and Germany*, edited by John Brewer and Eckhart Hellmuth (Oxford: Oxford University Press, 1999).
- Brubaker, Rogers, 'The French Revolution and the Invention of Citizenship', *French Politics and Society*, 7 (1989): 30–49.
- Brunschwig, Henri. *Enlightenment and Romanticism in Eighteenth-Century Prussia* (Chicago: University of Chicago Press, 1974).
- Bull, Hedley, *The Anarchical Society: A Study of Order in World Politics* (New York: Columbia University Press, 1977).
- Burg, Peter. *Kant und die Französische Revolution* (Berlin: Duncker und Humblot, 1974).
- Byrd, Sharon and Hruschka, Joachim, *Kant's Doctrine of Right* (Cambridge: Cambridge University Press, 2010).
- Carsten, F. L., *Princes and Parliaments in Germany* (Oxford: Oxford University Press, 1959).
- Cavallar, Georg, *Pax Kantiana: Systematisch-historische Untersuchung des Entwurfs 'Zum ewigen Frieden' (1795) von Immanuel Kant* (Vienna: Böhlau, 1992).
- Cavallar, Georg, 'Kant's Society of Nations: Free Federation or World Republic?', *Journal of the History of Philosophy*, 32 (1994): 461–482.
- Cavallar, Georg, *Kant and the Theory and Practice of International Right* (University of Wales Press, 1999).
- Christov, Theodore, 'Vattel's Rousseau: Jus Gentium and the natural liberty of states'. In *Freedom and the Construction of Europe. Volume II: Free Persons and Free States*, edited by Quentin Skinner and Martin van Gelderen (Cambridge: Cambridge University Press, 2013).
- Clark, Christopher M. *Iron Kingdom: The Rise and Downfall of Prussia, 1600–1947* (Cambridge, MA: Belknap Press of Harvard University Press, 2006).
- Collingwood, R. G., *An Autobiography* (Oxford: Clarendon Press, 1939).
- Crook, Malcolm, *Elections in the French Revolution: An Apprenticeship in Democracy, 1789–99* (Cambridge: Cambridge University Press, 1996).
- Dann, Otto, 'Kant's Republicanism and Its Echoes'. In *Republicanism and Liberalism in America and the German States, 1750–1850*, edited by J. Heideking and J. Henretta (Cambridge: Cambridge University Press, 2002).
- Deudney, Daniel, *Bounding Power: Republican Security Theory from the Polis to the Global Village* (Princeton: Princeton University Press, 2007).
- Dietrich, Therese, 'Kant's Polemik mit dem absprechenden Ehrenmann Friedrich Gentz', *Dialektik*, 17 (1989): 128–136.
- Dietze, A. and Dietze, W., 'Introduktion'. In *Ewiger Friede? Dokumente einer deutschen Diskussion um 1800*, edited by A. Dietze and W. Dietze (Leipzig: Gustav Kiepenheuer Verlag, 1989).
- Doyle, Michael W., 'Kant, Liberal Legacies, and Foreign Affairs', *Philosophy & Public Affairs*, 12 (Summer 1983): 205–235.
- Droz, Jacques, *Deutschland und die Französische Revolution* (Wiesbaden: Franz Steiner Verlag, 1955).
- Eberl, Oliver and Niesen, Peter, *Immanuel Kant: Zum ewigen Frieden und Auszüge aus der Rechtslehre* (Berlin: Suhrkamp Verlag, 2011).

- Ellis, Elisabeth, *Kant's Politics: Provisional Theory for an Uncertain World* (New Haven, Conn: Yale University Press, 2005).
- Epstein, Klaus, *The Genesis of German Conservatism* (Princeton: Princeton University Press, 1966).
- Fehér, Ferenc, 'Practical Reason in the Revolution: Kant's Dialogue with the French Revolution?' In *The French Revolution and the Birth of Modernity*, edited by F. Fehér (Berkeley: University of California Press, 1990).
- Fletcher, George P., 'Law and Morality: A Kantian Perspective', *Columbia Law Review*, 87 (1987): 533–558.
- Flikschuh, Katrin, 'Reason, Right, and Revolution: Kant and Locke', *Philosophy and Public Affairs*, 36 (2008): 375–404.
- Follesdal, Andreas and Maliks, eds., Reidar, *Kantian Theory and Human Rights* (New York: Routledge, 2014).
- Forsyth, Murray, *Reason and Revolution: The Political Thought of the Abbe Sieyès* (New York: Leicester University Press, 1987).
- Frazer, Michael L. *The Enlightenment of Sympathy: Justice and the Moral Sentiments in the Eighteenth Century and Today* (Oxford: Oxford University Press, 2010).
- Franklin, Julian H., *John Locke and the Theory of Sovereignty: Mixed Monarchy and the Right of Resistance in the Political Thought of the English Revolution* (Cambridge: Cambridge University Press, 1978).
- Franklin, Julian (ed.), *Constitutionalism and Resistance in the Sixteenth Century; Three Treatises by Hotman, Beza, and Mornay* (New York: Pegasus, 1969).
- Furet, Francois, *Revolutionary France: 1770–1880*, translated by Antonia Nevill (Oxford: Blackwell Publishing, 1988).
- Garber, Jörn, 'Liberaler und demokratischer Republikanismus. Kants Metaphysik der Sitten und ihre radikaldemokratische Kritik durch J. A. Bergk'. In *Die Demokratische Bewegung in Mitteleuropa im Ausgehenden 18. Und frühen 19. Jahrhundert*, edited by O. Büsch and W. Grab (Berlin: Colloquium-Verlag, 1980), pp. 251–289.
- Gierke, Otto, *Natural Law and the Theory of Society 1500 to 1800*, translated by Ernest Barker (Beacon Hill, Boston: Beacon Press, 1957).
- Gilli, Marita, *Pensée et pratique révolutionnaires: à la fin du XVIIIe siècle en Allemagne* (Paris: Annales littéraires de l'Université de Besançon, 1983).
- Goethe, Johann Wolfgang von and Schiller, Friedrich, *Xenien* (Frankfurt am Main: Insel, 1986).
- Gooch, G. P., *Germany and the French Revolution* (New York: Russel & Russel, 1966).
- Grab, Walter, *Leben und Werke norddeutscher Jakobiner* (Stuttgart: J. B. Metzler, 1973).
- Grandmaison, Olivier Le Cour, 'Passive Citizens or the Reasonless Poor During the French Revolution, 1789–1791?' In *The Languages of Revolution*, edited by Loretta Valtz Mannucci (Milano: Istituto di Studi Storici, 1989).
- Gulick, Edward Vose, *Europe's Classical Balance Of Power* (New York: W. W. Norton & Company, 1967).
- Haasis, Hellmut G., 'Nachwort'. In Erhard, Johann Benjamin, *Über das Recht zu einer Revolution des Volkes und andere Schriften*, edited by Hellmut G. Haasis (München: Carl Hanser Verlag, 1970).
- Habermas, Jürgen, *The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society*, translated by Thomas Burger (Cambridge, MA: The MIT Press, 1991).

- Habermas, Jürgen, *Theory and Practice*, translated by John Viertel (Boston: Beacon Press, 1974).
- Habermas, Jürgen, ‘Kant’s Idea of Perpetual Peace: At Two Hundred Year’s Historical Remove?’ In *The Inclusion of the Other: Studies in Political Theory*, edited by Ciaran Cronin and Pablo De Greiff (Cambridge, MA: MIT Press, 1998).
- Haensel, Werner, *Kant’s Lehre vom Widerstandsrecht: Ein Beitrag zur Systematik der Kantschen Rechtsphilosophie*, *Kant-Studien*, Ergänzunghefte Nr. 60 (Berlin: Pan-Verlag Rolf Heis, 1926).
- Hayek, Friedrich, *The Constitution of Liberty* (Chicago: The University of Chicago Press, 1960).
- Heideking, Jürgen and Henretta, James, eds., *Republicanism and Liberalism in America and the German States, 1750–1850* (Cambridge: Cambridge University Press, 2002).
- Henrich, Dieter, ‘Über den Sinn vernünftigen Handelns im Staat’. In *Kant, Gentz, Rehberg: Über Theorie und Praxis*, edited by Dieter Henrich (Frankfurt am Main: Suhrkamp, 1967).
- Hirschman, Albert O., *The Passions and the Interests: Political Arguments for Capitalism Before its Triumph* (Princeton: Princeton University Press, 1977).
- Hochstrasser, T. J., *Natural Law Theories in the Early Enlightenment* (Cambridge, UK: Cambridge University Press, 2000).
- Höffe, Otfried, *Kant’s Cosmopolitan Theory of Law and Peace*, translated by Alexandra Newton (Cambridge: Cambridge University Press, 2006).
- Holtzman, Sarah Williams, ‘Revolution, Contradiction, and Kantian Citizenship’. In *Kant’s Metaphysics of Morals: Interpretative Essays*, edited by Mark Timmons (Oxford: Oxford University Press, 2002).
- Hueglin, Thomas O., *Early Modern Concepts for a Late Modern World: Althusius on Community and Federalism* (Waterloo, Ontario: Wilfrid Laurier University Press, 1999).
- Hunter, Ian, ‘Kant’s Political Thought in the Prussian Enlightenment’. In *Kant’s Political Theory: Interpretations and Applications*, edited by Elisabeth Ellis (University Park, PA: Penn State University Press, 2012).
- Hunter, Ian, ‘Kant’s regional cosmopolitanism’, *Journal of the History of International Law*, 12 (2010): 165–188.
- Ingrao, Charles, ‘The Problem of “Enlightened Absolutism” and the German States’, *Journal of Modern History*, 58, suppl. (1986): 161–180.
- Israel, Jonathan I., *Democratic Enlightenment: Philosophy, Revolution, and Human Rights 1750–1790* (New York: Oxford University Press, 2011).
- Kersting, Wolfgang, *Wohlgeordnete Freiheit* (Frankfurt am Main: Suhrkamp, 1993).
- Kersting, Wolfgang ‘Kant’s Concept of the State’. In *Kant’s Political Philosophy*, edited by Howard Williams (Chicago: University of Chicago Press, 1992).
- Kleingeld, Pauline, *Kant and Cosmopolitanism: The Philosophical Ideal of World Citizenship* (Cambridge: Cambridge University Press, 2012).
- Klemme, Heiner F., ‘Einleitung’. In *Über den Gemeinspruch: Das mag in der Theorie richtig sein, taugt aber nicht für die Praxis*, edited by H. F. Klemme (Hamburg: Felix Meiner, 1993).
- Klinger, Andreas, ‘Die “deutsche Freiheit” im Revolutionsjahrzehnt 1789–1799’. In *Kollektive Freiheitsvorstellungen im frühneuzeitlichen Europa (1400–1850)*, edited

by Georg Schmidt, Martin van Gelderen, and Christopher Snigula (Frankfurt am Main: Peter Lang, 2006).

Klippel, Diethelm, 'Der politische Freiheitsbegriff im modernen Naturrecht' in *Geschichtliche Grundbegriffe: historisches Lexikon zur politisch-sozialen Sprache in Deutschland*, edited by Otto Brunner, Werner Conze, and Reinhart Koselleck (Stuttgart: Klett-Cotta, 1976).

Klippel, Diethelm. 'Reasonable Aims of Civil Society. Concerns of the State in German Political Theory in the Eighteenth and Early Nineteenth Centuries'. In *Rethinking Leviathan. The Eighteenth-Century State in Britain and Germany*, edited by John Brewer and Eckhart Hellmuth (Oxford: Oxford University Press, 1999), pp. 71–98.

Knudsen, Jonathan B., *Justus Möser and the German Enlightenment* (Cambridge: Cambridge University Press, 1986).

Korsgaard, Christine M., 'Taking the Law into Our Own Hands: Kant on the Right to Revolution'. In *Reclaiming the History of Philosophy: Essays for John Rawls*, edited by Christine Korsgaard, Andrews Reath and Barbara Herman (Cambridge: Cambridge University Press, 1997).

Koselleck, Reinhart, *Preussen zwischen Reform und Revolution. Allgemeines Landrecht, Verwaltung und soziale Bewegung von 1791 bis 1848* (Stuttgart: Klett, 1967).

Koselleck, Reinhart, *Futures past: On the Semantics of Historical Times* (Cambridge, MA: The MIT Press, 1985).

Koselleck, Reinhart. *Critique and Crisis: Enlightenment and the Pathogenesis of Modern Society* (Cambridge, MA: MIT Press, 1988).

Kuehn, Manfred, *Kant: A Biography* (New York: Cambridge University Press, 2001).

Kuehn, Manfred, 'Kant's Metaphysics of Morals: the history and significance of its deferral'. In *Kant's Metaphysics of Morals: A Critical Guide*, edited by Lara Denis (Cambridge: Cambridge University Press, 2010).

Krieger, Leonard, *The German Idea of Freedom: History of a Political Tradition* (Boston: Beacon Press, 1957).

La Vopa, Anthony J., 'The Revelatory Moment: Fichte and the French Revolution', *Central European History*, 22 (1989): 130–159.

Lee, Daniel, 'Roman law, German liberties and the constitution of the Holy Roman Empire'. In *Freedom and the Construction of Europe, Volume 1: Religious Freedom and Civil Liberty*, edited by Quentin Skinner and Martin van Gelderen (Cambridge: Cambridge University Press, 2013).

Lepenies, Wolf. *The Seduction of Culture in German History* (Princeton, NJ: Princeton University Press, 2006).

Linden, Harry van der, *Kantian Ethics and Socialism* (Indianapolis: Hackett Publishing Co., 1988).

Ludwig, Bernd, "'The Right of a State' in Immanuel Kant's *Doctrine of Right*', *Journal of the History of Philosophy*, 28 (1990): 403–415.

Lutz-Bachmann, Matthias, 'Kant's Idea of Peace and the Philosophical Conception of a World Republic'. In *Perpetual Peace: Essays on Kant's Cosmopolitan Ideal*, edited by James Bohman and Matthias Lutz-Bachmann (Cambridge, MA: MIT Press, 1997).

Maliks, Reidar, 'Liberal Revolution: the cases of Jakob and Erhard', *Hegel Bulletin*, 63 (2011): 216–231.

Maliks, Reidar, 'Revolutionary Epigones: Kant and his Radical Followers', *History of Political Thought*, 33 (2012): 647–671.

- Maliks, Reidar, 'Kant, the State, and Revolution', *Kantian Review*, 18 (2013): 29–47.
- Maliks, Reidar, 'Kant and the Debate over Theory and Practice'. In *Kant und die Philosophie in weltbürgerlicher Absicht: Akten des XI. Kant-Kongresses 2010*, edited by Stefano Bacin, et. al. (Berlin: De Gruyter, 2013), pp. 741–753.
- Maliks, Reidar, 'The State of Freedom: Kant and His Conservative Critics'. In *Freedom and the Construction of Europe. Volume II: Free Persons and Free States*, edited by Quentin Skinner and Martin van Gelderen (Cambridge: Cambridge University Press, 2013), pp. 188–207.
- Mandt, Hella, 'Historisch-politische Traditionselemente im politischen Denken Kants'. In *Materialen zu Kants Rechtsphilosophie*, edited by Zwi Batscha (Frankfurt am Main: Suhrkamp, 1976).
- Manin, Bernard, *The Principles of Representative Government* (Cambridge: Cambridge University Press, 1997).
- Mansfield, Harvey, 'Hobbes and the Science of Indirect Government'. *APSR*, 65 (1971): 97–110.
- Martinson, Steven D., 'Reason, revolution and religion: Johann Benjamin Erhard's concept of enlightened revolution', *History of European Ideas*, 12 (2) (1990): 221–226.
- Maus, Ingeborg, *Zur Aufklärung der Demokratietheorie: rechts—und demokratietheoretische Überlegungen im Anschluss an Kant* (Frankfurt am Main: Suhrkamp, 1992).
- McNeil, Gordon H., 'The Anti-Revolutionary Rousseau', *The American Historical Review*, 58, 4 (1953): 808–823.
- Merriam, Jr., C. E., *History of the Theory of Sovereignty since Rousseau* (Kitchener, Ontario: Batoche books, 2001).
- Mikalsen, Kjartan Koch, 'In defense of Kant's league of states', *Law and Philosophy*, 30 (2011): 291–317.
- Moggach, Douglas, 'Freedom and Perfection: German Debates on the State in the Eighteenth Century', *Canadian Journal of Political Science*, 42, 4 (2009): 1003–1023.
- Morgan, Edmund, *Inventing the People: The Rise of Popular Sovereignty in England and America* (New York, London: W. W. Norton, 1988).
- Mendus, Susan, 'Kant: "An Honest but Narrow-Minded Bourgeois"?' In *Essays on Kant's Political Philosophy*, edited by Howard Williams (Chicago: University of Chicago Press, 1992).
- Murphy, Jeffrie G., 'Kant on theory and practice', *Nomos XXXVII: Theory and Practice*, edited by Ian Shapiro and Judith Wagner DeCew (New York: New York University Press 1995).
- Muthu, Sankar, *Enlightenment Against Empire* (Princeton: Princeton University Press, 2003).
- Nakhimovsky, Isaac, *The Closed Commercial State: Perpetual Peace and Commercial Society from Rousseau to Fichte* (Princeton: Princeton University Press, 2011).
- Naragon, Steve, 'Pörschke'. In *Dictionary of Eighteenth-Century German Philosophers, Volume 2*, edited by Heiner F. Klemme and Manfred Kuehn (London and New York, Continuum, 2010).
- Nussbaum, Martha C., 'Kant and Stoic Cosmopolitanism', *The Journal of Political Philosophy*, 5, 1 (1997): 1–25.
- O'Neill, Onora, 'Kant and the Social Contract Tradition', *Kant Actuel*, edited by F. Duchesneau, G. Lafrance, and C. Piché (Montreal: Bellarmin, 2000).

- Nichols, Peter, 'Kant on the Duty Never to Resist the Sovereign'. *Ethics*, 86 (1976): 214–230.
- Parry, Geraint, 'Enlightened Government and its Critics in Eighteenth-Century Germany', *The Historical Journal*, 6 (1963): 178–192.
- Perreau-Saussine, Amanda, 'Immanuel Kant on international law'. In *The Philosophy of International Law*, edited by John Tasioulas and Samantha Besson (Cambridge: Cambridge University Press, 2010).
- Philonenko, Alexis, *Théorie et praxis dans la pensée morale et politique de Kant et de Fichte en 1793* (Paris: Librairie Philosophique J. Vrin, 1968).
- Pinkard, Terry, 'Kant, Citizenship, and Freedom'. In Immanuel Kant: Zum Ewigen Frieden, edited by Otfried Höffe (Berlin: Akademie Verlag, 1995).
- Pitkin, Hanna Fenichel, *The Concept of Representation* (Berkeley: University of California Press, 1967).
- Pocock, J. G. A., 'The Ideal of Citizenship since Classical Times'. In *The Citizenship Debates: A Reader*, edited by Gershon Shafir (Minneapolis, University of Minnesota Press, 1998).
- Pogge, Thomas W., 'Kant's Theory of Justice'. *Kant-Studien*, 79 (1988): 407–433.
- Pogge, Thomas W., 'The Categorical Imperative'. In *Kant's Groundwork of the Metaphysics of Morals*, edited by Paul Guyer (Totowa: Rowman and Littlefield, 1998).
- Pogge, Thomas W., 'Is Kant's Rechtslehre a Comprehensive Liberalism?'. In *Kant's Metaphysics of Morals: Interpretative Essays*, edited by Mark Timmons (Oxford: Oxford University Press, 2002).
- Pogge, Thomas W., 'Kant's Vision, Europe, and a Global Federation'. In *Globale Gerechtigkeit. Global Justice*, edited by Jean-Christophe Merle (Stuttgart-Bad-Cannstatt: Frommann-holzbog, 2005).
- Przeworski, Adam, 'Conquered or Granted? A History of Suffrage Extensions'. *British Journal of Political Science*, 39 (2009): 291–321.
- Reed, T. J., *Light in Germany: Scenes from an Unknown Enlightenment* (Chicago: Chicago University Press, forthcoming).
- Reiss, Hans, 'Kant, Möser und Nicolai'. *Möser-Forum XXXIII*, 3 (2001): 15–35.
- Reiss, Hans, 'Kant and the Right of Rebellion', *Journal of the History of Ideas*, 17 (1956): 179–192.
- Reiss, Hans, 'Introduction to Reviews of Herder's Ideas on the Philosophy of the History of Mankind and Conjectures on the Beginning of Human History'. In Immanuel Kant and Hans Reiss, *Kant: Political Writings* (Cambridge: Cambridge University Press, 1991).
- Riedel, Manfred, 'Transcendental Politics? Political Legitimacy and the Concept of Civil Society in Kant'. *Social Research* 48, 3 (1981): 588–613.
- Riedel, Manfred, 'Bürger, Staatsbürger, Bürgertum'. In *Geschichtliche Grundbegriffe. Historisches Lexikon zur politisch-sozialen Sprache in Deutschland*, edited by Otto Brunner, Werner Conze, and Reinhart Koselleck (Stuttgart: Klett-Cotta, 1972).
- Riethmüller, Jürgen, *Die Anfänge der Demokratie in Deutschland* (Erfurt: Sutton Verlag, 2002).
- Riley, Patrick, 'Kant against Hobbes in *Theory and Practice*', *Journal of Moral Philosophy* 4 (2007): 194–206.

- Riley, Patrick. *Will and Political Legitimacy: A Critical Exposition of Social Contract Theory in Hobbes, Locke, Rousseau, Kant, and Hegel* (Cambridge, MA: Harvard University Press, 1982).
- Ripstein, Arthur, *Force and Freedom: Kant's Legal and Political Philosophy* (Cambridge, MA: Harvard University Press, 2009).
- Ritter, Christian, *Der Rechtsgedanke Kants nach den frühen Quellen* (Frankfurt am Main: V. Klostermann, 1971).
- Ritter, Gerhard, *Frederick the Great* (Berkeley: University of California Press, 1968).
- Ruiz, Alain, 'Neues über Kant und Sieyès. Ein unbekannter Brief des Philosophen an Anton Ludwig Théremin (März 1796)', *Kant-Studien*, 68, 4 (1977): 446–453.
- Rosen, Allen D., *Kant's Theory of Justice* (Ithaca, NY: Cornell University Press, 1993).
- Rosenberg, Hans, *Bureaucracy, Aristocracy, and Autocracy: the Prussian Experience, 1660–1815* (Cambridge, MA: Harvard University Press, 1958).
- Schlumbohm, Jürgen, *Freiheit: Die Anfänge der bürgerlichen Emanzipationsbewegung in Deutschland im Spiegel ihres Leitwortes (ca. 1760–ca. 1800)* (Düsseldorf: Schwann, 1975).
- Schmidt, Alexander, 'Freedom and state action in German late Enlightenment thought'. In *Freedom and the Construction of Europe, Volume 1: Religious Freedom and Civil Liberty*, edited by Quentin Skinner and Martin van Gelderen (Cambridge: Cambridge University Press, 2013).
- Schmidt, Georg, 'Die Idee "deutsche Freiheit", eine Leitvorstellung der politischen Kultur des Alten Reiches'. In *Kollektive Freiheitsvorstellungen im frühneuzeitlichen Europa (1400–1850)*, edited by Georg Schmidt, Martin van Gelderen, and Christopher Snigula (Frankfurt am Main: Peter Lang, 2006).
- Schmidt, James, 'Introduction'. In *What Is Enlightenment? Eighteenth-Century Answers and Twentieth-Century Questions*, edited by James Schmidt (Berkeley: University of California Press, 1996).
- Schmitt, Carl, *The Nomos of the Earth in the International Law of the Jus Publicum Europaeum*, translated by G. L. Ulmen (New York: Telos Press, 2003).
- Schmitt, Carl, *Political Romanticism*, translated with an introduction by Guy Oakes (Cambridge, MA: MIT Press, 1986).
- Schottky, Richard, 'Einleitung'. In Johann Gottlieb Fichte, *Beitrag zur Berichtigung der Urteile des Publikums über die französische Revolution erster Teil Zur Beurteilung ihrer Rechtmäßigkeit (1793); beigefügt die Rezension von Friedrich von Gentz (1794)*, edited by Richard Schottky (Hamburg: Meiner, 1973).
- Schui, Florian, *Rebellious Prussians: Urban Political Culture under Frederick the Great and his Successors* (Oxford: Oxford University Press 2013).
- Schultze, Johanna, *Die Auseinandersetzung zwischen Adel und Bürgertum in den deutschen Zeitschriften der letzten drei Jahrzehnte des 18. Jahrhunderts (1773–1806)*, volume 163 of *Historische Studien* (Berlin: Verlag von Emil Ebering, 1925).
- Schwartzberg, Melissa, 'Rousseau on Fundamental Law', *Political Studies*, 51, 2 (2003): 387–403.
- Seifert, Hans-Ulrich, 'Heydenreich'. In *Dictionary of Eighteenth-Century German Philosophers, Volume 2*, edited by Heiner F. Klemme and Manfred Kuehn (London and New York: Continuum, 2010).
- Sewell, William Hamilton, *A Rhetoric of Bourgeois Revolution: The Abbé Sieyès and What Is the Third Estate?* (Durham, NC: Duke University Press, 1994).

- Sheehan, James, *German History 1770–1866* (Oxford: Clarendon Press, 1989).
- Skinner, Quentin, *The Foundations of Modern Political Thought. Volume 2* (Cambridge: Cambridge University Press, 1996).
- Skinner, Quentin, 'Hobbes and the Purely Artificial Person of the State'. *The Journal of Political Philosophy*, 7, 1 (1999): 1–29.
- Skinner, Quentin, 'States and the freedom of citizens'. In Quentin Skinner and Bo Stráth, *States and Citizens: History, Theory, Prospects* (Cambridge: Cambridge University Press, 2003).
- Soboul, Albert, *A Short History of the French Revolution 1789–1799* (Berkeley: University of California Press, 1977).
- Spaemann, Robert, 'Kants Kritik der Widerstandsrechts'. In Zwi Batscha, *Materialien zu Kants Rechtsphilosophie*. In *Materialien zu Kants Rechtsphilosophie*, edited by Zwi Batscha (Frankfurt am Main: Suhrkamp, 1976).
- Stedman Jones, Gareth, 'Kant, the French revolution and the definition of the republic'. In *The Invention of the Modern Republic*, edited by Biancamaria Fontana (Cambridge: Cambridge University Press, 1994).
- Steiger, Heinhard, 'Völkerrecht'. In *Geschichtliche Grundbegriffe*, edited by Otto Brunner, Werner Conze, and Reinhart Koselleck, vol. 7 (Stuttgart: Klett-Cotta, 1978), pp. 245–313.
- Stolleis, Michael, *Staatsraison, Recht und Moral in Philosophischen Texten des späten 18. Jahrhunderts* (Meisenheim am Glan: A. Hain, 1972).
- Taylor, Robert S., 'Democratic Transitions and the Progress of Absolutism in Kant's Political Thought', *Journal of Politics*, 68, 3 (2006): 556–570.
- Teson, Fernando R., 'The Kantian Theory of International Law', *Columbia Law Review*, 92, 1 (January 1992): 53–102.
- Tilly, Charles, 'War Making and State Making as Organized Crime'. In *Bringing the State Back In*, edited by Peter B. Evans, Dietrich Rueschemeyer, and Theda Skocpol (Cambridge: Cambridge University Press, 1985).
- Tilly, Charles, *European Revolutions 1492–1992* (Oxford: Blackwell, 1993).
- Timmons, Mark, ed., *Kant's Metaphysics of Morals: Interpretative Essays* (Oxford: Oxford University Press, 2002).
- Tosel, André, *Kant révolutionnaire: Droit et politique* (Paris: Presses Universitaires de France, 1988).
- Tuck, Richard, *The Rights of War and Peace: Political Thought and the International Order From Grotius to Kant* (Oxford: Oxford University Press, 1999).
- Turchetti, Mario, '"Despotism" and "Tyranny": Unmasking a Tenacious Confusion'. In *European Journal of Political Theory*, 7, 2 (2008): 159–182.
- Uleman, Jennifer K., 'External Freedom in Kant's Rechtslehre: Political, Metaphysical', *Philosophy and Phenomenological Research*, LXVIII (2004): 578–601.
- Urbinati, Nadia, *Representative Democracy: Principles and Genealogy* (Chicago: University of Chicago Press, 2006).
- Urbinati, Nadia, 'Competing for Liberty: The Republican Critique of Democracy', *American Political Science Review*, 106, 3 (2012): 607–621.
- Valjavec, Fritz, *Die Entstehung der politischen Strömungen in Deutschland 1770–1815* (München: R. Oldenbourg, 1951).
- Varden, Helga, 'Kant's Non-Voluntarist Conception of Political Obligations: Why Justice Is Impossible in the State of Nature'. *Kantian Review*, 13, 2 (2008): 1–45.

- Varden, Helga, 'Kant's Non-Absolutist Conception of Political Legitimacy – How Public Right 'Concludes' Private Right in the "Doctrine of Right"; *Kant-Studien*, 101 (2010): 331–351.
- Vierhaus, Rudolf, 'Politisches Bewusstsein in Deutschland vor 1789', *Der Staat* 6 (1967): 175–196.
- Vierhaus, Rudolf, 'Wir nennen's Gemeinsinn'. In *Republicanism and Liberalism in America and the German States, 1750–1850*, edited by J. Heideking and J. Henretta (Cambridge: Cambridge University Press, 2002).
- Vogel, Ursula, *Konservative Kritik an der Bürgerlichen Revolution* (Darmstadt and Neuwied: Luchterhand, 1972).
- Vorländer, Karl, *Immanuel Kant: Der Mann und Das Werk* (Hamburg: Meiner, 1992).
- Wilson, Peter, *From Reich to Revolution: German History, 1558–1806* (New York: Palgrave Macmillan, 2004).
- Waldron, Jeremy, 'Kant's Legal Positivism', *Harvard Law Review*, 109, 7 (1996): 1535–1556.
- Waldron, Jeremy, 'Kant's Theory of the State'. In *Kant: Toward Perpetual Peace and Other Writings on Politics, Peace, and History*, edited by Pauline Kleingeld (New Haven: Yale University Press, 2006).
- Walker, Franklin A., 'The Conservative Face of a Radical Kantian in Prussia and Russia: the Case of Ludwig Heinrich Jakob (1759–1827)', *Germano-Slavica*, XIII (2002): 3–17.
- Walker, Mack, 'Rights and Functions: The Social Categories of Eighteenth-Century German Jurists and Cameralists', *Journal of Modern History*, 50 (1978): 234–251.
- Waltz, Kenneth N., 'Kant, Liberalism, and War', *The American Political Science Review*, 56, 2 (June 1962): 331–340.
- Warda, Arthur, *Kants Bücher* (Berlin: Martin Breslauer, 1922).
- Weinrib, Jacob, 'Kant on Citizenship and Universal Independence'. *Australian Journal of Legal Philosophy*, 33 (2008): 1–25.
- Weis, Eberhard, 'Enlightenment and Absolutism in the Holy Roman Empire: Thoughts on Enlightened Absolutism in Germany', *The Journal of Modern History*, 58 (1986): 181–197.
- Wittichen, Paul, 'Kant und Burke', *Historische Zeitschrift*, 93 (1904): 253–255.
- Williams, Howard, *Kant's Political Philosophy* (Oxford: Basil Blackwell, 1983).
- Williams, Howard, *Kant's Critique of Hobbes: Sovereignty and Cosmopolitanism* (Cardiff: University of Wales Press, 2003).
- Woloch, Isser, 'In the Aftermath of the French Revolution', *The History Teacher*, 28, 1 (1994).
- Wolzendorff, Kurt, *Staatsrecht und Naturrecht in der Lehre vom Widerstandsrecht des Volkes gegen rechtswidrige Ausübung der Staatsgewalt* (Breslau: M. & M. Marcus, 1916).
- Wunderlich, Falk, 'Garve'. In *The Dictionary of Eighteenth-century German Philosophers*, edited by Heiner F. Klemme and Manfred Kuehn (London: Continuum International Publishing Group Ltd, 2010).
- Zammito, John H., *Kant, Herder, and the Birth of Anthropology* (Chicago: University of Chicago Press, 2002).

- Yack, Bernard, *The Longing for Total Revolution: Philosophic Sources of Social Discontent from Rousseau to Marx and Nietzsche* (Princeton: Princeton University Press, 1986).
- Zande, Johan van der, 'Statistik and History in the German Enlightenment', *Journal of the History of Ideas*, 71 (2010): 411–432.
- Zylberman, Ariel, 'Kant's Juridical Idea of Human Rights'. In *Kantian Theory and Human Rights*, edited by Andreas Føllesdal and Reidar Maliks (New York: Routledge, 2014).

# *Index*

- Abicht, Johann Heinrich 99 n. 91  
Achenwall, Gottfried 13, 14, 18, 35–7, 46, 48, 68, 73, 148  
    citizenship 88, 89, 92 n. 56, 106  
    influence on Kant 3, 36, 49, 93 n. 64  
    resistance and revolution 117–18, 120–3, 124–5, 126, 127, 129, 142  
Afsprung, Johan Michael 20, 46  
Aletes 60  
Althusius, Johannes 115, 116, 116 n. 19, 116 n. 20, 116 n. 23, 122, 128  
Aquinas, Thomas 116 n. 19  
Arendt, Hannah 15, 95  
Aristotle 37, 78, 92 n. 57, 95, 102, 117  
Augustine 115 n. 18  
Authority 1, 2, 14, 17, 19, 21, 26, 30, 35, 39, 46, 54, 65, 71, 72, 74, 75, 77, 83, 88, 96, 103, 110, 113, 114–5, 116–7, 119, 121–2, 130, 132–34, 136–143, 169, 172  
    dissolution of 14, 114–5, 118, 120, 122 n. 50, 126–7, 129, 131, 139–41, 143  
    international federation 145, 146, 147–8, 150, 155, 159, 164  
  
barbarism, 60, 96, 141, 161  
Barclay, William 115 n. 15  
Baumgarten, Alexander 66  
Beiser, Frederick 3 n. 8, 3 n. 10, 5 n. 16, 18 n. 9, 40 n. 2, 55, 82 n. 8, 87 n. 32, 113 n. 8, 120 n. 45, 121 n. 46, 168 n. 1  
Bentham, Jeremy 51 n. 56, 114–15, 143, 168–9  
Bergk, Johann Adam 9, 10, 12, 101, 169  
    political rights 14, 80–1, 82, 96, 97, 98, 100, 106, 107, 110  
    resistance and revolution 114, 124, 124 n. 56, 125 n. 57, 126, 127 n. 73, 128, 128 n. 85, 129, 129 n. 91, 133 n. 102  
    right of nations 160  
*Berlinische Monatsschrift* 4, 26, 31, 33, 49, 56, 57, 59, 60, 123  
Biester, Johann Erich 60, 62, 63  
Bödeker, Hans Erich 6, 20, 85 n. 22, 85 n. 23, 90 n. 102  
Bodin, Jean 21, 117 n. 29  
Bouterwek, Friedrich 9, 10, 12, 65  
    resistance and revolution 114, 136–7, 140, 143  
    Brandes, Ernst 18  
    Brandt, Reinhard 3 n. 10, 71 n. 153, 76, 76 n. 180  
    Brienne, Etienne Charles Loménié de 42  
    Brubaker, Rogers 86–7, 89 n. 45  
    Burke, Edmund 8, 9, 19, 39, 44, 45, 49, 60, 114, 120, 123, 142, 143, 169  
    categorical imperative 5, 7, 24–6, 38, 48, 57, 66, 74, 78, 137–8  
    Charles X of France 172  
    Cicero 18, 25 n. 38  
    citizenship 58–9, 85–8, 95–101, 169  
        France 80, 83–5, 89, 102  
        Kant on 2, 3, 50, 80–3, 90–5, 101, 104–111, 128  
    Cloots, Anarcharsis 144, 150, 156  
    Collingwood, R. G. 2  
  
*Declaration of the Rights of Man and the Citizen*, 7, 39, 41, 83, 96, 112, 114, 115, 119, 120, 127  
democracy 2, 10, 25, 45, 48, 56, 59, 62, 80, 82–3, 85, 100–1, 104, 110, 116, 119  
    direct 8, 13–4, 15, 80, 83–4, 86, 90, 118  
        Kant's rejection of 90, 102–3, 107, 164  
    despotism 11, 14, 15, 18–9, 22, 26, 27, 31, 38, 76, 82, 89, 90, 102, 107, 114–6, 118, 123, 124–9, 131, 144, 145–6, 156, 158, 160–1, 164  
Dumouriez, Charles François 144, 150  
duty  
    ethical 7, 34, 36–7, 47, 48, 49–50, 67, 78, 137–8  
    juridical/legal 1, 14, 26, 36–7, 39, 40, 54, 67–8, 71–2, 74–5, 78, 91, 108, 122, 131, 140–1, 143, 159, 163, 165  
  
Eberhard, Johann August 33, 85  
enlightenment 5, 8, 9, 17, 19–21, 30–1, 47, 62, 100, 107, 168  
    Kant 4, 5, 7, 22, 26–8, 75, 89, 107, 108, 129, 132, 164  
    revolution 27–8, 119, 128, 129, 132  
Epstein, Klaus 7 n. 28, 18 n. 9, 48 n. 43, 55, 56 n. 72  
Erhard, Johann Benjamin 9, 10, 10 n. 40, 40, 101, 169  
    political rights 96, 100

- Erhard, Johann Benjamin (*Cont.*)  
 resistance and revolution 114, 124, 124 n.  
 56, 125, 125 n. 57, 126, 127 n. 73, 127 n.  
 76, 128–9, 128 n. 85, 135
- estate society (*Ständestaat*) 7–8, 15,  
 17–19, 21, 22, 38, 45, 48, 55,  
 58–9, 62, 75, 80, 88–9, 92, 116,  
 122–3, 147, 169, 171
- Feyerabend, Gottfried 35, 121 n. 48
- Fichte, Johann Gottlieb 9, 10, 12, 40, 49, 53,  
 101, 169  
 freedom and equality 42, 46–8, 50, 76  
 French Revolution 39, 74, 79, 168  
 political rights 14, 80, 82, 82 n. 8, 90, 96,  
 97–8, 100, 106, 110  
 resistance and revolution 120, 124, 124 n.  
 56, 125 n. 57, 126, 127 n. 73, 128,  
 129, 137  
 right of nations 146, 150, 160–1
- Forster, Georg 89, 96, 110
- Frederick II of Prussia 5–6, 8, 17, 19, 20,  
 21–2, 23, 26–7, 29, 52, 76, 102, 113
- Frederick William II of Prussia 5–6
- Frederick William III of Prussia 1
- freedom 9, 45–8, 55–60, 96, 100–1, 106–7,  
 114, 124–6, 129, 136–7  
 of choice 1, 58, 64, 66, 68, 96, 70, 71, 97,  
 171  
 equal 2, 13, 15, 32, 37, 38, 39, 42, 43, 46,  
 49–54, 62–4, 68–70, 72, 79, 81, 100, 105,  
 156, 162, 164, 169  
 as independence 1, 6, 13, 14, 40, 70, 124,  
 169  
 lawless 69, 75, 148, 152, 165  
 as non-domination, 40, 82, 83, 92, 100, 93  
 n. 64  
 political rights 20, 80, 81, 82, 85, 97, 101,  
 103, 105, 106, 107, 110  
 right to 1, 2, 9, 15, 39, 40, 41, 42, 45–6, 47,  
 48, 49, 50, 58, 63, 64, 66, 68–9, 70, 71–3,  
 79, 81, 96, 107, 110, 112, 114, 124, 125,  
 126, 142, 169  
 rightful/lawful 7, 14, 36, 40, 61, 69–70, 74,  
 107, 110–11, 141–3, 158  
 of speech 8, 26–7, 29, 46–7, 91, 108, 172  
 of the will 1, 10, 23–6, 28, 37, 38, 41, 47,  
 57, 58, 62, 66, 68, 72, 78, 130
- Garve, Christian 9, 25 n. 38, 49–50, 55, 56, 123  
 general will 63, 72, 74–5, 79, 81, 91, 98, 99,  
 102, 107, 110, 128, 132  
 Rousseau 25 n. 38, 37–8, 42, 72–3, 91, 104,  
 118
- Gentz, Friedrich 7, 8, 9, 39, 49, 61, 67,  
 104 n. 113, 169, 171
- freedom and equality 13, 55, 56–7, 60,  
 61–2, 63, 79  
 revolution 7, 44, 120, 123  
 right of nations 145, 146, 152, 159, 162, 164
- Gierke, Otto 46 n. 28, 87 n. 32, 116
- Girondists 43, 150
- Gleichen, Karl Heinrich von 153 n. 39
- Goethe, Johann Wolfgang von 12
- Gouges, Olympe de 84
- Gregor, Mary 65 n. 127
- Grotius, Hugo 21 n. 22, 119 n. 40, 153
- Gundling, Nikolaus Hieronymus 33
- Haensel, Werner 113
- Hamann, Johann Georg 30
- Hamilton, Alexander 104 n. 115
- Hegel, Georg Wilhelm Friedrich 9 n. 35, 57,  
 58, 69 n. 147, 96, 170, 171–2
- Hennings, August Adolph Friedrich 60
- Henrich, Dieter 3 n. 10, 8, 40 n. 2, 49 n. 5,  
 56–7, 121 n. 46, 134 n. 108, 168 n. 1
- Herder, Johann Gottfried 9, 17, 18, 29–32,  
 38, 56, 78
- Heydenreich, Karl Heinrich 9, 99, 101  
 political rights 14, 82, 96, 97, 101, 107, 109  
 revolution 114, 124, 124 n. 56, 125, 127,  
 127 n. 73
- Hippel, Theodor Gottlieb von 7 n. 27, 101  
 n. 102
- Hobbes, Thomas 21, 21 n. 22, 33, 40, 50, 91  
 n. 53, 92, 105, 106, 116–19, 133, 145, 145  
 n. 5, 147, 148, 149, 166
- Höcheim, Karl August Joseph 159 n. 59
- Hölderlin, Friedrich 9 n. 35, 170
- Holtman, Sarah Williams 113 n. 7, 113 n. 10
- Hufeland, Johann Gottlieb 13, 17, 33–5, 38
- Hugo, Gustav 170–1
- Humboldt, Wilhelm von 52, 52 n. 60
- Hume, David 56, 57
- Hunter, Ian 4 n. 11, 165 n. 89
- international law 2, 14, 145, 145 n. 5, 148,  
 153–5, 157, 162, 164, 165, 166
- Jachmann, Reinhold Bernhard 7 n. 27, 11 n.  
 43, 56, 89 n. 47
- Jacobi, Friedrich Heinrich 20
- Jacobins 8, 39, 43–4, 79, 80, 102, 115, 119–20,  
 130, 134, 144  
 German Jacobins 10, 89–90, 96, 110, 150
- Jakob, Ludwig Heinrich 9, 10, 101, 169  
 political rights 40, 82, 96, 97, 100, 101,  
 105
- resistance and revolution 112–13, 114,  
 124, 124 n. 56, 125, 125 n. 58, 126,  
 127 n. 75, 131, 140

- right of nations 159, 161 n. 74, 165  
 Jay, John 104 n. 115  
 Jung-Stilling, Heinrich 7 n. 29  
 Justi, Johann Heinrich Gottlob von 18
- Kant, Immanuel  
 'An Answer to the Question: What Is Enlightenment?' 4, 16, 23, 26–8, 36, 100, 108, 122, 129, 135  
*Conflict of the Faculties*, 6, 64, 132 n. 99, 134, 135, 139  
 correspondence 4, 6, 7 n. 29, 10 n. 40, 33, 46–7, 56, 60–1, 76–7, 89 n. 47, 101, 123, 136, 137, 140 n. 135, 159  
*Critique of the Power of Judgment* 13, 16, 23, 26, 56, 78, 96–7, 160  
*Critique of Practical Reason* 10, 16, 23, 46, 56, 66, 151 n. 30  
*Critique of Pure Reason* 22–3, 32, 33, 37, 38, 50, 62, 68, 99, 103 n. 111, 105, 136, 139–40  
*Groundwork of the Metaphysics of Morals* 10 n. 40, 16, 23–5, 25, 33–4, 36, 57, 66, 78, 80  
*Handschriftlicher Nachlass*:  
*Moralphilosophie* 37, 52, 82 n. 7, 90, 92, 121, 134  
 'Idea for a Universal History with a Cosmopolitan Aim' 16, 23, 26, 28–31, 36, 151–2, 172  
*Lectures on Ethics*, 64, 66, 77 n. 151, 94, 141  
*Metaphysics of Morals, The* 2, 7 n. 29, 11–12, 47, 52, 63, 65–78, 98, 101–8, 114, 130–4, 132–9, 141–2, 147, 154, 162–5, 170  
*Naturrecht Feyerabend* 35, 36, 37, 52 n. 59, 121 n. 48, 154  
 'On the Common Saying: That May Be Correct in Theory, but It Is of No Use in Practice' 8, 9, 13, 39–40, 49–60, 63, 65, 68–9, 77–80, 82, 90–5, 97, 102–3, 105, 110, 112, 121, 123, 126, 130–1, 134–6, 139, 145, 151–2, 155  
 'On turning out books' 63–4  
*Religion within the boundaries of mere reason* 5, 56 n. 74, 65, 76 n. 179, 78, 138  
 'Review of Gottlieb Hufeland's Essay on the principle of natural right', 33–5  
 'Review of J. G. Herder's Ideas' 31  
*Toward Perpetual Peace* 11, 61–3, 69, 74, 77–8, 102–4, 131–2, 145, 149, 151, 152–65  
 Kiesewetter, Johann Gottfried 7 n. 29, 159  
 Klein, Ernst Ferdinand 76–7  
 Kleingeld, Pauline 3 n. 9, 144 n. 3, 146 n. 10, 161 n. 72  
 Korsgaard, Christine M. 113 n. 5, 131, 131 n. 94  
 La Boétie, Etienne de 128–9  
 Locke, John 21 n. 22, 73, 74, 118 n. 37, 122 n. 50, 141  
 Louis XIV of France 43  
 Louis XVI of France (Louis Capet) 42, 43, 133–4, 133 n. 102, 136  
 Luther, Martin 130 n. 92, 138  
 Madison, James 104 n. 115  
 Mainz Society of the Friends of Liberty and Equality 89  
 Mallet du Pan, Jacques 104 n. 113  
 Mendelssohn, Moses 50, 151  
 Metternich, Clement von 171  
 Montesquieu, Baron de 103, 158  
 Morgenstern, Karl 140 n. 135  
 Mornay, Philippe du Plessis 115 n. 18, 116, 116 n. 19, 116 n. 20, 133 n. 104  
 Morris, Gouverneur 83 n. 13  
 Möser, Justus 7, 8, 9, 12, 17, 27, 30, 32, 61, 62, 67, 169, 171  
 citizenship 80, 86, 87, 88, 93, 96, 108  
 conventionalism 17–19, 22, 39, 71  
 equality and freedom 13, 63, 44–5, 48, 53, 55–6, 58–9, 63, 70, 73, 75, 79  
 French Revolution 44–5, 49, 123  
 Kant's debate with 32, 59, 63–4  
 revolution 120, 123  
 Moser, Karl Friedrich von 20  
 Müller, Adam 171  
 Napoleon Bonaparte 171  
 Newton, Sir Isaac 37  
 Oelsner, Konrad Engelberg 11  
 original contract 18, 19, 53–4, 59, 63–4, 81, 88, 90, 102, 106, 121, 122, 124  
 Paine, Thomas 46, 97, 98, 104, 114, 131  
 permissive law 71, 72, 77, 79, 142, 154  
 Perreau-Saussine, Amanda 164 n. 85  
 Phaedrus 67 n. 136  
 Philonenko, Alexis 3 n. 10, 49 n. 46, 92 n. 57  
 Plato 32, 116 n. 24, 139, 140 n. 135  
 political rights see citizenship  
 Pocock, John 86  
 Pogge, Thomas 25 n. 35, 66–7 n. 131, 131 n. 94, 141 n. 142, 145 n. 9  
 Pope, Alexander 104 n. 113  
 Pörschke, Karl Ludwig 82, 96, 97, 98–9, 100, 101, 106, 130 n. 92  
 positive law 7, 25, 51, 67–8, 75, 113, 117 n. 30, 124, 125, 141, 148, 161, 170

- postulate of public right 74–5, 130–1  
 property 13, 19, 45, 53, 58–9, 70–4, 75–6,  
   79, 80–4, 87, 92–4, 97, 99–101, 105,  
   107, 146  
 Prussia 4, 5, 11, 40, 79, 90  
   bourgeoisie 5, 17, 19–20, 79  
   censorship 5–6, 8, 26–7, 140  
   law reforms 22, 76–77, 169  
   monarchy 6, 17, 20–1, 89, 119  
   nobility 17, 20–1, 48, 53, 75–6, 89  
   war 39, 62, 89, 148, 150–1, 153, 162  
 public sphere 4–6, 16, 91, 107, 129, 130, 169  
   late eighteenth century German 1, 4–10,  
   19–20, 41–8, 85, 120, 149 n. 21, 168–9,  
   172  
 Pufendorf, Samuel 18, 21 n. 22, 73–4, 86,  
   88, 106, 117 n. 29, 119, 138, 138 n. 125,  
   148, 153  
 reason 8, 22–3, 24–5, 26, 35, 39, 47, 50–1, 54,  
   60, 62, 66–8, 74, 76, 78, 79, 96, 107, 124,  
   126, 127 n. 76, 129, 136, 139, 141, 161,  
   168–9, 172  
   postulate of practical reason 71–2, 79, 151  
     n. 30, 151  
   public 4, 16, 27, 34, 108  
 rebellion 21, 43, 121, 128, 135, 142, 147  
 Rehberg, August Wilhelm 9, 18, 39, 55–6, 71,  
   78, 159, 169  
   citizenship 80, 87, 93, 95–6, 97  
   freedom and equality 13, 44–5, 46, 47, 48,  
   63, 70, 73, 75, 76, 77, 79  
 French Revolution 44–5, 168  
   Kant's debate with 57–9, 60–3, 67  
   revolution 120, 123, 142  
 Reinhold, Karl Leonhard 7  
 Reiss, Hans 30 n. 59, 63 n. 120, 113 n. 10  
 representation, political 4, 14, 42, 53, 80, 82,  
   83–4, 90–1, 91 n. 53, 102–3, 104 n. 15,  
   107, 116, 118–9, 132–3, 156, 160, 169,  
   172  
 republicanism 6, 20, 46, 46 n. 30, 102–3, 107,  
   110, 140, 146, 156, 164, 168–9, 172  
   democracy 2, 10, 83, 102, 104, 107  
   freedom 6, 7, 13, 15, 61, 62, 64, 124  
   Kant 62, 83, 95, 102–3, 104, 107, 110,  
   131–2, 134–5, 140, 146, 154, 156, 157–8,  
   159, 164, 169  
 Reubell, Jean Francois 144  
 revolution 10–11, 44–8, 55, 87, 96, 112, 114,  
   120, 123–30  
   French 1, 3, 5–9, 11, 13, 15, 16, 38, 39, 40,  
   41–8, 49, 54, 55, 74, 75–6, 79, 80–2, 85,  
   87, 89, 102, 114, 115, 119–20, 121–23,  
   124–130, 133–4, 133 n. 102, 135–6, 142,  
   144, 151, 158, 160, 168–172  
   Kant's rejection of a right of 2, 8, 14, 15, 27–  
   8, 39, 54, 112–4, 120–3, 130–6, 137, 142  
   Riedel, Manfred 81 n. 4, 88 n. 43, 92 n. 57,  
   93 n. 63, 95  
   right 47, 50, 128, 130–1, 137–8, 141, 170  
     concept 13, 36, 37, 49, 51–4, 55, 60, 63,  
     67–75, 126, 171–2  
     contrasted to virtue 9, 23, 26, 36–7, 65–6,  
     67, 170  
     cosmopolitan 3, 14, 154, 157–8  
     innate 15, 66, 70–1, 107, 110, 112, 124,  
     142, 168  
     natural 19, 33–6, 46, 48, 125, 130, 135, 136,  
     142, 143, 168–9  
     provisional 72–5, 77, 142, 159, 163  
     universal principle of right 37, 51–2, 53,  
     63–4, 68–9, 91 n. 53, 103, 114, 171  
   See also right of nations; postulate of public  
     right  
 right of nations 14, 36, 145–7, 151–8,  
   159–166  
   See also international law  
 Ripstein, Arthur 2 n. 4, 6, 69 n. 149, 71 n.  
   153, 103 n. 108, 113 n. 12, 141 n. 137,  
   141 n. 142, 146 n. 11, 164–5  
 Roman law 6, 69–70, 86, 89, 93, 106, 149  
 Robespierre, Maximilien de 10, 43–4, 62, 66,  
   78, 85, 97  
 Rosen, Allen D. 69 n. 149, 81, 108, 113 n. 10  
 Rousseau, Jean-Jacques 9, 11, 21 n. 22, 28, 45,  
   92, 103, 104  
   freedom and equality 41, 42, 45, 46, 48, 69,  
   73, 74, 83  
   general will 37–8, 72, 91, 104, 107, 141  
   influence on Kant 3, 8, 13, 25, 37, 59, 80,  
   102 n. 105  
   revolution 118, 119, 122, 124, 127–8,  
   131–2, 133  
   right of nations 146–7, 149–50, 152, 153,  
   154, 157, 158, 163, 165, 166  
   social contract 76, 82, 73, 106, 118  
 Saint-Pierre, Charles-Irénée Castel de 146–7,  
   149–150, 152, 157, 158, 165  
 Savigny, Friedrich Carl von 171  
 Scheidemantel, Heinrich Gottfried 117  
 Schelling, Friedrich Wilhelm 9 n. 35,  
   96, 170  
 Schiller, Friedrich 12, 52, 170  
 Schlegel, Friedrich 9, 10, 101, 114, 170  
   political rights 82, 82 n. 8, 96–7, 99–100,  
   101, 107  
   revolution 124, 124 n. 56, 126, 127, 127 n.  
   73, 128, 129  
 Schlözer, August Ludwig von 19–20, 43, 86  
 Schmalz, Theodor von 7, 8 n. 31, 93 n. 64

- separation of powers 14, 82, 86, 116, 121, 127, 164, 169  
Shaftesbury, Earl of 83–4 n. 13  
Sieyès, Emmanuel Joseph 11, 21 n. 22, 62, 76, 110  
citizenship 82, 83–4, 85, 87, 89, 97, 104–5, 106, 108  
freedom and equality 41, 42, 43, 54, 75  
revolution 118–19, 132, 133–4  
Skinner, Quentin 69 n. 149, 93 n. 64, 115 n. 15, 116 n. 26, 147 n. 15  
Smith, Adam 28, 109  
Sonnenfels, Joseph von 18  
sovereignty 2, 14, 102, 103, 169  
contrasted with dualism, 75, 92, 116–7, 122, 125, 147, 169  
popular 8, 9, 43, 76, 82, 83, 85, 89, 96, 116, 119, 120, 122–3, 124, 128, 129, 130, 132, 134, 141, 169  
state 2, 14, 21, 77, 92, 117, 119, 122, 131, 135, 137, 139, 144, 147, 154, 157, 162, 164, 166  
state of nature 14, 18, 34, 41, 73, 88, 114, 117, 118, 127, 129, 131, 145, 148, 149, 154, 159, 161  
Kant on 72–5, 121, 132, 139–42, 143, 146, 153, 155, 163, 164–5  
*Ständestaat*, see estate society  
*Sturm und Drang* movement 30  
Svarez, Carl Gottlieb 76  
Tacitus 119 n. 40  
Tafinger, Wilhelm Gottlieb 61–2  
Taubert, Gustav, ‘Everyone Reads Everything’ 1, 172  
Théremin, Karl 11  
Thermidorian reaction 62, 97, 115  
Thucydides 116 n. 21  
Tieftrunk, Johann Heinrich 12, 95 n. 69, 101  
political rights 96, 97, 98, 106  
resistance and revolution 127 n. 73, 127 n. 74, 127 n. 76, 140  
Vattel, Emer de 148, 149, 153, 163  
Vigilantus, Johann Friedrich 61, 141  
Virtue 16, 17–18, 21, 23, 24, 35, 41, 44, 48, 51, 62, 66, 77–8, 79, 81, 95, 98, 164  
contrasted to right 9, 26, 36–7, 65–6, 67, 170  
Vitoria, Francisco de 157  
Vorländer, Karl 5 n. 15  
Waldron, Jeremy 113  
Wedekind, Georg 89, 96, 110  
Wekhrlin, Wilhelm Ludwig 20  
Wolff, Christian 6, 13, 17, 18, 21–2, 23, 51–2, 67–8, 88–9, 106, 119, 148  
Wolffian school 17, 25 n. 38, 33, 36, 65–6, 86  
Wöllner, Johann Christoph 5  
Wollstonecraft, Mary 84  
Zedler, Johann Heinrich 85–6, 87–8