

CHAPTER NINE

JUSTICE AND REVOLUTION IN KANT'S POLITICAL PHILOSOPHY

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Kant was a forceful defender of representative government, political freedom, and the inherent dignity of all persons. Kant thus sympathized with the progressive forces in the Glorious Revolution of 1688, the American Revolution, the French Revolution, and the Irish attempt to achieve independence. Indeed, Kant maintained that the enthusiasm experienced by the spectators of the French Revolution constituted evidence of the fundamental moral disposition in human nature. Nonetheless, an absolute prohibition on revolution is at the very heart of Kant's *Doctrine of Right* in his *The Metaphysics of Morals* (MM).¹ Kant's opposition to even progressive revolutions is clearly puzzling. In defending the Rights of Man against violent tyrants and despotic power, the counter use of force and violence is widely recognized as a legitimate means of last resort. When Nelson Mandela refused to renounce

¹ Immanuel Kant (1797), *The Metaphysics of Morals*, abbreviated (MM), and translated by Mary Gregor (Cambridge, 1991) and included in *Practical Philosophy* (Cambridge Edition of the works of Immanuel Kant, 1996). Parenthetical references will be provided for this work as well as Kant's *Groundwork of the Metaphysics of Morals*, abbreviation (GMM), trans. H. J. Paton (Harper & Row, 1964/1785) and Kant's *Perpetual Peace and Other Essays*, trans. Ted Humphrey (Hackett, 1983), abbreviation (PP) for the essay "To Perpetual Peace: A Philosophical Sketch" (1795) and (TP) "On The Old Proverb: That May Be True In Theory but is of No Practical Use" (1793). Page numbers refer to the Prussian Academy edition, which are also provided in the above translations (*Kant's gesammelte Schriften* [Berlin: Preussische Academie der Wissenschaften, 1900-1942]). In addition to Mary Gregor's translation of Kant's *Metaphysics of Morals* (Cambridge, 1991), I also rely on John Ladd's earlier classic version. See Kant, *The Metaphysical Elements of Justice*, translated by John Ladd (Bobbs-Merrill, 1965 & 2nd edition Hackett, 1999).

revolutionary actions as a means to ending South African apartheid, the “enthusiasm” and support from distant people from around the world testified once again to the “moral disposition” in humanity. But was Mandela in fact wrong to hold that he, and all people, may legitimately use force to resist violent and repressive state power, and thereby defend their basic human rights? Surely, it is at least morally permissible to defend oneself and others too, when basic rights are threatened. Why then did Kant, despite applauding the sentiments of sympathy for progressive revolutions, condemn the actions of the revolutionaries?

Kant’s stringent and seemingly reactionary conclusion has surprised Kant’s readers for generations. According to Kant, the people must endure even “the most unbearable abuse of supreme authority” (MM 320). It does not matter how unjust or repressive a government may be, there is no right on the part of the subjects to revolt. Furthermore, his opposition to the right of revolution was no mere passing opinion. It appears in all of his major discussions of justice and Kant sticks to his position even in responding to a critic challenging the consistency of his position. One would thus expect Kant to have good, if not sound, grounds for his conclusion.

Given the wide ranging influence of Kant’s moral and political theory, we should discover the deeper basis for Kant’s surprising conclusion. In particular, the apparent conflict between Kant’s commitment to individual rights and his doctrine of obedience to thoroughly despotic states calls for a detailed explanation and a clear resolution. Most essays, on Kant’s theory of revolution, focus on the tension between Kant’s sympathetic discussion of the French Revolution and his prohibition on revolution. Although this tension is of interest, I shall focus on the apparent conflict within Kant’s theory of justice itself: Given Kant’s spirited defense of representative democracy, of the constitutional division of powers, of the political freedom and equality of persons, and of moral autonomy (that is, the imperative to rationally self-legislate the maxims of one’s action) what are we to make of Kant’s explicit and repeated insistence that civil rebellion is never justified? Since Kant agrees that actual states are often not only imperfect but also corrupt or despotic, this seems to imply that we have a duty to obey, or at least endure, illegitimate civil laws. Indeed, the actual executor of supreme coercive power may act in ways that are directly contrary to the ends of justice. Are we really morally obliged to tolerate state power when it is used to enforce systematic injustice?

In the first and second parts of this chapter, I reconstruct Kant’s position. We see how Kant’s justification of property and civil society entails a specific interpretation of his absolute prohibition on revolution. In

particular, we see that the prohibition on revolution is part of a general prohibition on the individual use of coercive means to promote individual ends.² In the third part, I turn to a critical analysis of Kant's absolute prohibition on rebellion. In the end, I defend Kant's conclusion that one may never rebel against a civil state but, nonetheless, I argue that Kant is mistaken in taking this to imply that we must endure the powers that be. We should not use violence to reform imperfect civil societies but awesome power alone does not transform a mafia into a legitimate government. Indeed, when state power is systematically used to exclude some for the benefit of others then it is simply Lawless organized power. In such a case, morally speaking, we are confronted with an unjust state of war, not a civil society. I argue that there is an unconditional duty, which is based on the basic principles of Kantian justice, to resist the Lawless powers that be, and to strive to bring forth, even by violent means, a true civil society.³

² In addition to his main argument for the prohibition on revolution, Kant raises other objections to revolution. Most prominent is Kant's claim that the principle of publicity "solves with utter ease" the question of the legitimacy of rebellion (see PP 382). The explanation that follows this bold claim is complex, overly compressed, and not very convincing. I leave this argument aside and I also do not assess Kant's more pragmatic arguments against violent revolution.

³ Kant's prohibition on revolution has inspired many responses. In one of my favorite responses, Beck claims that Kant believed that the duty to fight injustice is an imperfect duty and he thus argues that Kant's views on revolution are simply one more example of Kant incapacity to deal with conflicting duties (see L.W. Beck in "Kant and the Right of Revolution" in *Essays on Kant and Hume*; Yale, 1978). On the view here defended, Beck is mistaken in treating the Kantian duty to rebel as merely an imperfect duty. Leaving aside the difficulties with the perfect/imperfect distinction, the Kantian right of rebellion is based on considerations of justice. For Kant, justice involves duties which can be coercively enforced and (allegedly) all such duties are perfect duties. It has also been argued that Kant's positive statements about particular revolutions are part of his natural anthropology (and not part of his practical philosophy). I am sympathetic to Thomas Seebohm's use of the distinction between anthropology and justice to resolve the conflict between Kant's theory of justice and his sympathies for the French revolution (see Thomas Seebohm "Kant's Theory of Revolution" *Social Research* 48:557-587, 1981). I argue, however, that, in addition to being significant for natural anthropology, progressive revolutions are also required by considerations of justice. H. S. Reiss recognizes that Kant's theory of justice itself provides a justification for revolution (see "Kant on the Right of Rebellion," *Journal of the History of Ideas* 17: 179- 192, 1956). In particular, Reiss focuses on Kant's optimism about historical progress, and he objects to Kant's position on the inevitable progressive force of free discussion. Reiss does not address what I take

I- Kant's Theory of Justice

Kant's prohibition on revolution is based on his theory of justice. Although I cannot here reconstruct Kant's elaborate theory of justice, four central points are necessary for understanding Kant's conclusion: first, the theory of justified coercion; second, the duty to make property possible; third, the duty to enter into a civil society; and fourth, the right to use violent means to bring about a civil society.

First, under what conditions can one legitimately use force or threats of force to control the conduct of others? According to Kant, we may legitimately use coercion only in response to the unlawful conduct of others. We cannot, of course, force people to be good but we can force them to act as they ought to act; that is, even though we cannot coerce internal motives, we can coerce external actions. The actions which are done under the threat of coercion are described by Kant as externally legislated. In contrast, actions which are done because of our inner motives are internally legislated. For Kant, principles of justice are simply the body of external laws, that is, the laws that can be externally legislated (MM 229).

Since the principle of all legitimacy is the categorical imperative (that is, "act only on that maxims through which you can at the same time will that it should become a universal law") external laws governing actions must be possible universal laws. Justice (Right) thus involves "the sum of the conditions under which the choice of one can be united with the choice of another in accordance with a universal law of freedom" (MM 230). The universal law of justice, the categorical imperative of justice, is thus: "so act externally that the free use of your choice can coexist with the freedom of everyone in accordance with a universal law" (MM 230-31).

If an action is permissible, that is, compatible with universal lawful freedom of action, then it is also legitimate to use coercion against anyone preventing the permissible action. As Kant explains,

to be the central issue of the relationship between state power and political exclusion. The author that comes closest to the view here defended is Sarah Williams Holt in "Revolution, Contradiction, and Kantian Citizenship" in *Kant's Metaphysics of Morals: Interpretive Essays* edited by Mark Timmons (Oxford 2002). Holt contrasts Kant's position with Hobbes' prohibition on rebellion and emphasizes the different conceptions of citizenship and equality in the two approaches. From this different starting point, she also concludes that Kantian justice may sometimes justify violent revolutions.

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 hindering 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 it ... one can locate the concept of Right directly in the possibility of connecting universal reciprocal coercion with the freedom of everyone (MM 231-32).

Justice involves the authorization to use coercion to promote lawful freedom.

The next obvious question involves the nature of lawful freedom. Kant apparently takes it to be obvious that intrinsic violence, violence for its own sake, is a violation of lawful freedom. Even in a state of nature, maxims of self-defense are permissible (MM 307 and 312). Similarly, if you wrestle an unowned apple from my hand you attack my lawful freedom simply by attacking my hand (MM 250). Thus, even if there was no right of private ownership, acts of violence and of physical force would be impermissible. Although Kant does not explicitly say so, we may conclude that these actions are direct violations of justice and do not depend on civil society for their legitimate external enforcement. In this context, we too shall assume that murder and mayhem directly violate the constraints of justice.⁴

The controversial questions of justice, however, do not involve the illegitimacy of murder and violence. The core of legal justice involves property claims and contracts. Kant maintains that property and contracts both involve the agent's legitimate authority over something external; namely, either the possession of external things or the performance of actions by others (MM 247-248).⁵ In order to simplify matters, I will focus on property rights in particular. We have just seen that justice involves the enforcement of lawful freedom. Since property rights extend the agent's authority to external things, we need to uncover the relationship between legitimate property claims and lawful freedom.

Specifically, how can it be permissible for one person to claim a previously unowned object as his or her own? In claiming an object as

⁴ Kant says very little about murder and violence and it is not at all obvious how the universalizability test should handle such cases. For an excellent discussion of this problem see Barbara Herman, "Murder and Mayhem: Violence and Kantian Casuistry" (in *The Monist* vol. 72 no. 2, 1989; pp. 411-431 and reprinted in *The Practice of Moral Judgment*, Harvard 1996).

⁵ Kant includes women and servants as a type of property but it can be shown that this claim is inconsistent with his theory of property and his larger moral theory.

mine, since all others can no longer use the object, I thereby restrict their freedom. Furthermore, since it is impossible to secure the consent of all other rational beings, private acquisition restricts the freedom of others without their consent. If private ownership is legitimate, then it places all others under an obligation to respect my claim. It follows that my act of acquisition creates an obligation for all others without their consent. In general, however, one cannot incur an obligation without doing something. The acquisition of property and the resulting restriction of others' freedom thus must be justified. How can a unilateral act of my will generate an obligation for all others?

This brings us to the second and third points listed above: For Kant the justification of property rights and of civil society is one and the same: it is a duty to act so that private ownership of things is possible and this entails a duty to enter into a civil society. Briefly, Kant argues, I believe successfully, that it is necessary (that is, a demand of practical reason) that it be possible for external objects to be used and possessed by finite rational beings (MM 246-252). The juridical postulate of practical reason states "it is a duty of Right [of justice] to act toward others so that what is external (usable) can also become someone's [property]" (MM 252). But, as we have just seen, the acquisition of property restricts the freedom of others without their consent and a unilateral restriction of others' freedom is generally prohibited by the universal principle of justice.

Kant is thus led to explain that the juridical postulate of practical reason is a "permissive law" which "confers on us an authorization that we cannot derive from the mere concept of justice in general, namely, the authorization to impose an obligation on all others — an obligation that they otherwise would not have had — to refrain from using objects of our will because we were the first to take possession of them" (MM 247, Ladd). Kant's notion of a permissive law is thus crucial to his deduction of property rights and, as we shall see, civil society. Most simply, a permissive law involves a permission to do or allow something which is generally prohibited in order to bring about the state of affairs which is the goal, or intention of the general prohibition (PP 347-348).

In particular, in claiming possession of an object, one may restrict others' negative freedom, by imposing an obligation on all others without their consent, because the permission to do so results in a greater degree of negative freedom for all than otherwise would be possible. If there were no right to acquire property, then all objects would be unusable. All others would still have no legitimate claim to the object which, in accordance with the permissive law, I acquire by first possession. The permissive law is thus consistent with the intention of the general prohibition on non-

consensual restrictions of negative freedom; that is, the permission increases the freedom of each without interfering with the universal lawful freedom of all.

In evaluating Kant's prohibition on rebellion, we must ask whether, contra-Kant, the concept of a permissive law can also play a significant role in justifying some revolutionary activity. In principle, revolutionary activity may bring about the state of affairs which is the point or goal of the general prohibition on rebellious activity. Of course, we are not yet able to evaluate this suggestion. We will return to this issue after setting out the rest of Kant's argument for his conclusion.

The second point entails the third important point: According to the Universal Principle of Right (or Justice), "Any action is *right* if it can coexist with everyone's freedom in accordance with a universal law" (MM 230). Since the permissive law, which legitimizes my right of first possession, applies to all rational beings, it also imposes a reciprocal duty to respect the proprietary claims of others (MM 255). Nonetheless, unilateral coercion cannot provide a legitimate basis for the enforcement of rights. As Kant explains,

Now a unilateral will 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, that can provide everyone with this assurance. But the condition of being under a general external (i.e. public) lawgiving accompanied with power is the civil condition. So only in a civil condition can something external be mine or yours (MM 256).

Since a civil society is simply a society governed by such a general will, Kant concludes that reciprocal duties are only legitimately enforced in a civil society. In evaluating Kant's position, we shall repeatedly return to Kant's conceptions of unilateral and non-unilateral coercion. First, however, we need to appreciate the important conclusion which follows from the conjunction of this claim and the duty to make property possible. Since it is a duty of justice to make property rights possible and since property rights are only possible in a civil society, all persons are required to enter into a civil society.

The third point leads to the fourth and final preliminary point: As we saw above, lawful freedom is consistent with the coercive enforcement of rights. Since we must make use of and take possession of external objects, and since duties of justice are coercible duties, "the subject must be also be permitted to constrain [or, to compel] everyone else with whom he comes

into conflict about whether an external object is his or another's to enter along with him into a civil constitution" (MM 256). His reasons for this last point are fairly straightforward.

Despite the moral disposition in human nature, Kant recognizes that all human beings are subject to unconscious partiality (MM 312) and conscious self-interest. "Man feels in himself a powerful counterweight to all the commands of duty... the counterweight of his needs and inclinations" (GMM 405). Indeed, Kant recognizes a Hobbesian or Nietzschean element in human nature: We are all aware of "the inclination of men generally to lord it over others as their master (not to respect the superiority of the rights of others when they feel superior to them in strength or cunning)" (MM 307). As a consequence of this aspect of human nature, anyone who refuses to enter a civil society is a threat to all others. Since I may legitimately coerce coercers (that is, remove hindrances to lawful freedom), if someone is threatening me, I do not have to wait to protect myself until after I have "suffered a loss" from someone who refuses to enter into a civil society with me. It follows that "one is authorized to use coercion against someone who already, by his nature, threatens him with coercion" (MM 307). Against those who embrace lawless freedom, preemptive strikes are sometimes justified. It is thus permissible to use unilateral coercion, and to "impel the other by force" to leave the state of nature and enter a civil society (MM 312). In the Ladd translation of the same passage, the point is made even more forcefully, "everyone may use violent means to compel another to enter into a juridical state of society" (MM 312, Ladd).

The point, however, of a civil society is to restrict the authorization to use coercion to the united general will of the people. For coercion to have the force of a law, it must be governed by a common general will. Conversely, a primary basis of the general will of a people is their common interest in having public laws which enforce property claims. As Hobbes argued and Kant agreed, even "a people comprised of devils" and thus with no moral disposition have an interest in avoiding the destructive Hobbesian or Lockean anarchy of a state of nature (PP 366 and MM 311). In short, the use of unilateral coercion is permissible only in a state of nature and the ultimate goal of permissible unilateral coercion is the creation of a shared civil society.

When I claim an object as mine, based on my first empirical possession of the object, the exclusionary nature of my claim, places others under a duty to refrain from the use of the object. For this initial claim to have the juridical validity of a coercive right, I must enter into a

civil society with anyone contesting my claim.⁶ If I refuse to enter into a civil society then my claim, however initially valid, does not meet the conditions of a coercively enforceable right. Conversely, if the individual contesting my right refuses to enter into a shared civil society, when I am willing to do so, then I may resist his competing claim with force and I am additionally justified in using violent means, if necessary, to force him or her to enter into a shared civil society. Legitimate claims become coercive rights in a civil society but, nonetheless, the duty to enter into a civil society may be unilaterally and violently enforced (MM 256-257 and 313). Once one understands the logical structure of Kant's argument, one recognizes that these two claims are consistent and mutually entailed by the argument.

We start with the permissive law which allows the acquisition of unowned property. The initial acquisition of property generates a duty on all others to refrain from using the newly acquired object and a reciprocal duty on the part of the possessor to enter into a civil society with all others. So, if I claim any object, I become duty bound to enter a civil society governed by a general will. *The exercise of the permission leads to an unconditional obligation.* But, because of the necessity of need, all finite rational beings must make use of external objects. It follows that every

⁶ Since rights are publicly enforceable claims, prior to the formation of a civil society all property claims are only provisional. The civil society makes possible the legitimate coercive enforcement of property and thereby transforms the essentially provisional ownership of the state of nature into lawful property rights (MM 256-257). The reason for this is clear: Since the legitimacy of my property claim depends on my reciprocal duty to respect the legitimate claims of others (MM 255), and since my unilateral will can no more bind the other than the other's unilateral will can bind me (MM 256), in acquiring a thing I also fall under an obligation to enter into a civil society governed by a shared general will with anyone contesting my claim. Thus, only the general will of a civil society can legitimately adjudicate conflicting claims and enforce one of the claims. If I refuse to enter into a civil society with the other or if the civil judgment opposes my claim, then I do not have an enforceable right to the thing. In this sense, my initial claim is provisional on the impartial judgment of the civil society. Thus, in the state of nature, all ownership is only provisional. Nonetheless, there is legitimate first possession in the state of nature because the point of civil society is to secure and guarantee what is yours and what is mine. The civil society, however, provides the only legitimate condition for the coercive enforcement of competing claims. As Kant explains, civil society presupposes prior legitimate possession of things but the coercively enforceable right to a thing presupposes a civil society (MM 256-257 and 313). For a more thorough discussion of this issue, see Kenneth R Westphal "A Kantian Theory of Possession" *Kant's Metaphysics of Morals: Interpretive Essays* edited by Mark Timmons (Oxford 2002).

finite rational being, given the possibility of conflicts over rights, *is unconditionally bound to enter into a shared civil society.*

II. Revolution and the Idea of the State

The argument so far establishes the unilaterally enforceable duty to enter into a shared civil society. This argument rules out all forceful resistance to any united civil society which strives to protect individual rights. But Kant has not yet established the illegitimacy of all revolutionary activity. In particular, he has not established that it is illegitimate to use coercive means to end a situation in which “state” coercion does not express the general will of the people. If we have a duty of justice to secure the enjoyment of property by bringing about a shared civil society, then why do we not also have a duty to resist or overthrow a civil society that threatens the equitable enjoyment of property?

Indeed, why assume that any actual state is the product of the united general will of the people? It would seem that Kant has only demonstrated that revolutionary activity is impermissible if state power is actually a reflection of the general will. This clearly is not Kant’s position. Kant emphasizes that “the presently existing legislative authority ought to be obeyed, whatever its origin” (MM 319) and that the “people [have] a duty to put up with what is held to be an unbearable abuse of supreme authority” (MM 320). It thus seems that political obligation is not conditioned by the legitimacy of the government or the reasonableness of its commands.

In response to a reviewer of his work, Kant explains his controversial conclusion:

No object of experience can be given that adequately corresponds to an Idea. A perfect juridical [just] constitution among men would be an example of such an Idea. When a people are united through laws under a suzerain [or, an authority], then the people are given as an object of experience conforming to the *Idea in general* of the unity of the people under a supreme powerful Will. Admittedly, this is only an appearance ... Although the [actual] constitution may contain grave defects and gross errors and may need to be gradually improved in important respects, still, as such, it is absolutely unpermitted and culpable to oppose it. If the people were to hold that they were justified in using violence against a constitution, however, defective it might be, and against the supreme authority, they would be supposing that they had a right to put violence as the supreme prescriptive act of legislation in the place of every right and Law (MM 371-372, Ladd).

There is much in Kant's response which we need to explicate. The key points are (i) Kant's distinction between the Idea of the state and actual states and (ii) Kant's claim that popular opposition to the supreme authority replaces Law with violence.

Prior to clarifying his response, however, let me note the problematic assumption Kant seems to be making. Kant claims that all instances of de facto state power present at least an appearance of the Idea of a juridical state. I take it that this implies that whenever one has a territorial coercive monopoly one has coercion regulated by the rule of Law, and an imperfect but sufficiently just civil society is therefore instantiated. As a result, Kant is led to his claim that, no matter how defective and abusive it may be, we must endure the rule of the supreme power. This is thus a surprising assumption which leads to a very unattractive conclusion.

Let us pause and consider the grounds for attributing this assumption to Kant: Is he really committed to such a Hobbesian account of sovereign power? In order to avoid the extreme interpretation of Kant's prohibition on rebellion, one might argue that Kant does not actually endorse the controversial assumption which leads to this unattractive conclusion. It is tempting to credit Kant with a more subtle, *unstated* position which distinguishes between a "current viable, though perhaps quite imperfect project of protecting people in morally important freedoms that are threatened in the state of nature" and "a successful mafia take-over of Nevada." Only the former, it might be claimed, is an example of sovereign power. Kant's prohibition on rebellion would then apply only to imperfect projects of protecting important rights. It would not apply to any successful exercise of organized, territorial, coercive power.

Clearly, if Kant supported violent revolution, then he had reason to fear the Prussian censors. Furthermore, in responding to the above mentioned reviewer, Kant grants the paradox in his views of rebellion but insists that he cannot be convicted of heterodoxy (MM 371). The basic preconditions for a dissimulation interpretation are thus in place: fear of the censors and a paradoxical conclusion. We are thus to believe that Kant hid his true views behind statements crafted to mislead the powers that be; for he knew the "astute and careful" reader would recognize his subtle and coyly stated position. In principle, I have nothing against this type of textual interpretation. It seems a fitting approach to some difficult, perhaps inconsistent, passages in Rousseau and Hume, for example. On the other hand, I am less sympathetic with its use in discovering Plato's secret

doctrines. In interpreting Kant's stand on revolution, however, I believe it should be a method of last resort.⁷

First, in general, Kant was opposed to the use of violence as a means. I believe that he was genuinely horrified by the death and destruction of a violent revolution. Indeed, his level of passion in discussing the horror of the formal execution of a monarch (MM 32On) is matched only by his emotion in his ode to "Duty!" in the *Critique of Practical Reason* (AK 86-87). In addition, Kant was as a firm believer in the inevitable moral progress of the human race. By a process of slow and gradual enlightenment, republican constitutions and perpetual peace will prevail throughout the world (MM 352-355 and PP). Thus, on the one hand, Kant repeatedly and forcefully insisted that all active rebellion violates an unconditional duty of justice. On the other hand, he also assures us that, in due time, peace and justice will indeed prevail. Kant simply believed that rebellion is both wrong and unnecessary. Kant advocated peaceful progressive evolution rather than violent revolution. This is such a plausible interpretation of Kant's overall view that a dissimulation hypothesis is just not called for.

Second, Kant's views about the unconditional demands of honesty are notorious: We cannot lie to a murderer in order to save a life. In addition, in his only published discussion of civil disobedience (which will be discussed below), Kant insists that, even under royal command and threat

⁷ For a different perspective on this question, see Kenneth Westphal "Kant's Qualified Principle of Obedience to Authority in the *Metaphysical Elements of Justice*." (in G. Funke, ed., *Akten des 7. internationalen Kant-Kongress* (Bonn: Bouvier, 1991), II.2:353-66) and "Kant on the State, Law, and Obedience to Authority in the Alleged 'Anti-revolutionary' Writings" (*Journal of Philosophical Research* 17 (1991-92):383-426). Kant's reaction to the censors, in presenting his religious views, seems to add some support to the dissimulation interpretation of Kant's views on revolution. When he was ordered not to publicly express his views on Christianity, he obeyed. Still, the religious case is, to my mind, utterly distinct in kind and degree from the alleged deception in this case. Even if silence is a legitimate response to state censorship, Kant was far from silent on this issue. On the contrary, in the appendix to MM which addressed a reviewer's criticism, he insisted on his conclusion (MM 371-372). Of course, Kant may have been winking all along but I find this quite implausible. In addition, Kant's obedient silence actually supports the interpretation offered below. After all, Kant did do what he was told to do. Nonetheless, if Kant recognized that it is a *duty of justice* to struggle against institutional exclusion, as I argue in section III, then Kant would still be wrong to "silently" mislead his readers about the true nature of their duties. One can legitimately obey or keep silent (as we shall see below) only if one does not thereby offend against duty by doing something that is wrong in itself.

of death, it is not permissible to bear false witness. According to Kant, it is better to die than to lie. Yet, we are expected to believe that Kant deceptively hides, and perhaps even denies, his true conclusions? I suggest, instead, that we take Kant at his word and we search for his best justification for his prohibition on violent revolution.

Recall Kant's stated position: He insists that the people are obliged to obey the powers that be irrespective of their origin (MM 319), of their intolerable abuses of authority (MM 320), of the grave defects and gross errors in their constitutions (MM 372). Kant emphasizes that "the unconditional submission of the popular Will (which is in itself not united and hence is lawless) to the sovereign Will (uniting everyone through one single law) is a deed that can begin only with the seizure of the supreme authority and in this way provides a foundation for a public Law in the first place" (MM 372, Ladd).

How then can Kant, given his stated view, distinguish between a successful mafia takeover of Nevada and the problematic origins and gross imperfections of other imperfect but adequate exercises of state power? Given the assumption that the take-over has been successful, the origin is irrelevant. Any distinction between the two must appeal to the nature of the abuses, defects, and errors. Kant, however, maintains that any successful grasp of supreme executive and legislative authority presents us with at least an *appearance* of the Idea of the state and of a people united under Law. He concludes that to act against even a mere appearance of the Idea of the state is unconditionally forbidden.

If, however, one is convinced that Kant's true view is indeed the more subtle unstated view, then the argument for his true view still must be constructed for him — for, by hypothesis, he could not present it for fear of the censors. In the next section, we shall see the more limited prohibition which actually follows from Kant's theory of justice. If Kant was coy, then, perhaps, this is also his real view. Since ultimately we are concerned with what *follows* from Kant's argument, we may set aside questions about Kant's hidden intentions. For simplicity, however, I will focus on Kant's stated view and its adequacy.

I shall argue, first, that Kant's prohibition on rebellion is plausible in a state which is imperfectly committed to the free and equal treatment of all persons under the law but, second, that it simply does not apply to a state of affairs in which a privileged group of individuals use centralized coercive power to perpetuate a state of inequality and injustice. Kant must acknowledge that there are conditions coercive power must meet before it can constitute legitimate government power; and, thus, before we are faced with even an imperfect civil society. In section III, I will develop and

defend this objection. For the moment, we shall set aside this objection and strive to more fully understand Kant's position. We shall see that, in an imperfect (but inclusive) civil society, Kant provides a plausible account of the basis and extent of our political obligations.

The concept of a society governed by a united general will, according to Kant, is an Idea of reason. An Idea of reason is as an ideal which is used as a guide to proper conduct; it is a practical concept expressed by a normative principle. Kant insists that, even though our imperfect society clearly does not satisfy the Idea of the state, we still owe political obedience to the ruler. In order to understand Kant's position, we must discover the regulative, normative, role of the Idea of the state.⁸

First, let us consider the perspective of the ruler. For Kant, the Idea of the state is a moral standard which the ruler, the *de facto* supreme authority of the state, morally ought to use in ruling the state. Thus, the ruler, as legislator, ought to legislate so as to reflect "the general and united will of the people," that is, "the concurring and united will of all, insofar as each decides the same thing for all" (MM 314). The ruler, as executive authority, ought to enforce only such laws. If the ruler uses the supreme coercive authority for private or partial ends, then the ruler acts wrongly and the state is corrupted.

The subjects, on the other hand, *should not* use the Idea of the state to judge the legitimacy of their state. Since the general will of the people must be *represented*, that is, some procedure for determining the general will is necessary, and since the government claims authority to determine the general will, Kant maintains that we (the subjects) should adopt the procedure of treating *de facto* supreme power as the only source of legitimate coercive power.⁹ In this way, the subjects are united under a

⁸ For our purposes, we do not need to determine the practical social and legislative results of the regulative and guiding idea of the general will. There is promise, however, in Harry van der Linden's suggestion that "the moral society [is] a society of autonomous or co-legislative institutions, aiming at universal happiness" (*Kantian Ethics and Socialism*, Hackett 1988; p.192). I would argue, however, for a more explicitly distribution-sensitive interpretation. In addition, Kantian value theory requires that the realization of the conditions necessary for the development and exercise of our rational capacities take priority over the maximization of happiness. With these two modifications, Kant's theory of justice would be a distinctly Kantian form of indirect (or rule) consequentialism (see Cumiskey *Kantian Consequentialism*, Oxford 1996).

⁹ Christine Korsgaard has emphasized the importance of the public representation of the general will in "Taking the Law into our own Hands: Kant on the Right to Revolution" in A. Reath, B. Herman, and C. Korsgaard, eds., *Reclaiming the History of Ethics: Essays for John Rawls* (Cambridge University Press, 1997).

system of law and an appearance of the Idea of the state is realized; that is, the coercive enforcement of claims takes on at least an appearance of the Idea of coercion regulated by a shared general will. All revolutionary activity involves the unilateral coercion of some citizens (namely, the members of the government) by other citizens (namely, the rebellious subjects) and it thus violates the fundamental condition of civil society: the transfer of the coercive enforcement of justice to the general will as manifest in a public constitution.

Of course, the government may be mistaken in its judgment of the demands of the general will but so too may the rebellious subjects. If some faction of the subjects replace their will with the government's will, there is no reason to think that there has been any gain in determining the true general will of the people. As Rousseau, Mill, and others have emphasized, even if a majority of the subjects rebel, they may represent only a tyranny of the majority. Indeed, Kant argues that "the head of the nation can as easily justify his harsh treatment of the subjects by appeal to their rebelliousness as they can justify their unrest by adducing complaints about unwarranted suffering at his hands" (TP 300). Thus, by enduring the actual government's authority, one at least maintains an appearance of justice that would be lost by any and all acts of factional rebellion.

The government's pronouncements on the general will may or may not accurately represent the true general will. The subjects are thus free to dissent from the government's judgment even after it has been duly pronounced. Such actions do not involve coercive violence and they are thus consistent with the required state monopoly on coercive power. This is why the subjects retain, and why the ruler should promote, the right of dissent and "the freedom of the pen" (TP 304). Indeed, in the interest of discovering the demands of justice, the ruler should encourage the people to use the "freedom of the pen" to offer advice and even to criticize the ruler (but not, of course, to incite rebellion) (TP 304).

Similarly, the subjects do not have a duty to obey all of the sovereign's commands. Specifically, Kant writes: "*Obey the authority who has power over you* (in whatever does not conflict with inner morality)" (MM 371). [Ladd translation: "Obey the suzerain (in everything that does not conflict with internal morality) who has authority over you!"] Kant's writings provide some explicit examples of what Kant had in mind by "internal morality." In *The Critique of Practical Reason*, Kant states that one should refuse to lie even under royal command.¹⁰ As I mentioned above, this is Kant's only published example of permissible civil disobedience. There is,

¹⁰ Kant *The Critique of Practical Reason*, pp. 155-156.

however, Kant's unpublished note which tells us that we may rebel in cases that involve "the enforcement of a religion, compulsion to unnatural sins, assassination, etc."¹¹ Lastly, in *Religion within the Limits of Reason Alone*, Kant writes that "when men command anything which in itself is evil (directly opposed to the law of morality) we dare not, and ought not, obey them."¹² Kant goes on to explain that we are to obey all other statutory laws, even if they do not appear to us to reflect the true general will of the people.

Kant clearly permits conscientious refusal. I believe that one can stretch a bit and claim that Kant also leaves room for Gandian style "passive" resistance to particular commands and laws. His position is thus more palatable than it may at first appear. But, Kant never sanctions violent revolution. The subjects should speak their minds but, provided the commanded act is not wrong in itself, do as they are told.

A right of rebellion would entail that the subjects have the right to coerce the sovereign ruler.¹³ But the sovereign power of the civil society is to provide the public, non-unilateral, enforcement of property rights. According to the Idea of civil society, state coercion is guided by the general will and it is the only type of justified coercion. The general will, however, is not simply the will of the majority. It thus must be interpreted by a supreme, authoritative, representative of the united people. This is a chief role of a supreme court in constitutional democracies. When it comes to the final interpretation and enforcement of the law, the subjects must set aside their particular judgments, even when it reflects the popular will of the majority, and defer to the rule of law. In this way the subjects fulfill their political obligations, as required by the Idea of the state. The actual supreme ruler of the state (or supreme court) has the responsibility and final authority to interpret the general will. Of course, my obedience as a subject does not guarantee that the ruler will correctly discern the general

¹¹ L.W. Beck in "Kant and the Right of Revolution" in *Essays on Kant and Hume* (Yale, 1978) p.173 (AK 594-595).

¹² Kant *Religion* Ak. VI, 99n; translated by Greene and Hudson (Harper, 1960) p. 90.

¹³ Kant also argues that if the people could coerce the ruler then the people and not the ruler would be sovereign. There is thus a contradiction in the claim that the people (who are the subjects not the sovereign) have the right to coerce the sovereign ruler (for then the ruler would be the subject and the people the sovereign). Since this is an uninteresting legalistic point, I do not pursue it (see Beck pp. 175-176). From our perspective, the relevant point here is that if both the ruler and the subjects have the right to coerce each other, then there is no final public procedure for adjudicating conflicting rights.

will or do his or her duty. According to Kant, when I disagree with the de facto ruler, my duty is to express my dissent; not to enforce my opinion.

According to Kant, the prohibition on rebellion is essentially a corollary of the unconditional duty to enter into a civil society. This is an important point. It is not the ruler whom we wrong by rebellion but the rule of Law itself and thus the very foundation of the commonwealth (PP 382, TP 299, MM 319-320).¹⁴ Kant's position here is not an aberration; in fact it coheres nicely with his account of the practical significance of the Idea of the kingdom of ends. Recall that a kingdom of ends would be the result of each rational being treating all others, never simply as a means, but always at the same time as an end in itself. It is "a systematic union of rational beings under common objective laws" (GMM 433). Of course, as Kant explains, even if I strictly follow the categorical imperative, I cannot count on all others to do so as well and thus my legitimate purposes may not be realized as they would be in a kingdom of ends. "But in spite of this the law' Act on the maxims of a member who makes universal law for a merely possible kingdom of ends' remains in full force since its command is categorical" (GMM 439). Similarly, even though I cannot count on the ruler of my state to be faithful to duty, the Idea of the state nonetheless categorically obliges me as a subject to obey the ruler. Indeed, the ruler's moral failures may undermine my expectations of happiness, but personal happiness is not the Kantian ground of duty. "And precisely here we encounter the paradox that without any further end or advantage to be

¹⁴ Kant's prohibition on rebellion is analogous to his uncompromising prohibition on lying to murderers. In addition to the obvious similarities, in both cases Kant does not base the prohibition on the rights of the sovereign or of the murderer. The murderer at the door does not have a right to the truth, Kant explains, because "truth is not a possession the right to which can be granted to one and refused to another; and next and chiefly, because the duty of veracity (of which alone we are speaking here) makes no distinction between persons towards whom we have this duty, and towards whom we may be free from it ... although by a certain lie I in fact do no wrong to any person, yet I infringe the principle of justice in regard to all indispensable statements in general ... and this is much worse than to commit an injustice to any individual." We are not here concerned with the soundness of Kant's position on lying to murders, but the similarity in the structure of Kant's arguments is instructive. If we are to understand Kant's reasoning we must focus on the justification of state power in general rather than on the legitimacy of the acts of a particular ruler. For a discussion of the similarities between Kant's prohibitions on lying and on rebellion, see Peter Nicholson "Kant on the Duty Never to Resist the Sovereign" (*Ethics* 1976: 214-230) but also see Wolfgang Schwarz "The Ambiguities of Resistance: A Reply to Nicholson" (*Ethics* 1977:255-259).

attained the mere dignity of humanity, that is, rational nature in man — and consequently reverence for a mere Idea — should function as an inflexible precept for the will” (GMM 439). Reverence for the mere Idea of the state is the determining ground of my political obligations; these obligations are not erased by the ruler’s failure to be faithful to duty.

As I stated above, Kant’s position is defensible in a society with a government which is committed to legislating in accordance with the united general will of all its subjects. When such a state fails in the fulfillment of its commitments, the appropriate reaction is one of political dialogue, expressive conduct, and perhaps even passive resistance. Violent revolution is not justified. Of course, the duty to endure imperfect governments does not justify complicity in a government’s evil deeds. In short, we should not blindly obey but we may never actively revolt. Passive resistance may be necessary but coercive resistance is always unjustified.

Historically, however, few governments have been committed in any way to the Idea of the state. The history of governments is a history of exclusion and privilege without even a pretense of republican spirit. I may be obligated to obey an imperfect regime when it is generally committed to the Idea of the people united by a supreme and powerful general will, but Kant’s argument simply does not apply to a state with no republican virtue.

III- Political Exclusion and Juridical Revolution

Kant’s conception of a civil society adopts and extends Rousseau’s notion of the general will as the basis of political obligation. Rousseau, however, recognized that the idea of the general will naturally limits the class of persons that are obligated by state power. Since Kant has little to say about the concept of the general will, it is useful to look back to Rousseau’s account. The general will represents the unifying and common interest which transforms an aggregate of individuals into a body politic. Despite their diverse and perhaps competing private interests, the members of a civil society also have shared and common interests as citizens. The laws of a civil society are binding on a subject only if that subject’s interests as a free and equal citizen are included in the determination of the general will.

As Rousseau points out in *The Social Contract*, laws may reflect the general will of some of its subjects and yet treat others as no more than slaves. In such a case, only the citizens of the slavery-dependent body politic are *obligated* to obey the (imperfect) procedures which determine

the shared general will. The slaves may be forced into submission but they are not obligated to obey. Slavery is of course an extreme case but the same principle applies to more commonplace cases. Rousseau, for example, emphasizes the ever present danger of corruption of a society by the magistrates. Just as citizens share a general will so too do the magistrates and thus the laws may reflect the interests of the governors rather than the governed. In a similar fashion, the laws may reflect the common interest of one class or gender or race of a society and not include the interests of the others.¹⁵ In all such cases, the excluded may find that it is *prudent* to obey the statutory laws, which constitute and perpetuate their oppression, but they have *no obligation* to obey a general will that is not theirs. The reason for this claim is familiar: we are obligated only to laws that we (can) give ourselves and one logically cannot consent to be a slave.¹⁶ We are thus only obligated by a general will which includes our interests in determining the common interests of all.

The error in Kant's argument for an absolute prohibition on revolution should now be clear. Kant is assuming that even in imperfect societies, everyone subject to the sovereign power is also included in the juridical or lawful condition of the society. Clearly, however, an individual may be subject to the coercive power of a society without being a free and equal citizen of the society. It is a minimal condition of political inclusion, or citizenship, that one's interests, as both a finite and a rational being, count in the determination of the general will. The mere fact that I am faced with awesome organized coercive power cannot entail that this power in any way reflects a general will which is mine.

Indeed, state power often does not even purport to reflect a united general will of all of its subjects. The apartheid laws of South Africa, for example, clearly asserted the privileged interests of some citizens, and these laws served to enforce the systematic oppression of other subjects. In such a case, part of the society, the included, are refusing to enter into an inclusive civil society with the excluded individual(s). Provided that the excluded are willing to enter into a more just civil society with the included, we have a "state of nature" where the included are using superior power to oppress and exploit the excluded. Resistance is essentially a form of self defense in response to an unjust aggression. Given Kant's argument, the excluded can use violent means to force the included to enter into a more fully inclusive civil society.

¹⁵ See Rousseau, *On the Social Contract*, Bk. I ch. v-vi, Bk. II ch. i-vi, Bk. III ch. ii, x, and especially Bk. III xv, & Bk. IV ch. ii.

¹⁶ See Rousseau, *On the Social Contract*, Bk. I ch ii-v; and Arthur Kuflick "The Inalienability of Autonomy" (in *Philosophy and Public Affairs* 13, 1984:271-298).

What are the duties of the included to the excluded? All persons are to strive, in so far as they are able, to promote a condition in which all those worthy of happiness are able to achieve happiness, a condition Kant refers to as the highest good.¹⁷ The doctrine of virtue clearly requires that we make the happiness of others our end and that we thus strive to eliminate, by legitimate means, oppressive and unjust restrictions on the freedom of the excluded. A united civil society is an end in itself, an end that each person *ought* to have. In addition, however, I believe that it is also an unconditional duty of justice to bring about a fully inclusive juridical condition.

First of all, in deriving property rights and in his “articles for perpetual peace among nations”, Kant’s argument depends upon his notion of a permissive law. A permissive law involves a permission to do or allow something which is generally prohibited in order to bring about the state of affairs which is the goal, or intention of the general prohibition (PP 347-348). In cases of systematic institutional injustice there must also be a permissive law which allows one to set aside the general prohibition on unilateral coercion in order to bring about (at least an appearance of) the juridical condition, that is, the just or lawful civil society, which is the point of the general prohibition. The permissive conclusion is inescapable: as a matter of principle, revolutionary activity is permissible. The fundamental duty of justice, however, requires an even stronger conclusion.

When the law systematically excludes some people from its equal protection, when the government functions as a tool of oppression rather than a guarantor of individual rights, then it is an unconditional duty of justice to resist or to transform the unlawful state in the most effective manner available. As we saw above, Kant clearly argues that whenever there is a potential conflict over mutual rights, there is a duty to enter into a shared civil society (MM 256 and 306-308). Kant is quite explicit on this point, it is “an unconditioned and primary duty with respect to every external relation in general among men, who cannot help but influence one another” (TP 289). It follows that, if the included are situated such that they unavoidably influence the excluded, the included have an unconditioned and primary duty to enter into a juridical condition with the excluded. We have also seen that “everyone may use violent means to compel another to enter into a juridical state of society” (MM 312, Ladd). It thus also follows that everyone, the included and the excluded, have a coercively enforceable duty to enter into a fully inclusive civil society.

¹⁷ See Kant, *Critique of Practical Reason* Bk. II pp. 106-120.

Although Kant rejects happiness based principles of justice, his theory of justice has a clear consequentialist element. The juridical postulate of practical reason (the duty to make property possible) entails a duty to *bring about a state of affairs* where reciprocal property rights are determined by and enforced by a united general will. We are to do *whatever is necessary*, including using violent means, to bring about this juridical state of affairs. Given these consequentialist aspects of Kant's theory of justice, in principle, it must be permissible to use coercive or violent means to undermine, reform, or remove a regime using coercive power to perpetuate a non-judicial state of affairs. Whether, in any particular circumstance, violent revolutionary activity is also advisable must be determined by difficult, pragmatic, consequentialist considerations. Caution should, of course, rule such decisions. Still, there are unfortunate cases where the calculus is clear and action is called for. Revolution is not only permissible, it is also, regrettably, sometimes required.

Have we not, however, reintroduced the problem which civil society was supposed to solve; that is, the problem of the unbridled exercise of unilateral coercion? Was Kant wrong to conclude that the legitimate coercive enforcement of rights must be determined from a universal, general perspective not from a partial, individual perspective? Let us return to Kant's derivation of civil society.

As we have seen, Kant's concerns are the adjudication of conflicting property claims and the pernicious effects of partiality. It is clearly not legitimate for any person's unilateral will to determine legitimate property rights in cases of conflicting claims, for this would violate the reciprocal rights of others. It simply cannot be a universal law that each person unilaterally has authority to determine legitimate ownership, for then two or more persons could each own, that is, have exclusive authority over, one and the same object (a contradiction in conception). When it comes to "external and contingent possessions," no matter how erroneous one believes the decision to be, there is a duty of justice to abide by the decision of an impartial procedure (MM 256). It follows that some impartial decision procedure should have final authority in determining legitimate claims.

It does not follow, however, that one must also simply obey when fundamental rights are being systematically undermined by the existing political procedures. This is both a moral point and a logical point. It is a moral point, first, because the dangers of partiality simply cannot justify allowing the systematic institutional exclusion, oppression, and even extermination of persons. The point of a civil society is that it promotes the rights of humanity (MM 240). The complete abandonment of moral

judgment, however, is morally more dangerous than the partial distortion of moral judgment could ever be.

Second, the duty to enter a juridical condition is based on the necessity of justifying property acquisition under the constraint of the universal principle of justice: Justice (Right) is “the sum of the conditions under which the choice of one can be united with the choice of another in accordance with a universal law of freedom” (MM 230). We are all duty bound to enter into or bring about a civil society because otherwise property claims and negative freedom would conflict. But, the successful organization of overwhelming force, also known as state power, does not necessarily transform a state of nature into the requisite juridical condition. The structure of Kant’s argument simply cannot generate a duty to obey a supreme coercive power that systematically violates the negative freedom and basic rights of some of its subjects. A commitment to basic civil rights for all is thus a limiting condition on the duty to obey the powers that be.

The duty to enter into a civil society also logically entails a duty to judge the legitimacy of coercive power. Justice obliges us to abandon the state of nature and enter into a civil society. But, we simply cannot fulfill such a duty without assessing whether we are in a state of nature or a civil society. The duty to defer to impartial procedures logically presupposes a judgment that a procedure is indeed sufficiently impartial. Indeed, the basic starting point of Kantian ethics is the perspective of an agent acting on principle. Thus for a Kantian, the decision of an impartial procedure is final but the individual simply must be the final judge of the procedure itself. When the law is a tool of systematic oppression, a conscientious moral agent must take *justice* into her own hands. In such a case, one acts without *legal* justification. But, nonetheless, for the sake of justice, one must act.

Conclusion

Kant’s prohibition on revolution is as extreme as it appears to be and it is entailed by his theory of coercion and his deduction of property rights. Nonetheless, the juridical requirement to enter a civil society justifies an unconditional duty to combat, by the most effective means available, all instances of systematic institutional injustice. Such rebellious activity is a hindrance to a hindrance to freedom and thus consistent with universal lawful freedom. There is no right to resist a civil society. There is, however, a right to determine whether the coercive power which confronts one presents even the *appearance* of the Idea of a civil society. In order to represent the general will, one must do more than simply present awesome

force. Each individual who is subjected to the coercive power of an aspiring ruler must determine for him or her self whether obedience is consistent with the demands of justice. If one is to satisfy the unconditional juridical duty to bring about an inclusive civil society, then the society one shares with others must be sufficiently committed to civil rights for all. Surely such a limited degree of autonomous judgment about one's obligation is consistent with the practical necessity of sovereign authority. Additionally, such a limited coercive right (against illegitimate coercers) is not contradictory, for it is a right which is prior to all other civil duties.

There are circumstances which require a Kantian to be a revolutionary. Whether Kant likes it or not, this is indeed the conclusion which actually follows from his arguments. Individual judgment must sometimes override organized power. The Kantian principle of autonomy is the ground under, but should not be buried under, the principle of political obedience.

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