

Phil 114, March 23, 2012

Immanuel Kant, *Metaphysics of Morals, The Doctrine of Right, Part I (Private Right)*, §§41–42 only; *Part II (Public Right), Sect. I (The Right of a State)*

Immanuel Kant, “On the Common Saying: That May Be Correct in Theory, but it is of no Use in Practice,” *Part II*

### Leaving the state of nature, continued:

Kant suggests that if everyone chooses to remain in a state of nature “as if by mutual consent,” then:

- they do not wrong one another—perhaps because one cannot *wrong someone* by treating them in a way to which they *consent* to be treated,
- but “in general they do wrong in the highest degree” insofar as they “subvert the right of human beings as such”—perhaps because they have a duty of rightful honor to assert their worth as human beings and so to *refuse* to consent to be treated in that way.

Thus, as we saw last time, there is a duty of right—which may be coercively enforced—to exit the state of nature.

*Postulate of public right*: “From private right in nature there proceeds the postulate of public right: when you cannot avoid living side by side with all others, you ought to leave the state of nature and proceed with them into ... a condition of distributive justice,” i.e. where there is a court to determine what the law requires.

*Public right*: “The sum of laws that need to be promulgated generally in order to bring about a rightful condition.”

### The qualities of citizens:

*Freedom*:

- “obeying no other law but that to which he has given his consent”

*Equality*:

- Everyone has the same *coercive rights* against everyone else.
  - “not recognizing among the people any superior with the moral capacity to bind him as a matter of right in a way that he could not in turn bind the other”
  - “Each member of a commonwealth has coercive rights against every other.”
- Compatible with inequality of external goods, and so compatible with considerable dependence, hierarchy, subordination, etc. “the welfare of one is very much dependent upon the will of another (that of the poor on the rich); thus one must obey (as a child its elders or a wife her husband) and the other directs; thus one serves (a day laborer) and the other pays him.”
- However, this is not inequality in *right*, in permissible *coercive* power. “But in terms of right... they are nevertheless all equal to one another as subjects; for, no one of them can coerce any other except through public law.”
- *An implication*: There cannot be hereditary prerogatives. “Every member of a commonwealth must be allowed to attain any level of rank within it... to which his talent, his industry and his luck can take him.” Why? Because the alternative—a system in which people would be barred, from birth and by force, from aspiring to certain

positions—would be a system in which someone could “coercively prevent others from attaining by their own merit the higher levels of subordination” or “coerce without others in turn being able to coerce him.”

*Independence:*

- “owing his existence and preservation to his own rights and powers as a member of the commonwealth, not to the choice of another among the people.” “serves no one other than the commonwealth”
- Not a woman or child.
- Has some property. Is “one’s own master, hence having some property that supports him.”
- Is not a servant. One earns one’s living by alienating what is one’s own, rather than “giving others permission to make us of his powers.”
- Necessary condition for a right to vote, to be an “active” rather than merely “passive” citizen.
  - “From his independence follows his civil personality, his attribute of not needing to be represented by another where rights are concerned.”
  - “The independence... of a member of a state as a citizen, that is, as a colegislator. As for legislation itself, it is not the case that all who are free and equal under already existing public laws as to be held equal with regard to the right to give these laws.”
- Why should it be a necessary condition, other than that it was, at the time, a commonly applied condition? Perhaps—I’m not sure—Kant sees a dilemma here. If we give dependents votes, they will simply vote as directed by those on whom they are dependent. The result will be that those with more dependents will have a greater say. So, paradoxically, there is a sense in which political equality requires that only independent people have a say.
- Not a necessary condition for other rights. Even “passive citizens” can “demand that all others treat them in accordance with the laws of natural freedom and equality.”
- Moreover, “whatever sort of positive laws the citizens might vote for, these laws must still not be contrary to the natural laws of freedom and of the equality of everyone in the people corresponding to this freedom, namely that anyone can work his way up from this passive condition to an active one.” (Great for male servants and boys, but where does this leave females...?)

**The social contract as idea of reason:**

The social contract is “*only an idea of reason*,” not an actual event. We don’t consider what people *actually* will, but instead what, hypothetically, they *could have willed*.

However, this “idea of reason” has “undoubted practical reality”: that is, it *normatively constrains decision-making*.

- On the part of those making the laws: “to give his laws in such a way that they *could have arisen* from the united will of a whole people.”
- On the part of those bound by the laws:

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

### **The aim of the state: conformity with the principles of right:**

The aim of the social contract and so the state is:

- not an end that people *happen* to have,
- but instead the end that people *ought* to have.

This means that the aim of the state is:

- not *happiness*, which depends on contingent, empirical factors (the likes and dislikes people *happen* to have),
- but instead *conformity with the principles of right*, which are necessary and a priori.

Indeed, Kant goes so far as to *define* my being free at one point as its being the case that: “no one can coerce me to be happy in his way (as he thinks of the welfare of other human beings).” For Kant, to live under a perfectly benevolent, but paternalistic government would be to be unfree.

Why couldn't the state have both aims: the aim of happiness *as constrained by right*? Because there is too much disagreement about what happiness is. Any serious attempt to promote people's happiness, given how much people vary, would end up being incompatible with the kind of universality and equality necessary for right. “[S]ince people differ in their thinking about happiness and how each would have it constituted, their wills with respect to it cannot be brought under any common principle and so under any external law harmonizing with everyone's freedom.” (Compare to contemporary arguments for liberal pluralism.)

The state may, at times, promote certain constituents of happiness, such as material wealth. But this is *only as means to* the legitimate end, conformity with right. “If the supreme power gives laws that are directed chiefly to happiness (the prosperity of the citizens, increased population and the like), this is not done as the end for which a civil constitution is established but merely as means for securing a rightful condition, especially against a people's external enemies.”

### **Law as the united will of all:**

Kant suggests that everyone must will the laws that are passed. Why?

1. The law must not wrong anyone.
2. If one person decides for another, he can always wrong her.
3. But when one person decides for herself, she cannot wrong herself.
4. So, everyone must will the laws.

Another argument for the same conclusion is:

1. Freedom is defined as “obeying no other law but that to which he has given his consent.”
2. All must have freedom under the laws.
3. So, everyone must will the laws.

Does Kant mean *actual* consent or *hypothetical* consent?

*In favor of actual consent:*

- Can't someone wrong you by treating you in ways to which you do not, but could, consent? (Sexual consent makes the point most clearly.)

*In favor of hypothetical consent:*

- What if there is not *actually* unanimity? Kant replies: Then the “very principle of letting such a majority be sufficient, adopted as with universal agreement and so by a contract, must be the ultimate basis on which a civil constitution is established.” But what if there is not *actually* unanimity about majority rule either?
- As we have seen, Kant grants that lots of people, who are capable of being wronged, have no part in *actually* making the laws at all: i.e., merely “passive” citizens.
- Isn't consent to whatever laws are *necessary* for public right *morally required*? Indeed, can't we be *coerced, without being wronged*, to conform to those laws, whatever we may *actually* think of them? So how can our *actual* consent matter?

### **Separation of powers:**

Kant argues for a “republican” form of government, where there would be a separation of powers. Each branch of government is subordinate to the other (as in a game of rock, paper, scissors):

- The executive cannot be the legislator. The executive must be *bound* by laws. Similarly, the legislator can remove the executive.
- However, the legislator cannot punish—most of all not the executive (e.g., Louis XVI)! Punishment is a function of the executive: the supreme capacity to exercise coercion in conformity with the law.
- Neither the legislator nor the executive can judge particular cases. “[O]nly the people can give a judgment upon one of its members, although only indirectly, by means of representatives (the jury) whom it has delegated.”

The aim is the *rule of law*, rather than *of men*. No one in a state is “dependent on the absolute [coercive?] will of another.”

### **No right to revolution:**

“A practical principle of reason: the principle that the presently existing legislative authority ought to be obeyed, whatever its origin.” This includes obeying its chosen executive.

This means that people should not inquire, “with any practical aim,” into the origin of the supreme authority: i.e., with the aim of deposing the supreme authority should its origins be shown to be “illegitimate.” (Purely *theoretical* inquiries into the history of someone's bloody rise to power might be OK.)

Note two ways in which Kant's view on the right to revolution might be weaker or stronger:

1.

*Weakest:* One is *only* not permitted to resist with force.

vs. *Stronger*: One *also* is required to obey.  
vs. *Strongest*: One *also* is not permitted to object.

2.

*Weaker*: Only when the idea of the social contract is satisfied: i.e., all *could have* consented.

vs. *Stronger*: Even when the idea of the social contract is violated.

It seems clear that Kant means *at least* a view that would be weakest in sense 1 and stronger in sense 2: “And this prohibition is unconditional, so that even if that power of its agent, the head of state, has gone so far as to violate the original contract and has thereby, according to the subjects’ concept, forfeited the right to be legislator inasmuch as he had empowered the government to proceed quite violently (tyrannically), a subject is still not permitted any resistance by way of counteracting force.”

At one point, he *seems* to allow “negative resistance”: i.e., disobedience, but not the use of force, which would suggest only the weakest view in sense 1. But there he has in mind the *legislature* resisting the *executive*, not any individual subject resisting. And elsewhere he does seem to write that the *obedience* of the subjects is required, which seems to suggest the stronger view in sense 1.

Kant never seems to accept the strongest view in sense 1. He writes that the “freedom of the pen” is the “sole palladium” of the people’s rights. And he allows for “complaints.”

Why? *A contradiction* in saying: “Someone has the authority to resist the supreme authority.” But anyone with that authority would *be* the supreme authority. So this would be a kind of contradiction.

*But why does there need to be a single, supreme authority in the first place?*

- Kant’s answer is *not*: because otherwise we can’t get the benefits of political union: e.g., self-preservation, relief from the inconveniences.
- Instead, Kant’s answer has to be: It is necessary for our equal external freedom.
- “Unilateral, private” uses of force—one individual using force, on his own judgment, against another—are incompatible with our equal external freedom. Recall the role that this point plays in explaining why we must exit the state of nature.
- What we need for equal external freedom is for the use of force to be, somehow, exclusively “omnilateral, public”: never the act of some mere, private individual, acting on his own recognizance.
- For the use of force to be suitably “public,” it must be exercised by some single, supreme authority, with the power to effect its judgments. Public decisions can only be made and executed by that single, supreme authority.
- Once there is some single, supreme authority, any *other* use of force is private, unilateral. As such, it is a violation of our equal external freedom. And that includes even uses of force motivated by convictions, perhaps even true convictions, about the errors of the government.

- It may help here to think about your privately, unilaterally punishing someone else. (Keeping them in your own private dungeon.) It doesn't matter whether that person is guilty, whether the punishment fits the crime, etc. You just don't have the authority to do that. The reason isn't just that you might have gotten it wrong. It's that it is *incompatible with a society of equals under the law*. The punishment has to be public.
- For Kant, the revolutionary's act is analogous to the vigilante's. It is a private, unilateral act. It doesn't matter whether he's right, whether the new government would be better. He just doesn't have the authority to use force in that way. It is also incompatible with a society of equals under the law. "Revolution" has to be public, which is to say that it has to be a matter of internal reform.
- Note, however, that this argument stresses that the revolutionary doesn't have *a right to use force* privately or unilaterally. But might he disobey the law without using force? If so, does this argument explain why it would be wrong? In sum, while this argument may support the "weakest" view in sense 1, it is less clear that it supports the "stronger" view.

**Review Questions:**

1. According to Kant, what is the only social condition such that there is an a priori law that you enter into it? What does this mean?
2. Hobbes held that the sovereign had no obligation to his subjects and could not wrong them. Kant thinks that Hobbes is partly right and partly wrong about this. How so?
3. Throughout Kant, one hears echoes of Rousseau's *Social Contract*. Clearly, Kant was deeply influenced. Find two passages in Kant and Rousseau that resonate with one another.