

## The state of freedom: Kant and his conservative critics

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### I

At the height of the French Revolution a debate about freedom took place in Germany.<sup>1</sup> The concept had been central in public discourse for decades, but the discussion gained urgency due to the Terror, which led most German writers to turn against the Revolution and its principles. Conservatives like Justus Möser (1720-94) and progressives like Immanuel Kant (1724-1804) agreed about the significance of freedom but they understood different things by it, and were divided in particular over whether freedom implies equality. Conservatives worried that the egalitarian concept of freedom was responsible for the excesses of the French Revolution, and mounted a defence of the old regime by prescribing severe limits on freedom and, in some cases, dusting off the concept of the old German liberties, where freedom was understood in the plural, in reality representing unequal privileges among social ranks.<sup>2</sup> Progressives, who were often inspired by Rousseau, defended the modern concept of freedom based on the rights of man and the universalistic ideals of the Enlightenment. Both parties disagreed on how freedom ought to be implemented politically. Conservatives levelled a critique against the progressive desire to transform reality according to principles of freedom, and thereby not just dismantling the old regime but risking anarchy.

A few years before these events, in 1785, Kant had published *Groundwork for the Metaphysics of Morals*, where he provided a moral theory resting on the idea of a free will, which became immensely influential.<sup>3</sup> It was not clear, however, what that theory would imply for the organisation of society,

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1. Schlumbohm 1975; Klippel 1976; Vierhaus 1967. 2. Schmidt 2006; Klinger 2006.

3. Kant 1911. Translations are from Kant 1996, except Kant 1922b which are from Kant 1999.

because it was primarily a theory of personal conscience and not of political conduct. Although Kant had lectured on natural law for years, his writings on the subject were limited. Some of his students took the initiative to compose their own Kantian tracts on politics,<sup>4</sup> others wrote to ask for his opinion,<sup>5</sup> and eventually, in September 1793, he published the essay 'On the Common Saying: That May Be Correct in Theory, but It Is of No Use in Practice', his first sustained theory of justice. In this essay Kant sided unequivocally with the progressive cause and argued for an egalitarian conception of civil liberty. But he left many questions unanswered. He failed to explain why persons who have the capacity to be morally autonomous in the sense of having a free will must also have a right to civil liberty. And, despite the title, he said little about how to implement theory in practice. The *Theory and Practice* essay became the centre of the discussion and was criticised from all sides. This chapter will focus on the conservative critics Friedrich von Gentz (1764-1832) and August Wilhelm Rehberg (1756-1836), in addition to Justus Möser. They claimed that Kant's basic principles of freedom do not have egalitarian consequences and actually support key institutions of the old regime, in particular hereditary nobility.

Kant's debate with his conservative critics has not received much attention, perhaps because, except in the case of Möser, he never formally answered them. Those who have written on the debate have therefore focused on the critics rather than on Kant's response.<sup>6</sup> Others have tried to show that Kant was really responding to canonical writers like Hobbes.<sup>7</sup> But there is good textual evidence that much of what Kant wrote in the years to follow was prompted by and intended as answers to his conservative critics, and that, as a result, he developed his political thought in two directions. First, he attempted to show why exactly someone committed to his view of a free person must also be committed to a republican constitution. Second, he developed a pragmatic view on the implementation of theory in practice, showing how civil liberty can be instituted gradually rather than as it happened in France. In the first part of this chapter I present the debate on freedom and Kant's contribution to it; next, I show how conservatives reacted to Kant's intervention; finally I show how Kant subsequently developed his initial ideas in order to counter his critics.

4. See Chapter 11 of this volume.

5. See letters from Heinrich Jung-Stilling, 1 March 1789, in Kant 1922b: 7-9 and from Johann Gottfried Kiesewetter, 15 June 1793, 1922b: 436.

6. Henrich 1967; Vogel 1972; Stolleis 1972; Beiser 1992; Knudsen 1986.

7. Riley 2007; Williams 2003.

## II

The French Revolution put political transformation on the agenda in the German states. In 1789 the Revolution had been extremely well received in Germany, and was hailed by many as the triumph of the philosophy of the Enlightenment.<sup>8</sup> Gentz's statement from a letter to Christian Garve in December 1790 was not untypical:

The revolution constitutes the first practical triumph of philosophy, the first example in the history of the world of the construction of government upon the principles of an orderly, rationally-constructed system.<sup>9</sup>

But as the Revolution reached its radical phase German intellectuals turned against it. Gentz came under the influence of Edmund Burke and cooled on the principles of liberty that he had once defended. He now warned about the 'fanaticism of freedom', the fervent belief in a limitless liberty to do as one pleases, which he had seen unfold during the Revolution.<sup>10</sup> This led to scepticism about theorists in general: 'the philosopher creates systems; the rabble forges murderous weapons from them'.<sup>11</sup>

Conservatives did not abandon the principle of liberty, however, but either defended a liberty severely curtailed by the state, as Gentz did, or else reached for the traditional view of freedom of the old estate society (*Ständestaat*).<sup>12</sup> Möser defended the traditional inegalitarian conventions of the old German *Reich* where freedom was understood in the plural and not taken to be a basic feature of the human condition. No one should be called simply free because everyone serves someone: a general who does not stand in the ranks of soldiers is not free *as such* because he serves elsewhere in a different way. Even the prince serves and Möser wrote that the prince is therefore as little free as the common man.<sup>13</sup> One should only speak of freedom as exemption from an obligation or a general burden that others must carry. Freedoms therefore come in a wide array of rights, privileges and immunities distributed unequally according to status in the social pyramid.<sup>14</sup>

Defenders of egalitarian principles of freedom had reason to worry, because their ideals were seen as connected to the Revolution. Natural rights theories, like Gottfried Achenwall's, had been dominant in Germany. Achenwall (1719–72) described humans as naturally free, equal and independent

of the command of others.<sup>15</sup> When entering the civil state men give up some of their natural freedom and take on obligations; their civil liberty is defined by the rule of law established by civic authority.<sup>16</sup> Natural rights theory was easy to combine with Rousseau's principles, which had had a remarkable influence in Germany. Under his influence, thinkers had, before the Revolution, not merely called for civil freedom but also, like Johann Michael Afsprung (1748–1808), for political freedom, the right of citizens 'to a voice in determining legislation'.<sup>17</sup>

The debate on freedom had immense importance for the question of the justice of hereditary privileges.<sup>18</sup> On Möser's view, these were perfectly compatible with liberty, whereas they were excluded on the egalitarian natural rights view. This was a question of particular importance in Kant's and Gentz's Prussia, where the nobility during the eighteenth century had gained an increasingly powerful position in the bureaucracy, economy and military.<sup>19</sup> Likewise, in Rehberg's Hanover the nobility had never been quite subdued by the monarch,<sup>20</sup> and in Möser's Osnabrück the late medieval *Ständestaat* remained largely in place.<sup>21</sup> The parties to the debate could not know it at the time, but the strength of the German nobility (which was characterised by its anti-democratic views) would come to shape decisively the course of German history over the next century.<sup>22</sup>

Although Kant's debt to Rousseau and Achenwall was obvious, his concept of personal autonomy from 1785 was not a direct argument in this debate because he had not explained its implications for politics. There was no theory of individual rights; his main concern was with the categorical imperative as the test for duties of individuals in abstraction from society. The idea of transcendental freedom might easily be seen as apolitical. It is in principle possible to have a free will even within states that fail to provide civil liberties; personal autonomy does not depend on whether one lives in a monarchy, an aristocracy or a democracy.<sup>23</sup> Someone who only knew Kant's theory of inner freedom might have expected him in the political domain to settle for patient stoicism. But when he published *Theory and Practice* in *Berlinische Monatsschrift* in 1793 he unequivocally sided with the modern concept of a right to equal liberty.

8. Gooch 1966; Aris 1936; Valjavec 1951; Vierhaus 1967. 9. Cited in Epstein 1966: 436.  
10. Gentz 1991: 405–6. 11. Quoted in Vogel 1972: 90, my translation.  
12. Schlumbohm 1975: 41; Klinger 2006: 451. 13. Möser 1944: 68. 14. Klinger 2006: 449.

15. Achenwall 1763: §§ 106, 219. 16. Achenwall 1763: § 107.

17. Afsprung quoted in Bödeker 2002: 37. 18. On that debate, see Schultze 1925.

19. Hans Rosenberg named the period Prussia's 'age of noble reaction'. See Rosenberg 1966: 70, 181. Also Berdahl 1988: 78; Wilson 2004: 243, 332.

20. Epstein 1966: 547. 21. Knudsen 1986: 1ff. 22. Berdahl 1988: 3ff; Sheehan 1989: 504ff.

23. On Kant's concepts of internal and external freedom, see Uleman 2004.

*Theory and Practice* is framed as a polemic against a 'worthy gentleman' who disparages theories and systems. Some have conjectured that Burke,<sup>24</sup> Gentz<sup>25</sup> or Möser<sup>26</sup> was on Kant's mind, but the evidence is inconclusive and it might equally well have been a synthesis of them. Suggestively, however, Möser had published a piece in *Berlinische Monatsschrift* in 1791 where he wrote that the 'scholarly theory (*Buchtheorie*) of the rights of man' had led the Revolution in France astray and that society should instead be guided by 'common practice'.<sup>27</sup> Kant's essay is structured in three parts, but the debate that ensued was concerned almost exclusively with the second and most novel part on civil liberty in a constitutional state. This section, for unknown reasons, carries the heading 'against Hobbes', but apart from one critical remark at the end Kant never engages with him.

Kant starts by establishing the proper relation between theory and practice. When it comes to moral questions, one must establish principles a priori, before experience, and then seek to implement them in practice. One cannot reason from *is* to *ought*; therefore one cannot very well derive morally binding principles from conventions and traditions in the manner of Möser and Burke. The a priori principle for justifying political authority is individual freedom as independence from the arbitrary choices of others. Kant's principle of right, or justice, is the following: 'The limitation of the freedom of each to the condition of its harmony with the freedom of everyone insofar as this is possible in accordance with a universal law'.<sup>28</sup> Freedom can be limited, but only by the rule of 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 just if it could be willed by free and equal subjects, generating a rational 'general will'.<sup>29</sup> Kant was conscious that basing justice on individual freedom went against the traditional view of justifying authority by reference to the common good, and was careful to acknowledge his debt to the tradition even as he reinterpreted it:

The saying *Salus publica [sic] suprema civitatis lex est* remains undiminished in its worth and authority; but the public well-being that must *first* be taken into account is precisely that lawful constitution which secures everyone his freedom by laws, whereby each remains at liberty to seek his happiness in whatever way seems best to him.<sup>30</sup>

24. Wittichen 1904. 25. Dietrich 1989. 26. Henrich 1967.

27. Möser 1965: 290. 28. Kant 1912b: 290. 29. Kant 1912b: 295.

30. Kant 1912b: 298. Compare Kant 1907a: 318 and 1934: 489. Mary Gregor identifies Cicero as the originator of the maxim; see her note in Kant 1996: 461.

The principle of right is the source of three a priori principles for a justified constitution. The first is 'the *freedom* of every member of the society as a human being'.<sup>31</sup> This is a critique of paternalistic government (*väterliche Regierung*), which with a benevolent but arbitrary will seeks to impose happiness on dependent subjects instead of giving them the freedom to pursue it in private, as in *patriotic* government (*vaterländische Regierung*). The second principle is a person's '*equality* with every other as a *subject*', which means that freedom must be equal and that 'Every member of the commonwealth must be allowed to attain any level of rank within it... to which his talent, his industry, and his luck can take him.' The third principle is 'the *independence* of every member of a commonwealth as a *citizen*',<sup>32</sup> which grants each citizen the right as co-legislator to vote for representatives. Not everyone qualifies as a citizen, however, because apart from not being a child or a woman, one must be 'one's own master (*sui iuris*)' by which Kant meant having some property. (The latter two restrictions have in different ways been singled out as contradicting Kant's universalistic presuppositions.<sup>33</sup>) Kant's three principles of freedom were incompatible both with the absolutist monarchy of Prussia and with the traditional institutions of the old estate society. Although he did not support a right of revolution, it was evident that *Theory and Practice* represented his rejection of the old regime. He would not have to wait long for an answer.

### III

Much criticism of Kant came from students and acolytes who felt that his thoughts on politics betrayed the principles of morals he had set up in the 1780s. Radical critics argued that Kant's principles should have led him to support a right of revolution. We will return to this critique at the end. Kant's conservative critics, Gentz, Rehberg and Möser, questioned his egalitarian concept of freedom and the very idea that principles should dictate politics. The three critics were men of state with a commitment to the old regime. Gentz was a Prussian civil servant with an illustrious career ahead of him, which was to include the office of councillor to Metternich and secretary to the Congress of Vienna. Rehberg was a secretary for an aristocratic council in Hanover, where he eventually rose to the highest level. Möser, more than a generation older than the other two, went from being the secretary of the noble estate in Osnabrück in 1742 to the biggest offices of that bishopric

31. Kant 1912b: 290. 32. Kant 1912b: 290. 33. See Mendus 1992.

by the time of his death and, due to his abundant publications, to assume prominence as the most eminent German conservative voice. By 1793, all three had published essays and books against the French Revolution.

Conservatism came in a variety of types, but, as Klaus Epstein points out, it always involved a commitment to the status quo and a desire to preserve it within new circumstances.<sup>34</sup> Gentz and Rehberg were what Epstein calls 'reform conservatives', characterised by a willingness to engage in reform while attempting to secure 'the maximum possible historical continuity' rather than maintaining the status quo or seeking to reverse development.<sup>35</sup> They nonetheless exemplify two different types of conservatism. Gentz was attached to the modern view of individual freedom but disliked its intolerant and fanatical defenders and thought it must be severely limited by the state for the sake of order and stability.<sup>36</sup> Rehberg was less committed to freedom and more concerned with maintaining the old estate society with its guilds, churches and other intermediary associations. He justified authority by appeal to custom: the myriad agreements and traditions through which institutions grow in history. Möser made similar arguments. More than anything else, he was a defender of the old regime. He stood for the German *Kleinstaat*, its nobility and paternalistic rule, traditional beliefs and practices, and, after the Revolution in France, he decisively rejected the rights of man (*das Recht der Menschheit*).<sup>37</sup> His rejection of modern liberal ideas places him close to the category of a reactionary.

Gentz and Rehberg were in the peculiar position of being under the direct influence both of conservative masters and of Kant. Gentz was the translator of Burke's *Reflections on the Revolution in France*, but before that he had studied with Kant in Königsberg where he had assisted with the proofreading of the *Critique of Judgment*. Rehberg was for a period assigned to Osnabrück where he became the protégé of Möser, whom he called his 'fatherly friend'.<sup>38</sup> While he had not actually studied with Kant, Reinhold Jachmann, Kant's friend, described him in a letter to Kant as his 'student' in the broader meaning of that term.<sup>39</sup> Rehberg had studied Kant's ethics at Göttingen and had written a review of *Critique of Practical Reason*, where, some disagreements notwithstanding, he basically agreed with Kant.<sup>40</sup> This double commitment may have contributed to the two critics' uncomfortable

34. Epstein 1966: 7. 35. Epstein 1966: 8–9. 36. Gentz 1991: 424, 429.  
37. Möser 1965. 38. Epstein 1966: 557.  
39. See letter by Jachmann to Kant, 14 October 1790, in Kant 1922b: 225.  
40. Rehberg 1975: 241.

attempt at combining basic Kantian principles with a defence of the old regime.

Gentz's reply to Kant appeared in *Berlinische Monatsschrift* in December.<sup>41</sup> Showing extreme deference (*Ehrfurcht*), he points out that he is in complete agreement with his former teacher about the freedom of the will, but that matters are a bit different in politics. While principles of human rights are necessary for political practice, they do not suffice.<sup>42</sup> In the construction of a constitution, one must go further and find the means for its practical realisation, and this requires empirical knowledge of people and their actual behaviour in social circumstances, which in turn can ground a new theory of implementation.<sup>43</sup> The purpose of this theory is to secure the stability of the state. Dieter Heinrich has argued that Gentz thereby sacrificed Kant's practical philosophy for the sake of Humean pragmatism.<sup>44</sup> It is not clear that Gentz's suggestion is quite so radical – Kant too accepted that constitution-building has an empirical component – but it is evident that Gentz was willing to interpret Kant's basic principles in a way that favoured the political stability of Prussia.

In this endeavour, Gentz was particularly keen to reinterpret Kant's claim that freedom entails equal rights, excluding hereditary prerogatives. He points out that Kant had required only the equality of *subjects* and that he had exempted the head of state from this equality because the sovereign has coercive rights against subjects but not vice versa. Gentz deduces that *all* prerogatives inherently connected to the government of the state must be permitted. As a consequence, the hereditary privileges of monarchs in monarchies, of senators in aristocratic states such as Venice, and of lords as in England are justified.<sup>45</sup> This is rather more than Kant had actually claimed. Kant's point was that, since rulers must have the right to use force, and since subjects cannot have this right, there must remain *one* juridical inequality. But this legal inequality is distinct from the many privileges of princes and nobles in the old regime and it is not hereditary. Perhaps in recognition of the weakness of this interpretation, Gentz adds that hereditary privileges prevent freedom only when they are truly exclusive. They are truly exclusive, however, only if the noble estate has been closed off to new members.<sup>46</sup> Nobility is perfectly just if there is equal opportunity to be chosen to join its ranks due to talent industry or luck, even when the status is passed on to descendants who did nothing to merit it.

41. Gentz 1967. 42. Gentz 1967: 101. 43. Gentz 1967: 103.  
44. Heinrich 1967: 105. 45. Gentz 1967: 98. 46. Gentz 1967: 99.



Rehberg's reply to Kant followed in *Berlinische Monatsschrift* in February 1794.<sup>47</sup> Like Gentz, he argued that a priori principles do not suffice when it comes to political practice. But he went further: empirical knowledge is necessary not just to know how to implement principles; the very principles of justice themselves are derived from the conventions of historically situated communities. The procedure of universalisation of the categorical imperative is too formal to tell us anything useful about actual conduct (a critique that G. W. F. Hegel, who read Rehberg as a *Gymnasiast*,<sup>48</sup> would later make famous) and the principle remains insufficient even if we add Kant's second formulation, about treating humanity in others as an end and never just as a means.<sup>49</sup> The reason is that according to Rehberg we are technically to respect *reason* as an end in itself and not *humanity*, because (as Kant himself had admitted) humanity involves much more than reason. In real human life reason tends to be mixed with all sorts of folly and caprice and there is no reason why the irrational and arbitrary ways individuals lead their lives should be respected or tolerated. Sometimes humans must *not* be treated as ends in themselves.<sup>50</sup>

Rehberg made a radical separation between having a free will (the cognitive capacity for autonomy) and having external freedom (the right to have one's choices protected by law). When humans seek to realise their freedom externally, they inevitably have to do so using material things – their own bodies and other possessions – and these must be held as private property. But property rights are not given a priori; there is no 'metaphysically free property'.<sup>51</sup> Humans only own their own will, and property rights arise through interpersonal contracts in history. Humans may be free as rational agents in a kingdom of ends, but as members of a real community they have to abide by the distributions of property and rights that have arisen in a society through its history. As a consequence of this dramatic reinterpretation of Kant's separation between the inner and outer domains, Rehberg revises Kant's three principles:

The *freedom* of every member of society as *human* applies only to that which is really free in a human, that is, it applies to its will. The right to freedom does not belong to the member of the commonwealth as such, to the whole human, but only to the human *in so far as he is a rational being*.<sup>52</sup>

47. Rehberg 1967. 48. Hegel 2000: 224. 49. Kant 1911: 429.  
50. Rehberg 1967: 119. 51. Rehberg 1967: 122. 52. Rehberg 1967: 123.

Persons do not have a right to equal civil liberty because when they act within a material world they depend on unequally distributed property. The amount of property a person has, as well as the social status of his trade, determines what estate he belongs to and membership of estates determines civil rights. Since estates are hierarchically organised, there are great differences in the 'scope and content' of rights. These differences are passed down between generations, so that a person's civil rights are inborn and contingent on his forefathers' social rank.<sup>53</sup>

Rehberg employed a similarly conservative and conventionalist logic with regard to citizenship. He agreed with Kant that citizenship must be limited to those who are their own masters, but becoming one's own master is not simply a matter of achieving wealth or being an industrious and skilled craftsman able to support himself. Citizenship rights are established by actual agreements among corporations and guilds; social recognition, not individual enterprise, is decisive. Echoing Möser he wrote, 'In truth, not one person in the world is completely his own master (*Herr*)' because everyone stands under laws that are historically created and express the privileges of institutions within the larger hierarchy of society.<sup>54</sup>

Rehberg concluded that Kant's theory of a civil society based on a priori principles 'can work only in a world where members are entirely, metaphysically free' and 'the makers of their own sphere of action'.<sup>55</sup> Kant had simply adopted Rousseau's principles and he should have admitted, as Rousseau had, that 'his system is fit only for a republic of gods'. If the attempt were still made to implement an a priori system of natural right among humans, anarchy would follow because perfect equality would require the sacrifice of the inherited estates that hold together every existing constitution.<sup>56</sup>

Möser died in 1793 before he had completed his reply to Kant's *Theory and Practice*, but in 1798 Biester published an excerpt in *Berlinische Blätter*.<sup>57</sup> Möser's general view was that rights depend on property, and that property is unequally distributed according to an inherited social hierarchy.<sup>58</sup> But in the essay Möser seeks to show that Kant's theory of justice – the hypothetical social contract – can be used to defend hereditary privileges. Möser had limited patience for philosophy, but he was a good storyteller, and in the reply he told a story about a benevolent emperor who allows his subjects in twelve different provinces to elect their duke. In the six first provinces,

53. Rehberg 1967: 125. 54. Rehberg 1967: 125.  
55. Rehberg 1967: 127. 56. Rehberg 1967: 130.  
57. Möser 1798. *Berlinische Blätter* was the new name for *Berlinische Monatsschrift*.  
58. Knudsen 1986: 168, 179.

the people choose *not* to elect the son of the former duke and the outcome is generally quite bad. If the new ruler is elected because he is educated, he does not know local conditions; if he is not noble, he will not be respected; if the election is democratic, there will be contentiousness and civil war and so on. In the next six provinces, however, the people elect the son of the previous duke, and the outcome is very good. It is convenient that the new ruler can utilise the spectacular old castle; the son will take over the debts of his father; he is related to the nobility in the neighbouring province and can create alliances through marriage; and the subjects see the son as more legitimate because he carries on family traditions and so on. Considering these good consequences of hereditary prerogatives, Möser concludes that a people could very well choose it.

Möser's use of the social contract was not quite what Kant had in mind, and we shall return to Kant's answer to Möser. For now it is worth noting that all three conservative critics defended the existing order, partly from fear of social dissolution, and partly from a conviction that morals result from traditions and conventions. This led them to seek to show the compatibility of hereditary privileges with Kantian principles. It would have been quite an achievement for them to reveal that the principles of the great man of the *Aufklärung* could genuinely accommodate, or even justify, the cornerstone of the old regime.

## IV

Kant received Rehberg's essay on 9 April 1794 and the following day he wrote a letter to Johann Erich Biester, the editor of *Berlinische Monatsschrift*, who had invited him to answer his critics.<sup>59</sup> In his letter to Biester, Kant took a swipe at Rehberg. Rehberg writes more like a lawyer than a philosopher, and the lawyer always defends the powers that be. He 'puts a sword onto the scales of justice to balance the side of rational grounds'.<sup>60</sup> Rehberg is not really applying Kant's theories to reality but just engaging in trickery, Kant writes, playing with the words application (*Praxis*) and trickery (*Praktiken*):

In reading [Rehberg's essay], I found that, as regards the infinite disparity between rationalist and empiricist interpretations of concepts of justice the answering of his objections would take too long;

59. See letter from Biester to Kant on 4 March 1794, in Kant 1922b: 490–2 and letter from Kant to Johan Erich Biester, 10 April 1794, in Kant 1922b: 496–7.

60. Letter from Kant to Biester, 10 April 1794, Kant 1922b: 496.

with regard to his principles of justice grounded on power as the highest source of legislation, the answering would be too *dangerous*; and in view of his already having decided in favour of the powers that be (as on page 122),<sup>61</sup> the answering would be in *vain*.

Kant concluded: 'It can hardly be expected that a man of 70 would occupy himself with tasks that are burdensome, dangerous, and in vain.'<sup>62</sup>

But that was not the end of the discussion. Although Kant appears never to have mentioned the names of Rehberg and Gentz in writing again, he proceeded to compose a string of political essays in which he tacitly continued the debate with his conservative critics.<sup>63</sup> Thus, in *Perpetual Peace* of 1795 he presents himself as a 'theoretical politician', who proceeds differently from 'practical politicians' who employ principles drawn from experience. Likewise, Kant replied swiftly to Möser as soon as the latter's critique was published in 1798. Kant undertook two tasks to meet his critics. First, he developed the explanation of the proper relation between theory and practice. Second, he showed that freedom is not merely a matter of the will but requires equal legal status in a republican state. As a result of this debate Kant developed some of the most central elements of his political theory.

Other thinkers and events also influenced Kant, in particular his views on perpetual peace.<sup>64</sup> But to Kant it must have been particularly important to refute Gentz's, Rehberg's and Möser's interpretations not just because they were influential contemporaries but because these critics claimed to base their reasoning on Kantian principles. They could not be brushed off as entirely on the wrong track. And, to be sure, there was something about their reasoning that might ring true to a reader of Kant both then and now. In *Critique of Pure Reason*, and in later moral writings, Kant had made much of the bifurcation between internal autonomy and external natural causality, between humans as free in a *noumenal* sense and determined in a *phenomenal* sense. It would have been easy to conclude that freedom is just a matter of inner will whereas the external world would be governed by principles drawn from historical practice.

Yet, in *Perpetual Peace* he came out even more clearly in defence of the principles of 1789. He no longer advocated 'patriotic government'; instead, for the first time he publicly endorsed republicanism, stating that 'the civil

61. Kant's page reference is to Rehberg's statement cited above in footnote 50.

62. Letter from Kant to Biester, 10 April 1794, in Kant 1922b: 497.

63. This continuity is also noted in Klemme 1993. 64. See Cavallar 1992.

constitution in every state shall be republican'.<sup>65</sup> The change in terminology may have been a response to Gentz, who had argued that 'patriotic government' could actually be compatible with 'paternalistic government'.<sup>66</sup> In his letter to Kant, Biester had pointed out just this feature of Gentz's essay as troublesome. In the 1790s 'patriotism' was an ambiguous term and could be understood both in a conservative sense, as in Möser's *Patriotische Phantasien* where it indicated adherence to the traditional corporate society, and in a radical sense, where it indicated the egalitarian ideals of the Enlightenment.<sup>67</sup> But 'republicanism' was unambiguously connected with civil liberty, and by switching terms Kant clarifies that paternalism is incompatible with freedom. The republican constitution is defined essentially in the same way as he had previously defined the patriotic constitution, but he now gives a more democratic dimension to his own definition of external freedom: it is 'the warrant to obey no other external laws than those to which I could have given my consent'.<sup>68</sup>

Gentz, Rehberg and Möser had defended different political visions but they were equally sceptical about theory dictating reality. Kant's adversary in *Perpetual Peace* is an imaginary 'practical man', who may have been an agglomerate of the three but who bears the features of Rehberg. In describing this politically prudent man, all the phrases from Kant's letter to Biester about Rehberg turn up. The practical man 'puts the sword into [the scales of justice]', dealing in 'trickery' to get his preferred outcomes.<sup>69</sup> The only other place in Kant's writings up to then where these phrases appear is in the letter about Rehberg (they would appear again in his reply to Möser).

The real problem with the practical man 'who frames a morals to suit the statesman's advantage' is that he is unprincipled.<sup>70</sup> Laws must be constructed from a formal principle and only then implemented in reality instead of letting principles be determined by whatever purposes one wishes to achieve. The practical man is 'putting the cart before the horse'.<sup>71</sup> One cannot hold equal freedom to be an ideal only until one discovers that inherited privileges are conducive to society's stability and prosperity. The practical man dogmatically decides that a particular social arrangement is good and reduces politics to the technical endeavour of finding the means to that outcome.

But social arrangements themselves must be based on principle, resting on the premise of a human right to freedom. Whether specific policies are

65. Kant 1912b: 349; see Dann 2002. Kant had previously used the term in a metaphorical sense to describe a spiritual community and to identify ancient republics and thinkers.

66. Gentz 1967: 97. 67. Vierhaus 2002: 26. 68. Kant 1912b: 350.

69. Kant 1912b: 369, 373. 70. Kant 1912b: 372. 71. Kant 1912b: 376.

justified can be tested by the procedure of the hypothetical original contract where citizens consider whether policies are compatible with equal liberty. Hereditary nobility is a case in point. A people could not agree to inherited rank because merit does not follow birth and 'a nobleman is not necessarily a noble man' (Kant adds that it would be equally absurd for the people to agree to a 'born professor').<sup>72</sup> This effectively disposed of Gentz's attempt to argue that Kantian principles support hereditary nobility if there is equal opportunity to seek to join it.

The same idea (and some of the wording) appears in Kant's argument against Möser, published in a pamphlet called *On Turning out Books* in 1798.<sup>73</sup> This would be the final essay from Kant's hand. Again, Kant's argument is that practice 'must always be arranged according to theory'.<sup>74</sup> Möser had attempted to show that Kant *malgré lui* must accept hereditary nobility because its salutary consequences showed that a people could indeed agree to it in a hypothetical original contract. Kant was not pleased. The idea of the original contract is not what people actually will choose, but what they ought to choose. As Kant had argued in *What Is Enlightenment?* a people can want anything including servitude. But they must choose according to the principle of right, not according to what might provide happiness. The chief requirement of right is equal civil liberty, and it is unjust to establish heritable prerogatives 'even if it might be customary and in many cases even useful to the state'.<sup>75</sup>

Rehberg had worried that Kant's principled defence of equal liberties would lead to the collapse of society. Kant recognises that a sudden introduction of equal rights, even if it was not through revolution, might severely weaken the state, which in most parts of Germany at the time depended on the services performed by estate owners and civil servants who were often hereditary nobles. Kant sought a principled accommodation to reality. Starting in *Perpetual Peace* he takes up the idea of 'permissive laws (*leges latae, lex permissiva*), which confer a provisional justice on a state even if its constitution is unjust.

Permissive laws of reason . . . allow a situation of public right afflicted with injustice to continue until everything has either itself become ripe for a complete overthrow or has been made almost ripe by peaceful means.<sup>76</sup>

72. Kant 1912b: 351; 1907a: 329. 73. See Reiss 2001. 74. Kant 1912c: 435.

75. Kant 1912c: 435. 76. Kant 1912b: 327; see Brandt 1995.

Kant is keen to argue that permissive laws are not *exceptions* to laws. That was an approach that Rehberg had advocated when he wrote that, for the sake of order, rulers must very often harm the letter of law to remain faithful to its spirit.<sup>77</sup> But laws are universal and necessary and therefore permit no exceptions. Permissive laws, however, are internally connected to circumstances of implementation, so that feasibility constitutes a limiting condition within the law itself. This condition is that delaying putting the law into effect is permitted 'lest implementing the law prematurely counteracts its very purpose'.<sup>78</sup> That Kant intended permissive laws as a transition from the institutions of the old *Reich* is evident when the idea returns in the *Doctrine of Right* from 1797:

[The state] has a provisional right to let these titled positions of dignity [hereditary privileges] continue until even in public opinion the division into sovereign, nobility, and commoners has been replaced by the only natural division into sovereign and people.<sup>79</sup>

Following the debate with his conservative critics, Kant for the first time makes an effort to show the connection between freedom of the will and civil liberty. In the *Doctrine of Right*, he supplies the argument lacking in *Theory and Practice* for the unity of personal autonomy and external liberty. Freedom in the 'internal' and the 'external' use both relate to the *same* human capacity for choice; this capacity is the origin of the innate right to equal external liberty and the reason why humans are responsible and can have actions imputed to them.<sup>80</sup> In this book he also argues that being subject to laws of which one can consider oneself the author is not really a limitation on freedom. It is just a limit on 'lawless freedom', which he (in unpublished notes) called 'Polish freedom'.<sup>81</sup>

Next, he shows how human freedom can be expressed through rights to property that are metaphysically grounded, that is, prior to experience. This may have been in response to Rehberg's claim that there is no 'metaphysically perfect property', which was a step in his defence of the property system of the old regime with its unequal freedoms. Although notes and lectures show that Kant had been occupied with the relation between property and freedom since the 1770s, he had not published on it before or attempted to give it a metaphysical grounding. Kant's theory begins with the argument that there can be 'intelligible possession' separated from mere 'sensible possession'.<sup>82</sup>

77. Rehberg 1967: 130. 78. Kant 1912b: 347. 79. Kant 1907a: 329.  
80. Kant 1907a: 214, 223. 81. Kant 1912b: 354; 1907a: 316; 1923: 595.  
82. Kant 1907a: 245.

This is the difference between physically occupying a house and having a *right* to the house, even if one has left it for the day. To hold on to possessions is not the same as having a right to them. The difficulty with claiming a right to possessions, however, is that ownership comes with a right to exclude others, hence limiting the scope of their freedom. But persons tend to disagree about what rightfully belongs to each, and respect for everyone's freedom therefore requires that an impartial judge must decide any conflicts over claims to property. This judge can only be conceived of as the sovereign, whom Kant calls 'the supreme proprietor'.<sup>83</sup> Specifically, Kant points out that the sovereign, which he conceives as the legislative assembly, may restrict the property rights of the nobility and the church. The nobility's claims to rights in Germany were based largely on holding land for generations, what Kant dismisses as mere 'sensible possession'. It is easy to see the repercussions for Rehberg's argument. For Kant, humans create their own circumstances of justice through the state so that they will not remain hostages to an arbitrary property distribution.

The most pernicious effect of the purportedly sober realism of the conservative man of practice is that he does not just respond to difficult circumstances of justice, but actually *creates* them. The practical man's central proposition is that persons are incapable of free agency, hence they must be managed. As Rehberg had written, a republic is possible only for a nation of angels. But this very propaganda makes people lose faith in their capacity for freedom and self-government.

Such a pernicious theory itself produces the trouble it predicts, throwing human beings into one class with other living machines, which need only be aware that they are not free in order to become, in their own judgment, the most miserable of all beings in the world.<sup>84</sup>

He continued the argument against the practical men in *Conflict of the Faculties*, published in 1798 but written in 1795. Heavy-handedly they antagonise persons by treating them as if they have no capacity for freedom and as a result they become stubborn and uncooperative, which in turn justifies more coercion and manipulation.<sup>85</sup>

Kant's conservative critics had attempted to prove their points using Kantian reasoning. Kant turns the tables and seeks to prove his republican ideal by the empiricism of his opponents. He argues in Mandevillian fashion that even a nation of 'devils' would be capable of creating a republic if only

83. Kant 1907a: 323. 84. Kant 1912b: 378. 85. Kant 1912b: 80.



they have understanding.<sup>86</sup> Their self-seeking inclinations will naturally lead them to cooperate when facing an external threat, without morality, never mind saintliness, entering the picture.

Returning to his own idiom, he writes that when a republic that respects civil freedom is introduced, humans are also more capable of *developing* the judgement necessary for moral autonomy. Already in *Groundwork* he had written that *a priori* laws still require 'judgment sharpened by experience' for agents to know how to apply the law and to become susceptible to reason's influence.<sup>87</sup> In the *Doctrine of Virtue* he added that it is a duty to cultivate one's conscience.<sup>88</sup> This may be a matter of overall cultivation, as he wrote in *Critique of Judgment*, ranging from the appreciation of art to skills of choosing means to ends in a trade.<sup>89</sup> Pursuing these judgment-enhancing activities requires a domain of security, and civil liberty provides this, 'greatly facilitating' the capacity for autonomy.<sup>90</sup> 'It is not the case that a good state constitution is to be expected from inner morality, on the contrary, the good moral education of a people is to be expected from a good state constitution.'<sup>91</sup> Persons may start as rational devils, but life in the republic puts them on the path to moral freedom.

Realism produces the trouble it predicts, but idealism is equally self-fulfilling. Kant is not about to argue that, if humans were given civil liberty, their behaviour would instantly become rational and autonomous. The point is rather that, if humans are alerted to their capacity for moral autonomy, they will gain faith in it and increasingly act on it. The historical evidence of such freedom is the disinterested sympathy of the onlookers who supported the French Revolution. These onlookers must have been subject to a moral cause, the insight that a nation has a right to establish a republican constitution.<sup>92</sup> While there may be many setbacks in humanity's development, this event 'will never be forgotten', and it will inspire human emancipation everywhere.

Kant nevertheless rejected revolution as a legitimate means of political change and this made him a target for the scattered radicals in Germany at the time. Ludwig Heinrich von Jakob (1759–1827) and Johan Benjamin Erhard (1766–1826) were students of Kant who argued that Kant's basic principles should have led him to support a right of revolution.<sup>93</sup> While Kant had argued that the logic of sovereignty excludes a legal right of revolution, they thought that Kant would still be committed to a *moral* defence of it. But a

86. Kant 1912b: 366. 87. Kant 1911: 389. 88. Kant 1907a: 401, 440. 89. Kant 1913: 431.  
90. Kant 1912b: 376. 91. Kant 1912b: 366. 92. Kant 1798a: 86.  
93. Von Jakob 1794; Erhard 1970. Fichte had already made this claim in 1793, see Chapter 11 of this volume.

moral right of revolution makes no sense in Kant's scheme, because there is an unconditional duty to obey the state and there can be no conflicts between moral and legal duties and no exceptions from them. In this regard Kant's thinking is rigorist. But his rejection of resistance is not quite the same as a demand for absolute obedience to whoever exercises superior power in a territory. Kant never wrote that political entities that entirely fail to respect the rule of law qualify as states and impose on us a moral obligation to obey.<sup>94</sup> There is reason to believe that Johan Heinrich Tieftrunk (1759–1837), Kant's friend and editor, got it right in a commentary on Kant's *Rechtslehre*, published hard on the heels of the *Rechtslehre* itself:

If a government in a state sinks so low that it perverts all right, and abolishes the human entitlements that no man can give up without losing his sense of dignity, then the civil bond is broken by the ruler himself.<sup>95</sup>

When the civil bond is broken, persons do not face a ruler nor are they in a state and as a consequence there is no longer an obligation to obey.

If one lives under monarchy, as Kant did, and one does not accept a right of revolution, it follows that monarchy must be legitimate at least for a transitional period. Yet, Kant is often thought to have been a staunch defender of monarchy and therefore not seriously committed to republicanism. Kant's defence of state authority was indeed vigorous, but the 'Hobbesianism' identified by Richard Tuck and others should not be taken too far. Referring to paragraph 51 of *Rechtslehre*, where Kant discusses autocracy, Tuck claims that, for Kant, 'a single-person legislator [is] quite possible and even desirable on the ground of simplicity'.<sup>96</sup> But Kant's view is a little different:

It is true that, with regard to the administration of right within a state, the simplest form [autocracy] is also the best. With regard to right itself, however, this form of state is the most dangerous for a people, in view of how conducive it is to despotism.<sup>97</sup>

Kant adds a tacit quotation from Alexander Pope's lines 'For forms of government let fools contest / whate'er is best administer'd is best', which he rejects out of hand as false.<sup>98</sup> Kant associated this sentiment with the royalist and anti-revolutionary Jacques Mallet du Pan (1749–1800), who, as Kant

94. For a more extensive discussion, see Maliks 2013.

95. Tieftrunk 1798: 366. A substantially similar interpretation to that of Tieftrunk is offered by Ripstein 2009: 325–52.

96. Tuck 1999: 211; Stedman Jones 1994. 97. Kant 1907a: 339. 98. Kant 1907a: 339.

reports in *Perpetual Peace*, had taken it as his motto.<sup>99</sup> Incidentally, the name of the translator of Mallet du Pan was Friedrich Gentz. To be sure, republicanism to Kant is compatible with monarchy (as it was for Rousseau and for many others in the republican tradition) but he had in mind constitutional monarchy, where sovereignty remains in the elected legislature. Kant's constitutionalism was not well developed, but he evidently supported the rule of law, the separation of powers (if not checks and balances), and government accountable to citizens in elections.

Kant is often thought to have lacked realism. Fania Oz-Salzberger doubts his commitment to republicanism because he 'did put forward proposals for republics [but] did not apply them to present-day Germany'.<sup>100</sup> But this is like saying that Kant proposed the categorical imperative but failed to apply it to Englishmen because the English are not mentioned in *Groundwork for the Metaphysics of Morals*. Kant intended his moral principles to apply universally; like most philosophers, he did not see it as his task to specify how they should be implemented in one particular time and place. We have nonetheless seen that he was unusually sensitive to the difficulties of applying theory in practice.

## V

Kant developed his philosophy in two fundamental ways during the debate with Gentz, Rehberg and Möser (and others who may have shared their views) in the aftermath of the French Revolution. First, he became more radical, endorsing republicanism for the first time and sharpening his critique of hereditary nobility. In the process, he showed that the capacity for personal autonomy entitles persons to civil liberty, in particular the rights to property, which are instrumental to the exercise of freedom. Additionally, civil liberties facilitate the development of judgement necessary for free human agency. Second, he developed his views in a more cautious direction when it came to implementation. This led him to the principle of a permissive law allowing gradual transition if implementing a law suddenly would undermine its purpose. Kant's contribution to the German debate on freedom was to provide the foundation for a liberal theory that was sensitive to its historical context of realisation.

The controversy between conservatives and progressives, between those who wished to restructure society according to a human right to freedom and

those who wanted to conserve traditional institutions, remained a source of discord in Germany for decades to come. When dusk fell on the first day of the ideological battlefield of the French Revolution, Hegel made reconciliation the task of philosophy. His *Philosophy of Right*, published in 1820 – only a few years after the Congress of Vienna – dominated the first part of the new century because it succeeded in convincing many that Kantian personal autonomy and civil rights can be preserved and sustained within traditional ethical life, complete with revived estates.

99. Kant 1796: 353. 100. Oz-Salzberger 2002: 218.