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Kant and the French Revolution[1]

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Abstract. Like the French revolutionaries, Kant defended individual rights and a republican constitution. That he nonetheless rejected a right of revolution has puzzled scholars. In this article I give an overview of Kant's rejection of a right of revolution, compare it to the German intellectual context, and use it to explain Kant's view of the events in France. In Kant's nuanced account of the revolution's two central phases, he refined a distinction between legitimate political transition and lawless popular rebellion.
Keywords: Kant, French revolution, Rebellion, Sovereignty, Rights.

[es] Kant y la Revolución Francesa

Resumen. Al igual que los revolucionarios franceses, Kant defendía los derechos individuales y una constitución republicana. Sin embargo, el hecho de que rechazara el derecho a la revolución ha desconcertado a los estudiosos. En este artículo propongo una visión general del rechazo de Kant al derecho de revolución, lo sitúo en el contexto intelectual alemán y me valgo del mismo para dar cuenta de la opinión de Kant sobre los acontecimientos de Francia. En su matizada reconstrucción de las dos fases centrales de la revolución, Kant establece una distinción entre la transición política legítima y la rebelión popular anárquica.
Palabras clave: Kant, Revolución Francesa, Rebelión, Soberanía, Derechos.

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Kant's rejection of a right of resistance and revolution has puzzled and upset readers for more than 200 years. By the outbreak of the French revolution in 1789 he was famous for a moral theory, which emphasized individual autonomy, and he had in several shorter essays described how moral autonomy best can be promoted within a state, which supports individual freedom and popular sovereignty. His defense of the general will as a test of justice signaled an adherence to Rousseau, whose values had powerfully influenced the French revolution of 1789. Yet, in the essay *Theory and Practice* from 1793 he concluded:

> Any resistance to the supreme legislative power, any incitement to have the subjects' dissatisfaction become active, any insurrection that breaks out in rebellion, is the highest and most punishable crime within a commonwealth, because it destroys its foundation. And this prohibition is *unconditional*, so that even if that power or its agent, the head of state, has gone so far as to violate the original contract and has thereby, according to the subjects' concept, forfeited the right to be legislator inasmuch as he has empowered the government to proceed quite violently (tyrannically), a subject is still not permitted any resistance by way of counteracting force. (Kant, 1793/1996, TP, 8, pp. 299-300).[3]

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3 References to volume and page number are to the edition of *Kant's gesammelte Schriften* by the German Academy of Sciences (Berlin, Georg Reimer; from 1990, published by Walter de Gruyter & Co). Translations are taken from the Cambridge edition of the works of Immanuel Kant. Abbreviations and sources: 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 University, 1996); MM: *The Metaphysics of Morals*, translated Mary Gregor, in *Immanuel Kant, Practical Philosophy*, edited by Mary Gregor (Cambridge University, 1996); Refl.: *Reflections on the Philosophy of Right*, in *Kant: Lectures and Drafts on Political Philosophy*, edited and translated by Frederick Rauscher (Cambridge University, 2020); 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*; PP: 'Toward Perpetual Peace', translated by Mary Gregor, in *Immanuel Kant, Practical Philosophy*.

Ludwig Heinrich Jakob, a contemporary 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' (Jakob 1796). A rejection of a right of resistance and revolution would seem to strip individuals of a moral responsibility to judge the government, and make them subservient to tyrannical government with no recourse. What happened to freedom?

Kant's unconditional rejection of a right of resistance has puzzled interpreters ever since and contributed to an image of Kant, which Philip Pettit recently has given new currency. Kant, so Pettit claims, lacks a concept of "contestatory citizenship" (Pettit 2014). This is what distinguishes not just Kant but German republicanism in general, from the other republican traditions. Pettit contributes to cementing a classical image of German political philosophy as particularly authoritarian. By contrast, I will argue that Kant's rejection of a right of revolution was founded on respect for the rule of law and on a constitutionalism that sought to incorporate popular sovereignty within a legal framework. I will proceed in three steps. First, I present Kant's view, second, I contrast it to Wolffian natural law theory and to republican theory, and, finally I will show how this can help us understand his response to the French revolution.

Kant's rejection of a right of resistance

To start with, I will briefly outline Kant's argument, focusing on its basic features. This quote encapsulates his view:

> 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. (Kant, 1793/1996, TP, 8, p. 299).

As usual, for Kant a *formal* principle determines an action's permissibility. What matters morally is not the *material ends* a revolutionary seeks to achieve but whether his means to reach the end can be universalized. The question, then, is whether the following maxims could be made universal and established in the form of public law: "whenever I find a law unjust, I may resist it", or "if the government is tyrannical, I may seek to overthrow it by force". If I want to adopt either of these maxims, it must be possible for everyone else to adopt them as well. Kant's answer is simple: it would lead to the dissolution of the civil constitution. This is not an empirical claim about the actual destruction of society, but a moral claim that the maxim is incompatible with a *legitimate* juridical condition. Let us bring out formally this argument.

Kant's major premise is that an act is only permissible if it is compatible with an ideal juridical condition, a *Rechtszustand*. The question is not whether an act is *in fact* permitted in an actually existing legal system. The French *The Declaration of the Rights of Man and the Citizen* of 1789, and the constitution of 1793, permitted a right of resistance, but that does not mean it is permitted in a moral sense. To Kant, there are two basic steps to identifying this ideal juridical condition. The first is the principle of justice, which he calls the Universal Principle of Right. "*Right* is the limitation 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." (Kant, 1793/1996, TP, 8, p. 290). This principle essentially says that freedom of choice is to be limited only by the equal freedom of choice of others. The principle is formal because it only specifies that persons must act in such a way that their choices become possible simultaneously, and not material because it says nothing about the ends people should pursue. Public authority should not be concerned with the goal people have in their lives, only with the means they use in obtaining the goals in so far as they affect others' chances of pursuing their goals. Underlying is an innate right to freedom, understood in the republican sense as the independence from the choices of others (as Ripstein (2009) emphasizes in his influential work).

Yet, the Universal Principle of Right is indeterminate about many rights and duties. What equal freedom requires – in terms of private rights to property, contracts, and family relations, and the public rights of a state, must be developed through law. No individual could do this on his or her own outside of a juridical condition because no-one has the right privately to enforce their views on others. Doing so would be to establish an asymmetry, where everyone would be dependent on the arbitrary choice of a private person making the decision. Taking a cue from Rousseau's version of the general will, Kant argues that no unilateral will can decide on justice, right and wrong can only legitimately be established by an *omnilateral* will, which only comes into being with public legal authority in the state. There is therefore – through a postulate of public reason – a duty for those who unavoidably interact to exit the state of nature and enter a state. Only in the state can persons interact consistently with equal freedom. It follows an obligation to obey the law, because this is the formal condition for the external freedom, which everyone is entitled to by nature. Just like Rousseau had argued, persons give up their right to decide to a public authority and are not at liberty to decide when to obey or not. It is worth noting that for Kant the state does not arise through an actual social contract because no contract could be (legally) binding prior to the state. The social contract for Kant is merely an ideal, which establishes justice as that which individuals in principle cannot reject.

The minor premise in Kant's argument against resistance is that a maxim to resist the state means to make public legal authority conditional on unilateral choice. It is to not submit one's personal judgment to public authority. It does not mean that a person is wrong on substance and that the government is always right. A government may well enact unjust legislation or decrees, and a private person may well have a better understanding of what equal freedom requires. Yet, the appropriate way to correct the system is to approach it from within, through existing procedures of reform. Importantly, Kant insists on the right to free expression specifically for the sake of informing government of its errors (Kant, 1793/1996, TP, 8, p. 304). Using private force, by contrast, is to not fully abandon the state of

nature. As Christine Korsgaard has written, resistance out of benevolent motives is paternalism, because it is for a private person to impose his view on everyone else in the state (Korsgaard 1997). To refuse to abide by a legal system is to 'do wrong in the highest degree', which is Kant's way of saying that it is not wrong against a particular person but wrong against law itself, which is the precondition for everyone enjoying freedom (Kant, 1793/1996, TP, 8, p. 301; Kant, 1797/1996, MM, 6, p. 308; Kant, 1795/1996, PP, 8, p. 382).

Revolutionaries often claim to not express a private view but to represent the people. Yet, how can that be established? Normally, the general will is established and becomes binding through an omnilateral procedure in the legal system. In Kant's view, there is no way of identifying the people's will except through the union that arises through a legislative process with a juridical condition, among other reasons because there is no way prior to law to identify who the people is or who speaks for it. An alternative route for the revolutionary is to set up a competing legal structure. Yet, the result is two sovereigns who claim authority over the same territory, which requires a third sovereign to arbitrate between them, which Kant, like Hobbes, showed leads to an infinite regress (Kant, 1793/1996, TP, 8, p. 300) (cf. Hobbes 1651/1996, p. 224).

The conclusion, therefore, is that no individual or people can have the right to resist its own public legal authority. By contrast to the classical European resistance theory of the Monarchomachs, there is no actual social contract, which resisters could claim as the legal justification for their resistance, and by contrast to John Locke's influential justification for revolution there is no set of natural law principles that they could unilaterally enforce against the government. Is there no other way for Kantians to justify revolution? It would be tempting, of course, to argue that revolution should nonetheless be permitted when its consequences may be very beneficent. It is tempting to think that a short act of injustice could be justified by its good consequences, measured by Kantian values such as freedom and enlightenment. Yet, on Kant's view, we are never entitled to set material ends ahead of formal principles. Acts that cannot be justified by the Universal Principle of Right cannot be justified by reference to good material outcomes simply because the ends do not justify means.

Natural law and republican theories of resistance and revolution

Having presented the rudiments of Kant's view, I want now to compare it to German Eighteenth Century defenses of a right of resistance and revolution. We can distinguish between natural law theory and broadly republican theories, the former inspired by Christian Wolff, the latter by Rousseau.

The first type of resistance was maintained by proto-utilitarian natural law theorists in the Wolffian school including Gottfried Achenwall, Daniel Nettelbladt, H. G. Scheidenmantel, and Ludwig Höfner. The main contrast to Kant was that they considered the government's legitimacy to rest on it providing material benefits. Christian Wolff had argued 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. 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 (Wolff, 1720/2003, p. 338).' The state's task is to enforce this natural law, thereby making subjects into more perfect beings. Where to Kant justice is defined by a formal principles about the compatibility of free choice, to Wolff justice is to promote a particular end.

Following Wolff, Achenwall considered the state's purpose to be to secure public prosperity, defined in economic terms such as fostering a large population, thriving agriculture and commerce, schools and an expansive infrastructure. The ruler's legitimacy, and the people's obligation to obey, is derived from this duty (Achenwall, 1763). His principles of justice are entirely material and they simply follow the ends people individually and collectively wish to achieve. In order to reach these ends, individuals band together and create society and a government. This happens through two separate contracts. First people unite through a social contract, and create society in the first place. At a second stage, the people, now existing as a society, set up a government. This too is done contractually, through a 'contract of subjection', when the people promise its obedience to the ruler in return for the ruler's job in securing public prosperity. By contrast to Kant, these are actual contracts, not mere thought experiments, and they have the result of making obedience conditional. A ruler who fails to pursue public prosperity loses his authority. The paradigmatic case is the tyrant who enriches himself at the public expense. As a consequence, the people is entitled to resist the government in order to bring it back to the pursuit of public prosperity, or to withdraw from the contract of subjection and dethrone the monarch (Achenwall, 1763, §204). Technically, when the people unilaterally withdraw from the contract of subjection they enter the state of nature *between* the ruler and the subjects. Individuals themselves are not returned to the state of nature, because of the social contract keeping them together. In this particular aspect, Achenwall's view is similar to that of John Locke.

Achenwall's theory makes resistance into a mechanism of political accountability, and an aspect of regular politics. To Kant it would ensure continued disorder because the legal system would not have the final say in disagreements and conflicts. There is a further problem caused by the fact that happiness is an unstable principle for a polity: "The sovereign wants to make the people happy in accordance with his concepts and becomes a despot; the people are not willing to give up their universal human claim to their own happiness and become rebels." (Kant, 1793/1996, TP, 8, p. 302). It is a simple fact of life that we disagree about ends, and if the state's legitimacy is tied to reaching ends we will also disagree about the legitimacy of the state. Thus, to Kant the proto-utilitarian natural law theory was a recipe for continued disorder and legal instability.

Kant was more friendly to a competing tradition of resistance, which developed in the wake of Rousseau's support for popular sovereignty, and which was inspired by Kant's moral theory as well. We can call it the German republican tradition, since its basic principle was an individual right to freedom, understood as independence from private choices of others. These republican authors included Ludwig Henrich von Jakob, Johan Benjamin Erhard, Johann Adam Bergk, Karl Heinrich Heydenreich, and Gottlob Fichte. Following Rousseau and Kant, legitimate authority must be such that it does not express an arbitrary private will, but rather establishes the general will. The state's purpose is to protect the members' right to freedom with united force. The republicans strenuously opposed the paternalistic eudemonism of enlightened absolutism, as Fichte empathically wrote: "No, prince, you are not our *God*. From *Him* we expect happiness; from *you* the protection of our rights. You should not be *kind* to us; you should be *just*." (Fichte, 1793/1996, p. 123).

On this view, too, obedience is *conditional*. If law is disconnected from this moral foundation in individual freedom it carries no obligation, as Erhard wrote: '[w]hat contradicts reason can be no law for humans, it is the speech of a fool or the threat of a robber' (Erhard 1795/1970, p. 16).[4] Tyrannical rule dissolves the state and therefore obligation to obey. The consequence is that the people can resist the ruler, who strictly speaking no longer *is* a ruler. As Karl Heinrich Heydenreich wrote: "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." (Heydenreich, 1794, p. 154). By contrast to Achenwall, the people are not abandoning a legal commitment to obey stipulated in a 'contract of subjection', the entire legal edifice of society is dissolved and the united people take charge and can craft a new constitution. They do so outside of any legal framework, but in what Erhard calls the court of conscience, and they do so according to moral criteria. For that reason, they do not technically contest Kant's claim that no one may disobey the state or unilaterally use force to overturn it, because the claim is that the state is dissolved. But by contrast to Kant, they believe that the people can act collectively to get rid of the old regime and set up a new one. The challenge, as they saw it, was anarchy, and the solution to the collective action problem was what they considered a Kantian solution: enlightenment. A population that is made aware of its moral entitlements will be able to act in concert outside of legal structures.

The French revolution

Considering that Kant rejected a right of resistance and revolution it would seem that any transition from an authoritarian regime would have to be by general legal procedures and authorized from the top, as Kant indeed writes in *Conflict of the Faculties* (Kant, 1798/1996, CF, 7, p. 92). Rulers have a non-enforceable duty to introduce republican government. But would not that lead to a situation where subjects of despots can do nothing? As long as they cross the threshold to a juridical condition it would seem that subjects have nothing to do apart from petitioning the ruler, using the public sphere, which Kant referred to as the palladium of the people (Kant, 1793/1996, TP, 8, p. 304). Individuals may also seek to withdraw from the head of state's dominion (Kant, 1797/1996, MM, 6, pp. 331, 371). Many have noticed that this seems to lead to the conclusion that Kant would have to deny the legitimacy of the French revolution. This would seem strange, considering the often noticed closeness between Kant's ideals and those of the revolution (Vorländer 1912; Fehér 1990). Like the revolutionaries, Kant defended freedom, human dignity, and a republican constitution, he supported the sovereign's right to put an end to noble orders and the church, and he followed closely the citizenship rules that became established in France. He even admitted that his own thinking depended to some extent on the institutional innovations set in motion by the revolution, and used that as an explanation for why his public right section was underdeveloped: so much was still going on in the political sphere that it was wise to see developments before publishing on the topic (I have written more about that in Maliks (2022)).

The standard view in scholarship holds that Kant defended the revolution's ends, but not its means to the end. That view is broadly true, but lacking of nuance since it does not distinguish well between the complicated aspects of the revolution. Although philosophers, even commentators on Kant, often talk about the French revolution as one event, to Kant, as to any observer in the 1790s, it was a series of events. Kant used these events as an example to illustrate political transition. Kant seized on two of those events in particular: the transfers of sovereignty in 1789 and 1792. In both cases, the motive force was popular sovereignty, a people's right to create its own constitution. The first case, however, was an example of a proper constitutional transition in line with that principle, while the second was an example of the perversion of it. The former was what Kant called a "metamorphosis" a transition of an existing constitution, whereas the latter was a "palingenesis", a destruction of a constitution and return to the state of nature (for a discussion of these concepts, see Williams, 2003). Let us look at these in turn.

The first example is the transition of supreme authority from Louis XVI to the National Assembly in June 1789. Kant uses the example to illustrate what happens when a head of state decides to let itself be represented by a national assembly. A monarch, for example, might decide no longer to be the nation's representative but to delegate that task to an assembly. The national assembly will then speak on behalf of the community, its laws will count as the nation's united general will and the monarch will cease to be sovereign. This is exactly what Kant thought happened in the spring of 1789, when Louis XVI called the Estates General to give advice on fiscal

[4] Author's translation.

matters, an assembly which subsequently evolved into the National Assembly and took over sovereign authority. Kant is of course correct that Louis XVI did not intend to abandon power, but in the standard historical account he was forced to do so by renegade representatives from the Third Estate in a violent revolution. Kant's argument, in brief, is that since the sovereign gave the assembly the right over fiscal matters he must also have given it the right to government in general, since that presupposes the authority to decide on matters like war that require decisions on public spending.

> 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 to the people to take this burden on itself and distribute it as it saw fit [*daß er es dem Volk übertrug, diese Last nach dessen eigenem Gutbefinden selbst zu übernehmen und zu vertheilen*]; for then the legislative authority naturally came into the people's hands, not only with regard to the taxation of subjects but also with regard to the government [*Regierung*], namely to prevent it from incurring new debts by extravagance or war. The consequence was that the monarch's sovereignty [*Herrschergewalt*] wholly disappeared (it was not merely suspended) and passed to the people, to whose legislative will the belongings of every subject became subjected. (Kant, 1797/1996 MM, 6, p. 341).

Kant's preparatory notes indicates that he thought of the assembled people as having been called not just to give advice, but to guarantee (*verbürgen*) the public debts with their property (Kant 1760-1804/2020, Refl, 19, p. 595). He deduces that they must therefore put themselves in the position of someone who has full rights to dispose of their property, hence sovereign. This argument is rooted in Kant's theory of the sovereign as the supreme proprietor (*dominus territorii*), the public possessor with 'the right to assign to each what is his', that is, to decide on property rights (Kant, 1797/1996, MM, 6, p. 323).[5] The argument, then, is that by giving the people the right to decide on fiscal matters, Louis XVI put the people in a position where they could declare themselves sovereign, which historically is what the leaders of the Third Estate did on June 17, 1789, when they refused to accept the old orders and claimed to be the National Assembly.

This argument is confusing for two reasons. First, it was not *the people* but the Estates General that Louis XVI convened. This was the ancient three orders where the people only made up one third, and where the nobility and clergy had veto powers since in voting by orders the two (which had shared interests in maintaining the old regime) outweighed one. Second, the monarch did not allow the estates general to decide, rather he asked them for advice. The king's convocation letter in April 1789 merely requested his loyal subjects' counsel and assistance (*nous conceiller & nous assister*) (Louis XVI, 1789). One might easily think Kant was engaging in wishful thinking, or in ideological justification of a party whose conclusions he agreed with (and who had regained power by the time Kant wrote *The Metaphysics of Morals*), (for these interpretations, see Henrich, 1993, p. 111 and Losurdo, 1983).

There is a plausible alternative explanation, however. Possibly Kant was specifically commenting on Louis XVI's Séance Royale of 23 June, where the monarch allowed the three estates to deliberate together on a limited topic (taxation) and for a limited time (one session). In the Séance Louis XVI stated that no money should be borrowed without the consent of the Estates-General, and yet said that none of their decisions could have the force of law without his agreement (thus claiming veto power). In this compromise the monarch made several errors that all amounted to the false idea that sovereignty can be divided: in scope, in time, and between two parties. This flew in the face not just of Kant's theory of sovereignty, but of the official doctrine of the French monarch's sovereignty, which (from Bodin to Bossuet) relied on the King being the sole representative of the people. Once the Estates-General had been tasked with representing the people, as they did when they were given the authority to decide on fiscal matters, the monarch could no longer claim to represent the people. As Kant writes:

> Thus the misfortune of the king comes directly from his own sovereignty, after he had once allowed all the people's deputies to assemble, then he was nothing; for his legislative power was founded only on his representing the whole people. (Kant, 1760-1804/2020, Refl, 19, p. 596).

When the people, through the agency of the Third Estate, took sovereign authority they merely drew the conclusion from this arrangement. Having been summoned to reform the state, they had the right to take on sovereignty themselves (Kant, 1760-1804/2020, Refl 19, p. 582). Although this was not a revolution, because authority was transferred without a return to the state of nature, it was far from a perfect transition. Faced with a defiant Third Estate, and the prospect of resistance, Louis XVI may not have had much of a choice. Yet, this metamorphosis differed in significant ways from the lawlessness of the events in 1792-1793.

The second example of transition was through popular rebellion. It was against Louis XVI, by then a constitutional monarch, in 1792, including his subsequent trial and execution in 1793. Kant uses the events to illustrate the wrong of revolution and of punishing a head of state. The events started unfolding on August 10 when radical factions accusing Louis XVI of plotting counter-revolution stormed the Tuileries Palace, imprisoned the king, abolished the National Assembly, and proclaimed the republic. Subsequently the former monarch was judged and executed despite his legal inviolability according to the constitution of 1791. Kant zeroes in on the trial and execution of the monarch, arguing that although an attempt was made to present it as a formally correct procedure, it was in fact just

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[5] The sovereign's authority over fiscal policy justifies the abolition of the property rights of the nobility and the Church, measures that echoed decisions of the French National Constituent Assembly on August 4 of 1789.

political justice: the proscription of an enemy. The rebels did this because they (rightly) considered the former monarch a threat and want to safeguard themselves against counter-revolution. There are two violations here: first they overturn the principles for the proper relation between a sovereign (constitutional) monarch and the people

> so that violence is elevated above the most sacred rights brazenly and in accordance with principle. Like a chasm that irretrievably swallows everything, the execution of a monarch seems to be a crime from which the people cannot be absolved, for it is as if the state commits suicide. (Kant, 1797/1996, MM, 6, p. 320).

In maintaining that the people can judge a sovereign they uphold a principle, which we have seen, is incompatible with a juridical condition, hence they kill the state. The second violation is to instrumentalize law for the lawless purpose of killing a sovereign, which is "worse than murder, since it involves a principle that would have to make it impossible to generate again a state that has been overthrown." (Kant, 1797/1996, MM, 6, p. 322). It would have been better, Kant thinks, simply to execute the monarch with no legal pretense and rather to seek the excuse of a right of necessity.

Kant's verdict on the events after 10 August 1792 was based on his rejection of a right of resistance, itself based on the doctrine of sovereign inviolability. That theory precludes legal rights against the sovereign and denies any claim of a moral right to represent the people against the head of state, who himself represents the united general will. Unless those basic premises of the civil condition are respected, the kind of political justice that took place in Paris in the late autumn of 1792 will follow. The delegates' attempts to hide their political justice under the veneer of a legal process only made matters worse, because it meant they founded the republic on a principle that rejected the supremacy of public legal authority. They built the new state on a principle that guaranteed ongoing instability – something that became very clear in the century of revolutions that followed in France.

Kant's studies of the 1789 reform and the 1792 rebellion represented his attempts to understand the nature of popular sovereignty and how persons acting together could establish republican government. What the events of 1789 and 1792 have in common is the protagonists' attempt to justify their acts by claiming to represent the people. This principle of popular sovereignty was entirely in line with Kant's foundational idea that freedom can only be united with authority within a constitution that represents the united general will. Kant used his theory to interpret and evaluate two very different uses of the principle. Sieyès pushed through his constitutional reform in 1789 by denying the legitimacy of the old estates, and founding legitimacy on the nation acting through a representative assembly. The 95 per cent of society who were commoners were the backbone of the nation, and the nobility and clergy mere parasites. The claim to represent the nation was formulated in a forum established for just that purpose by the existing sovereign by means of elections. Danton and Robespierre also claimed to act on behalf of the nation against a treasonous monarch in the 1792 rebellion, yet they stood at the helm of a power grab by parts of the Paris commune, directly opposing the sovereign. Kant asserted that their claim to act in the name of the people was incoherent, because the people could only act through the existing institutions that were lawfully established for that purpose. The popular leaders of the insurrection had no standing to challenge the National Assembly, and abandoning the principle of sovereign immunity only entangled them in contradictions.

Conclusion

Kant's rejection of a right of resistance was primarily an argument against the claim that the state's legitimacy relies on providing material benefits and that it relies on a contractual agreement. In this regard, he was arguing against Achenwall and other defenders of enlightened despotism. Yet, it also expressed a rejection of the idea that the people can act spontaneously and with legally binding effect outside of a state. In this regard, Kant expressed skepticism to radical defenses of popular sovereignty, such as among some of the republican authors and among the radicals during the revolution in France. Clearly, he was worried about the potential for paternalism among factions who seek to destroy an imperfect yet functioning legal order for the sake of furthering freedom.

Kant is concerned to ward off the possible interpretation of his moral theory to the effect that we individually or collectively may act against a legal structure by setting up a set of natural moral laws against it. Freedom can only be preserved, he argues, if claims to right or wrong are mediated by institutions of law, if not they become a new source of inequality and domination, but in this case by the revolutionary agent who unilaterally (but perhaps claiming to represent the people) smashes a functioning legal system and replaces it with his subjective view of right and wrong. This does not mean that anyone who claims to be a ruler, and who controls the state's coercive apparatus is legitimate, but it does mean that an existing institutional structure cannot be set aside by anyone appealing to superior insight into morality. Kant's lesson is that in politics, the unilateral appeal to morality against the law, while it sounds attractive, can be used for domination.

Philip Pettit was of course correct to point out that Kant has no theory of legitimate resistance to the state, and if that was the standard of a laudable "contestatory citizenship", then Kant would indeed lack it. But while there is no room for "contestatory citizenship" in the sense of violent resistance, there can of course be public contestation of authority in two different ways. First, the public sphere can for Kant take this function. The informal public sphere is the site where people express their views on the government and Kant explicitly insists that freedom of expression can serve to hold rulers accountable. Second, the formal public sphere, in the form of the legislative assembly can also contest and resist the initiatives of the government. In the *Metaphysics of Morals* Kant's claim is that legislators who do not oppose the government from time to time fail to do their job in protecting the people's rights. Both

processes were at play during the French revolution. While instigated by Louis XVI and therefore a "top down" process, it was driven forward by the people acting through regular channels.

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