

REVOLUTIONARY EPIGONES: KANT AND HIS RADICAL FOLLOWERS

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Abstract: When Kant in 1793 rejected a right of revolution, he was immediately criticized by a group of radical followers who argued that he had betrayed his own principles of justice. Jakob, Erhard, Fichte, Bergk and Schlegel proceeded to defend a right of resistance and revolution based on what they took to be his true principles. I argue that we must understand Kant's *Metaphysics of Morals*, which came in 1797, partly as a response to these radical democratic writings. Exploring this forgotten controversy reveals that Kant did not betray his own principles when he denied a right of revolution, because he did not mean that persons have an unconditional duty to obey. This becomes clear when we read the final developments of Kant's thinking on individual liberty and republican government in light of the radical critique.

I

Introduction

The revolution in France polarized German intellectual life.³ In the years following 1789, conservatives and progressives were divided over the legitimacy of revolution, and in the debate that followed many wanted to know the opinion of Immanuel Kant, by then indisputably the most influential German philosopher. But Kant remained silent about the revolution until 1793 and had little to say about political principles in general. Many of his followers expected that he, like most German liberals and defenders of the Enlightenment, would come out in favour of the revolution, because his ethical theory had seemed to have such implications. In *Groundwork for the Metaphysics of Morals* and in *Critique of Practical Reason*, both published before the revolution, Kant had developed a view of humanity as an end in itself, based on a universal capacity for pure practical reason, which conferred on humans a dignity that stood in great contrast to how persons were treated in the old

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³ Fritz Valjavec, *Die Entstehung der politischen Strömungen in Deutschland 1770–1815* (Munich, 1951); Rudolf Vierhaus, 'Politisches Bewusstsein in Deutschland vor 1789', in *Der Staat*, 6 (1967), pp. 175–96; G.P. Gooch, *Germany and the French Revolution* (New York, 1966); Frederick Beiser, *Enlightenment, Revolution, and Romanticism: The Genesis of Modern German Political Thought, 1790–1800* (Cambridge, MA, 1992).

Reich with its inequalities of honours and privileges.⁴ In shorter political writings from the 1780s, such as *What is Enlightenment?* and *Idea for a Universal History*, he had also defended ‘a perfect civil constitution’ based on justice understood as the right to equal liberty.⁵ Both his ethics and his forays into political theory, then, seemed to point in the direction of the ideals of 1789. Added to that were the testimonies that Kant had greeted the revolution with joy. When the republic was proclaimed he is said to have declared, with Simeon: ‘Lord, now you let your servant go in peace; your word has been fulfilled.’⁶

But Kant surprised his many followers when eventually he published his first sustained discussion of justice in the essay on *Theory and Practice* in September 1793. As expected, he did defend equality, liberty and independence, which put him close to the values of 1789. But he appended to that a puzzling discussion. In it, he rejected a right of resistance and revolution, even when the legislature or executive violates the most basic principles of law and behaves ‘quite violently (tyrannically)’.⁷ Kant’s followers were baffled. Ludwig Heinrich Jakob, a popularizer of Kant’s thoughts, refused to believe it. ‘I cannot, however, imagine that he really means it that way. An unconditional suffering obedience [*leidender Gehorsam*] contradicts Kant’s moral system through and through.’⁸ What was particularly galling was that Kant’s rejection of a right to resist the state was presented as a *consequence* of a constitution based on a human right to freedom. One might have expected that this right would instead have *grounded* a right of resistance and revolution.

⁴ Immanuel Kant, *Grundlegung zur Metaphysik der Sitten*, in *Kant’s gesammelte Schriften* 4, herausgegeben von der Königlich Preußischen Akademie der Wissenschaften (Berlin, 1911); Kant, *Kritik der praktischen Vernunft*, in *Kant’s gesammelte Schriften* 5, herausgegeben von der Königlich Preußischen Akademie der Wissenschaften (Berlin, 1913). Kant’s collected works in German will be referred to as *Akademieausgabe*. Translations are from *Immanuel Kant: Practical Philosophy*, ed. Mary J. Gregor (Cambridge, 1996) and *Immanuel Kant: Correspondence*, ed. Arnulf Zweig (Cambridge, 1999). Where nothing else is mentioned, translations are my own.

⁵ Kant, ‘Beantwortung der Frage: Was ist Aufklärung?’ and ‘Idee zu einer allgemeinen Geschichte in weltbürgerlicher Absicht’, both in *Kant’s gesammelte Schriften* 8, herausgegeben von der Königlich Preußischen Akademie der Wissenschaften (Berlin, 1923).

⁶ The source is Varnhagen von Ense’s diary, quoted in Rudolf Malter, *Immanuel Kant in Rede und Gespräch* (Hamburg, 1990), p. 348. One may doubt the veracity of von Ense’s diary, but the general attitude is consistent with several other preserved accounts. See Valjavec, *Die Entstehung der politischen Strömungen*, p. 133.

⁷ Kant, ‘Über den Gemeinspruch: Das mag in der Theorie richtig sein, taugt aber nicht für die Praxis’, in *Akademieausgabe* 8, p. 299.

⁸ Anonymous [Ludwig Heinrich Jakob], *Antimachiavel, oder über die Grenzen des bürgerlichen Gehorsams: Auf Veranlassung zweyer Aufsätze in der Berl. Monatsschrift (Sept. und Dec. 1793) von den Herren Kant und Genz* (Halle, 1794), p. xxi.

What was it about Kant's conception of a human right to freedom that excluded it?

Jakob's cry of surprise has been echoed through history and Kant's views on revolution have been explored many times without any resulting consensus.⁹ It remains an obstacle to a proper understanding of his philosophy. Most studies of the problem are systematic and not historical, and they often fail to make sense of Kant's position because his writings are polemical and hard to understand outside their ideological context. The few historical studies that exist tend to situate him in the larger European tradition of canonical authors such as Hobbes, Locke and Rousseau, often without asking whether there were more immediate influences on his thinking. A common claim is that Kant's thoughts on resistance and revolution had been shaped decades before the events in France,¹⁰ and while there is some truth to that, it conceals the extent to which his ideas evolved during the 1790s.

Despite the considerable attention this topic has received, it has not been noted that Kant developed his view in the context of a debate among a group of young and radical followers, who accepted his premise of a human right to freedom but not his conclusion of a rejection of a right of revolution. They included the already mentioned Ludwig Heinrich Jakob (1759–1827), along with Johann Benjamin Erhard (1766–1826), Johann Adam Bergk (1769–1834), Johann Gottlieb Fichte (1762–1814) and Friedrich Schlegel (1772–1829), who all published sympathetic critiques of Kant in the period leading up to his *magnum opus* the *Metaphysics of Morals* in 1797. Although Fichte and Schlegel have received more treatment in the literature, it has been overlooked that they were part of a larger group of Kantians who defended a right of revolution. Not even specialized studies like Peter Burg's *Kant und die französische Revolution* discusses these radicals. The neglect is not confined to Kant studies. Books on German political thought of the period, like those of Frederick Beiser, G.P. Gooch, Reinhold Aris, Kurt Wolzendorff and Fritz

⁹ Compare the divergent interpretations in the two first and the two latter of the following recent interpretations: Arthur Ripstein, *Force and Freedom: Kant's Legal and Political Philosophy* (Cambridge, MA, 2009); B. Sharon Byrd and Joachim Hruschka, *Kant's Doctrine of Right: A Commentary* (Cambridge, 2010); Christine Korsgaard, 'Taking the Law into Our Own Hands: Kant on the Right to Revolution', in *Reclaiming the History of Philosophy: Essays for John Rawls*, ed. C. Korsgaard, A. Reath and B. Herman (Cambridge, 1997); Sarah Williams Holtman, 'Revolution, Contradiction, and Kantian Citizenship', in *Kant's Metaphysics of Morals*, ed. Mark Timmons (Oxford, 2002).

¹⁰ Peter Burg, *Kant und die französische Revolution* (Berlin, 1974); Wolfgang Kersting, *Wohlgeordnete Freiheit* (Frankfurt am Main, 1993); Hella Mandt, 'Historisch-politische Traditionselemente im politischen Denken Kants', in Zwi Batscha, *Materialien zu Kants Rechtsphilosophie* (Frankfurt am Main, 1976); Beiser, *Enlightenment, Revolution, and Romanticism*.

Valjavec, are silent about most of the radicals.¹¹ The few studies that exist focus on single authors, seemingly unaware that there was a cluster of radical Kantians.¹² One reason for the neglect of this aspect of Kant's context is perhaps that few of the radical writings exist in modern editions and that most of his followers failed to create an obvious legacy. Yet they mattered to Kant and, apart from their considerable intrinsic interest, they are important for understanding the genesis and nature of his thought.

The radicals mattered to Kant because they contributed to evaluating the cogency of his philosophy and thereby helped him to develop it. As such, they fulfilled the function of the critical public sphere, which Kant had earlier praised in his essay on Enlightenment. Here is how he describes his publishing activity in a letter to Fichte in 1797:

My choice of the journal *Berliner Blätter* for my recent essays will make sense to you and to my other philosophizing friends [. . .] For in that paper I can get my work published and evaluated [*beurtheilt*] most quickly, since, like a political newspaper, it comes out almost as promptly as the mail allows.¹³

By publishing his minor essays in journals like *Berlinische Monatsschrift* and its successor *Berliner Blätter* Kant could prepare his long-promised treatise on political philosophy, the *Metaphysics of Morals*, which eventually came out in 1797, after all the young radicals had offered their critiques. Speed mattered: he was in his seventies and had no time to waste.

¹¹ Beiser, *Enlightenment, Revolution, and Romanticism*; Gooch, *Germany and the French Revolution*; Reinhold Aris, *History of Political Thought in Germany from 1789 to 1815* (New York, 1965); Kurt Wolzendorff, *Staatsrecht und Naturrecht in der Lehre vom Widerstandsrecht des Volkes gegen rechtswidrige Ausübung der Staatsgewalt* (Breslau, 1916); Valjavec, *Die Entstehung der politischen Strömungen*.

¹² Jörn Garber, 'Liberaler und demokratischer Republikanismus: Kants Metaphysik der Sitten und ihre radikaldemokratische Kritik durch J.A. Bergk', in *Die Demokratische Bewegung in Mitteleuropa im Ausgehenden 18. Und frühen 19. Jahrhundert*, ed. O. Büsch and W. Grab (Berlin, 1980), pp. 251–89; Zwi Batscha, 'Johann Benjamin Erhards Politische Theorie', in *Jahrbuch für Deutsche Geschichte*, Universität Tel-Aviv, 1 (1972), pp. 53–75; Zwi Batscha, 'Ludwig Heinrich Jakobs frühbürgerliches Widerstandsrecht', in *Studien zur politischen Theorie des deutschen Frühliberalismus* (Frankfurt am Main, 1981); Franklin A. Walker, 'The Conservative Face of a Radical Kantian in Prussia and Russia: The Case of Ludwig Heinrich Jakob (1759–1827)', in *Germano-Slavica*, 13 (2002), pp. 3–17; Steven D. Martinson, 'Reason, Revolution and Religion: Johann Benjamin Erhard's Concept of Enlightened Revolution', in *History of European Ideas*, 12 (2) (1990), pp. 221–6. More has been written on Fichte; for an exemplary article see Anthony J. La Vopa, 'The Revelatory Moment: Fichte and the French Revolution', in *Central European History*, 22 (2) (1989), pp. 130–59.

¹³ Kant, Letter to Fichte, December 1797, in *Briefwechsel*, in *Kant's gesammelte Schriften*, 12, herausgegeben von der Königlich Preußischen Akademie der Wissenschaften (Berlin 1922), p. 221.

Other debates about Kant's writings also shaped his context. The *Theory and Practice* essay created a stir among his conservative followers, who contested the idea of reason dictating reality, and who wanted to derive justice from the conventions of the old regime. These included Friedrich von Gentz and August Wilhelm Rehberg. Very much like Kant's radical followers, these thinkers agreed with his basic premise but not with his conclusions. But the conservatives were not opposed to Kant's view of revolution, and I shall therefore leave them aside here.¹⁴

In the first section of this article I present Kant's view in 1793. I next discuss the attempts by the radicals to put the critical project on the right track. I finally show how Kant subsequently developed his thought. The two main challenges by the radicals were that individuals must have a right to resist the state, and that a people collectively can be justified in engaging in revolution. I argue that Kant took the radicals seriously and that he attempted to meet their critique when developing his view of justice and popular sovereignty.

II Kant's Initial View

The view of justice Kant presented in *Theory and Practice* in 1793 was a liberal view.¹⁵ Liberals, who became more prominent in Germany during the latter half of the eighteenth century, were against the feudal remnants of the old *Reich*, defended individual civil rights, freedom of speech and limits to state authority. The state should stay out of religion and not unduly manage the economy. They typically did not defend a universal right to vote, however.¹⁶ Liberals welcomed the revolution in France, turned sharply against it during the Reign of Terror and the execution of Louis XVI, and regained some confidence in it after the rise of the Directory in 1794.¹⁷

Kant's liberalism was based on equal freedom as the principle of justice, or right (*Recht*). Freedom can be limited, but only by law and for the sake of the equal freedom of others, never by reference to public happiness, religious virtue or even moral perfection. Law is justified if it could be willed by free and equal subjects, generating a 'general will'.¹⁸ Citizens should have the right to elect their representatives, but not everyone qualifies as a citizen. Apart from

¹⁴ I explore Kant's debate with the conservatives in R. Maliks, 'The State of Freedom: Kant and his Conservative Critics', in *Freedom and the Construction of Europe*, Vol. 2, ed. Quentin Skinner and Martin van Gelderen (Cambridge, 2013).

¹⁵ For a discussion of the use of the word 'liberal', see Beiser, *Enlightenment, Revolution, and Romanticism*, p. 15.

¹⁶ Valjavec, *Die Entstehung der politischen Strömungen*, p. 189.

¹⁷ Beiser, *Enlightenment, Revolution, and Romanticism*, p. 24; Valjavec, *Die Entstehung der politischen Strömungen*, pp. 177–9.

¹⁸ Kant, 'Über den Gemeinspruch', p. 295.

not being a child or a woman, one must be 'one's own master (*sui iuris*)' by which Kant meant having some property.

Kant's principles of justice in *Theory and Practice* are followed by a 'conclusion' [*Folgerung*] where he presents his rejection of a right of resistance. Most interpreters today take this passage to be about revolution, but the words he uses are resistance (*Widersetzlichkeit*), insurrection (*Aufstand*) and rebellion (*Rebellion*). These were traditional pejorative terms used to describe political disobedience to government but, unlike revolution, they did not necessarily entail constitutional change. Nor was Kant primarily arguing against the defenders of the French revolution. His chief target was Gottfried Achenwall (1719–72), safely dead by then, who had defended resistance in his book *On Natural Law*, on which Kant had lectured frequently from the 1760s. Indeed, Kant had developed this argument long before the French revolution, as is evident from his lectures as well as his unpublished notes. The most significant arguments from *Theory and Practice* are recorded in the lecture notes of Gottfried Feyerabend, taken in 1784, and some ideas can be traced back as far as 1769.¹⁹

Kant rejects the idea of a right to resist because justice [*Recht*] presupposes universalizability, and a right for individuals to resist when they judge it to be right cannot be made universal. 'Each resistance would take place in conformity with a maxim that, made universal, would annihilate any civil constitution and eradicate the condition in which alone people can be in possession of rights generally.'²⁰ According to Kant's conception of justice (the 'universal principle of right'), any act that is right must be compatible with an equal right for everyone else to do the same according to a general law,²¹ and that would mean that anyone would be at liberty to refuse obedience whenever their conscience tells them to do so. It would mean subjects retaining the right to judge when to obey the law, and therefore, in effect, to make law into recommendation and to leave society in the state of nature. Hence, within the state and against the government there can be no unilateral action based on justice, and to claim a right to resist is therefore the same as wanting a return to the state of nature. In Kant's terminology, this is to do 'wrong in the highest degree' since a necessary condition for justice is to heed the 'unconditional and first duty' to be in a civil condition.²²

¹⁹ See *Vorlesungen über Moralphilosophie*, in *Kant's gesammelte Schriften* 27, herausgegeben von der Königlich Preußischen Akademie der Wissenschaften (Berlin, 1979) and *Handschriftlicher Nachlass. Bd. 6. Moralphilosophie, Rechtsphilosophie und Religionsphilosophie*, in *Kant's gesammelte Schriften* 19, herausgegeben von der Königlich Preußischen Akademie der Wissenschaften (Berlin, 1934).

²⁰ Kant, 'Über den Gemeinspruch', p. 299.

²¹ *Ibid.*, p. 290.

²² *Ibid.*, pp. 304 and 289.

Achenwall, however, had argued in line with a traditional view whereby resistance could be legally regulated. In his view, the people enter into a 'contract of subjection' with the ruler, and if a tyrannical ruler violates this contract, the people is legally entitled to resist and overthrow him. The result of that is not a return to the state of nature, however, because political society is unified by an initial agreement, the 'contract of society', in which individuals give up their right to decide and contract to join a political society in the first place.²³ Only in a second step do they enter the 'contract of subjection' with the ruler. The people's unity in the revolution is guaranteed by the first contract, and it reverts to the state of nature only with regard to the tyrant.

But to Kant the contract of subjection (*Unterwerfungsvertrag*) is an absurd proposition.²⁴ The problem is that no one can adjudicate and enforce the mutual commitments between the people and the government. One party to a contract cannot unilaterally decide over it, and no third party can make the decision without the result of an infinite regress. A people cannot simultaneously judge and be a party to the contract:

In an already existing civil constitution the people's judgment to determine how the constitution should be administered is no longer valid. For suppose that the people can so judge, and indeed judge contrary to the judgment of the actual head of state; who is to decide on which side the right is? Neither can make the decision as judge in its own suit. Hence there would have to be another head above the head of state, that would decide between him and the people; and this is self-contradictory [. . .] Only he who possesses the supreme administration of public right can [decide the issue], and that is precisely the head of state; and no one in the commonwealth can, accordingly, have a right to contest his possession of it.²⁵

While Kant's argument against a contractual right to resist is usually thought to be odd and unusual, it relies on the same premise as Locke's and Rousseau's standard arguments against the contract of subjection. Both thinkers had maintained that society is created through a social contract, yet neither of them thought of the relation between society and government as contractual.²⁶ Instead of contracting, society delegates authority to the government, which holds it on trust.

²³ Gottfried Achenwall, *Iuris naturalis pars posterior complectens jus familiae, jus publicum, et jus gentium*, reproduced in *Akademieausgabe* 19, here at §11 and 101.

²⁴ See Ingeborg Maus, *Zur Aufklärung der Demokratietheorie: Rechts- und demokratietheoretische Überlegungen im Anschluß an Kant* (Frankfurt am Main: Suhrkamp, 1992), pp. 43 ff.; Kersting, *Wohlgeordnete Freiheit*, pp. 457 ff.

²⁵ Kant, 'Über den Gemeinspruch', p. 300.

²⁶ John Locke, *Second Treatise*, ed. Peter Laslett (Cambridge, 1967), II, pp. 332, 349; Jean-Jacques Rousseau, *On the Social Contract*, in *The Basic Political Writings*, ed. Donald A. Cress (Indianapolis/Cambridge, 1987), p. 200.

In his critique of Achenwall, Kant was a representative of his times. As Wolzendorff has shown,²⁷ the contractual justification for a right of resistance was a remnant of the dualistic system of government from the medieval and early modern communities. It presupposed a dated view of legitimacy and relied on the unique role played by the nobility, who were the neutral third party enforcing the contract between the people and the ruler.²⁸ By 1793 theories of resistance had already moved away from this view to one based on natural law and popular sovereignty.

It must have been puzzling to a contemporary reader that Kant focused on refuting a largely outdated theory of contractual resistance. The political philosophy underlying the revolution in France was instead based on the view that the people is the sovereign *pouvoir constituant* and that it can at any time discard the old constitution and create a new one. This view came from Sièyes but originated in Rousseau, whom Kant seemed to follow in the view that all justice proceeds from a general will. Rousseau (following Locke) had been emphatic that if government becomes tyrannical or despotic the people may decide whether to revoke power and overthrow the government.²⁹ Unlike Achenwall's theory of the people judging on a contract, this is simply the spontaneous action of the people, and does not express legality, but rather the popular will's higher legitimacy. Kant's argument against the legality of contract-based revolution from 1793 did not obviously contradict this notion of justified collective action. Nor did the argument that the maxim to resist cannot be universalized. It is not obviously impossible to universalize the maxim that when the people as a whole judges revolution to be just it must be free to initiate it. Because Kant had not properly engaged with the modern view of the people as the *pouvoir constituant*, the *Theory and Practice* essay left him vulnerable to the radical suggestion that the nation could legitimately assert itself in a revolution.

III

Revolutionary Followers

Kant's radical followers were born between 1759 and 1772, which means that they grew up in revolutionary times. Erhard describes how as a child he had been stirred by the American struggle for independence, which roused a love

²⁷ Wolzendorff, *Staatsrecht und Naturrecht*. See also Maus, *Zur Aufklärung der Demokratietheorie* and Kersting, *Wohlgeordnete Freiheit*.

²⁸ See for example Philippe du Plessis Mornay, *Vindiciae contra tyrannos*, in *Constitutionalism and Resistance in the Sixteenth Century; Three Treatises by Hotman, Beza, & Mornay*, ed. Julian Franklin (New York, 1969), pp. 189, 191; and Johannes Althusius, *Politica: Politics Methodologically Set Forth and Illustrated with Sacred and Profane Examples*, ed. Frederick S. Carney (Indianapolis, 1964 [1614]), pp. 103, 106, 108, 134.

²⁹ Rousseau, *Social Contract*, p. 202; Locke, *Second Treatise*, II, p. 241.

for the truly republican constitution and a sentiment of freedom.³⁰ This sympathy with the American struggle was generally shared among German observers.³¹ There followed the democratic revolution in Geneva in 1782, insurrections in Augsburg and Aachen in 1785–6, the Dutch democratic revolution in 1784–7, the revolution in Brabant in 1787–90 and, eventually, the revolution in France in 1789. In Europe during the 1780s ‘there existed a widely diffused, revolutionary awareness’.³² This awareness, and a horror at despotism, suffuse the writings of all the young radicals.

The young radicals also came of age in a period when Kant’s writings increasingly dominated public discourse. By the 1790s there were Kantians at all important German universities.³³ Erhard describes how the *Critique of Practical Reason* made him shed tears of joy and that it convinced him of the possibility of human progress and individual freedom.³⁴ Jakob, Bergk, Schlegel and Fichte express a similar devotion. All five of them went on to develop the Kantian philosophy during the 1790s. Erhard, who studied with Reinhold in Jena, became a medical doctor but wrote several Kantian tracts on the side. Jakob, who became a professor of political economy in Halle, devoted his career to popularizing Kant’s philosophy. Schlegel lectured in Jena, where he became the leader of the romantic circle which was heavily influenced by Kant’s *Critique of Judgment*. Bergk spent most of his life in Leipzig as a private scholar, political publicist and prolific popularizer of Kant’s philosophy. Fichte, who taught in Jena and Berlin, veered between boundless respect for the master and the need to surpass him by taking the critical philosophy further. Erhard, Fichte and Jakob were not satisfied with admiring Kant from a distance and initiated correspondence with him. The two former visited him in the beginning of the 1790s. Although Erhard and Fichte were acquainted with each other (in Jena), and although it is likely that all the young radicals were aware of each other, they do not discuss each other’s writings. Their texts are nonetheless similar, in particular in defending two main claims that put them at odds with Kant: the justice of individual resistance and the justice of popular revolution.

As the young radicals started their publishing careers in the 1790s, sympathy for revolution was no longer an innocent stance in German areas. While the Revolution in France had been met with great enthusiasm among most German intellectuals in 1789, it had quickly lost support during the terror. As

³⁰ See ‘Johann Benjamin Erhards eigne Lebensbeschreibung’, in *Denkwürdigkeiten des Philosophen und Arztes Johann Benjamin Erhard*, ed. K.A. Varnhagen von Ense (Stuttgart and Tübingen, 1830), p. 8.

³¹ James Sheehan, *German History 1770–1866* (Oxford, 1989), p. 205.

³² Jonathan Israel, *Democratic Enlightenment: Philosophy, Revolution, and Human Rights 1750–90* (Oxford, 2011), p. 858.

³³ For an overview, see Karl Vorländer, *Immanuel Kant: Der Mann und Das Werk* (Hamburg 1992), pp. 239–65.

³⁴ Erhard, ‘Lebensbeschreibung’, pp. 20–1.

French radicalism abated after 1794, it lost its force in Germany as well.³⁵ In Kant's Prussia, Frederick William II (1786–97) rolled back the liberal policy on freedom of expression that Frederick II had maintained, and it became risky to express subversive opinions. While there was no revolutionary situation in Germany, the populist message of the radicals could not have been seen as anything but a challenge to an order dominated by the entrenched privileges of the nobility, the church and the King.

The young radicals were not typical of intellectual opinion in Germany, but they would have had a reasonable hope that at least Kant would side with them. After all, his ideas of equal freedom and popular self-government (expressed in the minor writings before the Revolution) seemed quite in line with the ideas of 1789 and, like the writings of the architects of the French Revolution, they had an origin in Rousseau. Kant's rejection of resistance and revolution therefore came as a surprise to his followers. His conservative acolytes could breath a sigh of relief, whereas the Kantian revolutionaries were forced to consider whether they could coherently hold on to both of their commitments.

In the subsequent years the radicals produced a large number of essays and books in which, among other things, they attempted to reconcile Kantian principles and a defence of revolution.³⁶ They did so on the background of Kant's metaphysical conception of human dignity from the moral writings of the 1780s. But Kant's concern in those writings had been with individual virtue, and the radicals were aware that the principles of justice for a society must be structured differently. In particular, they all sought to develop the nature of juridical rights. By 1793, Kant himself had only rudimentarily sketched what that amounted to, and this opened a space for the radicals to develop their own

³⁵ Valjavec, *Die Entstehung der politischen Strömungen*, pp. 180 and 204; Hans Erich Bödeker, 'The Concept of the Republic in Eighteenth Century German Thought', in *Republicanism and Liberalism in America and the German States, 1750–1850*, ed. J. Heideking and J. Henretta (Cambridge, 2002), pp. 41–3, 49.

³⁶ Jakob was the first to respond to Kant. His anonymously published answer to *Theory and Practice*, called *Antimachiavel, oder über die Grenzen des bürgerlichen Gehorsams*, was published in Halle in 1794, and on the title page he added 'Occasioned by two essays in Berl. Monatsschrift by the gentlemen Kant and Gentz'. Erhard's treatise came in 1795; it was called *Über das Recht zu einer Revolution des Volkes*, and although Kant's name is not mentioned, it is clearly an attempt to develop Kant's thought. Bergk's essay 'Bewirkt die Aufklärung Revolution?' was published in 1795 and was incorporated into a book the following year, called *Untersuchungen aus dem Natur-, Staats- und Völkerrechte*. Finally, he published *Briefe über Immanuel Kant's Metaphysische Anfangsgründe der Rechtslehre*, in 1797. Schlegel published his 'Versuch über den Begriff des Republikanismus' in 1796 and, as the title page stated, it was a review of *Perpetual Peace*. Fichte had already defended a right of resistance in his *Beitrag zur Berichtigung der Urtheile des Publikums über die französische Revolution* from 1793. He then published a review of *Perpetual Peace* in 1795, and developed the ideas further in *Foundations of Natural Right*, from 1796.

Kantian theories. Like Kant, they thought of juridical rights as the protection of a space of external liberty, the freedom of choice. But unlike Kant, they held that the right to freedom must have a primacy to positive law and could justify resistance and revolution.

Space does not permit going into detail on all the aspects of these writings, and the following discussion will be limited to their two main arguments about resistance and revolution. First, they argue that a person's obligation is to morality, and that positive law can be set aside if it contradicts one's conscience. Individuals are therefore not under an obligation to obey tyrannical rulers. Second, they develop a Rousseauian argument about the people as the constituent power (*pouvoir constituant*) that legitimately can use force to depose the current regime and change the constitution when it judges it to be the right thing to do. Although these tenets placed the young Kantians on the radical side of the German political spectrum, it is not correct to call them Jacobins. The German Jacobins were publicists, pamphleteers and agitators inspired by Robespierre's radical democratic vision, working to bring the revolution to Germany.³⁷ The young radicals' common point of departure was the Kantian emphasis on Enlightenment and civil liberty within a well-ordered state.

In developing the first argument, that individuals can disobey and resist despotic law for the sake of justice, the radicals embrace a Kantian notion of justice. Right and wrong are defined not according to consequences and utility but according to pure principles found in human reason. Facts cannot by themselves tell us what is just. The radicals argue that a human right to freedom underlies all other rights established through positive law. Dependency on another's arbitrary will is domination and persons have the right to live in a republican constitution where they obey laws that they could find reason to approve of.³⁸ All five radicals subscribe to the anti-paternalistic Kantian idea

³⁷ Walter Grab, *Leben und Werke norddeutscher Jakobiner* (Stuttgart, 1973), cf. T.C.W. Blanning, 'German Jacobins and the French Revolution', *The Historical Journal*, 23 (1980), pp. 985–1002. Helmut G. Haasis, the editor of the only modern edition of Erhard, categorizes Erhard as a German Jacobin, but that is not entirely credible. In his treatise Erhard presents the Jacobins as wanting to expunge all law and order and to replace it with the despotism of opinion, and that is hardly an agenda he shared. See 'Nachwort', in J.B. Erhard, *Über das Recht zu einer Revolution und andere Schriften*, ed. Helmut G. Haasis (Munich, 1970), pp. 203–33.

³⁸ See Erhard, *Über das Recht zu einer Revolution*, pp. 89, 13; Jakob, *Antimachiavel*, pp. 151, 112, 1, 16, 98; J.A. Bergk, *Untersuchungen aus dem Natur-, Staats- und Völkerrechte: Mit einer Kritik der neuesten Kantitation der französischen Republik* (1796), pp. v, 47; J.A. Bergk, *Briefe über Immanuel Kant's Metaphysische Anfangsgründe der Rechtslehre, enthaltend Erläuterungen, Prüfung und Einwürfe* (Leipzig and Gera, 1797), p. 189; Friedrich Schlegel, 'Essay on the Concept of Republicanism occasioned by the Kantian Tract "Perpetual Peace"', in *Early Political Writings of the German Romantics*, ed. Frederick C. Beiser (Cambridge, 1996), pp. 97, 101; J.G. Fichte,

that it is not the government's task to make subjects happy and that it should confine itself to the purely negative job of administrating justice.

Having established this view of justice, the radicals go on to question Kant's view that there can be no justification for resistance by individuals who are subject to despotic treatment. Jakob writes that a person's primary obligation is to justice, which it is the 'purpose [*Zweck*] of the state' to implement.³⁹ He formulates a 'general law' for resistance: 'Each subject is obligated to actively resist the sovereign when he attempts to use force to do something the subject is obliged to prevent, or, in general, when he attempts to coerce the subject to do something contradicting his duty.'⁴⁰ Jakob's examples show that eighteenth-century Germans had no trouble imagining rulers committing atrocities on a grand scale. Tyrants include rulers commanding all subjects to swallow two grams of arsenic and kings who turn the order of society upside down, requiring husbands to kill wives, judges to give unjust sentences, and teachers to propagate licence.⁴¹ Likewise for Erhard, positive laws carry obligation only insofar as they do not contradict morality, allowing reason, rather than violence, to rule: 'What contradicts reason can be no law for humans, it is the speech of a fool or the threat of a robber.'⁴² We find similar statements among Schlegel, Bergk and Fichte.⁴³

To show that his defence of resistance is consistent with Kant's principles, Jakob (somewhat incredibly), claims that all Kant had argued in *Theory and Practice* was that resistance is not permitted if it is undertaken for the sake of material well being. He had not meant to reject a right of resistance altogether.⁴⁴ Jakob pretends to not contradict his teacher, but to supply a missing piece in his theory by justifying resistance with the help of Kantian principles of justice. This is a strategy he shares with the other radical writers. As Jakob sees it, resistance can be justified if it is determined by pure reason and formal procedure [*Form*], and not by material utility: 'To liberate the world of a villain (*Bösewicht*) is a crime if it does not happen in a legitimate way [. . .] When it comes to ethical tasks it does not depend on *what* happens, but *how* or in what way it happens; not the *material*, but the *form* must be taken into

'Review of Immanuel Kant, Perpetual Peace: A Philosophical Sketch', trans. Daniel Breazeale, in *Philosophical Forum*, 32 (4) (2001), pp. 311–21.

³⁹ Jakob, *Antimachiavel*, p. 30; Bergk, *Untersuchungen aus dem Natur-, Staats- und Völkerrechte*, p. 123.

⁴⁰ Jakob, *Antimachiavel*, p. 42; see also p. 52.

⁴¹ *Ibid.*, pp. 21, 28.

⁴² Erhard, *Über das Recht zu einer Revolution*, pp. 16, 15, 45, 63.

⁴³ Schlegel, 'Essay on the Concept of Republicanism', pp. 111–12; Bergk, *Untersuchungen aus dem Natur-, Staats- und Völkerrechte*, pp. 122–5; Bergk, *Briefe*, p. 208; Fichte, *Beitrag*, pp. 112–13.

⁴⁴ Jakob, *Antimachiavel*, p. xxii.

account.⁴⁵ Erhard likewise emphasizes that revolution must be motivated by a sense of ‘pure right’,⁴⁶ and Bergk writes that because there is a duty to realize one’s freedom there is a duty to stop despotic rulers.⁴⁷ The judgement about when to resist must be according to principles of right (*Recht*) not prudence (*Klugheit*) Bergk writes, invoking a familiar Kantian dichotomy.⁴⁸ The same goes for Schlegel and Fichte. Fichte explicitly commits himself to Kant’s view of justice and argues that this is what the ruler must be judged according to (but with a characteristic appreciation of his own significance he claims to have discovered the principles independently of Kant).⁴⁹

Their first argument, then, is that there is no moral duty for individuals to obey despots. The second argument is a defence of *revolution*, which the radicals take to mean the attempt by a mobilized people to overturn unjust political institutions within a state by force and to establish a republican constitution.⁵⁰ In this case, it is not a mere matter for an individual to resist, but for the nation to create a new constitution. This argument is more in line with the principles of 1789.⁵¹ They take a Rousseauan view of the people as the constituent power, which easily could be seen to be in line with Kant, since he too had been influenced by Rousseau and used the idea of the general will as a criterion of political legitimacy. He just had not drawn the conclusion that revolution is justified.

Underlying this view is a greater appreciation for popular participation in politics than Kant had expressed. He had, for example, limited the right to citizenship — and hence the right to vote — to male property holders. Bergk first committed to paper his view in 1796 when he wrote that denying political rights — the right to vote and hold office — is to rob humans of their dignity and to render them vulnerable to oppression.⁵² In his 1797 treatise he attacks Kant directly and asks rhetorically whether property holding makes for better citizenship. Does it ‘make the voter more honest, the legislator more perceptive, and the judge more impartial?’⁵³ His answer is negative, amassing property is an expression of selfishness, and rewarding it with privileges

⁴⁵ *Ibid.*, p. 126; cf. p. 128.

⁴⁶ Erhard, *Über das Recht zu einer Revolution*, pp. 49, 57.

⁴⁷ Bergk, *Untersuchungen aus dem Natur-, Staats- und Völkerrechte*, p. 122. Likewise, Bergk, *Briefe*, p. 228.

⁴⁸ Bergk, *Untersuchungen aus dem Natur-, Staats- und Völkerrechte*, p. 123.

⁴⁹ Fichte, ‘Review of Immanuel Kant, Perpetual Peace’.

⁵⁰ See for example Erhard, *Über das Recht des Volks zu einer Revolution*, p. 53; Bergk, *Untersuchungen aus dem Natur-, Staats- und Völkerrechte*, p. 121; and Bergk, *Briefe*, p. 227; Fichte, *Beitrag*, p. 113.

⁵¹ On the modern concept of revolution, see Hannah Arendt, *On Revolution* (London and New York, 1990); Jürgen Habermas, *Theory and Practice* (Boston, 1974); Reinhart Koselleck, *Futures Past: On the Semantics of Historical Time* (New York, 1985).

⁵² Bergk, *Untersuchungen aus dem Natur-, Staats- und Völkerrechte*, p. 49.

⁵³ Bergk, *Briefe*, p. 180.

encourages the most animal-like qualities of humanity. Anyone who is physically mature is capable of virtue and knowledge, and one cannot accurately make decisions about who actually *is* virtuous, hence, physical maturity must be the criterion for the right to vote. Bergk concluded that all women too must have the vote, since they are moral beings just like men.⁵⁴ Although he went further and expressed himself in more detail than the other radicals, similar sentiments can be found among all of them, with the exception of Jakob who signed on to Kant's property requirement.⁵⁵

The radicals do not defend revolution as a legal right, as Achenwall had done, but as a moral right, based in the human right to freedom. In fact, they *agree* with Kant that there can be no positive law providing such a right. Erhard writes that no one can have the legal right (*das Recht*) to revolution because no court could decide on its justice. But in some circumstances it is nonetheless morally right (*es ist recht*) to start a revolution:

Instead of 'who has the right' to start a revolution one must ask 'who does right' when he starts a revolution. The question belongs therefore alone in the court of morality, and the right (*das Recht*) to start a revolution cannot be positively given or taken away. The question is therefore not about legality (*das Recht*) but about legitimacy (*Rechtmässigkeit*).⁵⁶

Revolution is not a matter for law (a *Rechtsfrage*), but for conscience (a *Gewissenssache*).⁵⁷ Subjects, then, must consult their conscience to establish the limits of their obligation.

For the young radicals revolution is a morally necessary measure when the government seeks to harm not just an individual but society itself. A people rising against a despot is justified, because individuals are no longer under an obligation to obey, and because the general will is the source of justice and carried by the majority of the people. Bergk writes: 'the majority view confirms justice in a state'.⁵⁸ Bergk speaks of a 'nation', thereby connecting to the French revolution: 'the nation's conscience of the revolution's legitimacy must be taken to be holy by all external observers. It may err in choosing means to execute the revolution, but the undertaking is not immoral'.⁵⁹ Schlegel, likewise, decrees that '*the will of the majority* should be the surrogate of

⁵⁴ *Ibid.*, p. 187.

⁵⁵ Schlegel, 'Essay on the Concept of Republicanism', pp. 100, 102; Erhard, *Über das Recht des Volks zu einer Revolution*, p. 81; J.G. Fichte, *Foundations of Natural Right According to the Principles of the Wissenschaftslehre*, ed. Frederick Neuhouser (Cambridge, 2000), pp. 16, 301.

⁵⁶ Erhard, *Über das Recht zu einer Revolution*, p. 42; also pp. 44, 87.

⁵⁷ *Ibid.*, p. 51. Bergk is almost identical, see *Untersuchungen aus dem Natur-, Staats- und Völkerrechte*, p. 120. Likewise Schlegel, 'Essay on the Concept of Republicanism', p. 111; and Fichte, *Foundations of Natural Right*, pp. 159–61.

⁵⁸ Bergk, *Untersuchungen aus dem Natur-, Staats- und Völkerrechte*, pp. 125, 118.

⁵⁹ *Ibid.*, p. 120.

the general will'.⁶⁰ This general will permits insurrection when a dictator destroys the existing constitution, and the insurrection is legitimate because it aims to organize republicanism anew.⁶¹ A similar view is also to be found in Erhard and Fichte.⁶² Fichte strongly connects to Rousseau when writing that whatever the populace decides by majority vote is just, that is, in accordance with the general will.⁶³ If the government and the *ephors* (a body that guards against despots) become completely corrupt the people is entitled to rise up:

The people are never rebels, and applying the expression *rebellion* to the people is the most absurd thing that has ever been said; for the people, both in fact and as a matter of right, is the highest authority, above which there is no other; it is the source of all other authority, and is accountable only to God. When the people assemble, the executive branch loses its power, both in fact and as a matter of right.⁶⁴

Having established that a nation is morally entitled to rise against tyrannical government, the radicals were still left with the problem of how this would be possible in practice. This action would not have to be unanimous, but it would have to be by a majority, which could credibly claim to act as the people. They all choose the same strategy: the necessary precondition for revolution is popular enlightenment. Persons must become aware of their rights as humans and as members of a nation before they can act together as a people, otherwise they will not realize that they are oppressed. Merely physical deprivation is insufficient; it must be combined with an understanding of the causes of deprivation and the injustice of oppression.⁶⁵

This is particularly a dominant theme in Erhard and Bergk's writings. Erhard's theory of why a people lets itself be oppressed bears a resemblance to that of Etienne de La Boétie, whose *On Voluntary Servitude* he had translated into German in 1793. La Boétie's pessimistic thesis is that persons acquiesce to tyrannical government not out of fear but because they lack the will to withdraw support resulting from habituation to servitude and lost awareness of their freedom.⁶⁶ It is a pessimistic thesis because he sees no real way out of the oppression: people are incapable of breaking the spell of dogma.

⁶⁰ Schlegel, 'Essay on the Concept of Republicanism', p. 102.

⁶¹ *Ibid.*

⁶² Erhard, *Über das Recht zu einer Revolution*, p. 93; Fichte, 'Review of Immanuel Kant, "Perpetual Peace"', *Foundations of Natural Right*, p. 149.

⁶³ Fichte, *Foundations of Natural Right*, p. 153.

⁶⁴ *Ibid.*, p. 160.

⁶⁵ See for example Bergk, *Untersuchungen aus dem Natur-, Staats- und Völkerrechte*, p. 137; and Erhard, *Über das Recht zu einer Revolution*, p. 55.

⁶⁶ Etienne de La Boétie, *The Politics of Obedience: The Discourse on Voluntary Servitude*, ed. Murray N. Rothbard (New York/London, 1975 [1576]), p. 55.

Erhard's solution to the conundrum is Kant's theory of enlightenment. Kant starts from the same premise as La Boétie: the people is in a condition of self-incurred minority, resulting from laziness and 'a lack of resolution and courage to use [one's own understanding] without direction from another'.⁶⁷ The solution is a free public sphere, which eventually will make persons capable of self-government, at which point (Kant hopes) the ruler will give it to them. Erhard, too, hopes that a people will be given freedom by the ruler, but if he fails to do so revolution is justified and it is enabled by enlighteners who take the people out of its minority by spreading the idea of liberty,⁶⁸ and generating a 'feeling' for right.⁶⁹ 'Only in a country of patriots can a moral insurrection take place', Erhard thinks, intending 'patriot' in the eighteenth-century sense of being enlightened about rights and duties.⁷⁰

Bergk, Schlegel and Fichte draw similar conclusions. Bergk emphasizes that since Kantian principles are not utilitarian or based on welfare they are universal and can transport persons beyond the world of senses, giving the people unity and courage.⁷¹ Fichte writes that if a revolution fails, it is because the nation is not mature, and the instigators can blame themselves: they should have known the spiritual condition of their nation better.⁷²

The challenge Kant received from his own followers, then, was double. Individuals are not morally obliged to obey oppressive government, and collectively they are entitled to institute republican principles through a revolution. To support this argument they had used Kantian reasons: a view of human dignity as a paramount value, a notion of justice that is non-consequentialist, and the idea of the people as a popular sovereign. In addition, they had taken Kant's treasured notion of enlightenment and enlisted it in the revolutionary venture. But what would Kant think? The young radicals must have had great expectations for the master's promised *magnum opus* on law and politics, the *Metaphysics of Morals*.

IV

Kant's Evolving System

To what extent did Kant engage with his followers? Apart from one mention of Erhard's essay, he does not address them by name in his writings. But it was not always his habit to explicitly refer to authors he engaged with, particularly not in systematic works like the *Metaphysics of Morals*. Since he maintained a

⁶⁷ Kant, 'Beantwortung der Frage', p. 35.

⁶⁸ Erhard, *Über das Recht zu einer Revolution*, p. 94.

⁶⁹ *Ibid.*, p. 93.

⁷⁰ *Ibid.*, p. 59. On this view of patriotism, see Vierhaus, 'Politisches Bewusstsein in Deutschland'.

⁷¹ Bergk, *Briefe*, p. 229.

⁷² Fichte, *Foundations of Natural Right*, p. 161. Bergk makes the identical point in *Briefe*, p. 207.

correspondence with Erhard, Jakob and Fichte, he probably had a general sense of what they were writing about. The correspondence also shows a great deal of mutual respect.⁷³ In one instance, Kant describes Erhard as a ‘true, merry, and clever friend’ with whose mind ‘I flatter myself [I] will forever be in accord’.⁷⁴

We do know that Kant read Erhard’s treatise in 1795 and may have read Jakob’s book then too, since they corresponded at the time. Possibly he read Schlegel’s article, or at least knew its contents, since he recorded its title and place of publication.⁷⁵ It is not unlikely that he was familiar with Bergk’s writings as well, since he engaged with him in a public exchange on a different matter in 1796.⁷⁶ He was probably familiar with Fichte’s works since the two exchanged letters about developing a doctrine of right in 1793 and because Kant writes to him that he had received his book on natural law.⁷⁷ The extent to which Kant read his radical critics cannot be ascertained, but it seems reasonable to assume that he was aware of the ongoing debate. Defences of resistance and revolution were uncommon in Germany at the time and these ones were provided by his followers and clearly addressed to him. Moreover, since Kant wanted his ideas evaluated in the public sphere he must have looked out for these kinds of efforts.

It is no exaggeration to say that Kant attached world historical importance to his radical followers. This, at least, is the conclusion if we make the reasonable assumption that his young ‘philosophizing friends’ were among the enthusiastic supporters for revolution, who Kant in the *Conflict of the Faculties* from 1798 takes as a sure sign that humanity is improving.⁷⁸ This occurrence, that proves humanity’s development, is described as follows:

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

⁷³ In a letter to Erhard, Kant wrote that ‘of all the persons I so far have come to know there is no one I would more wish the daily company of than you’. The letter has been lost but Erhard cites it in his biography. See Erhard, ‘Lebensbeschreibung’, pp. 33, 22.

⁷⁴ Letter to Reinhold, 21 September 1791, in *Kant’s gesammelte Schriften* 11, herausgegeben von der Königlich Preußischen Akademie der Wissenschaften (Berlin, 1922), p. 289.

⁷⁵ Kant, *Handschriftlicher Nachlass: Bd. 5. Metaphysik. Theil 2*, in *Kant’s gesammelte Schriften* 18, herausgegeben von der Königlich Preußischen Akademie der Wissenschaften (Berlin, 1928), p. 666.

⁷⁶ Bergk had claimed in the *Allgemeiner litterarischer Anzeiger* that Kant was the author of the philosophical passages in Theodor Gottlieb Hippel’s *Lebensläufe*, and Kant felt the need to publicly deny this. See Bergk in *Allgemeiner litterarischer Anzeiger*, XXX, October 1796, pp. 327–8, and Kant’s reply in *Allgemeiner litterarischer Anzeiger*, II, January 1797, pp. 15–16.

⁷⁷ Kant, letter to Fichte, December 1797, in *Akademieausgabe* 12, p. 221.

⁷⁸ Kant originally wrote the essay in 1795 but he published it only in 1798, so we can assume that it represents Kant’s view over a period of several years in the 1790s.

disinterested sympathy for the players on one side against those on the other [. . .] 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 towards the better, but is already itself progress insofar as its capacity is sufficient for the present.⁷⁹

Two pages further on Kant quotes Erhard's support for republicanism as an element of this sign that had occurred: 'This occurrence is the phenomenon, not of revolution, but (as Mr. Erhard expresses it) — a phenomenon of the evolution of a constitution in accordance with *natural right*.'⁸⁰

It is puzzling that Kant cites Erhard as defending evolution rather than revolution. Yet it is not directly a misinterpretation, since Erhard had written that evolution is desirable in cases where the ruling elite voluntarily hands over power. To make sense of Kant's quotation we have to see that Erhard plays two roles in Kant's text. Kant reads Erhard first as a philosopher, where the truth of his views is being taken into account. Among his philosophical arguments the defence of evolution is the most valuable. Second, Kant reads Erhard as a person, as a symptom of a widespread attitude in Europe that indicates what the future will be like. On this perspective, Erhard's support for revolution indicates a republican future for humanity because that is his underlying moral conviction. In this teleological perspective Kant is pleased with the revolution and all the agitation and sympathy it arouses, because it indicates that universal freedom is not a vain hope. The young radicals had shown Kant that revolution is not merely rebellion, the futile actions of people too immature to be governed, but that it is an idealistic endeavour aimed at realizing humanity's higher aspirations. This was a view Kant had not considered seriously before *Conflict of the Faculties*. What made him develop an understanding for revolution and for its spectators cannot be said with certainty, but the idiom he adopted to describe it was that of the young radicals, and Erhard in particular.

Thus, Kant's radical followers first and foremost represented to him a symptom of history's development. But what about their philosophical arguments? They had argued that human dignity implies a right of resistance and revolution, and that this was much more in line with the liberal principles Kant otherwise endorsed. One might have thought he would recognize his mistake and revise his theory accordingly. But this was not quite what happened. Kant remained firm in rejecting a right of resistance and revolution. He did, nonetheless, develop his political thought in ways that allowed him to have taken seriously the arguments they had promoted, and to show how

⁷⁹ Kant, *Der Streit der Fakultäten*, in *Kant's gesammelte Schriften* 7, herausgegeben von der Königlich Preußischen Akademie der Wissenschaften (Berlin, 1907), p. 85.

⁸⁰ *Ibid.*, p. 87.

human dignity can be preserved even without a right of resistance and revolution. For this, we have to turn to the *Metaphysics of Morals* from 1797 and its appendix from 1798.

First it is notable what path Kant does *not* take when he revisits resistance and revolution. He does not argue that external oppression is not a serious problem because humans have the capacity for transcendental freedom and therefore can be inwardly free even when externally oppressed. Given Kant's great faith in transcendental freedom (and limited concern for worldly happiness) one might indeed have expected him to make this argument. At least that is what Karl Ludwig Pörschke, Kant's student and later colleague in Königsberg, did. In 1795 Pörschke published a book on natural right, where he defended Kant's argument along that line: 'the civil slave shall and may be morally free'.⁸¹ But this reasoning had more of a lineage to Luther than to Kant.⁸² To Luther external liberty had no particular value, since Christian righteousness is the source of a person's dignity. Kant, however, made it very clear in the *Metaphysics of Morals* that human dignity requires external freedom. In the beginning of that book he writes that 'rightful honour' requires interacting agents to have civil freedom.⁸³

For that reason, Kant also avoids the first argument of his radical followers, that individuals are permitted to resist. The trouble with this argument is not just that it will lead to anarchy if everyone were entitled to enforce their private visions of right and wrong. The problem, as he goes on to show, is that individuals cannot themselves decide what is right and wrong. The radical critics emphasized that the principles justifying resistance must be formal and universal (and therefore 'kantian'), providing 'objectivity'.⁸⁴ Yet for Kant justice has much to do with who is entitled to judge, not merely about the quality of the judgment. He thinks of justice in constructivist terms, where justice must be established and judged by public procedures.⁸⁵ Any claim to have a right (*ein Recht*) must be established in a body of law (*das Recht*). The public aspect ensures that it is possible to obey law and yet remain free. Natural law is indeterminate and even if people want to abide by it they will disagree on what it requires one to do.⁸⁶ If subjects back their private visions of natural law with the use of force the result is either civil war or domination, hence that

⁸¹ Karl Ludwig Pörschke, *Vorbereitungen zu einem popularen Naturrecht* (Königsberg, 1795), p. 337.

⁸² Martin Luther, 'The Freedom of a Christian Man', in *The Protestant Reformation*, ed. Hans J. Hillerbrand (New York, 1968), pp. 17, 24.

⁸³ Kant, *Die Metaphysik der Sitten*, in *Kant's gesammelte Schriften* 6, herausgegeben von der Königlich Preußischen Akademie der Wissenschaften (Berlin, 1907), pp. 236–7.

⁸⁴ Jakob, *Antimachiavel*, p. 24.

⁸⁵ This interpretation has been developed in more detail by others. See Thomas Pogge, 'Kant's Theory of Justice', *Kant-Studien*, 79 (1988), pp. 407–33; and Korsgaard, 'Taking the Law into Our Own Hands'.

⁸⁶ Kant, *Die Metaphysik der Sitten*, p. 312.

task must be left to the state, which has a greater likelihood of achieving impartiality.⁸⁷ Force can only be used when authorized by public law, within the state individuals can never unilaterally resort to it.

The duty never to resist is not equivalent to a claim that one must always obey, however. That became clear in the appendix to the *Metaphysics of Morals*, which Kant added in 1798 in response to a review by Friedrich Bouterwek.⁸⁸ Kant denied that his theory of resistance was heterodox, and now reformulated it this way: ‘Obey the authority who has power over you (in whatever does not conflict with inner morality).’⁸⁹ By ‘inner morality’ we must understand a person’s sense of what a virtuous individual must do, such as Kant had established in the theory of the categorical imperative in the *Groundwork of the Metaphysics of Morality*. Thus, for example, if a tyrant commands a subject to tell a lie, the virtuous subject will not use force to resist the ruler, but simply refuse to comply. In other words, Kant’s solution to the radical’s claim that human dignity requires a right to resist is to point out that passive disobedience is the appropriate way to deal with the dilemma.⁹⁰

The second challenge from the young radicals was that a people must collectively be entitled to institute republicanism by way of revolution. In this argument they were influenced by Rousseau’s theory of the people as the constituent power. Kant, too, had been influenced by Rousseau and in the *Metaphysics of Morals* he reaffirms that sovereignty belongs to the general will of the people.⁹¹ But he explains more about what this means. First, in what looks like a concession to the radicals, he increases the circle of those with the right to vote. Women are no longer excluded *a priori*, and he now emphasizes that

⁸⁷ Jeremy Waldron, ‘Kant’s Legal Positivism’, *Harvard Law Review*, 109 (7) (1996), pp. 1535–56.

⁸⁸ Friedrich Bouterwek, ‘Rezension von Kants Metaphysische Anfangsgründe der Rechtslehre’, *Göttingische Anzeigen von gelehrten Sachen unter der Aufsicht der Königl. Gesellschaft der Wissenschaften* 18.02.1797; reprinted in *Kant’s gesammelte Schriften* 20, herausgegeben von der Königlich Preußischen Akademie der Wissenschaften (Berlin, 1942), pp. 445–53.

⁸⁹ Kant, *Die Metaphysik der Sitten*, p. 371.

⁹⁰ That Kant recognized a justification for passive disobedience for the sake of conscience is also supported by other passages in his writings, see *Kritik der praktischen Vernunft*, pp. 30 and 156, *Die Metaphysik der Sitten* p. 371, and *Die Religion innerhalb der Grenzen der blossen Vernunft*, pp. 99–100. The latter work is to be found in *Akademieausgabe* 6. See also reflection 8051 in *Akademieausgabe* 19. See also Kenneth Westphal, ‘Kant on the State, Law, and Obedience to Authority in the Alleged “Anti-Revolutionary” Writings’, *Journal of Philosophical Research*, Vol. 17 (1992), pp. 384–426; and Thomas W. Pogge, ‘Is Kant’s Rechtslehre a “Comprehensive Liberalism”?’ in *Kant’s Metaphysics of Morals*, ed. Mark Timmons (Oxford, 2002).

⁹¹ Kant, *Die Metaphysik der Sitten*, pp. 313–14.

everyone, because of their civil rights, has the chance to acquire property and so to 'work themselves up' to the rank of a true citizen with the right to vote.⁹²

Yet he also makes it clear that although the people is in principle sovereign, it cannot act collectively against the state. The radicals had claimed that the legitimacy of revolution rests on the majority decision of the people. Kant now goes on to show why majority decisions are an insufficient foundation of binding collective action. The reason is that a public decision must always be possible to understand as the people's general will, the source of the decision's legitimacy. This will must be unanimous, since otherwise some persons (the dissenters) would be subject to a law to which they could not give their consent, and so they would not be free. Thus, a mere majority cannot be entitled to overthrow the existing constitution: 'a public declaration of resistance requires unanimity in a people'.⁹³ This does not mean, however, that Kant would be prepared to find revolution justified if the people on the street spontaneously came to unanimous agreement about it. The reason is that a unanimous decision can only come from a public legal authority that pronounces what is to count as the univocal view of the people in the form of laws and decisions. This unanimity is not an actual agreement, but a 'mechanical unanimity' whereby one view is made to stand for the view of everyone.⁹⁴ This is the outcome of a constitutional procedure, where the legislature creates a law, the government executes it, and the judiciary pronounces on particular cases. Contrary to both Rousseau and the radicals, therefore, the general will is a fiction that is inherent in public legal authority. The mere wishes of a majority is just a blind statement of desire unlimited by law, it is the attitude of the mob.

The radicals had attempted to defend the feasibility of revolution (and to avoid the suspicion of defending mob action) by using Kant's theory of enlightenment to show that once a people become aware of justice it will be able to act collectively to change the constitution. But Kant shows that this relies on a mistaken view of collective agency. A people is not unified by customs or by a sense of justice, but by the civil constitution 'by which a multitude becomes a people'.⁹⁵ The people can only be said to act through the constitutional order, mediated by its representatives, and that means that it could not act *against* that very same authority:

For, since a people must be regarded as already united under a general legislative will in order to judge with rightful force about the supreme authority

⁹² *Ibid.*, p. 315.

⁹³ *Ibid.*, p. 320.

⁹⁴ Kant, *Der Streit der Fakultäten*, in *Akademieausgabe* 7, p. 80.

⁹⁵ Kant, *Zum ewigen Frieden*, p. 352.

(*summum imperium*), it cannot and may not judge otherwise than the present head of state (*summum imperans*) wills it to.⁹⁶

Without the ‘mechanical unanimity’ of the present head of state, there *is* no unanimity. Enlightenment cannot be the basis for legitimate collective action because a binding view on justice presupposes a constitutional state with coercive power to secure that view. If the people attempted to act against it, it would have no legitimate head to univocally speak for it; it would be a mob. If the mob kills the king it ‘is as if the state commits suicide’⁹⁷ because the people only had an existence through the monarch’s constitutional authority.

Kant and the radicals shared the Rousseauian notion of the people as a constituent power, but by insisting that it can only act through institutions Kant aligned himself with a moderate interpretation of this doctrine, which had been championed in France by Emmanuel-Joseph Sieyès, the intellectual architect of the French revolution. Sieyès wrote that ‘a nation is made one by virtue of a common system of law and a common representation’.⁹⁸ The nation technically is sovereign, yet it can only exercise its power through representatives. This is what the people of France did, when its representatives assembled in the third estate decided to change the constitution in 1789. But instead of speaking of revolution, Sieyès speaks of extraordinary constitutional crises, resolved by duly constituted representatives, and not (as Kant’s radical followers) through spontaneous collective action.

That Kant was a supporter of Sieyès was no secret. The similarity of outlook between the two had been noted, and in February 1796 Karl Thérémin, a Prussian diplomat in Paris and a member of Sieyès’s circle, even made an attempt to initiate a correspondence between the two. A widespread rumour in Berlin had it that Kant was invited to be the new legislator of France, and he found it necessary to publicly deny this.⁹⁹ The exchange of letters never took place because Kant thought it inappropriate to meddle in the politics of another country, but in a letter to Thérémin Kant admits that he was honoured by the attention of the ‘famous’ and ‘commendable’ Sieyès.¹⁰⁰

We see a clear echo of Sieyès’s theory of the popular *pouvoir constituant* in Kant’s thought. The people is sovereign, but only as represented in parliament. In the *Metaphysics of Morals* he reveals that this means that the legislators can depose the executive, regardless of whether this is a king or an elected

⁹⁶ Kant, *Die Metaphysik der Sitten*, p. 318.

⁹⁷ *Ibid.*, p. 321.

⁹⁸ Emmanuel Joseph Sieyès, ‘What is the Third Estate?’, in *Political Writings*, ed. Michael Sonenscher (Indianapolis, 2003), pp. 138, 99.

⁹⁹ See Alain Ruiz, ‘Neues über Kant und Sieyès: Ein unbekannter Brief des Philosophen an Anton Ludwig Thérémin (März 1796)’, *Kant-Studien*, 68 (4) (1977), pp. 446–53, at p. 450.

¹⁰⁰ *Ibid.* See also Jachman’s biography of Kant in Rudolf Malter, *Immanuel Kant in Rede und Gespräch* (Hamburg 1990), pp. 349–50.

ruler.¹⁰¹ As a consequence, Kant drew the conclusion that the revolution in France had really been a perfectly legal constitutional transition.¹⁰² Louis XVI had merely represented the people, who remained sovereign, and when he called the Estates-General he allowed it to represent the people. But then the highest authority was transferred to the Estates-General and, in line with Sieyès's interpretation of the doctrine of the constituent power, it could do as it pleased: keep the existing constitution or create a new one. It decided on the latter:

A powerful ruler in our time therefore made a very serious error in judgment when, to extricate himself from the embarrassment of large state debts, he left it to the people to take this burden on itself and distribute it as it saw fit; for then the legislative authority naturally came into the people's hands [. . .] The consequence was that the monarch's sovereignty wholly disappeared (it was not merely suspended) and passed to the people.¹⁰³

In his preparatory notes to the *Metaphysics of Morals*, Kant is even more clear: 'The king otherwise represented the people; here he was negated because the people themselves were present.'¹⁰⁴

Not only was the revolution in France legitimate, but counter-revolution is impermissible. Once a revolution is completed subjects must obey the new regime. Although this was a new argument in the *Metaphysics of Morals*, it was technically an implication of the rejection of resistance from *Theory and Practice*. If a regime's illegitimate origins could justify resistance no regime would be secure since every state begins by the fact (*Factum*) of violent seizure of control.¹⁰⁵ Consistency required Kant to deny a right to resist even a revolutionary regime.

Kant, then, was able to have his cake and eat it too: to reject the right of a revolution, yet approve of the events in France. But he seemed to have elided a question: what if Louis XVI had not called the Estates-General and instead increased the level of oppression? Since Kant maintained his stance against revolution, it would seem that persons would have no right to resist even the most terrible despots. But in his appendix to the *Metaphysics of Morals* from

¹⁰¹ Kant, *Die Metaphysik der Sitten*, p. 317.

¹⁰² *Ibid.*, p. 341.

¹⁰³ *Ibid.* One difficulty with Kant's interpretation is that Louis XVI did *not* delegate power to 'the people' but to the entire Estates-General, where the people only constituted the Third Estate and where the nobility and clergy had supremacy. The people only gained sovereignty when the Third Estate, on 17 June 1789, successfully claimed to be the National Assembly. Because this happened against the rights of the two other estates one must, by Kant's logic, call this a revolution — not against the King but against the nobility and clergy. For Kant's interpretation of the events in France see Dieter Henrich, 'Über den Sinn Vernünftigen Handelns im Staat', in *Kant — Gentz — Rehberg: Über Theorie und Praxis*, ed. Dieter Henrich (Frankfurt am Main, 1967), p. 32.

¹⁰⁴ Kant, *Akademieausgabe* 19, pp. 595–6.

¹⁰⁵ Kant, *Die Metaphysik der Sitten*, pp. 318, 372.

1798, Kant reveals that this is not quite the case. When he required absolute obedience to the state he did not by ‘state’ mean just anyone who manages to maintain power in a territory and claims to be a king. For an entity to be a state it must at least to some extent fulfil the ideal constitution — what he in *Conflict of the Faculties* refers to as ‘a Platonic ideal’.¹⁰⁶ In his *Anthropology*, published in the same year, Kant wrote that a regime that only uses physical power without protecting freedom and law is a form of ‘barbarism’ and not a proper state.¹⁰⁷ If this is indeed what Kant had meant in the *Theory and Practice* essay of 1793, then much of the disagreement with the radicals simply relied on a misunderstanding: they had taken him to deny a right to resist a Hobbesian state, while he had only denied a right to resist states that fulfil certain moral criteria, such as the protection of the rule of law. Friedrich Schlegel had in fact anticipated this when he, in his review of *Perpetual Peace*, wrote that ‘one could regard despotism as a *quasi-state*, not as a genuine form but as a *degenerate form of the state*’.¹⁰⁸ This is the view of the state Kant endorsed in 1798.

V

Conclusion

Kant is usually considered to have been a highly systematic thinker, aloof from parochial German controversies, addressing a cosmopolitan audience. In this article I have attempted to show that this perception is incomplete. He was genuinely involved in contemporary debates and as a result his political thought developed and gained depth through a series of iterations. By reconstructing the dialogue between Kant and his radical followers I have wanted to add one angle from which we can explore his writings. It is not possible to determine exactly the extent to which these writers influenced him, but

¹⁰⁶ Kant, *Der Streit der Fakultäten*, p. 91.

¹⁰⁷ Kant, *Anthropologie in pragmatischer Hinsicht*, in *Akademieausgabe* 7, p. 331.

¹⁰⁸ Schlegel, ‘Versuch über den Begriff des Republikanismus’, p. 112, cf. p. 101. Kant did not explain how one might judge when the state ceases to be a state, but his faithful friend and later editor Johan Heinrich Tieftrunk (1759–1837) gives a hint. In a commentary on the *Doctrine of Right* he writes: ‘If a government in a State sinks so low that it perverts all right and abolishes the human entitlements [*Befugnisse der Menschheit*], which no man can give up without losing his sense of dignity, then the civil bond is broken by the ruler himself.’ Then the ruler becomes just a private individual in a lawless condition seeking to coerce other private individuals: ‘when there is only violence, there is no longer a state’. A similar view has been launched again in the most recent interpretations of Kant by Ripstein and by Byrd and Hruschka. See Johan Heinrich Tieftrunk, *Philosophische Untersuchungen über das Privat- und öffentliche Recht: Erläuterung und Beurtheilung der metaphysischen Anfangsgründe der Rechtslehre vom Herrn Prof. Imm. Kant. Zweiter Theil* (Halle, 1798), p. 366; Ripstein, *Force and Freedom*; Byrd and Hruschka, *Kant’s Doctrine of Right*.

exploring this context can help us to see new things both in Kant's ideas and in his milieu.

Most importantly, we see that Kant developed the complexity of his thinking on resistance and revolution during the 1790s. He found new support for his teleological view of history in the enthusiasm with which the radicals greeted the revolution in France. But he also developed other theories that were only embryonic or non-existent in his earlier writings. To refute the notion of an individual right to resist he developed his view on the dependence of justice on law, at the same time as he indicated the contours of a theory of passive disobedience. He also developed his theory of popular sovereignty along the lines of Sièyes. The constituent power does not manifest itself in direct action and through majority decisions, but the general will is a standard of legitimacy, which becomes the basis for unanimous political action only through representative institutions. It was consistent with this theory that Kant supported the legitimacy of the French revolution, although he refused to classify it as a revolution. Finally, he clarified that there is no duty to obey very despotic regimes because they do not qualify as states in the first place. Eventually it turned out that his views were not that far away from those of his radical followers.

Kant's gradual and incremental way of developing arguments may seem haphazard, but in fact it was quite in line with his view of how to reason about politics. As he had written in the essay on enlightenment, it is through reasoning in public that enlightenment can be achieved.¹⁰⁹ By addressing the world of readers in brief journal contributions he could get his work quickly evaluated and subsequently be more confident when constructing the systematic philosophy that became the *Metaphysics of Morals*.

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¹⁰⁹ Kant, 'Beantwortung der Frage: Was ist Aufklärung?'