



University of
Massachusetts
Amherst

Kant's theory of the social contract.

Item Type	dissertation
Authors	Dodson, Kevin E.
DOI	10.7275/5a08-kf81
Download date	2025-04-19 16:03:02
Link to Item	https://hdl.handle.net/20.500.14394/12157



KANT'S THEORY OF THE SOCIAL CONTRACT

A Dissertation Presented

by

KEVIN E. DODSON

Submitted to the Graduate School of the
University of Massachusetts in partial fulfillment
of the requirements of the degree of

DOCTOR OF PHILOSOPHY

September, 1991

Department of Philosophy

© Copyright by Kevin Eugene Dodson 1991

All Rights Reserved

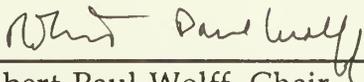
KANT'S THEORY OF THE SOCIAL CONTRACT

A Dissertation Presented

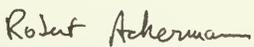
by

KEVIN E. DODSON

Approved as to style and content by:



Robert Paul Wolff, Chair



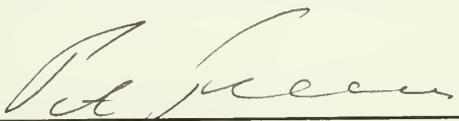
Robert Ackermann, Member



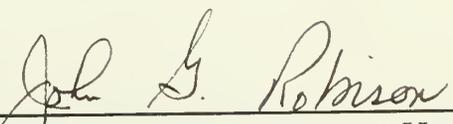
Bruce Aune, Member



Susan Meld Shell, Member



Peter Fenves, Member



John Robison, Department Head
Department of Philosophy

ACKNOWLEDGEMENTS

I am indebted to many persons in the writing of my dissertation. I want to thank the members of my committee (Robert J. Ackermann, Bruce Aune, Peter Fenves, and Susan Meld Shell) for the time and effort they devoted to reading and commenting upon my dissertation. I owe a special debt to my director Robert Paul Wolff for all his patience and guidance in the writing of my thesis. Professor Wolff taught me not only about Kant and political theory but also about reading philosophical texts.

I have had too many friends and colleagues among my fellow graduate students to acknowledge all of them by name; however, I want to recognize a select few. My years as a graduate student would have been much less interesting and exciting had it not been for George Leaman (my arch-nemesis), Alex Pienknagura, and Dan Costello. I also wish to thank my parents and my brother Rob for their encouragement and support. Lastly, I want to thank my wife Catalina, without whose support and encouragement this dissertation would never have been written.

ABSTRACT

KANT'S THEORY OF THE SOCIAL CONTRACT

SEPTEMBER, 1991

KEVIN E. DODSON, B. A. UNIVERSITY OF WASHINGTON

Ph. D., UNIVERSITY OF MASSACHUSETTS

Directed by: Professor Robert Paul Wolff

The thesis of my dissertation is that Kant's theory of the social contract, which is the central concept of his political philosophy, provides, when suitably reconstructed, an adequate theoretical foundation for liberal democracy. I take liberal democracy to consist of three components: first, the rule of law; second, democratic self-rule (either representative, direct, or some combination of the two); and third, the recognition and institutional guarantee of the rights of individuals.

In the dissertation, I take as my starting point Kant's conception of autonomy. For Kant, the idea of the social contract explains how individual moral agents can maintain their autonomy in the context of community. The social contract resolves the conflict between moral autonomy and political authority by defining a model of civil society in which free, equal, and independent rational agents collectively legislate the public laws that are to govern their external relations, which are essentially property relations. Ideal civil society, then, is a condition of maximum equal freedom for rational agents who interact with one another.

TABLE OF CONTENTS

ACKNOWLEDGEMENTS	iv
ABSTRACT	v
Chapter	
I. INTRODUCTION	1
II. THE HISTORICAL BACKGROUND	11
III. THE IDEA OF THE SOCIAL CONTRACT	80
IV. AUTONOMY AND AUTHORITY	113
V. THE A PRIORI PRINCIPLES OF JUSTICE	139
VI. KANT'S REPUBLICANISM	209
VII. THE IDEAL AND THE REAL	234
VIII. CONCLUSION: THE SOCIAL CONTRACT AND HISTORY	271
BIBLIOGRAPHY	289

CHAPTER I

INTRODUCTION

The past two decades have seen an upsurge of interest in Kant's long-neglected political theory. While Kant's stature as a political theorist does not yet rival that of Hobbes or Rousseau in the English-speaking world, we are finally beginning to recognize his contributions to political philosophy. For far too long, commentators slighted Kant's politics in favor of his many other contributions to philosophy, and while this was understandable, it nonetheless did a great injustice to Kant's rich and sophisticated thinking on the moral foundations of politics. With the publication of several studies of Kant's political theory over the last two decades, this injustice has now been rectified.¹ As yet, however, no commentator on Kant's political theory has focused on the all-important idea of the social contract and provided us with a comprehensive account of Kant's thought about this notion. Given the centrality of the concept of the social contract to Kant's theory (and those of Hobbes, Locke, and Rousseau), this is somewhat surprising. A clear and comprehensive account of Kant's thinking on this matter is essential to an understanding of his politics, and this is what I propose to provide in my dissertation.

My initial interest in Kant's political philosophy grew out of my desire to ground my pre-philosophical commitment to liberal democracy. It is my conviction that utilitarianism is incapable of providing an

¹- Among the most notable of these are: William Galston, Kant and the Problem of History (Chicago: University of Chicago Press, 1975); Patrick Riley, Kant's Political Philosophy (Totowa, NJ: Rowman and Allanheld, 1983); Susan Meld Shell, The Rights of Reason: A Study of Kant's Philosophy and Politics (Toronto: University of Toronto Press, 1980); and Howard Williams, Kant's Political Philosophy (New York: St. Martin's Press, 1983).

adequate foundation for liberal democratic theory and that only social contract theory is up to the task. Kant's theory provides the most cogent and philosophically sophisticated version of classical social contract theory.

I take liberal democracy to consist of three components: first, the rule of law; second, democratic self-rule (either representative, direct, or some combination of the two); and third, the recognition and institutional guarantee of individual rights. Thus, any defense of liberal democracy must provide some account and justification of the rule of law, democracy, and human rights. Of these three notions, I take it that the third is logically prior to the first and second. The task of law in a liberal democracy is to define and protect the rights of individuals within civil society. The most fundamental of these rights is the right to participate as a free and equal citizen in the collective decisions of that society. Thus, the concept of right is the basic concept of Kant's politics. Kant's political theory, however, is rooted in his ethics, and thus the concept of right is in turn grounded in the autonomy of the will, which Kant declares in the Grundlegung to be "the supreme principle of morality." Now the three components of liberal democracy appear to be incompatible in practice. For example, a majority may democratically enact a law that violates the rights of individuals within civil society. Kant's theory, however, provides a satisfactory resolution of this problem.

According to Kant, an individual is autonomous when she obeys no laws except those she has given to herself, that is, when she is self-legislating. Obedience to external legislation is heteronomy. This poses a rather tricky issue in the justification of civil society. A law is essentially a command, and political authority is the right to issue those commands

and enforce them through the use of force. When one enters into civil society, one subjects oneself to some authority. But this submission to authority would appear to place us in a condition of heteronomy and be in conflict with our own autonomy. How can we reconcile the right to issue commands with the right to obey only those commands we have given to ourselves? The reconciliation of these two conflicting requirements is central to my project. If Kant's attempted reconciliation of these two conflicting demands fails, then he cannot justify the moral legitimacy of the rule of law and civil society itself; authority must give way to autonomy.

For a utilitarian, the conflict between autonomy and authority never arises. The rule of law is justified by its consequences for the social balance of pleasure over pain (or whatever other standard a particular variant of utilitarianism may employ). The autonomy of the individual need not be considered, except insofar as it has consequences for that social balance.

Though utilitarian theories may be capable of grounding the rule of law, they are incapable of providing an adequate foundation for democratic self-rule and the rights of individuals. Because utilitarian theories are teleological in nature, democratic self-rule and individual rights can be justified only in instrumental terms. That is, the rights of individuals and democratic self-rule are justified only if they promote the end specified by utilitarian theory.

Let us consider the theory elaborated by John Stuart Mill in Utilitarianism as an example.² The fundamental problem with Mill's

²- John Stuart Mill, Utilitarianism, (Indianapolis: Bobbs-Merrill, 1983).

theory in this regard is shared by all utilitarian theories, despite their variations. Therefore, a brief discussion of Mill will enable us to examine this difficulty with sufficient clarity and generality.

In simplest terms, Mill maintains that one should act so as to produce the greatest amount of happiness in society at large. The amount of happiness is a function of the relative quantities of pleasure and pain, so that the greatest happiness is the greatest balance of pleasure over pain in the society at large. (Mill does distinguish between higher and lower pleasures, but it is not clear that this distinction is tenable. Even if it were, it would make no difference for my argument.) Those actions that produce this result are right and those that do not are wrong. By subordinating the right to the good, Mill forces us to justify democracy and human rights in purely instrumental terms and thus only contingently.

Whether a society should be democratic or individuals should have rights can be decided only by determining whether such a societal organization would generate a greater balance of pleasure over pain than any possible alternative. This type of justification is wholly contingent and dependent on matters of fact. It is quite possible, however unlikely, that the most rigid totalitarian regime could produce a greater balance of pleasure over pain than its democratic counterpart. In principle, then, one could argue along utilitarian lines that such a system is morally preferable to liberal democracy. This point can be generalized to include all forms of political organization, liberal democracy being only one among many. The determination of the specific form of political organization appropriate to a society would depend upon cultural, historical, and other empirical considerations. Such considerations are certainly legitimate in determining the specific form that liberal democracy is to take and how

one should proceed in establishing it, but they are not legitimate considerations in determining whether there ought to be democracy and human rights in the first place.

The aforementioned point is readily apparent in Chapter Three of Utilitarianism, "The Ultimate Sanction." From the point of view of utilitarian theory, there is no intrinsic moral difference between a law that is self-imposed and one that is imposed by external force; it is irrelevant whether the law is the edict of a philosopher-king or the result of democratic deliberation. Further, the content of laws is to be determined solely by the principle of utility, unchecked by any prior conception of rights. In fact, as Mill points out in Chapter Five ("Utility and Justice"), the particular rights we are to enjoy in a society are themselves determined by appeal to the principle of utility. If social conditions change, our rights are liable to change along with them.

As conceived by the natural rights tradition and its historical offspring, individual rights are universal and inalienable. According to the American Declaration of Independence, the French Declaration of the Rights of Man, and the United Nations Universal Declaration of Human Rights, one possesses rights simply by virtue of being human. The Preamble to the United Nations Universal Declaration of Human Rights, for example, asserts that "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world." Further, Article 1 states that "All human beings are born free and equal in dignity and rights." Later articles then attempt to specify those particular rights that we all possess. The same discourse found in the Universal Charter can be found in other texts governing human rights law. In a sense, then, I am

attempting to spell out what must be the philosophical foundations of this view and its associated political documents. Clearly, utilitarianism can not provide this foundation.

If we are to provide a foundation for the universal validity of human rights and democratic self-rule, then, we must turn to Kantian social contract theory. In my Dissertation, I demonstrate how Kant's theory of the social contract provides an adequate grounding for the universality of democratic self-rule and human rights. The connecting thread throughout the dissertation is the idea of a social contract. Simply put, my thesis is that the idea of the social contract is the central concept of Kant's political philosophy and that his theory of the social contract, when suitably reconstructed, provides an adequate theoretical foundation for liberal democracy.

In Chapter Two, I provide the historical background needed for my discussion of Kant's theory of the social contract. I survey briefly the relevant doctrines of Hobbes, Locke, and Rousseau, constructing out of these a connected and coherent development that culminates in Kant's own theory. In the course of this discussion, I point out the internal tensions in their respective theories as well as providing a Kantian critique of each of them.

Chapter Three is devoted to a discussion of the conceptual status that Kant attributes to the idea of a social contract. In order to achieve theoretical clarity, we must understand the types of concepts we are using. Hence, a clear account of the nature of this concept is absolutely essential to any adequate social contract theory; we need to understand what type of concept the concept of a social contract is. Unfortunately, Kant's predecessors (in particular, Locke and Rousseau) do not adequately discuss

the conceptual status of the idea of a social contract, a failing of which Kant is not guilty. Kant maintains that the concept of a social contract is an idea, a concept of reason. This account allows us to resolve certain basic misunderstanding and provides a much-needed self-understanding to social contract theory.

In Chapter Four, I examine our obligation to enter into the social contract. Kant asserts that the social contract is the only contract we are obligated to enter into and I explain why he thinks we have such an obligation. He bases this obligation on the need for property as a precondition of any action whatsoever. I also demonstrate how Kant reconciles the autonomy of the individual with authority of state, while at the same time justifying the existence of civil society.

Chapter Five is concerned with the content of the social contract. I begin with a discussion of Kant's underlying moral theory and then proceed to the derivation of the a priori principles of justice that provide the content of the social contract and link this content to Kant's conception of autonomy. Further, I argue that we ought to look beyond the apparent formalism of Kant's theory by pointing to Kant's own recognition of the limitations of formal a priori principles and the necessity of supplementing such principles with an empirically-rooted understanding of actual social conditions. In connection with this, I discuss the implications of the Kantian social contract for political economy and argue that Kant's concept of autonomy provides both a powerful tool for the critique of liberal democratic capitalism and a means of effecting a rapprochement between liberalism and socialism.

In Chapter Six, I examine Kant's republicanism. Kant asserts that a republican constitution provides the only legitimate form of government

and argues for this claim by applying the a priori principles of justice to the structure of the state. I first expound Kant's conception of the nature of a republican constitution and then discuss the argument he makes on its behalf. Further, I criticize his rejection of democracy as incompatible with a republican constitution and locate this rejection in Kant's conflation of his own terminological distinction between the form of sovereignty and the form of government. Finally, I discuss Kant's assertion that the spread of republicanism increases the prospects for world peace.

In Chapter Seven, I discuss the relation between the ideal and actual civil society and point to certain internal problems with Kant's theory. Specifically, I am concerned with our obligations towards existing civil societies and their laws. Kant, the great spokesperson of moral autonomy, argues that we have an absolute duty to obey the laws of whatever state exists. Given the nature of existing states, this duty would involve the abdication of moral autonomy and place us in a condition of heteronomy. I will critically examine Kant's rationale for his position and then provide a more satisfactory, alternative Kantian account.

In the eighth and final chapter, I examine Kant's philosophy of history as it relates to his political theory. Kant sees human history as progressing towards the achievement of the true social contract. Thus, I link Kant's political theory with his views on history, which provide the capstone to his theory. In a sense, Kant's theory of history is an attempt to resolve the third antinomy of the Critique of Pure Reason at the societal level.

One final comment about my interpretive approach to Kant's corpus is in order. In his politics, Kant is at best a paradoxical thinker, a man who denied the right to revolution and yet supported both the

American and French Revolutions. His views present a disturbing and at times contradictory mix of the conservative authoritarianism of Hobbes, the liberalism of Locke, and the radical democratic and emancipatory politics of Rousseau. From Hobbes, he derives his opposition to revolution and his commitment to existing civil societies; from Locke, he derives his commitment to natural rights and his emphasis on property as the basis of civil society; and he is indebted to Rousseau for his notion of the general will. I intend to sort out all these conflicting lines of Kant's thought and present a reconstruction of what I take to be Kant's strongest position on the issues. My reconstruction will be at variance with Kant's own statements at certain points, and these discrepancies will be duly noted. Nonetheless I think my reconstruction does present a coherent, defensible strand of Kant's thought.

In order to remain within the general framework of Kant's theory, I will proceed with my reconstruction in the following manner. First, I will present Kant's position on a particular subject, or at least what I take to be the dominant view expressed in the text. I will then present a critique of that position. I will finish by proposing and arguing for a revision of Kant's position as a response to that critique. Both my critique and proposed revision will be internally generated; that is to say, I will rely primarily on the textual and theoretical materials that Kant himself provides by paying careful attention to internal inconsistencies and lines of thought that Kant suggested but failed adequately to pursue and develop. Kant often stakes out bold positions only to step back and weaken them in the next breath; my task is the elimination of these regressions in order to display the essential core of Kant's thought. I have been forced to play the archaeologist in this effort, excavating the textual

materials in order to expose in bold relief the doctrines embedded within. In doing so, I have tried above all to remain faithful to Kant's spirit.

It may seem to some readers that I have granted myself excessive license in reconstructing Kant's political theory and that I should confine myself to expounding what Kant actually thought and wrote. To this objection, I have only one defense. Any interpretation of the work of a great philosopher is inherently anachronistic in that it unavoidably involves reading that philosopher in the light of one's present concerns. In fact, past philosophers are alive and important to us today only to the extent that their writings permit and even invite such a reading, for if they do not address provocatively and incisively the same philosophical problems that we ourselves are grappling with, then there is no sense in applying ourselves as philosophers to the interpretation of their work. Consequently, I can not rest content with a simple recounting of Kant's views, but seek to reconstruct them so that they form a coherent totality with contemporary relevance.

CHAPTER II

THE HISTORICAL BACKGROUND

A. Introduction

The idea of a social contract has traditionally performed two different functions, one historical and the other logical.¹ First, it has been used to provide an historical account of the genesis of government, state, and society in an agreement between individual persons or between some previously constituted people and its sovereign. Second, it has been used as a theoretical tool to explicate the nature and limits of political obligation and authority. Though these two functions are distinct, they have not always been clearly differentiated by contractarian theorists, but have often been merged, producing a hybrid of political anthropology and political philosophy. At times, a theorist will write as though the social contract describes an actual event that both explains the origin of a government and justifies some claim about the basis and extent of that government's authority, while at other times he will appear to conceive of the social contract as something else, though not always specifying clearly what that something else is. One of the merits of Kant's theory of the social contract is his provision of an explicit, well-developed account of the conceptual status of the social contract based on a recognition of the aforementioned distinction.

1- For a useful survey of the contractarian tradition, see J. W. Gough, The Social Contract, (London: Clarendon Press, 1957).

I take it that there is an intrinsic value in understanding the nature of the theoretical activity involved in any serious intellectual discipline. The idea of the social contract is the central concept of any contractarian theory, and we can never hope to attain clarity about this particular theoretical approach without understanding the nature of that concept. An account of the conceptual status of the contract, then, is simply an essential component of theoretical self-consciousness, and the provision of such an account is justified by nothing further than the need to understand our own theorizing.

But an understanding of the nature of our conceptual apparatus is more than just intrinsically valuable. In addition to providing some account of the conceptual status of the social contract, a contract theorist must provide some justification for our obligation to enter into the contract, specify the content of the contract, and explain the relationship between his theoretical contract and reality, in particular actually existing civil societies. A theorist's response to our initial question in turn determines the types of moves available to him in addressing these other issues, as well as generating its own problems.

If the social contract is conceived as an actual event, then it faces objections on the grounds of historical realism and transmissibility of consent from one generation to the next. The plausibility of the theory depends on whether such an event has ever or could ever take place, and the theorist must be prepared to argue for this. Further, the theorist will have to explain how the legitimacy of the contract entered into can be preserved past the first generation. For this reason, Locke, who does conceive of the social contract as an actual event that did or at least ought to take place, is forced to explain away the lack of any records of such an

event and to provide some mechanism by which later generations that were not a party to the original contract may enter into it.

But if we construe the social contract in hypothetical or ideal terms, we must provide some other account of how this construction is to be related to actual civil society and our duties within it. Finally, a difference in such an account may affect the content of the contract. For example, there were attempts to translate contractarian theory into practice by actually drawing up and agreeing to one (the Mayflower Compact is a notable instance) or by interpreting historical documents in contractarian terms, as in the Settlement of the English Revolution.² Assuming the problem of transmissibility can be solved, these documents do provide a determinate historical content that forms the basis of a real tradition. Hypothetical and ideal contracts lack such a content. Therefore, some alternative means of injecting content into the contractual form must be found by using reason-- instrumental reason in the case of the hypothetical contract and substantive reason in the case of the ideal. These points will be discussed in greater detail later in this chapter.

Before we embark on an exposition of Kant's theory of the social contract, it will be useful to provide a brief account of the theories of his most important predecessors. For purposes of brevity and clarity of presentation, I will confine my remarks to the theories of Thomas Hobbes, John Locke, and Jean Jacques Rousseau. Kant wrote against the background of these thinkers, responding both to their insights and to their failures; by understanding this background we can arrive at a deeper appreciation of Kant's achievement. I intend to construct an account that

²- See Gough, The Social Contract.

displays these theories as a development culminating in Kant's own theory of the social contract, and to a considerable extent, my interpretation of Hobbes, Locke, and Rousseau will be governed by this end. My account will serve to introduce certain issues and themes that are central to the contractarian tradition in general and Kant in particular.

While I will be concerned with such specific issues as the conceptual status of the social contract and the relation of property to civil society, the larger, encompassing issue of the nature and limits of reason itself will never be far from the surface, for no commentary on any aspect of Kant's critical philosophy can ignore this question and still hope to do justice to his thought. The controlling theme of this discussion will be the nature of autonomy and the progressive development of this concept from Hobbes to Rousseau. Autonomy is the central concept of Kant's moral theory and unites two different conceptions of freedom. Positive freedom is practical reason itself, the capacity of reason alone to determine action, whereas negative freedom is an agent's independence from determination by natural causation. Reason can be legislative only if one's actions are in some significant way independent of the natural course of cause and effect, whereas human action can be independent of natural causation only if reason is capable of legislating action. All events occur in accordance with law; human actions, if they are to have some moral content, must be determined in accordance with laws promulgated by reason and not laws of natural causation.

From Kant's point of view, the failure of his predecessors derived largely from their failure to undertake a critique of reason itself. As a result, they are unable to prove that reason can be anything more than, in Hume's words, a "slave of the passions." Reason must examine itself in

order to determine the sources and limits of its own powers; "to criticism everything must submit," and politics and law are no exceptions to this demand.³ Only by means of such a critique can reason adequately ground its own activities and achieve the necessary theoretical self-consciousness. Kant's critique of reason, in both its theoretical and practical aspects, enabled him to avoid some of the problems that plagued his predecessors and clarify certain key issues.

B. Hobbes: Mechanism versus Reason

Hobbes opens his theoretical discussion in Leviathan with an "examination of the Thoughts of man." According to him, all our thoughts can ultimately be traced back to sense impressions, which are in turn produced by objects. The qualities of the objects that cause our sense impressions are "but so many several motions of the matter, by which it presseth upon our sense organs diversly."⁴ This pressure produces a motion in our sense organs that is then transmitted to our brains, "for motion, produceth nothing but motion."⁵ For the same reason, the thoughts to which our sense impressions give rise are also nothing but matter in motion. Matter in motion is the ontological basis of the Hobbesian system, and to it all phenomena are reducible.

Our thoughts, of course, are not isolated atoms but are always a part of a "trayne," in which each thought is connected with those that precede and succeed it. Since each thought is just the motion of matter in the

³- Immanuel Kant, The Critique of Pure Reason, trans. Norman Kemp Smith, (New York: St. Martin's Press, 1965), p. 9.

⁴- Thomas Hobbes, Leviathan, (London: Penguin,1985), p. 86.

⁵- Hobbes, Leviathan, p. 86.

brain, the connection between thoughts in this series is determined in accordance with the causal laws governing the motions of matter. Thus, each thought is caused by that which precedes it and in turn causes that which succeeds it.

But there is another sense in which we can talk about the connection of one thought to another, that is, logical connection. Here we are concerned with reasoning, the drawing of conclusions from premises in accordance with rules of inference. The necessity of connection here is not causal but logical. One judgment entails another; it does not produce or cause it. To this picture, we can of course add inductive and probabilistic reasoning.

There is a practical correlate of our theoretical reasoning. Practical reasoning is guided by the adoption of some end, which is a consequence of our desires and aversions. Our desires and aversions regulate our thought processes by directing us to "the Thought of some means we have seen produce the like of that which we ayme at; and from the thought of that, the thought of means to that means; and so on continually, till we come to some beginning within our own power."⁶

In Chapter Three, Hobbes distinguishes between two sorts of mental discourse. The first type of discourse "is Unguided, without Designe, and inconstant," whereas the second is "regulated by some desire, and designe."⁷ In the latter, there is some "Passionate Thought, to govern and direct those that follow, to it self, as the end and scope of some desire, or other passion."⁸ This is Hobbes' conception of practical reason, but it is

⁶- Hobbes, Leviathan, p. 95-6.

⁷- Hobbes, Leviathan, p. 95.

⁸- Hobbes, Leviathan, p. 95.

difficult to see how Hobbes can fit this conception into his ontological scheme. For Hobbes, practical reasoning is teleological in nature. If we take Hobbes' mechanistic materialism seriously, however, teleological reasoning is impossible. Our thinking is governed by causal laws in which each thought is an event that is determined by those thoughts that precede it and not some end at which our thinking aims.

Herein lies the basic problem for Hobbes: How do we reconcile these two views of human thought? In the first, thinking is merely the diverse motions of matter in the brain and is accordingly governed by laws of natural causation. Each judgment is caused by the preceding one. But the latter view is essentially different, for here we are concerned with reason. Rational thought is governed not by causal laws but by rules of inference; a judgment is not caused by preceding judgments, but is inferred from them. While we do not always think or act rationally, we must be at least capable of rationality if we are to acquire knowledge or to act purposefully. We attempt to establish knowledge-claims by putting forth arguments in which a conclusion is justified by reasons, either in the form of the premises of a syllogism or in the form of empirical evidence. This capability is the essential prerequisite of any scientific theorizing or purposive action.

The main tension in Hobbes' thought, then, lies in the conflict between mechanism and reason, and this gives rise to an ambiguity regarding the guiding aim of his political theory. Hobbes is clearly concerned with the nature of political authority, but it is not clear whether his aim is simply to explain such authority or, in addition, to justify it. That is, is Hobbes engaged in descriptive political science or normative moral philosophy? If the former is the case, then we can construe Hobbes

as attempting to describe the process by which political authority originates and is sustained, while if the latter is the case, then Hobbes must be read as arguing that we ought to enter into civil society and accept the obligations such entrance involves. Hobbes is rather ambiguous on this point, and there is certainly a textual basis for either reading. For example, in his Introduction to Leviathan, Hobbes state that his aim is "To describe the Nature of this Artificiall man (the sovereign)," though this description involves an account of his "Rights and Just Power."⁹ Thus, we seem to have both projects joined together in one, an attempt at describing political authority that unavoidably involves normative concepts.

If we take seriously Hobbes' attempt to explain all phenomena in terms of matter in motion, then we must adopt a positivist approach to Hobbes and interpret him as providing a scientific account of de facto authority.¹⁰ Hobbes was deeply influenced by the mechanistic natural science of his time and attempted to construct a science of politics along similar lines.¹¹ The starting point of Hobbes' scientific model of politics is matter governed by mechanistic laws of motion. On this basis, Hobbes proceeds to construct an account of individual persons and their behavior and then of the joining of these persons together in a commonwealth. By construing the theory in this way, we are able to preserve the unity of Hobbes' thought, but we do so at the price of depriving it of its normative

⁹- Hobbes, Leviathan, p. 82.

¹⁰- For an example of this interpretive approach, see Andrzej Rapaczynski, Nature and Politics, (Ithaca: Cornell University Press, 1987).

¹¹- For an interpretation of that questions the importance of mechanistic natural science for Hobbes, see Leo Strauss, The Political Philosophy of Thomas Hobbes, (Chicago: University of Chicago Press, 1984). Strauss argues that Hobbes arrived at his moral and political theory prior to and independently of his acquaintance with modern science. The mechanistic foundation of his theory was a later addition that was grafted on to a pre-existing theory.

force. Ostensibly normative terms (such as 'right,' 'good,' etc.) are ultimately defined in purely mechanical terms, thus draining it of the prescriptive content the theory appears to have.

Hobbes' mechanistic materialism is simply incompatible with an account of human action in terms of even prudential rationality. Prudential norms are norms and, as such, presuppose an ability to perform an action simply because one ought to perform it and not because one is causally determined to perform it. Hobbes is guilty here of confusing motives with causes, for as Bishop Bramhall points out in Liberty, Necessity, and Chance, "motives determine not naturally, but morally."¹² The appropriate contrast here is not between prudence and morality, but between reason and mechanism, prudence and morality being different forms of rationality. This point is captured best by Kant's distinction between hypothetical and categorical imperatives. In Kantian terms, prudential norms are hypothetical imperatives; they inform us of the best means of attaining a given end and are the product of reason in its instrumental capacity. Moral imperatives, however, are categorical, commanding actions independently of ends derived from one's desires and aversions, and are issued by a reason capable of self-legislation. Since both are the products of reason and in that sense rational, what is at stake here is a difference in the assessment of the powers of reason.

One might try to interpret prudential norms in terms of the mechanistic laws governing human behavior, but such an interpretation is dubious in the light of Hobbes' own theory (as it imputes to humans a

12- Thomas Hobbes, The Questions Concerning Liberty, Necessity, and Chance, The English Works of Thomas Hobbes, Vol. V, 1841, p. 279.

level of automatic self-interested behavior in the state of nature, an imputation that Hobbes rejects) and renders such norms superfluous. The real explanation of any action would involve an appeal to the preceding motions of the basic components of matter, and once such an explanation were supplied, no appeal to motives or reasons would be necessary. Deliberation and reasons would be purely epiphenomenal and irrelevant.¹³

Hobbes himself indicates that his theory is not just descriptive, but has some prescriptive force as well. At the end of the second part of Leviathan (Of Commonwealth), Hobbes expresses his hope that "this writing of mine, may fall into the hands of a Sovereign, who will consider it himselfe,; and by the exercise of entire Sovereignty, in protecting the Publique teaching of it, convert this Truth of Speculation, into the Utility of Practice."¹⁴ Clearly, Hobbes conceives of his theory as more than just a description of political society, but also as having some value for the conduct of practical human affairs.

For the purposes of my presentation, I will interpret Hobbes' theory as essentially prescriptive. I do this for reasons both internal and external to Hobbes' theory. I do not see how the positivist reading of Hobbes can account for the extensive use of prudential and purposive language (with respect to human ends). So, for example, though an act of the will is the

¹³- As Bishop Bramhall argues, "if T. H.'s opinion were true that the will were naturally determined by the physical and special influence of extrinsical causes, not only motives but reason itself and deliberation were vain." (Hobbes, The Questions Concerning Liberty, Necessity, and Chance, p. 279.) This is of course a controversial point that has been widely debated in contemporary analytic philosophy. Since I am concerned here solely with motivating Kant's position, I will not discuss these debates, but will content myself with merely noting their existence and persistence.

¹⁴- Hobbes, Leviathan, p. 409.

last appetite or aversion before acting, when deliberating about whether or not we should perform a specific action, "the Appetites and Aversions are raised by foresight of the good and evil consequences, and sequells of the action whereoff we Deliberate."¹⁵ Thus, our volitions, which are merely appetites or aversions (i.e. motions in the brain), are governed by our beliefs about the consequences of acting or not acting and the how these consequences relate to our ends. Further, as we shall see, Hobbes construes the "lawes of nature" as prudential norms and argues that one ought to enter into civil society on purely prudential grounds.

Nor am I convinced that Hobbes' own attempted reduction of mental activity to matter in motion is successful. Mental states are essentially intensional, that is, they refer to something beyond themselves. But matter in motion lacks such a character, for the states and processes of matter just are and lack any referential component. Even an ingenious interpretation such as Rapaczynski's at some point must appeal to mental states for which no adequate reduction can be given.¹⁶

Finally, Kant's theory of the social contract is prescriptive, and Kant interpreted Hobbes as providing the same. For the purpose of providing an exposition that highlights certain important issues, it behooves me to follow Kant's lead.

15- Hobbes, Leviathan, p. 129.

16- Rapaczynski argues that, for Hobbes, political authority and obligation are rooted in a type of self-fulfilling prophecy. Individuals mistakenly come to believe that they lack sufficient power to resist a specific individual or set of individuals, but when enough individuals acquire this belief, it in fact becomes the case that no individual is capable of successful resistance. The source of this mistake can be traced to religious belief. I do not see, however, how an adequate materialist reduction can be given of these mistaken beliefs, nor, for that matter, of religious belief.

Let us turn now to specifics of Hobbes' political analysis. Hobbes transforms the unlimited rights of individuals into the unlimited right of the sovereign, thus basing the most illiberal of conclusions on what would appear to be impeccably liberal foundations. This places Hobbes in a rather ambiguous position relative to the liberal tradition.

In the pre-political state, Hobbes tells us, organized society is impossible as humanity is nothing but a collection of thoroughly atomistic, self-governing individuals, each possessing the same right of nature. Hobbes characterizes this right of nature as "the Liberty each man hath to use his own power, as he will himselfe, for the preservation of his own nature; that is to say, of his own Life; and consequently, of doing anything, which in his own Judgement and Reason, hee shall conceive to be the aptest means thereunto."¹⁷ While in this condition, no individual has any obligations to any other individual. On the contrary, any obligation on the part of one individual to another would constitute a restriction of the liberty of that individual and thus would be incompatible with the right of nature.

While all individuals possess absolute liberty to act as they see fit, the "condition of meer nature" (Hobbes' expression for the state of nature) is far from satisfactory. Each person seeks after the means of satisfying his desires, but is opposed in this by other persons. In fact, power (i.e. the "present means to obtain some future apparent good") is defined in terms of this opposition: "Naturall Power, is the eminence of the Faculties of Body, or Mind."¹⁸ This situation is aggravated by the natural equality

¹⁷- Hobbes, Leviathan, p. 189.

¹⁸- Hobbes, Leviathan, p. 150.

among individuals. Individuals are naturally equal in that any individual is capable of killing any other individual, either alone or in league with others. Consequently, every person is threatened by every other person. In order to defend oneself against the threat posed by everyone else, one is entitled to use whatever means one thinks necessary. Now since there is nothing whatsoever that might not prove useful in the struggle for self-preservation, each individual has by nature the right to everything. Thus, there can be no such thing as property in a state of nature: "There be no Propriety, no Dominion, no Mine and Thine distinct; but onely that to be every mans that he can get; and for so long as he can keep it."¹⁹ Since everyone is equally entitled to everything, no individual alone can claim a right to the exclusive use of any particular object. This produces an inevitable clash of rights and wills as each individual attempts both to appropriate for himself the means to defend his person and to preempt any threats from other individuals. Consequently, the state of nature is in effect a war of all against all; for even when there is no actual fighting, there is the disposition to fight and no assurance to the contrary. Under such circumstances, "the life of man" is "solitary, poore, nasty, brutish, and short."²⁰

Fortunately, human rationality is capable of conceiving a way of quitting this mean condition. Reason is able to discern general rules or "lawes of Nature," the most fundamental of which commands one to defend oneself by all means possible, but also to seek peace, peace being the best means of preserving one's life. From this, Hobbes derives the critical

¹⁹- Hobbes, Leviathan, p. 188.

²⁰- Hobbes, Leviathan, p. 186.

second law of nature: "That a man be willing, when others are so too, as farre-forth, as for Peace, and defence of himself he shall think it necessary to lay down this right to all things, and be contented with so much liberty against other men, as he would allow other men against himselfe."²¹

Strictly speaking, these "lawes of nature" are prudential maxims of self-preservation: "These dictates of Reason, men use to call by the name of lawes; but improperly: for they are but Conclusions or Theoremes concerning what conduceth to the conservation and defence of themselves;."²²

Thus, Reason dictates that, in order to preserve themselves and attain a more contented life, individuals remove themselves from the state of nature by creating a "visible power to keep them in awe," thereby forcing them to keep their agreements and observe the laws of nature.

This power is created when individuals in a state of nature :

conferre all their power and strength upon one Man, or upon one Assembly of men, that may reduce all their Wills, by plurality of voices, unto one; which is as much to say, to appoint one man, or Assembly of men, to beare their Person, shall act, or cause to be Acted, in those things which concerne the Common Peace; and therein to submit their Wills, every one to his Will, and their Judgements, to his Judgement. This is more than Consent, or Concord; it is a reall Unitie of them all, in one and the same person, made by Covenant of every man with every man, in such manner, as if every man should say to every man, I Authorise and give up my Right of Governing my selfe, to this Man, or to this Assembly of men, on this condition, that thou give up the right to him, and Authorise all his actions in like manner.²³

And thus a commonwealth is born.

²¹- Hobbes, Leviathan, p. 190.

²²- Hobbes, Leviathan, pp. 216-7.

²³- Hobbes, Leviathan, p. 227.

The sovereign established by this covenant is an "artificial person" who represents the individuals within the commonwealth and acts by their authority. Though the sovereign is the actor, the actual authors of his actions are those he represents, and it is only by the authority they have vested in him by virtue of choosing him as the sovereign that he has the right of acting on their behalf. The sovereign is charged with maintaining order and possesses absolute, unlimited authority to do whatever in his judgment is necessary to secure the public peace, with all citizens placing their powers at the disposal of the sovereign so that he may effectively carry out this task. No subject has the right to resist the decisions of the sovereign, for all subjects have transferred their respective rights of judging and acting for themselves to the sovereign. If one were to reserve the right of resistance to oneself, one would in effect continue to exist in a state of nature. The sovereign arbitrarily determines the distribution of property within the commonwealth, and no citizen of the commonwealth can complain of being treated unjustly by the sovereign. Since one is the author of all the acts performed by the sovereign and no one can do an injustice to oneself, no one can suffer an injustice at the hands of the sovereign. Because the commonwealth was instituted to preserve the lives of those within it and it would be irrational for them to give up the right of self defense, the only right that one retains in a commonwealth is the right to defend one's life.

What are we to make of this account? Is Hobbes describing an historical process that culminates in an actual event of covenanting or is his account a purely hypothetical construction necessary for an understanding of the nature of political authority and obligation? While the latter view is certainly now the dominant one, the former

interpretation does have some considerable history behind it and still finds adherents today.²⁴ Hobbes is ambiguous on this point, and both interpretations have some textual basis. Therefore, I will present both sides of this interpretive question and then state my own view on the matter.

In some texts, Hobbes himself explicitly adopts the view that his account of the genesis of the commonwealth is a hypothetical construction. In response to the possible criticism that a state of nature has never existed, Hobbes states that his account is not meant to be taken literally as a description of a historical period or process, but is a hypothetical construction of "what manner of life there would be, where there no common power to feare."²⁵ (Prior to this statement, however, he does claim that the people in America can be appropriately characterized as living in a state on nature.) Hobbes bases this construction on an analysis of human nature. It is an "Inference from the Passions"²⁶ and, as such, is subject to empirical verification or falsification.²⁷ The model, then, describes what rationally self-interested individuals of a specific nature would do if they found themselves in a state of nature with other rationally self-interested individuals of a similar nature, a condition in which there exists no political authority. The specific nature of these individuals depends upon the constitution of their faculty of desire and

²⁴- See C. B. Macpherson, The Political Theory of Possessive Individualism (Oxford: Oxford University Press, 1964) and Michael Oakeshott, Hobbes on Civil Association (Oxford: Oxford University Press, 1975) for interpretations that treat Hobbes' social contract as a hypothetical construction. For an interpretation of the Hobbesian covenant as an actual event, see Michael Lessnoff, Social Contract, (London, 1986).

²⁵- Hobbes, Leviathan, p. 186.

²⁶- Hobbes, Leviathan, p. 187.

²⁷- Hobbes, Leviathan, pp. 83, 186-7.

aversion. This is a critical point, because the conditions that prevail in a state of nature depend upon the types of individuals that compose it, that is, the specific nature of their desires and aversions and the behavior to which those give rise. One major criticism of the use of the concept of a social contract focuses on the vacuity and flexibility that results from this dependence.²⁸ The conclusions one draws from the model depend upon the manner in which one construes human nature; hence, one can draw whatever conclusions one wants simply by depicting human nature in an appropriate manner. This explains how Hobbes and Locke were able to draw radically different conclusions by employing a contractarian model, which would appear then to be useless because it is empty. I will discuss this further later, so let us now return to the issue at hand.

On the other hand, Hobbes' theory of political obligation does appear to require that the members of a commonwealth enter into some actual covenant, for he claims that there is "no obligation on any man which ariseth not from some act of his own."²⁹ Political authority involves the right to promulgate laws that are binding on the citizens within the commonwealth. Laws are essentially commands issued by the legitimate sovereign to his subjects: "And first it is manifest, that law in general, is not counsel, but command; nor a command of any man to any man, but only of him, whose command is addressed to one formerly obliged to obey him."³⁰ But one is "formerly obliged" to obey the

28- As one commentator puts it, "Barely stated, it is a mere formula which can be filled with any content from absolutism to pure republicanism." G. D. H. Cole, "Introduction", in Jean Jacques Rousseau, The Social Contract and Discourses, (London, 1973), p. xviii. See also Gough, The Social Contract.

29- Hobbes, Leviathan, p. 268.

30- Hobbes, Leviathan, p. 312.

sovereign only if one has covenanted to do so. This act of covenanting occurs upon one's entrance into the commonwealth, wherein one commits oneself to obeying all the laws enacted by the sovereign authority: "But every subject in a Common-wealth, hath covenanted to obey the Civill Law, (either one with another, as when the assemble to make a common Representative, or with the Representative it selfe one by one, when subdued by the Sword they promise obedience, that they may receive life;) And therefore Obedience to the Civill Law is part also of the Law of Nature."³¹ A violation of the law is a violation of one's covenant and, hence, an act of injustice; in fact, for Hobbes, "violation of a covenant" is the definition of injustice.³² Similarly, as one would expect, the attribution of authority to the sovereign also appears to depend on the existence of some actual covenant. Without an actual event in which the sovereign is chosen by the parties to a covenant (by majority vote at the institution of the commonwealth, for example), the sovereign appears to have no basis on which to claim authority as the representative of those parties, whose authorization his actions require. There appears, then, to be substantial basis for interpreting Hobbes' social contract as an actual event.

Nonetheless, I think that such an interpretation is incorrect.

Hobbes describes two ways in which sovereign power can be acquired: by institution (or voluntary agreement); and by acquisition (or force). The establishment of sovereign power by institution involves a covenant by the members of the commonwealth, whereas the establishment of sovereign power by acquisition is the normal course in human history

³¹- Hobbes, Leviathan, p. 314.

³²- Hobbes, Leviathan, p. 202.

and is what Hobbes refers to when talks about citizens covenanting with the sovereign "one by one." Hobbes employs the model of sovereignty by institution as his paradigm in his analysis of political authority and obligation, but maintains that the mode by which sovereign power is established is irrelevant to the rights of the sovereign and the duties of his subjects. A sovereign by acquisition possesses the same rights as a sovereign by institution. With this assertion, Hobbes vitiates the need for any actual event in which a multitude covenant together and legitimate the de facto political authority of any realm. Such of course was Hobbes' aim; the absolute need to prevent the overwhelming disaster of civil war makes it imperative that individuals submit unconditionally to whatever political authority exists. The historical origins of the de facto sovereign, then, are irrelevant when considering his just powers. But even if sovereignty has been acquired by force, there still appears to be some need for an actual act of submission on the part of each member of the commonwealth to serve as the ground political obligation.

But Hobbes' conception of the will is simply too weak to support a moral theory in which consent generates moral obligations and legitimates political authority.³³ According to Hobbes, an act of the will is merely the last appetite prior to an action, the appetite that is the cause of that action. If our obligation to obey the law is derived from an actual volition, from willing such an obligation, then, Hobbes is committed to the claim that appetites are capable of creating obligations. Now it is

³³- See Patrick Riley's discussion of Hobbes' political theory in his Will and Political Obligation, (Cambridge: Harvard University Press, 1982). Riley argues that Hobbes' conception of the will as appetite is an insufficient basis for his politics, but that Hobbes makes his system work because "he does not use the concept of will as his definition requires."

difficult to see how a mere appetite can give rise to an obligation, but that is what must be the case if we are to interpret Hobbes as asserting that the authority of the sovereign requires for its legitimacy an actual act of submission on the part of each member of the Commonwealth. However, we face no such difficulty fitting appetites into an account of prudential rationality, as long as they are divorced from the mechanistic underpinnings that Hobbes provides them. Thus, just as we may interpret the establishment of a commonwealth by institution as a hypothetical construction, we may interpret the act of submission in a similar fashion. Prior to any act of submission, an individual is in a state of nature vis a vis the commonwealth and, thus, is subject to the depredations inherent in that condition, as well as possessing an interest in exiting it. The act of submission merely describes what a prudentially rational agent would do in such a situation, especially when confronted with the overwhelming power of the sovereign.

The account of consent that Hobbes supplies in Chapter V of De Cive further supports this interpretation. According to Hobbes, even bees and ants are capable of consent, which consists only in "ensuing or eschewing the same things."³⁴ Consent, then, is nothing more than the desire for some object. But bees and ants are not capable of forming a Commonwealth "because their government is *only* a consent, or many wills concurring in one object, not (as is necessary in civil government) one will."³⁵ The will of the sovereign is this "one will." But the consent

³⁴- Thomas Hobbes, Philosophical Rudiments Concerning Government and Society, The English Works of Thomas Hobbes, Vol. II, ed. by William Molesworth, p. 66.

³⁵- Hobbes, Philosophical Rudiments Concerning Government and Society, p. 66. Emphasis is mine.

of such creatures is "natural," for their "natural appetite is conformable; and they desire the common good, which among them differs not from their private."³⁶ But the consent of humans is not natural but "by compact only, that is to say, artificial."³⁷ Because their wills are not automatically in conformity with each other but often in conflict, human beings require that one will be imposed upon them by some "common power" if they are to live in peace with each other. The possession of the appropriate desire or appetite, the desire for peace, and not any actual act of submission is all that is needed for consent to this imposition.

From a Kantian perspective, Hobbes' hypothetical social contract has significant shortcomings as a justification of the existence of civil society and a model for its proper organization. These problems derive from the nature of its construction, specifically the impurity of reason that lies at its root. Hobbes operates with a purely instrumental conception of reason, which, according to Kant, illegitimately construes reason as subordinate to inclination. As a consequence, Hobbes can not attain the universality he desires for his claims and reduces moral agents to a condition of what Kant calls heteronomy, supplying them with only hypothetical imperatives. Hobbes himself thought he could do no more than that, but that is because he failed to apprehend the true nature of reason.

There is a fundamental conflict at the heart of Hobbes' moral theory. Hobbes enunciates two distinct conceptions of moral philosophy:

³⁶- Hobbes, Philosophical Rudiments Concerning Government and Society, pp. 66-7.

³⁷- Hobbes, Philosophical Rudiments Concerning Government and Society, p. 67.

moral philosophy as the science of the laws of nature; and moral philosophy as the science of good and evil.³⁸ Yet there is considerable tension between these two conceptions. On the one hand, Hobbes declares that "The Lawes of Nature are Immutable and Eternal."³⁹ Thus, moral philosophy as the science of the laws of nature would seem to provide us with universal laws of action. Yet when we view moral philosophy as the science of good and evil, a very different picture emerges, for Hobbes' conceptions of good and evil are thoroughly relativistic: "For these words of Good, Evil, and Contemptible, are ever used with relation to the person that useth them: There being nothing simply and absolutely so; nor any common rule of Good and Evil, to be taken from the nature of the objects themselves;"⁴⁰ What is good and evil is a function of one's faculty of desire and hence will differ from person to person and for the same person at different times.⁴¹ The object of appetite is good, whole the object of aversion is evil. Further, appetite and aversion are reduced to motions in the human mechanism; appetite is the first beginning of motion toward an object, whereas aversion is the same except away from the object. The direction of these motions will depend on the particular constitution of a mechanism, which will differ from mechanism to mechanism. Construed as the science of good and evil, moral philosophy seems incapable of generating any universally-valid laws. Thus, there is an incompatibility between the claim to universality for the laws of nature and the basis on which these laws rest.

38- Hobbes, Leviathan, p. 215.

39- Hobbes, Leviathan, p. 215.

40- Hobbes, Leviathan, p. 120.

41- Hobbes, Leviathan, p. 216.

Now one might argue that the law of good and evil is (like the law of gravitational attraction) universal, even though its application varies with the circumstances to which it applies. As far as the form of law is concerned, this point is perfectly correct, but there is still a gap here because the laws of nature are actually only maxims of prudence and thus involve the positing of a specific end. The content of the laws of nature, then, requires that there be some end that is universally recognized as good, for otherwise these laws would not be "immutable and eternal." Hobbes locates this end in the universal desire for peace based on an overriding fear of violent death. If we carry out Hobbes' reduction to matter in motion, we find that Hobbes postulates a drive to continued motion on the part of human mechanisms. Pleasure and pain serve as signifiers as to what furthers and hinders that motion. Thus, we desire those objects that further the continued motion of the mechanism and are averse to objects that hinder that motion. A science of good and evil would serve to specify those objects that contribute to our continued motion and those objects that threaten it. Certainly, peace is a condition that contributes to the continued motion of all human mechanisms, and therefore we can consider peace to be a universal object of desire and thus universally good. Since all men agree that peace and the means of achieving peace are good, the science of good and evil consists of laws that are universally valid. Since these laws serve to specify the conditions under which peace is to be attained and subsequently maintained, they just are the aforementioned laws of nature.

But there are problems with the reduction that enables Hobbes to effect the reconciliation between his two conceptions of moral philosophy, for it is simply not true that pleasure and pain are the accurate signifiers

that Hobbes claims they are. Further, it is difficult to see how this reduction can handle a conflict between immediate or short-term pain (or pleasure) and deferred or long-term pleasure (or pain) without introducing an account of prudential rationality that is inconsistent with a materialist basis. But in keeping with my interpretive strategy here, we can easily jettison this reduction and still retain the claim that the desire for peace is universal, which alone is sufficient to make the reconciliation work. Given the glorification of militarism and warfare throughout human history, however, this is a very dubious assertion on Hobbes' part. Hobbes himself recognizes a strong desire for "glory" and "vaine-glory" on the part of human beings, a desire that has traditionally been satisfied by success in battle. Both glory and vaine-glory are based on assessment of one's power, one's own in the former case and that of others in the latter. Now physical strength and intelligence, in the form of tactical cunning and strategic vision, are forms of power the successful exercise of which will contribute to one's glory and vain-glory. Hence there would appear to be no unambiguous desire for peace, but also a desire for war. The empirical evidence certainly favors such a conclusion. If Hobbes is to ground his claim that we ought to enter into civil society on our desires and aversions, then any ambivalence or ambiguity in this area seriously weakens his argument. But even if we grant that the desire for peace is universal, the correct formulation of these laws depends upon human nature, and thus we must make the further assumption that human nature is universal and not subject to change over time.

Again, for Kant, the root of Hobbes' problem lies in his subordination of reason to inclination. Hobbes conceives of reason as purely passive; it is a slave of the passions, from which it takes direction.

The precepts of Hobbes' moral philosophy are prudential maxims derived from a model of human interaction under hypothetical conditions. It is in our self-interest to join civil society, as life outside it is "solitary, poore, nasty, brutish, and short." Thus, we are well-advised to submit to the absolute authority of the sovereign that the commonwealth requires. Hobbes, then, has provided us with what Kant calls a hypothetical imperative, specifically a counsel of prudence. Counsels of prudence state general rules for the achievement of happiness and are hypothetical in form. Hobbes' argument for the existence of civil society amounts to the claim that, given the type of creatures we are, if we want to achieve happiness, we ought to covenant together and form a commonwealth. The force of Hobbes' argument depends upon our acceptance of the end he posits (though it is certainly hard to argue with solitary, poor, nasty brutish, and short) and on the truth of his depiction of human beings.

By pointing this out, I have certainly not refuted Hobbes. Hobbes himself did not think he could accomplish any more than this, but this is because he did not appreciate the active and spontaneous powers of reason. Hobbes succumbed to:

the confusions of philosophers concerning the supreme principle of morals. For they sought an object of the will in order to make it into the material and foundation of a law; ... instead they should have looked for a law which directly determined the will a priori and only then sought an object suitable to it.⁴²

As active and spontaneous, reason can provide such laws in the form of categorical imperatives, imperatives whose binding force does not depend

⁴²-Immanuel Kant, Critique of Practical Reason, trans. Lewis White Beck, (Indianapolis: Bobbs-Merrill, 1978), p. 66.

on one's inclinations or interests. Only categorical imperatives are moral imperatives, according to Kant. Hobbes, then, is unable to provide a moral justification for entrance into civil society; rather, he consigns agents to a condition of heteronomy with respect to their desires and aversions. It is with Locke that we begin to move beyond an account of reason as purely passive and instrumental and begin to see reason as active with respect to desires and inclination.

C. Locke: The Failure of Empiricism

In both the Essay Concerning Humane Understanding and the Two Treatises of Government, John Locke makes a considerable advance from the position of Hobbes to that of Kant, thereby marking an intermediate point between the two. As a result of occupying this intermediate position, there is considerable tension in Locke's thought, a tension which he recognized but could never resolve. Locke is committed both to some form of mechanism, though not the materialistic variety of Hobbes, and also to a conception of persons as free agents. Locke recognizes that free agency is required for moral responsibility. He is faced with the difficult task, then, of combining mechanism with free agency, which "are not very easy to be reconciled or made consistent."⁴³ The conflict between his empiricism and the need for some a priori foundations for morality is closely connected to this issue. In the Second Treatise, Locke deploys a notion of natural law that requires an a priori epistemic basis, yet the epistemological position he develops in the Essay, particularly his denial of innate practical ideas, is incompatible with there being any such basis. It is

⁴³. John Locke, Essay Concerning Human Understanding, (New York: Dover) p. 80.

to Locke's credit that he acknowledged the existence of these tensions, and though he failed to overcome them, his attempt to do so is illuminating.

In spite of certain similarities, Locke's account of the state of nature differs considerably from that of Hobbes. According to both Locke and Hobbes, a basic natural equality prevails in the state of nature: all power and jurisdiction is reciprocal; there is neither subordination nor subjection; and all persons have roughly similar abilities. The state of Nature is a "state of perfect freedom" in which persons may "order their Actions, and dispose of their Possessions, and Persons as they think fit, within the bounds of the Law of Nature, without asking leave, or depending upon the Will of any other Man."⁴⁴ But whereas for Hobbes one is unconstrained in a state of nature except insofar as one is checked by the physical force of another, there being no pre-political obligations between persons, Locke holds that people in a state of nature are bound by the laws of nature, which establish pre-political obligations. As we have seen, Hobbes also employs the notion of laws of nature, but conceives of them in purely prudential terms and grounds them in the self-interest of rational agents. In the Hobbesian state of nature, every other person is a potential enemy; hence one is not bound to respect their person or their possessions. According to Locke, however, the laws of nature bind one to a respect for other persons in a state of nature and thus place a check on one's self-interest: "The State of Nature has a Law of Nature to govern it, which obliges every one: And reason, which is that Law, teaches all

⁴⁴- John Locke, Two Treatises of Government, (Cambridge: Cambridge University Press, 1988), p. 269.

Mankind, who will but consult it, that being equal and independent, no one ought to harm another in his Life, Health, Liberty or Possessions."⁴⁵

Every individual has the right to enforce the law of nature and consequently rightfully possesses a power or jurisdiction over every other individual. The right to enforce the law of nature involves the right to punish violations of it (which is possessed by everyone) and the right to recover damages stemming from such violations (which belongs only to the aggrieved victim of a transgression); however this power is not arbitrary, but is regulated by the law of nature. The severity of punishment is determined by what is necessary to induce repentance on the part of the transgressor and deter others from similar actions. This situation is problematic, however. In interpreting the law, each individual is influenced by his or her own self-interest; thus when judging in one's own case, one will tend to favor oneself, one's friends, and one's family to the disadvantage of others. Civil society is established to remedy this shortcoming by creating a publicly known law administered by impartial judges.

The law of nature serves as the basis for property rights for Locke. Locke maintains that the world was originally given by God to humanity in common for its livelihood and support, but in order to use some part of the common for its intended purpose, one must inevitably exclude others from the same use of that resource. Therefore, if there is to be any rightful use of the common, and God certainly intended that there be such a use, there must be some method by which an individual can rightfully remove resources from the common and appropriate them for himself. Locke

⁴⁵- Locke, Two Treatises, p. 270.

locates this method in application of labor to the common. Each individual has a property in his own person and hence in his own labor as an extension of his person. One may remove an object from the common by an application of one's labor to it, i.e. by mixing one's person with it, thereby annexing it to oneself and making it one's private property. The private appropriation of the common, then, does not require for its legitimacy the consent of all other agents, but is justified by natural law. Natural law places only two restrictions on the extent of private appropriation of the common: first, one may appropriate only so much as one may use without any spoilage; second, there must be "enough, and as good left in common for others."⁴⁶ Unlike Hobbes, then, Locke maintains that property, not just possession, exists prior to civil society. Locke recognizes the centrality of property for the establishment of civil society, and in this he agrees with Kant. But where Locke argues that civil society is necessary to guarantee the security of pre-existing property, at his deepest Kant recognizes that the social contract is necessary for the establishment of property in the first place.

The introduction of money prior to the establishment of civil society, by means of consent on the part of all individuals with tacit agreement as to its value, radically alters the previously existing system of property rights. As a permanent store of value and medium of exchange, money invalidates the two restrictions on the private appropriation of the common, paving the way for unlimited private accumulation and inequality. Since money does not spoil, one is no longer constrained by the spoliage limitation and may hoard up as much as one desires, and

⁴⁶- Locke, Two Treatises, p. 288.

since money serves as a medium of exchange, individuals who formerly had to earn their living by working the land may now survive by selling their labor to others who no longer must leave "enough and as good."⁴⁷ The original equality of individuals in a state of nature, then, is considerably modified by the introduction of money: "This partage of things, in an inequality of private possessions, men have made practicable out of the bounds of Societie, and without compact, only by putting a value on gold and silver and tacitly agreeing in the use of Money."⁴⁸ In addition to generating economic inequality, the introduction of money gives rise to conflicts among individuals. Prior to the introduction of money, one's title to a piece of property was established solely by the labor one bestowed upon it, hence there was "no room for Controversie about the Title, nor for Incroachment on the Right of others; what Portion a Man carved to himself, was easily seen; and it was useless as well as dishonest to carve himself, or take more than he needed."⁴⁹ It may be then that Locke believed that the invention of money provided the impetus for the creation of civil or political society.

Still, according to Locke, a state of nature is not necessarily a state of war, as it is for Hobbes. A state of nature is distinguished by the lack of some political authority; it is a state in which individuals live "together

⁴⁷- For two excellent discussions of Locke's theory of property and the importance of money in that theory from opposing points of view, see Macpherson and Rapaczynski. Macpherson argues that Locke uses the introduction of money to suspend the limitations on property embodied in natural law, thereby legitimating capitalist accumulation and wage dependency. Rapaczynski, however, argues that property is the means by which humans transform their dependence on nature and express their autonomy. The sufficiency limitation is operative only in backward societies and in more developed societies is superseded by a sufficiency principle that dictates that no one be left without the means to each autonomy. Rapaczynski's interpretation turns Locke into something of a Kantian.

⁴⁸- Locke, Two Treatises, p. 302.

⁴⁹- Locke, Two Treatises, p. 302.

according to reason, without a common Superior on Earth, with Authority to judge between them."⁵⁰ A state of war exists where person(s) employ force or have designs against others: "Want of a common Judge with Authority puts all Men in a State of Nature: Force without Right, upon a Man's Person, makes a State of War, both where there is, and is not, a common Judge."⁵¹ Nonetheless, the desire to avoid a state of war is one of the reasons why persons enter into civil society.⁵²

Though not a state of war, the conditions prevailing in a state of nature are far from ideal. In the absence of a publicly established and known law and impartial judges to administer it, the law of nature is distorted by self-interested individuals acting as judges in their own cases. Further, without the protection offered by the state, individuals are subject to aggression on the part of others and are insecure in their person and possessions. Consequently, though one possesses freedom and property in the state of nature, "the enjoyment of it is very uncertain, and constantly exposed to the Invasion of others."⁵³ Civil society is instituted to remedy this condition, as it provides a means of securing the lives, liberty, and estates of those who enter into it.

Locke is clearly vacillating here. This stems from Locke's desire to justify the establishment of civil society, while at the same time avoiding Hobbes' conclusion that absolute power must be placed in the hands of a self-perpetuating sovereign. The former goal requires that he construct a plausible rationale for entrance into civil society by individuals, whereas

⁵⁰- Locke, Two Treatises, p. 280.

⁵¹- Locke, Two Treatises, p. 281.

⁵²- Locke, Two Treatises, p. 282.

⁵³- Locke, Two Treatises, p. 350.

the latter requires that the state of nature and the individuals who compose it not be so atomized and recalcitrant that the only solution is the imposition of absolutist government. These dual objectives give rise to oscillation or shift in Locke's depiction of the state of nature. In order to contrast his views with those of Hobbes, Locke begins by declaring that "the State of Nature, and the State of War, which however some Men have confounded, are as far distant, as a State of Peace, Good Will, Mutual Assistance, and Preservation, and a State of Enmity, Malice, Violence, and Mutual Destruction are from another."⁵⁴ But if the state of nature were so idyllic, there would be no reason for anyone to exit it, and thus Locke is forced to acknowledge certain "inconveniences" in the state of nature. For Hobbes, entrance into civil society is a matter of vital interest, a question of survival; hence the Hobbesian conception and justification of political authority is extremely compelling. Inconvenience, however, is not a particularly compelling argument for relinquishing one's natural freedom, so Locke gravitates towards the Hobbesian position and asserts that we must quit the state of nature in order to avoid the danger that it will degenerate into a state of war. But as Hobbes points out, a state of war is not characterized by constant violence but by the ever-present potential or disposition for violence, with the consequence that Locke's state of nature drifts perilously close to being a state of war. Locke, then, has considerable difficulty reaching an intermediate position between the two views of the state of nature, one as a golden age and the other as a state of war of each against all.

⁵⁴- Locke, Two Treatises, p. 280.

Locke does have other means at his disposal to break his slide into the Hobbesian defence of absolutism. First, he argues quite plausibly that absolutism is incompatible with civil society, for an absolute sovereign, since he acts as judge in his own cases, remains in a state of nature vis a vis all other members of civil society. The citizens of the Commonwealth could not possibly agree to such a situation, as it would be even worse than the state of nature, with the absolute power of the sovereign added to the original defects of the state of nature. Further, natural law, which defines the rights and legitimate powers of all agents, serves as a moral restraint on political authority. Given his empiricism and corresponding denial of innate practical ideas, however, Locke cannot provide an adequate epistemic basis for his conception of natural law. Finally, Locke believes that individuals are capable of a greater degree of social cohesion than Hobbes thought possible and simply do not need the iron hand of an absolutist sovereign to make civil society a reality.

As stated before, the creation of political power is needed to remedy the defects of the state of nature. Locke defines political power as the "Right of making laws with Penalties of Death, and consequently all less Penalties, for the regulating and Preserving of Property, and of employing the force of the Community, in the Execution of such Laws, and in the defence of the Common-wealth from Foreign Injury, and all this only for the Publick Good."⁵⁵ This power is created with the establishment of civil or political society and is legitimate only when it is based on the consent on those who are subject to it. In order to establish civil society, all persons must relinquish their natural freedom and power by placing it in

⁵⁵- Locke, Two Treatises, p. 268.

the hands of the community, which then "comes to be Umpire by settled standing Rules, indifferent, and the same to all Parties."⁵⁶ These actions must be voluntary, for one can only lose one's natural freedom and be bound to civil authority by an act of one's own will:

Man being, as has been said, by Nature, all free, equal and independent, no one can be put out of this Estate, and subjected to the Political Power of another, without his own Consent. The only way whereby any one devests himself of his Natural Liberty, and puts on the bonds of Civil Society is by agreeing with other Men to joyn and unite into a Community, for their comfortable, safe, and peaceable living one amongst another, in secure Enjoyment of their Properties, and a greater Security against any that are not of it.⁵⁷

This general agreement of individuals is the social contract or "original Compact" by means of which civil society is constituted.

Upon entrance into civil society, individuals relinquish the right to do whatever they think necessary to ensure their own survival and the right to punish violations of the law of nature and transfer these rights and their natural force to the community. But the legislative power of the community is not unlimited and arbitrary. Since individuals can not transfer a power greater than that which they possess in the state of nature, a power limited by the law of nature, that same law of nature circumscribes the power and authority of the community. The purpose of political power, then, is to secure the property rights of the members of the community and to pursue the common good.

In effect, political power is not vested in the community as a whole but in the majority of the community. Since collective decisions must be

⁵⁶- Locke, Two Treatises, p. 324.

⁵⁷- Locke, Two Treatises, p. 330-1.

made even though unanimity is impossible, Locke argues that the majority must have the right to decide. Locke employs an analogy with physics to establish this claim: the body politic must move one way or another; the direction of movement is to be determined by the greater force; the majority possesses the greater force; therefore, the majority should determine the direction of movement. This is somewhat similar to Hobbes in that every one binds himself to the decision of the majority in the act of covenanting. With Hobbes, however, the majority makes only one decision; it chooses the sovereign and then transfers decision-making power to him. For Locke, on the other hand, the majority retains some right to make collective decisions to the extent that it may determine whether the government has abused its trust. The original unanimity of the social contract is further mediated by the creation of representative institutions- a majority of the representatives chosen by the majority of the people choose for all the people.

The establishment of civil society, however, is not equivalent to the establishment of government. Sovereignty resides ultimately in the hands of the community, or at least the majority of the community, which erects a government to carry out its will. Locke characterizes the relation between the community and the government as a trust, with the community as both trustor and beneficiary and the government as trustee. A trust is a one-sided relationship in which the trustee has no rights, only duties, and the trustor is under no obligation to the trustee.⁵⁸ There is, then, no reciprocal obligation between the community and the

⁵⁸- For a discussion of the concept of a trust as it relates to Locke, see Ernest Barker, "Introduction," The Social Contract, (Oxford: Oxford University Press, 1948), p. xxii-xxiv.

government; the government has only duties, while the community has rights. The government is entrusted with political power so that it may protect property and advance the common good, where failure to do so is grounds for dismissal. But the dissolution of the government does not constitute the dissolution of political society. If the community determines that the government has abused its power and failed to live up to its trust, it may dismiss the government without dissolving itself in the process and then create a new government to replace it. Political society persists throughout this change of governments. The sharp distinction between civil society and government allows Locke to avoid Hobbes' conclusions that the sovereign must be self-perpetuating and that there can be no right of resistance to that sovereign. Even if the government fails, political society continues to exist, and resistance to the government is not equivalent to resistance to civil society. One may resist government without leaving civil society and returning to a state of nature.

Locke never presents an account of the conceptual status of the social contract, but appears to be possessed of a greater historical naiveté than Hobbes and to conceive of it in historical terms. In section 100 of Chapter VII of the Second Treatise, Locke raises two possible objections to his theory: first, that there are no historical instances of a social contract; second, that all persons, being born under governments, have no liberty to begin a new one and must simply submit themselves to one that already exists. His responses indicate that he conceives of the social contract as a historical event and of the consent needed to legitimate a government as actual. This conclusion is further buttressed by the lack of any alternative account.

Locke devotes sections 101 to 112 of Chapter VII to his response to the first objection, the details of which need not concern us much here. Basically, Locke asserts that political society originated with some compact, but emerged at a time when historical records were not kept, such records being a product of political society. He then explains the nature of those first governments and the process by which they degenerated. Clearly then, Locke appears to conceive of the social contract as some sort of historical event, a conclusion which is buttressed by the lack of any alternative account. But Locke does recognize the limitations of such a conception. Though at one time governments were founded on a contract, this is no longer the case, and the consent involved in the original agreement is no longer operative for consent cannot be passed from generation to generation. Further, appealing to the is/ought distinction, he holds that "at best an Argument from what has been, to what should of right be, has no great force."⁵⁹ This point is important in considering criticisms by those such as David Hume who assert that governments have nowhere been founded on consent (except, as Hume concedes, in their earliest stages) but on force. Despite its historical pretensions, Locke's point should not be construed descriptively (as Hume does) but prescriptively: government should be based on consent and not force, regardless of whether it is so based now. The moral legitimacy of political power depends on the consent of those over whom it is exercised.

This creates a problem for Locke. Even if a commonwealth is founded on an actual contract that specifies the terms of civil association,

⁵⁹- Locke, Two Treatises, p. 336.

it is not binding past the first generation, with whose passing the moral legitimacy of the established political authority ends. How then may political society maintain its legitimacy throughout time? This can be accomplished only if some method can be found by which succeeding generations may become parties to the contract. Locke employs the notion of tacit consent as the means of solving this problem.

Now one may enter into civil society by express consent, but also by tacit consent. Though the consent of the parents is not visited upon their children, parents can annex conditions to the inheritance of their property: for children to come into possession of their parents' property, they must consent to the prevailing political authorities and become members of the political society where that property is located. When one takes possession of one's parents' property, one has tacitly agreed to the social contract and consented to the authority founded on that contract. Locke's comments indicate that he is thinking of land here, but he also recognizes that not everyone within the jurisdiction of the commonwealth is a landowner. This limited conception of tacit consent, then, would exclude the majority of inhabitants of a territory, and thus he develops a more inclusive notion of tacit consent that includes not only land ownership but also "Lodging only for a Week; or whether it be barely travelling freely on the Highway; and in Effect, it reaches as far as the very being of any one within the Territories of that Government,"⁶⁰ a conception is so broad as to permit one to tacitly consent to any tyranny. It is only the narrow conception of tacit consent, however, for which any explicit motivation is provided, though clearly the concept of property applies to far more than just

⁶⁰- Locke, Two Treatises, p. 348.

ownership of land. Locke argues that government is established to secure and regulate property by means of settled laws, and hence anyone who owns property and benefits from this function of government is subject to these laws. It is axiomatic that whoever wills an end wills the necessary means to that end; therefore, it is simply contradictory for one to enter into civil society for the purpose of securing one's life and property and at the same time to claim exemption from the laws established for the attainment of those ends. Anyone who assumes ownership of some property within the domain of a Commonwealth has by that fact become a member of that same Commonwealth. A similar argument can be made for any individual who even enters the territory of a Commonwealth.

This position, however, has several problems. First, as Hume pointed out, it is wholly unrealistic, for given the situation of most persons, we can not reasonably describe this "tacit consent" as freely given. Due to economic circumstances and legal restrictions, people are simply not mobile enough to describe their remaining in one jurisdiction as freely-given tacit consent to the authority of the governors. As Hume so eloquently states it,

Can we seriously say, that a poor peasant or artisan has a free choice to leave his country, when he knows no foreign language or manners, and lives, from day to day, by the small wages which he acquires? We may as well assert that a man, by remaining in a vessel, freely consents to the dominion of the master; though he was carried on board while asleep, and must leap into the ocean and perish, the moment he leaves her.⁶¹

61- David Hume, "Of the Original Contract," in Barker, Social Contract, p. 156.

Now the situation may not be so grim as Hume depicts it; historically, large numbers of people of limited means have migrated from their native lands to new territories. Nonetheless, Hume's criticism does have the ring of truth. Given the severe constraints on such movements, it is difficult to see how the failure to emigrate can be reasonably construed as a form of tacit consent.

Second, Locke has construed tacit consent in such a way that one's intentions do not matter.⁶² One may tacitly consent to existing political arrangements without even being aware that one is doing so. All that is necessary for tacit consent is the purchase of property, and the purchase of property does not necessarily involve the consciousness of having consented to some political arrangement. It seems quite odd to describe one's consent as freely given when one is not even aware that one has so consented, let alone intended to give it.

Third, the appeal to consent seems to be unnecessary here. Locke holds that we consent to a government because it preserves our property and in general secures the blessings of civilization and that we are obligated to obey the government because we have so consented. But why do we need this extra step? We can derive an obligation to obey the government directly from its role in protecting our person and property without appealing to any notion of consent. This is just a variation of the argument Hume makes in "Of the Original Contract." According to Hume, contractarian theorists argue that we are obligated to obey the law because we have promised to do so, this promise being expressed by our

⁶²- For a discussion of this point, see A. John Simmons, Moral Principles and Political Obligations, (Princeton: Princeton University Press, 1979).

freely-given consent. But why, Hume asks, are we obligated to fulfill our promises? Because, Hume answers, if people did not live up to their promises, the bonds that hold society together would break down and civilized life would be impossible. But the same holds true of political authority and the law, for if there were no law or any common power to enforce it, civilization could not endure. Political authority and obligation can be justified in utilitarian terms, and there is no need for any notions of consent or contract to do this job. Thus, the idea of a social contract is superfluous with respect to the grounding of our actual obligations to any existing government. Whether we accept this claim about the basis of political obligation and authority depends on whether we subscribe to utilitarian moral theory. But even if we accept Hume's criticism, the contractarian model is not without some value, for it still provides us with some guidance in the construction of political institutions and the assignment of legal rights. This can be seen most clearly with Hobbes, who accepted the ground of obligation later advanced by Hume but used a contractarian model to determine the extent of this obligation and the proper organization of civil society.

Finally, Locke's doctrine of consent, both tacit and express, is difficult to reconcile with the assertion of a right to dismiss the government, by force if necessary, and his characterization of the relation between the government and the people as a trust. If this relation truly is a trust, then the people as trustors and beneficiaries have only rights and no obligations toward the government. Locke also holds that one's tacit consent lasts only so long as one owns property and terminates with the termination of possession, whereas express consent binds one permanently. But if one is obligated by any form of consent, how can one

rightfully resist that government to which one is bound? Someone who has given express consent seems unable to resist rightfully under any circumstances. On the other hand, someone who has given only tacit consent may withdraw that consent by relinquishing his properties and free himself of any obligation, but in doing so would deprive himself of the only means by which he might effectively resist the government.

I think the problem here arises from Locke's failure to observe his own distinction between civil or political society and government. One's primary obligation is to the commonwealth and not to the government, the obligation to which is derived from one's obligation to the commonwealth. One's obligation to the commonwealth may actually require that one actively resist the government that has violated its trust. One may withdraw one's consent from the government without withdrawing from civil society, as one's express or tacit consent ties one to civil society, not to the government.

We have seen then that, though it is problematic, Locke's deployment of consent is essential to his political theory. But if consent is to be meaningful, it must be freely given and proceed from the will of the agent. We need to step back now from Locke's political theory and examine its metaphysical and epistemological underpinnings in order to determine whether or not Locke's account of practical reason and the will can adequately ground his use of consent. This discussion will of necessity involve us in an examination of the troubled relationship between Locke's appeal to natural law and his empiricism.

As pointed out earlier, Locke recognizes free agency as a necessary condition of morality. Locke equates self-determination with free agency, positing the former as the telos of our being, and in doing so takes a

considerable step towards the Kantian conception of autonomy. An agent is free only if his actions are the products of his own judgment:

were we determined by anything but the last result of our own minds, judging of the good or evil of any action, we were not free; the very end of our freedom being that we may attain the good we choose. And therefore, every man is put under a necessity, by his constitution as an intelligent being to be determined in willing by his own thought and judgment what is best for him to do: else he would be under the determination of some other than himself, which is want of liberty.⁶³

In Locke's contrast between determination of the will by one's own judgment and determination by something other than one's self, we see the outlines of the Kantian opposition between autonomy and heteronomy. Since one is free only when one acts in accordance with one's own judgment, freedom "is grounded on his having Reason, which is able to instruct him in that Law he is to govern himself by."⁶⁴ Locke's empiricism, however, prevents him from locating this Law, the source of our judgments of good and evil in reason itself. Instead, the law is imposed on us from without, thus relegating us to a condition of heteronomy, in which desire and not reason governs our actions.

According to Locke, the will is a power, an ability to produce change; specifically, it is the power to command an action or its forbearance, where a volition is the exercise of that power: "Volition, it is plain, is an act of the mind knowingly exerting that dominion it takes itself to have over any part of the man, by employing in, or withholding it from, any particular action."⁶⁵ Freedom is the capacity to act in accordance with one's

⁶³- Locke, Essay, p. 346.

⁶⁴- Locke, Two Treatises, p. 308.

⁶⁵- Locke, Essay, p. 370.

volitions, the commands issued by one's will. A free agent, then, is able to act according to dictates of his will, whereas a necessary agent lacks both thought and volition. Since both freedom and the will are powers or attributes and powers can be attributed only to substances and not other powers, any talk of a "free will" is incoherent according to Locke, as we would be referring to the power of a power.

But volitions are not uncaused and we may inquire as to what it is that determines the will, an issue Locke discusses in sections 29 to 31 of the first book of the Essay. His initial answer looks very much like an appeal to transeunt causation: the mind or the agent himself determines the will. In the succeeding discussion, however, he reverts to a version of immanent causation, where the immediate cause of a volition is a desire or present uneasiness over some absent good.⁶⁶ Locke's distinction between desire and will enables him to use desire to mediate between understanding and will, thus substituting a mechanism of the mental for Hobbes' materialism.

Judgments of good and evil, then, do not directly determine the will, but require some connection with desire to be efficacious. Thus, the greatest perceived good will not necessarily determine the will, for a pressing immediate uneasiness may override it and incline us to act contrary to our long-term interest. Only if desire is raised to a proportionate level can we be sure that we will act according to our perceptions of our greatest good. Now if Locke were to hold that our desires are fixed, he would be unable to account for even prudential

⁶⁶- For a discussion of the distinction between transeunt and immanent causation, see Roderick Chisholm, "Freedom and Action," in Freedom and Determinism, ed. Keith Lehrer (Atlantic Highlands, NJ: Humanities Press, 1976).

rationality within this framework, but in fact he accepts that our desires are malleable and subject to our own control on the basis of rational examination. According to Locke, we possess a power of suspending the determination of the will so that we may engage in a rational critique of our desires: "For, the mind having in most cases, as is evident in experience, a power to suspend the execution and satisfaction of any of its desires; so all, one after another; is at liberty to consider the objects of them, examine them on all sides, and weigh them with others." This ability opens up the possibility of prudentially rational action. We can compare our immediate desires with our understanding of our long-term well-being in order to determine their place, or lack of such, in our overall life plan, and on the basis of this evaluation, we can alter our the nature of our desires so as to reflect our long-term interest. Locke writes: "And thus by due consideration, and examining any good proposed, it is in our power to raise our desires in a due proportion to the value of that good, whereby in its turn and place it may come to work upon the will, and be pursued."⁶⁷ In this way, understanding determines the will, though mediately.

All persons naturally pursue their own happiness, which Locke defines as "the utmost pleasure we are capable of," and avoid misery, the "utmost misery."⁶⁸ The goodness of an object of desire depends on the amount of pleasure or pain it produces: objects that produce pleasure are good; objects that produce pain are bad. Since pleasure and pain depend on a person's constitution, which varies from person to person, good and

⁶⁷- Locke, *Essay*, p. 344.

⁶⁸- Locke, *Essay*, p. 340.

evil appear to be person-relative, just as with Hobbes. For this reason, there can be no *summum bonum*.⁶⁹ Locke's typically liberal commitment to a toleration of different conceptions of the good life, however, conflicts with his conception of natural law, as we shall see.

If Locke were to stop here, he would have made a small advance over Hobbes. Locke would have produced a theory of practical reason in which reason is purely instrumental in the prudential pursuit of self-interest, while avoiding the pitfalls of Hobbes' pure materialistic mechanism. Moral agents would still be left in a condition of heteronomy, though an intelligent one, and reason would be incapable of generating universally-valid categorical imperatives. But at points Locke's comments suggest that he is operating with a conception of the good that is not relativistic but absolute and objective, and as such can serve as a standard of judgment for our actual desires and a guide to the formation of new ones. For example, in connection with his discussion of our power to modify our desires, he writes: "In this we should take pains to suit the relish of our minds to the intrinsic good or ill that is in things; and not permit an allowed or supposed possible great and weighty good to slip out of our thoughts, without leaving any relish, any desire of itself there, till by a due consideration of its true worth, we have formed appetites in our minds suitable to it, and make ourselves uneasy in the want of it, or in the fear of losing it."⁷⁰ We seem to have, then, some standard of intrinsic goodness to which we ought to make our desires conform. Locke's problem is to find some epistemic basis for this standard.

⁶⁹- Locke, *Essay*, p. 351.

⁷⁰- Locke, *Essay*, p. 350.

What then is the source of our judgments as to the intrinsic goodness of an object? It certainly can not be experience; experience can only tell us what actually pleases us, not what ought to please us. What we need is a standard to which we can appeal when judging our actual desires, thereby enabling us to bring them into accord with the demands of our true happiness. Experience can only teach us how to coordinate our desires to achieve the greatest amount of pleasure throughout our life given our present constitution, whereas we need to know how to reform that constitution. There is simply no empirical basis for judging the intrinsic worth of an object except for the actual pleasure we derive from it.⁷¹

Now an obvious move here would be to appeal to some innate standard of the good, a moral standard known a priori, but Locke's empiricism prevents him from making just such an appeal. In Chapter Two of Book I of the Essay, he takes considerable pains to refute the claim that there are any innate practical ideas by arguing that there are no plausible criteria for their identification. Locke considers two possible criteria, self-evidence and universal acceptance, and rejects them both.

Locke argues that any innate moral principle would have to be self-evident. But since we may legitimately ask with regard to any moral principle for the reasons that would justify it, "the truth of all these moral rules plainly depends on some other antecedent to them, and from which they must be deduced."⁷² Moral principles, then, are not self-evident, and

⁷¹- This is a problem with Rapaczynski's interpretation of Locke. Rapaczynski ably reconstructs Locke's claim that we can choose our pleasures, but offers no rational grounds on which we may make that choice. Without such grounds, we can not construe Locke as a theorist of true autonomy.

⁷²- Locke, Essay, p.

therefore, they are not innate. Further, Locke points out that any principle can be justified by an appeal to self-evidence: "if it be the privilege of innate principles to be received upon their own authority, without examination, I know not what may not be believed, or how any one's principles can be questioned."⁷³

Finally, as part of our original cognitive make-up, any innate principle would have to be universal. But Locke points out that there are no such principles that are universally held, as beliefs and practices vary from person to person and culture to culture. The study of human history reveals that "there is scarce that principle of morality to be named, or rule of virtue to be thought,, which is not, somewhere or other slighted and condemned by the general fashion of whole societies of men, ..."⁷⁴

Let us first consider Locke's claim that the need to rationally justify a moral principle indicates that it is not innate or known a priori. Now there is an ambiguity here with regard to the type of reason that Locke would accept as justifying a moral principle. First, if one asks for a reason to act according to a specific rule of conduct, one might be asking for a specification of the end or goal for the attainment of which it is conducive. For example, if I ask why I ought to tell the truth, you might reply that, by telling the truth, I will acquire a good reputation, which would be useful in my business dealings. It may be that Locke thinks that this is the only type of reason we can give when asked to justify a rule. If Locke were right, then all moral imperatives would be hypothetical in nature, applicable only if we accept the specified end. But this is unacceptable. It

⁷³- Locke, *Essay*, p. 90.

⁷⁴- Locke, *Essay*, p. 74.

always makes sense to ask why we ought to adopt the end specified in the antecedent of a hypothetical imperative, and the answer to this question is not trivial. The same can not be said, however, of moral imperatives. Moral imperatives are commands; they tell me what I ought to do, i.e. what is my duty. It makes no sense to ask with regard to a duty why I ought to perform it, for that would be to ask why I ought to do what I ought to do. The statement 'I ought to do what I ought to do' is tautological. Thus, the only possible answer to such a question is trivial: 'I ought to do what I ought to do, because I ought to do it.'

There is still a non-trivial sense, however, in which I can ask for the reason why I ought to act according to a specific rule. If someone asserts that a rule is in fact a moral imperative, I can always ask for the epistemic justification of this claim. Now when Locke asserts that an a priori moral principle must be self-evident, he clearly goes too far. A principle may be susceptible of a demonstration and yet still be known a priori as long as it is deduced from other a priori principles. Nonetheless, Locke does have a point. The process of justification must eventually end, and we must arrive at principles for which no further demonstration is possible. When that point is reached, we seem to be left with no justification for those fundamental principles but the appeal to their self-evident character, an appeal that can be used to justify any principle. Further, if a principle is truly self-evident, then it ought to be apparent to everyone. The great variety of mores and cultural practices throughout human history, however, suggests that no moral principle possesses the required universality of acceptance.

When Locke demands the "marks" or "character" by which we can identify innate or a priori moral principles, he fails to consider the

criterion of universalizability. For Kant, the lack of universality of assent to or action in accordance with a rule is irrelevant in determining whether it specifies a duty. If it is our duty always to keep our promises, it remains our duty regardless of whether anyone actually does always keep his promises. Even if there were never an instance of someone who always kept his promises, it would still be our duty to do so. What matters is the universalizability of the rule, not the universality of assent or conformity to it.⁷⁵ It may be that Locke failed to recognize this standard because he believed that the good or object of the moral law was logically prior to the right or the law itself. Only rules are universalizable, and in fact, this criterion is derived from the very nature of a law.

In order to ascertain whether a rule or maxim is morally acceptable, one must determine whether it is universalizable. The principle of universalizability, then, is not the first premise of a syllogism (as suggested by Lockean demand for a demonstration), but a test or canon that one applies to the maxims one has formulated for oneself. But if as the highest or fundamental principle, it is itself not susceptible to proof by demonstrative reasoning, then what justifies our acceptance of it? What we need, and what Kant attempts to provide, is a deduction in which this principle is derived from the nature of practical reason itself. But as a result of his empiricism and his corresponding acceptance of the priority of the good, Locke lacks the conceptual resources necessary to carry out such a deduction.

⁷⁵- Kant of course believed that this principle was imbedded in the everyday common understanding of morality, but that this understanding was confused and distorted by the influence of sensuous inclinations. The first part of the Foundations of the Metaphysics of Morals is an analytic attempt to clear away these confusions and distortions and bring this understanding to proper clarity and self-understanding.

In the end, Locke is left with only the appeal to God as the source of our judgments of intrinsic goodness, and even this claim is rendered problematic by his epistemology. Locke holds that God has promulgated a law of nature that directs human beings to the pursuit of their true happiness and goes so far as to identify this law with reason itself.⁷⁶ He further asserts that, though there may be some variation in right and wrong, virtue and vice, from culture to culture "as to the main, they for the most part kept the same everywhere," an assertion that contradicts his earlier denial of the existence of universally-accepted practical precepts. Now this appeal to a law of nature in the form of reason granted by God might make sense if Locke were a Cartesian and committed to a light of nature bestowed upon us by our creator, but he is not. Locke's empiricism with its denial of synthetic judgments known a priori is incompatible with his identification of reason as the law of nature and his appeal to it as the source of our moral judgments. Locke is left with his final fallback position- revelation.

Locke's appeal to God still leaves moral agents in a condition of heteronomy, pursuing only their own self-interest. The law that we ought to be obey is not the product of the self-legislative activity of reason, not even reason as a gift of God, but is imposed upon reason from without. In order to insure our compliance, this law is backed up by the threat of punishment and the promise of reward. Morality, then, consists in the mere conformity of action to the law, the motive for which is supplied by our expectation of punishment or reward. Morality is reduced to prudential self-interest with an eye to eternity:

⁷⁶- Locke, Two Treatises, pp. 271, 272.

morality, established upon its true foundations, can not but determine the choice in any one that will but consider: and he that will not be so far a rational creature as to reflect seriously upon infinite happiness, and misery, must needs condemn himself as not making that use of his understanding he should. The rewards and punishments of another life, which the Almighty has established, as the enforcements of his law, are of weight enough to determine the choice, against whatever pleasure or pain this life can show when the eternal state is considered but in its bare possibility, which nobody can make doubt of.⁷⁷

This is in sharp contrast to Kant's position, which grants primacy to practical reason rather than theoretical reason. For Kant, our belief in the existence of God is derived from our knowledge of our own moral responsibility; a theoretical proof of the existence is dangerous simply because it would preempt that knowledge and induce agents to obey the moral law out of fear and desire and not because it is the law, thus depriving their actions of all moral worth. Locke leaves us as creatures of passion, activated by fear and desire, governed by a law imposed from without.

We have seen then that Locke in many ways anticipates and is struggling toward an understanding of autonomy, but is unable to complete the process. His inability to break with mechanism prevents him from constructing an adequate account of free agency governed by reason, while his commitment to empiricism prevents him from formulating an adequate account of practical reason. Locke is unable to resolve the tensions within his own thought and the conflicting demands made upon it.

⁷⁷- Locke, *Essay*, p. 364.

D. Rousseau: The General Will

Of our three chosen predecessors, Rousseau's moral and political theory is closest to Kant's. A brilliant stylist and intuitive thinker, though lacking in rigor and methodological sophistication, Rousseau proved to be a seminal influence on Kant's philosophical development.⁷⁸ Kant himself credited Rousseau with teaching him to respect human nature in the person of the common people and placed Rousseau's contribution to moral philosophy on the same level with that of Newton's to the natural sciences. Rousseau places the concept of autonomy at the center of his politics and states in very clear terms the fundamental problem this concept poses for political philosophy, though as we shall see he was unable to solve it.

In his first discourse, The Discourse on the Arts and Sciences, Rousseau challenges the basic assumptions of the Enlightenment.⁷⁹ Writing in response to the Academy of Dijon's prize essay question, "Has the restoration of the sciences and the arts helped to purify morals?", Rousseau argues that the advance of the arts and sciences does not generate an improvement in the morals of the species, but on the contrary contributes to the decline of virtue, with the refinements of intellectual

⁷⁸- For an account of this influence, see Ernst Cassirer, Rousseau, Kant and Goethe: Two Essays, (Princeton: Princeton University Press, 1947), pp. 1-60. For a neo-Kantian interpretation of Rousseau, see also his The Question of Jean-Jacques Rousseau, (Bloomington: Indiana University Press, 1967). Cassirer argues that Kant, almost alone among 18th century thinkers, understood Rousseau's real position and significance, but unfortunately he interprets Rousseau's writings so much in the light of Kantian theory that one begins to wonder what the real differences between the two are and whether Kant made any significant contribution to ethical theory other than systematizing and elaborating Rousseau's insights.

⁷⁹- Jean Jacques Rousseau, "The Discourse on the Arts and Sciences," The Social Contract and Discourses, trans. and ed. G. D. H. Cole, (London, 1973).

and aesthetic culture walking hand in hand with the degeneration of moral character. When faced with a choice, Rousseau opts for virtue over knowledge and cultivation, thereby elevating the practical over the theoretical. Though polemical and rhetorical in character, the first Discourse marks the beginning of Rousseau's assault on the naive optimism of his time and its faith in the power of reason to emancipate and benefit humanity. Rousseau pursues this line of thought in The Discourse on the Origin and Foundation of Inequality among Men, his second Discourse. In the second Discourse, Rousseau questions the value of reason itself and asserts that the improvement of human reason has paralleled the decline of the species, portraying reason as a corrosive force that weakens our natural sentiment of pity. The development of reason and of artificial human passions and needs are intertwined in an historical development in which each determines the other and humans are reduced from a condition of independence from each other to one of mutual dependence. Rousseau forces us to question whether reason is in fact good and demands that reason justify itself in the court of virtue.⁸⁰

Rousseau's methodological observations regarding the theoretical activity in the second Discourse are confusing at best. The outlook of the work appears to be historical and to describe the actual social contract, but Rousseau's own comments raise major difficulties for any such

⁸⁰- For a provocative interpretation of Rousseau's influence on Kant along these lines, see Richard Velkley, Freedom and the End of Reason, (Chicago: University of Chicago Press, 1989). Velkley argues that Enlightenment thinkers attempted to emancipate human thought from the fetters of tradition and the supernatural and to use reason as a means of satisfying human desires. Yet reason itself could not justify this emancipatory project nor could it justify its own principles on either teleological or methodological grounds. Rousseau questioned the goodness of reason and raised this teleological problem for it. Kant's solution to this problem, his provision of a telos for reason, is the guiding and unifying theme of the critical philosophy.

interpretation, for he claims that factual accuracy is irrelevant in determining the truth value of his claims:

Let us begin by setting aside all the facts, because they do not affect the question. One must not take the kind of research which we enter into as the pursuit of truths of history, but solely as hypothetical and conditional reasonings, better fitted to clarify the nature of things than to expose their actual origins; reasonings similar to those used everyday by our physicists to explain the formation of the earth.⁸¹

The work, then, purports to present a scientific model that explains the genesis of property, inequality, civil society, and the degraded condition of humanity. Yet Rousseau presents this account as a history of the species and affirms the historical validity of his claims: "here is your history as I believe I have read it, not in the books of your fellow men who are liars but in nature which never lies."⁸²

Rousseau seeks to uncover the nature or natural condition of humanity by stripping away "all the supernatural gifts he may have received, and all of the artificial faculties that he can have acquired only through a long process of time," the modifications and accretions generated by society.⁸³ Rousseau claims that no previous philosopher has succeeded in reconstructing humanity's natural condition, though many have tried, because all have imported into their depiction of the state of nature characteristics that are attributable to our later social existence and thus have confused "savage man with the man before our eyes."

⁸¹- Jean Jacques Rousseau, Discourse on the Origins and Foundations of Inequality among Men, trans. Maurice Cranston, (Harmondsworth: Penguin, 1984), p. 78.

⁸²- Rousseau, Discourse on Inequality, p. 79.

⁸³- Rousseau, Discourse on Inequality, p. 81.

Though a critic of Hobbes' modelling of the state of nature, Rousseau's understanding of natural phenomena was quite similar to that of Hobbes, for both were deeply influenced by mechanistic natural science. Natural beings are merely machines for Rousseau, so that a description of the natural condition of human beings is merely a model of the functioning of a specific type of machine. In this respect, humans are no different from animals:

I see in all animals only an ingenious machine to which nature has given senses in order to keep itself in motion and protect itself, up to a certain point, against everything that is likely to destroy or disturb it. I see exactly the same things in the human machine, with this difference: that while nature alone activates everything in the operations of a beast, man participates in his own actions in his capacity as a free agent.⁸⁴

Rousseau's task in describing humans qua natural beings is to isolate these mechanical operations and display the manner in which they function. But, unlike Hobbes, Rousseau holds that the resultant model is incapable of capturing and explaining all human activity, for as a free agent, "we see a spiritual activity, of which the laws of mechanics can explain nothing."⁸⁵

According to Rousseau, human beings in their natural condition are motivated by an instinctive drive for self-preservation moderated by a sentiment of pity activated by the sight or sound of others of their kind in pain. Hobbes' voracious egoists forever seeking to dominate their fellows disappear in Rousseau's state of nature. Far from being the vicious creature described by Hobbes, humans in their natural condition are

⁸⁴- Rousseau, *Discourse on Inequality*, p. 87.

⁸⁵- Rousseau, *Discourse on Inequality*, p. 88.

neither virtuous nor vicious for they know nothing of right and wrong, good and evil. There is no society to speak of; contacts between humans are few and fleeting and are regulated by natural pity and physical desire. Human needs are few, modest, and unlikely to generate any conflict, for even if one is injured by another, one feels no enduring insult worthy of vengeance, but reacts reflexively "like a dog that bites a stone thrown at him." Humans in their natural condition lack self-awareness, possessing no sense of themselves as distinct from others and no conception of their own existence in time: "His soul, which nothing disturbs, dwells only in the sensation of its present existence, without any idea of the future, however close that might be, and his projects, as limited as his horizons, hardly extend to the end of the day."⁸⁶

Unfortunately, humans were not destined to remain forever in the state of nature. Human beings possess what Rousseau ironically calls the faculty of self-improvement- *perfectibilité* - which enables the individual and the species to develop all its other faculties. Human beings, then, are malleable, capable of assuming a variety of forms. The operation of the faculty of self-improvement, set in motion by external forces, drives humanity out of the state of nature and places it on the long road to civilization without any hope of return to its original innocence. But this faculty is more curse than blessing: "It would be sad for us to be forced to admit that this distinguishing and almost unlimited faculty of man is the source of all his misfortunes; that it is this faculty which, by the action of time, drags man out of the original condition in which he would pass peaceful and innocent days; that it is this faculty, which bringing to

⁸⁶- Rousseau, Discourse on Inequality, p. 90.

fruition over the centuries his insights and his errors, his vices and his virtues, makes men in the end a tyrant over himself and over nature."⁸⁷ Rousseau conjectures that the original stimulus that activated this faculty was the increase in population, as a result of health and fertility of our natural condition, beyond the capacity of the environment to support it. Thus humanity exits the state of nature and enters nascent society, the next stage of its development.

While Rousseau speaks in terms of stages of development, he recognizes that these stages can not be divided into discrete periods, but required long periods of germination and slow, gradual transformation for their emergence. Language, thought, and society all slowly develop together until eventually humans enter into nascent society. According to Rousseau, nascent society is "the golden mean between the indolence of the primitive state and the petulant activity of our own pride" and "must have been the happiest epoch and the most lasting."⁸⁸ Nascent society was characterized by the settled life of families in small communities nited by "custom and character- not by rules and laws." The gathering of individuals into families and communities gave rise to notions of merit, value, and consideration on the part of humanity and to which everyone claimed a right. Thus, the passions of pride, jealousy, and revenge are formed, and along with these passions, new needs begin to develop which later serve to enslave humanity. Morality is introduced to regulate social intercourse as the force of natural pity diminishes, with revenge serving to punish transgressions and sufficing in the place of law.

⁸⁷- Rousseau, Discourse on Inequality, p. 88.

⁸⁸- Rousseau, Discourse on Inequality, p. 115.

Full-fledged civil society emerges with the development of agriculture and metallurgy and the consequent division of labor these developments generated. Cultivation of the land necessitated its division, and this, in combination with the division of labor, resulted in the transformation of natural inequality into inequality of rank. Independence was replaced by relations of mutual dependence, for where formerly one could survive without the aid of others, now one required their assistance. This situation was exacerbated by the development of new desires and needs that could be satisfied only with the efforts of others, thus forcing each person to persuade others that it is in their interest to provide that help. Finally, ambition and greed developed as individuals strove to surpass others. Under such circumstances, life and property became increasingly insecure with nascent society giving way to a Hobbesian state of war of all against all. Yet, at the same time, we find "all our faculties developed, memory and imagination brought into play, pride stimulated, reason made active and the mind almost at the point of perfection of which it is capable."⁸⁹

This situation was most disadvantageous for the rich, who had the most to lose and whose claims to wealth and property were based on force rather than right. In order gain security in the enjoyment of his life and possessions, the rich man concocted "the most cunning project that ever entered the human mind: to employ in his favor the very forces of those who attacked him, to make his adversaries his defenders, to inspire them with new maxims and give them new institutions as advantageous to

⁸⁹- Rousseau, Discourse on Inequality, p. 118.

him as natural right was disadvantageous."⁹⁰ Thus, the social contract was born. All persons were persuaded to unite their forces so as to protect the lives and property of the members of the community and to promulgate settled laws to govern their mutual relations. Of course, this arrangement favored the rich, who had the property that was to be protected and could manipulate the laws to suit their own interests. Rousseau, then, exposes actual civil society as a sham perpetrated by the rich upon the poor "which put new fetters on the weak and gave new powers to the rich, which irretrievably destroyed natural liberty, established for all time the law of property and inequality, transformed adroit usurpation into irrevocable right, and for the benefit of a few ambitious men subjected the human race thenceforth to labor, servitude and misery."⁹¹

Though reason and the faculty of self-improvement have proven to be curses in the past, they also provide the means by which we can extricate ourselves from our present predicament. As pointed out above, humanity is malleable and capable of receiving a variety of forms, including modes of social existence devised by human reason. Reason is capable of formulating ideals that extend beyond present reality, and in The Social Contract Rousseau presents just such an ideal construction. Where the second Discourse explains how we arrived at where we are, The Social Contract tells us where we ought to go from here, and we are capable of making this proposed journey because we are malleable and not condemned to remain in our present condition in perpetuity. In the

⁹⁰- Rousseau, Discourse on Inequality, p. 121.

⁹¹- Ibid., p. 122.

second Discourse, we see the process by which all humans are induced to run "towards their chains;" in The Social Contract, we begin with humanity "everywhere in chains" and seek to determine whether "there can be any legitimate and sure principle of government, taking men as are and laws as they might be" and thus transform our condition from bondage to freedom.⁹²

The state of nature presented in The Social Contract is considerably different from that of the second Discourse, so much so that one wonders whether he is using the expression with the same meaning. According to Rousseau in the former text, life in the state of nature becomes untenable at some point and some drastic change in humanity's mode of existence is necessary for the species to survive. The demands of self-preservation require that we find some mechanism by which individuals can continue to maintain their existence. Since we are incapable of creating new powers but can only combine previously existing ones, individuals can create this mechanism only by uniting together in civil society and employing the power of all to defend the life and property of each. This union, however, generates what Rousseau considers to be the "fundamental problem" of political philosophy: "How to find a form of association which will defend the person and goods of each member with the collective force of all, and under which each individual, while uniting himself with the others, obeys no one but himself, and remains as free as before."⁹³ The social contract is supposed to provide the solution to this problem.

⁹²- It ought to be pointed out that, contrary to my interpretation, in the The Social Contract Rousseau holds that he does not know how we arrived at our present state.

⁹³- Jean Jacques Rousseau, The Social Contract, trans. Maurice Cranston, (Harmondsworth: Penguin, 1968).

Now taken literally, this problem simply can not be solved.⁹⁴ If everyone is to govern himself and possess the same freedom as in the state of nature, then the transition from the state of nature to civil society is meaningless as it is no transition at all. These conditions can be met only in the state of nature. But I think Rousseau should not be taken literally here, and though the problem is a difficult one, he points the way to the solution that Kant carries out. The key point here is the expression "as free as before." When one enters the state of nature, one can not remain "as free as before" because the freedom that one enjoys in civil society is different in kind from that which prevails in the state of nature. Entrance into civil society generates a qualitative change in the moral status of individuals: "The passing from the state of nature to the civil society produces a remarkable change in man; it puts justice as a rule of conduct in the place of instinct, and gives his actions the moral quality they previously lacked."⁹⁵ By entering into civil society, individuals exchange the lawless freedom of the state of nature for the autonomy of reason, that is, they acquire the capacity to govern their actions by reason rather than passion: "man acquires with civil society, moral freedom, which alone makes man the master of himself; for to be governed by appetite alone is slavery, while obedience to a law one prescribes to oneself is freedom."⁹⁶ The moral freedom Rousseau describes can only be achieved in true community with others of the species, for it is only in such a context that we acquire a general will. Real autonomy, then, is

⁹⁴- For discussions of this problem, see Gough, The Social Contract, p. 168-9, and Robert Paul Wolff, In Defense of Anarchism, (New York: Harper and Row, 1976).

⁹⁵- Rousseau, The Social Contract, p. 64.

⁹⁶- Rousseau, The Social Contract, p. 65.

collective in nature. The human beings we are left with at the conclusion of the second Discourse possess no general will, for suspended midway between nature and true community, they are governed by appetite and passion and possess only a private will, the result of the gross imperfection of actual civil society.⁹⁷

The terms of the social contract are "precisely determined by the nature of the act:" one alienates one's person, possessions, and rights to the whole community, an alienation that is unconditional and absolute. The mutual dependence between persons is replaced by the dependence of each upon all, and thus upon no one in particular. Our persons and possessions are placed under the control of the general will, which in turn directs the legislative activity of the community towards the common good, the purpose for which civil society was instituted. In our present condition, private interests are in conflict with each other, thus necessitating the establishment of civil society, but there is also a harmony of interests which makes civil society possible and is expressed by the general will. Rousseau states clearly that the general will is not a mere aggregation of all the diverse private interests, but is not clear as to what it is:

There is often a great difference between the will of all (what all individuals want) and the general will; the general will studies only the common interest while the will of all studies private interest, and is indeed no more than the sum

⁹⁷- Rapaczynski argues that Rousseau attempts to overcome the atomizing effects of liberal theory, while at the same time accepting its individualistic basis. Alienated from nature, human beings in modern society are also alienated from each other and entirely alone in the world. Rousseau attempts to overcome this condition by bringing individuals together in tightly integrated community that will replace nature as man's home; thus Rousseau's theory expresses a yearning that can not be met within the confines of traditional liberalism.

of individual desires. But if we take away from these same wills, the pluses and minuses which cancel each other out, the sum of the differences is the general will.⁹⁸

When deliberating on legislation as a member of civil society, one must consider only the common good, for qua citizen one possesses only a general will. All law is a declaration of the general will (as determined by the majority), and the essence of human freedom lies in this legislative activity, since freedom just is "obedience to a law one prescribes to oneself." Thus, an individual may be compelled to obey the law, "which means nothing other than that he shall be forced to be free."⁹⁹

But individuals in modern society do not possess a general will yet, and Rousseau needs to find some means by which such a will may be brought into being. If a people is to be free, then social institutions must be the product of its free consent, for only that people possesses legislative right. This creates a serious problem for Rousseau. The general will is a product of correct social institutions, but correct social institutions presuppose the existence of a general will; therefore, individuals "would have to have already become before the advent of the law that which they become as a result of law."¹⁰⁰ Rousseau resolves this problem by resorting to the *deus ex machina* of revolutionary politics, the enlightened lawgiver. If one aims at the sudden transformation of existing society root and branch by conscious human agency, then one must find some person, or group of persons, who have risen above the corruption and degradation engendered by existing social conditions and can lead the rest of humanity to its emancipation. Rousseau finds this in the person of the lawgiver.

⁹⁸- Rousseau, The Social Contract, p. 72-3.

⁹⁹- Rousseau, The Social Contract, p. 64.

¹⁰⁰- Rousseau, The Social Contract, p. 87.

The lawgiver crafts the appropriate social institutions for a people and then, lacking the moral authority to promulgate laws on his own, submits his program to the people for their approval. The lawgiver elicits their consent by deceiving his charges with appeals to supernatural authority and divine sanction. Unlike Kant, then, Rousseau does not conceive of the social contract as the projected end-point of an infinite historical process. Rather, a people must receive the foundational laws of its civil society all at once, generally in its infancy.¹⁰¹ In contrast to this, Kant's reliance on historical process vitiates any need for a lawgiver or revolutionary vanguard. The ideal that Rousseau lays out is meant to guide the lawgiver in the construction of civil society, but the lawgiver requires the actual consent of the people when translating this ideal into practice, otherwise the resultant civil society lacks moral legitimacy. It appears, then, that in some sense the social contract can be an actual event or is at least a metaphor for an actual event.

As we have seen, Rousseau makes a considerable advance over Locke in the development of the notion of autonomy by asserting that freedom consists in being governed by "a law one prescribes to oneself," by reason rather than appetite, and unfolding the political implications of this freedom. Nonetheless, Rousseau is unable to formulate clearly this concept, a problem that can be discerned clearly in Rousseau's account of the general will. The notion of general will is extremely paradoxical, for the will is essentially particular as opposed to general, an individual faculty not a collective one, and one is tempted to make sense of it by positing some collective mind or ego. But we need not do this, since the

¹⁰¹- Rousseau, The Social Contract, pp. 88-9, 95.

general will can be defined in terms of its object or end, the common good. In the concept of a general will, Rousseau attempts to combine a morality of the common good with one of individual consent.¹⁰² The source of Rousseau's difficulties I shall argue lie in his granting priority to the good over the right, from his attempt to base the law on a conception of the good rather than base his conception of the good on the law.

Despite Rousseau's attempts to distinguish sharply between reason and desire, identifying freedom with the former and slavery with the latter, this distinction is untenable within the confines of his moral theory; it is merely apparent and not real. As we have seen, Rousseau is forced to appeal to the desires and interests of individuals when attempting to explain his conception of the general will. For a Kantian, this comes as no surprise, because, as Kant points out, one can only be related to the good through the faculty of desire. Now this relation must be either necessary or contingent. If our relation to some good is necessary, then we lack the freedom that is the precondition of moral agency and responsibility. Any law formulated on the basis of that good is nothing but a description of human behavior in terms of causal connection; it links a stimulus (the object of an action) with a response (the end of that action). On the other hand, if our relationship to some good is contingent, then we are incapable of formulating a categorical imperative with regard to that good. Whether or not an object is good will

¹⁰²- See Patrick Riley's discussion of Rousseau in Will and Political Obligation. Riley argues that Rousseau attempts to combine two traditions of political thought, the ancient tradition of community and social cohesion with the modern tradition of individuality and consent, and that this attempted synthesis is what makes Rousseau's thinking so paradoxical. For a history of the development of the idea of the general will, see Patrick Riley, The General Will Before Rousseau, (Princeton: Princeton University Press, 1986).

depend on whether or not we desire it, and this will vary from agent to agent, being determined by the specific constitution of a person's faculty of desire. Under these circumstances, reason can provide us only with hypothetical imperatives and not categorical ones. By granting primacy to the law rather than its object (the common good), Kant enables us to overcome Rousseau's confusion on this point and to formulate clear concepts of autonomy and the general will. Kant identifies the general will with pure practical reason; the generality of this will is derived from the universal validity of its principles.

Kant's shift of priority from the good to the right also allows us to soften what is perhaps the most disturbing aspect of Rousseau's political theory- its totalitarian implications. Despite Rousseau's protestations to the contrary, it is difficult to see how individuality can be preserved in Rousseau's tightly and thoroughly integrated community. The individual seems bound to be swallowed up in the collective. Each person receives "his life and being" from the collective and, unable to do anything without "the help of others," becomes completely dependent on the whole. The power of the community over its members is total and "absolute;" its authority "penetrates into a man's inmost being, and concerns itself no less with his will than with his actions."¹⁰³ The public sphere expands to the point where the sphere of private life disappears, and each person's "particular will is in all things conformable to the general will."¹⁰⁴ Rousseau's conception of the common good is so strong and all-inclusive that there appears to be no room left for any conception

¹⁰³-Jean Jacques Rousseau, "A Discourse on Political Economy," in Cole, The Social Contract and Discourses, p. 127.

¹⁰⁴- Rousseau, "A Discourse on Political Economy," p. 130.

of an individual good distinct from that of the collective. Rousseau's concern for community and his opposition to the atomizing and dehumanizing effects of liberal individualism, though noble, in the end forges shackles as strong and as confining as any of those clamped on us by Hobbes.

Kant's political theory walks this fine line between the rights of the individual and the claims of the community. In the Foundations of the Metaphysics of Morals, Kant combines the legislative activity of the collective with the pursuit of private ends in his vision of a realm of ends:

By 'realm' I understand the systematic union of different rational beings through common laws. Because laws determine ends with regard to their universal validity, if we abstract from the personal difference of rational beings and thus from all content of their private ends, we can think of a whole of all ends in systematic connection, *a whole of rational beings as ends in themselves as well as of the particular ends which each may set for himself.*¹⁰⁵

For Kant, the "common objective laws" that form the bonds of this "systematic union of rational beings" and govern our mutual relations is the concern of the social contract, not the particular ends of individuals. The concept of autonomy lies at the center of the social contract as the laws of civil society are the product of a collective self-legislation in which each member "gives universal laws in it while also subject to these Laws" and is thus "subject to the will of no other."¹⁰⁶ Individuals are left to pursue their own private ends within the framework of these common laws. This reflects the division of his Metaphysics of Morals into two parts, the

¹⁰⁵- Immanuel Kant, Foundations of the Metaphysics of Morals, trans. Lewis White Beck, (Indianapolis: Bobbs-Merrill, 1959), p. 51. Emphasis is mine.

¹⁰⁶- Kant, Foundations, p. 52.

theory of justice (the Rechtslehre) and the theory of virtue (the Tugendlehre). The former discusses the external relations between agents, which are subject to collective self-legislation as determined by the social contract, while the latter concerns itself with the ends adopted by individual agents, which because internal can not be subject to the legislative edicts of civil society.

CHAPTER III

THE IDEA OF THE SOCIAL CONTRACT

A. Introduction

As we saw in the previous chapter, there are essentially three different accounts of the conceptual status of the social contract: the actual; the hypothetical; and the ideal. Of these three different accounts, Locke's theory is an instance of the first, Hobbes' of the second, and Rousseau's and Kant's of the third. In each case, of course, the social contract is meant to guide practice, though the basis of this guidance varies from theory to theory. Locke seeks the renewal of the original contract that bound humans together into civil society; we are to establish that contract anew by harkening back to the basic principles of that contract, which have become distorted over time. Hobbes, on the other hand, argues that we need to govern ourselves in accordance with the principles of prudential rationality. The social contract is merely a model that enables us to discern the operation of prudence with respect to political affairs and not any sort of actual event, which either has or at least ought to take place. Kant rejects both of these conceptions of the social contract, instead opting for an account of the contract along idealistic lines.

The Kantian critique of the social contract as a hypothetical construction was laid out in the last chapter. A hypothetical construction can yield only hypothetical imperatives, more specifically, counsels of prudence, which inform us as to how we are best to promote our own happiness. Because these imperatives depend on the presence of sensuous inclinations and on the specific contingent make-up of the agents who are

the parties to the contract, they are not universally valid for rational beings. Incapable of generating any properly moral, i.e. categorical, imperatives, such an interpretation of the social contract represents an illegitimate attempt on the part of empirical practical reason to overreach its appropriate limits.

If, on the other hand, we construe the social contract as an actual historical event, then some proof of its occurrence would be required for it to be binding: "Such an assumption would mean that we would first have to prove from history that some nation, whose rights and obligations have been passed down to us, did in fact perform such an act, and handed down some authentic record or legal instrument, orally or in writing, before we could regard ourselves as bound by a pre-existing civil constitution."¹ Given the lack of records at the time of the founding of civil society, this would require an impossible feat of historical archaeology, "for savages do not draw up documents when they submit themselves to the law, and, indeed, from the very nature of uncivilized men it can be inferred this was achieved through the use of violence."² In the absence of any historical documents, the theorist is left with only practical reason to fill in the details of the contract, and this is exactly what Locke is forced to do when he engages in speculation about the original contract. Further, as we

1- Immanuel Kant, "On The Common Saying: 'This May Be True In Theory, But It Does Not Apply In Practice'," in *Kant's Political Writings*, ed. by Hans Reiss, trans. by H.B. Nisbet, (Cambridge: Cambridge University Press, 1970), p. 79. Hereafter cited as "Theory and Practice."

2- Immanuel Kant, *The Metaphysical Elements of Justice*, ed. and trans. John Ladd, (Indianapolis: Bobbs-Merrill, 1965), p. 111. In addition to the impossibility of excavating the original contract, Kant maintains that any examination of the historical origins of the state is potentially dangerous, for it may be used to weaken its legitimacy in the eyes of the people.

saw in our discussion of Locke, the claim that such an event imposes an obligation on succeeding generations is extremely dubious.

This brings us to the key point here. Any attempt to found political obligation and the prescription for the proper arrangement of political society is an attempt to derive an ought from an is; it is an attempt to base an account of how civil society ought to be constituted on a claim about how it was constituted. Such an effort by its very nature precludes any moral critique of the original contract, for that contract itself is put forth as the standard by which to judge existing political arrangements. This reverses the proper relationship between theory and practice. Instead of theory guiding practice, practice guides theory.

But perhaps we have placed an excessive emphasis on the apparent historicity of Locke's presentation. While some contractarian theorists of his time did conceive of the social contract as an historical event,³ and there is some textual basis for interpreting Locke's theory in a similar fashion, Locke also recognizes that the historical reality of the original contract is not essential to his theory, as was pointed out in the last chapter. Instead, Locke can be interpreted as arguing that civil society ought to be founded on a contract, even though it may not have been in the past. Even so, this does little to salvage Locke's theory in this respect, for he is still committed to conceiving of the contract as an actual event. In addition to the problem of transmissibility, the actuality of the social contract is theoretically superfluous. Since we must rely on practical reason to guide us in the drafting of the contract, otherwise we can not remove the is/ought problem, the act of covenanting adds nothing to

³- For a discussion of Locke's predecessors and contemporaries, see Gough, The Social Contract.

either our understanding of the content of the contract or the obligations that derive from it. These can be deduced directly from morality itself.

Kant maintains that the social contract "is in fact merely an idea of reason, which nonetheless has undoubted practical reality."⁴ It serves as a standard by which to judge existing constitutions with an eye to their improvement and as a guide to the legislator in the framing of laws, thereby establishing the proper relationship between theory and practice. Without this idea, we lack any standard by which to evaluate the moral imperfections of existing civil societies, "for it is only by means of this idea that any judgement as to moral worth or its opposite is possible; and it therefore serves as an indispensable foundation for every approach to moral perfection."⁵ Whether existing constitutions and laws actually conform to the idea of the social contract is irrelevant with respect to its truth and value, as "the canon of reason is related to practice in such a way that the value of practice depends entirely upon its appropriateness to the theory it is based on."⁶ In constructing this idea, then, we are forced to abstract from all the empirical and contingent conditions of human society and to rely solely on pure practical reason itself, for "all is lost if the empirical conditions governing the execution of the laws are made into conditions of the law itself, so that a practice calculated to produce a result which previous experience makes possible is given the right to dominate a theory which is in fact self-sufficient."⁷ By abstracting from empirical conditions, we obtain universal validity for the theory.

4- Kant, "Theory and Practice," p. 79.

5- Kant, Critique of Pure Reason, p. 311.

6- Kant, "Theory and Practice," p. 63.

7- Kant, "Theory and Practice," p. 63.

Unfortunately, Kant's contribution in this regard has been given short shrift by some commentators on the contractarian tradition. J. W. Gough, for instance, argues that the social contract has only "pragmatic reality" for Kant, obliging both rulers and ruled to act "'as if' it were real." Further, he dismisses it as purely superfluous since one's political obligations can be founded directly on the moral law.⁸ But the social contract simply is the moral law as applied to politics and, as such, is an integral part of the Kantian system of morality. This sort of interpretation fails to grasp the role of ideas in the critical philosophy. For Kant, 'idea' is a technical term, the specific meaning of which can be understood only in the context of the critical philosophy.

In the next section, I will examine Kant's theory of ideas in general. In doing so, I will situate that theory in the context of Kant's critical philosophy and present the rationale Kant adduces for his account of ideas. In section C, I will turn from the general to the particular by considering Kant's treatment of the idea of freedom, of which his theory of the social contract is one aspect. Section D will be devoted to a discussion of the defects with Kant's account of freedom. Finally, I will conclude in section E with some remarks on the fundamental importance of freedom for both theoretical and practical reason.

B. The Theory Of Ideas

Kant occupies the position of a transitional thinker within the history of western philosophy. He is deeply attached to the tradition of rationalist metaphysics, but the epistemological doctrine he propounds in

⁸- Gough, The Social Contract p. 183. See also Lessnoff's discussion of Kant.

the Critique of Pure Reason is one of the most trenchant critiques of that very same tradition. Torn between the limits imposed upon reason and knowledge by his own epistemology and his unwillingness to relinquish fully rationalist metaphysics, Kant searches for some way of reconciling these conflicting demands. The theory of ideas is the means by which Kant attempts to effect this reconciliation.

Norman Kemp Smith points out that Kant actually works with two distinct, though not necessarily incompatible, conceptions of ideas- a skeptical one and an idealist one.⁹ Though Kemp Smith does not argue for this, these two conceptions correspond roughly to the distinction between theoretical and practical reason. I will use this as the organizing principle of my discussion and begin by examining what I take to be the skeptical conception.

According to the skeptical conception of ideas, reason is just understanding in its self-regulating capacity. Ideas, or concepts of reason, are merely the categories extended beyond the realm of possible experience and applied to things-in-themselves. This extension is the result of the natural tendency of reason to seek the unconditioned and must be defended against by exposing the "natural and inevitable" illusions to which this tendency gives rise, a task Kant undertakes in the Transcendental Dialectic. Ideas, however, do have a legitimate cognitive function. Properly understood, they are regulative principles that govern the subjective conditions of thought and not objects themselves. The explanation of these remarks requires a brief excursion into the Transcendental Analytic of the first Critique.

⁹- Norman Kemp Smith, A Commentary on Kant's Critique of Pure Reason, (New Jersey: Humanities Press, 1984), p. 425-31.

The central question that Kant seeks to answer in the first Critique is: How can synthetic judgments concerning the independently real be known a priori?¹⁰ It is obvious how analytic judgments can be known a priori, for in such judgments we are merely explicating the content of our concepts, and for this we need only the definitions of the appropriate terms and the rules of formal logic.¹¹ But synthetic judgments are ampliative. What they assert cannot be justified simply by appealing to the meanings of their component terms, for they provide us with substantive information that can not be gleaned from mere conceptual analysis. Since we are concerned with judgments known a priori, any appeal to experience is strictly forbidden here. Kant, however, does not stop here. As a result of his encounter with David Hume's skeptical attack on the traditional conception of causation as necessary connection, Kant recognized that the synthetic a priori also lies at the root of our empirical knowledge. The empirical knowledge provided by science consists of laws of necessary connection, but, as Hume points out, sense experience alone presents no such connection. Through the senses, we can discover only

¹⁰- Kant first posed this question in a letter written to his friend Marcus Herz after the Inaugural Dissertation of 1770, in which he had espoused the view that such knowledge was possible. "In my dissertation, I was content to explain the nature of intellectual representations in a merely negative way, namely, to state that they were not modifications of the soul brought about by the object. However, I silently passed over the further question of how a representation that refers to an object without being in any way affected by it can be possible. I had said: The sensuous representations present things as they appear, the intellectual present them as they are. But by what means are these things given to us, if not by the way in which they affect us? And if such intellectual representations depend on our inner activity, whence comes the agreement that they are supposed to have with objects- objects that are nevertheless not possibly produced thereby? And the axioms of pure reason concerning these objects, since the agreement has not been reached with the aid of experience?" Immanuel Kant, Philosophical Correspondence 1759-99, (Chicago: University of Chicago Press, 1986), p. 72.

¹¹- Kant defines the analytic/synthetic distinction in terms of judgments that involve only subjects and predicates. My description of the distinction is more expansive than this and includes judgments that are not in strict subject/predicate form.

the constant conjunction of two different types of events, which produces a habit of association on the part of the mind. Even our empirical knowledge, then, contains elements that can not be derived from experienced but must be given a priori. But on what basis can we establish reason's claim to provide such a priori knowledge?

Kant's answer is both elegant and simple. We cannot have a priori knowledge of the independently real, but we can have such knowledge of that which is dependent on our own mental activity. We can know a priori what our mental activity contributes to the objects of experience. Thus, synthetic judgments known a priori do not apply to things as they are in themselves, independent of our own mental activity, but to things as they appear to us, for the mind is active with respect to appearances. We construct experience with the aid of concepts provided by our own understanding. Human knowledge, then, has two distinct sources: understanding and sensibility. Understanding provides the form of thought, while sensibility provides the matter of thought.¹² Both are absolutely necessary, if we are to have knowledge, for "without sensibility no object would be given to us, without understanding no object would be thought. Thoughts without content are empty, intuitions without concepts are blind."¹³ Rationalism focuses on the former to the exclusion of the latter, whereas the opposite is the case with empiricism. Both rationalism and empiricism fail as accounts of human knowledge because they do not take adequate account of the two sources of knowledge, understanding and sensibility, and the corresponding duality of our

¹²- The picture is a bit more complicated than this. The mind also provides the form of sensibility, space and time or the pure forms of intuition, which is the source of mathematics.

¹³- Kant, Critique of Pure Reason, p. 93.

mental activity, that it is both active and passive, combining spontaneity and receptivity.

The form of our experience of the world is provided by the understanding through its own pure concepts, the categories. In order to establish this claim, Kant employs a particularly powerful argumentative strategy. Kant starts with the fact of self-consciousness or intelligible thought and then deduces its necessary conditions. Since all potential critics must accept the starting point of self-consciousness to even enter into debate, Kant has constructed an argument for which, if it is successful, there can be no reply. In brief, Kant points out that 'I think' must be capable of accompanying all of our diverse representations ('representation' is Kant's generic term for any mental event). For this to be possible, unity must be introduced into the manifold of our representations by means of synthesis. The categories are the rules by which the manifold of representation is synthesized so as to produce the necessary unity, and thus without the categories, no intelligible thought would be possible. But the categories require some material on which to operate, for otherwise they are mere empty forms of thought. The matter of experience is provided by sensibility in the form of intuition. The faculty of sensibility is the receptive capacity of the mind, and the resulting representations are intuitions. The categories, then, synthesize a manifold of intuition into a connected, coherent experience.

By arguing in this fashion, Kant provides a powerful justification for the existence of synthetic judgments known a priori, but he does so at the cost of restricting those judgments to appearances only. The categories require material in the form of intuition for their operation; in the absence of intuition, the categories are incapable of determining an object.

The categories, then, and the principles based on them apply only to phenomena, or appearances, and not to noumena, things-in-themselves, that is, their application is restricted to the domain of possible experience.

Reason, however, naturally seeks to transcend this limitation of its powers and in doing so generates dialectical illusions. Because it seeks what Kant terms "the unconditioned" for any conditioned events or judgment, reason is impelled by its own nature to transcend the bounds of experience, where only the conditioned can be found. This process is best illustrated by the logical employment of reason:

reason, in its logical employment, seeks to discover the universal condition of its judgment (the conclusion), and the syllogism is itself nothing but a judgment made by means of the subsumption of its condition under a universal rule (the major premiss). Now since this rule is itself subject to the same requirement of reason, the condition of the condition must therefore be sought (by means of a prosyllogism) whenever practicable, obviously the principle peculiar to reason in general, in its logical employment, is: to find for the conditioned knowledge obtained through the understanding the unconditioned whereby its unity is brought to completion.¹⁴

Kant construes every judgment about the world as the conclusion of a syllogism. The major premise of this syllogism is itself a judgment that is in turn the conclusion of another syllogism, the major premise of which is justified as the conclusion of a still further syllogism. Thus, we are caught in an regress that can only be brought to an end by finding some judgment that is not the conclusion of a syllogism, that is, some condition that is itself unconditioned.

The same holds true of the real employment of reason, its application to events in the world. For every event, we seek to determine

¹⁴- Kant, Critique of Pure Reason, p. 306.

its cause or condition, as we know that every event has a cause, i.e. is connected with another in accordance with a rule. A complete explanation of any event would involve a statement of all the conditions leading up to its occurrence, namely it would provide the totality of conditions for the specific conditioned in question. Experience, however, presents only the infinite regress of one event serving as the condition of another succeeding event, and thus, the series of conditions can never be brought to completion by any possible experience. In order to end its restless quest for the unconditioned, reason must transcend the range of possible experience and its infinite series of conditions for any conditioned. Reason does this by illegitimately applying the categories, which serve only to determine possible experience, to things in themselves, depriving them of an object and thus all content. This move is certainly understandable, for the categories find ample instantiation in experience, but in the process reason succumbs to transcendental illusion. The purpose of the Transcendental Dialectic is, in part, to expose and explain these "natural and inevitable" illusions by locating them in reason itself.

Ideas do, however, find a legitimate, even necessary theoretical employment in the regulation of the understanding. Where understanding operates on intuition by means of the categories, reason operates on the understanding by means of ideas. The concepts of reason, then, are related only mediately to the objects of experience. Ideas are heuristic principles that guide the operations of the understanding towards systematic unity in its investigation of nature. This systematic unity involves the subsumption of the greatest variety of rules under one principle:

multiplicity of rules and unity of principles is a demand of reason, for the purpose of bringing the understanding into thoroughgoing accord with itself, just as the understanding brings the manifold of intuition under concepts and thereby connects the manifold. But such a principle does not prescribe any law for objects, and does not contain any general ground of the possibility of knowing or of determining objects as such; it is merely a subjective law or the orderly management of the possessions of our understanding, that by the comparison of its concepts it may reduce them to the smallest possible number,...¹⁵

An example of an idea is the scientific principle of simplicity of theory. This principle is neither true nor false, but merely regulative of our theoretical activity by specifying a desideratum for theory construction and acceptance. The systematic unity posited by the idea "is only a projected unity, to be regarded not as given in itself, but as a problem only."¹⁶ The unconditioned can never be an object of experience, and experience is never fully adequate to the idea of the unconditioned. Nonetheless, ideas are used to guide us in extending and systematizing empirical knowledge: "If the concepts of reason contain the unconditioned, they are concerned with something to which all experience is subordinate, but which is never itself an object of experience."¹⁷

As pointed out earlier, however, Kant often works with an idealist conception of ideas, as opposed to the skeptical conception. Conceived of idealistically, reason is a faculty, independent of and in fact superior to understanding, with concepts and interests all its own. Here, Kant takes his cue from Plato:

15- Kant, Critique of Pure Reason, p.305.

16- Kant, Critique of Pure Reason, p. 535.

17- Kant, Critique of Pure Reason, pp. 308-9.

Plato made use of the expression 'idea' in such a way as quite evidently to have meant by it something which not only can never be borrowed from the senses but far surpasses even the concepts of understanding (with which Aristotle occupied himself), inasmuch as in experience nothing is ever to be met with that is coincident with it. For Plato ideas are archetypes of the things themselves, and not, in the manner of the categories, merely keys to possible experiences. In his view they have issued from highest reason,..¹⁸

In the idealistic conception of reason and its ideas, the whole precedes its parts, and the unconditioned is prior to the conditioned. Ideas are indispensable to the conditioning of experience, revealing its phenomenal character.

Kant borrows a great deal from Plato's account of ideas, adapting it to meet the requirements of the critical philosophy. According to Kant, Plato possessed an intimation, however obscure, of the true nature of reason, for he "realized that our faculty of knowledge feels a much higher need than merely to spell out appearances according to a synthetic unity, in order to read them as experience," and "that our reason naturally exalts itself to modes of knowledge which so far transcend the bounds of experience that no give empirical object can ever coincide with them, but which must none the less be recognized as having their own reality, and which are by no means mere fictions of the brain."¹⁹ Kant, however, only approves of Plato's use of ideas as regards morality and rejects Plato's attempt to extend their use to mathematics and to employ ideas to acquire speculative knowledge of the nature of things-in-themselves. While recognizing the legitimate regulative employment of ideas by theoretical reason, Kant asserts that it is "in regard to the principle of morality,

18. Kant, Critique of Pure Reason, p. 310.

19. Kant, Critique of Pure Reason, pp. 310-11.

legislation, and religion, where the experience, in this case of the good, is itself made possible only by the ideas- incomplete as their empirical expression must always remain- that Plato's teaching exhibits its peculiar merits."²⁰ Kant argues that the substantive practical employment of ideas is absolutely necessary, for we need some standard by which to judge virtue and vice, right and wrong. Experience can not provide such a standard but only examples of it, for we need this standard in order to evaluate our experiences in the first place. We can recognize an instance of personal virtue only by comparing individuals to the idea of virtue. Any attempt to derive the idea of virtue from examples of virtuous conduct is doomed to failure, for it must presuppose the idea of virtue in order to determine instances of it.

The substantive employment of ideas is made possible by the nature of practical reason itself. Where the aim of theoretical reason is knowledge of the phenomenal world, the end of practical reason is action. Practical reason "deals with the grounds determining the will, which is a faculty either of bringing forth objects corresponding to conceptions or of determining itself, i.e. its causality to effect such object."²¹ Theoretical reason, as a cognitive faculty seeking knowledge of objects of experience, can employ ideas only as regulative principles, because ideas, being without any intuition on which to operate, do "not contain any ground of the possibility of knowing or of determining objects as such." But practical reason is unconcerned with knowledge of appearances, except insofar as such knowledge is necessary for the attainment of its ends, rather it is concerned with the determination of the will, for which it needs ideas.

²⁰- Kant, Critique of Pure Reason, p. 313.

²¹- Kant, Critique of Practical Reason, p.16.

The objective reality of ideas is derived from the capacity of the will to be a cause of objects. Thus, "we give objective reality" to an idea, "at least in a practical context, because we regard it as the object of our will as pure rational beings."²² This is possible because of our freedom as rational agents. Practical reason, then, enables us to arrive at the unconditioned in the form of freedom; in fact, Kant defines 'the practical' as "everything that is possible through freedom."²³

The idea of freedom, then, is the fundamental concept of practical reason, and we need to explore the nature of this idea in order to place the social contract in its appropriate theoretical context. The social contract covers one aspect of the idea of freedom; it regulates external relations among rational agents by defining the conditions of maximum equal freedom for those agents. As such, it partially defines Kant's conception of a community of rational agents as expressed by his notion of the realm of ends.

C. Freedom

Freedom, the spontaneous causality of an agent by means of which a series of conditions is initiated, is the most important form of the unconditioned in the critical philosophy. Because 'ought' always implies 'can', freedom is the sine qua non of moral responsibility. If it is the case that we ought to act in a certain fashion, then it must be the case that we can act in that manner. Strict determinism threatens that freedom, and hence morality, because if all actions are events that are causally necessitated by preceding conditions, then there is no sense in which we

²²- Kant, Critique of Practical Reason, p. 45.

²³- Kant, Critique of Pure Reason, p. 632.

can meaningfully assert that we could have acted differently than we in fact did. Freedom, then, is the ratio essendi of the moral law, and the moral law is the ratio cognoscendi of freedom. We are subject to the moral law because we are free, and we know we are free because we are subject to the moral law.

The necessity of making some place for freedom governs the structure of the critical philosophy and motivates the distinction between phenomena and noumena. If theoretical reason could provide knowledge of things as they are in themselves, then freedom would be impossible, for each action would then be the effect of an infinite series of causal conditions over which the agent had no control. In order to make room for freedom, and hence morality, Kant restricts the applicability of the categories and theoretical reason to possible experience, finding "it necessary to deny knowledge in order to make room for faith."²⁴

The possibility of freedom and its reconciliation with the strict determinism found in nature is established by Kant's resolution of the third antinomy in the Transcendental Dialectic. An antinomy consists of two contradictory propositions, a thesis and an antithesis, each of which is established by a rational argument that decisively refutes the other. The antinomies threaten the integrity of reason, for in them reason is brought into conflict with itself, and thus reason must find some way of resolving them if it is to preserve its legitimacy. In the case of the third antinomy, the thesis states that there exists an unconditioned causality of freedom, whereas the antithesis states that there is no such freedom, rather every event occurs in accordance with natural necessity, i.e. laws of nature.

²⁴- Kant, Critique of Pure Reason, p. 29.

Kant resolves the conflict between the thesis and the antithesis by appealing to the distinction between noumena and phenomena. As demonstrated in the *Transcendental Analytic*, the relation of cause and effect is constitutive of all possible experience; hence the antithesis is true of phenomena or appearances. But the phenomenal world, the world of appearances, is not exhaustive of all being. There also exists a world of noumena, a world of things as they are in themselves and not as they appear to us in accordance with conditions of our consciousness, where it is at least logically possible that there is a spontaneous causality of freedom. The understanding is a distinct faculty from sensibility. The categories, as pure concepts of this faculty, are concepts of objects in general and thus have wider application than to just intuition, albeit a problematic one. Without intuition, the categories lack the material necessary for the determination of an object and thus remain empty forms of thought. Nonetheless, we can at least think without contradiction of these categories as being applied to noumena and giving rise to a notion of transcendental freedom, though they do not thereby determine an object of possible experience. The critique of theoretical reason, then, establishes the possibility of the freedom necessary for morality, though not its actuality, which is established by the moral law. Since the noumenal world contains the ground of the phenomenal world and as noumena we possess the freedom that would enable us to act differently than we in fact do act, we can be held responsible for actions, despite the fact that as phenomena we are subject to the strictest determinism. By restricting the claims of theoretical reason to the realm of possible experience, Kant creates a vacuum, which can then be filled by practical reason.

The skeptical conception of ideas, then, establishes the possibility of a spontaneous causality on the part of noumenal agents by checking the attempt of the understanding to provide us with knowledge of things as they are in themselves by means of an application of the categories beyond the realm of possible experience. The space created thereby can then be filled by the idealist conception of ideas, which allows us to conceive of the laws governing the operation of this spontaneous causality or freedom.

By its very nature, causality must always be exercised according to laws, for causality just is the connection of events in accordance with a rule. The application of the category of cause to noumena, then, entails the governance of noumena by laws. Therefore, qua free agents, we are still subject to laws, though of a different type than laws of natural necessity:

Since the concept of a causality entails that of laws according to which something, i.e. the effect, must be established through something else which we call cause, it follows that freedom is by no means lawless even though it is not a property of the will according to laws of nature. Rather it, it must be a causality according to immutable laws, but of a peculiar kind.²⁵

The laws that govern our activity as free agents are laws of freedom, as opposed to the laws of nature that govern our behavior as phenomena. Laws of freedom prescribe how things ought to be, as opposed to describing how they actually are, and in doing so, govern the exercise of our freedom. Just as the laws of nature are constitutive of nature, the laws of freedom are constitutive of freedom.

²⁵- Immanuel Kant, Foundations of the Metaphysics of Morals, trans. and ed. by Lewis White Beck, (Indianapolis: Bobbs-Merrill, 1959), p. 65, [446]. Hereafter cited as Foundations.

Since the categories provide the form of all possible experience, they are constitutive of the empirical world. Their objective reality is derived from the fact that "they [the concepts of the understanding] constitute the intellectual form of all experience."²⁶ On the other hand, the concepts of reason or ideas merely serve in their theoretical capacity to regulate the manner in which we think about that world so that it accords with the demands of reason and, consequently, they possess only subjective reality. As concepts of practical reason, however, the ideas possess objective reality, for they guide or regulate our action by providing us with an object of the will in the form of a model. Herein then lies the crucial difference between ideas in their theoretical and in their practical employment; in the former, ideas are purely regulative, whereas in the latter they are also constitutive.²⁷ In fact, ideas of practical reason can only regulate our activity because they are also constitutive of an object that serves as the end of rational action.

Like the categories, the ideas derive from the legislative capacity of the mind. Theoretical reason is subordinate to practical reason, then, for it

²⁶- Kant, Critique of Pure Reason, p. 308. Kant does formulate this distinction in a different manner in the Transcendental Analytic. There Kant claims that not all of the categories are constitutive of possible experience. The axioms of intuition and the anticipations of perception are constitutive, because they are essentially quantitative or rules of mathematical synthesis that "enable us to determine appearance as magnitude," i.e., they are constitutive of objects of possible experience. As essentially qualitative, however, the analogies of experience and postulates of empirical thought do not allow this since they require material provided by sense. Consequently, the analogies of experience and the postulates of empirical thought are purely regulative. (Ibid., A178-80=B221-23; Smith, pp. 210-11) I think we see here a shift in the meaning of this distinction between the Transcendental Analytic and the Transcendental Dialectic. In the former, Kant is concerned with objects in the world, whereas in the latter his concern is with the world of objects, i.e. the whole as opposed to its parts. The usage of the Dialectic is carried over into the Critique of Judgment. (See Immanuel Kant, Critique of Judgment, trans. Werner Pluhar, (Indianapolis: Hackett, 1987), pp. 3-5. Note that Kant states that reason "does not contain any constitutive a priori principles *except for the power of desire*." Emphasis is mine.)

²⁷- See Lewis White Beck, A Commentary on Kant's Critique of Practical Reason, (Chicago: University of Chicago Press, 1960), pp. 48-9.

is the in practical, the self-legislation of rational agents, that reason finds its telos: "it is evident that the ultimate intention of nature in her wise provision for us has indeed, in the constitution of our reason, been directed to moral interests alone."²⁸ Practical reason, through its legislative capacity, posits the end of all our activity, for the attainment of which theoretical reason is employed. .

In the Canon of Pure Reason of the first Critique, Kant describes a free will as an *arbitrium liberum*; it is a will that is independent of sensuous impulses and is instead capable of being motivated by reason. This is contrasted with an *arbitrium brutum*, a will that is determined pathologically according to laws of nature.²⁹ Kant deepens this account considerably in the Foundations of the Metaphysics of Morals by providing an account of the law that governs such a will and the corresponding motive that determines it. A free will can be determined by the pure form of legislation, universality or the fitness of a maxim to serve as a universal law for all rational agents. A free will, then, is identical with a will that is subject to moral law. The strict proof of this claim is found in the Critique of Practical Reason.³⁰ Here Kant demonstrates that we are free if and only if we are subject to moral law. We prove the first half of the biconditional by assuming that we are subject to moral law, i.e. that the legislative form of a maxim is sufficient to determine the will and then derive the character of a will that can be so determined. Now the form of a law can only be thought by reason and thus is not an object of experience, or appearance; these can provide only

²⁸- Kant, Critique of Pure Reason, pp. 632-3.

²⁹- Kant, Critique of Pure Reason, p. 633.

³⁰- Kant, Critique of Practical Reason, pp. 28-9.

the material or object of a law. Hence, the conception of the form of law as the determining ground of the will is distinct from determination by natural causes, the determining grounds of events in nature, for these are appearances. If the sole determining ground of a will were universal legislative form, this will would have to be independent of the natural causal order, which just is transcendental freedom. Such a will, then, would have to be a free will. In order to prove the other half of the biconditional, Kant assumes that the will is free, i.e. independent of the natural causal order, which is freedom in the negative sense, and then determines what type of law would be competent to determine such a will. Now empirical conditions are part of the world of sense and, as such, are governed by a thoroughgoing determinism. Thus, a free will must be determined independently of empirical conditions. Therefore, a free will must find its determining ground in the law but not in the material of the law, which is empirical. Since outside the material of the law there is only its legislative form, the legislative form of a maxim must be the determining ground of a free will, that is, the moral law is the determining ground of a free will. The positive and negative conceptions of freedom, then, are reciprocal concepts that "can not be used to explain each other." Kant fuses these two conceptions together in the concept of autonomy, "for they can, however, be used for the logical purpose of bringing apparently different conceptions of the same object under a single concept," that being the concept of autonomy.³¹

Now as we have seen, the laws of freedom apply not to phenomena but to noumena and are constitutive of an intelligible world, which is

³¹- Kant, Foundations, p. 69.

independent of the empirical world and is presented as possible through our will. The totality of these laws of freedom is not just a aggregate, but "constitutes a system," for which "a special kind of systematic unity, namely the moral, must likewise be possible."³² Kant's claim that reason demands "multiplicity of rules and unity of principles" is the clue to understanding the place of the social contract in this system. The highest principle of the system of morality is the categorical imperative. This system is then sub-divided into two parts, the theory of justice and the theory of virtue, with the idea of the social contract serving as the highest principle within the theory of justice.³³ The idea of the social contract is the application of the categorical imperative to one dimension of human existence, the domain of external relations among a manifold of moral agents, and is used as a canon for the rules that govern these relations. As a canon of practical reason, the social contract determines the moral permissibility or impermissibility of laws, just as the law of non-contradiction, a canon of theoretical reason, determines the logical possibility or impossibility of judgments. The social contract requires unanimous agreement among all rational agents with respect to all laws governing their external relations. According to the idea of the social contract, a law is permissible if and only if it is possible that it could command the unanimous agreement of purely rational agents.

Now there is an ideal that corresponds to every idea. The idea provides the rule for the construction of the ideal, which is the idea "not merely in concreto, but in individuo, that is, as an individual thing,

³²- Kant, Critique of Pure Reason, p. 639, 637.

³³- The distinction between the theory of justice and the theory of virtue is discussed in detail in Chapter Four.

determinable or determined by the idea alone" and serving as an end or object of the will.³⁴ Thus, from the idea of the social contract, we can construct the ideal civil constitution, which is "a constitution allowing the greatest possible human freedom in accordance with laws by which the freedom of each is made to be consistent with that of all others."³⁵ The ideal serves as the model or archetype that we gradually seek to approximate in reality.³⁶ In any historical period, civil society is inadequate when judged by the standard of the ideal, and we are obligated to improve upon this state of affairs: "This perfect state may never, indeed, come into being; none the less this does not affect the rightfulness of the idea, which, in order to bring the legal organization of mankind ever nearer to the possible perfection, advances this maximum as an archetype."³⁷ Though we may never be able to instantiate perfectly the ideal, we can gradually approach the ideal through our collective efforts over the course of history. In this sense, an ideal is analogous to a limit in calculus; we approach the ideal asymptotically, so that at the limit we have attained it.

An ideal, and the idea determining it, possesses reality even if no instance of it can be found actually existing within the world. Ideas and ideals possess objective reality, albeit only practical reality, as grounds determining the will: "to this nature we give objective reality, at least in a practical context, because we regard it as the object of our will as pure

³⁴- Kant, Critique of Pure Reason, p. 485.

³⁵- Kant, Critique of Pure Reason, p. 312. Later in this passage, Kant does call this civil constitution as a "necessary idea," but I think he is misusing his own terminology here, which is not uncommon for Kant. See footnote 37 for an explanation of this.

³⁶- Kant, Critique of Pure Reason, p. 486.

³⁷- Kant, Critique of Pure Reason, p. 312. Here again Kant calls the perfect civil state an idea. But he also explicitly describes the perfect civil constitution as an archetype, and archetypes just are ideals.

rational beings."³⁸ The reality of the ideas stem from the will as a cause of objects. Reason, then, possesses a causality that takes ideas, which are purely transcendent for theoretical reason, and endows them with an immanent use as grounds determining the will: "Thus reason, which with its ideas always became transcendent when proceeding in a speculative manner, can be given for the first time an objective, although still only practical reality; its transcendent use is changed into an immanent use, whereby reason becomes, in the field of experience, an efficient cause through ideas."³⁹

D. Problems with Kant's Theory

Kant's account of ideas and their role within the critical philosophy is far from satisfactory. Despite his heroic efforts, the resources provided by Kant's epistemology simply cannot meet the demands of his ethical theory. Ultimately, Kant's resolution of the third antinomy fails to provide the necessary epistemological and ontological basis of his ethics, as the bifurcation of being into noumenal and phenomenal worlds leads to a divorce between agency and action and prevents Kant from constructing the shared, intersubjective world that is necessary for morality in general and the social contract in particular.

At the root of Kant's ethics lies the conflict between reason and inclination. The distinction between autonomy and heteronomy itself expresses this conflict by locating two essentially different grounds of the determination of the will, one in reason and the other in sensuous desire. Further, the very idea of an imperative is defined in terms of this conflict.

³⁸- Kant, Critique of Practical Reason, p. 45.

³⁹- Kant, Critique of Practical Reason, p. 49.

Laws of freedom are expressed as imperatives for us because our adherence to them is not necessary, as it would be for a holy will. Practical laws merely describe how a perfectly rational agent would act. But human beings are not perfectly rational; rather, they are influenced by desires and impulses that often lead them to act contrary to the dictates of reason. For this reason, laws of freedom are imperatives or commands and not descriptive statements. Within the confines of Kant's ontology, however, there is simply no way to make sense of this conflict. Sense and the resulting inclinations are attributes of phenomena and not noumena. Reason, however, is a property of us as noumenal agents. Since inclination and reason operate within two different worlds, there exists no common arena in which they may come into conflict with each other, each being restricted to its own distinct sphere of activity.⁴⁰

Now Kant does point out that, while noumena and phenomena are different they are not wholly separate and cut off from each other. Rather, the noumenal or intelligible world serves as the ground of the phenomenal, phenomena being the product of the synthesizing activity of noumenal agents: "But since the intelligible world contains the ground of the world of sense and hence of its laws, the intelligible world is (and must be conceived of) as directly legislative for my will, which belongs wholly to the intelligible world."⁴¹ As I am a noumenal agent and member of the intelligible world, "all my actions would completely accord with the principle of the autonomy of the pure will."⁴² Now it is difficult even to make sense of these claims, for it is incomprehensible how a noumenal

⁴⁰- For a detailed discussion of this point, see Robert Paul Wolff, The Autonomy of Reason, (New York: Harper and Row, 1973).

⁴¹- Kant, Foundations, p. 72.

⁴²- Kant, Foundations, p. 72.

agent, who is timeless, can engage in action, which is always temporal, or how a timeless intelligible world can be legislative for a temporal phenomenal world. The difference in kind seems to be so great as to render these claims unintelligible.

Now one might maintain, as Karl Jaspers does in his study of Kant, that the reflexive nature of Kant's project, thinking about thought, necessarily breeds contradictions, tautologies, vicious circles, and (I would add) category mistakes.⁴³ So let us accept all of this at face value for the sake of argument. From the two aforementioned claims, it follows that there should be no moral imperfections in the phenomenal world. If as a noumenal agent my will is legislative for phenomena and that will is purely rational, i.e. always acts according to the moral law, the moral law should always be perfectly instantiated in the phenomenal world. Whence, then, arise the moral flaws and imperfections of the phenomenal order, which it is our duty to remove under the guidance of the ideas? Why does not the phenomenal world accord completely with the moral law? Perhaps noumenal agents find themselves in a situation similar to that of Plato's Demiurge in the Timaeus, confronted with a material of synthesis that is flawed and not wholly susceptible to their power. But if this is the case, then responsibility for immorality can not be placed on any agent.

Ultimately, the strict identity between freedom and rational agency that Kant argues for in the second Critique is too restrictive and prevents us from making sense of morally blameworthy actions. If a moral will is

⁴³- Karl Jaspers, Kant, (New York: Harcourt, Brace, and Jovanovich, 1962), pp. 34-43.

identical with a free will, then it follows that by definition an immoral will is not free.

Kant deepens this account in both Religion within the Limits of Reason Alone and The Metaphysics of Morals by distinguishing between two different faculties involved with action, *Wille* and *Willkür*. *Wille* just is practical reason itself, whereas *Willkür* is our capacity to choose and, as such, is the locus of the traditional conception of free will.⁴⁴ As a property of noumenal agents, however, we can have no substantive knowledge about the nature of *Willkür*, but can only define it negatively as our independence from determination by sensuous impulses. The faculty of *Willkür* is capable of incorporating incentives derived from sensuous inclinations into its maxims and thus has the capacity to adopt and act on maxims contrary to the dictates of practical reason or *wille*.⁴⁵ But this distinction is of little avail here. Given the sharp separation between the noumenal and the phenomenal, one can not make sense of a noumenal agent acting according to maxims that are derived from her phenomenal inclinations and desires.

The second major problem here is the lack of intersubjectivity in the critical philosophy. The epistemology of the first Critique does not permit the construction of a common, shared world of experience, in the absence of which there can be no concept of the social sufficient to make sense of a social contract and external relations among moral agents. This

⁴⁴- Kant, The Metaphysical Elements of Justice, pp. 12-3. 'Wille' is often translated as legislative will, while 'willkür' is translated as elective will or choice. This seems to capture the distinction that Kant intended to bring out with these two different terms.

⁴⁵- Immanuel Kant, Religion within the Limits of Reason Alone, trans. by Theodore M. Greene and Hoyt H. Hudson, (New York: Harper and Row, 1960), p. 19. Hereafter cited as Religion.

can be best illustrated by examining the interaction between individual action and human history.

I assume at the outset of this discussion that there is a one to one correspondence between noumenal and phenomenal selves. Now if an agent is to be held responsible for an action, it must be possible for that agent to have acted differently. But given the strict determinism that governs the world of appearances, any action performed by a phenomenal agent is the product of an infinite series of conditions that stretch back long before even the birth of that agent. Thus, for any agent to act differently than he in fact does act, the whole history leading up to that act would have to be different; a change in even one action presupposes some change in the whole of history, however insignificant. Now Kant opens up the possibility of alternative courses of action by appealing to the synthesizing activity of the transcendental ego or noumenal self as the ground of the phenomenal world. Presumably, the series of conditions for a conditioned action could have been different because it could have been constructed differently by the transcendental ego responsible for its synthesis, and consequently the resulting action would also have been different. Thus, in order for there to be different courses of action available, the moral agent must be capable of changing the whole of history, including that which occurred before his birth. In itself, this is pretty tough to swallow, but there is more.

Given the interdependence between human beings, any difference in the series of conditions would almost certainly affect other phenomenal selves in some manner, an effect that would have to be reflected in the synthesizing activity of the corresponding noumenal self. A change in any one phenomenal world necessitates a similar change in every

phenomenal world and this raises the question as to how there can be such a harmony among phenomenal worlds. While different phenomenal selves can encounter each other in the same phenomenal world, there is no way that different noumenal selves can do so, for only one one transcendental ego can occupy the position of author of or law-giver to any phenomenal world. If we are to preserve a multiplicity of noumenal agents, then it seems that we are left with only an inexplicable pre-established harmony of synthesis among noumenal agents, with each phenomenal world being monadic in character.⁴⁶

But none of this will do if we are to make sense of Kant's ethics and politics. We have duties towards other individuals and those individuals have rights, only because they are rational agents. We are obligated to treat other rational agents as ends and not solely as means simply because they are rational, but individuals are rational only insofar as they are noumena. As an appearance, a phenomenal self is no different from any other natural entity, such as a tree, and is likewise subject to the laws of nature. Now I have no obligations towards a tree as such. Though I may have certain duties regarding my use of a tree stemming from my obligations to other rational agents, unless that tree can be shown to possess rationality, it has no claim to be treated as an end-in-itself and can be used as a mere means to an end. Phenomenal selves occupy the same position vis-à-vis myself as a tree does; they only acquire the moral status of a person if they are rational agents. But they are only rational agents, if there is a noumenal self to which they correspond and this is impossible.

⁴⁶- One could, of course, retain Kant's epistemological framework and still establish a single phenomenal world by arguing that there is only one mind that effects the required synthesis, but this would eliminate the possibility of social interaction or external relations among agents, which is a requirement of the social contract.

There can only be one noumenal self that corresponds to any phenomenal self in my experience, and that is my own noumenal self, for only I can act as the lawgiver to my own experience. Thus, I have no moral obligations to any phenomenal being I encounter in experience. This clearly will not do as an ontological basis of morality. Morality requires that rational agents share some common world of experience. Without this shared world, there can be no concept of the social and hence no social contract. The collective legislative activity of a multiplicity of agents implied by the social contract is simply impossible within the Kantian epistemological and ontological framework.

E. Conclusion

What then are to make of all this? We are faced with a clear choice between Kant's epistemology and his ethics, and something must give. Kant himself claimed that were an irreconcilable conflict between freedom and determinism arise, we would be forced to abandon freedom in favor of natural necessity.

As some commentators on Kant's ethics have pointed out, we can view human action from two distinct perspectives, that of an observer and that of a participant.⁴⁷ From the standpoint of an observer, human action is merely another type of event within the natural order and occurs in accordance with same laws of natural necessity that govern all natural processes. Given sufficient knowledge of those laws and existing conditions, an observer could predict with exactitude the behavior of any

⁴⁷- For discussions of this point, see H. J. Paton, The Categorical Imperative, (Philadelphia: University of Pennsylvania Press, 1971), pp. 235-36, 266-68 and Beck, A Commentary on Kant's Critique of Practical Reason, pp. 29-32.

human being. From this standpoint, human freedom is only an illusion, a pathological feeling misleading us as to our real situation. But from the perspective of the individual engaged in action, the situation is radically different. As agents, we must deliberate on different courses of action and decide on the basis of the reasons we propose to ourselves. This process presupposes the existence of freedom on our part, for we must make choices concerning available courses of action. But this is a purely subjective condition of thought and action, which from the standpoint of the scientific observer has no basis in objective reality.

One is tempted to argue that the best we can do is to claim that as agents we must act as if we were free, though in fact we are not. This move is not wholly unfaithful to Kant. Kant himself maintains that "the laws which would obligate a being who was really free would hold for a being who can not act except under the idea of his own freedom."⁴⁸ Certainly, human beings fall into this latter category. The moral law merely states how an individual who was truly free ought to act, and since we must act as if we were free, it applies to us as well. This clearly will not do, however. Such a move might be sufficient to sustain a conception of prudential rationality, but if an individual is not truly free, there is no good reason for that individual to follow the dictates of morality contrary to those of prudence. If we are not truly free, then we are not bound by any moral obligations and should discard even the pretence of morality as an illusion, conducting our affairs in accordance with prudential rationality, though this too be an illusion. Since we can not escape from

⁴⁸- Kant, Foundations, p. 66.

the subjective fantasy of rational deliberation, let us look after ourselves as best we can.

If we are to preserve morality, then despite Kant's protestations to the contrary, we must relinquish Kant's epistemology as unworkable and opt for freedom in order to preserve his ethical and political theory. At the level of the architectonic, Kant insists on the necessity of determinism for theoretical reason, but at a deeper level, Kant recognizes not only that freedom is necessary for moral obligation, but that it is an essential precondition of theoretical reason as well. If we are to consider our judgments as grounded in reasons, we must consider those judgments to be free of determination by natural causes, for "we can not conceive of a reason which consciously responds to a bidding from the outside with respect to its judgments, for then the subject would attribute the determination of its power of judgment not to reason but to an impulse."⁴⁹ In the absence of freedom, judgments are determined causally by impulses and not rationally by evidence and logical demonstration. The concept of justification would then have to be discarded and with it any claim to knowledge. We simply can not retain the claims to knowledge made by theoretical reason without accepting the logically prior claim that we possess transcendental freedom, and for this reason, if there is a conflict between freedom and natural necessity, freedom must win out.

One can only admire Kant's uncompromising commitment to retaining both freedom and determinism and his tenacity in attempting to reconcile them without glossing over the moral implications of the latter.

⁴⁹- Kant, Foundations, pp. 66-7. Kant's point here is similar to the one made by Bishop Bramhall against Hobbes- there is an essential difference between reasons and causes.

But despite his best efforts, transcendental idealism proves to be an inadequate vehicle for establishing the claims of theoretical reason while preserving those of practical reason. For the remainder of my discussion, then, I will bracket the problems I have raised and proceed accordingly.

CHAPTER IV

AUTONOMY AND AUTHORITY

A. Introduction

In this chapter, I will examine Kant's justification of the moral necessity of civil society. In order for this justification to be both cogent and compatible with the rest of his moral theory, Kant must successfully complete two tasks. First, he must reconcile the sovereign authority of the civil state with the moral autonomy of the individual and thereby establish the possibility of an obligation to enter into civil society. If Kant cannot effect this reconciliation, then membership in civil society cannot be a morally legitimate condition. But Kant cannot rest content with the bare possibility of such an obligation. Thus, as his second task, he must establish the actuality of our obligation to enter into civil society, that is to say, he must demonstrate that the establishment of civil society is not only permissible but also necessary.

In the short essay on theory and practice, Kant declares that the social contract differs from all other types of contracts in that agreement to it is obligatory and may be exacted through the use of force. In all contracts, we find a union of different individuals, but only in the social contract do we find "a union as an end in itself which they all ought to share and which is thus an absolute and primary duty in all external relationships whatsoever among human beings (who cannot avoid influencing one another)," and this union "is only found in a society in so

far as it constitutes a civil state, i.e. a commonwealth."¹ One has a duty to enter into civil society, and should one refuse, one may be forced to do so.

Unlike Hobbes or a utilitarian theorist, Kant can not appeal here to the happiness that civil society makes possible or to some other end that can only be attained through it. Such an appeal would generate only a hypothetical imperative, not a categorical imperative, and transform the social contract into a purely hypothetical construction, not an idea of practical reason. Instead, Kant must find some way of grounding a categorical imperative commanding entrance into civil society as a duty. Kant locates this ground in the necessity of property for action and civil society as the necessary condition of the institution of property.

But before he can establish that we actually have a duty to enter into civil society, Kant must first establish the possibility of such an obligation. The civil union envisioned in the social contract involves the subjection of all members of the commonwealth to "coercive public laws by which each can be given what is due to him and secured against attack from any others."² This subjection of persons to law generates what Kant calls "the general problem of civil union": how "to combine freedom with a compulsion that is yet consistent with universal freedom and its preservation."³ Kant comes face to face here with Rousseau's "fundamental problem" of political philosophy: "How to find an association which will defend the person and goods of each member with the collective force of all, while uniting himself with the others, obeys no

1- Kant, "Theory and Practice," p. 73. Kant uses the term 'social contract' in this passage to apply to all contracts, but I of course will use it such a manner as to preserve its traditional meaning in political theory.

2- Kant, "Theory and Practice," p. 73.

3- Immanuel Kant, *Philosophical Correspondence, 1759-99*, ed. and trans. Arnulf Zweig, (Chicago: University of Chicago Press, 1986), p. 132.

one but himself, and remains as free as before."⁴ In short, Kant must reconcile the moral autonomy of the individual with the political authority of the state. In the absence of any reconciliation, there can be no morally legitimate civil society and no obligation to enter into it.

The problem is as follows. Political authority is the right to promulgate laws and enforce those laws through a publicly-recognized monopoly on the use of coercion. Laws are in essence binding commands issued by the sovereign, who exercises political authority, to the subjects of the state, who for their part are obligated to obey. But the fundamental attribute of moral agency is autonomy, i.e. self-legislation or the capacity of a will to give laws to itself. The moral agent, then, is bound only by those laws that he or she has legislated for him- or herself. Subjection to the dictates of some source other than one's own reason, for example the will of another, is heteronomy, the contrary of autonomy. The existence of political authority places one in a condition of heteronomy vis á vis whoever exercises political authority, because it subjects one to the commands of that person and not one's own reason. Hence, political authority, and with it civil society, is always morally illegitimate.⁵

⁴- Rousseau, The Social Contract, p. 60.

⁵- For a provocative discussion of this problem, see Wolff, In Defense of Anarchism. Professor Wolff argues that the problem is insoluble and that the only condition in which persons can retain their autonomy is anarchy. Professor Wolff draws this conclusion because he fails to appreciate the collective dimension of Kant's conception of autonomy and thus his construal of the notion of autonomy is excessively individualistic; to put this point into Kant's terms, he conceives of autonomy "distributively" rather than "collectively." Kant is deeply concerned in his political theory with avoiding the pitfalls of a one-sided emphasis on either the individual or the collective. This concern is manifest in his conception of a community of rational agents (the realm of ends) as a totality, a synthesis of the concepts of unity and plurality. I will discuss this point in greater detail in the next chapter. For an important interpretation of Kant that emphasizes the central role the concept of totality plays throughout both the pre-critical and critical corpus, see Lucien Goldmann, Kant, trans. Robert Black, (London: New Left Books, 1971).

Let us now formulate this problem in the terms of contractarian discourse. In a state of nature, there exists no public authority with the power to issue and enforce laws binding upon all citizens. Consequently, individuals are left to their own devices and are free to fend for themselves in whatever way they see fit, this freedom being bounded only by the superior physical force of other individuals. Upon entering into civil society, each individual relinquishes this anarchic freedom and subjects him- or herself to a public authority that is authorized to legislate and enforce laws on behalf of all citizens within civil society. Now such a transition from a state of nature to civil society may be desirable on purely prudential grounds, as Hobbes argues, but from Kant's perspective it is highly problematic. In abandoning the state of nature, each person seems also to be abandoning his or her moral autonomy and placing him- or herself in a condition of heteronomy. Kant, then, faces the difficult task of legitimating this transition and the resulting civil society by demonstrating the compatibility of political authority with moral autonomy.

In order to solve this problem, Kant begins with the basic insight derived from Rousseau that civil society produces a moral transformation in the nature of individuals. The person as a moral agent is qualitatively different in civil society than in a state of nature. In civil society, one can be just or unjust, whereas such notions simply do not apply in a state of nature: "Certainly, a state of nature need not be a condition of injustice...; it is, however, still a state of society in which justice is absent."⁶

⁶- Kant, The Metaphysical Elements of Justice, p. 76.

By entering into civil society, the individual "has completely abandoned his wild lawless freedom in order to find his whole freedom again undiminished in a lawful dependency, that is, in a juridical state of society."⁷ In the state of nature, one is free because one is capable of self-legislation (that is, one has the capacity for autonomy), but this freedom is lawless for as yet the capacity for self-legislation has not been fully actualized. The self-legislation of moral agents, in so far as we are concerned with their external relations with each other, is a collective enterprise that can only be carried out through the civil union established by the social contract. As regards external relations among moral agents, Kant espouses a contract theory of morality, in which the specific duties one moral agent has towards another are determined and systematized through the idea of the social contract.

I shall develop my argument in this chapter in the following manner. In the section that follows, I shall examine Kant's discussion of the nature of juridical legislation and its attendant duties of justice. This will lead into a discussion in section C of Kant's conceptual unification of freedom and coercion in the notions of justice and rights. Section D will be devoted to an exposition of Kant's deduction of the most important type of right- the right of property. In section E, I shall complete my exposition of Kant's argument by displaying the essential connection between the establishment of civil society and the institution of property. I shall conclude this chapter with some remarks on both the conditional character of our obligation to enter into civil society and the collective dimension of moral autonomy.

⁷- Kant, The Metaphysical Elements of Justice, pp. 80-1.

B. Juridical Legislation and Duties of Justice

Legislation is always composed of two parts: the prescription of an action and an incentive to the performance of that action.⁸ Kant employs this latter component as the basis for a distinction between two types of legislation- juridical and ethical. Both ethical and juridical legislation prescribe actions as duties, but whereas ethical legislation makes the idea of duty the incentive for performance of its prescribed actions, juridical legislation looks elsewhere for its incentives. Juridical legislation plays on each person's natural desire for happiness by employing pathological incentives derived from human inclinations and disinclinations, specifically the latter as a form of coercion. Thus, while both ethical and juridical legislation may prescribe the same action, they differ with respect to the incentives for the performance of that action.

Now the actions prescribed by juridical legislation are duties and, as such, ought to be performed simply for duty's sake. Even if the incentive of external coercion is lacking, one is still obligated to obey the prescriptions of juridical legislation, for "ethics teaches only that, if the incentive that juridical legislation combines with duty, namely external coercion, were absent, the Idea of duty alone would still be sufficient as an incentive."⁹ Consequently, every duty prescribed by juridical legislation is also prescribed by ethical legislation, though the reverse is not true. "Hence, though there are many directly ethical duties, internal legislation makes all the rest indirectly ethical."¹⁰

⁸- Kant, The Metaphysical Elements of Justice, p. 18.

⁹- Kant, The Metaphysical Elements of Justice, p. 20.

¹⁰- Kant, The Metaphysical Elements of Justice, p. 21.

Kant calls those actions prescribed by juridical legislation "duties of justice" and those specific to ethical legislation "duties of virtue." Since the incentive provided by juridical legislation is external compulsion and not the idea of duty itself, only an external action can be a duty of justice. One can always be compelled to perform any external action, however internal actions are not susceptible to coercion. Consequently, the adoption of an end, which is an internal act, can only be a duty of virtue. One may be forced to perform an action that contributes to the realization of a certain end, but one can never be compelled to adopt that end as one's own. This distinction between duties of justice and duties of virtue gives rise to the division of the Metaphysics of Morals into two parts, the theory of justice and the theory of virtue. The former, the first part of the Metaphysics of Morals, is devoted to duties of justice, whereas duties of virtue are the subject of the latter, the second part of the Metaphysics of Morals. Because it deals with external relations among moral agents, juridical legislation must be a social, collective enterprise, and the first action it prescribes is entrance into civil society. On the other hand, ethical legislation is primarily concerned with the internal adoption of ends by individual moral agents and thus is individualistic in orientation.

There are two types of juridical legislation: natural law and positive law. Natural law is rooted in reason, and the duties of justice prescribed by it are recognizable a priori. Further, natural law provides the principles that ought to guide positive law. Positive law, however, requires actual external legislation in order to be binding and depends on the authority of the legislator. The authority of the legislator consists of "his authorization

to obligate others through his mere will" and is ground in natural law.¹¹ But how can such authority be possible?

As pointed out in the introduction, autonomy is the condition of being bound only by those laws that one has legislated for oneself, that is, of being self-legislating. The opposite of autonomy is heteronomy, the condition of being bound by laws that have been legislated by another. The authority of the legislator consists of his ability or right to obligate others through his will, i.e. to issue morally binding commands in the form of laws. But in the exercise of this authority, the legislator reduces those who are subject to his commands to a condition of heteronomy. Thus, political authority seems to be incompatible with the autonomy of moral agents.

Now Kant's conception of political authority might at first glance seem unnecessarily strong. Political authority need not be the right to obligate others through the issuance of binding commands; rather, political authority might be conceived merely as consisting of the monopoly over the legitimate use of coercion. Such a conception of authority is suggested by Kant's own conception of juridical legislation as being external in nature and as involving external incentives that consist primarily of the use of force.

This approach does not provide a satisfactory solution to the problem, however, for we still require some explanation of why this use of force is legitimate. One may use force to insure performance of a duty of justice simply because the performance of such an action is a duty. Thus, if one is permitted to use coercion to insure compliance with positive law,

¹¹- Kant, The Metaphysical Elements of Justice, p. 26.

then it can only be because positive law consists of duties of justice, duties that are imposed by the will of the legislator. Locke's solution is to claim that the authority of the legislator to impose obligations on his subjects derives from the consent of those same subjects to that authority. But this solution is unacceptable, for it implies that one can abdicate one's autonomy by transferring legislative authority over one's own will to another. This is exactly what happens when we abandon reason and subject ourselves to our sensuous inclinations, and the result is the same—heteronomy.

The conflict between autonomy and authority strikes at the very heart of Kant's political theory, for it threatens the integrity of the idea of a social contract. In terms of logical priority, the most fundamental claim of Kant's politics is that we have an obligation to enter into civil society, yet there can be no such obligation if one must relinquish one's autonomy in fulfilling it. Kant solves this problem by demonstrating that autonomy and authority are not diametrically opposed; on the contrary, they are not even distinct notions. He accomplishes this identification by means of the concept of a right.

C. Justice and Rights¹²

According to Kant, the moral concept of justice is applicable under three conditions.¹³ First, it applies only to the external relations of moral agents, in so far as these agents mutually influence each other. Second, the concept of justice concerns the relation of one will to another. Finally, justice is not concerned with the intended ends of moral agents, which is the concern of the theory of virtue. Now it is not clear that these conditions are actually distinct from one another. The difference between the first and second conditions is more a matter of expression than substance, for the relation of one will to another just is the external relation between those two wills. As for the third condition, it is merely negative and is actually a consequence of the first. Since the ends pursued by a moral agent are internal to that agent, they are not subject to external legislation and are not duties of justice.

Taking all three conditions together, it is clear that Kant intends the concept of justice to cover the totality of external relationships and interactions among moral agents. We are to imagine a system of individual moral agents bound together in a state of dynamic community. In such a community, there are no relations of subordination; all

12. The German word 'Recht' can be translated into English using either 'law,' 'justice,' or 'right,' depending on the context. The difference lies in whether Kant is concerned with the whole (as the whole corpus of law or the totality of external relationships) and the principles that ought to govern it (in which case 'law' or 'justice' respectively would be appropriate), or whether we are concerned with something particular (as, for example, the specific rights of individuals). For the most, I chosen to follow Ladd's translation here, for it seems to me to be quite satisfactory. For a discussion of these points, see Ladd's "Translator's Introduction," in Kant, The Metaphysical Elements of Justice, pp. xv-xviii.

13- Kant, The Metaphysical Elements of Justice, p. 34.

members are coordinate with each other and co-exist in a thoroughgoing reciprocity of mutual interaction. This system is analogous to the natural world.¹⁴ In the natural world, the interaction of material entities, the relations among which are similarly external, are determined by the relative forces of attraction and repulsion, forces which operate according to laws of nature.¹⁵ The moral world, however, is not subject to the conditions of space and time, since qua moral agents we are noumena. The laws governing this world are not physical but juridical, and the body of these laws is called "jurisprudence." Juridical laws prescribe how interactions among moral agents ought to take place, not how they do occur, and are enforced by the use of coercion. In the ideal case, juridical laws are legislated collectively by the agents themselves.

In section C of the Introduction to the Metaphysical Elements of Justice, Kant sets forth what he calls the "universal law of justice" as the fundamental principle of juridical laws: "act externally in such a way that the free use of your will is compatible with the freedom of everyone according to a universal law."¹⁶ Kant claims that this law is a "postulate" of pure practical reason and is "not susceptible to further proof." Anyone who prevents me from acting in a manner consistent with this law does me an injustice.

While the universal law of justice requires me to restrict my own freedom, it also permits me to restrict the freedom of others. Kant argues that the coercion employed in restricting the activities of others is

¹⁴- Kant, The Metaphysical Elements of Justice, p. 37.

¹⁵- For an interesting discussion of this analogy, see Hans Saner, Kant's Political Thought: Its Origins and Development, trans. E. B. Ashton (Chicago: University of Chicago Press, 1973). Saner argues that this is one of three themes or forms of thought that has its origin in Kant's pre-critical period and runs throughout his mature critical philosophy.

¹⁶- Kant, The Metaphysical Elements of Justice, p. 35.

compatible with freedom and that justice or right involves the authorization to use coercion. He bases this argument on the principle that anything that counteracts the hindrance of an effect is consistent with that effect and in fact serves to promote it. Any unjust action or condition is by definition a hindrance to freedom according to universal laws. Consequently, if a certain use of freedom is unjust, then the use of coercion to counteract or prevent it is just, that is to say, it is consistent with freedom according to universal laws. It follows from this last claim and the law of contradiction that "justice [a right] is united with the authorization to use coercion against anyone who violates justice."¹⁷

I am authorized to use coercion against anyone who would act unjustly towards me, just as others are authorized to use coercion against me so as to prevent me from doing them an injustice. Thus, "strict justice can be represented as the possibility of a general reciprocal use of coercion that is consistent with the freedom of everyone in accordance with universal laws."¹⁸ We find, then, freedom and coercion combined in the same concept, that of justice or of a right: "the concept of justice <or of a right> can be held to consist immediately of the possibility of the conjunction of universal reciprocal coercion with the freedom of everyone."¹⁹

The notion of a right embodies this duality. A right is not only the freedom to act in a certain way; it is also the authorization to use coercion to prevent someone from hindering me in the performance of that action. If I have the right to perform an action, then I am authorized to use

17- Kant, The Metaphysical Elements of Justice, p. 36.

18- Kant, The Metaphysical Elements of Justice, p. 36.

19- Kant, The Metaphysical Elements of Justice, p. 36.

coercion to prevent someone from hindering me in that action. The positive and negative conceptions of freedom are again indissolubly united, for my freedom to do engage in a specific action always involves a corresponding freedom from external interference with the performance of that action. Thus, " 'right' <or 'justice'> and the 'authorization to use coercion' mean the same thing."²⁰

Just as law is divided into natural and positive, so rights are divided into innate and acquired. Innate rights belong to us by virtue of our nature as human beings, whereas acquired rights are established by actual juridical acts. Positive law, then, serves to determine our acquired rights. Though there are many acquired rights, there is only one innate right: "Freedom (independence from the constraint of another's will), insofar as it is compatible with the freedom of everyone else in accordance with a universal law, is the sole and original right that belongs to every human being by virtue of his humanity."²¹ We are autonomous agents, and our autonomy ought to be respected insofar as it is consistent with the autonomy of all other moral agents. Acquired rights specify the actual terms of that autonomy in the social world. As we shall see in the next section, the most important acquired right is the right of property.

D. Property²²

Property is the locus of our interaction with other moral agents. In order to pursue our particular private ends, we must avail ourselves of external objects as means to those ends. In using these objects, we come

²⁰- Kant, The Metaphysical Elements of Justice, p. 37.

²¹- Kant, The Metaphysical Elements of Justice, p. 43-4.

²²- For useful discussions of Kant's theory of property, see Shell, The Rights of Reason, pp. 127-52, and Williams, Kant's Political Philosophy, pp. 77-96

into conflict with others wishing to use those same objects in the pursuit of their private ends. These conflicts must be resolved in a manner that respects the autonomy of the different moral agents involved, and such a resolution is possible only in civil society.

According to Kant, an object is my property if its unauthorized use by another would constitute an injury to me: "An object is mine de jure if I am so bound to it that anyone else who uses it without my consent thereby injures me."²³ If this object is external to me, then it is mine only if such use would constitute an injury even if the object were not in my possession. Now at first glance, this last claim appears to be contradictory, for it asserts that I can possess an object even when I do not possess it. In order to avoid this contradiction, Kant distinguishes between two types of possession: sensible or empirical; and intelligible or rational. Sensible possession of an object is detention, actual physical possession. Intelligible possession, however, is possession regardless of detention; it is pure de jure possession. Now the term 'external' has two different senses here. In the first sense, an object is external to me, if it occupies another position in space and time. In the second sense, an object is external to me if and only if it is distinct from me, i.e. the object and I are different entities. When 'external' is used in the first sense, possession is sensible; when used in the second sense, possession is intelligible.

With intelligible possession, we abstract from the conditions of space and time. The nature of the concepts involved make this abstraction both possible and necessary. We are concerned here with pure practical concepts, and such concepts allow reason to transcend the limits of sense

²³- Kant, The Metaphysical Elements of Justice, p. 51.

experience and its forms, space and time, though they provide us with no speculative knowledge thereby. Further, since we are concerned with the interaction of moral agents, i.e. noumena, our concepts must not be limited by the conditions of space and time. These concepts are independent of the material provided by intuition:

The possibility of intelligible possession and hence also of what is externally yours or mine can not be intuited, but must be inferred from the postulate of practical reason. There is something especially noteworthy in that here practical reason proceeds without intuitions, not needing even a single a priori intuition, and extends itself by simply omitting empirical conditions, a procedure justified by the law of freedom.²⁴

Now Kant provides two different formulations of this postulate of practical reason. His first is as follows: "it is possible to have any and every external object of my will as my property."²⁵ Later, he changes this formulation so that it reads: "It is a duty of justice to act toward others so that external objects (usable objects) can also become someone's [property]."²⁶ It is on the latter formulation that he bases his deduction of the concept of intelligible possession. Since it is a duty to act according to this principle, it must be possible to do so. It can only be possible to do so if intelligible possession is possible. Thus, intelligible possession must be possible.

My focus will be on the second formulation of the juridical postulate, since it is clearer and more easily connected to his claim that we have an obligation to enter into civil society. Though a postulate of practical reason is not supposed to be demonstrable as such, Kant does in

²⁴- Kant, The Metaphysical Elements of Justice, p. 64.

²⁵- Kant, The Metaphysical Elements of Justice, p. 52.

²⁶- Kant, The Metaphysical Elements of Justice, p. 60.

fact provide a justification for this postulate in section 2 of the first chapter on Private Law. Kant is concerned here with the question of right (*quid juris*), for which he must provide a "deduction" or proof.²⁷ His approach here is similar to that which he employed in the Transcendental Deduction of the categories in the First Critique.²⁸ Where in the latter he argued that the categories were necessary for self-consciousness and intelligible thought, in this section he argues that property is a necessary condition of morally acceptable action. This argument is central to Kant's political theory, for it is on the necessity of property that Kant builds his argument for the crucial claim that we are obligated to enter into civil society.

Kant defines an object of the will as an external object that I have the power to use. This power or physical capacity to make use of an object must be distinguished from the authority to make use of it, and it is the latter that characterizes property. An object of the will is our property when we not only have the power to make use of it, but in addition the right or authority to do so. Without property rights, we would not have the right or authority to employ any external object for our own purposes, whatever they might be, and in the absence of such authority, any employment of an external object would be morally illegitimate. Thus, if property were prohibited, the will would be denying itself the use of any means for the achievement of its ends. But if one wills the end, then one wills the necessary means to that end. Now action is always purposive or ends-oriented. Hence, in order to act, one must be authorized to use external objects as means to one's ends, that is to say, one must have the

²⁷- See Kant, Critique of Pure Reason, p.120.

²⁸- See Shell, The Rights of Reason, p. 185.

right to property. Of course, we have no choice but to act and in fact are commanded to perform certain actions by the moral law. Therefore, individuals are authorized to acquire external objects as property and in doing so impose obligations on others to refrain from making use of those same objects without prior consent.

Though he generally writes in terms of private property, there is nothing in Kant's conception of property that would limit it solely to this. Quite the contrary, Kant recognizes the possibility of communal property.²⁹ Such property is characterized by a prohibition directed to all private individuals to refrain from appropriating it for themselves alone. As with private property, it is not held in common by nature, but requires a juridical act or contract in order to acquire this status.

E. Civil Society

We have finally arrived at the point where we can examine Kant's claim that we have an obligation to enter into civil society, his argument for which is quite simple. We have a duty to act so that external objects of the will can be someone's property. Property is possible only in civil society. Therefore, we have a duty to enter into civil society with each other. I have discussed the first premise in the preceding section and now turn to the second premise.

I think there are essentially two different views in the Metaphysical Elements of Justice regarding the relationship between civil society and property. In the first view, property is possible in the state of nature, but it is merely provisional. In order to guarantee the security of our

²⁹- Kant, The Metaphysical Elements of Justice, p. 58.

provisional property, we enter into civil society. This is similar to Locke's argument for the necessity of civil society, the difference being that Locke holds that property in the state of nature is more than just provisional.

According to the first view, the right to property is based on the innate common possession of the earth, and the general will corresponding to this common possession that permits private possession. One acquires an object as property by being the first to possess it empirically, and this is possible in a state of nature. Since the general will permits the acquisition of private property, "taking possession is an act of private will without being an arbitrary usurpation."³⁰ Though property is possible in the state of nature, it is extremely insecure, as each individual is left to fend for him- or herself in defending his or her property. A private individual alone can not guarantee the security of his or her own property against threats by others, so each individual must unite his or her will with the private wills of all other persons in order to create a public legislative authority with sufficient power to provide the requisite guarantees. Thus, one enters into civil society, retaining in the process everything that one possessed in the state of nature. The laws governing property relations in civil society are exactly the same as those laws in the state of nature. The only difference between civil society and a state of nature in this regard is that the laws of civil society are backed by a public lawful coercion, that is to say, "a civil constitution only provides the juridical condition under which each person's property is secured and guaranteed to him, but it does not actually stipulate and determine what

³⁰- Kant, The Metaphysical Elements of Justice, p. 57.

that property shall be."³¹ For this reason, we can say that "in the state of nature, there can be actual external property, but it is only provisional."³²

This view is clearly the dominant one in the Metaphysical Elements of Justice. But if this were all Kant were claiming, he would have made precious little advance over Locke and learned nothing from Rousseau, at best presenting a thoroughly secular version of Locke's theory of property and its relation to civil society. Fortunately, a stronger alternative position is imbedded in the text. The heading of section 8 in the first chapter on Private Law states that "having external things as one's property is possible only in a juridical condition of society, under a public-legislative authority, that is, a civil society."³³ In the very next section, however, Kant retreats from this position and adopts the view presented above. This move is quite typical of Kant's procedure in his political theory; Kant often sets forth a bold claim, only to weaken it in the very next breath. The shift in doctrine from section 8 to section 9 substantially weakens Kant's theory and opens it to several objections.³⁴

First, Kant has mixed pure and empirical practical concepts in that he has made first empirical possession into the ground of intelligible possession. With intelligible possession, we are supposed to abstract from the conditions of space and time, yet a temporal condition, first possession, is supposed to be the ground of intelligible possession. Certainly, the concept of intelligible or de jure possession must "be applied to objects of

³¹- Kant, The Metaphysical Elements of Justice, p. 65.

³²- Kant, The Metaphysical Elements of Justice, p. 65.

³³- Kant, The Metaphysical Elements of Justice, p. 64.

³⁴- In general, commentators on Kant's politics accept the weaker doctrine of provisional property without criticism. Even Mary Gregor, whose approach is in many ways similar to my own, commits this error. See Mary Gregor, The Laws of Freedom, (Oxford: Oxford University Press, 1963), pp. 50-63.

experience, the knowledge of which depends on temporal and spatial conditions."³⁵ But if first possession is to be the condition of application, then we are entitled to an argument establishing this claim, and Kant never provides us with one.³⁶

Second, Kant claims that there is only one innate right, freedom. If law specifies our rights and natural law specifies our right to property, then it is difficult to see how Kant can square the claim that we have property rights (of which there would seem to be many) in a state of nature with the claim that we have only one innate right.

But there is a more fundamental problem with this view. Our right to property is based on our innate common possession of the land and the corresponding general will permitting private possession. We have only one innate right, and any right to an external object is an acquired right based on positive law. Now, the acquisition of an external object is right only when it is in accordance with the general will. But the general will does not exist in a state of nature, rather it is produced by the uniting of private wills together upon entrance into civil society. In a state of nature, we act according to our own private wills. We all have the right to follow our own individual judgment as to what is best, as there is simply no general, public standard to which we can appeal. Upon entrance into civil society, however, we unite our separate private wills into a general will capable of legislating for all. Outside of civil society, in a state of nature, this general will does not exist. As we shall see, Kant himself recognizes

³⁵- Kant, The Metaphysical Elements of Justice, p. 61.

³⁶- If we accept that provisional property is possible in the state of nature, then in this respect, Kant did not even advance as far as Locke. Locke at least provides a justification of private appropriation prior to civil society based on the application of one's labor to nature.

this point. Thus, the general will permitting private property does not exist in the state of nature, and any acquisition of property outside the legal framework of civil society is nothing but an arbitrary usurpation. In a state of nature, one may possess an object empirically but not de jure, for de jure property requires the recognition of other moral agents and that can only take place in civil society.

In section 44 of the Metaphysical Elements of Justice, Kant argues that if provisional property were impossible, civil society would likewise be impossible. In doing so, Kant makes property the condition of the possibility of civil society, when in fact the converse is the case. He writes:

If it were held that no acquisition, not even provisional acquisition, is juridically valid before the establishment of a civil society, then civil society itself would be impossible. This follows from the fact that, as regards their form, the laws concerning property in a state of nature contain the same things that are prescribed by the laws in civil society insofar as they are considered merely as pure concepts of reason; the only difference is that, in the civil society, the conditions are given under which the [right of] acquisition can be exercised (in conformity with distributive legal justice). Accordingly, if there were not even provisional property in a state of nature, there would be no duties of justice with respect to them, and consequently, there would be no command to quit the state of nature.³⁷

If we examine this passage carefully, we can see the confusions and the contradictory elements involved in the doctrine of provisional property and its relation to civil society.

Let us consider for a moment the argument that Kant puts forth here. The conclusion Kant wishes to draw allegedly "follows from the fact that, as regards their form, the laws concerning property in a state of nature contain the same things that are prescribed by the laws in civil

³⁷- Kant, The Metaphysical Elements of Justice, p. 77.

society." Now the form of a law simply is its universality, that is, its universality of application to moral agents as well as its universality as being legislated by those same agents. In fact, a law is universally applicable because it is universally legislated; it is because we have all given the law to ourselves that we are all bound by it. Now this is just what the idea of the social contract expresses- that our external relations with each other ought to be governed by those laws to which we could all as rational agents agree. The laws that govern property, then, are to be determined in accordance with the social contract. Thus, rather than being the necessary precondition of civil society, property presupposes the social contract and the civil union it prescribes as an end-in-itself. As Kant himself states in "Theory and Practice," the union of individuals in civil society is the "primary duty in all external relationships whatsoever."

Now Kant's confusion here leads him into a contradiction. In the penultimate sentence of this passage, Kant asserts that the conditions for the acquisition of property are given in civil society, which is correct. But if this is the case, then clearly there can be no property in a state of nature, since the conditions for its acquisition are not present. The primary condition for the acquisition of property is of course the general will. Given the absence of the conditions required for legitimate appropriation, provisional property can be nothing more than usurpation.

We are left, then with Kant's initial claim that property is only possible in civil society. This is a much stronger position, and there are sufficient materials available in the text to sustain such an interpretation along these lines. For example, in section 8 of the first chapter on Private Law, Kant writes:

Now, with respect to an external and contingent possession, a unilateral Will can not serve as a coercive law for everyone, since that would be a violation of freedom in accordance with universal laws. Therefore, only a Will binding everyone else- that is a collective, universal (common), and powerful Will- is the kind of Will that can provide the guarantee required. The condition of being subject to general external (that is, public) legislation that is backed by power is the civil society. Accordingly, a thing can only be externally yours or mine only in civil society.³⁸

This passage is especially important for my reading of Kant and as such bears careful examination. We see here a subtle shift in Kant's position. In the first sentence, Kant takes the strong, and I think correct, position, by arguing that a unilateral private will cannot legitimately claim any external object as its property, even one in its physical possession. He then weakens this stance by maintaining that a general will provides only the security for property that is lacking in the state of nature. Finally, Kant reverts to his original strong position and draws the correct conclusion that property is only possible in civil society. Let us now examine that inference.

When I appropriate something as my own, I impose an obligation on others to forbear from using it without my authorization. Similarly, I am reciprocally bound to respect the property of all others. Thus, when I declare that some object is my property, I am in effect legislating for all moral agents; I am binding them to an obligation through an act of my will. But the legislation of a unilateral private will cannot produce the universality required, for this would violate the autonomy of all other moral agents. I can not legislate for others without making them dependent on my will, thereby impinging on their autonomy. Only a general, collective will can provide the necessary universality, while at the

³⁸- Kant, The Metaphysical Elements of Justice, p. 65.

same time preserving the autonomy of all moral agents involved. Now only through the establishment of civil society can the required union of private wills into a general will be effected. Disputes over property, then, are resolved by appeal to the laws promulgated by this general will. In this way, no moral agent is able to impose his or her private will on any other moral agent. Therefore, while detention or physical possession is possible in the state of nature, property is only possible in civil society.

Since all moral agents participate in the general will, when one submits oneself to the general will, one is obeying only those laws that one has legislated for oneself. These laws are universal, not only because they apply universally, but also because they can command universal agreement. That is, all agents, in so far as they are rational, could agree to be bound by such laws. Further, since everyone legislates for everyone, there is no possibility of injustice. If one individual legislates for another, there is always the possibility that the former will do the latter an injustice. But no individual qua perfectly rational agent can do him- or herself an injustice. Those laws, then, that can command the unanimous agreement of moral agents are just and specify those external duties that we have towards other individuals, i.e. our duties of justice. Civil society, then, guarantees the security of one's property, but also determines what that property shall be and how it may be acquired.

F. Conclusion

In his politics, Kant is grappling with the fundamental question of how individuals can live together in community with each other and yet remain autonomous. The idea of the social contract provides the answer to this question by displaying in ideal terms the conditions under which

this is possible. But just as the categories of the understanding are conditionally a priori, this idea is conditional in character, . The idea of the social contract applies only under the condition that persons must inevitably come into contact with one another, and this is a contingent fact. Given that we find ourselves interacting with each other, the social contract determines the conditions and laws that ought to govern this interaction.

Though its applicability is dependent upon a contingent fact, the validity of the idea is still independent of the empirical character of the individuals involved, for as an idea it applies to rational agents as such. "Even if we imagine men to be ever so good natured and righteous before a public lawful state of society is established," we are still obligated to enter into a civil union governed by the social contract.³⁹ For this reason, interpretations of the Kantian social contract that emphasize its instrumental character are misleading.⁴⁰ It is true that at times Kant writes as if this obligation depended on the specific nature of the human

³⁹- Kant, The Metaphysical Elements of Justice, p. 76.

⁴⁰- See Williams, Kant's Political Philosophy, and Riley, Kant's Political Philosophy, as well as his Will and Political Obligation . I trust that in the last chapter I paid sufficient attention to the problems with Williams' interpretation in this regard; however, I think further attention to Riley's is in order here. Riley's teleological interpretation of Kant's politics emphasizes the purely instrumental character of civil society as regards the status of persons as ends in themselves. Civil society serves to realize legally certain moral ends and provides a context for the flourishing of a good will on the part of individuals by removing impediments to its development. While it is certainly true that civil society does further the development of a good will on the part of its members, the civil union generated by the social contract is not just a means to that end but an end in itself. Civil society is not established simply to secure some given rights or ends, but to establish what those rights are in the first place. As an idea, it plays a constitutive role in the determination of our obligations towards other persons. I shall discuss Riley's interpretation further in the next chapter.

beings,⁴¹ but in doing so, Kant ignores the ideal character of the social contract.

Kant rejects anarchy as the appropriate condition for moral agents, for true autonomy can never be exercised in such a condition. In the state of anarchy, which just is the state of nature, each person "will have his own right to do what seems just and good to him, entirely independently of the opinion of others."⁴² Hence each individual would be subject, at least potentially, to the will of any other individual possessing superior power, and thus be placed in condition of heteronomy vis á vis that individual. True autonomy as regards external relations among moral agents is collective in nature. Through collective self-legislation, we determine the rights of individual moral agents within society, most importantly their property rights. Since this activity can only be carried out in civil society, we are obligated to enter into civil society. Outside of civil society, there can be no juridical legislation compatible with the autonomy of moral agents.

⁴¹- "Because he can quite adequately observe within himself the inclination of mankind in general to play the master over others (that is, man's inclination not to respect the rights of others when he feels superior to them in might or cleverness), it is unnecessary to wait for actual hostilities. A man is authorized to use coercion against anyone who by his very nature threatens him." Kant, *The Metaphysical Elements of Justice*, p. 71-2. Here Kant depicts human beings in a fashion quite similar to that of Hobbes, with the result that the state of nature is a state of war even when there are no actual hostilities.

⁴²- Kant, *The Metaphysical Elements of Justice*, p. 76.

CHAPTER V

THE A PRIORI PRINCIPLES OF JUSTICE

A. Introduction

We now turn our attention to an examination of the content of Kant's idea of a social contract. Here we seek to determine what principles autonomous rational agents would agree to upon entering the social contract, a task posing especially difficult problems for Kant. As we saw in the first chapter, the notion of the social contract has historically proven to be extremely indeterminate when it comes to providing us with substantive political principles. The social contract is nothing but a principle of unanimity; it requires unanimous agreement among contracting individuals on the principles that are to guide the organization and activities of civil society. Construed in this manner, it is a purely formal principle of construction that is capable of receiving whatever substantive content with which we wish to imbue it (as evidence of this, witness the divergent claims by Hobbes, Locke, and Rousseau, all of which are allegedly justified by the social contract). As one commentator has put it, "Barely stated, it is a mere formula which can be filled with any content from absolutism to pure republicanism."¹ Clearly, such a criticism is a damning one for social contract theory. If the idea of the social contract is to fulfill the normative function that Kant and other theorists attribute to it, it must specify some determinate principles as its content, principles that can serve to guide the organization and

¹- G. D. H. Cole, "Introduction," J. J. Rousseau, The Social Contract and Discourses.

activities of existing civil societies. Without this content, the idea of the social contract provides no standard that can be used in the reform of our political institutions.

Traditionally, this deficiency has been remedied by making use of assumptions about the nature of human beings and the specification of their reasons for entering into the contract. Both Hobbes and Locke make assumptions about human nature (in particular, the sociability of human beings) that enable them to flesh out their constructions of the state of nature and specify the ends that human beings hold, the satisfactory pursuit of which requires the establishment of civil society. As we have seen, the differences between their appraisals of human nature account for the differences in respective theories of the social contract.

No such resources are available to Kant, however. As a pure concept of practical reason, the social contract is an agreement among purely rational agents and abstracts from all empirical conditions, including the empirical character of the agents involved in its construction. In short, Kant appears to be faced with the hopeless task of deriving substantive principles of politics from a purely formal constraint, namely, unanimity of agreement among purely rational agents. Expressed this way, Kant's project seems rather unpromising.

Now this problem is not specific to Kant's politics, but is symptomatic of Kant's ethical theory as a whole and is rooted in his account of the categorical imperative. The same charge of vacuity leveled against contractarianism has a long history as a criticism of Kant's ethics, and thus this problem is especially acute for his version of the social contract. Kant is often charged with an excessive formalism that is incapable of yielding any substantive moral judgments, but is in practice

compatible with the grossest immorality. We find one of the earliest statements of this line of criticism in Hegel's early work Natural Law.² In order to set the stage for our discussion in this chapter, I will examine Hegel's critique in some detail and, in doing so, will quote liberally from Hegel's text.

Hegel argues that Kant's moral theory is nothing more than an abstract formalism in which "we can recognize only the formal Ideal of the identity of the real and the ideal."³ This formal ideal provides only a negative criterion of right: "The construction of this practical philosophy rests on the presentation of what this negative absoluteness can achieve."⁴ In the process of this construction, all content is drained from morality, leaving us with only a barren formalism:

Kant, the man who expounded this abstraction of the concept in its absolute purity, recognizes full well that practical reason totally renounces the content of the law and can do nothing beyond making the form of fitness of the will's (*Willkür*) maxim into supreme law. The maxim of the arbitrary will (*Willkür*) in choosing has a content and includes a specific action, but the pure will is free from specification. The absolute law of practical reason is to elevate that specification into the form of pure unity, and the expression of this specification taken up into this form is the law. If the specification can be taken up into the form of the pure Concept, if it is not cancelled thereby, then it is justified and has itself become absolute through negative absoluteness as law and right or duty.⁵

In Kant's own terminology, practical reason provides only a canon of acceptability for maxims of the will in the form of the categorical

2- G. W. F. Hegel, Natural Law, trans by T. M. Knox, (Philadelphia: University of Pennsylvania Press, 1975).

3- Hegel, Natural Law, p. 71.

4- Hegel, Natural Law, p. 71.

5- Hegel, Natural Law, p. 75

imperative, or fitness to be universal law. A canon is a purely negative criterion, a *conditio sine qua non*, which can only rule out maxims as unfit to be universal law and hence morally unacceptable. As a canon, the role of the categorical imperative in practical reason is analogous to that played by the law of non-contradiction in theoretical reason, and subject to the same limitations. (We shall discuss this point further in the next section in order to assess the validity of Hegel's criticism.)

According to Hegel, Kant correctly recognizes that theoretical reason can provide no universal standard of truth. The truth of judgment is a matter of its content as well as its form. In the Introduction to the *Transcendental Logic* Kant adopts a traditional correspondence theory of truth- truth is the "agreement of knowledge with its object." A universal criterion of truth would have to be valid in all instances of knowledge, regardless of the variation among the objects of judgment. Given the infinite diversity of objects of knowledge, there can be no one criterion capable of covering them all as regards their content, for "such a criterion [being general] can not take account of the [varying] content of knowledge." Theoretical reason, then, provides only the law of non-contradiction as a formal criterion of truth.

Hegel continues that Kant fails to discern the similarity here between practical reason and theoretical reason. Practical reason finds itself in the same situation as regards duty that theoretical reason find itself in as regards truth. In each case, it is the content that is crucial, not the form:

In saying this, Kant is pronouncing judgment of the principle of duty and right set up by practical reason. For practical reason is the complete abstraction from all content of the will (*Wille*); to introduce a content is to establish a heteronomy of

choice (Willkür). But what is precisely of interest is to know what right and duty are. We ask for the content of the moral law, and this content alone concerns us. But the essence of pure will is to be abstracted from all content. Thus it is a self-contradiction to seek in this absolute practical reason a moral legislation which would have to have a content, since the essence of this reason is to have none.⁶

Since the legislative activity of practical reason is limited solely to the form of the moral law, it is reduced to the production of tautologies, which "is in truth what the sublime lawgiving power of pure practical reason's autonomy in legislating consists of."⁷

Now our primary interest in our moral deliberations is with the content of the moral law and not its form. We are concerned with the ends we ought to pursue and the specific duties these ends give rise to. The pure form of the law, however, is incapable of specifying the content of morality, of providing us with concrete duties. In order to do so, we must posit some matter, such as an end or desire: "If this formalism is to be able to promulgate a law, some matter, something specific must be posited to constitute the content of the law. And the form given to this specific matter is unity or universality."⁸ But any specific matter is capable of being so posited, as is its contrary. Thus, the form of universal law is compatible with any matter we may choose to posit:

But every specific matter is capable of being clothed with the form of the concept and posited as quality; there is nothing whatever which can not in this way be made into a moral law. Every specific matter, however, is inherently particular, not universal; the opposite specific thing stands over against it, and it is specific only because there is this specific opposition. Both are equally capable of being thought; which of the two is to be taken up into the unity or to be thought,

6- Hegel, Natural Law, p. 76.

7- Hegel, Natural Law, p. 76.

8- Hegel, Natural Law, p. 76.

and which is to be abstracted from, is completely open and free. If one is fixed as absolutely subsistent, then, to be sure, the other can not be posited. But this other can just as easily be thought, and, since the form of thinking is the essence, expressed as absolute moral law.⁹

Since every specific matter can be given the form of universal law, no concrete duties can be specified simply by employing the formal principle of universality; everything is permissible when all we may utilize in the determination of our obligations is the pure form of the law.

Hegel illustrates his point by applying the categorical imperative to a concrete situation, the acceptance of a deposit and the resulting obligation to return that deposit when so requested. If one is entrusted with a deposit, one is obligated to return it to its rightful owner upon his or her request. If this were not the case, a contradiction would result in that deposits would cease to exist. But, Hegel argues, there is no contradiction in the non-existence of deposits. We are left, then, only with the tautology that a deposit is a deposit.

Now since deposits are a form of property, this allows Hegel to expand upon this point and to critique Kant's theory of property along the same lines:

If the specification of property in general be posited, then we can construct the tautological statement: property is property and nothing else. And this tautological production is the legislation of this practical reason; property, if property is, must be property. But if we posit the opposite thing, negation of property, then the legislation of this same practical reason produces the tautology: non-property is non-property. If property is not to be, then whatever claims to be property must be cancelled. But the aim is precisely to prove that property must be; the sole thing at issue is what lies outside the capacity of this practical legislation of pure reason, namely to decide which of the opposed specific things must

⁹- Hegel, Natural Law, p. 77.

be lawful. But pure reason demands that this shall have been done beforehand, and that one of the opposed specific things shall be presupposed, and only then can pure reason perform its now superfluous legislating.¹⁰

According to Hegel, Kant must assume the existence of property in order to ground the question-begging inference that there is property. But none of this establishes that there must be property, which is exactly what we want to prove. Now we have seen that Hegel is mistaken on this critical point; Kant does in fact demonstrate the necessity of property, though I shall hold off on discussing Hegel's error on this matter until later.

Hegel argues that this problem is the result of Kant's transformation of the conditioned into the unconditioned:

When the specific concept is expressed in a sentence, the specific thing, taken up into the form of pure unity or formal identity, produces the tautology of the formal sentence: the specific A is the specific A. The form, or in the sentence the identity of subject and predicate, is something absolute, but only negative or formal, and the specific A is unaffected; for the form, this content is something wholly hypothetical. However, the absoluteness, which by virtue of the sentence's form is in the sentence, acquires a totally different meaning in practical reason. Absoluteness is also conferred on the content, which by its nature is something conditioned; and this conditioned non-absolute, contrary to its own essence is elevated into an absolute by this confusion.¹¹

This confusion between the "absolute form" and the "conditioned matter" of the maxim allows Kant to smuggle the former into the latter and turn anything into a duty.

This same sort of criticism has been levelled at Kant from a radically different philosophical perspective. In his Utilitarianism, Mill criticizes those "a priori moralists," who, when they argue at all, appeal to the

¹⁰- Hegel, Natural Law, 78.

¹¹- Hegel, Natural Law, p. 78-9.

principle of utility or greatest happiness. According to Mill, Kant is the foremost example of such a moralist, for his formalism allows the adoption of any maxim, even the most immoral, on the part of rational agents. Kant can only prevent this result by appealing covertly to the principle of utility:

This remarkable man [Kant], whose system of thought will long remain one of the landmarks in the history of philosophical speculation, does in the treatise in question [The Metaphysics of Morals], lays down a universal first principle as the origin and ground of moral obligation; it is this: 'So act that the rule on which thou actest would admit of being adopted as a law of rational beings.' But when he begins to deduce from this precept any of the actual duties of morality, he fails, almost grotesquely, to show that there would be any contradiction, any logical (not to say physical) impossibility, in the adoption by all rational beings of the most outrageously immoral rules of conduct. All he shows is that the consequences of their universal adoption would be such as no one would choose to incur.¹²

Kant, then, is a closet utilitarian for whom such "utilitarian arguments are indispensable." That Kant does in fact appeal to the principle of utility in deriving our actual duties is questionable to say the least, but Mill, like Hegel, does zero in on the most significant problem of Kant's ethics: How are we to imbue the categorical imperative with the necessary determinate content?

In what follows in this chapter, I shall absolve Kant from this charge of empty formalism, without thereby turning him to a proto-Utilitarian. Ultimately, one's acceptance of my arguments depends on the legitimacy of Kant's moral theory, the full explication and defence of which would alas take us well beyond the particular subject at hand.

¹²- Mill, Utilitarianism, p. 6.

Regrettably, then, my remarks will be unavoidably sketchy at important points.

The organization of this chapter will follow Kant's presentation of the three formulations of the categorical imperative as a "progression" from the "unity of form" to the "plurality of material" and finally culminating in the synthesis of form and matter in the "totality of a system of ends."¹³ Given that the categorical imperative is the "supreme principle of morality," it is appropriate that we employ it as the organizing principle of our discussion, for the theory of justice is only one part of the system of morals to which it gives rise. The a priori principles of justice, therefore, must be derived from the categorical imperative. In the first formulation, the categorical imperative is treated as "a form, which consists in universality," whereas in the second, it is considered as providing "a material, i.e. an end" in the form of rational beings. These two formulations are synthesized to yield "a complete determination of all maxims by the formula that all maxims which stem from autonomous legislation ought to harmonize with a possible realm of ends as with a realm of nature."¹⁴ This third formulation, with its concept of a realm of ends, is central to understanding Kant's politics and its position within his moral theory.

13- There is some disagreement in the secondary literature on just how many formulations of the categorical imperative Kant does provide. Professor Paton counts five such formulae. A more recent commentator, Bruce Aune, asserts that there are four formulae, each with a corresponding topic. See Bruce Aune, *Kant's Theory of Morals*, (Princeton: Princeton University Press, 1979). I have adopted Kant's own count in my exposition for organizational reasons and not because I believe it be correct.

14- Kant, *Foundations*, pp. 54-5.

B. The Limits of Ethical Formalism

On the surface, Hegel's and Mill's criticism of Kant's moral theory has considerable merit and has been echoed since their time. Kant seems to present us with the impossible task of deriving substantive moral principles from a purely formal constraint.¹⁵ This task is fraught with insurmountable difficulties, for it asks us to derive content from form. Yet in his ethical theory, this is exactly what Kant asks us to do, for a free will is just that which acts according to the pure form of universal law. Let us examine then the functioning of Kant's formulation of the categorical imperative in order to see how Kant approaches this task.

Kant's first formulation of the categorical imperative reads as follows: "Act only according to that maxim by which you can at the same time will that it should become a universal law."¹⁶ Now this formulation provides only the negative condition of acceptability of maxims, or a canon of practical reason, and Hegel appears to be quite correct on that point. In section three of the Introduction to Transcendental Logic in the First Critique, Kant distinguishes between a canon and an organon. The canon of understanding is concerned with the mere form of judgments and provides only the negative condition of truth. With respect to the

¹⁵- For a discussion of this point, see Wolff, The Autonomy of Reason. Professor Wolff argues that in the Foundations Kant attempts to ground a theory of obligatory ends that would provide content to the categorical imperative. Kant fails in this task for the best of all reasons- because it can not be done. There simply are no categorical imperatives. This does not prove that Kant's analysis of moral imperatives is incorrect, however, for Kant may very well be correct in his analysis and yet be mistaken as to whether we are bound by any moral law in the first place. If Professor Wolff is correct, then rather than being a fact of reason, the moral law is just a chimera.

¹⁶- Kant, Foundations, p. 39.

understanding and theoretical reason, this role is filled by formal logic and, in particular, the law of non-contradiction. The law of non-contradiction is "the purely logical criterion of truth, namely, the agreement of knowledge with the general and formal laws of the understanding and reason, is a condition sine qua non, and is therefore the negative condition of all truth."¹⁷ No consideration is given here to the content of judgments or the objects of knowledge. With respect to their form, all judgments must conform to this law, and a violation of this form yields a contradiction. But mere conformity itself is not a guarantee of the truth of judgments. We can only say that any judgment that possesses this form is logically possible and nothing more.

In contrast to a canon, an organon is an "instrument" capable of generating substantive judgments that "extend and enlarge our knowledge." We succumb to the "logic of illusion" when we attempt to treat formal logic as an organon for the production of true judgments; "General logic, when thus treated as an organon, is called dialectic."¹⁸ Such a move is clearly illegitimate, "for logic teaches us nothing whatsoever regarding the content of knowledge, but lays down only the formal conditions of agreement with the understanding; and since these conditions can tell us nothing at all as to the objects concerned, any attempt to use this logic as an instrument (organon) that professes to extend and enlarge our knowledge can end in nothing but mere talk."¹⁹ But it is just the content of a judgment that is essential in determining its truth and providing us with knowledge of the objects of experience. Thus

17. Kant, Critique of Pure Reason, p. 99.

18. Kant, Critique of Pure Reason, p. 99.

19. Kant, Critique of Pure Reason, p. 99.

in abstracting from the content of judgments, logic is limited to providing only a canon of reason.

As a canon, the categorical imperative is a test applied to given maxims, and this is the way Kant employs it in his examples. It is not a principle from which concrete duties can be deduced as theorems from an axiom, but a test applied to independently formulated, given maxims to determine whether they are capable of being practical laws.

As a canon of practical reason, the categorical imperative in its first formulation establishes only the permissibility, the analogue of logical possibility, of acting on a given maxim not its obligatoriness. This creates something of a problem for Kant. At best, Kant can only establish that a certain action is permissible, but not that it is obligatory. The categorical imperative would seem, then, to be incapable of grounding Kant's notion of duty or obligation. Now there is one special set of circumstances under which we can derive an obligation from the permissibility and impermissibility of maxims, i.e. when a canon functions as an organon. Such a situation exists when there is a finite set of possible maxims and all but one of them fails to meet the test of the categorical imperative. Under such circumstances, the adoption of all but one maxim is impermissible. Further, an agent cannot abstain from acting. Since acting follows analytically from the concept of agency, it is necessarily the case that agents act. Consequently, rather than being just permissible, the adoption of the remaining maxim becomes obligatory. Thus, Kant's task is not as hopeless as it might appear at first. This point will be important in our discussion of Kant's fourth example as it relates to respect for rational beings as ends-in-themselves.

Given Kant's own reasoning, there is much to be said for Hegel's claim that Kant has succumbed to the "logic of illusion" with regard to practical reason. In our moral deliberations, it is just the content of the moral law (our specific concrete duties and the ends that we are to pursue) that concerns us and not the form of our maxims. In order to satisfy the demands of our ordinary moral reasoning, Kant must provide some content to the moral law, some ends that we ought to pursue, but he has at his disposal here only the pure form of law, its universality. In attempting to derive substantive principles from this purely formal constraint, Kant appears to have fallen prey to the same error he so forcefully warned us against with regard to theoretical reason; he has treated a canon as an organon.

But there is one crucial difference between theoretical and practical reason that Hegel has failed to grasp. Where the understanding and theoretical reason seek knowledge of the objects of experience, practical reason seeks the determination of the will to action. With regard to the former, we are concerned with thinking; whereas with regard to the latter, we are concerned with willing. Therein lies the difference between logical possibility and permissibility; in the former we are concerned with judgments, while in the latter, with maxims or rules of action. Hegel, then, is clearly incorrect when he asserts that "the form of thinking is essence expressed as absolute moral law."²⁰ By formulating the core of Kant's ethics in this way, Hegel conflates theoretical and practical reason. Correctly stated, it is the form of willing that is the essence expressed as absolute moral law. By focusing on thinking rather than willing, Hegel

²⁰- Hegel, Natural Law, p. 79.

misses Kant's argument for the practical necessity of property- that property, as the means to our ends, is a necessary condition of our purposive action. Kant is quite clear about this in the first formulation of the categorical imperative, when he states that we are to consider whether we can *will* that a maxim should be a universal law, not whether whether we can conceive that it be so.

Mill commits the same mistake in his interpretation of Kant. It is not only whether we can conceive of all moral agents acting according to a certain maxim that is important, but also whether we can will that they do so, for the former is a necessary but not sufficient condition of the latter. If a maxim is incapable of being a universal law, then we can not consistently will that it should be so. But Kant clearly thinks that there are certain maxims that could conceivably be universally adopted, e.g. rational egoism, but which we could not will to be so adopted: "although it is possible that a universal law of nature according to that maxim could exist, it is nevertheless impossible to will that such a principle should hold everywhere as a law of nature."²¹

The key transition in Kant's ethical theory is between the first and second formulations of the categorical imperative. The first formulation of the categorical imperative is formal in nature, whereas the second provides the material or end of the law that we so desperately need to get past the empty form of universality and move from permission to obligation. Kant is caught between two poles here. On the one hand, he claims that the law is logically prior to its object and must give rise to that object. But on the other hand, he needs some object of the law, some end

²¹- Kant, Foundations, p. 41.

that we ought to pursue, to provide the moral law with a determinate content that is capable of generating concrete moral duties. In order to provide such content, he must provide some account of objective or obligatory ends, i.e. ends that are valid for all rational agents as such.

In the Foundations of the Metaphysics of Morals, Kant acknowledges the necessity of providing such an account. There he distinguishes between subjective and objective ends. Kant recognizes that the "objective ground" determining the will to action is always an end. Some of these ends are those "which a rational being arbitrarily proposes to himself as consequences of his action;" these "are material ends and are without exception only relative, for only their relation to a particularly constituted faculty of desire in the subject gives them their worth."²² In contrast to these ends, there are ends that "are given by reason alone" and "depend on motives valid for every rational being."²³ Kant then categorizes practical principles according to the type of end they involve; "Practical principles are formal when they disregard all subjective ends; they are material when they have subjective ends, and thus certain incentives, as their basis."²⁴ Only objective ends "afford any universal principles for all rational beings or valid and necessary principles for every volition," for such ends themselves possess validity for rational agents as such.²⁵ Kant's formalism, then, contra Hegel, does not preclude a matter or content of morality, only the specific type of content determined by the subjective constitution of our faculty of desire.

22. Kant, Foundations, pp. 45-6.

23. Kant, Foundations, p. 45.

24. Kant, Foundations, p. 45.

25. Kant, Foundations, p. 46.

In a particularly important section of the Doctrine of Virtue (section III of the Introduction), Kant pursues this line of thought and elaborates on his conception of objective ends:

An end is an object of free choice, the thought of which determines the power of choice (*Willkür*) to an action by which the object is produced. Every action, therefore, has its end; and since no one can have an end without himself making the object of choice into an end, it follows that the adoption of any end of action whatsoever is an act of freedom on the agent's part, not an operation of nature. But if this act which determines an end is a practical principle that prescribes the end itself (and therefore commands unconditionally), and not the means (and so not conditionally), it is, therefore, an imperative which connects a concept of duty with that of an end as such.²⁶

Kant acknowledges, then, the purposive nature of human action. In keeping with freedom as a precondition of morality, the ends that guide our actions must be freely adopted, though their source may lie either in our reason or in our empirical nature. If that source is the former, those ends are objective or valid for all rational beings; if in the latter, they are purely subjective, for rational beings may differ with regard to the contingent make-up of their constitution of desire.

Given the purposive nature of human action, if there are to be obligatory actions, there must be obligatory ends ("objects man ought to adopt as ends"):

Now there must be such an end and a categorical imperative corresponding to it. For since there are free actions, there must also be ends to which as their object, these actions are directed. But among these ends there must also be those that are at the same time (that is, by their concept) duties. For were there no such ends, then all ends would be valid for practical reason only as a means to other ends; and since

²⁶- Immanuel Kant, The Doctrine of Virtue, trans. Mary Gregor, (Philadelphia: University of Pennsylvania Press, 1980), p. 43.

there can be no action without an end, a categorical imperative would be impossible. And this would do away with all moral philosophy.²⁷

Since there is a categorical imperative, there must be objective ends. If there were no objective ends, then there could be no morality. But it is a "fact of reason" that we are morally responsible agents and are subject to moral law.

The difficulty here lies in the derivation of these objective ends. Kant argues in the Second Critique that the end or object of the law must be derived from the law itself, or more specifically the mere form of universality. Only if we are able to derive the ends of action from the form of universality can we conclude that these are in fact objectively valid for all rational agents. Thus, we again face the gap between form and content and must find some way to bridge it.

C. Persons and Objective Ends

Kant's second formulation of the categorical imperative reads as follows: "Act so that you treat humanity, whether in your own person or in that of another, always as an end and never as a means only."²⁸ At first glance, it appears that humanity supplies us with these objective ends, but actually it is rather broader than that. Humans are objective ends because they are capable of rational agency; hence, it is rational agents who are ends in themselves. As ends-in-themselves, "such beings are not merely subjective ends whose existence as a result of our action has a worth for us, but are objective ends, i.e. beings whose existence in itself is an end."²⁹

²⁷- Kant, The Doctrine of Virtue, p. 43.

²⁸- Kant, Foundations, p. 46.

²⁹- Kant, Foundations, p. 46.

It is here that Kant fleshes out the formal skeleton of his ethics.

Unfortunately, due to the limitations of my presentation I can not do justice to the complexity of the issues involved with Kant's conception of persons as ends; I can only sketch the outlines of this part of his moral theory and present what I take to be the basic problem with it, without pretending to offer a solution.

Kant's claim that persons are ends in themselves surely involves an odd usage of the term 'end.' In what sense of 'end' can humanity be described as an end? When I say that the acquisition of wealth is one of my ends, I have said something that is easily understood, and the consequences of the adoption of this end for action are not difficult to grasp. But when I state that I am my own end, none of this is readily apparent. Similar difficulties arise when I apply this notion to other individuals. If I state that my child is my end, it is unclear what this could mean beyond the expression of a desire to sire a child, and for Kant it clearly does mean more than that. When Kant states that a person is an end in itself, he means that a person is a subject capable of forming and pursuing purposes and not just an object. One treats someone as such an end by respecting that ability. With regard to oneself, this involves trying to develop and perfect one's natural capacities, one's ability to set and pursue ends. When Kant speaks of treating other persons as ends, he is referring to the ends of those persons. In this regard, Kant propounds two different but related conceptions of persons as objective ends- a negative one and a positive one. According to the negative conception of persons as objective ends, treating another person as an end means not interfering with the pursuit of his or her morally permissible ends. In the positive sense, I treat another person as an end when I adopt that person's ends as

my own and strive to further that persons efforts to achieve his or her morally permissible ends; in short, I make that person's happiness my end.

Unfortunately, Kant provides scant argumentation in the Foundations for the claim that one ought to treat persons as ends in themselves. In fact, Kant begins by providing no argument at all for this claim, starting with a supposition and then immediately afterwards quite dogmatically asserting the truth of that supposition.³⁰ Finally, when he does get around to arguing for it, there seem to be a variety of arguments imbedded in the text.³¹

One such argument is suggested by Kant when he claims that a rational being as such "restricts all [arbitrary] choice." Paton argues that this restriction is implicit in the first formulation of the categorical imperative. By stressing the formal universality of the moral law, Kant requires that we take into consideration not just ourselves but all rational agents. In its first formulation, the categorical imperative requires that we consider not just what we can will for ourselves, but what we can will that all rational agents should will. Thus, our own willing is limited by the wills of all other rational agents. Hence, such agents "must serve in every maxim as the condition restricting all merely relative and arbitrary ends."³² Presumably, since such agents cannot will that they be treated merely as means to my subjective ends, just as I myself can not, I am forbidden from treating them in such a manner. At the least, in the

³⁰- Kant, Foundations, p. 46.

³¹- In his seminal study of Kant's ethics, H. J. Paton finds four distinct arguments for the second formulation of the categorical imperative. As should be clear, I am greatly indebted to Paton in my own reading of Kant here.

³²- Kant, Foundations, p. 55.

pursuit of my own ends, I must leave others free to pursue theirs. When I involve others in the pursuit of my private ends, as I inevitably do, I must insure that I do not use them in such a way that they are not free and able to pursue their own private ends

In a later passage, Kant provides another argument for the second formulation in "the formula of an absolutely good will."³³ Here the absolutely good will, as the subject of ends, serves as a limiting condition on the pursuit of arbitrary ends. This argument is, of course, anticipated in the very first sentence of the first section of the *Grundlegung*:

"Nothing in the world- indeed nothing beyond the world- can possibly be conceived which could be called good without qualification except a good will."³⁴ The good will, then, is an end in itself. Since every person possesses the potential for a good will, every person must be considered to be an end in him- or herself. Every person as a moral agent has at least potentially a good will, and this potential must be respected. Thus, every person rightfully serves as a limiting condition upon our actions and purely subjective ends.

But, Kant's argument here is circular in nature. A good will is defined in terms of the moral law; one possesses a good will when one does one's duty because it is one's duty (i.e. one follows the moral law because it is the moral law). We can not without circularity, then, attempt to provide content to the moral law by appealing to the notion of a good will.

Kant provides another piece of argumentation in the following passage:

³³- Kant, Foundations, p. 56.

³⁴- Kant, Foundations, p. 9.

Man necessarily thinks of his own existence in this way; thus far it is a subjective principle of human actions. Also every other rational being thinks of his existence by means of the same rational ground which holds for myself; thus it is at the same time an objective principle from which, as a supreme practical ground, it must be possible to derive all laws of the will.³⁵

This argument is based on the claim that one necessarily considers him- or herself to be an end in itself. Further, the reason why one does so in his or her own case holds for all other rational beings as well. But from this it follows only that all rational agents must consider themselves as ends in themselves, a conclusion that is clearly insufficient for Kant's purposes. Kant needs to get beyond the subjective validity of this rational ground for each agent to its objective validity for all agents and does so by means of the requirement that all maxims be universalizable. In order to see how Kant accomplishes this, let us first consider the nature of this rational ground.

In the footnote to the above passage, Kant refers us rather vaguely to the final section of the Foundations for the relevant discussion of this rational ground. Following Paton, I take it that this reference is to the passage entitled "Freedom Must Be Presupposed As The Property Of The Will Of All Rational Beings."³⁶ There Kant argues that, on whatever basis we ascribe freedom to our own will, we must also attribute freedom to all rational beings. This claim rests on the moral law itself, which is valid "for us only as rational beings." Since the moral law as valid for all rational beings "must be derived from the property of freedom," freedom must be ascribed to such beings. Kant concludes this sub-section by

³⁵- Kant, Foundations, p. 47.

³⁶- Kant, Foundations, p. 66-67.

maintaining that "the will of a rational being can be a will of its own only under the idea of freedom, and therefore in a practical point of view such must be ascribed to all rational beings."³⁷ Freedom, then, provides the rational ground on which each agent considers him- or herself to be an end in itself.

Kant elaborates and expands upon this line of thought in sections 82 to 87 of the Critique of Judgment. Patrick Riley calls attention to the importance of these sections for an understanding of Kant's doctrine of persons as ends in themselves in his excellent study of Kant's political Philosophy.³⁸ In what may seem to be an old-fashioned appeal to teleology, Kant argues that only in human beings as rational agents do we find a being "who can form a concept of purposes and use his reason to turn an aggregate of purposively structured things into a system of purposes."³⁹ This establishes humanity as the "ultimate purpose of creation," "the purpose by reference to which all other natural things constitute a system of purposes." Humans, through the use of their reason, are able to order and systematize all natural entities into coherent, structured whole of purposes and thereby introduce purpose into the natural world. But this activity is "always subject to a condition: he must have the understanding and the will to give both nature and himself reference to a purpose independent of nature, self-sufficient, and a final purpose."⁴⁰ We find intimated here an important distinction between ultimate and final purposes, though one that is not clearly drawn.

37- Kant, Foundations, p. 67.

38- Riley, Kant's Political Philosophy.

39- Kant, Critique of Judgment, p. 67.

40- Kant, Critique of Judgment, p. 318.

The ultimate purpose of nature is immanent within nature and lies in the development of a rational being who possesses an aptitude for setting purposes for himself and using nature for their attainment, i.e. who possesses what Kant calls "culture." It is here in this concept that we find a rather old-fashioned teleology at work. But Kant goes on to distinguish a final purpose from the ultimate purpose of nature. A final purpose is defined as "a purpose that requires no other purpose as a condition of its possibility."⁴¹ Since it depends on no other condition, a final purpose is unconditioned. But within nature, the unconditioned is nowhere to be found, for here we are confronted only with an unending series of conditions. The final purpose of creation, then, must not be sought "within nature at all;" it is transcendent. Now only rational agents as noumena fit this description:

Now in this world of ours there is only one kind of being with a causality that is teleological, i.e., directed to purposes, but also so constituted that the law in terms of which these beings must determine their purposes is presented as unconditioned and independent of conditions in nature and yet necessarily in itself. That being is man, but man considered as noumenon. Man is the only natural being in whom we can recognize, as part of his own constitution, a supersensible ability (freedom), and even recognize the law and the object of this causality, the object that this being can set before itself as its highest purpose (the highest good in the world).⁴²

As moral beings, rational beings under moral laws, humans serve no other purpose.

Without such beings, Kant argues, the world would lack all value. If there were no rational beings in the world, there would exist no entity

⁴¹- Kant, Critique of Judgment, p. 322.

⁴²- Kant, Critique of Judgment, p. 323.

that could imbue the world with value. Thus, the existence of the world and everything in it would be without value. Further, if there were only instrumentally rational beings, the world would also lack value, for there would be no final point of attachment for "the chain of mutually subordinated purposes." Under such conditions, this chain would remain forever incomplete. It is, then, the power of desire determined by laws of freedom, i.e. practical principles, that gives human existence absolute value.

Kant's point here is a simple one: each human being must consider himself to be a subject of purposive action and not solely as its object. This consideration rests on his freedom as a rational agent, as an agent who can set himself ends, and is not dependent on any teleological interpretation of humanity as the ultimate purpose of creation. The positing of an end must be considered an act of freedom, undetermined by natural necessity, which is purely mechanistic. This is why human freedom is teleological. Since one must consider oneself as such a subject, one can not will that one should be used solely as an object to be used in the attainment of another's ends. Consequently, I can not will that the maxim 'Always treat others solely as a means to my ends' be a universal law. Thus, in one's relationships with others, one must respect them as subjects with their own ends. This requires that, in the pursuit of one's own ends, one not use others in such a manner as to prevent them from attaining their own ends.

Now this reasoning, while I think it is correct, is insufficient for a full understanding of what it means to be an end-in-itself. Kant argues that our conception of others as ends must be positive as well as negative:

but this harmony with humanity as an end-in-itself is only negative rather than positive if everyone does not also endeavor, so far as he can, to further the ends of others. For the ends of any person, who is an end in himself, must as far as possible also be my end, if that conception of an end in itself is to have its full effect on me.⁴³

Thus, we are required by the positive conception of humanity as an end in itself to adopt the ends of others as our own. But now we need some sense of how Kant might be able to derive this stronger conception of an end in itself from the formulation of the categorical imperative as fitness for universal law. This is provided by Kant's reasoning in the fourth example, in which he attacks rational egoism as a possible principle of morality. Here Kant argues that, given the type of being we are, we can not consistently will that all rational agents act solely out of self-interest. There are times in which each of us may need the aid of others, even though the provision of that aid by others would run counter to their own self-interest. Thus, my own self-interest demands that others not always act according to their own self-interest; hence, I can not consistently will that the maxim of rationally self-interested action become a universal law of action.

We can express the maxim of rational self-interest and its contrary in the language of means and ends. So formulated, the maxim of rational self-interest is as follows: Always treat others solely as a means to one's own arbitrary ends. The alternative to this maxim is: Never treat others solely as a means to one's own arbitrary ends, but treat them also as ends in themselves, i.e. the second formulation of the categorical imperative. Here we have a quite plausible case of a canon functioning as an organon.

⁴³- Kant, Foundations, p. 49.

We have a choice between two possible maxims,⁴⁴ the adoption of one of which is prohibited by the categorical imperative expressed as universal law; thus we are obligated to act according to the sole remaining one. This manner of expressing and justifying the second formulation of the categorical imperative on the basis of the first formulation provides a basis on which to ground the positive as well as the negative conception of persons as ends in themselves, since it recognizes the need of all individuals for the aid of others.

Now Kant must find some way of distinguishing those ends of others that I ought to adopt and advance and those that I ought to oppose, (my earlier discussion in terms of morally permissible ends skirted this problem). Clearly the adoption of certain ends is immoral (e.g. Hitler's adoption of the extermination of world jewry as an end was immoral because it violated the negative conception of persons as ends as regards the world's Jews), and hence should not be furthered by us but opposed. Kant needs some way of discriminating, then, between those ends whose attainment I ought to oppose and those ends of others that I ought to adopt as my own. The appeal to persons as ends does not seem to be able to do this without circularity. The conception of persons as ends in themselves is supposed to provide us with the obligatory ends of our actions, but it can only accomplish this task if we possess some prior standard of moral permissibility for ends. If we appeal to the conception of persons as ends as this standard, then our definition is circular. Thus, we

⁴⁴- It may seem here that I am ignoring another possibility, the contradictory of the maxim of rational self-interest: do not always treat others solely as means to one's own arbitrary ends. I think, however, that this maxim fails for the same reason that the maxim of self-interest fails. One's own self-interest demands that others never treat oneself solely as a means to their arbitrary ends.

seem to require some independent criterion of permissibility in order to imbue this notion with a determinate content. But if there is such a criterion, then the categorical imperative, at least in its second formulation, is not the highest principle of morality as Kant claims, but a derivative of this logically prior principle.⁴⁵

For the most part, this issue lies outside the present range of discussion. Since it concerns the internal adoption of ends on my part and not the external relations among rational agents, it is a matter dealt with in the theory of virtue and not the theory of justice. One might usefully situate the dividing line between the two parts of the metaphysics of morals in terms of the negative and positive conception of persons as ends in themselves, with the theory of justice concerned with the negative conception and the theory of virtue concerned with the positive conception. At this point, we need merely state that those actions that violate the negative conception of persons as ends in themselves are prohibited. Consequently, if the adoption and pursuit of a certain end necessarily involves the violation of that negative conception, as did Hitler's adoption of the extermination of the world's Jews did, then we are obligated to hinder the pursuit of that end. We need not refer to the positive conception of persons as ends in themselves in order to make sense of this obligation.

I wish to draw attention here to one final point on which I will elaborate in the next section. Kant's ethics involves a conditional sort of a priorism, which Hegel failed to appreciate. Like the categories of the First Critique, it is dependent on our being agents of a certain sort. The

⁴⁵. For a discussion of this point, see Aune, Kant's Theory of Morals, pp. 109-11.

categories do not apply to all types of understanding and intuition, but only to beings whose experience is spatio-temporal and whose understanding is discursive and intuitive or creative in character. Similarly, the a priori commands of morality apply on the condition that we are agents of a certain sort; that is, that we must employ means to achieve our ends and that we are externally related to other rational agents on whom we are dependent. A being such as God whose understanding is intuitive and who is self-subsistent would not be bound by it. Now Kant often asserts that a divine will would necessarily act according to the commands of morality. In doing so, Kant is simply contrasting the notion of a divine will with our own; a divine will is purely rational, whereas our will are determinable by sensuous inclinations as well as by reason.

D. The Realm of Ends

The third formulation of the categorical imperative is intended by Kant to be the synthesis of the previous two, with the first formulation providing the form of the law and the second providing its matter. The third formula is the synthesis of this form and matter. Alternatively, Kant describes the three formulations as a "progression here like that of the categories" unity, plurality, and totality respectively. This whole discussion, of course, recalls the first sub-division ("Of Quantity") of the Table of Categories. Each sub-division of that Table contains three categories, with the third category arising "from the combination of the second category with the first." It is easy to dismiss Kant's remarks here as nothing more than an instance of his obsessive concern with the architectonic of his theory, but doing so would be a mistake. First, Kant's remarks warn us not to interpret his theory in a one-sided manner. This

is the trap both Hegel and Mill fell into by focusing exclusively on the first formulation to the exclusion of the later formulations and the teleological component of Kant's moral theory. Neither seems aware of Kant's important discussion of persons as objective ends. More recently, Patrick Riley falls into this same error, only from the other side. Riley's teleological interpretation of Kant's ethics and politics ignores the formal elements of Kant's theory, most importantly, the requirement that the object of the law be derived from the law itself.⁴⁶ Second, this progression makes it clear that the totality prescribed by Kant's theory is one of unified plurality and not the total unity of will found in Rousseau. This allows Kant to avoid the totalitarian implications of Rousseau's politics discussed in the first chapter.⁴⁷

Now Kant does not provide a proper rendering of the third formula. He simply describes it as "the supreme condition of its harmony with universal practical reason, viz., the idea of the will of every rational being as making universal law."⁴⁸ Kant entitles this "the principle of autonomy of the will" and later declares that it is "the supreme principle of morality." This formula, however, seems to add nothing to the first formulation of the categorical imperative as universal law. At best, it merely emphasizes, what is only implicit in that formulation, that we are

⁴⁶- To a considerable extent, Riley's interpretation of Kant's political theory can be accounted for by his choice of texts. Riley derives his interpretation almost exclusively from discussions in Perpetual Peace and the Critique of Judgment, which have a teleological orientation and view politics as instrumental to morality. He pays little and inadequate attention to either the Metaphysical Elements of Justice or "Theory and Practice," which are contractarian in outlook. These latter texts, especially the Metaphysical Elements of Justice, are the heart of Kant's political theory and merit far more attention than they receive from Riley.

⁴⁷- For another discussion of this point, see Harry van der Linden, Kantian Ethics and Socialism, (Indianapolis: Hackett, 1988), pp. 33-4.

⁴⁸- Kant, Foundations, p. 49.

to consider the will as "not only subject to the law but subject in such a way that it must be regarded as self-legislative and only for this reason as being subject to the law (of which it can regard itself as the author)."⁴⁹ This is implied by the requirement that we are to ask of a maxim whether we can "will that it should become universal law," or, alternatively, that we could "act as though the maxim of [our] action were by [our] will to become a universal law of nature."⁵⁰ Both of these formulations suggest that the will is to be considered as "making universal law" in its willing. In making explicit that which is only implicit in the first formula, this principle does make an important contribution to our understanding of Kant's moral theory.

According to Kant, the concept of autonomy of the will "leads to a very fruitful concept, namely, that of a realm of ends," though he does not explain this connection. It would be far more appropriate to describe this latter concept as the synthesis of the first and second formulations of the categorical imperative, as attested to by Kant's characterization of the three formulae as a progression culminating in "the all-comprehensiveness or totality of the system of ends." As I noted in my discussion of Rousseau in the first chapter, the notion of a realm of ends is essential to understanding Kant's vision of ideal civil society and the distinction between the theory of right and the theory of virtue. Kant defines this concept as follows:

By 'realm' I understand the systematic union of different rational beings through common laws. Because laws determine ends with regards to their universal validity, if we abstract from the personal difference of rational beings and

⁴⁹- Kant, Foundations, p. 49.

⁵⁰- Kant, Foundations, p. 39.

thus from all content of their private ends, we can think of a whole of all ends in systematic connection, a whole of rational beings as ends in themselves as well as of the particular ends which each may set for himself.⁵¹

We see in this concept, then, a synthesis of universal law with the conception of persons as ends in themselves, both the positive and negative conceptions. The "whole of all ends in systematic connection" involves both the negative and positive conception of persons as ends in themselves. The former, as represented by the expression "a whole of rational beings as ends in themselves," is the concern of Kant's theory of justice. The private ends "which each may set for himself," the furtherance of which is part of the positive conception of persons as ends in themselves, are the concern of the theory of virtue, with rational beings as ends in themselves serving as the negative limiting condition on this activity. In order to anticipate our discussion in the next section, one final point needs to be made here regarding the comprehensiveness of the realm of ends. As a totality involving all ends, the realm of ends as an ideal encompasses all rational beings, a feature that is captured in the expression "a whole of rational beings as ends in themselves" One belongs to, or alternatively is a member of, the realm of ends because, as a person, one is an end in oneself. No other qualifications are required.

Ideal civil society represents one aspect or dimension of the realm of ends, its juridical aspect. In the realm of ends, all rational agents are united under common laws, and it is this union that is expressed by the social contract and just is civil society. As I pointed out in the last chapter, these common laws are the product of a collective legislation and govern external relations among persons. Participation in this legislative activity

⁵¹- Kant, Foundations, p. 51.

is an essential element involved with membership in the realm of ends, as it is a requirement of moral autonomy. In the absence of such participation, one is reduced to a state of heteronomy, subject to laws that are not of one's own making.

But Kant confuses the issue by introducing a distinction between two different types of belonging to the realm of ends:

A rational being belongs to the realm of ends as a member when he gives universal laws in it while also himself subject to these laws. He belongs to it as sovereign when he, as legislating, is subject to the will of no other.⁵²

It is difficult to make out the difference here. It may be that this distinction is another version of the distinction, found in both "Theory and Practice" and the Metaphysical Elements of Justice, between passive and active citizenship.⁵³ This affinity is suggested by the second sentence, specifically the expression "subject to the will of no other." This sentence states that independence of another's will is a condition of belonging to the realm of ends "as sovereign," much in the same way that it this qualification serves as a requirement for active citizenship. However, there are significant differences between the two as well. Here, one "gives universal laws" as a member of the realm of ends and not just as sovereign, whereas a passive citizen is excluded from this process. In order to belong to the realm of ends as sovereign, one must meet some further condition, the significance of which is not entirely clear, though failure to meet this condition does not seem to exclude one from the legislative process. Further, Kant's terminology also differs in these two

52. Kant, Foundations, p. 52.

53. For a fuller discussion and criticism of this distinction, I refer the reader the next section of this chapter, section E.

texts. Here Kant contrasts belonging to the realm of ends as a "member" (*Glied*) with belonging to it as "sovereign" (*Oberhaupt*), whereas in the *Rechtslehre* the contrast is between belonging to civil society as a "part" (*Teil*) and as a member (*Glied*), where a passive citizen is only a part and an active citizen is a member. For these two reasons, it would seem that membership in the realm of ends corresponds to active citizenship in civil society. Finally, being "subject to the will of no other" is simply a characteristic of autonomy. Thus, if we are to take moral autonomy seriously, every person, as an autonomous agent, must belong to the realm of ends "as sovereign." We shall return to this point in the next two sections as it is quite important.

Given the importance of the notion, there is one quite damning criticism of Kant's conception of the realm of ends that requires some comment. It has often been argued that Kant's moral theory is essentially monological in that it requires no communication among rational agents, each person being possessed of the same reason, which legislates the same principles for each and all. Consequently, even in the absence of communication among them, every rational agent will reach the exact same conclusions regarding his or her duties. Unanimity of principles is arrived at not by collective deliberation but by a pre-established harmony that lies in the very nature of practical reason itself. One commentator has compared the realm of ends to a hall full of mathematicians, each solving the same problem independently of all the rest. The mathematicians will all reach the same answer without ever having to consult one another.

Under such circumstances, any communication among rational agents is superfluous and purely accidental.⁵⁴

This criticism strikes at the heart of Kant's notion of a community of rational agents as expressed in the social contract because it obviates the need for any collective deliberation among citizens within civil society. While there is much to be said for this criticism, there are textual materials on which to begin the construction of an alternative Kantian account of reason and its relation to community.⁵⁵ The relevant passages are found scattered among Kant's shorter essays.

The second thesis in "The Idea for a Universal History from a Cosmopolitan Point of View" suggests a conception of reason as being essentially social and requiring communication among rational agents. This thesis states that "In man (as the only rational creature on earth) those natural capacities which are directed to the use of his reason are to be fully developed only in the race, not in the individual."⁵⁶ Kant's reasoning for this claim is fairly straightforward:

Reason itself does not work instinctively, but requires trial, practice, and instruction in order gradually to progress from one level of insight to another. Therefore a single man would have to live excessively long in order to learn to make full use of all his natural capacities. Since Nature has set only a short period for his life, she needs a perhaps unreckonable series of generations, each of which passes its own enlightenment to its successor in order finally to bring the seeds of enlightenment to that degree of development in our race which is completely suitable to Nature's purpose.⁵⁷

⁵⁴- Wolff, *The Autonomy of Reason*, p. 183.

⁵⁵- For an examination of the public nature of reason for Kant, see the first two essays in Onora O'Neill, *Constructions of Reason: Explorations of Kant's Practical Philosophy*, (Cambridge: Cambridge University Press, 1989).

⁵⁶- I. Kant, "The Idea for a Universal History from a Cosmopolitan Point of View," in *On History*, ed. by Lewis White Beck, (New York: Macmillan, 1988), p. 13.

⁵⁷- Kant, "Idea for a Universal History," p.13.

Successive generations contribute to the development of reason through the social activities of "trial, practice, and instruction" and the communication of the resulting enlightenment to the next generation. Now this reasoning poses two problems for the conception of reason I am trying to develop here. First, the fact that reason can only develop fully in the species as a whole and not in any individual is due to the contingent fact that our lifespans are too short to allow for the full flowering of our rational capacities. Presumably, if persons were to live for a sufficiently long period of time, reason could develop in the individual. Second, Kant is concerned here only with the development of reason in history, whereas in the realm of ends (because it is an idea) reason has already been developed fully. It may be the case that, though communication among persons is necessary for the development of reason, it becomes superfluous once reason is developed. Nonetheless, Kant's emphasis on "trial, practice, and instruction" contains the seeds of a conception of reason in which communication plays an essential role.

My interpretation is buttressed by two other texts, "What is Enlightenment?" and "What is Orientation in Thinking?." In the former essay, Kant argues that the public use of reason is necessary for enlightenment, the ability of a person to make use of his or her own reason: "The public use of one's reason must always be free, and it alone can bring about enlightenment among men."⁵⁸ Only if individuals are free to discuss and debate can persons employ their own reason, and without such employment, one can never free oneself from one's "self-

⁵⁸- I. Kant, "What is Enlightenment?," The Critique of Practical Reason and Other Writings in Moral Philosophy, trans. and ed. by Lewis White Beck, (Chicago: University of Chicago Press, 1949), p. 287; VIII, [36].

incurred tutelage." Like any other capacity, one's reason must be exercised if it is to develop. This exercise of reason must be public if it is to be corrected and purged of error. While Kant's conception of the public use of reason is rather narrow, being restricted to "the use which a person makes of it as a scholar before the reading public,"⁵⁹ it contains the recognition of the necessity of public discourse for rational agency.

Kant makes a similar point in the short essay "What is Orientation in Thinking?." There Kant argues that thinking itself is impossible without the ability to communicate one's thoughts to one's fellow citizens:

Freedom to think is first opposed by civil restraint. Certainly one may say, 'Freedom to speak or write can be taken from us by a superior power, but never the freedom to think.' But how much, and how correctly would we think if we did not think in common as it were with others, with whom we mutually communicate! Thus one can well ask that the external power which wrests from man the freedom publicly to communicate his thoughts also takes away the freedom to think- the sole jewel that remains to us under all civil repression and through which alone counsel against all the evils of that state can be taken.⁶⁰

Without the ability to communicate our thoughts, we lack the corrective of criticism from others and the access to information of which we are ignorant. Without open, public examination, thinking itself becomes impossible.

Unfortunately, Kant did not fully elaborate on these matters in the context of his moral theory, but we can start with his recognition of the centrality of communication for both reason and human community. Let us return to the analogy of practical deliberation with mathematical proof.

⁵⁹- Kant, "What is Enlightenment," p. 288.

⁶⁰- I. Kant, "What is Orientation in Thinking?," The Critique of Practical Reason and Other Writings in Moral Philosophy, trans. and ed. by Lewis White Beck, (Chicago: University of Chicago Press, 1949), p. 303; VIII, [44].

There is one important difference between the two that is highly relevant to our assessment of this comparison. Mathematical propositions and their proofs can be known a priori because they are grounded on constructions in pure intuition. But there is nothing analogous to pure intuition in the case of practical reason; rather, the laws of freedom prescribed by practical reason are analogous to the laws of nature, which are determined by the rule-governed synthesis of empirical intuition. Knowledge of these laws requires a community of scientists engaged in theorizing and experimentation.

The notion of a realm of ends is an Idea. From the standpoint of morality, "a possible realm of ends" is regarded "as a realm of nature," that is, "it is a practical idea for bringing about that which is not actually real but which can become real through our conduct, and which is in accordance with the idea."⁶¹ In order to be guided in our conduct by this idea, we must apply it to existing circumstances, which can only be known empirically through the communication of public discourse.

While Kant is often seen as an "a priori moralist," he was not so naive as to fail to recognize the importance of empirical conditions for morality. In the Metaphysics of Morals, Kant is quite clear about the importance of matters of fact for his moral theory. While "the concept of justice [recht] is a pure concept," it must also take "practice (i.e. the application of the concept to particular cases presented in experience) into consideration."⁶² Consequently, "a metaphysical system of justice would have to take into account the empirical diversity and manifoldness of those cases in order to be complete in its subdivision," which is

⁶¹- Kant, Foundations, p. 55.

⁶²- Kant, Metaphysical Elements of Justice, p. 3.

impossible.⁶³ Thus the first part of his Metaphysics of Morals is entitled The Metaphysical Elements of Justice (Die Metaphysische Anfangsgründe der Rechtslehre) and not the Metaphysical System of Justice, "for, if we take these cases of application into account, we can only expect to attain only an approximation of a system, not a system itself."⁶⁴ Civil society, however, requires a system of public law that takes into account just this "empirical diversity and manifoldness," the understanding of which can only be generated by public discourse. The legislation of specific laws within such a system, then, must be the outcome of the collective deliberation of the members of civil society.

There is, then, an open-endedness to Kant's ethics that derives from his appreciation of the importance of empirical conditions. It is important to keep this in mind when considering Kant's politics, for he often misapplies his own principles. Many of the problems and paradoxes in Kant's theory, I think, stem not from those principles, but from his own misapplication of them to the empirical world.

E. Freedom, Equality, and Independence

As pointed out in the previous section, ideal civil society is the juridical dimension of the realm of ends; civil society concerns itself with the status of agents as negative ends in themselves and their legislative role in the promulgation of the common laws governing their external relations within the realm of ends. The agents within civil society are

⁶³- Kant, Metaphysical Elements of Justice, p. 3.

⁶⁴- Kant, Metaphysical Elements of Justice, pp. 3-4. Ladd translates the German word 'Anfangsgründe' as elements, though it can also be translated as first principles. This word is actually a plural compound noun composed of the nouns 'Anfang' (meaning beginning) and Grund (meaning ground). Literally, then, it means beginning grounds, which I think captures better the incompleteness of Kant's moral theory.

called "citizens" by Kant: "The members of such a society (*societas civilis*), that is, of a state, who are united for the purpose of making laws are citizens."⁶⁵ According to Kant, "there are three juridical attributes inseparably bound up with the nature of a citizen as such-" freedom, equality, and independence. These three juridical attributes, then, are essential characteristics of all members of the realm of ends. Simply put, they are the necessary conditions for the autonomy of rational agents within a community of rational agents.

At this point, Kant makes a profoundly important move. Rather than attempting to derive the basic principles of politics from the unanimous agreement of rational agents within a contractarian construction, Kant recognizes that those principles are logically prior to and constitutive of the construction itself. Kant expresses this by describing freedom, equality, and independence as "attributes" of citizens within civil society and not as principles derivable from that construction. The a priori principles of justice govern the construction of ideal civil society, thereby defining the nature of citizenship within it. Freedom, equality, and independence are the three essential characteristics that individuals within the framework of contractarian deliberation must possess if they are to be truly autonomous agents.

My interpretation of Kant on this point diverges sharply from the Kantian constructivism espoused by John Rawls.⁶⁶ Rawls interprets the social contract as a theoretical construction from which we can derive

⁶⁵- Kant, *Metaphysical Elements of Justice*, p. 78. In this passage, Kant appears to treat the term 'state' as interchangeable with that of 'civil society'. In another passage, Kant defines the term 'state' in a similar fashion: "A state (*civitas*) is a union of a multitude of men under laws of justice." (p. 77)

⁶⁶- John Rawls, "Kantian Constructivism in Moral Theory: The Dewey Lectures 1980," *The Journal of Philosophy*, September, 1980, pp. 515-72.

substantive principles of justice. Consequently, these principles are logically posterior to the contractarian construction. But for Kant, the contractarian construction is not a conceptual device for the generation of principles; rather, it is an idea and provides us with a model of civil society to be used as a guide for the transformation of the actual world. The a priori principles of justice, then, are not logically posterior to the contractarian construction but logically prior to it in that they govern its construction.

I shall now discuss each attribute in turn, for they provide us with the fundamental a priori principles of justice. Since Kant's accounts of these principles vary with different texts, I shall be concerned to reconcile them where this is possible.

In "Theory and Practice," the principle of "the freedom of every member of society as a human being" is expressed as follows: "No-one can compel me to be happy in accordance with his conception of the welfare of others, for each may seek to be happy in whatever way he sees fit, so long as he does not infringe upon the freedom of others to pursue a similar end which can be reconciled with the freedom of everyone else within a workable general law- i.e. he must accord to others the same rights as he enjoys himself."⁶⁷ Kant provides here a classic formulation of the neutrality of the liberal state towards differing individual conceptions of the good. Freedom, then, is just the negative status of one as an end in oneself. One is obligated to respect the particular ends of other individuals by not imposing one's own conception of the happiness upon them and interfering with their actions in pursuit of their own welfare, that is, as

⁶⁷- Kant, "Theory and Practice", p. 74.

long as those actions are compatible with the framework of universal law. All persons are to be allowed to pursue their own private ends so long as they respect rights of others to the similar pursuit of their ends. Given that we are concerned with the external relations of moral agents here, this obligation is to be enforced by the coercive apparatus of the state.

In the Metaphysical Elements of Justice, Kant describes freedom as "the lawful freedom to obey no law other than one to which he has given his consent."⁶⁸ We see a shift here from the negative conception of persons as ends in themselves to one of self-legislation or autonomy, which is a more comprehensive and expansive account of freedom. It is not difficult to reconcile these two accounts, however.

In "Theory and Practice," our pursuit of our own individual happiness occurs within the framework of universal laws. These laws of course are just those which can command the unanimous consent of rational agents as such, i.e. those which are the product of our collective legislative activity. Freedom, then, has the double meaning of our freedom to pursue our own ends and our freedom collectively to give laws to ourselves. This is nothing but the positive conception of freedom in both its individual and collective aspects, i.e. freedom as self-legislation. Our self-legislation governs both our adoption of particular ends as individuals and our collective legislation of universal laws. We are free, then, to pursue the ends we give to ourselves qua individuals within the framework of laws we collectively impose on ourselves as a society. Kant combines both the individual and the collective aspects of self-legislation

⁶⁸- Kant, Metaphysical Elements of Justice, p. 78.

in this a priori principle of freedom, thereby making explicit what is, at best, only implicit in the formula of freedom in "Theory and Practice."

Let us now turn to the a priori principle of equality. Kant's formulations of this principle also differ in "Theory and Practice" and the Metaphysical Elements of Justice, though they too are easily reconciled. In "Theory and Practice," the principle of equality is expressed in the following formulation: "Each member of the commonwealth has rights of coercion in relation to all the others, except in relation to the head of state."⁶⁹ Later Kant characterizes this as equality before the law. All individuals are to be subject equally to the same laws. Law, "as the pronouncement of the general will," is universal; that is, there is to be only one law to which all are subject. However, this does not accord with Kant's exemption of the head of state from any "rights of coercion" possessed by the members of society, an exemption that, as we shall see, creates considerable confusion for Kant and which is dropped in the formulation of this principle in the Metaphysical Elements of Justice.

In the Metaphysical Elements of Justice, Kant describes "civil equality" as the right "of having among the people no superior over him except another person over whom he has just as much of a moral capacity to bind juridically."⁷⁰ Here equality expresses our co-equality as legislators, as well as our equality as subjects. Each individual is equal as a legislator in the legislation of universal laws, and this co-equality implies our equality before the law. Under a juridical condition of society, persons are subject to a publicly promulgated and enforced law that determines the coercive rights that an individual possesses vis a vis all other individuals.

⁶⁹- Kant, "Theory and Practice," pp. 74-5.

⁷⁰- Kant, Metaphysical Elements of Justice, p. 79.

If the law differs among individuals in such a way that different individuals are subject to different laws, then the corresponding coercive rights towards others will also differ among individuals, i.e. different individuals will possess different coercive rights towards others. Consequently, individuals would not be co-equal as legislators under such circumstances, for one individual would then possess coercive rights over another that that individual would not possess over him. Therefore, if individuals are subject to different laws, then they can not be co-equal as legislators. Coercive rights can only be equal if the law binding each is the same for all.

Now Kant distinguishes "civil" equality from economic equality, the former being compatible with an extreme degree of economic inequality. According to Kant, the principle of equality requires only that one "be entitled to reach any degree of rank which a subject can earn through his talent, his industry, and his good fortune."⁷¹ As regards the class structure of a society, Kant uses the principle primarily as a means of delegitimizing the hereditary privileges of the feudal nobility of his time.

Since all laws and the distribution of positions within civil society must be governed by the universal legislation of the general will, a hereditary nobility is unacceptable. The general will can not allow the existence of a class of hereditary nobles, "a class of persons who acquire their rank before they have merited it," that is, purely by an accident of birth.⁷² Such individuals have not acquired their position on their own merits nor is there any reasonable ground to expect that they will merit their position through their actions. A hereditary nobility owes its

⁷¹- Kant, "Theory and Practice," p. 75.

⁷²- Kant, Metaphysical Elements of Justice, p. 97.

position and privileges to the accident of their birth and not to their own talents and efforts, and "since birth is not an act on the part of one who is born," it can not ground "any inequality in his legal position."⁷³ Only differences that result from the actions of agents themselves are sufficient to ground a legal distinction, because only such actions and their consequences are attributable to those agents. There is simply no valid reason to ground the existence of a hereditary nobility. Thus, "as it can be assumed that no man would throw away his freedom, it is impossible that the general will of the people would consent to such a groundless prerogative, and therefore neither can the sovereign make it valid."⁷⁴ Since there is no valid reason for its existence, rational agents could not possibly will that there be a hereditary nobility.

By advocating the abolition of different legal statuses among persons and the establishment of a single legal status for all, that of citizen, Kant takes the first step in the emancipation of humanity . The different estates and their separate law courts are to be dismantled and replaced by the formal equality of citizenship and a unitary system of justice, as was done during the French Revolution. The formal inequality of feudalism is to be replaced by the formal equality of liberal capitalism.

But while he argues for the formal equality of all persons, Kant still accepts the existence and persistence of material inequality. I think Kant's reasoning on this matter is not difficult to reconstruct. With the abolition of the legal barriers preventing the advancement of commoners and the feudal privileges preserving the position of the nobility, all positions within society are opened up to all persons; no longer are the highest

⁷³- Kant, "Theory and Practice," p. 76.

⁷⁴- Kant, Metaphysical Elements of Justice, p. 97.

positions within society the exclusive preserve of a few. With their efforts no longer frustrated by feudal barriers, individuals are able "to reach any degree of rank" that they can "earn through [their] talent, [their] industry, and [their] good fortune." Over time, material inequality should come to reflect those factors and not be the result of the formal inequality institutionalized in the different legal statuses of feudalism.

In contrast to the hereditary privileges of the nobility, then, Kant believes that the legal categories of employer/employee, landlord/tenant, etc., open as they are to all persons in society, are founded on the meritorious actions of individual; thus, there is a sufficient basis on which such legal distinctions may be grounded. Kant's acceptance of inherited wealth, however, raises serious problems here. Since a person may dispose of his acquired property as he wishes, one is entitled to pass on that property to one's heirs. Over time this property may accumulate in the hands of individuals so that vast inequalities of wealth are created: "He [a member of the commonwealth] may hand down everything else [but the privileges attached to the rank he occupies in the commonwealth], so long as it is material and not pertaining to his person, for it may be acquired and disposed of as property and may over a series of generations create considerable inequalities of wealth among the members of the commonwealth (the employee and the employer, the landowner and the agricultural servants, etc.)."⁷⁵

But one simply cannot distinguish so sharply between one's material property and the position one occupies in society, as Kant does here, for one's socio-economic position depends upon one's property

⁷⁵- Kant, "Theory and Practice," p. 76.

holdings. Thus, by permitting unlimited inheritance of property, Kant is allowing the inheritance of social position. While the accumulation of property on the part of one person may be the result of his or her own efforts, surely the inheritance of that property and the socio-economic position that accompanies it is not the result of merit. In fact, Kant recognizes this in his discussion of feudal privilege. But if one is able to inherit and not merit one's position as landlord or employer, this calls into question the legitimacy of historically-given legal categories.

In short, while Kant argues that all persons ought to possess the same legal status, he allows their class status to continue to vary widely, for the abolition of legal barriers does not automatically produce the crumbling of class barriers. Consequently, the legal categories, despite their ostensibly open character, reflect and serve to perpetuate the class composition of society, thereby undermining the formal equality of citizens. I shall discuss this point in more detail in the last section of this chapter.

Finally, we turn to the principle of independence. Kant's clearest characterization of this principle is found in the Metaphysical Elements of Justice where he asserts that the citizen possesses "the attribute of civil independence that requires that he owes his existence and support, not to the arbitrary will of another person in the society, but rather to his own rights and powers as a member of the commonwealth, hence his own civil personality may not be represented by another person in matters involving justice and rights."⁷⁶ Kant's actual treatment of this principle is very curious and highly problematic. If the principle of independence is

⁷⁶- Kant, Metaphysical Elements of Justice, p. 79.

to have the same status as the principles of freedom and equality, then it ought to be treated expansively as imposing a requirement upon the organization of society. Interpreted in this manner, this principle requires that society be organized so that persons are not dependent on other individuals for their livelihood. (I will return to this point in the next section.) But Kant employs this principle in the opposite manner by using it to restrict the franchise.

Kant uses this concept of independence to ground a distinction between two types of citizens. He claims that "fitness for voting is a prerequisite of being a citizen."⁷⁷ This fitness, however, depends not on one's status as a person but on one's independence of other individuals, that is, on being not "just a part of the commonwealth, but also a member." This requires that one "will of his own accord." Now a condition of dependency threatens this ability. If someone "must depend for his support (subsistence and protection), not on his own industry, but on arrangements by others (with the exception of the state)," one lacks independence and consequently "civil personality." Kant describes this type of existence as "only in the mode of inherence." As examples of this condition, Kant lists "the woodcutter whom I employ on my estate; the smith in India who goes with his hammer, anvil, and bellows into houses to work on iron, in contrast to the European carpenter or smith, who can offer the products of his own labor for public sale; the private tutor, in contrast to the schoolteacher; the sharecropper, in contrast to the farmer;

⁷⁷- Kant, Metaphysical Elements of Justice, p.79.

and the like."⁷⁸ All these are "under the orders or protection of other individuals" and thus lack "civil independence."

Kant seems to be distinguishing here between the independent producer of goods and services and the wage-laborer.⁷⁹ The independent producer possesses sufficient capital to support himself outside the employ of others, though, of course, he is, strictly speaking, not independent of the "arrangements" of the market, whereas the wage-laborer possesses no such endowment and consequently can live only by selling his labor to those who can make use of it. Thus, the wage laborer is dependent upon another person, his employer, in a way that the independent farmer, artisan, or merchant is not. Kant's view on these matters is similar to that of Karl Marx:

it follows precisely from the fact that labour depends on nature , that the man who possesses no other property than his labour power must, in all conditions of society and culture, be the slave of other men who have made themselves the owners of the material conditions of labour. He can only work with their permission, and hence only live with their permission.⁸⁰

This condition renders one subject to the "orders" of another and thus unable to "will of his own accord," thereby making one incapable of representing oneself. Consequently, Kant argues, such individuals are unfit to vote, though "they can still demand that they be treated in

⁷⁸- Kant, Metaphysical Elements of Justice, p. 79. For a useful explication and discussion of Kant's meaning here, see Williams, Kant's Political Philosophy.

⁷⁹- His comparison of the private tutor and the schoolteacher is a bit problematic in this regard, since neither presumably owns any capital but must sell their skills. The schoolteacher, however, had an established and secure position within the community and therefore was dependent on civil society as a whole and not on any particular individual. On the other hand, the private tutor essentially occupied the position of a servant within the household of his employer, on whom he was completely dependent. Kant himself started his career as a private tutor and experienced this dependency first-hand.

⁸⁰- Karl Marx, Critique of the Gotha Programme, (New York: International Publishers, 1966), p. 3.

accordance with the laws of natural freedom and equality," which only entitles them to the right "to work up from this passive status to an active status."⁸¹

Kant's distinction between passive and active citizens is clearly untenable within the framework of his a priori principles, for the concept of a passive citizen is, according to Kant's own definitions, an oxymoron. Kant himself recognizes that the concept of a passive citizen "appears to contradict the definition of the concept of a citizen in general," though he provides no account that serves to clear up this apparent contradiction. In order to display the contradictory nature of the concept of a passive citizen, we need merely to refer to Kant's definition of citizens as "the members of such a society (*societas civilis*), that is, of a state, who are united for the purpose of making laws."⁸² By definition, one can not be citizen without actively participating in the collective legislation of civil society. Later in the text, when he introduces this distinction, Kant claims that "fitness for voting is a prerequisite of being a citizen." If one is not fit to vote, as is the case with the passive citizen, then that person has simply not met one of the requirements for being considered a citizen. Thus, if we follow Kant's own definitions, the concept of a passive citizen is a contradiction in terms.

But we need not restrict ourselves simply to definitions of terms in order to see the incoherence of this notion, for more importantly there are significant theoretical grounds for its rejection as well. Despite Kant's pronouncements to the contrary, this distinction is "incompatible with the freedom and equality that men possess as human beings." If one were not

81- Kant, Metaphysical Elements of Justice, p. 80.

82- Kant, Metaphysical Elements of Justice, p. 78.

permitted to participate in the legislative activity of civil society, one would be subject to a "law other than one to which he has given his consent," which is a violation of one's "lawful freedom." Further, under such circumstances, if one were a passive citizen, one would have as a superior a person, namely all active citizens, over whom he does not have "just as much of a moral capacity to bind juridically as the other has to bind him," in violation of his civil equality. Finally, Kant ignores his own injunction that one's "civil personality may not be represented by another person in matters involving justice and rights."⁸³

Finally, the category of passive citizenship is incompatible with the concept of a realm of ends. As stated in the previous section, civil society represents the juridical aspect of the realm of ends. All persons, or rational beings, are ends in themselves and hence necessarily members of the realm of ends.⁸⁴ An essential element of membership in the realm of ends is the giving of universal law, i.e. participation in the collective legislative activity that produces the common laws to which all persons are subject. This follows simply from our autonomy as moral agents, for exclusion from this process would relegate one to a position of heteronomy vis a vis those common laws.

⁸³- Kant, Metaphysical Elements of Justice, pp. 78-9.

⁸⁴- A brief rehearsal of terminological issues dealt with in the previous section may be helpful here. One may belong to the realm of ends in two ways: as a member (*Glied*); or as sovereign (*Oberhaupt*). Membership is the weaker sense of belonging. In both cases, however, one is involved in the making of the common laws that govern external relations among members of the realm of ends. With regard to civil society, however, one can be a part (*Teil*) or a member (*Glied*), with passive citizens being the former and active citizens being the latter. Here, being a part of civil society, and hence a passive citizen, is the weaker sense of belonging to civil society. Now membership in the realm of ends involves membership in civil society. Consequently, there is no way in which one can incorporate the notion of a "part of civil society" into the concept of a realm of ends.

Now one might argue that Kant has anticipated these criticisms and circumvented them by the language he uses. For example, when he discusses the consent that is necessary to legitimate a law, he does not mean the actual consent of the empirical self, but rational consent, the consent that one would give if one were a perfectly rational agent. Further, in his discussion of equality, he uses the expression "moral capacity" to bind others, not actual capacity. This merely refers to the right one has to be considered in the promulgation of laws.

None of this will do, however, for Kant is not discussing here actual civil society, but ideal civil society, which ought to guide actual civil society. The right one has to be considered in the promulgation of laws derives from one's ideal participation in the legislation of the public law of civil society. At best, one can only argue that, in a society in which the franchise is restricted by property qualifications of the type Kant presents (or any type for that matter), those who can vote must consider what all persons (including those without the franchise) could consent to when promulgating laws. But this requirement stems from the nature of ideal civil society, in which all persons participate in the collective legislation of public law.

While his acceptance of property qualifications for the franchise is untenable within the framework of Kant's theory considered ahistorically, it does make more sense when placed in the appropriate historical context. Kant is addressing a very hot political issue of his time, though one which has cooled considerably since then. Viewed in this light, Kant appears as moderately liberal, requiring only the ownership of enough property to subsist on for the right to vote. Given his commitment to the gradual

reform, it is tempting to see Kant as advocating here only the next step in the expansion of political liberty as opposed to stating its end-point.

In both "Theory and Practice" and the Metaphysical Elements of Justice, Kant accepts as a given the economic situation in which some have sufficient property to support themselves while others do not, never questioning the conditions that give rise to it. In the former text, his discussion explicitly abstracts from the justice of this situation and the historical process that generated it: "As for landowners, we leave aside the question of how anyone can have rightfully acquired more land than he can cultivate with his own hands (for acquisition by military force is not primary acquisition), and how it came about that numerous people who might otherwise have acquired permanent property were thereby reduced to serving someone else in order to live at all."⁸⁵ Kant's earlier remarks with regard to the passing on of property to one's heirs give us some idea as to how he might at least partially answer the second question. As for the first question, Kant does not leave this question unaddressed, but one must ferret out his views on this subject from a variety of texts and draw the appropriate conclusions for oneself, for Kant did not.

E. Conclusion

It would be quite easy to conclude on the basis of his remarks about the three a priori principles that Kant is little more than an apologist for the emerging bourgeois order of his time. By attacking the hereditary privileges of the feudal nobility while accepting the massive inequalities of wealth generated by emerging capitalism, Kant certainly employs those

⁸⁵- Kant, "Theory and Practice," p. 78.

principles in a manner that is quite congenial to the interests of the emerging bourgeoisie. Further, by arguing for property qualifications for the franchise, he places political power firmly in the hands of capital, while relegating wage-labor to the political limbo of passive citizenship, denied the right to press their case through the ballot box or the street and dependent on the good will of the property-owning class. Kant's political project, then, seems to provide a rationalization of the freeing of the hands of the bourgeoisie vis á vis both the old feudal nobility and the newly emerging working class.

In a classic Marxian critique of Kant's political theory, Herbert Marcuse charges Kant with transforming "the historical facticity of bourgeois society into an a priori ideal."⁸⁶ According to Marcuse, Kant presents us with a society of individuals, each with a claim to the free exercise of his will and striving naturally after the acquisition of property. The result is a "society of universal insecurity, general disruption, and all-round vulnerability," which can be held together only by a regime of universal coercion that secures the lives and property of each and all.

Kant recognizes that simple possession is not property, a divorce he represents by the distinction between empirical and intelligible possession. Empirical possession is purely fortuitous and in and of itself based upon the acquisition by a unilateral will; consequently it is inherently insecure. Private possession can be legitimated only by the original communal ownership of nature and a general will permitting the private appropriation of nature on this basis. Thus, Kant paradoxically bases the acquisition of private property upon collective ownership, thereby

⁸⁶- Herbert Marcuse, Studies in Critical Philosophy, (Boston: Beacon Press, 1973), pp. 79-94.

justifying the peremptory possession of bourgeois property. But Marcuse also acknowledges the progressive moment in Kant's social thought: "When Kant deals with social problems in the context of general community, this already signifies a decisive step in the history of social theory: it is no longer God but man who gives man freedom and unfreedom."⁸⁷ However, Marcuse goes on to argue, "not every general community, i.e. every actually constituted society, is truly universal."⁸⁸ In bourgeois society, the interest of the "ruling strata," the bourgeoisie, is antithetical to that of the majority of citizens.

My response to Marcuse is three-fold. First, his criticism is based on the acceptance of the doctrine of provisional property, for it is only this doctrine that allows for the legitimation of "property relationships as they existed at the 'beginning' of bourgeois society" and their securing by civil society. But as I pointed out in the last chapter, this doctrine is incoherent within the terms of Kant's own theory and ought to be replaced by the stronger doctrine that Kant enunciates in the first part of the Metaphysical Elements of Justice. Once this is done, we can develop the full critical potential of Kant's theory. Second, Marcuse's characterization of Kant's view of society focuses solely on the negative conception of persons as ends in themselves, thereby ignoring the positive conception, which is an essential component of the concept of the realm of ends. The realm of ends, then, is not a competitive society but a cooperative one in which individuals seek to further the ends of each other. A society in which this is impossible and where one group's pursuit of its interests necessarily

⁸⁷- Marcuse, Studies in Critical Philosophy, p. 87. As we shall see later in this section, this point is made explicitly by Kant in the Lectures on Ethics.

⁸⁸- Marcuse, Studies in Critical Philosophy, p. 88. But then Kant never made this claim; nor would it be consistent with his theory and the claims he does make.

interferes with a similar pursuit on the part of others, as Marcuse claims is true of bourgeois society, simply could not be considered even an approximation of the realm of ends as it would conflict not only with the positive conception of persons as objective ends but the negative conception as well. Finally, the claim by each person to the free exercise of his will is also a demand to participate in the legislation of common laws governing society, a demand that has radical implications for the organization of society.

Though such a view as Marcuse's does have merit, especially in the light of some of Kant's own pronouncements, we adopt it at the risk of missing Kant's insights into the nature of domination and subordination and losing sight of a potentially powerful Kantian critique of these relationships. In reading Kant, we must always keep in mind the limitations of his perspective imposed upon him by his historical position and what I have remarked upon before- his unique combination of timidity and boldness. Kant constantly puts forth radical concepts and pronouncements, only to withdraw from the implications of his own doctrines in the very next breath. Thus, we may rest satisfied with the results of Kant's apparently conservative temperament or we may pursue the implications of his deeper insights to their ultimate conclusion. The latter is the task I have set for myself in this work. What I want to do in this, the final section of the chapter, is to call attention to some of Kant's more radical insights and pronouncements in order to construct the outlines of a Kantian critique of the political economy of capitalism.

It is true that Kant himself did not level such a critique. Given his historical position he could not have; further, he pulled back from drawing the conclusions that I argue are implied by his own theory.

Nonetheless, it is not for naught that Kant has been called "the true and real originator of German socialism."⁸⁹ I think we can discern in Kant's moral theory the outlines of a rapprochement between liberalism and socialism involving the construction of a vision of democratic socialism on impeccably liberal foundations, socialism as the completion of the liberal dream. It is entirely fitting that Kant, the great Prussian liberal, should provide us with the basis from which to begin such a project.

The key to this project lies, as one might expect, in the notion of autonomy. We have seen that Kant's attempt to ground a distinction between active and passive citizenship is based on a recognition of the dependence of wage labor on capital. Kant's understanding of this relationship is quite similar to that of Marx. For both Kant and Marx, the wage laborer, since he lacks sufficient capital to sustain himself, is forced to sell his labor and thereby becomes dependent upon his employer, who controls the material conditions of his livelihood. The employer determines whether he works, and since he must work to live, thereby determines whether he lives.

Though he clearly recognizes this situation, Kant draws the wrong conclusions from this recognition. Kant argues that wage laborers ought to be deprived of the franchise because they lack the requisite independence for its exercise. Such a distinction certainly controverts the notion of each individual as co-legislator. Though he falls into inconsistency in his argument for this conclusion, Kant is at least honest

⁸⁹- Hermann Cohen, cited in van der Linden, Kantian Ethics and Socialism, p. vii. van der Linden's reconstruction is deeply influenced by Cohen and aims to ground socialism on Kantian ethics. In this very interesting effort, van der Linden uses the notion of the highest good as social duty to project a Kantian version of democratic socialism as the appropriate goal of humanity's moral striving.

in his attempt to tackle a problem that strikes at the heart of our autonomy, rather than just ignoring it. However, one can easily stand Kant's own argument on its head and point it in a rather different direction on the basis of his insight into the domination of the wage-laborer by capital. Kant recognizes that this relationship of domination and subordination among persons undermines the autonomy of those who are subordinate, thereby denying them full citizenship in civil society and membership in the realm of ends. But he should have concluded that, in order to bring into being the realm of ends, this form of domination must be ended.

As has been observed by other commentators, Kant's theory fits quite nicely the model of an agrarian society consisting of independent landowners and artisans, a society existing in the ideal only.⁹⁰ In fact, Kant's various discussions of property focus almost exclusively on the ownership of land, which seems to serve as the paradigm of property. When confronted with nascent industrial capitalism, his model begins to lose its basic underpinning-- the assumption of the economic independence conferred by the ownership of property by all of the actors within the society. This loss of economic independence and its replacement by the structured dependency of the capitalist wage relationship confronts Kant as a powerful challenge- how can persons be citizens, that is, co-legislators, when they lack the material conditions necessary for autonomous agency in the real social world. Kant responds to this challenge with the distinction between passive and active citizenship- persons without capital are still citizens but lose their right to

⁹⁰- For example, see Victor J. Seidel, Kant, Respect and Injustice: The Limits of Liberal Moral Theory, (London: Routledge and Kegan Paul, 1986).

legislate. As we have seen, this solution is simply not tenable. But the failure of Kant's proposed solution should not leave us complacent with regard to the position of wage-laborers within the state, satisfied that they can be secured the right to vote. Kant is far too astute an observer of human society to have missed the mark so badly. The recognition of the dependency of the capitalist wage relationship that motivates this effort is still substantially correct and unaffected by the failure of his solution. It is to Kant's credit that he at least recognizes this dependency and attempts to make provisions for it in his theory; it is his failure that he takes the wrong path after this recognition.

In order to see the path he could have and should have taken, let us recapitulate the principle of independence as expressed in the Metaphysical Elements of Justice. This principle requires that the citizen owe "his existence and support, not to the arbitrary will of another person in the society, but rather to his own rights and powers as a member of the commonwealth."⁹¹ Now Kant treats this principle as specifying a requirement for full citizenship in the state, but in doing so he misconstrues the force of his whole theory. We are entitled to be citizens, to be co-legislators, not because we are economically independent, but because we are persons. We are moral agents who are ends in ourselves and possess an inviolable dignity as such. In order to express our nature as persons, we must participate in the collective decision-making of civil society, for otherwise we are reduced to a condition of heteronomy, subject to laws that are not of our own making.

⁹¹- Kant, Metaphysical Elements of Justice, p. 79.

But full autonomy requires independence (in this case, economic independence). As co-legislator within the realm of ends, one must be subject to the will of no other, that is, one must belong as sovereign to the realm of ends. Kant should have conceived of this principle as expressing the requirement that within civil society each individual be guaranteed the material conditions necessary for the exercise of autonomy, rather than as stating a requirement for the vote. As pointed out in the last section, this manner of construing the principle of principle coincides with the use Kant makes of the other two a priori principles of justice—freedom and equality. These principles are used in an expansive manner to establish certain rights, whereas the principle is used in a restrictive manner to limit them. I take this difference in usage to be further evidence of Kant's misunderstanding of his own principle.

To a considerable extent, Kant acknowledges the point I have made here by advocating the establishment of social welfare programs by the state. In section C of the General Remarks, Kant argues along contractarian lines that the state is obligated to provide the basic material means of life for those who are unable to provide it for themselves:

The general Will of the people has united itself into a society in order to maintain itself continually, and for this purpose it has subjected itself to the internal authority of the state in order to support those members of the society who are not able to support themselves. Therefore, it follows from the nature of the state that the government is authorized to require the wealthy to provide the means of sustenance to those who are unable to provide the most necessary needs of nature for themselves.⁹²

⁹²- Kant, Metaphysical Elements of Justice, p. 93.

Since the physical existence of the individuals within civil society "depends on the act of subjecting themselves to the commonwealth for the protection and care required in order to stay alive, they have bound themselves to contribute to the support of their fellow citizens, and this is the ground for the state's right to require them to do so."⁹³ The state, then, has the right to tax the wealthiest members of the commonwealth to provide a minimum income for all its members. This income is to be provided out of current tax assessments, in order to insure that "the profession of poverty will not become a means of livelihood for the lazy." Those who, for whatever reason, are unable to support themselves are to be supported by a social welfare system established and administered by the state.

One can derive this from both the principle of unanimity and the concept of a person as an end in himself. In the first instance, given the general insecurity of human existence, all agents could certainly agree to the establishment of basic social welfare designed to provide a measure of economic security. The second strategy, which is the one actually employed by Kant, appeals to the purpose of civil society in establishing one's negative status as an end in oneself. Since the continuation of life is a prerequisite for membership in the realm of ends, one can not be simultaneously treated as an end and allowed to perish. The denial of the necessities of life is an interference with the pursuit of one's private ends and thus a violation of one's negative status as an end in oneself. Since life is a necessary condition of moral agency, one can not be autonomous if

⁹³- Kant, Metaphysical Elements of Justice, p. 93.

one is not alive. Therefore all persons must be guaranteed at least the minimal material means necessary for the sustaining of life.

At best, however, Kant's reasoning in this passage provides only a rationale for welfare-state capitalism. At a deeper level, we may question the inequality of resources (and the social structure producing it) that gives rise to this situation, as Kant himself does. The injustice of economic inequality is a recurring theme throughout the Kantian corpus. We find an expression of this theme in his Lectures on Ethics:

We all have an equal right to the good things which nature has provided. These good things have not, however, been shared out by God. He has left men to do the sharing. Every one of us, therefore, in enjoying the good things of life must have regard to the happiness of others; they have an equal right and ought not to be deprived of it.⁹⁴

This passage reminds one of Locke's dictum that, in the private appropriation of property, one must leave "enough and as good" for others. Kant's point here is that the sharing out of nature is a human activity and not divinely ordained; consequently, it ought to be governed by moral principles.

Here, of course, one may argue that Kant has only granted that all persons have an equal right to share in the bounty of nature and not a right to an equal, or even equitable, share of the same. Such an interpretation, however, would not be consistent with either Kant's moral theory as a whole or other passages from the text. If one individual, or group of individuals, appropriate for their own so much of nature that others are unable to make do on what remains, then that person (or group of persons) have violated the status of others as ends-in-themselves by

⁹⁴- Immanuel Kant, Lectures on Ethics, trans. Louis Infield, (Indianapolis: Hackett, 1963), p. 192.

depriving them of the basic material means of pursuing their own ends. This would constitute a violation of the principle of non-interference. Further, such an appropriation would render those without property dependent on those with property, thereby undermining their autonomy and respect.⁹⁵ One's independence, an aspect of autonomy, is threatened by a lack of the material means of livelihood.

In depriving others of the means of sustenance, we have done them an injustice. Under such conditions, acts of charity are not meritorious, for they merely restore to others what is rightfully theirs:

Respect for the rights of others is rooted in principle, and as mankind is not rich in principles, Providence has implanted in our bosoms the instinct of benevolence to be the source of actions by which we restore what we have unrighteously procured. We have thus an instinct to benevolence, but not to righteousness. This impulse makes a man merciful and charitable to his neighbour, so that he makes restitution for an injustice of which he is quite unconscious; though unconscious of it only because he does not properly examine his position. Although we may entirely within our rights, according to the laws of the land and the rules of our social structure, we may nevertheless be participating in general injustice, and in giving to an unfortunate man we do not give him a gratuity but only help to return to him that of which the general injustice of our system has deprived him. For if none of us drew to himself a greater share of the world's wealth than his neighbour, there would be no rich and no poor. Even charity therefore is an act of duty imposed upon us by the rights of others and the debt we owe to them.⁹⁶

⁹⁵- "Money enables a man to bring others under his power; for reasons of self-interest they will labor for him and do his bidding. By dependence upon others man loses his worth, and so a man of independent means is an object of respect."(Kant, Lectures on Ethics, p. 177.) It is clear in the text that the 'respect' to which Kant refers here the empirical respect we accord to others in everyday life and not the moral concept of 'respect' in the Foundations. But just as clearly Kant's remarks are appropos of the latter kind.

⁹⁶- Kant, Lectures on Ethics, p. 194. See also p. 211: "And as our social system is so arranged that we take part in the universal and open give and take of business with peculiar profit

In this passage, we see Kant again distinguishing between natural rights and legal rights, with the latter being open to criticism on the basis of the former. But Kant breaks new ground here by setting forth an explicitly egalitarian standard to be used in judging the justice of existing social systems. Our failure to recognize the injustice of an inequitable distribution of wealth in those systems stems from our failure to critically examine our social position and the societal structure in which it is imbedded, and we should expect that Kant, the man who advocated submitting every area of human endeavor to criticism, would not himself fall prey to the same failure. He does not.

Now we may well grant that the Lectures on Ethics is a pre-critical work and as such not reflective of Kant's mature views on the subject. But Kant's admonitions regarding the injustice of gross inequalities of wealth and their attendant consequences is also a regular feature of his critical writings. In the Critique of Judgment, Kant recognizes that, under conditions of gross inequality in the distribution of wealth, persons without wealth are reduced to mere means used by and for the benefit of those who possess vast amounts of property. In a passage that appears to begin as a paean to the beneficial effects of inequality and social stratification, Kant launches into a condemnation of the instrumentalization and exploitation of the laboring classes by those with wealth:

It is hard to develop skill in the human species except by means of inequality among people. The majority take care, mechanically as it were and without particularly needing art for this, of the necessities of life for others, who thus have the

to ourselves, ours acts of charity to others should not be regarded as acts of generosity, but as small efforts towards restoring the balance which the general social system has disturbed."

ease and leisure to work in science and art, the less necessary ingredients in culture. Those others keep the majority in a state of oppression, hard labor, and little enjoyment, even though some of the culture of higher class does gradually spread to the lower also. But on both sides trouble increases with equal vigor as culture progresses. (the height of this progress, when people's propensity to what is dispensable begins to interfere with what is indispensable, is called luxury.) For the lower class trouble results from violence from without, for the higher from insatiability within. And yet this shining misery has to do with the development of man's natural predispositions, and nature still achieves its own purpose, even if that purpose is not ours.⁹⁷

Kant ends this passage with his characteristic faith in progressive course of history, but it is clear that, aside from the possible historical necessity of the situation, this condition is morally objectionable. First, those who labor for the leisure class are turned into instruments for the cultural advancement of the latter and become the object of their violence and oppression. This is lessened only slightly by the trickling down of culture to those oppressed classes. Further, the resultant discord threatens the integrity of civil society and can only be alleviated by an alteration in social structure.

That such a condition, one where the distribution of wealth reduces some persons to a condition of dependence on others, is unjust is explicitly stated in the Doctrine of Virtue: "The ability to practice beneficence which depends on property, follows largely from the injustice of a government which favors certain men and so introduces an inequality of wealth that makes others need help."⁹⁸ In a manner reminiscent of the Lectures, Kant concludes this section by questioning whether an act of beneficence can, under such conditions, be considered

⁹⁷- Kant, Critique of Judgment, p. 320.

⁹⁸- Kant, Doctrine of Virtue, p. 122.

"something meritorious" and should even be called "beneficence at all."
We have arrived, then, back at our point of departure in the Lectures.

As we have seen in the previous chapter, the division of property and the rights attending to such ownership ought to be determined in accordance with the principles of justice. Kant reiterates this point in section B of the General Remarks in the *Staatsrecht*. Given that property is based on the common appropriation of nature by the general will, the actual division of property in society is subject to the a priori principles of justice that ought to govern society. Since the right of property ("the possibility of having something external as one's property") is "the first acquirable right of possible possession and use, all such rights must be derived from the sovereign as lord of the land or, better put, the supreme proprietor." The sovereign, then, is the supreme proprietor. The sovereign as supreme proprietor "is, however, only an Idea of the civil union that serves the purpose of representing the necessary unification of the private property of all the people under a general public will possessor, so that the determination of particular owners is in accordance with the necessary formal principle of division (division of the land) in terms of concepts of justice, rather than by principles of aggregation (which proceed from part to whole)."⁹⁹

Kant utilizes the notion of supreme proprietorship to bear a heavy burden by grounding a myriad of governmental activities on it. This idea permits the sovereign "to levy land taxes, excises, and customs or services," as well as "the right of the supreme commander to administer the national economy, finance, and police."¹⁰⁰ More interestingly,

⁹⁹- Kant, Metaphysical Elements of Justice, p. 90.

¹⁰⁰- Kant, Metaphysical Elements of Justice, p. 91.

though, this idea serves as the moral basis for any land reform effort that the state may undertake. The general will, from whose appropriation of nature the legitimacy of land-ownership is derived, is represented by the sovereign, who as supreme proprietor represents this common appropriation. Consequently, it is well within the rights of the sovereign as supreme proprietor to alter existing property arrangements, as those arrangements depend on the sovereign as representative of the general will for their legitimacy. Those who are dispossessed have no recourse to any higher authority:

Those who are affected by such reforms can not complain that their property has been taken from them, inasmuch as the only ground for their previous possession was the opinion of the people, which, as long as remains unchanged makes the possession necessarily valid. As soon as public opinion changes, however- but public opinion as it is reflect in the judgement of those who through their merits have the best claim to lead it- then the presumptive ownership must cease just as though it had been lost through appeal to the state.¹⁰¹

Historically-given property arrangements, then, are subject to change in the light of public opinion, which presumably is to be guided by the a priori principles of justice. Such reforms are subject only to the condition that those who are dispossessed must be compensated for their loss.

This discussion is interesting for two reasons. First, it reinforces my contention in the last chapter that Kant ought to discard the doctrine of provisional property, for he reiterates the logical priority of the general will to the right of first possession. Further, the right of first possession is not absolute but subject to change with changes in public opinion. Now Kant's addition of the restriction commanding compensation could be

¹⁰¹- Kant, Metaphysical Elements of Justice, p. 91.

seen as an attempt to reconcile the acceptance of land reform with his assertion of a right of first possession derivable from the general will. But it is not clear that Kant's assertion of this condition is justifiable in the light of his own remarks. If "presumptive ownership" ceases with legal changes in property arrangements, then there is no good reason to require compensation to any previous owners. One is entitled to compensation for one's property, but not for something that is not one's property. When presumptive ownership ceases, one's property rights cease to exist, including all claims to compensation for that property. Compensation may be justified on other grounds, then, but not on the basis of any putative property rights of previous owners. This line of thought is reinforced by the inclusion of the expression "just as though it had been lost through appeal to the state." I take it that Kant is drawing an analogy here with legal disputes between different claimants to the same object. Such a dispute is resolved by the courts when the judge determines which litigant has the legally-valid property claim. Consequently, since it is determined that the object is not the property of the loser, he or she is not necessarily entitled to any compensation by the victor.

Second, this passage augments my previous criticism of Marcuse's critique of Kant. Though it is clear from the passage in question that Kant is taking aim at the institutions of feudalism, the same claims are equally valid of capitalist property relations. Kant's theory provides no defense of the absolute and immutable property rights of the bourgeoisie. Quite the contrary, such rights are also subject to change in accordance with the a priori principles of justice.

It is true that Kant's conception of property arrangements and their possible reform is circumscribed by his insistence that ownership must be

private and not collective, that "all land belongs to the people (not collectively, but distributively)."¹⁰² I think this claim is best interpreted as a result of the limitations placed on Kant's vision by his cultural and historical perspective, rather than as an essential component of his theory. Kant may simply not have been familiar with communal land ownership patterns prevailing in other cultures; further, he does except nomadic tribes from this limitation, indicating that it is not absolute and unconditional.

More importantly, Kant writes at the beginning of the industrial revolution and the widespread development of factory production and consequently can not be expected to understand fully the nature of those developments. Nonetheless, Kant does remarkably well in providing us with the elements of a moral critique of capitalist relations of production when supplemented by an empirical understanding of their nature. The problem with Kant here is one of application in that we must adapt the a priori principles of justice to the prevailing empirical conditions; we need to keep in mind that the concept of the realm of ends must be applied to existing social reality so as to guide its transformation. Unfortunately, my conclusions here can only be of the most tentative sort. Based on Kant's analysis of economic dependency, I think we can plausibly argue that this transformation involves a movement towards socialism and away from capitalist relations of production. In brief, the socialized character of mass production requires collective ownership of the means of that production by labor if we are to overcome dependent condition of the wage-laborer. Such property arrangements are not only compatible with Kant's theory,

¹⁰². Kant, Metaphysical Elements of Justice, p.90.

but are mandated by the principle of independence when properly understood. This conclusion is further reinforced when we consider that the realm of ends incorporates both the negative and the positive conception of persons as ends in themselves. According to the latter conception, we are obligated to actively further the ends of other persons. Now this obligation is better fulfilled in a cooperative, socialist economy than in a competitive, capitalist one, where relations with others often possess a purely instrumental character, an important case in point is the employment (employee/employer) relationship in which this instrumental character is suggested by its very name.

I shall conclude here by pointing to what I take to be both Kant's most damning criticism of capitalist relations of production and the vision upon which any humane community must be built. Kant was perhaps the greatest defender of the dignity of all persons and expounded this position in some of the most moving passages in the history of philosophy. In his discussion of the realm of ends in the Foundations, he draws a distinction between price and dignity:

In the realm of ends everything has either a price or a dignity. Whatever has a price can be replaced by something else as its equivalent; on the other hand, whatever is above all price, and therefore admits of no equivalent, has a dignity.¹⁰³

Anything that "is related to general human inclinations and needs" have "a market price, for example "skill and diligence in work." Persons, on the other hand, possess an inviolable dignity due to their status as moral agents. If the relations of production within society are to be morally acceptable, they must respect the inviolable dignity of all persons that Kant

¹⁰³- Kant, Foundations, p. 53.

always insists upon. But in a situation in which an individual must sell his labor and thereby himself, for wage-labor is nothing other than the sale of the use of one's body for a wage, i.e. the market price, persons lose their dignity and become commodities to be exchanged at the going rate. Consequently, a capitalist labor market is incompatible with one's dignity as a human being and with the concept of a realm of ends.

I confess that my conclusions in this chapter are of the most tentative sort and require substantial elaboration, which would take us far beyond the limitations of this work. Nonetheless, I think these conclusions do point Kant's theory in the appropriate direction. Unfortunately, I must reserve the full development and elaboration this project for future work at a later date.

CHAPTER VI

KANT'S REPUBLICANISM

A. Introduction

We now turn to the nature of the ideal state (a republic) that Kant envisages as the application of the three a priori principles of justice-- freedom, equality, and independence. According to Kant, the constitution of the ideal state must be republican in form: "The only constitution which derives from the idea of the original compact, and on which all juridical legislation of a people must be based, is the republican."¹ This constitution is based on the a priori principles of justice and is the only one consonant with those same principles. Under a republican constitution, the executive authority of the government is separate from the legislative authority. In this chapter, I will discuss the nature of the republican constitution and Kant's arguments for it, as well as his rejection of political democracy. Kant equates democracy with popular sovereignty; in a democracy, legislative authority, or sovereignty, is vested in the people as a whole.

In many ways, Kant's discussion of republicanism is the least satisfactory component of his political theory. Kant's discussion of the ideal state is quite confusing due to the seemingly incoherent ordering of the text in the Metaphysical Elements of Justice,² his fluctuating

1- Immanuel Kant, Perpetual Peace, trans. Lewis White Beck, (Indianapolis: Bobbs-Merrill, 1957), p. 11.

2- One recent commentator has argued quite convincingly that the section entitled "Staatsrecht" is in complete disorder: " 'The Right of a State' ('Staatsrecht') is a text which almost certainly was not written as a single piece by a knowledgeable author who was capable of coherently presenting his thoughts." Bernd Ludwig, "'The Right of a State'

terminology, and his own annoying tendency to misuse and conflate his own terms. Further, the explicit textual references to the nature of the republican constitution are few, the most extensive discussion being the "First Definitive Article for Perpetual Peace." It is questionable whether, when taken all together, Kant's remarks on the subject provide us with a coherent doctrine, and it has been questioned whether Kant has anything original to say on these topics.³

In order that we may approach Kant's republicanism as methodically as possible, I shall begin by discussing in the next section the three different authorities within the state. In Perpetual Peace, Kant distinguishes between "the form of sovereignty" and "the form of government"; section C will be devoted to a discussion of the former and section D to a discussion of the latter. Kant explicitly rejects democracy as incompatible with a republican constitution, but I will demonstrate that this rejection is the result of Kant's ignoring of his own conceptual framework and his conflating of the form of sovereignty with the form of government. Finally, I will conclude by examining his contention that the spread of republicanism is necessary for the emergence of world peace. Here I will argue that the republican constitution must be democratic in character if it is to sustain the claims Kant makes for it in this regard. As in previous chapters, I will be concerned to determine where Kant held to

in Immanuel Kant's *Doctrine of Right*, Journal of the History of Philosophy, July, 1990, Vol. XXVIII, No. 3, p. 408. Professor Ludwig's proposed alternative ordering of the text is as follows: sections 45, 48, 46, 49, 47, 51, 52, the General Remark, and section 50. This proposed ordering does render a confusing text considerably more coherent.

³- For example, see W. B. Gallie, "Kant's View of Reason in Politics," Philosophy, 54, 1979, pp. 19-33. Gallie argues that Kant's philosophy of the state is merely an "academic exercise" that "amounts to a restatement, in dehistoricized terms and in accordance with Kant's rationalist theory of morals, of Rousseau's central political teachings." (p. 19) I trust that I have said enough in previous chapters in the way of criticism of the construal of Kant as presenting a "deepened Rousseauianism."

the proper course and where he went astray. It is my basic contention, in this chapter and throughout this work, that Kant's contractarian construction, despite his own statements to the contrary, projects a vision of radical democracy as the ideal form of civil society.

B. The Functions of the State

Kant distinguishes three authorities (or persons) within the state: the legislative authority (in the person of the sovereign); the executive authority (in the person of the ruler); and the judicial authority (in the person of the judge). Kant likens these three authorities to the three premises of a practical syllogism: "the law of the sovereign Will is like the major premise; the command to act according to the law is like the minor premise that is the principle of subsumption under the will; and the adjudication (the sentence) that establishes what the actual law of the land in the case under consideration is, is like the conclusion."⁴ This analogy plays an important though obscure role in Kant's argument for representational politics and will be discussed in greater detail in section D of this chapter.

Kant conceives of the three authorities as being both coordinate with one another and subordinate to each other. As coordinate, each "one serves as a complement to the others for the completeness of the state's constitution"; each function is equally necessary for a complete state. But they are "subordinate to one another" in that no one authority may "usurp the function of the others," for each authority has its own proper sphere of activity to which it is restricted. Thus, each authority or person

⁴- Kant, Metaphysical Elements of Justice, p. 78.

is superior to the others in its own proper sphere. Finally, this combination of subordination and coordination "secures" to every subject what is just and right."⁵ Let us now consider briefly each authority in turn.

We have already discussed at considerable length the legislative authority and will turn to it again in the concluding section of this chapter, so I will merely recapitulate here what I have said earlier. We have seen that "the legislative authority can be attributed only to the united Will of the people" for "only the united and consenting Will of all- that is, a general united Will of the people by which each decides the same for all and all decide the same for each- can legislate."⁶ Kant attributes this to the necessity to secure justice for each and all, since insofar as one is rational one can not do oneself an injustice. As we have seen in the last chapter, the deeper reason for this is the need to preserve the autonomy of the individual within civil society. It is my basic contention that, irrespective of his pronouncements to the contrary, Kant is first and foremost a theorist of radical democracy and popular sovereignty. I only note at this stage in my argument that Kant conceives of sovereignty as legislative authority.

Let us now turn to the ruler, the repository of executive authority. Essentially the ruler administers the governmental apparatus so as to execute the laws given by the sovereign. The ruler is unable to promulgate laws himself, rather "the commands he gives to the people, the magistrates, and the ministers who are in charge of the administration are not laws, but ordinances and decrees, because they involve decisions

⁵- Kant, Metaphysical Elements of Justice, p. 81.

⁶- Kant, Metaphysical Elements of Justice, p. 78.

about particular cases and are subject to change."⁷ Kant's manner of putting this is somewhat misleading. First, in at least one case, that of deciding to go to war, the sovereign makes a decision in particular cases. Second, it is at least conceivable that the law, as well as executive orders and directives, could change with changing circumstances. Executive commands, then, are different from laws in that, as applications of the law, they rely on the law for their validity. Should a discrepancy arise between a law propounded by the sovereign and a directive of the ruler, the former would invalidate the latter. In this regard, the ruler is subordinate to the sovereign, for he merely carries out the sovereign's will as expressed in the law. As we shall see, many of Kant's problems in the application of his theory arise from his tendency to conflate executive and legislative authority.

Finally, Kant separates the judicial function from the executive and legislative: "neither the sovereign nor the ruler can judge; they can only appoint judges as magistrates."⁸ Initially, Kant vests this appointive power in the ruler alone without any explanation as to why this should be so. But he later weakens the ruler in this regard by granting to both the executive and legislative branches the power to make judicial appointments. Kant does not rest content here, however, for immediately after this assertion he proceeds to make the case for a judiciary in which "the people judge themselves through those of their fellow citizens whom they have named by free elections as their representatives."⁹ Each act of a judge is "an adjudication (a sentence) [is] an individual act of public legal

7- Kant, Metaphysical Elements of Justice, p. 82.

8- Kant, Metaphysical Elements of Justice, p. 82.

9- Kant, Metaphysical Elements of Justice, p. 82.

justice (*iustitiae distributivae*) performed by an official of the state (judge or court of justice) on a subject, that is, on someone belonging to the people."¹⁰ The judge is to ascertain the facts in a particular case and then render a decision regarding the application of the law, a decision that is then enforced by the executive authority.

With Kant's account of the division of the state before us, we may now proceed to his account of the different forms of the state. Actually Kant's discussion of this in Perpetual Peace is slightly different from that in the Metaphysical Elements of Justice. I will focus my discussion on the account in the former, since it is more comprehensive than that in the latter, actually containing the latter account as one of its sub-divisions.

The different forms of the state can be classified in two different ways-- according to the exercise of sovereignty within the state (the form of sovereignty) or according to the internal structure of the state (the form of government):

In order not to confuse the republican constitution with the democratic (as is usually done), the following should be noted. The forms of the state (*civitas*) can be divided either according to the persons who possess the sovereign power or according to the mode of administration exercised by the chief, whoever he may be. The first is properly called the form of sovereignty (*forma imperii*), and there are only three possible forms of it: autocracy, in which one, aristocracy, in which some associated together, or democracy, in which all those who constitute society, possess sovereign power. They may be characterized respectively, as the power of a monarch, of the nobility, or of the people. The second division is that by the form of government (*forma regiminis*) and is based on the constitution, which is the act of the general will-- through which many persons become one nation. In this respect government is either republican or despotic. Republicanism is the political principle of the separation of the executive

¹⁰- Kant, Metaphysical Elements of Justice, p. 83.

power (the administration) from the legislative; despotism is that of the autonomous execution by the state of laws which it has itself decreed. Thus in a despotism the public will is administered by the ruler as his own will.¹¹

This classification, then, is motivated by Kant's desire to avoid what he sees as the common confusion of a republic with a democracy, though, as we shall see, he succumbs to the opposite confusion of opposing a republic to a democracy. Kant's discussion of the forms of the state in the Metaphysical Elements of Justice encompasses only what he calls the form of sovereignty in this passage.¹² Further, his language also differs in the two texts in a way that sometimes generates contradictions between the two texts. We shall first examine Kant's discussion of the forms of the state and then proceed to his account of the forms of government; finally we will conclude with an examination of how his conflation of this distinction leads him to misunderstand the implications of his own theory and mistakenly reject democratic self-rule.

C. The Forms of Sovereignty

I begin my discussion here by reiterating Kant's conception of the nature of sovereignty. Sovereignty is legislative authority; it is the right to promulgate the common laws binding on all members of civil society. There are three distinct forms of sovereignty: autocracy, in which one individual possesses legislative authority; aristocracy, in which some associated together possess sovereign power; and democracy, in which all persons in society hold that power together.

11. Kant, Perpetual Peace, p. 13-14.

12. Kant, Metaphysical Elements of Justice, pp. 109-10.

Kant's classification of the forms of the state, considered in terms of the exercise of sovereignty, in the Metaphysical Elements of Justice is similar to that in Perpetual Peace; in both texts, the three forms of the state are autocracy, aristocracy, and democracy respectively. The difference between the two texts lies in a distinction between autocracy and monarchy that is propounded in the former. In the passage above, Kant identifies monarchy and autocracy, with autocracy being "characterized ..., as the power of a monarch." Later in his discussion of the possible transformation of existing regimes into republics, all mention of 'autocracy' drops out of the the discussion and is replaced by the term 'monarchy.' In the Metaphysical Elements of Justice, however, monarchy is contrasted with autocracy, the difference lying in the extent of each's authority. The autocrat ("or 'self-commander'") "is one who possesses all the authority," whereas the monarch "possesses only the highest authority." The autocrat is said to be the sovereign, while the monarch is said to represent him.¹³ It is difficult to make sense of the distinction Kant is attempting to draw here, especially since he then proceeds to use the two terms interchangeably. It may be that Kant is trying to capture with this distinction the difference between the limited constitutional monarchy of England and the royal absolutism of Louis XIV in France.¹⁴ At any rate, this distinction fits in nicely with his attempt to show that a monarchy, since it is representative of the sovereign, is closer to the

¹³- Kant, Metaphysical Elements of Justice, p. 110.

¹⁴- This is a rather tricky point. Kant believed that in practice the British regime behaved as an absolute monarchy, or what Kant calls here an autocracy. Consequently, the difference between Great Britain and France is only nominal, but these definitions do seem to capture that nominal distinction. For Kant's view of the British monarchy, see section 8 of Part II of The Strife of the Faculties. Immanuel Kant, "An Old Question Raised Again: Is the Human Race Constantly Progressing?," in On History, ed. Lewis White Beck, trans. Robert E. Anchor, (New York: Macmillan, 1988), pp. 148-50.

republican form of government, which is essentially representational, than is a democracy.

Of the three forms of the state, autocracy is the simplest, for there is only one legislator and thus only one relationship in it, "that of a single person (the king) to the people." The aristocratic form is a bit more complex because it involves two relationships: the relation of the aristocratic legislators to each other; and the relation of the legislative aristocracy to the people as a whole. Finally, a democracy is the most complex of the three forms, containing as it does three relationships- "first, the Will of all to unite to constitute themselves a people; then, the Will of the citizens to form a commonwealth; and finally, to place at the head of this commonwealth a sovereign, who is none other other than this united will itself."¹⁵

In his analysis of the different relationships in a democracy, Kant departs from the symmetry of the previous two forms of the state without making clear why he does so. There seem to be no more relationships involved in a democracy than in an aristocracy, though those relationships are different ones. Whereas in an aristocracy we have relations among aristocratic legislators and between the aristocracy and the people as a whole, we have in a democracy relations among democratic legislators and between the people as a whole qua sovereign and the people as a whole qua subject. Instead of this scheme Kant substitutes a three-step process, each seemingly with its own contract, thus adding to even the traditional double contract theory. In the double contract theory, there are two different contracts- a social contract by which civil society is

¹⁵- Kant, Metaphysical Elements of Justice, p. 110.

constituted and a contract of government by which one part of the state, the ruler(s), contracts with another, the subjects. The latter contract presupposes the former. Now the third relationship that Kant points out is merely the contract of government. However, it is not clear which of the first two contracts is the social contract and why there is a need for two distinct steps in the first place, for the constitution of a people and the formation of a commonwealth are better considered as one act.

Nonetheless, this discussion is very important, for here Kant implicitly acknowledges that only in a democracy can the united will of the people be considered to be sovereign. Since only if the united will of the people is sovereign can persons within civil society be autonomous, we can conclude that persons are only autonomous in a democracy.

Now Kant goes on to argue that "as far as the administration of justice is concerned, the simplest form is without doubt also at the same time the best; but as far as justice and Law are concerned, the simplest form is the most dangerous for the people in view of the fact that it strongly invites despotism."¹⁶ Thus, "Simplification is indeed a reasonable maxim in the machinery of uniting the people through coercive laws, provided that all the people are passive and obey the one person who is above them; but, under such circumstances, none of the subjects are citizens."¹⁷ Autocracy, then, would seem to violate the freedom and independence of agents as citizens. All persons in such a society are denied their role as co-legislators and are subject to the will of one individual.

¹⁶- Kant, Metaphysical Elements of Justice, p. 110.

¹⁷- Kant, Metaphysical Elements of Justice, p. 110.

There is a deep tension here that runs throughout Kant political theory. Kant recognizes that "The supreme authority resided originally in the people, and all the rights of individuals considered as mere subjects (and especially as political officials) must be derived from this supreme authority."¹⁸ Further, this right is inalienable, and it would seem that the people can never relinquish it. In an allusion to Louis the XVI of France, Kant argues that:

the right of supreme legislation in a commonwealth is not an alienable right, but the most personal of all rights. Whoever possesses this right can control and direct the people through the collective Will, but can not dispose of the collective Will itself, for the collective Will itself is the first and original foundation of any public contract whatsoever. A contract that would obligate the people to give back its authority could not be consistent with its role as legislative power, and to hold that such a contract has any binding force is self-contradictory by the principle: 'No man can serve two masters.'¹⁹

But if sovereignty is inalienable, residing originally in the people, and the people can not give back the supreme legislative authority once they have received it, how could they ever have given it up in the first place? Autocracy, and aristocracy, then are incompatible with the supreme legislative authority of the collective will of the people, for each subjects the people to the arbitrary will of one or a few, thereby denying them their freedom, equality, and independence as citizens. Only in a democracy can all legislate for each and each legislate for all.

18. Kant, Metaphysical Elements of Justice, p. 113.

19. Kant, Metaphysical Elements of Justice, p. 114.

D. The Forms of Government

Let us now turn to Kant's discussion of the forms of government. Kant distinguishes two forms of government- despotic and republican.²⁰ In a despotic government, the legislative and executive functions are combined in one person. A republican government, on the other hand, separates these two functions and assigns them to different persons or branches of the government. Under such a government, all subjects are treated as citizens, "that is, in accordance with laws of their own proper independence."²¹ Here "everyone possesses himself and does not depend on the absolute Will of another next to or over him."²² From this last claim, Kant concludes that "the sovereign of the people (the legislator) can not at the same time be the ruler, for the ruler is himself subject to the law and through it is obligated to another, the sovereign."²³

The reasoning here is straightforward. If the ruler not only executes but also makes the law, then the ruler is superior to the law (i.e. the law is annexed to his person). This point is made quite clearly by Hobbes in Leviathan. The sovereign in the Hobbesian commonwealth is incapable of violating the law for his will is the law and "having power to make and repeale Lawes, he may when he pleaseth, free himselfe from that subjection, by repealing those Lawes that trouble him, and making of

20- This is the characterization provided in Perpetual Peace, whereas in the Metaphysical Elements of Justice, the distinction is between despotic and patriotic government. The difference between the two texts on this point is purely verbal.

21- Kant, Metaphysical Elements of Justice, p. 82.

22- Kant, Metaphysical Elements of Justice, p. 82.

23- Kant, Metaphysical Elements of Justice, p. 82.

new."²⁴ Should a discrepancy arise between his actions and his law, the sovereign need merely amend the law so as to bring it into conformity with his actions. The Hobbesian commonwealth, then, is a perfect despotism, where all members of civil society are subject to the arbitrary will of a single individual. But this political arrangement reduces the citizens of a commonwealth to a condition of heteronomy and violates the equality of all citizens by imposing upon them a superior whom they have no "moral capacity to bind juridically." Consequently, government must be republican and not despotic, for the republican "constitution is the only enduring political constitution in which the law is autonomous [selbstherrschend] and is not annexed to any particular person."²⁵

Under a republican form of government, it is always possible that the ruler abuse his power by failing to execute and even by violating the laws of the commonwealth. But as regards this abuse of power, Kant argues, the sovereign possesses only limited rights vis a vis the ruler: "The sovereign can take his authority from the ruler, depose him, or reform his administration, but can not punish him."²⁶ An act of punishment is an exercise of executive authority; thus, in punishing the ruler, the sovereign would be usurping the position of the executive. The ruler is the highest executive authority of the state, that is, to the ruler "alone belongs the supreme capacity to use coercion in accordance with the law." To subject the ruler to coercion, of which punishment is an instance, is to subject the supreme executive to some higher executive authority, "which is a self-contradiction."

24- Hobbes, Leviathan, p. 313.

25- Kant, Metaphysical Elements of Justice, p. 112.

26- Kant, Metaphysical Elements of Justice, p. 82.

Kant's argument here is clearly untenable. If the ruler is deposed, then he no longer possesses "the supreme authority to use coercion in accordance with the law;" rather, this authority is now vested in the new ruler who replaces him. This new ruler is certainly empowered to employ coercion against the old ruler for his violations of the law, as long as a judgment to this effect is handed down by the appropriate judicial authority.

Kant could respond to this point by appealing to the ideal character of the republican constitution, for the idea of a republican constitution abstracts from the conditions of space and time. The punishment of a deposed ruler by his successor takes place within the temporal ordering of events. Thus, by arguing along these lines for the legitimacy of the use of coercion against the ruler, one illegitimately imports temporality into the republican ideal.

But it is actually Kant who is responsible for the importation of time into the republican ideal. The deposing of a ruler and the reforming of his administration are themselves temporal acts. Thus, if it is illegitimate for this reason to punish the ruler for his actions once he has been deposed, it must also be illegitimate to depose him in the first place. But the latter can not be illegitimate, for otherwise the republican constitution would be a dead letter. It is important to remember here that ideas must be applied to the empirical world if they are to have any practical application for us. This requires that we apply them to the conditions of space and time, i.e. that we construct a *typic*. Thus, the importation of space and time into the discussion of the republican constitution is perfectly legitimate if we conceive of ourselves as constructing a *typic* for that idea, and that is just what we are doing here.

We can, however, continue to press the issue by again pushing it back one step and questioning whether the sovereign even has the right to depose the ruler in the first place, let alone punish him. As an application of the law to the ruler, the act of deposing a ruler is arguably an exercise of executive authority and thus lies outside the sphere of the sovereign. But if the sovereign were to lack this authority, then the whole republican structure would break down. Under such conditions the law would become an empty letter, for the ruler could break it with impunity. The whims of the ruler would then be the real law.

In this whole discussion, Kant is torn between pedantry and pragmatism. On the one hand, Kant argues on the basis of the definitions of legislative and executive authority for a rigid subordination of the legislative to the executive in the administration of the law, while on the other hand he recognizes the need for checks and balances and consequently flexibility in the allocation of power and authority to the respective branches of the government. He tries to resolve this conflict by means of the halfway house of permitting the deposition of the ruler but not his punishment. However, this solution can satisfy neither the demand for precision in the definitions of concepts nor the need for a realistic assessment of the exigencies of human government. I suggest that the choice to be made here can be determined only by appeal to the a priori principles of justice, which govern the constitution of ideal and civil society, and these I think decide in favor of Kant's pragmatic impulses for the reasons already adduced.

Finally, a republican government must be representative in nature, (in fact this is the only characterization of a republican constitution that Kant provides in the Metaphysical Elements of Justice):

Every republic is and can be nothing else than a representative system of the people if it is to protect the rights of its citizens in the name of the people. Under a representative system, these rights are protected by the citizens themselves, united and acting through their representatives.²⁷

Kant's argument for this claim is provided in Perpetual Peace. Let us now consider it in some detail.

If a government is not representative, then it is, "properly speaking, without form."²⁸ Kant's reasoning here is based on the analogy of the different authorities of the state with the formal structure of a syllogism, with the legislative branch being the analogue of the major premise and the executive the analogue of the minor. Apparently, if a government is not representative, then the legislative and the executive branches are one and the same. But it is impossible in a syllogism for the major and minor premises to be one and the same. On the basis of his analogy of the internal structure of the state with syllogistic form, Kant concludes that similarly the legislative and the executive can not be so united: "The legislator can unite in one and the same person his function as legislative and as executor of his will just as little as the universal of the major premise in a syllogism can also be the subsumption of the particular under the universal in the minor."²⁹

This argument contains two rather puzzling points. First, it is unclear what type of impossibility Kant means when he claims that the legislative and executive can not be united in one person. Second, the nature of the connection between representation and form is quite murky.

27- Kant, Metaphysical Elements of Justice, p. 113.

28- Kant, Perpetual Peace, p. 14.

29- Kant, Perpetual Peace, p. 14

With respect to the first point, Kant's analogical inference from the impossibility of the unification of the major and premises of a syllogism to the impossibility of the unification of the legislative and the executive branches of government simply will not do, for a government is not a syllogism. Despotism is a possible form of government, and Kant himself explicitly recognizes this with his distinction between republicanism and despotism. As a matter of empirical fact, a government can exist and function even though the executive and legislative are united in one person, and it is just this form of government that Kant desires to discredit. Thus, it is unclear what type of impossibility we are dealing with here; certainly it is not logical or real impossibility. Perhaps we are concerned with moral impossibility, which is to say that such a form of government is impermissible. Kant certainly believes this to be the case. But if it is the case, then the argument from form is superfluous. Kant can adduce compelling moral reasons for republicanism by appealing to the a priori principles of justice, and the argument from form adds nothing to these considerations. The most that Kant can establish with this analogy is that a government without form is a despotism and that a despotism is a government without form. This may be an interesting side point, but it is nothing more.

As regards the second puzzle, Kant does not make clear in the text why a non-representational government is necessarily without form, even if it is clear that a government without form is a despotism. We can only speculate as to Kant's thinking on this matter. First we need to know who is being represented and who is doing the representing. There are two possibilities here: first, the sovereign represents the people; second, the ruler represents the sovereign. In the former case, the sovereign

represents the people in that he is authorized by them to make laws for them. But if this is what is meant by 'representation' here, the notion of representation provides no reason why the sovereign could not also be the ruler. In the latter case, the ruler represents the sovereign as his agent in the execution of his laws and the administration of the governmental apparatus. Now this conception does provide for a separation of the executive function from the legislative function. Further, it is quite compatible with the first conception of representation, as the sovereign could represent the people and the ruler the sovereign. I am inclined to think that Kant meant his conception of representation here to encompass both of these relationships. But a republic need involve only the second relationship, not both of them. An arrangement in which the ruler represents the sovereign as his agent and the sovereign is actually the people themselves, not just their representative, is an instance of a republican constitution, for that constitution is defined only as the separation of the executive from the legislative.

As we have just seen, the analogy of the form of government with the form of the syllogism serves the dual purpose of providing arguments for both the division between the legislative and executive branches and a representative system, but Kant confuses these issues by dragging in a discussion of monarchy, aristocracy, and democracy, thereby conflating the form of sovereignty with the form of government. Kant argues that while monarchy and aristocracy are defective modes of administration, "it is at least possible for them to assume a mode of government conforming to the spirit of a representative system." But this is impossible for a democracy, for under democratic rule "everyone wishes to be master."

It is clear from Kant's discussion that by the term 'master' ("Herr") he means the ruler or chief executive. The ruler is supposed to represent the people, and this power of representation is enhanced by a decrease in the number of rulers: "the smaller the personnel of the government (the smaller the number of rulers), the greater is their representation and the more nearly the constitution approaches to the possibility of republicanism; thus the constitution may be expected by gradual reform finally to raise itself to republicanism." Presumably, we are to conceive of representation in arithmetical terms. If there is more than one ruler, then each of those rulers represents only a fraction of the people (the specific fraction being determined by the number of rulers). A monarch would represent all the people as their sole ruler, and therefore his power of representation would be the greatest.

Kant then asserts that the greater the capacity for representation, the closer a regime is to a republican form of government. As a result of this greater capacity for representation, monarchy and aristocracy are more capable of transforming themselves into a republican form of government, whereas this is all but impossible for a democracy, for the difficulty of such a transformation increases with the number of rulers. Of the three forms, monarchy is the most suitable for transformation into a presidency or constitutional monarchy along with the development of a separate legislative branch.³⁰ A president represents the people as their agent in the execution of the law and the administration of the governmental apparatus. As sovereign, the monarch is limited in his

³⁰- Kant's claim here runs counter to his other claim (cited earlier) that monarchy poses the greatest threat of despotism. I take it that this latter claim is correct and that this contradiction provides more evidence of Kant's confusion on this matter.

ability to transform the form of sovereignty by the consent of the people. Further, this transformation ought to take place gradually through legal reform and not violent revolution. Though difficult, a gradual, peaceful transition to a republican constitution is at least possible for a monarchy or aristocracy, whereas "it is impossible for a democracy to do so except by violent revolution."³¹

Given the historical record and Kant's political stance vis á vis the events of his day, in particular his devotion to the cause of the French Revolution, it is difficult to take this last claim seriously, and if it were not for Kant's reputed probity, one would be tempted to accuse him of dissembling. Historically, the transformation of European monarchies into republics (the French case) or constitutional monarchies (the English case) was produced by revolutionary means, and Kant himself had the recent example of France as evidence of this point. This is especially puzzling since Kant was well known as a supporter of the revolution there, so much so that he was considered by his fellow Prussians to be a Jacobin.³²

In his whole discussion here, Kant confuses the form of sovereignty with the form of government. He talks of monarchies, aristocracies, and democracies transforming themselves into republics when the appropriate discussion would be of despotisms transforming themselves into republics. The appropriate opposition is between despotism and republicanism, not between republicanism and democracy. At most, Kant is permitted to explain how those different forms of sovereignty might

³¹- Kant, *Perpetual Peace*, p. 15.

³²- Kant's support for the French Revolution and his views on revolution in general will be discussed in detail in the next chapter.

help or hinder the transformation of a despotic government into a republican one. Strictly speaking, none of these forms can be transformed into a republic, and in speaking of such a transformation, Kant is guilty of a category mistake.

Let us consider Kant's specific argument against democratic self-rule. Kant asserts that "democracy is, properly speaking, necessarily a despotism, because it establishes an executive power in which 'all' decide for or even against one who does not agree; that is, 'all,' who are not quite all, decide, and this is a contradiction of the general will with itself and with freedom."³³ First, a system of governance is not despotic because of some alleged contradiction with the general will, but because it involves the unification of the legislative and executive functions in the same person or branch of government. Second, this same criticism could be made of aristocracy and monarchy with even greater effect, where one or some purport to decide for all. Finally, Kant fails to consider the possibility of representative democracy with a constitutional separation of powers; instead, he identifies democracy with one of its specific forms- a direct democracy where the people function as both legislative and executive

By opposing a republican constitution to a democratic one, Kant mistakenly turns the concept of a democratic republic into an oxymoron. A republican form of government is quite compatible with the various forms of sovereignty, for a republican constitution involves by definition only the separation of the executive from the legislative. The nature of the form of sovereignty is an entirely separate issue, and the concept of a

³³- Kant, Perpetual Peace, p. 14.

republican constitution taken by itself does not entail any one of these forms to the exclusion of the others. Sovereignty in a republic could conceivably reside in one, some, or all. In a democratic republic, sovereignty resides in the people as a whole, rather than some sub-grouping of it. Further, as we have seen prior to this, the a priori principles of right require that sovereignty be democratic in character.

E. Conclusion

I shall conclude this chapter by commenting briefly on Kant's discussion of the connection between the spread of republicanism and the establishment of world peace.³⁴ I want to call particular attention to the manner in which Kant's reasoning on this point presupposes that the form of sovereignty under the ideal republican constitution be democratic in character. A fuller discussion of Kant's views on world peace in the context of his philosophy of history will be provided in the final chapter.

Kant explicitly makes the connection between republicanism and peace in both "Theory and Practice" and Perpetual Peace, while it is only suggested in the Metaphysical Elements of Justice. His argument is the same in each text and fairly straightforward. War brings upon a people

³⁴- In his dismissal of Kant's views on home rule, Gallie fails to recognize the close connection that Kant establishes between the internal structure of a state and its external conduct. Gallie dismisses Kant's views on "home rule" as unoriginal and unincisive, but lauds Kant's stance on international relations and the institutional arrangements necessary to secure world peace, while adopting the converse position on Hegel. This position is highly problematic when one considers Kant's argument that the spread of republicanism is conducive to the establishment of world peace. The sharp distinction between the internal structure and the external conduct of the state that Gallie assumes is untenable in the light of this discussion, which Gallie glosses over. One should also note that Kant held that the connection between internal structure and external relations runs in the other direction as well- the state of nature between nations threatens the freedom of the citizens within a state for national security will always be used as trump to override that freedom, a claim with considerable empirical support.

monstrous calamities ("having to fight, having to pay the costs of war from their own resources, having painfully to repair the devastation war leaves behind, and, to fill up the measure of evils, load themselves With a heavy national debt that would embitter peace itself and that can never be liquidated on account of constant wars in the future"³⁵) that any rational agent would choose to avoid and few peoples would voluntarily endure. Consequently, if the consent of the cannon fodder were required to engage in war, few wars would ever be conducted. Under a despotic regime, where the head of state is unaccountable to his subjects and does not suffer the consequences of war, it is a relatively easy matter for the despot "to resolve upon war as on a pleasure party for the most trivial reasons, and with perfect indifference leave the justification which decency requires to the diplomatic corps who are ever ready to provide it."³⁶ But this is not so under a republican constitution. In contrast to a despotic regime, the citizens of a republic must give their consent as co-legislators to every declaration of war,³⁷ and given the high human cost of war for the people of a nation, such consent will always be extremely difficult to obtain.

But Kant's argument works only if the ideal republican constitution is democratic in nature, that is to say, that it must be some form of

35- Kant, Perpetual Peace, p. 13.

36- Kant, Perpetual Peace, p. 13.

37- "A citizen must always be regarded as a co-legislative member of the state (that is, not merely as a means, but at the same time as an end in itself), and as such he must give his free consent through his representatives, not only to the waging of war in general, but also to any particular declaration of war." (Kant, Metaphysical Elements of Justice, p. 118.) This is another instance in which Kant follows his pragmatic impulses and breaks with his rigid conceptual separation of the sovereign and ruler and grants executive authority to the sovereign. A law governing "the waging of war in general" is an act of legislative authority, whereas the application of that law to particular circumstances, as represented by "any particular declaration of war" is an act of executive authority. Nonetheless, Kant vests this latter power in the legislature as the duly-constituted representative of the people.

representative democracy. This is made quite explicit in "Theory and Practice:"

Each state must be organized internally in such a way that the head of state, for whom the war actually costs nothing (for he wages it at the expense of others, i.e. the people), must no longer have the deciding vote on whether war is to be declared or not, for the people who pay for it must decide. (This, of course, necessarily presupposes that the idea of an original contract has already been realised.)³⁸

Given the representative character of the republican constitution, such a decision or consent can be given only if the representatives of the people are chosen democratically, for otherwise the original problem remains. Unelected representatives, if sense can even be made of this notion, are not accountable to the citizens of a state and could easily embark upon a war in the same manner as a despot without suffering any adverse consequences from their decision. The accountability of representatives to the popular will can be established only through channels of democratic participation within the state.

Now Kant may be overstating his case somewhat. He probably underestimates the risks and potential costs of war to a despot and overestimates the difficulty of persuading citizens in a republic of the necessity of war. The despot must always fear removal by his enemies abroad if defeated and popular uprising at home, both of which will play a role in his calculations and provide some check on any aggressive tendencies he may have. Further, the citizens of relatively democratic states have historically proven themselves susceptible to irrational appeals to nationalism and manipulation on the part of elected officials.

³⁸. Kant, "Theory and Practice," p. 91.

Nonetheless, Kant's point is well taken. As an irrational force, nationalism can be checked by the spread of enlightenment among the citizens of a state. Further, the manipulation of public opinion requires some measure of duplicity, secrecy, and autocratic behavior on the part of government officials, all of which are anti-democratic in nature. Consequently, increased democratization of the polity can reduce the possibility of manipulation. There are certainly no guarantees that a democracy will not wage an aggressive war, but given the high human cost of war, it is reasonable to claim that such a war is much less likely if critical decisions are made democratically under conditions of open, informed, and spirited public debate on the issue, even more so when those involved in the debate are rational and motivated at least in part by moral considerations.

CHAPTER VII

THE IDEAL AND THE REAL

A. Introduction

In this chapter, I will discuss the relationship between ideal civil society as defined by the social contract and the real, existing civil societies in which people actually live. As I have already said a great deal about this in Chapter Two, I begin here by briefly reiterating in the most general way the points contained therein. The social contract is an idea that guides our actions within the actual world by providing us with a model, in the form of ideal civil society, that ought to govern our efforts to reform existing civil societies. Actual civil societies do not, and can not, ever measure up to the standard set by the ideal; nonetheless, we can bring about in the course of history an ever-closer approximation of the real to the ideal. Thus, Kant sets us the infinite task of realizing the ideal in history.

This account immediately gives rise to two closely-related questions regarding the relation of theory to practice. Given that existing statutes and political arrangements fail to satisfy the standards of justice, a reflective moral agent must find him- or herself in a quandary over whether or not to respect them. The first question, then, is whether one has any obligation to obey the actual laws of the state in which one lives, and if so, what the extent of that obligation is. As an historical agent, one is obligated to work for the transformation of existing civil society into a closer approximation of the ideal. This task confronts one with a choice of the means to be used in promoting political change. Thus one is led to ask about the means one is permitted use to transform existing civil society.

Since disobedience to existing political authorities, including the use of violence to overthrow those authorities, has often been advocated and employed as the means to change existing social and political structures, these two questions are intricately interwoven with each other.

In Chapter Three, I presented Kant's deduction of the idea of the social contract. With respect to ideal civil society as defined by the social contract, it is clear that one has an absolute duty to obey the laws of the state. Since one has participated as a co-legislator in the promulgation of these laws, the failure to obey them is nothing less than a failure to obey the dictates of one's own practical reason. In short, such a violation would constitute giving a universal law and then making an exception of oneself. But Kant asserts that the same obligation holds as regards existing political authority: "He who finds himself in possession of the supreme commanding and legislative authority must be obeyed; and this is so unconditional juridically that it is in itself punishable to inquire publicly into the title of his acquisition, that is, to raise questions about his title with a view to opposing him on the grounds of some defect in that title."¹ This last point would seem to threaten the public use of reason and philosophical discourse itself.

Kant's position on this matter is subject to a serious internal critique. In Chapter Three I discussed the tension between moral autonomy and political authority. While in theory Kant is committed to the proposition that political authority is legitimate only if it is compatible with the moral autonomy of all the individuals who are subject to it, in practice he resolve conflicts between autonomy and authority in favor of

¹- Kant, Metaphysical Elements of Justice, p. 139.

existing political authority . Since subjection to the will of another is a form of heteronomy, Kant's claim that we are bound to obey the authorities that be relegates persons in undemocratic polities to a condition of heteronomy. Further, Kant's distinction between natural and positive law contains an implicit recognition of the possibility of immoral laws, positive laws that contravene the prescriptions of natural law. These two points are closely related, for natural law is simply that which is legislated by our pure practical reason. Our question then becomes: Are we obligated to obey and accept laws and institutions to which we could not consent as rational agents? Kant's position on the authority of the existing sovereign would seem to entail an affirmative answer to this question, but if persons are to maintain their autonomy within existing civil societies, it would appear that he must answer in the negative.

Kant is somewhat sensitive to these issues. In Religion Within the Limits of Reason Alone, Kant claims "And when it is said: 'We ought to obey God rather than men,' this means only that when statutory commands, regarding which men can be legislators and judges, come into conflict with duties which reason prescribes unconditionally, concerning whose observance or transgression God alone can be the judge, the former must yield precedence to the latter."² Thus Kant does recognize certain limits on our obedience to statutory laws set by practical reason itself; the commands of the sovereign are only binding when they do not violate the dictates of the moral law.

Further, we find Kant endorsing the various revolutionary struggles of his time, the most famous being his enthusiastic embrace of

²- Kant, Religion, p. 142. See also the footnote on pg. 90 for a similar remark.

the French Revolution. Thus, we are confronted with a theorist who adopts the seemingly contradictory position of rejecting revolution in principle while supporting the actual efforts of peoples attempting to free themselves from the yoke of despotism. This certainly requires some comment.

In this chapter, I propose to sort all of this out as methodically as possible in order to determine whether Kant has a coherent position on these matters. In the very next section, I will explicate Kant's conception of resistance in order to determine what it is that he in fact opposes. Then in section C, I will present and criticize Kant's arguments against any putative right to resistance on the part of subjects against the existing authorities. Section D will be devoted to a discussion of Kant's paradoxical rejection of revolution in principle and his support for specific revolutions; my focus there will be on Kant's endorsement of the French Revolution. I shall argue that, as it stands, Kant's position on these matters is incoherent. Nevertheless, by paying a little attention to Kant's own conceptual framework, one can devise an account that reconciles Kant's concrete political commitments with his theoretical standpoint. In the penultimate section of this chapter, I will present just such a reconstruction. There I deploy Kant's own categorization of the forms of the state in order to distinguish among different political contexts and thereby legitimate of resistance in at least one context. I will complete this project in the conclusion, where I will discuss the issues involved with obedience and resistance with respect to a republican government.

B. The Nature of Resistance

Kant states that "It is the people's duty to endure even the most intolerable abuse of supreme authority,"³ a claim unworthy of a philosopher of Kant's stature. Immediately after this statement, Kant reformulates it in the following manner: "In other words, a categorical imperative says: 'Obey the suzerain (in everything that does not conflict with internal morality) who has authority over you!'"⁴ Under certain circumstances, one may disobey the commands of the sovereign, but one is never permitted to resist him. Thus, Kant does not equate disobedience with resistance. If we are to understand Kant's position, then, we need to specify the criteria that must be met for a violation of the law to be considered an act of resistance to the sovereign.

³- Kant, Metaphysical Elements of Justice, p. 86. Kant is not always clear about whether the supreme authority whom we are not to resist is the sovereign or the ruler. He often uses a general term 'chief of state' without indicating whether he is referring to the sovereign or the ruler. Further, he talks of the subject resisting the ruler at some points in the text, while in other passages it is the sovereign who is being resisted. There is of course a good historical explanation for Kant's lack of precision on this point. Given the prevalence of royal absolutism (or 'despotism' in Kant's terms) in Europe during his lifetime, there was no sharp distinction between the legislative and the executive authority of the state. Consequently, resistance was directed at both the executive and legislative in the person of one individual. Thus it seems possible for the subject to resist the ruler by refusing to accede to his commands and seeking to replace him or her by force. "If the organ of the sovereign, the ruler, proceeds contrary to the laws- ... - the subject may lodge a complaint (gravamina) about this injustice, but he may not actively resist."(Kant, Metaphysical Elements of Justice, p. 85. See also Kant's discussion of the limited constitution on pp. 88-9 of the same text.) But as is clear from this passage, the ruler is nothing but the "organ" of the sovereign, since his function is to administer the laws legislated by the sovereign. Further, as I noted in the last chapter, the sovereign has the authority to replace the ruler and reform his administration. Therefore, the sovereign is superior to the ruler and the highest authority within the state, and in resisting the ruler, we are in effect resisting the sovereign whose agent he is.

⁴- Kant, Metaphysical Elements of Justice, p. 139.

Every violation of the law is by definition a crime, but Kant distinguishes between two types of criminality:

Now the criminal can commit the misdeed either by following a maxim of a presumed objective rule (supposed to be universally valid) or as an exception to the rule (by dispensing with it for the occasion). In the latter case, he only strays from the law (even though intentionally); he can at the same time detest his own transgression, and he can still want to circumvent the law without formally renouncing his obedience to it. In the former case, however, he repudiates the authority of the law itself, even though he can not deny its validity before his own reason ...⁵

Thus by focusing on the maxim involved in the commission of a crime, we can distinguish between what we might call the common criminal and the politically-motivated one.

The common criminal accepts the law as binding upon persons within society, but he makes an exception of himself. His actions involve no formal renunciation of obedience to the sovereign, and consequently his actions have no political ramifications with respect to the legitimacy of existing authority. Though widespread criminality within a society may objectively indicate the existence of gross social injustice, subjectively the criminal does not question the validity of the laws he violates. The common criminal then is someone who is not engaged in resistance, for he never challenges the authority of the sovereign to make the laws. But the case of the politically-motivated criminal is considerably different. The politically-motivated criminal adopts a maxim, which he mistakenly believes to be universally valid, of opposition to the law and thereby repudiates its authority over him. Here an individual violates the law for he believes it to be unjust, even though it is a "practical principle of

⁵- Kant, Metaphysical Elements of Justice, pp. 87-88n.

reason" that "one ought to obey the legislative authority that now exists, regardless of its origin."⁶

As we have seen, Kant does permit exceptions to our obligation to obey the dictates of the state.⁷ When the state commands us to commit some action that violates the prescriptions of morality, we are obligated to refuse: "The saying: 'We ought to obey God rather than men,' signifies merely 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."⁸ The idea of a divine law superior to positive, statutory law merely indicates that the latter does not necessarily conform to the dictates of morality. Under such circumstances, we not only have the right to refuse obedience, we have the obligation to do so.

It is not too difficult to construct situations from Kant's ethics that exemplify this point. For example, if I am ordered to lie in a criminal trial so that a guilty verdict may be obtained against a defendant, I ought to refuse. Similarly, with respect to relations between nations, if I am ordered to slaughter thousands of non-combatants, I ought to refuse. But I can do no more than that. I am not authorized to employ coercion against the existing authorities to prevent such atrocities from being committed, though presumably I can publicize the intention to commit them, or their actual commission after the fact.

⁶- Kant, Metaphysical Elements of Justice, p. 85. This is the meaning Kant attributes to the expression 'All ruling power comes from God.' The divine right of kings consists of nothing more than an obligation on the part of their subjects to accept their authority and not an actual commission from God. It can be similarly stated of any regime, whether or not it is monarchical, that it rules by divine right.

⁷- For a reconstruction of Kant's views on civil disobedience, see Roger Hancock, "Kant and Civil Disobedience," Idealistic Studies, 5 (1975), pp. 164-76.

⁸- Kant, Religion, p. 90.

All of this constitutes legitimate disobedience of existing political authorities and not resistance, for the civilly disobedient person does not question the legitimacy of existing authority, only the morality of specific laws. He expresses this fidelity to the sovereign by accepting the punishment meted out in accordance with those laws.⁹ This establishes a space within Kant's theory for the traditional conception of civil disobedience.

Resistance, then, involves more than just disobedience of the law; rather it is always characterized by the employment of coercion against the sovereign. We may define an act of resistance as an action "in which an arbitrary association of the people coerces the government into acting a certain way."¹⁰ Violent revolution clearly falls under such a definition and is duly forbidden by Kant. In fact, when Kant discusses the nature of coercion, it is clear that he conceives of it in terms of violence.

But it is questionable whether coercion can be defined solely in terms of violence or, if it be so defined, whether resistance can be solely in terms of force. There is another element involved in resistance, and that is the repudiation of the authority of the existing sovereign. Clearly certain forms of non-violent action can involve a rejection of the existing authority. For example, in their successful effort to free themselves from British rule, the people of India engaged in massive non-violent resistance

⁹- This conception of civil disobedience finds an early exponent in the person of Socrates. In the Crito, Socrates argues for the acceptance of political authority, whereas in the Apology he explicitly states his refusal to obey certain commands of the Athenian authorities, namely the command to stop practicing philosophy and give up his divinely-ordained mission as a gadfly. For a modern restatement of the classic conception of disobedience along Kantian lines, see John Rawls, "The Justification of Civil Disobedience," in Civil Disobedience: Theory and Practice, ed. by Hugo Adam Bedau (New York: 1969), pp. 240-55.

¹⁰- Kant, Metaphysical Elements of Justice, p. 88.

against the colonial regime. This clearly involved rejection of and resistance to the existing sovereign without the resort to violence.

This raises an interesting and important problem for Kant regarding the classification and permissibility of massive non-compliance with existing regimes. Kant conceives of revolution solely in terms of the violent overthrow of existing authority, but in doing so, he tacitly excludes the possibility of a non-violent revolutionary activity. We can not fault Kant for the limitations of his historical perspective, and given his conservatism on these matters, I think we can safely conclude that Kant would have considered this to be a case of resistance against the sovereign and hence would reject it as impermissible. Nonetheless, such activity does not fit neatly into the conceptual framework of his political theory, falling somewhere in between civil disobedience and violent revolution. It resembles the former in its eschewal of violence as a means of generating political change, whereas it resembles the latter in its revolutionary aims. As we shall see in the final two sections of this Chapter, by paying careful attention to the gradations of civil disobedience, non-violent resistance, and violent revolution, we can provide an alternative to the more unsatisfactory conclusions that Kant draws with respect to one's relationship to existing authority.

Ultimately, Kant adopts a position of sanctioning only the gradual evolution of political institutions. Only reform from above is legitimate; revolution from below is forbidden: "An alteration in a (defective) constitution of a state, which may sometimes be required, can be undertaken only by the sovereign himself through reform, and not by the

people through revolution."¹¹ The progressive direction of history provides some hope that with the spread of enlightenment the appropriate reforms will gradually be carried out, and we are to be satisfied with that hope. The subject is restricted to protesting publicly against injustice and is prohibited from engaging in any activity that would undermine the sovereign's authority.

Before we move on to a discussion of Kant's justification of his position, there is one other important matter that requires comment. Kant claims that from the proposition that one ought to obey the powers that be, it follows that "The sovereign has many rights with respect to the subject, but no coercive duties."¹² But it does not follow that the sovereign has no duties towards his subjects, only that he may not be coerced into performing those duties he does have, i.e. that those duties are non-coercive. These non-coercive duties are derived from the inalienable rights of individuals, for the people "have inalienable rights against the head of state, even if these can not be rights of coercion."¹³ Persons can not be stripped of their rights by the state, even though the state can refuse to respect them. If the state refuses to respect their rights, individuals have no legitimate recourse beyond public protest and may not resort to violence. The individual must assume that the sovereign has no desire to do him any harm and that "any injustice which he believes he has suffered can only have resulted through error, or ignorance of certain possible consequences of the laws which the sovereign authority has made."¹⁴

11- Kant, Metaphysical Elements of Justice, p. 88.

12- Kant, Metaphysical Elements of Justice, p. 85.

13- Kant, "Theory and Practice," p. 84.

14- Kant, "Theory and Practice," p. 84.

Now this is a questionable move on Kant's part, for as I noted in the third chapter, a right involves by definition an authorization to use coercion against anyone who would hinder me in the exercise of it. Thus, the notion of a non-coercive right is a contradiction in terms. This point is especially important for my discussion in Section E of this chapter.

C. Kant's Argument for Non-Resistance

Now that we possess a sufficient understanding of Kant's conception of resistance, we can consider Kant's arguments for the claim that we ought not resist the sovereign. I think that there is essentially one basic argument that Kant adduces for his position. This argument is based on the conceptual status of the social contract as an idea of reason. Kant grafts two other arguments onto this argument-- one derived from "the transcendental principle of publicity" and the other from the status of the head of state. Since the latter two arguments are often seen as entirely separate arguments and represent distinct lines of thought,¹⁵ though derivative ones, I shall discuss each of them separately after my exposition of Kant's central argument. However, these two arguments are at best elaborations on Kant's central argument, since they are parasitic on it. If Kant's main argument does not work, then neither will these; and if Kant's main argument does work, then he has no need of them.

Some commentators have professed to find an argument against resistance based on the direct application of the categorical imperative to the maxim of resistance to the sovereign, and one has gone so far as to

¹⁵- For example, see van der Linden, *Kantian Ethics and Socialism*, pp. 175-87, and Lewis White Beck, "Kant and the Right of Revolution," *The Journal of the History of Ideas* 32 (1971), 411-22.

claim that this is Kant's only argument for his position.¹⁶ While I agree that there is fundamentally only one argument and that it in some sense involves a violation of the categorical imperative insofar as resistance to the sovereign is an instance of contradictory willing, I think that the contradiction involved in resisting the sovereign can only be understood in the context of Kant's discussion of the ideal character of the social contract, and it is to this that we now turn.

Kant's fundamental argument for non-resistance is based on the conceptual status of the social contract. This argument finds its most complete expression in the conclusion to "Supplementary Explanations" of the Metaphysical Elements of Justice, though intimations of it can be found elsewhere, particularly in those passages where his secondary arguments are presented. Kant begins this section with a quotation from one of his reviewers and, on this point, one of his critics:

To our knowledge, no philosopher has admitted the most paradoxical of all paradoxes, namely, the proposition that the mere idea of sovereignty should necessitate me to obey as my lord anyone who has imposed himself upon me as a lord, without my asking who has given him the right to issue commands to me. Is there to be no difference between saying that one ought to recognize sovereignty and a chief of state and that one ought to hold a priori that this or that person, whose existence is not even given a priori, is one's lord?¹⁷

Kant's position does indeed appear paradoxical at first glance, but it is not without its rationale.

Kant's argument begins with the claim that we have an obligation to enter into civil society as defined by the social contract. Should one

¹⁶- See for example Peter Nicholson, "Kant on the Duty Never to Resist the Sovereign," Ethics, 77 (1976), pp. 214-30. Professor Nicholson argues that this is the only argument that Kant adduces for the duty never to resist the sovereign.

¹⁷- Kant, Metaphysical Elements of Justice, p. 139.

refuse to enter civil society, one may be forced to do so. But the social contract is only an idea; consequently, all existing civil societies are inadequate when judged according to the standard set by this idea:

Every matter of fact is an object that is appearance (of sense); on the other hand, that which can be represented only through pure reason and which must be included among the ideas- that is the thing in itself. No object in experience can be given that adequately corresponds to an Idea. A perfect juridical constitution among men would be an example of such an idea.¹⁸

Nonetheless, all states, however imperfect they may be, are instances of this idea:

When a people are united through laws under a suzerain, 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; that is, a juridical constitution in the most general sense of the term is present.¹⁹

It is crucial to remember here that the social contract does not provide an historical explanation of the actual origin of civil society. Civil society is only possible through a sovereign who unites the people under one will. As a matter of fact, sovereignty is established through the seizure of public authority by force: "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...".²⁰ Once this

18- Kant, Metaphysical Elements of Justice, p. 139.

19- Kant, Metaphysical Elements of Justice, pp. 139-40.

20- Kant, Metaphysical Elements of Justice, p. 140. See also Kant, Perpetual Peace, p. 36.

seizure of authority is accomplished, a civil society is established as an empirical instance of the idea of the social contract.

But the social contract can not contain a provision permitting rebellion, because such a provision would render it null and void. We are obligated to work for the perfection of existing civil society in accordance with this idea, but "no attempt should be made to realize this Idea precipitously through revolutionary methods, that is, by the violent overthrow of a previously existing imperfect and corrupt [government] (for in that case there would be an intervening moment when the entire juridical state of affairs would be annihilated)."²¹ Rebellion always involves a departure from civil society and a regression back to the state of nature from which we are obligated to depart. Thus in rebelling against the existing sovereign, one acts contrary to one's duty to enter into civil society. The claim that one has the right to rebel against the existing sovereign entails the proposition that one is still in a state of nature. By claiming the right to rebel against the sovereign, one has effectively claimed the "right to put violence as the supreme prescriptive act of legislation in the place of every right and Law."²² But when one enters civil society, one relinquishes the right "to proceed in accordance with [one's] arbitrary will," including the right to employ violence, and submits oneself to the public law promulgated by the sovereign. Therefore, one must renounce the use of violence in one's efforts to change civil society, for otherwise one would remain within the state of nature. For this reason, any putative right to rebel is an instance of contradictory willing,

21- Kant, Metaphysical Elements of Justice, p. 129.

22- Kant, Metaphysical Elements of Justice, p. 140.

involving as it were both willing the establishment of civil society and willing the perpetuation of the state of nature.

Now as I noted at the beginning of this section Kant grafts two other arguments onto this his central argument. The first of these secondary arguments is found scattered throughout Kant's political writings. In this argument, Kant employs the technique of *reductio ad absurdum*. Simply put, the assertion that the people have the right to rebel against the supreme authority entails the contradictory proposition that the supreme authority is not the supreme authority:

To permit any opposition to this absolute power [of the sovereign] (an opposition that might limit that supreme authority) would be to contradict oneself, inasmuch as in that case the power (which may be opposed) would not be the lawful supreme authority that determines what is or is not to be publicly just [recht].²³

If the sovereign were not permitted to render the final decision on matters of public justice, then he would not be the supreme authority. But then the supreme authority in the state would not be the supreme authority, which is a contradiction. Consequently, the sovereign must have the final decision in all matters regarding public right.

But this move only begs the question: are existing sovereigns legitimate simply because they exist? Whether the final decision must rest with the existing sovereign is exactly what is at stake. One can resolve this question by arguing that the final decision must rest with the people and not the titular head of state, who is their agent. When considered by itself, this argument begs the question by assuming that the existing head of state is the highest authority. His only argument is that the chief of state makes

²³- Kant, Metaphysical Elements of Justice, pp. 140-41. See also, pp. 85 & 86 of the same text and "Theory and Practice," pp. 81-82.

a people by uniting them under one will. But in order to understand this claim, we need to refer to the idea of the social contract. We need some independent argument here to establish this claim, and that is what Kant provides with his central argument: "And this principle already resides a priori in the Idea of a political constitution in general, that is, in a concept of practical reason, a concept for which no adequately corresponding example from experience can be found, but one which, however, no one must contradict as a norm."²⁴

Lewis White Beck describes the secondary reductio argument as an example of Kant's "formalism in extremis," and interprets Kant as putting forth the claim that there can never be a legal right to rebel against, for no constitution can permit its own violent overthrow, a point that is trivially true and has never caused revolutionaries to lose any sleep.²⁵ But Beck does not adequately put Kant's argument into its appropriate context, for he fails to give sufficient consideration to its derivation from the idea of the social contract. This argument is certainly derived from Kant's "metaphysics of jurisprudence," but that metaphysics is in turn imbedded in Kant's critical moral theory. It is not that Kant is arguing that we have no moral right because we have no legal right; rather, he is arguing that we have no legal right because we have no moral right. On this matter, positive law mirrors natural law simply because it is an empirical instance of the ideal.

The other secondary argument Kant adduces is found in Perpetual Peace and appeals to "the transcendental principle of publicity" as the standard by which to judge whether a policy is permissible or not.

²⁴- Kant, Metaphysical Elements of Justice, p. 141.

²⁵- Beck, "Kant and the Right of Revolution."

According to this standard, a maxim must be capable of being publicized if it is to be permissible. The principle is derived from the form of public law itself; if one abstracts from the content of public law, all that is left is the form of publicity. Thus, it is impermissible to act on a maxim that can not be publicized without defeating its own purpose:

According to this principle, a people would ask itself before the establishment of the civil contract whether it dare publish the maxim of its intention to revolt on occasion. It is clear that if, in the establishment of a constitution, the condition is made that the people may in certain cases employ force against its chief, the people would have to pretend to a legitimate power over him, and then he would not be the chief. Or if both are made the condition of the establishment of the state, no state would be possible, though to establish it was the purpose of the people. The illegitimacy of rebellion is thus clear from the fact that its maxim, if openly acknowledged, would make its own purpose impossible. Therefore it would have to be kept secret.²⁶

There seem to be three distinct arguments woven together in this passage. In the second sentence we find the argument from the status of the chief of state that I have just examined. In the first and third sentences of the passage, we find the argument from the social contract, which I have argued is Kant's fundamental argument. And finally, there is an argument that if the maxim of resistance to the sovereign is publicized, its purpose (the overthrow of the sovereign) will be defeated, and it is this argument that I shall now consider.

Kant alleges that resistance to the sovereign is incompatible with this principle of publicity, for if those who plot revolution reveal the maxim on which they act, their purpose will be defeated. Consequently, they require secrecy if they are to be successful. On the other hand, the

²⁶- Kant, Perpetual Peace, p. 48.

chief of state requires no such secrecy for his or her purposes. Since the sovereign possesses "irresistible power" (otherwise he or she could not protect his or her subjects), "he [or she] need not fear vitiating his own purpose by publishing his maxims."

This line of argument is highly problematic. As a matter of fact, revolutionaries have never been loathe to proclaim publicly their goals. On the contrary, rather than requiring secrecy, revolutionaries need some measure of publicity if they are to attract adherents to their cause. The actual extent of that publicity is a matter of prudence, depending as it does only upon the level of repression prevailing within a given society. In principle, however, publicity is necessary for revolution. A coup d'etat requires secrecy, but not a revolution.

Further, Kant's argument here ignores the question of the legitimacy of authority. Kant's reasoning here is based on the overwhelming might of the sovereign and not on considerations of his right to that power, and it is this last point that is in question. Such an argument would be acceptable if the might of the existing sovereign were legitimated by right, but this requires some further argument that Kant does not provide in this section. Rather he just assumes it here. Consequently, taken by itself, this argument begs the question by granting irresistible power to existing sovereigns, without having established their right to it, and then using this power as a justification their right.

As we have seen, both of these secondary arguments taken by themselves beg the question by assuming that the existing sovereign legitimately possesses political authority. The legitimacy of this possession is established by the idea of the social contract, and it is for this reason that we must consider them to be secondary to and parasitic on that main

argument. If that argument fails to convince, then these arguments will also. And Kant's central argument is open to serious criticism. The possession of authority by existing sovereigns involves a mixture of both legitimacy and illegitimacy. It is legitimate because it is an empirical instance of the idea of the social contract, but it is illegitimate as it fails to conform to that idea. While the existing sovereign possesses supreme authority within the actual state, Kant's own theory entails that ultimately the people are sovereign and that the authority of the existing sovereign derives from his or her status as the deputy or representative of the people. Therefore, the people possess the right to dismiss the existing sovereign should they choose to do so. In the context of this conceptual framework, it is the sovereign who is the source of violence and engaged in immoral activity when he or she resists the people's exercise of its legitimate prerogative of dismissal.

D. The French Revolution

Despite his rejection of the right to revolution, Kant was deeply inspired by and supportive of the French Revolution,²⁷ and this combination of opposition and support for revolution continues to puzzle commentators. In this section, I shall examine the specifics of Kant's support for the French Revolution in order to determine whether it can be made to cohere with his general theoretical position on the impermissibility of revolution. Consequently, I will first present Kant's

²⁷- For a biographical account of Kant's engagement with the French Revolution, see G. P. Gooch, Germany and the French Revolution (London: Longmans, Green, and Co., 1920), pp. 260-82. See also, Iring Fetscher, "Kant and the French Revolution," in Kant 1724/1974: Kant as a Political Thinker, ed. by Eduard Gerresheim, (Bonn: Inter-Nationes, 1974), pp. 25-40.

position on the Revolution and then proceed to examine critically some of the interpretive strategies that have been used to exonerate him from the charge of inconsistency on this matter. In assessing the viability of these strategies, we need to keep in mind that Kant supported not only the French Revolution, but also the American Revolution and the Irish resistance to English rule.

Kant expressed his views on the French Revolution in comments strewn throughout his published writings and correspondence during the last decade of his philosophical activity, but his most extensive treatment of the subject is found in part two of The Conflict of the Faculties entitled "An Old Question Raised Again: Is the Human Race Constantly Progressing?." Here Kant argues that the enthusiasm the Revolution aroused among spectators is evidence of the moral improvement of humanity:

This event consists neither in momentous deeds nor crimes committed by men whereby what was great among men is made small or what was small is made great, nor in ancient splendid political structures which vanish as if by magic while others come forth in their place as if from the depths of the earth. No, nothing of the sort. It is simply the mode of thinking of the spectators which reveals itself publicly in this game of great revolutions, and manifests such a universal yet disinterested sympathy for the players on one side against those on the other, even at the risk that this partiality could become very disadvantageous for them if discovered. Owing to its universality, this mode of thinking demonstrates a character of the human race at large and all at once; owing to its disinterestedness, a moral character of humanity, at least in its predisposition, a character which not only permits people to hope for progress toward the better, but is already itself progress insofar as its capacity is sufficient for the present.

The revolution of a gifted people which we have seen unfolding in our day may succeed or miscarry; it may be filled with misery and atrocities to the point that a sensible man,

were he boldly to hope to execute it successfully the second time, would never resolve to make the experiment at such cost- this revolution, I say finds in the hearts of all spectators (who are not engaged in this game themselves) a wishful participation [*eine Teilnehmung dem Wunsche nach*] that borders closely on enthusiasm, the very expression of which is fraught with danger; this sympathy, therefore, can have no other cause than a moral predisposition in the human race.²⁸

Kant refers here primarily to the German intellectuals of his day who sympathized with efforts of the French to free themselves of the old regime and construct for themselves a new one, though who may not have been fully familiar with conditions in France at that time and who chose not to go France themselves and actively participate in events there.²⁹ Thus, we are concerned solely with spectators whose support for the Revolution was a matter of intellectual sympathy and well-wishing. Since these spectators derive no personal gain from the success of the Revolution, they are impartial, and their support can not be explained by self-interest. In fact, their support for the Revolution puts themselves at some risk of persecution. Thus, their enthusiastic support demonstrates that some other cause, a moral cause, must be operative, for no other explanation is possible. Given the existence and efficacy of this cause, there is some support for the hypothesis that the human race is capable of moral improvement. In fact, the widespread existence of such sympathy is itself evidence of moral progress.

The sympathy of the spectators is aroused for the self-determination of the French people in their effort to establish a republican constitution:

28- Immanuel Kant, "An Old Question Raised Again: Is The Human Race Constantly Progressing," trans. Robert Anchor, in *On History*, ed. by Lewis White Beck (New York: Macmillan, 1988), p. 144.

29- For a comprehensive account of the reaction in Germany to the Revolution, see Gooch, *Germany and the French Revolution*.

This moral cause inserting itself [in the course of events] is twofold: first, that of the right, that a nation must not be hindered in providing itself with a civil constitution, which appears good to the people themselves; and second, that of the end (which is, at the same time, a duty) that the same national constitution alone be just and morally good in itself, created in such a way as to avoid by its very nature principles permitting offensive war. It can be not other than a republican constitution, republican at least in essence; it thus establishes the condition whereby war (the source of all evil and corruption of morals) is deterred; and at least negatively progress toward the better is assured humanity in spite of all its infirmity, for it is at least left undisturbed in its advance.³⁰

Kant's primary concern here is the counter-revolutionary interventions of the Revolution's external opponents, and both points he makes support this project. In the absence of a direct threat by the revolutionary regime, any external intervention into the affairs of revolutionary France would violate the French people's right of national self-determination. Further, developments in France pose no such threat to its neighbors. Since the new revolutionary regime is republican, it is inherently non-aggressive.

There is of course a larger issue involved here. It is clear in this passage that the sympathy of the spectators is aroused by the ends of the Revolution and not the means, the use of revolutionary violence. The end of the Revolution is the establishment of a republican constitution under which persons would be treated as ends and not as means. This point is made clear in the Critique of Judgment:

In speaking of the complete transformation of a large people into a state, which took place recently, the word organization was frequently and very aptly applied to the establishment of legal authorities, etc. and even to the entire body politic. For each member in such a whole should be not merely a means, but also a purpose; and while each member contributes to

³⁰- Kant, "An Old Question Raised Again," p. 144-5.

making the whole possible, the idea of that whole should in turn determine the member's position and function.³¹

The non-aggressive character of a republican constitution is merely one aspect, albeit an important one, of its treatment of persons as ends. Since a republican constitution checks the proclivity to offensive war on the part of rulers, it thereby removes one of the greatest obstacles to the treatment of people as ends and not merely as means.

Moreover, given the enthusiasm aroused by the Revolution, it is likely that the revolution will continue to serve as an inspiration to those working for progress towards a more just society. As evidence of the moral progress of humanity, Kant discerns the likelihood that the example set by the Revolution will give rise to further attempts to improve civil society on propitious conditions, for "is too important, too much interwoven with the interest of humanity, and its influence too widely propagated in all areas of the world to not be recalled on any favorable occasion by the nations which would then be roused to a repetition of new efforts of this kind."³²

Now all of this poses the problem of whether it is possible to reconcile Kant's support of the Revolution and its offspring, the first Republic, with his theoretical opposition to revolutionary activity in general. A variety of approaches to this problem are possible and I shall now consider the most promising among them.

At first glance, it would appear that Kant denied that a revolution even took place in France, or, if it did in fact occur, that it was the King

³¹- Kant, *Critique of Judgment*, p. 254. There is some disagreement in this passage as to whether Kant is referring here to the United States or France. Pluhar asserts that it is the former, while most other commentators take it to be the latter. Without taking a stand on this issue, I need merely point out that even if Kant himself did not intend to refer to France here, it is certainly an apt expression of his views on the newly-born Republic in France.

³²- Kant, "An Old Question Raised Again," p. 147.

himself who was the real revolutionary. Kant argues that when Louis the XVI convoked the Estates General, he handed over sovereignty to it, with the consequence that all acts of the Estates General and its successors were the actions of the legitimate sovereign:

Thus, a great error in judgment was made by one of the powerful sovereigns of our time when he attempted to extricate himself from the embarrassment caused by large state debts by leaving it to the people to take over this burden and to distribute it as they saw fit. The natural result was that he handed over to the people legislative authority, not only over taxation, but also over the government, that is, authority to restrain the government from making new debts through the extravagance of war. As a consequence, the sovereignty of the monarch disappeared completely (it was not just suspended) and passed over to the people, to whose legislative Will the property of every subject now became subject.³³

Since the sovereign is not permitted to alter the form of sovereignty, the initial error or misdeed was committed by the King when he called the Estates General into session and thus transferred his sovereignty to them. Once this was done, however, the Estates-General as the new sovereign were free to alter the government as they saw fit and took a course of action in accordance with the a priori principles of justice.

All of this has the flavor of an ad hoc maneuver to defend the First Republic against charges of illegitimacy as the product of an unjust usurpation of power, and it is a highly dubious historical account of the actual development of the Revolution at that. This depiction of the revolutionary struggle conveniently ignores the force that was in fact brought to bear on the French monarchy, forcing it to capitulating to popular demands. As an avid observer of events in France, Kant cannot

³³- Kant, Metaphysical Elements of Justice, p. 113-14.

have been entirely ignorant of these developments. Further, this story cannot account for Kant's well-known support for the American Revolution and the Irish resistance to English rule. Consequently, it is of very limited value in helping us understand how Kant was able to reconcile his concrete political stances with his theoretical commitments, and we need to look elsewhere to find some more general explanation.

This leads us to a second possible explanation of Kant's views. According to this interpretation, Kant believed that the revolution was wrong, but that once it successfully established itself, all persons were obligated to give it their support: "Moreover if a revolution has succeeded and a new constitution has been established, the illegitimacy of its beginning and of its success can not free the subjects from being bound to accept the new order of things as good citizens, and they can not refuse to honor and obey the suzerain [Obrigkeit] who now possesses the authority."³⁴ In this passage, Kant presents himself not only as an opponent of revolution but also as an opponent of counter-revolution, which he certainly was. But this line of thought, which Kant no doubt held, reduces him to cheerleading after the fact. Kant would deny to a revolution in its early stages the very leadership of the enlightened sectors of the population that is absolutely essential to its success.

Kant's stance here is complicated by his acceptance of the dethroned monarch's right to pursue his restoration to power:

The dethroned monarch (who survives such a revolution) can not be held accountable for, much less punished for, his past administration, provided that he has retired to the private life of a citizen of the state and prefers peace and quiet for himself and the state to the foolhardy act of running away

³⁴- Kant, Metaphysical Elements of Justice, p. 89.

in order as a pretender, to attempt the adventure of recovering his kingdom, whether it be through a secretly instigated counterrevolution or through the help of outside powers. If, however, he prefers the latter course of action, his right to do so remains unchallengeable, because the insurrection that deprived him of his possession was unjust.³⁵

If the struggle of the dethroned monarch for restoration to his throne is legitimate because of the wrong done him by his removal from power, then it would seem to follow that those who support the monarch's cause are not doing anything wrong either. Kant asserts that this is not so with respect to the subjects of the new regime, but he does not explain why. Nor is his answer much better as regards other states.

Kant continues this passage as follows: "But whether other powers have the right to join in an alliance in favor of this dethroned monarch merely so that this crime of his people shall not go unpunished and so remain a scandal to all other states and whether they are justified and called upon to use their authority and power to restore the old constitution in every state where a new constitution has been set up as the result of a revolution-- these are questions that come under the Law of Nations."³⁶ Kant answers these questions with a resounding 'No'; counter-revolutions supported by neighboring states are wrong. In the appendix to the Metaphysical Elements of Justice where he discusses the Law of Nations, Kant asserts that punitive wars are impermissible. Further, external support for counter-revolutionary forces violates Preliminary Article #5 of Perpetual Peace, which states that interference by one nation in the internal affairs of another is forbidden. Kant argues that the relation of one state to another state is purely external; unless a state is

³⁵- Kant, Metaphysical Elements of Justice, p. 89.

³⁶- Kant, Metaphysical Elements of Justice, p. 89.

threatened by invasion by another, it has no stake in the outcome of any internal power struggle in that state. All of this fits in well with Kant's opposition to the invasion of France by surrounding powers in support of the monarchy, including his own Prussia. Apparently, the dethroned monarch is to be granted only the right to struggle alone against the new regime, for he can rightfully enlist neither the aid of his compatriots nor of any other nation.

But this position is weakened considerably by three considerations. First, according to the aforementioned Fifth Article, one state can intervene in the affairs of another if that second state falls into two parts, as is usually the case in revolutionary situations where a state becomes split between revolutionary and counterrevolutionary forces. Thus, during any revolutionary process, there is an interval in which external intervention is permitted. Second, one can challenge the assumption on which Kant's argument is based-- that the relations among states are purely external. A revolution in one state might inspire the subjects in a neighboring state to rise up, a possibility that Kant himself acknowledges when he lauds the Revolution as an example for future generations. Thus it is not quite accurate to say that relations between states are wholly external, involving the use of force by one against another. Kant's own advice to the European monarchies of his time was clear-- Reform thyself-- but his theory can be used to justify the alternative of intervention. Finally, revolutionary regimes have historically been possessed of an evangelical fervor that leads them to engage in aggressive wars to spread the gospel. Thus, when faced with a revolutionary regime, a preemptive strike on the part of neighboring states may be justifiable on such grounds. Although our historical experience on these matters begins with the

French Revolution so that the European powers of that time could not have made this argument, this is certainly a reasonable point with regard to the contemporary world, lying well within the framework of Kant's theory.

Finally, this position relies on an oversimplified conception of the actual course of historical revolutions; consequently, it places persons living in the midst of revolutionary upheavals in an impossible position. Revolutions regularly involve some transitional period characterized by dual sovereignty- a condition in which two opposing powers claim and to some degree exercise sovereignty over the population or a segment of it. There is typically a period of time during which the new revolutionary regime is in the process of formation and has not fully displaced the old regime, which still possesses some authority. Thus, a person living in such a situation would seem to owe allegiance to two different sovereigns: the old regime in the process of collapse and the new revolutionary regime in the process of formation.

Kant's prescription of obedience to existing authority provides us no guidance as to which opposing side is entitled to one's support under these circumstances: the old regime on account of the injustice of the revolution or the new regime on account of its progressive nature. During this transitional period, society reverts back to the state of nature. Hence, one might argue that the decision to support one side over another ought to be based on an assessment of which side is more likely to restore the order of civil society. But this will not do, for the ability of one side to restore order is not independent of the the choices of the people within society, but rather rests upon those decisions. Thus, we seem to be reduced

to making an arbitrary choice without moral guidance, a situation that could not satisfy Kant's predilection for rigor.

The most popular interpretive strategy adopted by those seeking to reconcile Kant's rejection of revolution with his support of the French Revolution emphasizes the difference in perspective involved with the two cases. In her Lectures on Kant's Political Philosophy, Hannah Arendt argues that the difference in evaluations here reflects the difference between willing and judging, between the actor and the spectator.³⁷ From the standpoint of the actor who wills a course of action, revolutionary activity is always wrong and thus prohibited. But from the standpoint of the spectator who observes the course of events without any involvement in them and passes judgment upon it, a specific revolution may meet with approval. The spectator's judgment is teleological and historical, not deontological. On such grounds, Kant supported the French Revolution because he deemed it to be historically progressive, representing as it did a movement towards a republican political constitution in which persons are treated as ends and not solely as means. The means used may have been wrong, but the end at which they aimed was laudatory. It was this end that inspired the sympathy of all disinterested observers.

Now it is an easy matter to assert that differences in evaluation derive from differences in perspective, but this does not mean that those different perspectives can be reconciled within the same theoretical framework. It is not clear that this approach resolves the paradox of

³⁷- Hannah Arendt, Lectures on Kant's Political Philosophy, (Chicago: 1982). Riley and Nicholson also adopt this general line in their respective explanations of Kant's support for the French Revolution. See also Sidney Axinn, "Kant, Authority, and the French Revolution," The Journal of the History of Ideas 32 (1971), pp. 423-32.

allowing spectators to support what the actors involved are forbidden to do. Lewis White Beck argues that Kant's position involves a conflict between the teleological imperative of seeking to reform existing societies and the formalism of obeying the powers that be, a conflict between imperfect and perfect obligations that Kant decides in favor of the latter.³⁸ Beck argues that Kant lacks the conceptual resources to resolve the conflict between his ethics and his philosophy of history involved here. As an historical agent committed to the progressive transformation of the state, I seem to be forbidden from taking what is under some circumstances the only efficacious course of action; judgment can not translated into practice.

Kant certainly believes that there is an alternative to revolution from below-- gradual reform from above. But this judgment rests on what are certainly very shaky historical grounds. While it is plausible to suppose that a republican regime with a democratic form of sovereignty may be capable of peacefully reforming itself, the farther we move away from democracy the less plausible the option of gradual reform becomes. There is little evidence that a despotic regime can be reformed without violence either from within or without, or at least the threat of it. With regard to the French Revolution, Kant himself advised the monarchies of Europe that they learn the appropriate lesson and begin the process of reform lest they meet the same fate. Kant's formalism, then, seems to deny moral agents living under a despotic regime the only leverage that could reasonably be expected to produce reform. Internally, Kant's own philosophy of history makes antagonism and conflict the engine of historical progress, thus making revolution a necessary element in the

³⁸- See Beck, "Kant and the Right of Revolution."

process of history. For Kant, "reformative revolutions" are the vehicles of progressive historical change.

In the final analysis, I think Kant's position here is, as it stands, simply untenable, and some commentators have suggested that we must choose between his formalism and teleology on this matter.³⁹ But I think we need not go so far. With a little attention to Kant's own conceptual distinctions, we can construct an alternative position that is compatible with his theory and would have met his practical political needs.

E. Despotism and Civil Society

In his discussion of Kant's views on revolution, Harry van der Linden argues that a state apparatus can be so oppressive as to be said to be in a state of nature vis a vis its subjects; under such circumstances, rebellion may reasonably be considered an effort to establish civil society, rather than overthrow one. Beck adopts a similar stance when he asserts that no rule can be given to cover cases of legitimate rebellion. This view reduces the decision to rebel against the existing sovereign to an arbitrary choice based on one's personal judgment, with a consequent lack of rigor. But it is this arbitrariness of decision and action that one abandons when one enters civil society.

In this section, I propose to sketch a conceptual scheme employing Kant's own categories that will allow us to establish the legitimacy of revolution under despotic regimes and provide the framework for a discussion in my conclusion to this section of extralegal political action under republican regimes. This is not a position that Kant himself

³⁹- For example Beck, "Kant and the Right of Revolution," and van der Linden, Kantian Ethics and Socialism.

adopted, but it is one that he could have adopted with consistency, and I think should have for it has the merit of bringing his theory into line with his personal commitment to the revolutions of his time.

In the previous chapter, we discussed Kant's classification of the form of the state according to the form of its government. There are only two forms of government- despotism and republicanism. On the basis of the a priori principles of justice, Kant argues that a republican constitution is the ideal form of government. This argument suggests a possible strategy for the establishing the legitimacy of revolution under certain conditions.

The despotic form of government violates the a priori principles of justice because, by unifying the sovereign and the ruler in one person, it raises the ruler above the law, rather than subjecting him to it. Consequently, a civil society under a despotic constitution is not subject to the rule of law but to the arbitrary will of a single individual. But as Locke points out in his critique of the Hobbesian commonwealth, despotism is not a form of civil society, because the despot remains in a state of nature with respect to his subjects. In fact, the situation is exacerbated by the despot's possession of the coercive power of the state in addition to any lack of restraint.

Kant himself tacitly recognizes this point. Kant's argument against resistance to existing sovereigns is based on the claim that existing regimes are all empirical instances of the idea of a juridical condition or civil society as defined by the social contract. But as I noted in the last chapter, Kant also holds that "the only constitution which derives from the idea of the original compact, and on which all juridical legislation must be based,

is the republican."⁴⁰ A despotism, then, is not actually an instance of the idea of a juridical condition as defined by the social contract, and therefore the reasoning behind Kant's injunction requiring obedience to existing sovereigns does not hold in such cases.

Rather than construing rebellion against despotism as an abandonment of a pre-existing civil society for the state of nature, Kant should have conceived of it as an effort to establish civil society in the first place. Every person has an obligation to enter into civil society with those with whom he can come into contact and may be coerced into doing so. Given that in a despotic regime the despot can not be said to be in civil society with his fellow persons, he has an obligation to leave the state of nature and may be coerced into doing so. A rebellion that aims at the establishment of a republican constitution is nothing more than a legitimate effort on the part of the despot's subjects to force the despot to leave the prevailing state of nature and enter into civil society with them.

Nicholson argues that the claim that one can force the sovereign into acting justly violates the Categorical Imperative. By resisting the sovereign, the subject treats the sovereign as a means and not as an end for the sovereign "cannot share the end of being forced to act justly."⁴¹ But this construal clearly involves a conflation of means (the use of force) and ends (justice). Further, if it were impermissible to coerce a person into acting justly, then civil society itself would be impossible, for that is exactly what it involves, the use of coercion to secure the conditions of public justice. By definition, a duty of justice is a duty that one can be forced to perform. The primary duty of justice is the obligation to enter into civil

⁴⁰- Kant, Perpetual Peace, p. 11.

⁴¹- Nicholson, "Kant on the Duty Never to Resist the Sovereign," p. 222.

society with one's fellows, a duty that applies as much to the despot as to any other person.

F. Conclusion

The approach I have just outlined has obvious limitations in that it serves to legitimate only those revolutions that are directed against despotic regimes. While this is precisely the situation that Kant and his contemporaries faced and that continues to plague many peoples today, the attention of those of us in the West today has shifted from a focus on despotism to a concern with the citizen's relation to the laws of modern republican and liberal democratic regimes. Consequently, I will complete the project I began in the last section by discussing the nature and extent of permissible disobedience to such regimes.

Certainly, formally republican regimes are capable of a degree of corruption and brutality rivaling that of any despotic regime. Further, a republican constitution is not necessarily democratic, for it is compatible with all the different forms of sovereignty. Finally, even a republican regime with *de jure* democratic sovereignty can be a *de facto* oligarchy or, more accurately, plutocracy, which is the problem with modern bourgeois democracies. According to Kant, it would be wrong under such circumstances to resort to violence in order to redress the wrongs committed by the state and reform its operations. This may not satisfy many an observer, and it certainly does not satisfy this one.

The problem we face here is the necessity of maintaining both political authority and moral autonomy in the context of an imperfect civil society. This raises serious conceptual problems within Kant's theory; nonetheless I think we have already provided the materials for a

satisfactory resolution of these problems. We need a categorial scheme that captures the different mixes of legitimacy and illegitimacy in existing civil societies in such a way that one's decision to disobey the law and the manner in which that disobedience manifests itself can be guided by well-grounded principles, rather than being reduced to a matter of arbitrary judgment. As I pointed out in the second section of this Chapter, careful attention to the differences among civil disobedience, non-violent resistance, and revolution may enable us to resolve some of the issues involved here. In short, I will argue that non-violent resistance is justified with regard to formally oligarchic and monarchic republican regimes, whereas civil disobedience is legitimate with respect to formally democratic republics that are plutocratic in operation.

Non-violent resistance combines the rejection of established authority with the principled repudiation of violent methods of opposing that authority, which places it somewhere between civil disobedience and rebellion. This suggests the possibility of rejecting the authority of the existing sovereign without abandoning civil society and returning to a state of nature. One's refusal to recognize existing positive law as binding in any manner constitutes the rejection of the authority of the existing sovereign, but this is combined with a renunciation of the use of violence, thus preserving the monopoly on the use of coercion enjoyed by the state. The state of nature is characterized by the lack of such a monopoly; instead every person possesses the right to use coercion. The non-violent resister, however, repudiates that right, while still not accepting the authority of the state.

We can apply this conception of non-violent resistance to a republican regimes with a non-democratic form of sovereignty. Given

that the sovereignty exercised by such a regime is undemocratic, the regime has no authority to bind its subjects to the performance of the law, and the subjects of such a regime are justified in repudiating it. But in order not to return to the state of nature, those subjects must at the same time repudiate the use of violence.

We have already discussed civil disobedience to some extent in the second section of this chapter. There I put forth a fairly traditional conception of civil disobedience as combining the acceptance of the authority of the law and the principled violation of it. The civilly-disobedient person seeks to express her fidelity or allegiance to the prevailing system of law in general, even while she rejects the legitimacy of a particular law or action of the government. This tightrope act is accomplished by publicly violating a particular law as a protest against some injustice and then accepting one's punishment as determined by that law. The unjust character of a specific law or action of the government justifies the violation of the law, while one's acceptance of the legitimacy of the existing authority requires that one accept one's punishment for that violation. This conception does find some textual basis in the Kantian corpus and is not inimical to even his exacting demand for obedience.

Now such political action is quite congenial to the practice of politics under liberal democratic regimes. Since sovereignty under such regimes is at least formally democratic, the laws promulgated therein are binding upon the subjects of the regime. But since such regimes are imperfect instances of the ideal, the actual laws may be unjust, and consequently one has no duty to obey them. This tension is resolved by

the acceptance of authority combined with the rejection of law as expressed in acts of civil disobedience.

Now I must confess that I am not fully satisfied with even this rather extensive revision of Kant's position and would like to be able to argue on Kantian grounds that violent revolution is permissible against any corrupt and brutal regime, regardless of its form of government or sovereignty. I think my revision of Kant, based as it is on formal categories, simply underestimates the ability of a regime, even a formally democratic one, to institutionalize systematic brutality against those living under its rule. Unfortunately, this also seems to me to be the best we can do and still remain within Kant's theoretical framework.

CHAPTER VIII

CONCLUSION: THE SOCIAL CONTRACT AND HISTORY

A. Introduction

In the last Chapter, I examined Kant's views on the limits that ought to be placed on our efforts to transform flawed civil societies into a closer approximation of the ideal. This leads one quite naturally to wonder whether history is friendly to such activity. Is the course of history such that all our best efforts to improve society will come to naught or does it favor us in this regard? If the former is the case, then Kant presents us with an impossible task; but if it be the latter, then we may take heart in spite of all our setbacks and failures. In this, the final chapter of my dissertation, I will wrap up my reconstruction by briefly situating the social contract within Kant's conception of history.

For Kant, the ultimate end of politics and history is the abolition of war and the establishment of an enduring peace among rational agents. This is achieved by replacing the arbitrary violence of the state of nature with a juridical condition in which disputes are settled by appeal to public law, i.e. by the establishment of civil society as defined by the social contract. Up to this point, I have considered primarily the relations among persons within a civil society and its internal structure, with only a few references to relations among states. In doing so, I have abstracted from the relations among different states, thereby unduly limiting the scope of the social contract, which encompasses all rational agents. Even with the establishment of particular civil societies over the face of the globe and their continuing internal improvement, the goal of peace will

remain forever elusive unless different states remove themselves from the state of nature, just as their individual citizens have already done by their establishment. The establishment of peace among states is essential to the establishment of justice for all rational agents. Thus, in the next section, I will examine Kant's proposal for the establishment of a federation of states that would be dedicated to the maintenance of peace among its members and relate this to his conception of the social contract.

Unless it is possible for us to approximate the ideal, the ideal is an empty figment of the imagination, for it can not be practical. But given Kant's thoroughgoing determinism in the realm of appearances, including history, the process of approximation must not only be possible but causally necessary. Thus, Kant's conception of the telos or direction of history provides the capstone to his political theory. By reconciling the transcendent character of the idea with the immanent stream of historical development, Kant's philosophy of history provides us with the hope that our actions will be efficacious in contributing to the slow and gradual evolution towards peaceful coexistence within ideal civil society. In the third section, I will discuss the process that Kant believes will culminate in the realization of this political condition.

Finally, I will conclude with some observations as to the status of these speculations within Kant's critical philosophy. Kant's use of teleology here is essentially practical and not theoretical in that it does not provide us with any knowledge of the future course of human affairs. We are justified in thinking in this way solely on practical grounds derived from the needs of our practical reason.

B. Peace and the Federation of States

The establishment of some form of international political organization that can eliminate the state of nature is a fundamental problem of politics, without the solution of which no internally just civil society can be established and maintained. A stable and just civil order and its members will always be susceptible to the injustice of violence committed against it by other states with whom it has no law-governed relations. Further, the pressure of defense from external threats, real and imagined, and the excuses thereby provided will always serve to undermine the exercise and protection of the rights of individual citizens. Consequently, "the problem of establishing a perfect civic constitution is dependent upon the problem of a lawful external relation among states and can not be solved without the solution of the latter problem."¹

As I noted in the third chapter, it is a duty of justice for all rational agents to enter into a juridical condition with all others with whom they may come into contact; that is, they must establish a civil society. Under such a condition, the rights of individuals (most importantly, the right of property), are established and secured, and all interpersonal disputes are adjudicated on the basis of a public law that can command the universal assent of rational agents. Arbitrary violence is replaced by law and the condition of constant war by the condition of peace. As long as individuals live under separate states whose relations are not governed by law, however, it can not be said that the duty to enter into civil society has

¹- Kant, "Idea for a Universal History," p. 18.

been fully discharged, for no one will be in a full-fledged juridical condition with all other rational agents. In particular, one will not occupy that position vis a vis members of civil societies other than one's own.

Now it is not quite accurate to say that the citizens of different states are wholly in a state of nature vis a vis each other. Individuals generally encounter each other in the midst of some civil society or other, and their interactions are subject to the public law of that particular state.² But insofar as their respective home states are in a state of nature vis a vis each other, neither can they be truly said to be in a juridical condition with one another. Further, the public law governing interpersonal relations will be neither universally-legislated nor universally-binding, a marked deviation from the idea of the social contract as including all rational agents who may come into contact with each other.

In the absence of a some supra-state political organization, states remain in a state of nature with each other. Even though hostilities may not have broken out, this condition is in effect one of constant war with individual states having the right to act in any manner they deem fit, unencumbered by any enforceable legal obligations towards other states and their citizens. Just as individuals are obligated to leave the anarchic condition of the state of nature, so must states do likewise; otherwise disputes can only be settled by violence and not through adjudication in accordance with public law as commanded by the principles of right. The social contract must be completed by the political integration of individual states.

²- There are of course some cases in which interactions among persons do not take place in the context of any civil society and its laws, on the high seas for instance.

Kant states the whole of his reasoning on this matter quite succinctly in Section 54 of the Metaphysical Elements of Justice:

(1) With regard to their external relationship to one another, states are naturally in a non-juridical condition (like lawless savages).

(2) This condition is a state of war (the right of the stronger), even though there may not be an actual war or continuous fighting (hostility). Nevertheless (inasmuch as neither side wants to have it better), it is still a condition that is in the highest degree unjust, and it is a condition that states are obligated to abandon.

(3) A league of nations in accordance with the Idea of an original social contract is necessary, not, indeed, in order to meddle in one another's internal dissensions, but in order to afford protection against external aggression.

(4) But this alliance must not involve a sovereign authority (as in a civil constitution), but only a confederation. Such an alliance can be renounced at any time and therefore must be renewed from time to time. This is a right that follows as a corollary in subsidium from another right, which is original, namely, the right to protect oneself against the danger of becoming involved in a actual war among the adherents of the confederation.³

I quote this passage at length because it is Kant's clearest and most concise statement on this matter and worthy of some detailed consideration. In my discussion of Kant's position, I will follow the outline presented in this passage.

I have already discussed somewhat points one and two of Section 54. Since states are not subject to a public law enforced by some recognized authority, they occupy a state of nature. The state of nature is a state of war even if there are no hostilities for there always exists the threat of them; consequently, states "may be judged to injure another merely by their coexistence in the state of nature (i.e. while independent of external

³- Kant, Metaphysical Elements of Justice, p. 116.

laws)."⁴ But just as individuals ought to exit the state of nature and relinquish their "lawless freedom" for the "rational freedom" of the juridical condition, so individual states are obligated to do likewise: "Each of them may and should for the sake of its own security demand that the others enter with it into a constitution similar to the civil constitution, for under such a constitution each can be secure in his right."⁵

This civil constitution, however, differs markedly from that which governs the internal affairs of a particular civil society. One might expect Kant to espouse some conception of world republicanism, but instead he opts for a loosely-connected league of states dedicated solely to the preservation of peace among its members and their protection from external threats. This league would have no legislative authority over its members and would be forbidden to interfere in their internal affairs. Membership in the league would be purely voluntary, with each state retaining the right to quit the league "at any time." As we shall see, this proposal is far from satisfactory.

Kant's basic claim that states must leave the state of nature and enter into a condition governed by "a constitution similar to the civic constitution" in accord with "the Idea of the original social contract" suggests a far higher degree of political integration than that provided for by his conception of a league of states. The idea of the social contract governs relations between persons and not states, and it is only by treating each state as a "moral" person analogous to a real person that Kant is able to extend this notion to an agreement among states. But it is far from clear that this analogy is appropriate. If we take the idea of the social contract

⁴- Kant, Perpetual Peace, p. 16.

⁵- Kant, Perpetual Peace, p. 16.

seriously, then we must conclude from the universality of its application that all persons ought to enter into civil society with each other, unmediated and undivided by particular states. In his Fifth Thesis on history, Kant himself recognizes this point: "The greatest problem for the human race, to the solution of which Nature drives man, is the achievement of a universal civil society which administers law among men."⁶ Now the analogy of states with persons may be useful in thinking about the structure of this projected "universal civil society," but Kant uses this analogy to produce only a pale reflection of the civil constitution established by the idea of the social contract, one hardly deserving of the name.

Kant's proposed league is devoid of any real political authority, for it lacks the power to promulgate and enforce public laws on its members, such as is established by a civil constitution. The absence of legislative authority has far-reaching consequences for the viability of Kant's project. Kant argues that each member of the league will be protected against external aggression by the combined force of the league as a whole rather than being dependent solely on its own resources: "In a league of nations, even the smallest state could expect security and justice, not from its own power and by its own decrees, but only from this great league of nations (Foedus Amphictyonum) from a united power acting according to

⁶- Kant, "Idea for a Universal History," p. 16. My emphasis on the theoretical necessity of a universal civil society for Kant is further bolstered by his claim that the whole world can be conceived of as an original community of land: "any piece of land that is possessed by an inhabitant of the earth and on which he lives is only a part of a determinate whole, and as such, everyone can be conceived as originally having a right to it."(Kant, Metaphysical Elements of Justice, p. 125) Since property is only possible in civil society, then all inhabitants ought to enter into a universal civil society with each other. Until that time, all claims to property represent nothing more than arbitrary usurpations on the part of individuals and their respective states.

decisions reached under the laws of their united will."⁷ But where is this "united power acting according to the decisions reached under their united will" to be found in the league of states? The answer is nowhere. Under the social contract, the united will simply is the legislative authority binding civil society together, but this same authority is lacking in Kant's proposed league of states.

This absence of real unity is further underscored by the right of exit that each state retains upon entering into the league. By granting to each state the right to exit the league whenever it so chooses, a right not similarly granted to individual persons under the terms of the social contract, Kant essentially preserves the state of nature among states. As long as states are permitted to enter and exit the league as they please, each individual state will remain the arbiter of its own fate and will retain the right to act in any manner it sees fit, being checked only by the forces arrayed against it. Consequently, the member-states of the league will not have forsworn the use of violence, as is required of persons upon entrance into the social contract. Moreover, this provision seriously weakens the ability of the league to perform its assigned task. No state can seriously expect the united power of the whole to protect it when each state is able to exempt itself from such service as it sees fit. Ultimately, the only bond available to this league is the narrow calculations of self-interest by each member-state. While self-interest may, as Kant argues, drive each state into establishing the league, it can hardly serve as the glue that holds it together over the long haul.

⁷- Kant, "Idea for a Universal History," p. 19.

In sum, Kant's league of states lacks every distinguishing characteristic of a civil constitution. It seems a bit far-fetched, then, to describe this arrangement as similar to that established by a civil constitution. Rather than a social contract among states, we have little more than an alliance that is always at risk of being scattered to the four winds.

In a curious passage in section 61 of the Metaphysical Elements of Justice, Kant himself acknowledges the validity of this point. Kant begins by pointing to a concrete historical approximation of what he calls a "permanent congress of states" (i.e., his proposed league of states) and then noting its failure.⁸ This paragraph is then followed by another in which he reiterates the limitations of this "congress" and implicitly commits himself to the moral necessity of a closer union of states, citing the United States as a example of this sort of union:

A congress in the sense intended here is merely a free and arbitrary combination of various states that can be dissolved at any time. As such, it should not be confused with a union (such as that of the American states) that is founded on a political constitution and which therefore can not be dissolved. Only through the latter kind of union can the Idea of the kind of public Law of nations that should be established become a reality, so that nations will settle their differences in a civilized way by juridical process, rather than in the barbaric way (of savages), namely, through war.⁹

The fulfillment of the social contract, then, in Kant's own mind, requires more than just the establishment of a league of states; it requires their real union.

⁸- Kant, Metaphysical Elements of Justice, p. 124. Kant refers to the assembly of states-general at the Hague in the first half of the eighteenth century.

⁹- Kant, Metaphysical Elements of Justice, p. 124-5.

In fairness, Kant does have his reasons for settling for the unsatisfactory arrangement of his proposed league of states. First, he argues that it is unrealistic to expect that the sovereigns of individual states will give up their authority and transfer it to some higher political entity:

For states in their relation to each other, there can not be any reasonable way out of the lawless condition which entails only war except that they, like individual men, should give up their savage (lawless) freedom, adjust themselves to the constraints of public law, and thus establish a continuously growing state consisting of various nations (*civitas gentium*), which will ultimately include all the nations of the world. But under the idea of the law of nations they do not wish this, and reject in practice what is correct in theory. If all is not to be lost, there can be, then, in place of the positive idea of a world republic, only the negative surrogate of an alliance which averts war, endures, spreads, and holds back the stream of those hostile passions which fear the law, though such an alliance is in constant peril of their breaking loose again.¹⁰

This argument, however, explicitly accepts the subordination of considerations of justice to empirical judgments of what is realistic in the near future ("nations reject in practice what is correct in theory"). In putting forth this argument, Kant succumbs to the very same weakness that he so often warns us against-- subordinating the ideal to the real, theory to practice-- leaving us with only a "surrogate" arrangement so that something can be salvaged.

But we are concerned here with the ideal, the integrity of which ought to be preserved and not diluted by the considerations he adduces. Nor is it clear that he need do so. Rather than just accepting the intransigence of existing states by conceding that the league of states is the end-point of

¹⁰- Kant, *Perpetual Peace*, pp. 19-20.

our action, Kant could have argued that this is nothing more than a necessary stepping-stone to the final goal of a world republic, a position that would better accord with the idea of a social contract and his own evolutionary view of history. Kant makes a similar point in his own discussion of despotism, maintaining that despotism, though contrary to the principles of justice, has served historically to accustom persons to the authority of law.¹¹ Similarly, Kant could have argued that the league of states, while inadequate in itself, serves the historical purpose of accustoming states to higher level of political integration and the rule of international law, thus paving the way for the establishment of universal civil society. The establishment of the league of states would then be a necessary step in the construction of more-encompassing political and legal institutions in the form of a world republic. This position would accord well with his conception of an idea as model for slow, gradual approximation in history while maintaining the purity of the ideal.

Kant's second argument is a more serious one and does not suffer from any inconsistency with the rest of his theory. Kant argues that, because of the vast extent of the territory it would cover, a world republic would eventually degenerate into a world tyranny subversive of the principles of right and from there slide into anarchy: "Although this condition is itself a state of war (unless a federative union prevents an outbreak of hostilities), this is rationally preferable to the amalgamation of states under one superior power, as this would end in one universal monarch, and laws always lose in vigor what government gains in extent; hence a soulless despotism falls into anarchy after stifling the seeds of the

¹¹- Kant, Perpetual Peace, p. 38.

good."¹² Technological advances in communication and travel have probably reduced the force of this argument somewhat, but Kant does display a sensitivity in this argument to the serious problem of centralization and decentralization inherent in any democratic polity. Following Rousseau, Kant recognizes that the more remote the government is from the individual citizen, the less responsive and accountable and the more burdensome it is to him or her.¹³ The amalgamation of smaller political units into larger ones increases the remoteness between government and individual citizen, with the extreme limit being reached at the level of the world as a whole. In response to these concerns, Kant reaches for the correct solution of this problem- some type of federation or confederation of states- but fails sufficiently to bind together the political units of the world system.

C. The Mechanism of History

Kant is not satisfied simply to advance a scheme for the establishment of a lasting peace among states. After setting forth his proposal, he proceeds to argue that his proposed arrangement will inevitably be realized in the course of history. This latter claim is implied by the combination of his acceptance of the proposition that ought implies can along with his commitment to determinism at the phenomenal level.

In order for the idea of the social contract to be practical, Kant must show that civil society can be gradually transformed into a closer and closer approximation of the ideal defined by the contract. Since one is not

¹²- Kant, Perpetual Peace, p. 31. See also Metaphysical Elements of Justice, p. 124.

¹³- For Rousseau's views on this matter, see The Social Contract (Book II, Chapter 9), pp. 90-93.

obligated to do that which one cannot do, one would not be obligated to promote the end of perpetual peace if one's actions could not possibly contribute to its realization. Thus Kant must demonstrate that it is possible to establish an enduring peace in accord with the social contract, or at least its approximation.¹⁴ But given his thoroughgoing determinism, the entire course of history is determined in accordance with universal laws of nature, and consequently any thing or event that is contrary to the operation of those laws is impossible, not logically impossible but causally impossible. Thus, in order to prove that perpetual peace can be achieved, Kant must demonstrate that the process of history will inevitably lead to a closer and closer approximation of the ideal. In order to show how this is to come about, the historical process must be described purely in terms of natural necessity.

For Kant, then, "the guarantee of perpetual peace is nothing less than that great artist, nature (*natura daedala rerum*)."¹⁵ Nature provides the mainspring of cultural and political development in the form of humanity's unsociable sociability-- "their propensity to enter into society, bound together with a mutual opposition that threatens to break up the society."¹⁶ This characteristic draws persons into society with each other, but it also makes that society tumultuous. Human social interactions are

¹⁴- This raises a rather tricky point in my interpretation of Kant. Kant clearly believes that his proposal for a league of states that would establish and guarantee a permanent peace is realizable. On the other hand, an ideal is never fully realizable in history, but only an ever-closer approximation to it. These two points are not contradictory because Kant, as I have already demonstrated, did not really believe that his proposal for a league of states was the ideal arrangement; rather it was the only feasible one. Thus, we can either talk about the realization of Kant's proposal for perpetual peace or the gradual approximation of ideal civil society in history. In either case, my point still holds- Kant needs to show that the course of history inevitably leads to whichever of these two goals we specify. I have tried to frame my discussion so that it finesses this point.

¹⁵- Kant, Perpetual Peace, p. 24.

¹⁶- Kant, "Idea for a Universal History," p. 15.

analogous to the interaction of physical matter in that both are governed by opposing forces of attraction and repulsion. Human beings are drawn into society by "an inclination to associate with others, because in society he feels himself to be more than man, i.e. as more than the developed form of his natural capacities."¹⁷ But countering this natural inclination of attraction is a force of repulsion in the form of each persons' desire "to have everything to according to his own wish." Expecting opposition on all sides, individuals are forced to overcome their natural slothfulness and develop their talents to the fullest.

Without the regulation of human affairs, human society is impossible, for the unsociable nature of persons will always place the existence of society at risk. The constant quarrelling among different persons, each seeking to have his or her own way, produces a continual disorder that threatens to tear apart the fabric of social life. Consequently, individuals are eventually forced to submit themselves to public law backed up by irresistible force in order to overcome their perpetual discord and maintain the continued existence of society. This is reinforced by external pressure from other peoples, which makes civil society necessary for mutual self-defense against external aggressors.

Similar forces are at work with respect to different states. Every state exists in a state of nature with every other state. By its very existence, each state constitutes a threat to its neighbors, which must constantly prepare to defend themselves against that threat. Eventually, open warfare amongst neighboring states breaks out. The continual devastation of recurring wars and the bankruptcy generated by constant preparation for

¹⁷- Kant, "Idea for a Universal History," p. 15.

war will eventually lead states to the conclusion that they must leave the state of nature prevailing in the international arena and construct political institutions that will rectify that situation. Thus, states will slowly be led to enter into a federation of states from pure self-interest and not from considerations of right.

The establishment and spread of republicanism serves to strengthen and greatly advance this process, for, as I noted in Chapter Five, republican regimes are inherently inclined against war. No state "can neglect its internal cultural development without losing power and influence among the others," a loss that in the prevailing state of nature among states could threaten its very survival. Thus, rulers are forced to reform the governments of their respective states not from good intentions but from basic necessity. These reforms inevitably lead to the organization of existing civil societies in accordance with the principles of right, thus greatly increasing the freedom of individuals with beneficial effects for the entire society. Kant adopts the position of Adam Smith here: the private pursuit of self-interest is coordinated by the invisible hand of the market to produce the greater good of the whole. Any interference with personal freedom would have the direst consequences for the strength of the state, for "when the citizen is hindered in seeking his own welfare in his own way, so long as it is consistent with the freedom of others, the vitality of the entire enterprise is sapped, and therewith the powers of the whole are diminished."¹⁸ Since the republican constitution is the only one that accords with the principles of justice, existing states will also undertake to

¹⁸- Kant, "Idea for a Universal History," p. 22.

reform themselves by adopting such constitutions, and republicanism will slowly spread across the face of the Earth.

This, in brief, is the process that Kant expects to lead to world peace, and at no point in his depiction of it does he allow moral motives to enter into his scheme. Since pure practical reason belongs only to noumenal agents, Kant can not allow himself the liberty of attributing such motives to phenomenal historical agents. Only natural causes, i.e. sensuous motives, are acceptable in the characterization of this historical process.

With the development of weapons of mass destruction, the problem of establishing peace has acquired increased urgency in our time. While we may not be as sanguine today as Kant was about the pacific effects of unrestrained capitalist commerce, there is fortunately some evidence that Kant's predictions and hopes are not wholly unfounded. The latter half of the twentieth century has seen increased political and economic integration, most notably, in the establishment of international political and legal institutions. However weak and open to manipulation these institutions may be at the present time, they do hold out the prospect of and provide the basis for stronger institutions in the future that could check the proclivity to war and aggrandizement.

D. Conclusion

As I noted in the second chapter, Kant's division of being into phenomena (the realm of nature) and noumena (the realm of freedom) allows him to resolve the conflict between freedom and determinism, as expressed in the third antinomy. As noumenal agents, we are free and subject to the dictates of pure practical reason, even though when considered as phenomena our actions are causally determined in strict

accordance with universal laws of natural necessity. We may be held responsible for our actions because as noumena we construct phenomenal nature through the activity of synthesis. Essentially, Kant's philosophy of history is the application of the resolution of that antinomy to history and society. He reveals something of this in the opening lines of his Idea for a Universal History from a Cosmopolitan Point of View:

Whatever concept one may hold, from a metaphysical point of view, concerning the freedom of the will, certainly its appearances, which are human actions, like every other natural event are determined by universal laws. However obscure their causes, history, which is concerned with narrating these appearances, permits us to hope that if we attend to the play of freedom of the will in the large, we may be able to discern a regular movement in it, and that what seems complex and chaotic in the single individual may be seen from the standpoint of the human race as a whole to be a steady progressive though slow evolution of its original endowment.¹⁹

This application is effected through the use of teleology as the supersensible substrate of the sensible world, with the telos of history uniting the freedom of agents with the mechanism of nature:

Hence an immense gulf is fixed between the domain of the concept of nature, the sensible, and the domain of the concept of freedom, the supersensible, so that no transition from the sensible to the supersensible (and hence by means of the theoretical use of reason) is possible, just as if they were two different worlds, the first of which can not have any influence on the second; and yet the second is to have an influence on the first, i.e., the concept of freedom is to actualize in the world of sense the purpose enjoined by its laws. Hence it must be possible to think of nature as being such that the lawfulness in its form will harmonize with at least the possibility of the purposes that we are to achieve in nature in according to laws of freedom. So there must after all be a basis uniting the supersensible that underlies nature

¹⁹- Kant, "Idea for a Universal History," p. 11.

and the supersensible that the concept of freedom contains practically, even though the concept this basis does not reach cognition of it either theoretically or practically and hence does not have a domain of its own, though it does make possible the transition from one way of thinking in terms of principles of nature to our way of thinking in terms of principles of freedom.²⁰

The transition from freedom to nature is provided by the concept of telos or purpose of history. Through this concept, we are provided with no theoretical knowledge; rather, it serves as the basis for a practical faith in the prospects for the success of our historical endeavors, a faith that is necessary for action.

Reason possesses no compelling theoretical interest in formulating any conjectures about the direction of history; rather this interest is derived from the needs of practical reason alone. We possess no theoretical insight into the direction of history, for "we do not infer or observe this providence in the cunning contrivances of nature." Such insight would require an understanding of the supersensible that is beyond our reach; instead, we must supply the design from our own minds, in accordance with the ends specified by practical reason, and "conceive of its possibility by analogy to actions of human art." Thus, while the telos of history "is transcendent from a theoretical point of view; from a practical standpoint, with respect, for example, to the ideal of perpetual peace, the concept is dogmatic and its reality is well established, and thus the mechanism of nature may be employed to that end."²¹ Our thinking about the teleology of history, then, is regulated by our need to assume the possibility of the ideas and ends specified by practical reason.

20- Kant, Critique of Judgment, pp. 14-15.

21- Kant, Perpetual Peace, pp. 25-26.

BIBLIOGRAPHY

Arendt, Hannah. Lectures on Kant's Political Philosophy. Chicago: University of Chicago Press, 1982.

Aune, Bruce. Kant's Theory of Morals. Princeton: Princeton University Press, 1979.

Axinn, Sidney, "Kant, Authority, and the French Revolution." The Journal of the History of Ideas, 32 (1971), pp. 423-32.

Barker, Ernest (ed.). The Social Contract. Oxford: Oxford University Press, 1948.

Beck, Lewis White. A Commentary on the Critique of Practical Reason. Chicago: University of Chicago Press, 1960.

_____. "Kant and the Right of Revolution", Journal of the History of Ideas 32 (1971), pp. 411-422.

_____. Studies in the Philosophy of Kant. Indianapolis: Bobbs-Merrill, 1965.

Bedau, Hugo Adam (ed.). Civil Disobedience: Theory and Practice. New York: Macmillan, 1969.

Carnois, Bernard. The Coherence of Kant's Doctrine of Freedom, trans. David Booth. Chicago: University of Chicago Press, 1987.

Cassirer, Ernst. The Question Of Jean-Jacques Rousseau. Bloomington: Indiana University Press, 1967.

_____. Rousseau, Kant and Goethe: Two Essays. Princeton: Princeton University Press, 1947.

Deleuze, Gilles. Kant's Critical Philosophy, trans. Hugh Tomlinson and Barbara Habberjam. Minneapolis: University of Minnesota Press, 1984.

Fackenheim, Emil C. "Kant's Conception of History." Kantstudien 48 (1957), pp. 391-398.

Förster, Eckart (ed.). Kant's Transcendental Deductions. Stanford: Stanford University Press, 1989.

- Gallie, W. B. "Kant's View of Reason in Politics". Philosophy 54 (1979), pp. 19-33.
- Galston, William. Kant and the Problem of History. Chicago: University of Chicago Press, 1975.
- Gerresheim, Eduard (ed.). Kant 1724/1974: Kant as a Political Thinker. Bonn: Inter-Nationes, 1974.
- Goldmann, Lucien. Kant. Trans. Robert Black. London: New Left Books, 1971.
- Gooch, G. P. Germany and the French Revolution. London: Longmans, Green, and Co., 1920.
- Gough, J.W. The Social Contract, 2nd ed. Oxford: The Clarendon Press, 1957.
- Gregor, Mary. Laws of Freedom: A Study of Kant's Method of Applying the Categorical Imperative in the *Metaphysik der Sitten*. New York: Barnes and Noble, 1963.
- Hancock, Roger. "Kant on Civil Disobedience". Idealistic Studies, 5 (1975), pp. 164-176.
- Hegel, G. W. F. Natural Law. Trans. T. M. Knox. Philadelphia: University of Pennsylvania Press, 1975.
- Hobbes, Thomas. The English Works of Thomas Hobbes. Ed. William Molesworth.
- _____. Leviathan. London: Penguin, 1985.
- Howard, Dick. From Marx to Kant. Albany: SUNY Press, 1985.
- Jaspers, Karl. Kant. New York: Harcourt, Brace, and Jovanovich, 1962.
- Kant, Immanuel. Anthropology from a Pragmatic Point of View. trans. Mary Gregor. The Hague: Martinus Nijhoff, 1974.
- _____. The Critique of Judgement. Trans. Werner Pluhar. Indianapolis: Hackett, 1987.
- _____. The Critique of Practical Reason. Trans. Lewis White Beck. Indianapolis: Bobbs-Merrill, 1956.

_____. The Critique of Practical Reason and Other Writings in Moral Philosophy. Trans. and ed. Lewis White Beck. Chicago: University of Chicago Press, 1949.

_____. The Critique of Pure Reason. Trans. Norman Kemp Smith. New York: St. Martins, 1965.

_____. The Doctrine of Virtue. Trans. Mary Gregor. New York: Harper and Row, 1964.

_____. The Foundations of the Metaphysics of Morals. Trans. Lewis White Beck. Indianapolis: Bobbs-Merrill, 1980.

_____. Immanuel Kants Werke. Berlin: Brunno Cassirer, 1913.

_____. Kant's Gesammelte Schriften. Berlin and Leipzig: Preussische Akademie der Wissenschaften, 1902-08.

_____. Kant's Political Writings. Trans. H. B. Nisbet and ed. Hans Reiss. Cambridge: Cambridge University Press, 1970.

_____. Lectures on Ethics. Trans. Louis Infield. New York: Harper and Row, 1973.

_____. Logic. Trans. Robert S. Hartman and Wolfgang Schwarz. New York: Dover, 1988.

_____. The Metaphysical Elements of Justice. Trans. John Ladd. Indianapolis: Bobbs-Merrill, 1968.

_____. On History. Ed. and trans. Lewis White Beck. New York: Macmillan, 1957.

_____. Perpetual Peace. Trans. Lewis White Beck. Indianapolis: Bobbs-Merrill, 1957.

_____. Philosophical Correspondence 1759-99. Ed and trans. Arnulf Zweig. Chicago: University of Chicago Press, 1967.

_____. Religion within the Limits of Reason Alone. Trans. T.M.Greene and Hoyt H. Hudson. New York: Harper Bros.,1960.

Korner, Stephan. Kant. New Haven: Yale University Press, 1982.

Lehrer, Keith (ed.). Freedom and Determinism. Atlantic Highlands: Humanities Press, 1976.

- Lessnof, Michael. The Social Contract. London: Humanities Press, 1987.
- Locke, John. Essay Concerning Human Understanding. New York: Dover, 1959.
- _____. Two Treatises of Government. Cambridge: Cambridge University Press, 1988.
- Ludwig, Bernd. "The Right of State in Immanuel Kant's *Doctrine of Right*." Journal of the History of Philosophy, 28 (1990), pp. 403-15.
- Macpherson, C. B. The Political Theory of Possessive Individualism. Oxford: Oxford University Press, 1964.
- Marcuse, Herbert. Studies in Critical Philosophy. Boston: Beacon Press, 1973.
- Marx, Karl. Critique of the Gotha Programme. New York: International Publishers, 1966.
- Mill, John Stuart. Utilitarianism. Indianapolis: Bobbs-Merrill, 1983.
- Murphy, Jeffrie G. Kant: The Philosophy of Right. London: Macmillan, 1970.
- "Hume and Kant on the Social Contract". Philosophical Studies 33 (1978), pp. 65-79.
- Nicholson, P. P. "Kant on the Duty Never to Resist the Sovereign". Ethics, 77 (1976), pp. 214-230.
- Oakeshott, Michael. Hobbes on Civil Association. Oxford: Oxford University Press, 1975.
- O'Neill, Onora. Constructions of Reason: Explorations of Kant's Practical Philosophy. Cambridge: Cambridge University Press, 1989.
- Paton, H. J. The Categorical Imperative: A Study in Kant's Moral Philosophy. Philadelphia: University of Pennsylvania Press, 1971.
- Rapaczynski, Andrej. Nature and Politics. Ithaca: Cornell University Press, 1987.
- Rawls, John. "Kantian Constructivism in Ethics." Journal of Philosophy, 77 (1980), pp. 515-71.

_____. A Theory of Justice. Cambridge, MA: Harvard University Press, 1971.

Reiss, Hans. "Kant and the Right to Rebellion." Journal of the History of Ideas, 17 (1956), pp. 179-192.

Riley, Patrick. The General Will Before Rousseau. Princeton: Princeton University Press, 1988.

_____. Kant's Political Philosophy. Totowa, N.J.: Rowman and Littlefield, 1983.

_____. "On Susan Shell's 'Kant's Theory of Property'". Political Theory, 6 (1978), pp. 91-100.

_____. Will and Political Obligation. Cambridge: Harvard University Press, 1982.

Ross, David. Kant's Ethical Theory: A Commentary on the Grundlegung zur Metaphysik der Sitten. Oxford: Oxford University Press, 1954.

Rousseau, Jean Jacques. Discourse on the Origins and Foundations of Inequality. Trans. Maurice Cornforth. Harmondsworth: Penguin, 1984.

_____. The Social Contract. Trans. Maurice Cranston. Harmondsworth: Penguin, 1983.

_____. The Social Contract and Discourses. Ed. G. D. H. Cole. London: ,1973.

Saner, Hans. Kant's Political Thought: It's Origins and Development. Chicago: University of Chicago Press, 1973.

Schwarz, Wolfgang. "The Right of Resistance." Ethics, 74 (1963), pp. 126-34.

Seidler, Victor J. Kant, Respect, and Injustice: The Limits of Liberal Moral Theory. London: Routledge and Kegan Paul, 1986.

Shell, Susan Meld. The Rights of Reason: A Study of Kant's Philosophy and Politics. Toronto: University of Toronto Press, 1980.

Simmons, A. John. Moral Principles and Political Obligations. Princeton: Princeton University Press, 1979.

Smith, Norman Kemp. A Commentary on Kant's 'Critique of Pure Reason', 2nd ed. New York: Humanities Press, 1962.

- Strauss, Leo. The Political Philosophy of Thomas Hobbes. Chicago: University of Chicago Press, 1984.
- van der Linden, Harry. Kantian Ethics and Socialism. Indianapolis: Hackett, 1988.
- Velkley, Richard. Freedom and the End of Reason. Chicago: University of Chicago Press, 1989.
- Walker, Ralph C. S. Kant. London: Routledge and Kegan Paul, 1982.
- Williams, Howard. Kant's Political Philosophy. New York: St. Martins, 1983.
- Wolff, Robert Paul. The Autonomy of Reason. New York: Harper and Row, 1973.
- Wolff, Robert Paul. In Defense of Anarchism. New York: Harper and Row, 1970.
- Wolff, Robert Paul (ed.). Kant: A Collection of Critical Essays. Notre Dame: Notre Dame University Press, 1968.

