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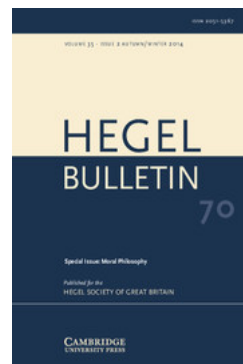
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## Liberal Revolution: the Cases of Jakob and Erhard

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# Liberal Revolution: the Cases of Jakob and Erhard

Reidar Maliks

This article explores the writings of Ludwig Heinrich Jakob and Johann Benjamin Erhard, two young Kantians who produced original defences of resistance and revolution during the 1790's. Comparing these two neglected philosophers reveals a crucial divergence in the liberal theory of revolution between a perspective that emphasises resistance by the individual and another that emphasises revolution by the nation. The article seeks to contribute to a more nuanced view of the political theory of the German Enlightenment, which has often been presented as excessively obedient to authority.

## I. Glorious obedience

The historian Charles Ingrao repeated a common perception when, in an article on enlightened absolutism, he speculated that, 'the German's greater acceptance of authority both then and now may be rooted in their own distinctive national culture' (Ingrao 1986: 165).<sup>1</sup> This idea of the obedient German has been promoted especially by those who seek cultural explanations for the authoritarian bent of German society in the 20<sup>th</sup> century (such as Mandt 1974 and Lepenies 2006). But the idea has a longer history. Herder described Germany as the land of obedience,<sup>2</sup> and Kant wrote that, 'in keeping with their penchant for law and order, they [the Germans] will rather submit to despotic treatment than venture on innovations (especially wilful reforms of government)' (Kant 1974: AA 7: 318). By 'wilful reforms of government' Kant meant revolution. Madame de Staël later observed that Germans 'join the greatest boldness of thought to the most obedient character' (Staël Holstein 1813: 35). As Frederick Beiser has shown, this view, which was repeated by Heine and Marx, came to dominate the historiography (Beiser 1992: 7).

There is some evidence from intellectual history to support the thesis about the obedient German. Luther and Pufendorf, Germany's most influential theologian and political theorist respectively, did not flinch in defending authority and order. Condemning the peasant rebellions in 1525, Luther wrote, '[t]he fact that the rulers are wicked and unjust does not excuse tumult and rebellion' (Luther 1968: 73). Absolute authority is necessary to contain the 'savage beast' in man, and if persons were to take the sword in their own hand, it would spell the end to earthly authority, government and order, and 'there would be only murder and bloodshed' (Luther 1968b: 48; 1968: 74). Pufendorf also rejected all collective resistance to authority. The citizen's 'only glory is obedience' (Pufendorf 1991: 143),<sup>3</sup> and they must endure severe rulers 'in exactly the same way that good children must bear the ill temper of their parents' (Pufendorf 1991:

146-7, 175). In most parts of the old Empire, subjects were indeed treated as children. The German bourgeoisie had been largely excluded from practical politics and found its self-realisation in the private sphere (Habermas 1991; Rosenberg 1966). Some historians have argued that, as a result, Germans developed a rich interior moral life but a depleted political life (Koselleck 1988).

Respect for authority and order occupies a central place in the history of German political thought. But this is far from the full picture. Early modern Germany heard other influential voices, such as that of Johannes Althusius, who defended a right of resistance (Althusius 1964: 7), and during the Enlightenment, the many new German journals were filled with a wave of republican writings (Bödeker 2002, Hermand 1975). Many of these were not just derivative of French or English sources but were generated by the public interest in the large administrative reforms taking place in many German states, Prussia in particular.

Kant's philosophy was another factor. The theory of personal freedom and responsibility that he developed in the 1780s became immensely influential and inspired many young intellectuals to use it as a foundation for a political theory. Kant's impact was not lost on Hegel, who saw the source of the 'frightful' French Revolution in his *Universal Principle of Right* (Hegel 1952: 33). The principle states that an individual's external liberty should be limited only by law and only for the sake of securing the equal liberty of others (Kant 1907: 230). Kant elaborated the principle fully only *after* the revolution, but Hegel's point was that the Kantian spirit — common to modern contractualist theories of individual rights — was at the origin of the upheavals.

The influence of Kant's critical philosophy reached its height just before the revolution and was soon associated with the event by its contemporary observers. Thus Friedrich Gentz wrote in a letter to Christian Garve in December 1790: '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>4</sup> Kantian political writings of the late 18<sup>th</sup> century nonetheless tend to be overlooked by historians of political thought, perhaps because they do not fit the standard view of the non-political German. Ludwig Heinrich Jakob and Johann Benjamin Erhard's theories of revolution are not discussed in any of the standard books on German political thought of the period.<sup>5</sup>

Studying them is nonetheless worth our while. Retrieving Germany's revolutionary thinkers allows us to question a picture of the country's political thought as proceeding through a predetermined history of obedience and to see it instead as a path with twists and turns. We can also gain insight into an interesting distinction in the liberal theory of revolution. Jakob and Erhard's philosophies were grounded in Kant, and their philosophical orientation was essentially liberal, founded as it was on a human right to freedom. But the two young Kantians defend disobedience in very different ways. Jakob emphasises resistance by the individual, while Erhard stresses revolution by the nation. As such they foreshadow a tension within liberalism between the value of individual

rights and the value of collective self-determination that would become significant in the 19<sup>th</sup> century.<sup>6</sup> The first section of the essay presents Jakob, the second section present Erhard, and the third section compares the two.

## II. Ludwig Heinrich Jakob

Jakob was born in simple circumstances; his father was a farmer whose particular craft was neutering pigs.<sup>7</sup> At school, his intellectual prowess was soon evident, and after the *Gymnasium* he studied at the University of Halle, where he completed his doctorate in philosophy in 1785 and became a professor in 1791. Due to his prolific publishing he advanced quickly. During Napoleon's occupation in 1806 the university was shut down and Jakob accepted an invitation to teach at the newly founded Kharkiv University (in today's Ukraine). The Czar soon became interested in him after he published an essay on paper money in Russia, and he secured public offices in St. Petersburg, eventually becoming a councillor of state. But Jakob's protector, minister M. M. Speranskii, was sent to Siberia in 1812 and Jakob lost influence. In 1816, he was happy to accept an invitation to return to Halle where he continued a successful academic career as a professor of political science (*Staatswissenschaften*).

Until 1800, Jakob's writings were mainly popularisations of Kant's moral and political theory, and he maintained a friendly correspondence with Kant, whom he addressed as his teacher although he never studied with him. They had a falling out in December 1796 when Jakob inappropriately (in Kant's view) asked for a letter of recommendation in a slightly dubious hiring process in Göttingen.<sup>8</sup> The relationship seems to have recovered, however, and Jakob became instrumental in connecting Kant to his English translator, John Richardson. He increasingly devoted himself to economic studies and became one of the most important advocates of Adam Smith in Germany. He translated David Hume and Algernon Sidney from English and Jean-Baptiste Say from the French.

Von Jakob's treatise defending revolution came out late in 1794 and was called *Antimachiavel: On the Limits of Civil Obedience*. On the title page he added, 'Occasioned by two essays in *Berl. Monatschrift* by Messrs. Kant and Gertz' (Jakob 1794). The essays he had in mind were Kant's 'On the Common Saying: That May be Correct in Theory, But it is of No Use in Practice', from 1793 (Kant 1912), and Friedrich Gertz' critique of that essay, which nonetheless applauded Kant's rejection of a right of revolution (Gertz 1967).

Although Jakob defended a right and duty of resistance and revolution he was not particularly radical in comparison to contemporary republican writers who defended popular sovereignty. The French revolution is only mentioned in passing in terms of 'the recent unfortunate (*unglücklichen*) events in France' (Jakob 1794: 4). This is perhaps not strange, since France had recently gone through regicide and terror, and German opinion had turned against the revolution. There would be reason for Jakob to take a distance

from the rhetoric of the Nation and its General Will. But his lack of interest may also have been caused by a general lack of faith in public opinion as a source of justice. He consciously situates himself in an older tradition of resistance theory from the Monarchomachs and John Locke, where natural law is the foundation of justice.

He nonetheless adopts Kant's natural law foundation to justify a right of resistance and revolution. That Kant had refused to recognise such a right was a problem, but, he writes, 'An unconditional suffering obedience [*leidender Gehorsam*] contradicts Kant's moral system through and through' (Jakob 1794: xxi), and therefore, Kant could not have meant it that way. Actually, he suggests, Kant was opposed only to those revolutions which were driven by the need for welfare, not to revolutions that took place for the sake of freedom. It is hard to believe that Jakob really believed this since Kant is categorical in *Theory and Practice* that no kind of resistance to the state could ever be permitted. He rejects revolution not because of its material consequences but because it cannot be reconciled with the Universal Principle of Right. It was perhaps because Jakob realised this that he abandoned Kant's actual text and instead argued that revolution can be justified on his own understanding of Kantian justice.

Jakob's basic premise is that humans have an equal right to external liberty. This right is universal and natural, independent of legislation. Normally persons must obey rulers in order for their human right to freedom to be protected, but to require persons to obey tyrants for the sake of human rights is senseless since tyrants deny persons their right to freedom. Obligation is not owed to the institution of the state but to its true purposes (Jakob 1794: 30). The state is a means to an end and if it fails to fulfil its purpose of protecting freedom it is no longer legitimate and obligation disappears.

Each subject has a perfect external right to resist [*widerstehen*] the will of the sovereign when its approach obviously is according to maxims that contradict the purpose [*Zweck*] of the state. (Jakob 1794: 17)

Jakob here invokes Kantian language. To Kant, perfect or 'strict' right means that there is connected with it an authorisation to use coercion, determined by law (Kant 1907: 234). By resistance, Jakob means defensive force used by disobedient subjects for the sake of justice against tyrannical rulers. Resistance is either negative, which is a mere refusal to carry out an order, or positive, which is the use of violence against a sovereign (Jakob 1794: 22). Resistance is not just a right, however, but can also be a duty. In cases where the ruler requires subjects to contravene their moral duty, persons must resist because they are under an obligation to overcome all obstacles to performing their duties (Jakob 1794: 26, 42, 97).

It is notable that Jakob is chiefly interested in individuals engaging in resistance. He is less interested in revolution, which at the time was understood as the attempt by a united people to use force to overturn the government and to establish a republican constitution. When he writes about revolution it is always in order for persons to restore

a pre-existing legal order, never for it to institute or strive for utopian moral and social ideals.

It is sometimes thought that German philosophers of the Enlightenment could not have imagined the atrocities of the twentieth century, but Jakob's many examples of abuses of power show that this can only be partly true. His examples include tyrants commanding all subjects to swallow two grams of arsenic and tyrants who turn the order of society upside down, commanding husbands to kill wives, judges to make unjust sentences, and teachers to propagate licentious behaviour (Jakob 1794: 21, 28). Many examples are gathered from history, and the scoundrels include Nero, Caligula, and Henry VIII (who callously executed *Anna von Boblen*). What all these examples have in common is that they are transgressions against rights understood in a non-perfectionist Kantian sense. They are attacks on the basic human right to freedom; no example involves rulers failing to provide for the people's welfare or who break contracts. All transgressions against rights occur when rulers violate the norm of equal liberty and when they command subjects to act against a moral duty. To drive home the point that justified resistance is a matter of right and not utility, Jakob listed a number of apparently trivial transgressions that are still in principle unjust. He writes that disobedience may be justified:

When he [the ruler] out of caprice commands a subject to limp, or to never take the hat off; when he requires an officer to dance a minuet on his hands, or of a minister to style his wife's hair, or of a professor to hold lectures on beatitude for his dog, or a priest to take the podium dressed like a harlequin, or a carpenter no longer to use the right hand for sawing but the left, and so on. (Jakob 1794: 93-4)

In these cases, individuals may refuse obedience, but they only have the right to resist with force if the transgressions are serious and many (Jakob 1794: 71). Some injustice must be tolerated for the sake of maintaining the state. But when rights are seriously violated and normal means of reform are blocked, there is no obligation to obey. Subjects then have 'a perfect external right' to defend their human right against the sovereign (Jakob 1794: 17, cf. 14, 22).

To explain how a positive law justifying resistance can work, Jakob uses the example of the Holy Roman Empire where statutory law limited the power of princes and a people had the right to resist, although resistance was carried out by nobles and estates (Jakob 1794: 106). Under this arrangement, the people is not judge in its own case when rebelling, because impartial judges at non-state levels decide. This is a clear step away from Kant's theory, which presupposed a single sovereign power in the state, contrary to the dualistic rule of the Empire. While the old *Reich* at this time was in its death throes, regional estates and the nobility remained strong (especially in Prussia) and Jakob was not alone in seeing the future in a revival of medieval institutions.<sup>9</sup> Notably

Fichte shortly thereafter reintroduced Althusius's idea of the *ephorate*, a council balancing the power of the ruler (Fichte 1979).

But revolution can also be justified as a natural right, without recourse to legal institutions. Persons who are no longer protected by the sovereign cease to stand in a juridical relation to it, and may judge for themselves, according to principles of human right (Jakob 1794: 108). To show the compatibility with Kant, he hastens to add that justice cannot depend on material utility but must be determined by persons judging in a formal way, according to pure reason (Jakob 1794: 112, 123): '[t]o liberate the world of a villain [*Bösewicht*] is a crime if it does not happen in a legitimate way' (Jakob 1794: 126).

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 account. (Jakob 1794: 128)

Rightful acts must be capable of justification in a public procedure. For this reason, resistance too must be public, and Jakob formulates this as a 'maxim' of publicity (anticipating Kant's publicity principle in *Perpetual Peace*): 'All justified counter-violence must be public. No one has a right to oppose others with secret violence' (Jakob 1794: 121). To revolt in secret is to not recognise the moral nature of one's opponent, treating him as a mere thing. Conspiracy, poisoning, and assassination are not legitimate (Jakob 1794: 122, 127).

The obvious worry for someone defending a right and duty of resistance in 1794, after the terror and internecine war in France, was the worry about anarchy. Jakob made several attempts to respond to this worry. Anarchy can be avoided because individuals only have the right to resist if the transgressions are serious and many; some injustice must be tolerated for the sake of maintaining the state. Positive resistance is only justified if ordinary procedures through the courts and police fail and if the transgressions can be ascertained objectively (Jakob 1794: 24, 99, 35, 58, 71). By 'objectively' Jakob likely meant that the injustice is identified through reasoning about the formal properties of an action. He added that overthrowing a king is not the same as overthrowing the institution of kingship; if the sovereign is killed, the crown will pass on to the person next in line. In case this failed to convince the reader, he added that anarchy is in any case better than a despotism involving terror directed against the citizens of the state (Jakob 1794: 152-3).

In the main, however, Jakob is not concerned as much with revolution as he is with resistance. When the right to freedom has been violated, the purpose of disobedience is primarily defensive, and not to institute an ideal society. Jakob's interest is primarily in protecting the life and liberty of individuals, not to ensure the political self-determination of a people, which was largely the basis for the legitimacy of the revolution in France. He bluntly dismisses any appeal to direct democracy and argues that the people can only act indirectly either through the king or through a representative assembly, otherwise it acts as a rabble (Jakob 1794: 2-3).

### III. Johann Benjamin Erhard

Johann Benjamin Erhard was born in Nuremberg in 1766 to a father who was a wire-drawer of the petty bourgeoisie.<sup>10</sup> He attended Latin school but discontinued in order to learn the craft of his father. He nonetheless taught himself Latin and philosophy before entering university in Würzburg in 1787 to study medicine. The winter of 1790-91 was spent as a student of Reinhold in Jena, where he became acquainted with a surprisingly large number of German luminaries, including Schiller, Goethe, Herder, Klopstock, Fichte, and Novalis. He visited Kant in Königsberg during the summer of 1791 before continuing his education in medicine. He became a medical doctor in 1792 and opened a practice in Nuremberg, but it was unsuccessful and he continued writing and publishing during the 1790's. From 1799 until his death in 1827 he ran a successful medical practice in Berlin, where he was also chief medical officer (*Obermedicinalrath*).

As a child, Erhard had been stirred by the enthusiasm of the German bourgeoisie for the American Revolution, and this enthusiasm is evident in his writings about moral rights and popular emancipation. His great philosophical influence was Kant, whom he considered to be his real educator. Kant, too, benefited from their conversations, as the correspondence between them shows.<sup>11</sup> But Erhard also had other philosophical allegiances, and in 1793 he translated Etienne de La Boétie's, *Discours de la servitude Volontaire*. His tract, *On the Right of the People to a Revolution*, which was published before February 1795, reads like an attempt to employ Kant's theory of enlightenment as a solution to La Boétie's pessimistic view of voluntary subjection.

Helmut G. Haasis, who has produced the only modern edition of Erhard, categorises him as a German Jacobin, but the categorisation is based on a questionable attribution to Erhard of an anonymously published incendiary pamphlet.<sup>12</sup> The evidence is mainly based on similarities in language and ideas but, even if the style of pamphlets is different from that of a treatise, the bombastic language and radical ideas are a world apart from Erhard's nuanced and sophisticated style. Like La Boétie, Erhard was not particularly strident. Moreover, in his treatise, Erhard presented the Jacobins as wanting to expunge all law and order and replace it with the despotism of opinion, and that was hardly an agenda Erhard shared (Erhard 1970: 89).

Erhard based his moral thinking on the Kantian principle of a human right to equal freedom. Although he shared this theoretical foundation with Jakob, his theory of disobedience is quite different. Jakob, more in line with the tradition of European resistance theory, had been concerned with defence against tyrants and with getting rid of a ruler without thereby getting rid of the constitution. His text is about resistance (*Widerstehung*). Erhard, more in line with the ideals of 1789,<sup>13</sup> was primarily concerned with revolution, which he thought of as a means for a people to consciously decide to create a new constitution under which it can enjoy political freedom.



Closely following Kant but without ever referring to him, Erhard argues that laws should be founded on the human right to freedom, not on welfare and happiness (Erhard 1970: 27). The basic human right is to not be subject to anyone's arbitrary will but to live under laws expressing reasons that one could approve of. There is an inalienable right to acquire legal rights (*das Recht, sich Rechte zu erwerben*) (Erhard 1970: 17, cf. 37). His conclusion is radical: positive law disconnected from a moral foundation carries no obligation: '[w]hat contradicts reason can be no law for humans, it is the speech of a fool or the threat of a robber' (Erhard 1970: 16). He adds that, 'everyone has a "duty to oneself" to be a being with moral dignity, and that means never giving up the right to judge on right and wrong' (Erhard 1970: 30).

But to a Kantian this is problematic because it means to act as a private individual against public institutions: 'Anyone who starts a revolution must act arbitrarily [*willkürlich*]. He throws the judges from their chairs, the judges who would judge his acts, he posits himself as ruler, and makes his choice [*Willkür*] the voice of the people' (Erhard 1970: 47). How can such arbitrary and apparently unilateral action be justified? Contrary to Jakob, Erhard argues that no one can have the right (*das Recht*) to revolution, where right is understood as an entitlement protected by positive law. There can be no such positive law because no court could decide on it. It would be preposterous for a foreign court to do so, and domestic courts — along with the constitution they rely on — are exactly what revolutionaries put in question. Prohibiting revolution makes no sense, permitting it would make the court's authority contingent, contradicting the 'dignity of legislation' (Erhard 1970: 41). But in some circumstances it is right (*es ist recht*) to start a revolution, if we understand right as a *moral* right:

Instead of asking 'who has the right?' to start a revolution, one must ask 'who does right?' when he starts a revolution. The question belongs therefore solely 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*]. (Erhard 1970: 42, cf. 44, 87)

More important than following positive law is to follow one's moral conscience (Erhard 1970: 45). Revolution is not a matter for law (a *Rechtsfrage*), but for conscience (a *Gewissenssache*). Erhard was still a Kantian and he is careful to point out that revolution cannot be justified for the sake of increasing welfare or happiness. It can only be justified for the sake of justice: when persons are enslaved, persecuted for their faith, or forbidden to progress in religion. In those cases, not just one person suffers, but humanity (Erhard 1970: 50). For that reason, revolution is not just a right but a duty. Persons may not choose to remain under oppressive government but are morally obliged to resist (Erhard 1970: 49).

But Erhard does not limit the right and duty of revolution to cases of extreme atrocities; it may be justified if it enables greater justice in the state's constitution (*Grundgesetz*): for example, by getting rid of unjust elite privileges (Erhard 1970: 51). More utopian than Jakob, he also considers revolution justified if the government prevents the people from achieving Enlightenment.

When the labour of the people is so oppressive that it is permitted no time to do anything human, but when everything is so constituted as to maintain the stupidity of a beast of burden, then it has a right of revolution. (Erhard 1970: 92-3)

But how can the people be a revolutionary subject? Jakob had already expressed the traditional worry that a people acting directly and on its own would be a rabble. Erhard sees the problem as one of finding how a people acting without a ruler can share a consciousness and have the courage to act. His first step towards solving this problem is the definition of a people as a mass of humans united by shared customs, and not primarily as united by law, as the absolutist tradition maintained. The reason why the people does not easily act collectively is that it is in a condition of minority: unable properly to understand and utilise rights (Erhard 1970: 37, 39, 76). As with La Boétie and Kant, this minority is mainly self-incurred (Erhard uses Kant's formulation about *selbstverschuldeten Unmündigkeit* but fails to attribute it to his mentor [Erhard 1970: 82-5]). In his essay on Enlightenment, Kant described it as a consequence of cowardice, it is 'a lack of resolution and courage to use [one's own understanding] without direction from another' (Kant 1912b: 35). Likewise, for La Boétie, those who are unaccustomed to freedom lose the desire for it and willingly submit to servitude (La Boétie 1975: 55).

Unlike Kant and La Boétie, Erhard does not lay blame on a lack of *courage*. The source of inequality is to be found at the origin of society when those who were physically and mentally superior came to dominate those who were slower to develop. This superiority was transformed into the legal superiority of the nobility, not through oppression but because of the people's negligence (*Unachtsamkeit*). The people had neglected its enlightenment and therefore tacitly agreed to the inequality (Erhard 1970: 81-3). But it is not cowed, it is not fearful, and if only it were enlightened it would not voluntarily submit to servitude. Because it is not held back by fear, the people is capable of acting collectively in a revolution. Erhard seems to have imagined such collective action as arising from the shared customs that unite the people, since he believes in a form of popular 'feeling' for rights, stemming from people's moral nature, which provides the univocity (*Einstimmigkeit*) required for a revolution (Erhard 1970: 93).

Erhard ends the tract on a conciliatory note by proposing that revolution can be prevented if the constitution gradually adapts to the people's level of enlightenment. The implication seems to be that rights are withheld from the people only because it lacks maturity and that when it is enlightened there will be no reason to oppress it. The ruling

powers will then be prepared to cooperate: 'In such a state that happens through an *evolution* brought about by wisdom, which in other states happens through *revolution*' (Erhard 1970: 96). This was a view Kant endorsed a few years later in the *Conflict of the Faculties* (Kant 1907b: 87). Erhard nonetheless did not take the revolutionary option off the table. If the rulers do not allow the people to educate themselves, revolution is justified.

#### IV. Two liberal approaches to revolution

What are the main differences in Jakob and Erhard's approaches to disobedience? Although they seemingly depart from the same Kantian principles of right as equal liberty they diverge from one another in two ways. The first is that Jakob's perspective is that of the individual, whereas Erhard's perspective is that of the people. On Jakob's view, the pressing issue is the individual's right to freedom, and to protect persons from being forced to carry out morally impermissible actions. He is concerned with the collective action of a people only in cases where resistance necessarily means deposing the government. Erhard too is concerned with the moral rights of the individual, but he adds that some crimes are transgressions against the people as such. When the people is made dependent on the arbitrary will of a ruler and prevented from enlightening itself, it suffers as a collective subject.

The second difference is that Jakob chiefly writes about resistance, whereas Erhard is mainly concerned with revolution. For Jakob, resistance is either the negative act of refusing an order or the positive act of using violence against a ruler, but in either case the chief aim is to fight a rapacious ruler. He is not particularly interested in utopian ideas of revolutionary action aimed at creating a new constitution and advancing society. Similarly to Locke, resistance is a way to maintain the *status quo*, which has been distorted.<sup>14</sup> Erhard's approach is different. He is mostly concerned with revolution, the attempt by a mobilised people to use force in order to overturn political institutions within a state and create a new constitution. His theory is situated within a utopian Kantian conception of Enlightenment's progress in history towards universal republicanism.

Jakob and Erhard arrived at these different conceptions of disobedience partly because they emphasised different aspects of the Kantian foundation. On the one hand, Kant's moral and political theory provides a foundation for the protection of individual rights; on the other hand, he emphasises popular sovereignty as the source of political legitimacy. In Kant's view, individual rights and popular sovereignty are related, since individual rights can only be protected in a republican constitution, and government by the people is legitimate only as long as individual rights are protected. But for Jakob individual rights are what matters, and political rights are secondary. Of the two young Kantians, Erhard has the most complex approach, since he seeks to carry further both the individual and the collective aspects of Kant's theory.

It would be wrong, however, to present their differences merely as idiosyncratic, because they clearly connect to a larger division within early liberalism between one line of reasoning that emphasises individual rights and another that emphasises collective action. Benjamin Constant and Wilhelm von Humboldt defended the former version of liberalism, whereas G. W. F. Hegel and T. H. Green are associated with the latter. This controversy came to the fore in the nineteenth century and remains significant because it goes to the core of the very idea of liberty: whether it is chiefly the freedom to avoid undue interference in the private sphere or whether it is the freedom of acting together in political society. It is instructive to see how this division had different consequences for resistance and revolution in Germany during the 1790's.

In proposing a theory of popular resistance and revolution based on enlightenment, Erhard provided a new answer to the conundrum of how a people can act collectively against its rulers under extraordinary circumstances. The challenge to resistance theory in the modern natural law tradition, which we can understand as starting with John Locke, was the worry that that direct action would lead to factions and tumult. Earlier resistance theory, such as that of the Monarchomachs, had not faced this problem because it did not defend collective action beyond institutions. To Althusius, for example, the rebellious people exercises its sovereignty only indirectly through its representatives, who are nobles appointed as ephors: 'what the ephors do is understood to be the action of the entire people' (Althusius 1964: 101-102). Moreover, the people is understood not as an aggregate of individuals, as in the social contract tradition, but as naturally unified in a society of orders, which remains integrated while rulers come and go. Tumult had not been a problem in Hobbes's theory of resistance either, because on his view only individuals have a right to resist (in cases where rulers seek to kill them), and hence there is no collective political action at all, only individuals attempting to survive (Hobbes 1996: 93-8; 151-2). But Social Contract theories from Locke to Rousseau attempted to defend direct action on the part of the people as the constituent power of the legal system, and they therefore had to show how a revolutionary subject prior to law can be created without tumult and without the people becoming a mob.

By the 1790's, various suggestions had already been made. In Locke's theory of revolution, collective action relies on an initial social contract that creates a political society where the people decide whether to appoint or reject a ruler (Locke 1967: 398-428). Rousseau institutionalised this further by suggesting that something resembling Locke's revolutionary assembly of the entire people can be made into a regular procedure, 'fixed, periodic assemblies' that are 'lawful by their date alone' (Rousseau 1987: 3.13). Sieyès took the formalisation one step further by introducing the idea of the nation acting indirectly through popularly elected representatives in a constitutional assembly with a mandate to judge on behalf of the people (Sieyès 2003: 139). Representation is necessary, Sieyès claimed, because of the size of the population: in a large state it is impractical for the people to act directly.

Jakob's answer to the conundrum was a combination of promoting the legal institutions of the old empire (reminiscent of the Monarchomachs) and suggesting that conscientious individuals acting unilaterally can objectively identify a just cause for resistance. But since his interest was not primarily in the revolutionary action of the people, he largely avoids the issue of tumult and faction. Erhard made a more systematic attempt at addressing the conundrum, but avoided the attempt to institutionalise revolution. Society is not founded on a social contract but on the people submitting to the nobles' superior power; hence, unlike Locke and Rousseau, no contractually created political society can unify the rebellious people. Unlike Sieyès's attempt at regulating the exception, Erhard's view is that moral legitimacy is prior to legal arrangements, which means that before representative assemblies can be created to secure the orderliness of a new constitution the people must act directly to get rid of the existing system. His solution to the difficulty of tumult was instead enlightenment. Once a people is enlightened it strives for shared ideals of freedom and equality and will not act as a rabble.

No doubt, Erhard considered his own publishing activity to be part of the enlightenment that would eventually lead rulers voluntarily to devolve power or the people taking charge through revolution. It was, moreover, a view he shared with Kant, who, in the *Conflict of the Faculties* from 1798, endorsed Erhard's view on society's evolution to a state of justice (Kant 1907b: 87). That Erhard could arrive at this confident view of collective action is a testament to the great faith in the transformative power of the public sphere among German intellectuals in the latter part of the 18<sup>th</sup> century.<sup>15</sup> Far from an unpolitical or excessively obedient intellectual culture, this was a public sphere teeming with discussions about the limits of state authority and the justice of transition to republicanism.

## V. Conclusion

The purpose of this essay has been to contribute to the excavation of Germany's neglected revolutionary tradition. Although the majority of German intellectuals turned their back on revolution as a means for social change after the terror in France, others remained true to the cause. Jakob and Erhard were by no means alone in defending a right and duty of resistance, but belonged to a larger group that counted Johann Gottlieb Fichte, Johann Adam Bergk, Friedrich Schlegel, and Paul Johann Anselm Feuerbach. These thinkers made a clean break with the absolutist tradition, which had attempted to keep individuals from intervening politically on the basis of their moral conscience.

As such, these disobedient Germans foreshadow the upheavals of the 19<sup>th</sup> century, when citizens individually and collectively demanded inclusion in political decision-making. They also exemplify the lacking consensus in the liberal tradition over how to defend rights in extreme circumstances, and whether freedom should be primarily a private or a public matter. Jakob is primarily concerned with individuals and their right

to resist, while Erhard is consumed with the question of how a people can act together in revolutionary change. Once the full story of the early German radicals has been written, we may get a more nuanced view of the history of political thought in Germany, and perhaps come to see it not as a persistent tradition of obedience but as a peculiar tradition of contention over the meaning of freedom and authority.

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## Notes

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<sup>1</sup> The same view can be found in Blanning 1974.

<sup>2</sup> Herder, cited in Gooch 1966: 22.

<sup>3</sup> Grotius had written that '[t]he Gods have bestowed a sovereign Power on Princes, leaving Subjects the Glory to obey,' a saying he attributed to Tacitus (Grotius 2005: 103).

<sup>4</sup> Gentz cited in Epstein 1966: 436.

<sup>5</sup> These books include Koselleck 1988, Habermas 1991, Beiser 1992, Wolzendorff 1916, Aris 1936, Valjavec 1951. A few overview-articles on each of the two have been published: see Batscha 1972, Batscha 1981, Walker 2002, Martinson 1990. Other radicals have received more attention; for a survey of the literature, see Blanning 1980.

<sup>6</sup> See Habermas 1974.

<sup>7</sup> This biographical overview draws upon Vopelius 1974, von Prantl 1881, and Walker 2002.

<sup>8</sup> See the letters from Jakob to Kant on 7<sup>th</sup> December 1796 and 2<sup>nd</sup> January 1797, in Kant 1922b: 120 and 198.

<sup>9</sup> See Bödeker 2002: 39-40; Rosenberg 1966: 70, 181; Berdahl 1988: 78; Wilson 2004: 243, 332.

<sup>10</sup> This biographical overview draws upon Richter 1877 and Haasis 1970.

<sup>11</sup> Erhard's letter to Kant, on 12<sup>th</sup> May 1786 in Kant 1922: 450 and the letter from Kant in Varnhagen von Ense 1830: 22, 33.

<sup>12</sup> Anonymous, 'Wiederholte Aufruf an die deutsche Nation' in Haasis 1970.

<sup>13</sup> See Arendt 1990, Habermas 1974, Koselleck 1985.

<sup>14</sup> See Habermas 1974.

<sup>15</sup> On the public sphere in the late 18<sup>th</sup> century, see Habermas 1991.

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