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Kant's Political Philosophy as *ausübende Rechtslehre*

Abstract: Based on Kant's own concept of politics, it is possible to construct his political philosophy that is related to but also different from his metaphysics of right. Politics is the practice of realizing the principles of right in experience; therefore, Kant's political philosophy must explore the general conditions that make this practice possible. These conditions, such as political judgement, publicity and the enlightenment of the people, are indispensable to Kant's thinking about human external freedom but do not belong to the metaphysics of right. Kant's metaphysics of right is undoubtedly a liberal theory, but we can also identify some republican elements in his political philosophy. In this way, Kant provides us with a very instructive programme to absorb republican elements within a liberal theory.

Introduction

In her lectures on Kant's political philosophy, Hannah Arendt asserts that Kant "never wrote a political philosophy" (Arendt 1982, 7). The very existence of a large amount of contemporary literature on Kant's political philosophy seems to be sufficient to refute this assertion. However, Arendt's assertion is based on a premise that she, like Schopenhauer, regards Kant's *Doctrine of Right* as a "boring and pedantic" work (Arendt 1982, 7). She thus tries to use Kant's other texts, especially the resources from the *Critique of the Power of Judgement*, to reconstruct a Kant's political philosophy, while most interpreters of Kant's political philosophy mainly focus on the *Doctrine of Right*. Arthur Ripstein, for example, states at the beginning of his *Force and Freedom* that

My aim in this book is to develop and defend Kant's own statement of his political philosophy, particularly as he articulates it in the *Doctrine of Right*, the first part of the *Metaphysics of Morals*. (Ripstein 2009, ix).

Contemporary Kant studies have provided good evidence to refute Arendt's underestimation of the *Doctrine of Right*. Nonetheless, her approach can still in-

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spire us to think about the following question: is it truly possible to construct Kant's political philosophy in addition to the metaphysics of right articulated in the *Doctrine of Right*?

The more important reason for raising this question is that in *Toward Perpetual Peace*, Kant distinguishes between right and politics and defines politics as an “ausübende Rechtslehre” in contrast to the metaphysics of right as a “theoretical doctrine of right” (*PP*, AA 8:370).¹ Most interpreters actually do not pay sufficient attention to this concept of politics. Some may think that it is related only to empirical practice and is therefore not a proper subject of political philosophy. Other interpreters realize that Kant's political thinking also contains empirical elements, and they thus assert that when talking about his political philosophy, we also need to give a little attention to these elements. Regarding Kant's political philosophy, whether we refer to the metaphysics of right or something else is normally an issue of naming that does not affect our understanding of Kant. However, this issue sometimes reflects a lack of awareness of a more explicit distinction, that is, a lack of awareness that there are two levels within Kant's thought about human external freedom, i.e., a priori principles of right derived from reason and the possible conditions for their realization in experience. As a result, either the latter level is ignored² or the two levels are confused.³ Certainly, there are also some interpreters who attempt to explore Kant's political theory based on his concept of politics. Volker Gerhardt provides a creative reading based on this concept, but his interpretation too closely follows the structure of *Toward Perpetual Peace*; therefore, its “political” character has largely been obscured (Gerhardt 1995). Reinhard Brandt's demonstration starts directly from Kant's concept of *ausübende Rechtslehre*, but it seems that he has no intention of constructing a systematic theory (Brandt 1995). Bernd Ludwig correctly notes that the aim of politics is to create institutions that can realize the concept of right, but he claims that this is “basically a one-dimensional process” led by the head of state (Ludwig 2000, 196). More recently, Luigi Caranti has also tried

1 Unless otherwise indicated, all references to Kant are according to the translation of the Cambridge edition. Literally, what Kant defines as the theoretical doctrine of right is morals, but given his further division of morals into ethics and the doctrine of right (*PP*, AA 8:386), the theoretical doctrine of right actually refers to the metaphysics of right. In addition, since there is no proper translation of “ausübende Rechtslehre”, I maintain the German form.

2 Heiner Bielefeldt, e.g., criticizes that Kant “largely fails to take into account the role of judgement and experience for the development of concrete norms” in his philosophy of right (Bielefeldt 1997, 543–544).

3 Christoph Horn's argument for Kant's political philosophy as a theory of non-ideal normativity would be more convincing if he were to recognize this distinction (Horn 2016).

to “reconstruct a theory of political agency that is both inherently consistent and harmonious with the rest of Kant’s philosophy”, but the key to his interpretation, as he claims, is “a close analysis of the Kantian ‘character’ of the ‘moral politician’” (Caranti 2017, 11–12). Similar to Ludwig’s interpretation, this reconstruction misses Kant’s more important philosophical insights about politics.

My aim in this article is to sketch a framework of Kant’s political philosophy that is related to but also different from his metaphysics of right. It is based on Kant’s own concept of politics and focuses on the general conditions under which the principle of right can be realized in experience. First, I argue that a political philosophy in this sense is not only possible but also necessary in Kant’s system. Second, I analyse the basic elements of Kant’s political philosophy, such as political judgement, publicity, enlightenment, etc. These concepts obviously do not belong to the metaphysics of right but are indispensable to Kant’s thinking about human external freedom. Finally, as an example of the application of this distinction, I attempt to clarify the liberal and republican elements in Kant’s thought.

1 Possibility and Necessity of Political Philosophy

Some interpreters, although they also notice Kant’s concept of politics, actually deny the possibility of constructing a political philosophy based on it. Ernst Vollrath, for example, claims that

The practical philosophy of Kant is ‘metaphysics (!) of morals’. In its framework, a political philosophy has no place as an independent programme. Politics is nothing more than the ‘mechanism for administering right’ (Vollrath 1987, 92).

Vollrath actually makes two assertions here. First, politics is merely a mechanical application of the rules of right; second, there is no space for an independent philosophical doctrine of politics in addition to the metaphysics of right in Kant’s system.

For Kant, politics is obviously not the application of positive laws but rather the application of the principles of the metaphysics of right to empirical cases. Kant claims that the metaphysics of right is a “system outlined *a priori*”, namely, “a system derived from reason” (*MM*, AA 6:205); therefore, it only contains the principles that can be cognized *a priori* by reason. Admittedly, there are also empirical contents in the *Doctrine of Right*. However, further classification is re-

quired to determine the roles of the different types of these empirical contents in the metaphysics of right. There are at least four types as follows.

(I) Anthropological propositions that serve as the premises of the entire system, such as human beings are rational and natural beings in plural, they live on a spherical and finite earth, etc. (Höffe 1995, 128–130). These propositions certainly cannot be excluded from the metaphysics of right.

(II) Concepts drawn from experience. But some propositions that are made up of these concepts may also be a priori, as Kant distinguishes in the *Critique of Pure Reason*:

Among *a priori* cognitions, however, those are called pure with which nothing empirical is intermixed, e.g., the proposition ‘Every alteration has its cause’ is an *a priori* proposition, only not pure, since alteration is a concept that can be drawn only from experience (*CPR*, B 3).

Most propositions of the metaphysics of right can only be a priori in this non-pure sense, insofar as their necessity can be formally derived from the concept of right. In the *Doctrine of Right*, Kant provides a good example, that is, money, which is obviously an “empirical concept” but can still be brought into

an intellectual concept by looking only to the form of what each party provides in return for the other in onerous contracts (and abstracting from their matter), thereby bringing it to the concept of right in the exchange of what is mine or yours generally (*commutatio late sic dicta*), so as to present the table above as a dogmatic division a priori, which is appropriate to the metaphysics of right as a system (*MM*, AA 6:289).

(III) Empirical facts that are hidden in Kant’s arguments. For example, the fact that there are plural sovereign states in the world; this cannot be derived a priori from the concept of right, but it is crucial for Kant’s division of the metaphysics of right. Without this fact, the idea of a world republic would be derived directly from Kant’s argument for civil condition; in this case, the right of states and the cosmopolitan right would be superfluous. In *Toward Perpetual Peace*, Kant concedes that “the positive idea of a world republic” is “what is correct *in thesi*” but contradicts the idea of the right of states (*PP*, AA: 8:357); this also shows that the right of states is not a priori necessary and should therefore not belong to the metaphysics of right in a strict sense.

(IV) Particular empirical examples. Kant requires distinguishing these examples from the metaphysics of right, but they do not appear only in remarks as Kant declares (cf. *MM*, AA 6:205). For example, Kant claims that the state should “support organizations providing for the *poor*, *foundling homes* and *church organizations*” for its own preservation (*MM*, AA 6:326). These organizations are

empirical examples that are not a priori necessary and do not exhaust the means that the state can take. Thus, they do not belong to the metaphysics of right.

Despite these empirical contents, the *Doctrine of Right* still presents a system with highly abstract (if not purely formal) principles. These principles certainly need to be applied in experience, but they do not contain rules of action that can be directly applied to empirical cases. As Dieter Henrich states,

The concept of right itself does not provide any guidance on action. It must be combined with the interpretation of the situation of a world so that it can become a program for political action (Henrich 1967, 35).

The application of the principles of right thus cannot be only mechanical because a mechanical application must presuppose a complete system of rational rules (Gerhardt 1996, 482). Moreover, due to its a priori character, the metaphysics of right does not take into account the possible conditions for their application in experience; it is a pure theory of right according to Kant's definition in *On the Common Saying*:

A sum of rules, even of practical rules, is called theory if those rules are thought as principles having a certain generality, so that abstraction is made from a multitude of conditions that yet have a necessary influence on their application (*Ausübung*). Conversely, not every doing is called practice, but only that effecting of an end which is thought as the observance of certain principles of procedure represented in their generality (CS, AA 8:275).

There can be different levels of theories according to their degree of abstraction. Among them, the metaphysics of right is undoubtedly the purest one because it should abstract from all empirical conditions for its application; it is therefore the "theoretical doctrine of right", while its practice is precisely politics in Kant's sense. Politics is not a mechanical application of existing rules, instead, the possible conditions of the practice of right still need to be explored in an *ausübende Rechtslehre* as the doctrine of political practice. In his terminology, Kant actually does not strictly distinguish between politics as a doctrine of practice and politics as practice itself. Sometimes, politics is defined as an *ausübende Rechtslehre*, and sometimes, it is the application of the principles of right to empirical cases. Here, we should make an explicit distinction. Politics is the practice of realizing the principles of right in experience, while an *ausübende Rechtslehre* must explore the possible conditions for this political practice.

Kant claims that even between a complete theory and its practice, a determinant use of judgement is still required to determine whether specific empirical cases can be subsumed under a rule. However, such completeness does not

yet exist in the metaphysics of right; its application still requires some intermediary *Grundsätze*. In this sense, Kant obviously agrees with a proposition of Benjamin Constant:

Every time [...] that a principle proved to be true seems inapplicable, this is because we do not know the intermediary principle (*Grundsatz*), which contains the means of application (*RLP*, AA 8:427).

These intermediary *Grundsätze* do not belong to the metaphysics of right, and, insofar as they should aim at the application of the principles of right, they also differ from empirical political science. Therefore, to realize the principles of right in experience, we must

progress from a metaphysics of right (which abstracts from all conditions of experience) to a *Grundsatz* of politics (which applies these concepts to cases of experience) and, by means of this, to the solution of a problem of politics in keeping with the universal principle of right (*Rechtsprinzip*) (*RLP*, AA 8:429).

Kant makes here a terminological distinction between *Grundsatz* and *Prinzip*; this naturally reminds us of his definition of the analytic of *Grundsätze* in the first Critique:

The analytic of *Grundsätze* will accordingly be solely a canon for the power of judgment that teaches it to apply to appearances the concepts of the understanding, which contain the condition for rules *a priori* (*CPR*, B 171).

This definition indicates that *Grundsatz* does not focus on the deduction of a priori rules but their application in experience. Politics, insofar as it is related to an external coercive order of a large society, certainly cannot be concerned only with the problem of cognition and judgement. A doctrine of politics, as an analytic of political *Grundsätze*, must explore the general conditions for the realization of the principles of right in experience.

The further question is the following: is it still the task of a philosopher to explore such conditions? This question relates to whether we can regard the *ausübende Rechtslehre* as Kant's political philosophy. Vollrath's claim implies a judgement that philosophy can only be a system of metaphysics or a priori cognitions; therefore, there can be no place for a political philosophy in Kant's system. Indeed, Kant sometimes defines philosophy as the "*cognition of reason from mere concepts*", which "*must be a priori*" (*Log.*, AA 9:23). However, this does not prevent him from accepting a philosophy based on empirical principles. As he states in the first Critique, "All philosophy, however, is either cognition from

pure reason or rational cognition from empirical principles. The former is called pure philosophy, the latter empirical" (*CPR*, B 868). He also mentions "a politics cognizable a priori" (*PP*, AA 8:378), but in view of his flexible use of "a priori" in *Toward Perpetual Peace*, we cannot assume that this can be equated with the metaphysical a priori. Nonetheless, Kant undoubtedly believes that it is possible to draw rational cognitions from empirical principles, which although they are not a priori necessary, can still be a subject of philosophical inquiry. For this reason, a philosopher, in addition to providing the principles of freedom and equality, needs to further raise

a problem of how it is to be arranged that in a society, however large, harmony in accordance with the principles of freedom and equality is maintained (namely, by means of a representative system); this will then be a *Grundsatz* of politics, the arrangement and organization of which will contain decrees, drawn from experiential cognition of human beings, that have in view only the mechanism for administering right and how this can be purposively established (*zweckmäßig einzurichten*). Right must never be accommodated to politics, but politics must always be accommodated to right (*RLP*, AA 8:429).⁴

This passage clearly illustrates the relation of politics to right. The task of politics is to realize the self-organization and institutionalization of a society in accordance with the principles of right. Politics indeed aims at establishing a mechanism for administering right, but the internal operation of this mechanism is not politics itself. The point is how to purposively establish and improve such a mechanism. Logically, once this task is completely accomplished, politics is no longer needed, as "the best constitution is that in which power belongs not to human beings but to the laws" (*MM*, AA 6:355). However, this is only an idea of reason, which cannot be fully realized in experience; therefore, politics will be a permanent enterprise. Kant certainly does not think that philosophers need only to raise the problem; rather, they must also contribute to the proper solution to this problem. As Gerhardt notes, "political philosophy not only needs to develop argument for ideas and models, it must also make a statement about the conditions of the realization of its normative expectations" (Gerhardt 1995, 48). Gerhardt still understands Kant's political philosophy in a broad sense. He makes a distinction between right and politics but does not make a corresponding distinction between the metaphysics of right and political philosophy. Here, I make a further distinction: the metaphysics of right, as Kant demonstrates in the *Doctrine of Right*, is only concerned with the a priori principles de-

4 "Zweckmäßig einzurichten" is falsely translated as "be managed appropriately" in the Cambridge edition.

rived from reason, whereas the political philosophy in Kant's sense should explore the general conditions that make possible the realization of the a priori principles of right in experience.

2 Basic Elements of Kant's Political Philosophy

How can the principles of right be realized in experience? In the *Idea for a Universal History*, Kant claims that to establish a perfect constitution, at least three conditions are required, namely, "correct concepts of the nature of a possible constitution, great experience practiced through many courses of life and beyond this a good will that is prepared to accept it" (*IUH*, AA 8:23). These three conditions correspond to principles, judgement, and decision. The first condition can be provided by the metaphysics of right, whereas the latter two are obviously not contained in the metaphysics of right; instead, they relate to two basic elements of political practice: the political judgement to integrate the principles of right with empirical conditions and the political will to promote the realization of these principles. The construction of Kant's political philosophy should revolve around these two elements.

Both political judgement and political will must primarily face the same problems: whose judgement and whose will? For Kant, a state of nature is not the starting point of politics; it is just an idea of reason in the metaphysics of right. In reality, we are already in a civil condition from the beginning. Therefore, the task of politics is not to establish a new constitution but to continuously improve the existing constitution to make it more consistent with the principles of right. Politics in this sense is the politics of reform. In this regard, the judgement and will of the sovereign or the head of a state are certainly indispensable for politics. Admittedly, according to the principles of right, sovereignty can be attributed only to the united will of the people, but this is also an ideal that may not have been realized in reality. Even in a democracy, people do not always directly exercise political power; politicians are therefore indispensable for political practice. Kant thus also discusses the *moral politician*. However, this discussion does not imply that Kant, as Caranti claims, appeals to "the morality of individual politicians" (Caranti 2017, 242). Kant's demonstration of the moral politician has nothing more than what is indicated in his elucidation of the relation between right and politics: every politician has a duty to promote political reform according to the principles of right. This description of political duty is derived directly from the definition of politics; it does not imply that Kant places the hope of political progress on the individual morality of politicians. In contrast, he refutes regarding individual morality, whether the ruler's or the sub-

ject's, as a premise of political progress. As he states in the *Idea for a Universal History*,

The human being is an animal which, when it lives among others of its species, has need of a master. For he certainly misuses his freedom in regard to others of his kind; [...] Thus he needs a master, who breaks his stubborn will and necessitates him to obey a universally valid will with which everyone can be free. But where will he get this master? Nowhere else but from the human species. But then this master is exactly as much an animal who has need of a master (*IUH*, AA 8:23).

The ruler is also a human being who would therefore misuse political power without restraint. This is the most difficult problem for politics. Given such a pessimistic judgement of human nature, Kant certainly would not appeal to the good will of a ruler. His solutions to this problem, whether it is the enlightenment of the people as described in *Idea for a Universal History* or publicity as described in *Toward Perpetual Peace*, all point to the people or the public as the real subject of political practice.

Certainly, some statements on publicity in *Toward Perpetual Peace* are indeed misleading. Here, Kant appeals to publicity to reconcile the disagreement between morals (right) and politics. He claims that this process can occur “as if by an experiment of pure reason” because once an unjust maxim is publicly declared, it will inevitably arouse the “a priori foreseeable” resistance of everyone (*PP*, AA 8:381). If this is the case, then publicity would merely require that a politician should actively examine the justice of laws or policies in his or her self-reflection to promote political reform. However, as Allen Wood analyses, the a priori foreseeability here only means that one can foresee the consequence of his or her action through experience before this action is actually carried out (Wood 2014, 78). Therefore, when Kant claims that politicians can a priori foresee the opposition of everyone against an unjust maxim, this simply means that they can foresee this through previous experience. However, unless the public has expressed a general consensus on this issue or a similar issue before, politicians cannot acquire the relevant experience to foresee this consequence. In this case, it would be the public, not a solitary politician, that would provide the judgement on the justice of laws or policies. However, this scenario actually presupposes the existence of a rational public sphere in which people have not only the ability to use their own reason to judge the justice of laws or policies but also sufficient courage to publicly express their opposition against unjust laws or policies; this means that the public must be enlightened, and political judgement can therefore only be public judgement or public reason.

The revival of the concept of political judgement in contemporary political philosophy and Kant studies must largely be attributed to Arendt, who success-

fully reveals some political implications of Kant's third Critique. Nonetheless, Arendt's understanding of politics is obviously different from that of Kant. For Kant, the political use of judgement is to integrate the principles of right with empirical conditions to obtain specific rules or programmes for action. Therefore, strictly speaking, the political judgement in Kant's sense is neither reflective nor determinant judgement and can only be somewhere in between or be a synthesis of them.⁵ Under the premise of underestimating Kant's *Doctrine of Right*, Arendt draws an analogy between political judgement and aesthetic judgement. As a result, her interpretation, as Höffe criticizes, lacks a "feature of modern politics, namely, its relation to universalist principles, such as basic and human rights" (Höffe 2001, 63–64). Compared with political judgement, public reason is a more popular concept in contemporary political philosophy and is also closely related to Kant. The resources on public reason in Kant's texts have been fully explored in Kant studies (Keienburg 2011). For Kant, reason in all its use should be public because its claim is "never anything more than the agreement of free citizens" (*CPR*, B 766); thus, his statements on public reason or the principle of publicity are not just for politics, although they receive the most attention in contemporary political discourse. Certainly, public reason must be understood in a broad sense here; it refers to the human cognitive abilities in general, including reason, understanding, and judgement. In Kant's context, the political use of public reason is the same as political judgement, and they both primarily aim to apply the principles of right to empirical cases. In this regard, Habermas, based on his discourse theory, has reason to accuse Kant of deducing these principles from a monological perspective (Habermas 1994, 123). However, as Rawls argues, any theory of justice must make certain substantive assertions; the point is that these assertions, as a part of the ongoing public discussion, can be further examined by public reason (Rawls 1995, 141). The principles of right certainly need to be further examined in ongoing public discussion. This examination is necessary not only because of cognitive reason but also because the realization of principles of right also requires their acceptance in public consciousness; the a priori principles

still require a judgment sharpened by experience, partly to distinguish in what cases they are applicable and partly to provide them with access to the will of the human being and efficacy for his fulfilment of them (*G*, AA 4:389).

⁵ See Annemarie Pieper's analysis of pure practical judgement in *Critique of Practical Reason* (cf. Pieper 2011).

As Kant's demonstration of *sensus communis* in § 40 of the third *Critique* shows, this can be possible only in the public sphere.

To realize the principles of right in experience, political will is also required as the driving force of political reform. However, Kant offers no solution other than publicity to reconcile the disagreement between right and politics. This may indicate that in his view, publicity already involves sufficient conditions for solving this problem. Publicity, as a mechanism for people to reach consensus and form collective will, can also act as a driving force for political reform. In this regard, Kant actually relies on the critical function of the public sphere. In the public sphere, first, people can make use of their own reason to participate in public discussion and thereby not only continuously enlighten themselves but also approximate rational consensus on public affairs. Second, people's publicly expressed opposition can also force rulers or politicians to promote political reform. Freedom of speech is therefore an important condition for political practice; it is even described as "the sole palladium of the people's rights" (CS, AA 8:304) and the "single gem remaining to us in the midst of all the burdens of civil life, through which alone we can devise means of overcoming all the evils of our condition" (OT, AA 8:144). However, the question is, is this also an ideal model? Georg Cavallar, for instance, claims that this interaction among publicity, enlightenment, and politics can occur only in a republican government (Cavallar 2015, 142). In a non-republican government, since the people do not hold political power and do not have the right to resist the government, criticism in the public sphere cannot necessarily generate political effects. Ciaran Cronin thus criticizes that Kant fails to overcome the tension between enlightenment and political power (Cronin 2003, 54).

Kant is of course aware of this problem, but his solution is often overlooked. In *What is Enlightenment*, he offers the following proposition:

What a people may never decide upon for itself, a monarch may still less decide upon for a people; for his legislative renown (*Ansehen*) rests precisely on this, that he unites in his will the collective will of the people (E, AA 8:39–40).⁶

Interpreters, including Cronin, usually regard this proposition as a statement of social contract. However, if we note that Kant refers here to the legislative *Ansehen* rather than the legislative *Autorität*, then we should realize that this is an empirical political proposition, which is later articulated by Max Weber as the proposition of belief in legitimacy:

⁶ "Ansehen" is translated in the Cambridge edition as "authority".

Experience shows that in no instance does domination voluntarily limit itself to the appeal to material or affectual or ideal motives as a basis for its continuance. In addition, every such system attempts to establish and to cultivate the belief in its legitimacy (Weber 1978, 213).

The continuance of political domination in any society requires the people's belief in its legitimacy, and Kant believes that in the age of enlightenment, only one type of this belief is possible because reason grants its unfeigned respect "only to that which has been able to withstand its free and public examination" (*CPR*, A XI). This relation is also implied in the positive formula of publicity, which claims that all maxims whose "end is to be attainable only through publicity, that is, by the removal of all distrust toward the maxims of politics, [...] must also be in accord with the right of the public" (*PP*, AA 8:386). This is also the reason why Kant has such great confidence in the enlightenment of the people; he believes that

this enlightenment, however, and with it also a certain participation in the good by the heart of the enlightened human being who understands the good perfectly, must ascend bit by bit up to the thrones and have its influence even on their principles of government (*IUH*, AA 8:28).

Certainly, the realization of both the people's self-enlightenment and political reform must be a gradual historical process. In this regard, Kant's distinction between the form of sovereignty and the form of government provides a more feasible route for gradual political reform. It is still possible even for a monarchy to continuously republicanize its constitution without immediately changing its form of sovereignty. On this basis, a slow but peaceful transition from a republicanized monarchy to a republican democracy is more possible. However, in this process, the driving force of continuous political reform does not depend on the good will of a monarch but ultimately comes from the people who continuously enlighten themselves.

3 Liberalism and Republicanism in Kant's Thought

The analysis above has revealed that in addition to the metaphysics of right, there is still space for Kant's philosophical doctrine of politics. Of course, whether to consider this doctrine alone as Kant's political philosophy or regard it as part of Kant's political philosophy in a broader sense would normally be an

issue of naming. Nonetheless, a further classification is not only more in line with Kant's terminology but also sometimes more convenient for resolving some of Kant's apparent contradictions. Therefore, I advocate a strict distinction between the metaphysics of right and political philosophy in Kant's context. While Kant follows a metaphysical logic of right in the metaphysics of right, he follows in political philosophy a political-practical logic that mainly focuses on the possible conditions for the realization of the principles of right in experience. As a result, these two branches also present different theoretical characteristics in some aspects. In the following, I attempt to resolve the dispute surrounding liberalism and republicanism in Kant studies through this distinction.

Kant is usually regarded as one of the founders of liberalism (Guyer 1997). In his political writings in the broader sense, it is not difficult to observe his uncompromising insistence on the priority of individual freedom that is explicitly defined as the negative freedom of external action in the usual sense. What serves as the unique starting point and the normative end of the entire order of right is the sole innate right:

Freedom (independence from being constrained by another's choice), insofar as it can coexist with the freedom of every other in accordance with a universal law, is the only original right belonging to every man by virtue of his humanity (*MM*, AA 6:237).

Correspondingly, an ideal state is that

which has the greatest freedom, hence one in which there is a thoroughgoing antagonism of its members and yet the most precise determination and security of the boundaries of this freedom so that the latter can coexist with the freedom of other (*IUH*, AA 8:22).

However, recently, some interpreters have placed more emphasis on the republican character of Kant's thought. Republicanism here is not what Kant himself defines as one of the forms of government; rather, it refers to a theoretical tradition that has been competing with liberalism for a long time. Liberalism usually gives priority to specific individual freedom and rights to define the purpose of the state and the boundary of political power, whereas republicanism insists instead that only through the general political participation of citizens can the political values, which should constitute the purpose of the community, be determined and guaranteed; "in this tradition, the active and equal political participation of citizens are seen as the core guarantors of liberty, equality, and solidarity" (Leipold & Nabulsi & White 2020, 1). From this perspective, some elements demonstrated above, such as the enlightenment of the people, the participation of the people in the public sphere and their public use of reason, are indeed more closely related to republicanism than to liberalism. How-

ever, they all belong to Kant's political philosophy rather than the metaphysics of right. The republican interpretations of Kant's theory often confuse these two levels, and some of them even appeal to ethical arguments from Kant's moral philosophy. Heiner Bielefeldt's approach of introducing "the challenges of moral self-responsibility and republican commitment" by interpreting Kant's theory as "a fighting liberalism" is a typical example (Bielefeldt 1997, 525). Howard Williams's argument is actually the same (Williams 2003, 276–279).

Aside from the approach of demonstrating a Kantian republicanism directly based on the concept of moral autonomy, interpreters who try to argue for the republicanism in Kant's metaphysics of right usually appeal to his statements on the legislative general will. In §46 of the *Doctrine of Right*, Kant claims that "the legislative authority can belong only to the united will of the people" (*MM*, AA 6:313). In *Toward Perpetual Peace*, he also defines external freedom as "the warrant to obey no other external laws than those to which I could have given my consent" (*PP*, AA 8:350). These statements can make us naturally think of Rousseau's concept of *volonté Générale* (Maus 1992, 185). However, a further classification of the generality of legislative will is necessary in Kant's context as follows: (I) the general binding force of legislative authority; (II) the general acceptability of the legislative outcome; and (III) general participation in the legislative process. (I) is of course indispensable for a civil condition. However, between (II) and (III), Kant obviously places more emphasis on (II) in the metaphysics of right. He even claims that the practical reality of the idea of a social contract lies merely in that it can

bind every legislator to give his laws in such a way that they could have arisen from the united will of a whole people and to regard each subject, insofar as he wants to be a citizen, as if he has joined in voting for such a will (*CS*, AA 8:297).

In §46 of the *Doctrine of Right*, Kant also claims that not all members of the community have the right to participate in legislation. Therefore, it is clear that when he talks about "the united will of the people", he actually gives more attention to the general acceptability of legislation rather than the general participation in legislation. This already makes his thinking essentially different from republicanism. Another important difference is that for Kant, the rational concept of right or the a priori principles of right logically precede the legislative general will; that is, the legislation of general will must conform to the rational concept of right to obtain its a priori normativity (LeBar 1999, 240). For Kant, the state as a civil condition is not purely instrumental; instead, it has constitutive significance for the realization of the concept of right, since only under a general legislative power can the external freedom of everyone and the conditions for its

general coexistence be realized. Nonetheless, such a community is derived for the sake of individual rights. Kant's theory about human external freedom actually contains the following three-level structure: (I) the innate right of human beings as the normative source of an external coercive order; (II) a priori principles in private right and public right for the realization of the innate right in idea; and (III) possible conditions for the realization of these principles in experience. Both the legislative general will and the idea of the social contract are at the second level; they are not empty ideas because they should always aim at defining and protecting everyone's innate right (the freedom of external action). Habermas's criticism of Kant, which was mentioned before, is derived precisely from Kant's insistence on the priority and the a priori character of the innate right.

Other evidence that has often been used to argue for Kant's republicanism is his concept of civic self-efficiency, which is described in *On the Common Saying* as one of the three a priori constitutive principles of civil society and in the *Doctrine of Right* as one of the three attributes of a citizen. Based on this concept, Kant also proposes his concept of the positive citizen, which requires a quality of *sui iuris* in two senses: a citizen must have not only the freedom of external action but also the capacity to independently participate in legislation. Civic self-sufficiency in this sense is indeed closer to the republican freedom of non-domination (Koukouvelis 2009, 859). However, as Manfred Riedel notes, here, Kant himself confuses the a priori and empirical elements (Riedel 1976, 139). First, self-sufficiency is an a priori principle, which is, however, based entirely on empirical grounds by Kant. Kant claims that only those who are not dominated by any others in economic relations are self-sufficient and are therefore qualified to participate in legislation. According to his empirical criterion, not only women and children but also all labourers employed by private persons or organizations are also excluded from participating in legislation. Second, self-sufficiency is a constitutive rather than a regulative principle of civil society; therefore, self-sufficiency is not a goal that every citizen should strive for but rather a criterion to distinguish citizens from non-citizens. Kant here obviously confuses the right and the capacity to participate in legislation. As a constitutive principle of civil society, self-sufficiency should be determined a priori. Accordingly, everyone should be entitled to citizenship to participate in legislation merely by virtue of the quality of *sui iuris* contained in his or her innate right. Regarding the capacity to participate in legislation, since this is only an empirical concept that can only be empirically judged, it should not belong to the metaphysics of right.

Kant undoubtedly takes a liberal position in the metaphysics of right, but his emphasis on publicity and public reason in his political philosophy indicates a

requirement for the enlightenment of the people and their public participation, which more closely resembles a republican position. The realization of principles of right in experience, namely, the reconciliation of the disagreement between right and politics, needs to be carried out through publicity, which further requires each individual to make use of his or her own reason to participate in political discussion in the public sphere, thereby continuously enlightening himself or herself and simultaneously promoting the improvement of the current constitution according to consensus in the public sphere. A basic proposition of Kant's political philosophy is that each individual should actively participate in shaping the community to realize his or her rights,

for in such a whole each member should certainly be not merely a means, but at the same time also an end, and, insofar as it contributes to the possibility of the whole, its position and function should also be determined by the idea of the whole (*CJ*, AA 5:375).

In this way, we can even redefine Kant's distinction between positive and passive citizens. Every member of the community should be attributed citizenship to (directly or indirectly) participate in legislation merely by virtue of the quality of *sui iuris* in the innate right. However, this is only a juridical self-sufficiency, and citizens in this sense are only passive citizens. On the contrary, active citizens are only those who have not only the right but also the courage and capacity to make use of their own reason to (directly or indirectly) participate in legislation; they are enlightened citizens who have the quality of political self-sufficiency. Kant insists that political progress does not depend on the improvement of individual morality, but it does require some type of civic virtue: everyone should "become a good citizen even if not a morally good human being" (*PP*, AA 8:366). A good citizen is a person who has realized through enlightenment that the community is indispensable for realizing his or her rights and enlightened interests, and he or she therefore actively participates in shaping the community. In contrast, even in a representative system, if the people do not oppose unjust laws or policies through their representatives in the parliament for a long time, for Kant, "this would be a sure sign that the people is corrupt" (*MM*, AA 6:322).

In *Drafts for On the Common Saying*, Kant makes the following statement:

The civil constitution, as a rightful condition under public laws, contains full freedom of every member of the community as the first condition (not ethical, not even just juridical, but political freedom). This consists in that everyone can seek his own welfare according to his concepts and also cannot even be used by others as a means to the end of his own happiness and according to their concepts, but only according to his own (*DCS*, AA 23:129, my own translation).

Here, Kant conceptually distinguishes between juridical and political freedom. Wolfgang Kersting believes that this political freedom is precisely what Kant proposes in *Toward Perpetual Peace*, that is, “the warrant to obey no other external laws than those to which I could have given my consent” (Kersting 2007, 286). However, this is a misreading caused by ignoring Kant’s own concept of politics. Around this passage, there is no discussion related to freedom in this positive sense. In contrast, the connotation of this freedom is clear in this passage; it is also described as the freedom of everyone as a human being in *On the Common Saying*:

No one can coerce me to be happy in his way (as he thinks of the welfare of other human beings); instead, each may seek his happiness in the way that seems good to him, provided he does not infringe upon that freedom of others to strive for a like end which can coexist with the freedom of everyone in accordance with a possible universal law (i.e., does not infringe upon this right of another) (CS, AA 8:290).

This freedom is certainly juridical, but regarding its function in experience, it is also political. Because allowing others to take care of one’s own happiness according to their concepts is nothing other than depriving him or her of the possibility of self-enlightenment. A government that governs in this way is a paternalistic government,

in which the subjects, like minor children who cannot distinguish between what is truly useful or harmful to them, are constrained to behave only passively, so as to wait only upon the judgment of the head of state as to how they should be happy and, as for his also willing their happiness, only upon his kindness – is the greatest despotism thinkable (a constitution that abrogates all the freedom of the subjects, who in that case have no rights at all) (CS, AA 8:290–291).

In such a state of general guardianship, the possibility of continuous political reform would also be stifled. Precisely in this sense, Kant regards this freedom as “not even just juridical, but political freedom”.

Accordingly, Kant’s metaphysics of right is a liberal (although not necessarily a libertarian) theory, while republican elements are more likely found in his political philosophy. However, given the subordinate status of politics to right, these republican elements must naturally be limited by and serve the realization of the principles of right. Kant is therefore a liberal, not a republican. Nonetheless, he provides us with a very instructive programme to absorb republican elements within a liberal theory. The distinction between the metaphysics of right and political philosophy can offer a proper framework to understand this programme.

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