

Enlightenment and Freedom

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FREEDOM IS THE CENTRAL CONCEPT of liberal political theory. For most contemporary political philosophers, the concept of enlightenment does not play a central role. Nevertheless, I want to claim in this paper that enlightenment is an important concern for a liberal theory of justice. I propose to explain this claim through a reading of Immanuel Kant's essay on enlightenment. Kant's account of enlightenment as emergence from immaturity in the use of reason is well known, but, surprisingly perhaps, his main concern in the essay is political. What we find in the essay is not primarily an analysis of enlightenment, but an account of the relation between enlightenment and the political order.¹

However, Kant's account of the relation between enlightenment and politics has not been well understood. It turns on a rather cryptic idea of the freedom of public reason, and Kant is less clear than we might like on how the freedom of public reason is to be politically justified. As a result, we still lack a clear understanding of the role that the state plays with respect to enlightenment in Kantian political theory. In attempting to grasp this role, some commentators appear to have been attracted by three interpretive claims. The first is that Kant holds that the state has a duty not to interfere in the sphere of public reason. The second is that this duty not to interfere is grounded in a negative liberty to reason publicly.²

¹While most commentators have recognized Kant's political concerns in the essay, many abstract from the political questions it raises in order to focus on his idea of enlightenment and its relation to reason or to our reasoning capacities. For an example from among Kant's critics, see Rüdiger Bittner, "What is Enlightenment," in *What is Enlightenment? Eighteenth-Century Answers and Twentieth-Century Questions [What is Enlightenment]*, ed. James Schmidt (Berkeley: University of California Press, 1996), 345–58. Among defenders of Kant, see Henry E. Allison, "Kant's Conception of Enlightenment," in *Proceedings of the Twentieth World Congress of Philosophy*, vol. 7, ed. Mark Gedney (Bowling Green, OH: Philosophy Documentation Center, 1999–2001), 35–44. Among those who address the political aspects of public reason or enlightenment, Ciaran Cronin and Daniel Weinstock are particularly noteworthy. See Ciaran Cronin, "Kant's Politics of Enlightenment," *Journal of the History of Philosophy* 41 (2003): 51–80; and Daniel Weinstock, "Natural Law and Public Reason in Kant's Political Philosophy" ["Natural Law"], *Canadian Journal of Philosophy* 26 (1996): 389–411.

²Another possibility is to deny that the state has a *duty* not to interfere in public reason, and to read Kant as claiming that a good ruler would not interfere in public reasoning (an enlightened ruler would grant his subjects the privilege of reasoning publicly). Such an interpretation is likely to embrace some (modified) form of the third thesis concerning the grounds of public reason.

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The third claim is that the negative liberty to reason publicly is itself grounded in one or more of the following: a) the value of realizing autonomy, b) the good consequences of the freedom of public reason with respect to enlightenment, or c) a moral duty of enlightenment.³

Unfortunately, this interpretation does not cohere with the account of law and political legitimacy that Kant develops in his main political writings. Kant conceives of freedom in terms of the republican concept of independence rather than in terms of negative liberty or non-interference. Furthermore, Kant does not ground the duties of the state in values like autonomy or the promotion of enlightenment. In this paper, I will present an alternative account of the foundations of the freedom of public reason. I will argue that the freedom of public reason is grounded in what Kant calls the “right of humanity.” This is not a right to non-interference but a right to independence from the will of others. While this implies that political authorities have a duty regarding public reason, it is not to be understood as a duty of non-interference. Furthermore, the Kantian justification of the freedom of public reason in terms of rightful or juridical independence from the will of other agents is distinct from considerations about ethical duties, autonomy, or the good consequences of lively practices of public reasoning. On my reading, the freedom of public reason is one important aspect of a political conception of freedom and equality in human relations. As such, public reason is something that the state has both to respect and protect. There is no principled reason to hold that this duty can be carried out merely by refraining from interfering in a marketplace of ideas.

The view that I will present is an attempt to understand Kant’s account of enlightenment through the lens of the legal and political theory that he develops in the *Metaphysics of Morals* and his other political writings.⁴ While the main

³It is difficult to pin commentators down on these points. The first thesis is held, for example, by Gisbert Beyerhaus, who claims that the “positive cooperation of the state with this spiritual process of maturity can only consist in the promotion of thinking for oneself, i.e. to put it in terms of state right, in affording and securing a ‘state-free sphere’.” Beyerhaus borrows the term ‘state-free sphere’ from Georg Jellinek. See Gisbert Beyerhaus, “Kant’s ‘Programm’ der Aufklärung aus dem Jahre 1784,” *Kant Studien* 26 (1921): 1–16, at 6. More recently, Ciaran Cronin (“Kant’s Politics of Enlightenment,” 59) appears to accept the first and second theses, claiming that

the public use of reason appears as a domain of individual freedom on which even supreme legislative authority cannot legitimately encroach. . . . The sovereign is not called upon to do anything positive to promote enlightened doctrines or opinions in any field—he need only remain neutral among competing views . . . and allow the reasoning of independent scholars to do its work in shaping the convictions of the public. . . . With this, the freedom to make public use of one’s reason takes on the appearance of an individual right, if only a negative one.”

Both Cronin and Beyerhaus interpret Kant as asserting a right to a sphere of non-interference against the state. What I hope to do in this paper is to give an interpretation of what it means to “afford and secure” the freedom of public reason that is drawn from Kant’s own views about legal authority. Such an interpretation will allow us to see that Kant’s concern is not to secure a sphere free of state interference.

⁴The *Metaphysics of Morals*, which appeared in 1797, contains Kant’s account of the principles and system of morality. It is divided into two sections. The first, often referred to as the “Doctrine of Right,” contains Kant’s political and legal philosophy. The second, the “Doctrine of Virtue,” contains Kant’s account of ethical duties.

themes that Kant addresses in the enlightenment essay are those that occupied him throughout his political writings, Kant does not present a systematic argument in favor of the freedom of public reason in the enlightenment essay. This paper is therefore partly an interpretation of Kant and partly an attempt to develop a defense of the freedom of public reason on the basis of the principles articulated in Kant's theory of right. I begin by explicating Kant's account of enlightenment and his concept of public reason. I then turn to the grounds of the freedom of public reason.

I. ENLIGHTENMENT AND IMMATURITY

The full title of Kant's essay is "An Answer to the Question: What is Enlightenment?" It is thus somewhat surprising that Kant takes only the first paragraph of the essay to provide the answer to this question.⁵ He begins with his own definition of enlightenment: "*Enlightenment is the human being's emergence from his self-incurred minority.*" Kant then explains the sense of minority with which he is concerned and the way in which it is self-incurred. "*Minority is inability to make use of one's own understanding without direction from another. This minority is self-incurred when its cause lies not in lack of understanding but in lack of resolution and courage to use it without direction from another.*" Enlightenment, Kant claims, involves the courage to use one's own understanding without guidance from another.⁶

It has often been pointed out that this emergence from immaturity is a social matter for Kant. Kant claims that it is difficult for an individual to free himself from minority by the "cultivation" of his own spirit. Despite the difficulties facing individual attempts to achieve enlightenment, however, it is possible for a public to enlighten itself. This enlightenment of the public is "almost inevitable if only [the public] is left its freedom."⁷

For there will always be a few independent thinkers, even among the established guardians of the great masses, who, after having themselves cast off the yoke of minority will disseminate the spirit of a rational valuing of one's own worth and of the calling of each individual to think for himself.⁸

There are difficulties involved in understanding these claims. It seems odd to say, on the one hand, that it is difficult for solitary individuals to enlighten themselves

⁵The essay on enlightenment appeared in 1784 in the context of a debate about the relationship between enlightenment, political society and religion. Much of this debate turned on the question of freedom of the press. For the background and historical context of the essay, see Norbert Hinske's introduction to *Was ist Aufklärung: Beiträge aus der Berlinischen Monatsschrift*, 4th ed., ed. Michael Albrecht and Norbert Hinske (Darmstadt: Wissenschaftliche Buchgesellschaft, 1990), 13–69; and Schmidt, *What is Enlightenment*, 1–11.

⁶Immanuel Kant, *Practical Philosophy*, trans. and ed. Mary Gregor (Cambridge: Cambridge University Press, 1996), 17. All references to Kant's works in this paper are to this edition, although I have modified the translation in a few places. Throughout this paper, references to Kant's works will be given using the following abbreviations and the Academy Edition pagination (volume: page):

MM *Metaphysics of Morals*

PP "Toward Perpetual Peace"

TP "On the Common Saying: That May Be Correct in Theory But It Is of No Use in Practice"

WE "An Answer to the Question: What is Enlightenment?"

⁷WE, 8: 36.

⁸WE, 8: 36.

and, on the other hand, that the enlightenment of the public depends upon a few independent thinkers who seem to have done so. But this passage does suggest an important sense in which the pursuit of enlightenment is social. Enlightenment involves the public dissemination of a certain practical attitude towards one's rational powers and moral worth. It is a specifically social *process*.

In the rest of the essay, Kant turns to the political conditions of this process of enlightenment. As we might expect, these conditions are not anthropological or empirical. The central condition of enlightenment is freedom. "For this enlightenment [of the public], however, nothing is required but *freedom*, and indeed the least harmful of anything that could even be called freedom: namely the freedom to make *public use* of one's reason in all matters."⁹ Kant's account of the political conditions of enlightenment turns on a distinction between public and private reason. In the next section, I present an analysis of this distinction.

2. PUBLIC AND PRIVATE REASON

The distinction between public and private reason has proven to be more puzzling than helpful to most readers of Kant. There are a number of reasons for this. First, Kant's use of the terms 'public' and 'private' does not directly correspond to our common uses of these terms. In one common use, the word 'public' designates something as concerning, affecting, or belonging to the people in general or as a whole.¹⁰ But we also use it to refer to things that are done out in the open. Perhaps the most common use of the word 'private'—though this is certainly not the only one—refers to things that are done away from others. We say, for example, that Susan prays in private, or that, in discussing some delicate matter between ourselves, we have had a private conversation. The privacy of our conversation might be thought to derive from the delicacy of the subject matter, but this seems not to be the case. In fact, our conversation is private because we are entitled to exclude others from it and not because of any particular content. We use the term to refer to practices or places from which others are excluded in some way. This is a private club, and you may not come in. What happens in the bedrooms of the nation is a private matter between the parties who are in the bedroom and not a matter for the neighbors. We use the term 'public', on the other hand, to refer to places from which people at large are not excluded. Anyone can have a picnic in a public park. A public lecture is open to all. The application of the terms 'public' and 'private' in these senses seems to depend on questions about who is entitled to do something or be in a place. Kant's use of the terms is related to these uses, but it is not equivalent to them.¹¹

Second, Kant's distinction does not correspond to our usual political uses of the terms 'private' and 'public'. The distinction between the public and private use of reason does not map onto the familiar distinction between the public and private sphere. That distinction provides one way of drawing the line between an

⁹WE, 8: 38.

¹⁰*Oxford English Dictionary*, 2nd ed., s.v. 'public'.

¹¹For a discussion of the roots and usage of the word 'public' in German, see John Christian Laursen, "The Subversive Kant: The Vocabulary of 'Public' and 'Publicity'," in *What is Enlightenment*, 254–56.

area in which legal regulation is permissible and an area in which legal interference is inappropriate. But Kant draws the distinction between the private and the public in a quite different way. Furthermore, Kant's idea of public reason is quite different from John Rawls' well-known conception. Rawls understands the public use of reason to refer to reasoning by citizens and especially by state officials about constitutional essentials and matters of basic justice. For Rawls, public reason is reason on the basis of a public conception of justice. It excludes appeal to comprehensive doctrines as the basis of arguments about justice in the organization of social institutions.¹² As we shall see, public reason is of a much wider scope for Kant than it is for Rawls, both in terms of its content and in terms of its limits. Kantian public reason is not limited to non-comprehensive reasons, and it is also not limited to matters of basic justice and constitutional essentials.

Kant's distinction between the public and private use of reason rests on a more fundamental distinction between two kinds of status or two types of role. The private use of reason is the use of reason in the context of a civil or official role. "What I call the private use of reason is that which one may make of it in a certain *civil* post or office with which he is entrusted."¹³ Kant gives three examples of roles in which one employs the private use of reason: army officer, clergy member (considered as an employee of the Prussian state), and citizen as taxpayer. Considered in terms of her office or role, each of these persons exercises the private use of reason. What this means is that her use of reason is subject to the authority of another. The case of the army officer is probably the most straightforward example. The army officer *qua* officer is subject to the authority of her superiors. She is required to obey them and does not have authority to countermand the orders she is given, even if she thinks they are ill-advised.¹⁴ "Thus," Kant writes, "it would be ruinous if an officer, receiving orders from his superiors, wanted while on duty to engage openly in subtle reasoning about its appropriateness or utility; he must obey." As the example indicates, the private use of reason is a matter of structures and relations of authority. As Kant says in his discussion of the clergy example, it involves acting "in the name of another" and "carrying out another's commission."¹⁵ Although this does not preclude that someone in an official role may be required to exercise judgment in carrying out her tasks, it does imply that her use of reason is bound in certain ways. In the usual case, as in the case of the army officer, she will be bound by the authority of a superior who is authorized to determine what ends she pursues. Even if the officer's superiors leave it up to her judgment as to how to carry out her orders or what means to take up in order

¹²See John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), 212–16; "The Idea of Public Reason Revisited," in *The Law of Peoples* (Cambridge, MA: Harvard University Press, 1999), 131–34.

¹³WE, 8: 37.

¹⁴It does not follow from this that she never has reason to go against her orders. Furthermore, the fact that she must obey without question does not imply that private reason reduces civil officials to bureaucratic automatons. If private reason is understood in terms of relations of authority, it need not follow that private reasoning is mechanical or unthinking. It is true that Kant says that officials are "passive" in the private use of reasoning, and that he uses the metaphor of a machine which is directed by authority to public ends; but an account of the private use of reason that characterized it as mechanical obedience would fail to make sense of the idea that it is a form of reason.

¹⁵WE, 8: 38.

to do so, insofar as she bears the role of officer, she is bound to carry out those orders and not to pursue other ends or purposes.¹⁶

The private use of reason is a matter of carrying out another's commission. In the public use of reason, things are quite different. Kant's conception of public reason has three important features. The first identifies the status of those who reason publicly in terms of membership in a community. In public reason, you regard yourself as a member "of a whole commonwealth, even of the society of citizens of the world."¹⁷ The public use of reason is the use of reason of members of a quite general, but nevertheless political, community. The second feature is a characterization of the audience of public reason. Insofar as you see yourself as a member of the commonwealth of public reason, you address "a public in the proper sense of the word."¹⁸ You speak (at least potentially) to "the public in the strict sense, that is, the world."¹⁹ The final feature emerges in Kant's discussion of the clergy example. Like the first feature, it focuses on status and on the capacities to act that go along with that status. In the public use of reason, you speak in your own person.²⁰ This feature of the account of public reason is particularly important, for it allows a clear distinction to be drawn between the public and private use of reason. Where the private use of reason is carried on "in the name of another," and involves carrying out another's commission, the public use of reason is a matter of acting on your own behalf. In public reason, your use of reason is not employed in the service of ends set by the authority of another, for you are not carrying out another's commission. Public reason is thus defined by its independence from authority. The distinction between public and private reason is a distinction between those uses of reason that are subject to authority and those uses of reason that are independent and in which one acts in one's own person.²¹

Several aspects of this account of public and private reason require further discussion. The first is a potential difficulty with the category of public reason. On the one hand, Kant claims that public reason is addressed to members of a quite general community of the public. On the other hand, he claims that members of the community of public reason act in their own person, i.e., they are not subject to the authority of another in their public reasoning. Taken to characterize the

¹⁶A similar account of the private use of reason is suggested by Cronin who holds that the private use of reason is private "in being subject to the will of a higher authority, be it the state itself or a subordinate authority, which sets legitimate restrictions on what may be communicated to a particular audience" ("Kant's Politics of Enlightenment," 59).

¹⁷WE, 8: 37.

¹⁸WE, 8: 37.

¹⁹WE, 8: 38.

²⁰WE, 8: 38.

²¹Those familiar with Kant's text will notice that I have left aside two aspects of Kant's account of public reason. First, Kant refers to public reason as the reason of a scholar. The public use of reason is the use of reason that one makes "as a scholar" or in one's "capacity of a scholar" (*in der Qualität eines Gelehrten*) (WE, 8: 37). Second, it is the use of reason that is made by the scholar through his or her writings. These two aspects illustrate the public use of reason but they cannot be essential to it. The freedom to reason publicly cannot depend upon having attained the role of an academic or scholar in any official sense (say a position in a university). Correspondingly, the idea that the public use of reason is exercised through writing is important because Kant sees the use of writing as the most important means for what he calls the exchange of thoughts (see *MM*, 6: 286), but it would be hard to see the principled basis for limiting public reason to writing.

status of someone who reasons publicly, these two aspects are not clearly related. In fact, it may seem that Kant has offered two accounts of the nature of public reasoning: the first in terms of its audience, the second in terms of a property of the person doing the reasoning. We can see this if we consider that not every act of reasoning that one does independently of the authority of another is addressed to the public at large. When you and I have a philosophical discussion, we are not subject to anyone else's authority, but this does not mean that we are addressing the entire community of citizens of the world. The public and private categories in Kant's view do not seem to be exhaustive.²²

I do not think that Kant means to propose that all non-private uses of reason are thereby fully public, i.e., addressed to everyone. Rather, they are potentially public in that they are not subject to authority. If you write a philosophical manuscript in your study, you have not thereby addressed an entire public, for you are entitled to exclude everyone from your manuscript. What is important here is that you retain the freedom to make your independent acts of reasoning fully public by offering them to the public at large. The same is true for our philosophical conversation. We are entitled to exclude others from this conversation, but we are also entitled to present our thoughts to the public at large without asking leave of anyone else. This idea of not having to ask another's leave is central. The army officer *qua* officer may openly make announcements about military policy before all, and these will then be available to all, but she may not do this without the authorization of her superiors. She must do it when and how they want it done, and she must say what they want said. That is the sense in which she acts privately or in the name of another. The army officer *qua* scholar may publish her opinions on military strategy, and here she does not have to ask anyone's leave. The primary marker of public reason, then, is not that what you say in exercising it is available to all, but that it is an independent use of reason in which you act in your own name. It is this idea that you speak independently, or on your own behalf, in public reasoning that generates the right to choose your audience. In the case of private reason, no such right arises because you are not there reasoning in your own name. We can say that a fully public use of reason is one in which you or I, acting in our own names, offer our reasoning to the public at large. The members of the public are thereby entitled to consider that offering on the basis of their own freedom. The claim that public uses of reasoning are addressed to the entire public is a consequence of rightful acts that you or I may do in our own names, and of the rights of others who are also entitled to act in their own names. This should give a sense of how Kant's public use of reason is related to the common usage of the word 'public' identified above. Fully public uses of reason are "open to all," but the ground of this availability is the authorization of persons to speak in their own names.²³

²²Thanks to Thomas Hurka for bringing this problem to my attention.

²³I have presented an account of the public use of reason in terms of status and structures of authority. This is a formal conception of public reason in that it looks to the form of the relations between reasoning persons. A quite different account of public reason holds that it should be characterized not in terms of its form but of its content. Such an account is defended by Kevin R. Davis. Davis argues that the distinction between public and private reason in WE is that private uses of reason serve particular interests, while public uses of reason always serve universal interests. This characterization of private

A second point is that the public and private uses of reason are supposed by Kant not to conflict with one another; occupying an official role does not preclude the freedom to reason publicly.²⁴ The public use of reason is the reason of the same persons who are characterized by the roles of citizen, clergy-member, and army officer, but here they are regarded under a different aspect. Considered under this aspect, obedience is not required of them. In the public use of reason, the citizen may question the justice of the system of taxation that is imposed upon her, and in the same way the army officer may openly criticize the wisdom of the way in which the military is operating. Similarly, a member of the clergy must teach in accordance with the creed of the church she serves, but as a scholar she is free to publish her thoughts about errors in this creed. According to Kant, she is even "called upon" to communicate with the public in this way.²⁵ This freedom of communication with the public is, for Kant, the central condition of enlightenment. "The *public use* of one's reason must always be free, and it alone can bring about enlightenment among human beings."²⁶

3. RIGHT AND THE FREEDOM OF PUBLIC REASON

I turn now to the political justification of the freedom of public reason. I will argue that a political defense of the freedom of public reason emerges in Kant's response to a particular problem, namely that of a binding religious creed. In responding to this problem, Kant does not present a systematic argument, but rather appeals to some of the most basic concepts of his theory of right. In order to understand Kant's response to the problem, we have to consider the way those

reason is particularly problematic. Kant gives no indication that the private use of reason can serve only particular ends. The army officer exercises the private use of reason, but the end that he serves in doing so is the end of the whole commonwealth in providing for external defense. If this is true, then the distinction between the private and public uses of reason cannot be drawn on these grounds. The army officer serves the same end both in obeying his commander and in putting forth his thoughts about ways to improve military defense of the commonwealth. (See Kevin R. Davis, "Kant's Different 'Publics' and the Justice of Publicity," *Kant Studien* 83 [1992]: 170–84, at 171–73.) Onora O'Neill defends a view according to which public reason is reason on the basis of universal principles. She also puts this in terms of the capacity of an act of communication to be accepted by an unrestricted audience. This view of public reason is narrower than the one that I defend. On my view, not all exercises of public reason will also be capable of being accepted by everyone. (The clergyman's thoughts about errors in the creed for example will not necessarily appeal beyond a community of believers.) (See Onora O'Neill, *Constructions of Reasons: Explorations of Kant's Political Philosophy* [Cambridge: Cambridge University Press, 1989], 32–34; and "Political Liberalism and Public Reason: A Critical Notice of John Rawls," *Political Liberalism*, *Philosophical Review* 106 [1997]: 411–28, at 422–28.)

²⁴The private use of reason is also problematic in the face of contemporary debates in political theory about whether there can be a duty to obey political authority. Some political philosophers deny that political authorities can obligate persons to obey independently of the content of what they demand. It is important to note, however, that the private use of reason is not reason about what it would be best to do or what anyone has ultimate reason to do. Its justification must be based upon an account of the justification of political authority and for Kant this is always a question of what it is legitimate for persons to demand from one another. More importantly, the legitimacy of private reason is closely linked to its coexistence with free public reason. The structures of authority in which the private use of reason finds its place cannot be justified unless those called upon to exercise the private use of reason can also be free to exercise public reason. Public reason is the appropriate form of reason for questions about what one has reason to do all things considered.

²⁵WE, 8: 38.

²⁶WE, 8: 37.

concepts function in his system of right. Of course, the binding creed case raises an issue about which there is no longer much controversy in political philosophy; but by considering his response to the binding creed in the context of Kant's political theory as a whole, a compelling Kantian defense of the freedom of public reason can be developed.

Kant raises the problem of the binding religious creed immediately after his discussion of the distinction between the public and private uses of reason. He presents it as a hypothetical question about guardianship and religion.

But should not a society of clergymen, such as an ecclesiastical synod or a venerable classis (as it calls itself among the Dutch), be authorized to bind itself by oath to a certain unalterable creed, in order to carry on an unceasing guardianship over each of its members and by means of them over the people, and even to perpetuate this?²⁷

A large section of the essay is then dedicated to answering this question in the negative. However, Kant's introduction of the binding creed problem is abrupt and thus rather puzzling. It raises two related questions. First, what is the question of the binding creed about? Second, what is the function of the binding creed problem in the essay as a whole?

With regard to the first question, the most natural answer is that the binding creed is about the possibility of state religion—a question that clearly concerned Kant.²⁸ One way of reading Kant's negative response to the binding creed case is thus to see it as a straightforward denial that a state religion accords with justice. This fits well with a common theme in Kant's discussions of the relation between religious institutions and the political authorities. As he says in the *Metaphysics of Morals*, "Religion (in appearance), as belief in the dogmas of a church and in the power of priests . . . can neither be imposed upon a people nor taken away from them by any civil authority."²⁹ This reading is further supported by Kant's reference to the problem of a binding creed as a question of the permissibility of a "religious constitution." However, the placement of the binding creed problem in the essay on enlightenment and the language that Kant uses to describe it suggest that he has a more general issue than that of state religion in mind. It seems plausible to read the binding creed case as an objection to Kant's claims about public reason. The case raises a challenge to the claim that the public use of reason must always be free by claiming that restrictions on the public use of reason are sometimes appropriate, either in some matters or for some persons. If this is correct, then we can expect Kant's response to the binding creed case to provide his political defense of the freedom of public reason.

The main textual evidence for reading Kant's response to the binding creed case as a general defense of the freedom of public reason comes from his description

²⁷WE, 8: 38–39.

²⁸Kant returns to this issue several times in his work and each time he raises the same question of the relation between state authority and enlightenment. In his discussion of this topic in "Theory and Practice," Kant emphasizes the political nature of this question. "Can a law prescribing that a certain ecclesiastical constitution, once arranged, is to continue permanently, be regarded as issuing from the real will of the legislator?" His reply is that "... an original contract of the people that made this a law would in itself be null and void because it conflicts with the vocation and end of humanity" (TP, 8: 305). In addition to the discussion in TP, see also *MM*, 6: 327, 368.

²⁹*MM*, 6: 368.

of the problem with the binding creed. In his description of the binding creed, Kant ascribes three properties to it: it is (1) persisting, (2) unalterable, and (3) “not to be doubted publicly by anyone.” While Kant does not explicitly claim that these properties are the features of the binding creed that make it objectionable, it is reasonable to ascribe them a central role in his rejection of the binding creed. Several of these features of the creed or religious constitution also appear in Kant’s other discussions of this issue. In his discussion of internal reform of churches in the *Metaphysics of Morals*, Kant focuses on the problems of imposing a permanent and unalterable religious doctrine on a people. A people cannot agree never to reform their beliefs, and so the imposition by the ruler of an unalterable creed on a religious community is unacceptable.³⁰ In his discussion of a religious constitution in “Theory and Practice,” Kant characterizes it as permanent and argues that, since such a law could not follow from the “real will of the legislator,” the people are allowed to “make representations against it.”³¹ In the enlightenment essay, Kant mentions the persistence and inalterability of the binding creed, but also introduces the idea that the binding creed is “not to be publicly doubted by anyone.” Thus he claims that a state-sanctioned religious creed “might indeed be possible for a determinate short time, in expectation as it were of a better one,” but he envisions this creed as compatible with public reason; “during that time each citizen, particularly a clergyman, would be left free, in his capacity as a scholar, to make his remarks publicly, that is, through writings, about defects in the present institution.”³² Kant contrasts this kind of arrangement, which “might be possible,” with one which is “absolutely impermissible.” “But it is absolutely impermissible to agree, even for a single lifetime, to a persisting [*beharrliche*] religious constitution not be doubted publicly by anyone.”³³ This contrast makes it reasonable to attribute to Kant the view that one basic, objectionable feature of the religious creed is its incompatibility with the freedom of public reason. If this is correct, then his rejection of the binding creed is in part an attack on this feature of it.

We will thus take the binding creed to be a problem about public reason and Kant’s response to the case as providing the grounds for a Kantian defense of the freedom of public reason.³⁴ Kant’s response to the binding creed contains three main claims. The first claim is that a perpetually binding and unalterable creed is ruled out because it is in contradiction with human calling.

One age cannot bind itself and conspire to put the following one into such a condition that it would be impossible for it to enlarge its cognitions (especially in such urgent matters) and to purify them of errors, and generally to make further progress in enlightenment. This would be a crime against human nature, whose original vocation lies precisely in such progress; and succeeding generations are therefore perfectly authorized to reject such decisions as unauthorized and made sacrilegiously.³⁵

The second is the claim that such a creed violates the “right of humanity.”

³⁰*MM*, 6: 327.

³¹*TP*, 8: 305.

³²*WE*, 8: 39.

³³*Ibid.*

³⁴This is consistent with reading it as a problem about perpetuity and inalterability as well.

³⁵*WE*, 8: 39.

One can indeed, for his own person and even then only for some time, postpone enlightenment in what it is incumbent upon him to know; but to renounce enlightenment, whether for his own person or even more so for posterity, is to violate the sacred right of humanity and trample it underfoot.³⁶

The third claim is that a people could not agree to be bound in religious matters, and that it cannot therefore be legitimate to institute an order in which they are bound in this way.

The touchstone of whatever can be decided upon as a law for a people lies in the question: whether a people could impose such a law upon itself. . . . But it is absolutely impermissible to agree, even for a single lifetime, to a persisting [*beharrliche*] religious constitution not to be doubted publicly by anyone and thereby, as it were, to nullify a period of time in the progress of humanity towards improvement and make it fruitless and hence detrimental to posterity.³⁷

These three claims are puzzling. Notice that Kant appears to intend them to apply even to cases where a person or a group voluntarily agrees to the binding creed. What could it mean to say that in accepting the binding creed, I “renounce enlightenment” and “violate the right of humanity”? Why think that a law imposing such restrictions nullifies a period of time in the progress of humanity towards improvement? As I will try to show in what follows, the answers to these questions can be seen by situating Kant’s account in his more general political and legal theory.

There is an interpretive difficulty that must be noted at this point. Kant’s response to the objection appeals to two categories of moral concepts; he considers the binding creed both in the context of ethics and of right. His emphasis on human calling suggests that the binding creed raises a problem of virtue. His emphasis on law and contract suggests that it raises a problem of right. This can be confusing because of the different roles that virtue and right play in Kant’s account. For Kant, virtue and right are distinguished by two different types of moral lawgiving: the ethical and the juridical. While ethical laws require that the law itself be the incentive of action, juridical laws are concerned only with the conformity of external action with the law, without regard for the incentive on which the agent acts.³⁸ Juridical laws unlike those of ethics can be externally imposed and, most importantly, they generate obligations whose performance can be coerced. Though virtue and right share the same root in a conception of human freedom, they are not reducible to one another. The difficulty that this raises in this context is to see how these two aspects of the moral domain fit together. Part of the problem in understanding Kant’s response to the binding creed example is, therefore, to clarify how human calling, the right of humanity, and the idea of a people’s consent are related.

A first proposal for capturing the relation between the three elements of Kant’s rejection of the binding creed is to take the idea that a binding-creed contract conflicts with human calling as fundamental, and to explain the violation of the right of humanity and the impossibility of consent in terms of the fact that the

³⁶Ibid.

³⁷Ibid.

³⁸For the distinction between juridical and ethical laws, see *MM*, 6: 214.

binding creed cuts off the pursuit of human calling. On this view, the right to publicly question the binding creed would be grounded in the human calling of enlightenment. While this reading is attractive, I believe that it ought to be rejected. An evaluation of the view requires us to explain in what sense a binding creed (or indeed any restriction on what may be publicly questioned) is contradictory to human calling.

Kant's claim that enlightenment is a human calling, or a calling of rational nature, should be read as a claim about duties of virtue. On this reading, the vocation of human nature is to be taken as a moral duty of human beings. Since the calling of human nature to progress in enlightenment is a calling of each individual, each person has a moral duty—specifically, a duty of virtue—to “enlarge her cognitions.” The duty to enlarge one's cognitions, or to make progress in enlightenment, should be seen as a part of the general duty of virtue to set one's own perfection as an end. Support for this is found in the introduction to the “Doctrine of Virtue.” There Kant characterizes the duty of self-perfection in terms of the cultivation of the understanding and the will. Kant explicates the cultivation of the understanding as a matter of increasing one's capacity for knowledge and learning.

This duty can therefore consist only in *cultivating* one's *faculties* (or natural predispositions), the highest of which is *understanding*, the faculty of concepts and so too of those concepts that have to do with duty. . . . A human being has a duty to raise himself from the crude state of his nature, from his animality (*quoad actum*), more and more toward humanity, by which he alone is capable of setting himself ends; he has a duty to diminish his ignorance by instruction and to correct his errors . . . morally practical reason *commands* it absolutely and makes this end his duty, so that he may be worthy of the humanity that dwells within him.³⁹

The duty of self-perfection includes the duty to diminish one's ignorance and to correct one's errors. In addition to thinking for one self in general, these are the two aspects of progress in enlightenment that Kant mentions in the essay on enlightenment. Thus it is reasonable to interpret the vocation of enlightenment as a part of this duty of virtue.

How might this account of the vocation of humanity connect to Kant's political concern with public reason? It seems quite natural to take the moral duty of self-perfection as the value that underlies Kant's political defense of the freedom of public reason. Public reason is a means by which persons are able to fulfill their duty of self-perfection or pursue their calling to enlightenment. If the freedom of public reason is a condition of pursuing an end which human beings are required to have as moral beings, then the public use of reason ought to be free.⁴⁰

³⁹MM, 6: 387.

⁴⁰A related view is defended by Gunnar Beck. Beck grounds political authority in general in the duty of virtue to perfect our natural capacities. According to Beck, Kant justifies rightful freedom (what Kant also calls external freedom) and the authority of the state as conditions of “the development of all those ‘natural capacities,’ ‘powers’ and ‘talents’ which are directed towards the use of human reason.” (See Gunnar Beck, “Autonomy, History and Political Freedom in Kant's Political Philosophy,” *History of European Ideas* 25 [1999]: 217–41, at 228.) Beck argues that development of our natural capacities is a condition of perfection of our moral capacities. Since development of our natural capacities is a social process, it requires us to leave a state of nature, which is too unstable for such practices, and enter a state which can guarantee the sort of stability that is required for self-development. While Beck

However attractive it may be, I believe that this account of the ground of the freedom of public reason should be rejected, at least as a political justification of the freedom of public reason. For Kant, virtue is a necessary project of rational beings, but it does not provide a ground for coercing others and so it cannot engage with Kant's theory of right in quite this way. A Kantian view on the grounds of the freedom of public reason can emerge only from a consideration of the political theory that Kant presents in the "Doctrine of Right." In his discussion of virtue and ethics in the "Doctrine of Virtue," Kant is concerned to explain why coercive laws are not appropriate in the realm of virtue. His reason is that virtue involves the free adoption of a maxim by the agent. If this is the nature of virtue, then external constraint to be virtuous is self-contradictory.⁴¹ But Kant does not pause to consider the different question of whether a duty of virtue can be a ground for placing others under rightful or coercively enforceable obligations. This is because he has already provided an account of the grounds of rightful obligation in the "Doctrine of Right." His account of when others can be said to be under a rightful obligation must be drawn from that text.

There are two problems for this duty of virtue account that arise directly from the text of "What is Enlightenment?" The first problem concerns Kant's claim that restrictions on the freedom of public reason make it impossible (not merely difficult) to fulfill one's duties of virtue. The difficulty is to explain the sense in which restrictions on the freedom of public reason make it impossible to pursue enlightenment. On an empirical reading of "impossible" it may simply not be true that such restrictions make it impossible for anyone to carry out their duties of virtue, even if it is exceedingly likely that they make it very difficult. Furthermore, Kant is unlikely to appeal to *a posteriori* considerations as justification for ruling out a binding creed. Since Kant's claim that restrictions on freedom of public reason are contrary to the calling of humanity seems to depend on his claim that such restrictions place persons in a condition in which it is impossible to carry out the process of enlightenment, an account which grounds the freedom of public reason in a duty of virtue faces a difficult task in explaining this impossibility. The same problem would apply to any account that defends the freedom of public reason solely in terms of its role in promoting enlightenment. The defender of such an account faces the task of explaining why restrictions on public reason could not actually promote enlightenment rather than hinder it.⁴²

is correct that Kant thinks that the development of our natural capacities is part of what makes someone worthy and capable of setting ends for himself, his account fails as an account of Kant's view of political authority because it ignores the account of political authority based on the right of humanity that Kant gives in the first part of the *Metaphysics of Morals*.

⁴¹"That ethics contains duties that one cannot be constrained by others (through natural means) to fulfill follows merely from its being a doctrine of *ends*, since *coercion* to ends (to have them) is self-contradictory. . . . Another can indeed *coerce* me to do something that is not my end (but only a means to another's end), but not to *make this my end*; and yet I can have no end without making it an end for myself. To have an end that I have not myself made an end is self-contradictory, an act of freedom which is not yet free" (*MM*, 6: 381). See also *MM*, 6: 239.

⁴²Thus Kant can appeal neither to the negative effects of restricting expression nor to the positive benefits of the free communication of ideas as Mill does in his famous defense of freedom of thought and expression in "On Liberty." Mill's defense is also arguably context-dependent. The extent of the liberty of freedom of expression will depend upon an analysis of what is best for a particular society

The second problem is more serious. The problem is that the duty of virtue account of the grounds of the freedom of public reason cannot explain Kant's claim that a binding creed violates the right of humanity. Duties of virtue are duties to adopt certain ends and the force of the duty derives from the reasonableness of the end. One of the central claims of Kant's legal and political philosophy, however, is that the ends that the parties may have in their relations to one another are irrelevant. Questions about rights are questions about formal relations between parties and are not determined by questions about the ends that the parties are pursuing.⁴³ This abstraction from ends means that I cannot claim that my rights have been violated simply because I am subject to a restriction that prevents me from pursuing a certain end. Even morally obligatory ends are ruled out as the ground of claims of right. Since a duty of self-perfection is a duty to set certain ends for myself, it cannot be a basis for asserting a claim of juridical obligation against others. It does not ground an entitlement to demand anything of others by right, either in terms of assistance or non-interference.

The duty of virtue account is, in my view, the best explanation of Kant's idea that enlightenment is a human calling, but it does not provide the materials for a political justification of the freedom of public reason.⁴⁴ In order to provide an account of the political grounds of the freedom of public reason, we need to place the freedom of public reason in the context of the formal relations between persons that are the concern of right. The key to doing this is to look more closely at the right of humanity and the question of why a people could not consent to restrictions on public reason. In the next section, I will develop these ideas in order to provide a more plausible account of the place of the freedom of public reason in the Kantian theory of right.

4. THE RIGHT OF HUMANITY AND THE PEOPLE'S CONSENT

In considering the question why a people cannot agree to a binding creed, we must begin with the right of humanity. Kant sometimes speaks of the right of humanity as the liberty of each "to seek his happiness in whatever way seems best to him."⁴⁵ However, in the central discussion of this right in an opening section of the

at a particular time. For this reading of Mill see L. W. Sumner, *The Hateful and the Obscene* (Toronto: University of Toronto Press, 2004), 22, 27.

⁴³In rightful relations "no account at all is taken of the matter of choice, that is, of the end each has in mind with the object he wants; it is not asked, for example, whether someone who buys goods from me for his own commercial use will gain by the transaction or not. All that is in question is the form in the relation of choice on the part of both, insofar as choice is regarded merely as free, and whether the action of one can be united with the freedom of the other in accordance with a universal law" (*MM*, 6: 320). See also *MM*, 6: 375.

⁴⁴This should not lead us to deny that public reason has an important role to play in the fulfillment of this duty. It is also important to make clear that the claim that Kant's *political* justification of the freedom of public reason does not rest on his account of human vocation does not imply that his justification of public reason is not a moral justification. Kant rejects instrumentalist or prudence-based accounts of political justification in favor of a republican political theory grounded in his conception of practical reason. His political justification of public reason thus appeals fundamentally to moral concepts and to the moral capacities of human beings. Thanks to an anonymous referee from the *Journal* for pressing me to clarify this point.

⁴⁵TP, 8: 298.

“Doctrine of Right,” it emerges that the right of humanity is not defined as a right to the pursuit of happiness, but as a right not to be subject to the will of others. “Freedom (independence from being constrained by another’s choice), insofar as it can coexist with the freedom of every other in accordance with a universal law, is the only original right belonging to every man by virtue of his humanity.”⁴⁶

Kant asserts three things about the right of humanity. First, it is an innate right by which Kant means that no positive act is required to establish it. It is attributable to all human beings insofar as they are human/rational creatures and constitutes their rightful personality. As such, the right of humanity is the normative basis of a human moral capacity to possess property and to contract with others. It is also the basis for an account of rightful spousal and parent/child relations. Second, the right of humanity is a right to what Kant calls “external freedom.”⁴⁷ He explicates this in terms of “independence from being constrained by another’s choice” and of a right to be united together with others only under general laws to which one could consent. Finally, Kant holds that the right of humanity is the basis of an obligation to uphold one’s “rightful honor.” Possession of the right of humanity places one under a duty not to allow oneself to be reduced to a mere means for others.⁴⁸

In grasping the right of humanity the concept of external freedom is particularly important. For Kant, external freedom, or independence, is a status that you possess in virtue of the right of humanity. However, as the idea of not being subject to another’s choice suggests, this status is not something that is ascribed to you in isolation from others. Rather, it must be understood relationally. The status of independence is constituted by your relation to each other person who is capable of affecting you through his or her external action. You are independent if you are not subject to my choice, and not subject to Simon’s choice, and Kate’s choice, and Jane’s choice, and so on. This way of describing independence characterizes it negatively. Positively expressed, it is the moral capacity to decide for yourself how you will direct your powers, and to what purposes you will apply your efforts and resources. This positive description of independence preserves its relational aspect, however, for the moral capacity to decide for yourself is the flip side of the immunity from having others decide for you. An independent person relates to others as an equal who must be respected. The relation of a dependent person to others, on the other hand, is characterized by subordination and legal incapacity to decide how to employ her efforts and powers.⁴⁹

The idea of a people’s consent—Kant’s criterion of legitimacy for exercises of political authority—is closely related to this conception of independence. The

⁴⁶MM, 6: 237.

⁴⁷For a recent discussion of external freedom see Jennifer K. Uleman, “External Freedom in Kant’s *Rechtslehre*: Political, Metaphysical,” *Philosophy and Phenomenological Research* 68 (2004): 578–601.

⁴⁸MM, 6: 236. In addition to the discussion in the *Metaphysics of Morals*, see Kant’s discussion of independence at PP, 8: 350 n.

⁴⁹For an analysis of distinction between the concepts of independence and negative liberty, see Philip Pettit, *Republicanism: A Theory of Freedom and Government* (Oxford: Oxford University Press, 1997). John Christman has noted the links between Pettit’s concept of freedom as non-domination and Kantian liberalism. (See John Christman, “Republicanism: A Theory of Freedom and Government,” *Ethics* 109 [1998]: 202–06, at 206.)

primary role of this idea of a people's consent is that of an ideal to which political authorities must look in formulating their legislation. Kant presents the criterion in "Theory and Practice" in the following terms:

[I]f a public law is so constituted that a whole people could not possibly give its consent to it . . . it is unjust, but if it is only possible that a people could agree to it, it is a duty to consider the law just, even if the people is at present in such a situation or frame of mind that, if consulted about it, it would probably refuse its consent.⁵⁰

Several things are worth noting here. First, as this passage shows, the idea of the people's consent is a rather weak formal criterion of just law, requiring only the mere possibility of the people's agreement. As Kant puts it, "provided it is not self-contradictory that an entire people should agree to such a law, however bitter they might find it, the law is in conformity with right."⁵¹ Second, when Kant says that the idea of a people's consent is the "touchstone of what can be decided upon as law for a people," he does not mean that we should look to what the people actually want in determining whether or not a law is just. The question of the justice of a particular law must be answered by considerations about what a people (suitably understood) *could* will. Despite the weakness of this criterion and its independence from the actual desires of the people, the question of the possibility of consent is important for our question about the freedom of public reason. Kant clearly intended his criterion to rule out some laws, such as those instituting a binding creed, and the criterion should, if possible, be interpreted in a way that allows us to explain the impossibility of consent in these cases.⁵²

The primary interpretive problem raised by the criterion of the public law is the idea of a "people" that it employs. If Kant's criterion is to play the role that he assigns to it, the idea of the people must have some content. One reason for this is that we need a way of understanding why the notion of a people's consent could be normatively significant even merely as an ideal. We cannot expect such an account without an account of the sort of "people" with whom we are concerned. A second reason is that, without some notion of the concept of a people, it will not be possible to apply the criterion. Kant's formulation of the criterion of the people's consent in terms of self-contradiction suggests that we view the criterion as a kind of practical contradiction test. In showing that a law fails to conform to the requirements of right, we must be able to show that agreeing to it would place a people, taken as a collective whole, in practical contradiction with itself.⁵³ If this

⁵⁰TP, 8: 297.

⁵¹TP, 8: 299.

⁵²In addition to the religious creed example, Kant provides two other examples of laws that are inconsistent with the criterion of a people's consent. The first is a law establishing a system of hereditary privileges (TP, 8: 297). The second is a war tax whose burdens are distributed unequally (TP, 8: 297 n.). Both of these seem to be ruled out by considerations of what is required in order to treat the members of the state as equals. Kant discusses the grounds for ruling out a hereditary system of rank at TP, 8: 292–93. See also PP, 8: 350 n.

⁵³This appears to me to be the most obvious way to interpret Kant's criterion, but my reading does involve some interpretive assumptions—the most important of which is that when Kant talks about a people's consent he is referring to a people taken as a unified collective whole. This interpretation is, I think, well supported by the text. In WE, for example, Kant writes: "But what a people may never decide upon for itself, a monarch may still less decide upon for a people; for his legislative authority rests precisely on this, that he unites in his will the collective will of the people" (WE, 8: 39). The task here is to specify how that unified whole or collective will is to be understood.

is correct, then applying the criterion requires an interpretation of the concept of a people. There must be some content to the idea of a people such that the possibility of its consent can serve as a criterion of conformity with right.

The content of the Kantian concept of a people comes, in my view, from the idea that a rightful political society is oriented to the purpose of securing the independence of all its members. This conception of the intrinsic purpose of the Kantian commonwealth is brought out most explicitly in Kant's discussion of the "original contract." In "Theory and Practice," Kant describes the end of the social contract in terms of securing the rights of all under public coercive laws.

Now the end that, in such an external relation [of people who cannot avoid affecting one another], is in itself duty and even the supreme formal condition [*conditio sine qua non*] of all other external duties is the *right* of human beings under *public coercive laws*, by which what belongs to each can be determined for him and secured against encroachment by any other.⁵⁴

On the Kantian view, political society must be understood in terms of an idea of a founding or "original" contract. As this passage suggests, the end that characterizes the Kantian "original contract" and distinguishes it from other social contracts is that of establishing and maintaining a system of coercive law through which the independence of each person can be secured.

Insofar as a people are united by such a contract, they form a general public will. The contract is a "coalition of every particular and private will within a people into a common and public will (for the sake of a merely rightful legislation)."⁵⁵ This suggests that we should interpret the idea of a people in terms of a general will directed to the achievement of the purpose of the original contract, namely securing the rights of all through public coercive laws.⁵⁶ That it is this idea of a people as general will that lies behind the criterion of consent emerges clearly in "Theory and Practice," where Kant links the idea of an original contract to the criterion of consent. The contract is "*only an idea* of reason, which, however, has undoubted practical reality, namely to bind every legislator to give his laws in such a way that they *could* have arisen from the united will of a whole people and to regard each subject, insofar as he wants to be a citizen, as if he has joined in voting for such a will."⁵⁷

We should interpret the Kantian idea of a people, therefore, as a general will whose purpose is to secure the rights of all through public coercive law. This interpretation of the concept of a people has two important advantages. First, because it conceives the idea of a people in terms of a general will, it can explain Kant's formulation of the criterion in terms of *consent*. Second, it can explain the normative significance of the criterion of public law. The end of establishing and sustaining a rightful system of public coercive law connects the criterion to Kant's conception of independence and ensures that it is not empty or normatively arbitrary. It establishes a moral standard that actual laws must meet and which they potentially could fail to meet. In order to show that a people could not consent

⁵⁴TP, 8: 289.

⁵⁵TP, 8: 297.

⁵⁶For a similar reading, see Weinstock, "Natural Law," 402.

⁵⁷TP, 8: 297.

to a certain law, therefore, what must be shown is that the law, as formulated, is incompatible with the idea of a people forming a general will for the purpose of securing the rights of all under public coercive laws. That would allow us to show that it would be self-contradictory for a people to agree to such a law.

It is important to note, however, that nothing Kant says suggests that what the criterion requires is obvious, or that a law that is inconsistent with the criterion always wears its wrongfulness on its face. Kant does hold that the question of what right requires by way of legislation is more straightforward than the question of what a principle of happiness would require, but this is because the requirements of a principle of happiness can be discovered only *a posteriori*.⁵⁸ The question of a people's consent, in contrast, is a matter of *a priori* argument, but this does not entail that it will always be a straightforward matter to discern the kind of practical contradiction we seek. Thus, I will be assuming that, in order to show that a proposed public law is inconsistent with right, we must appeal to a reasonable interpretation of what the idea of a people requires. Against the background of such an interpretation, a practical contradiction can be derived. While this position is consistent with the text, it is not clear that it can be attributed to Kant himself. I think, however, that it is only by conceiving of the criterion in these terms that we can address our questions about the binding creed and the freedom of public reason.

5. THE ROLE OF PUBLIC REASON

With this conception of the criterion of public law and the right of humanity in the background, we can return to our question of the binding creed. In order to reject the binding creed, we must show that there is a connection between the idea of a people and the freedom of public reason. This would allow us to say that a people could not consent to a law that is inconsistent with the freedom of public reason and thus to show that the binding creed is incompatible with right.

There are a number of ways in which it might be possible to defend a connection between the freedom of public reason and the idea of a people. The argument that I will defend focuses on the relation between the wills of the head of state and that of the people. I will present the argument briefly and then go on to defend it in more detail.

The argument begins from a claim that it must be possible to regard the people as forming a general will. It then asserts a necessary condition for regarding the people as forming such a united will. (1) We can regard the people as forming a united will only if it is possible to regard the people as not merely subject to the will of the ruler. This requirement concerns the way in which we conceive the relation between the people and the ruler. However, (2) when we spell out the

⁵⁸"Now the legislator can indeed err in his appraisal of whether [his] measures are adopted *prudently*, but not when he asks himself whether the law also harmonizes with the principle of right; for there he has that idea of the original contract at hand as an infallible standard, and indeed has it *a priori* (and need not, as with the principle of happiness, wait for experience that would first have to teach him whether his means are suitable). For, provided it is not self-contradictory that an entire people should agree to such a law, however bitter they might find it, the law is in conformity with right." (TP, 8: 299)

way in which it must be possible to conceive of the relation between ruler and people, we find that the possibility of conceiving of the relation in those terms requires the freedom of public reason. Therefore a commitment to regarding the people as forming a united public will requires a commitment to the freedom of public reason. We can conclude from this that it would be self-contradictory for a people who regard themselves as forming a united public will to agree to a law that is not consistent with the freedom of public reason. On these grounds we can reject the binding creed law.

The claim that it must be possible to regard the people as forming a general will seems to me to be straightforward. If the ruler is under an obligation to give his laws as if they had arisen from the general will of the people, then it must not be impossible to regard the people as forming a general will. The main task in defending the argument, therefore, is to spell out (1) and (2) above. In what way must it be possible to conceive of the relation between ruler and people, and why does this require the freedom of public reason?

The relation between the ruler and the people can be understood as a relation between the ruler and the people as *subjects*, in which the people are directed by the ruler to the ends of the commonwealth and employ the private use of reason. This relation is suggested by the taxpayer case in "What is Enlightenment?" However, this cannot be the whole story for two reasons. First, if the relation between the people and the ruler were conceived only in these terms, then the people would be dependent on the will of the ruler. It must be possible to regard the people as other than *mere* subjects. Second, the criterion of public law expresses the idea that the ruler derives his authority from the general will of the people. This means that there must be a relation between the wills of the ruler and the people which is distinct from the relation between ruler and subjects. We must also conceive of the relation between ruler and people as one in which the ruler represents the general will of the people and derives his authority from it. Thus, the relation between the people and the ruler must resolve into two distinct relations: that between ruler and subjects, and that between ruler and general will.

The relation between ruler and subjects is a straightforward case of private reason. The important question here is how to understand the relation between ruler and general will. In understanding this relation, our analysis of the structure of private reason makes a crucial claim possible, namely that the ruler considered as representative of the people/general will employs the private use of reason. This is a surprising claim, since Kant does not speak of monarchs or rulers as exercising the private use of reason. Nevertheless, on the analysis of private reason given in this paper, it seems necessary to conceive of the power of state officials in this way. First, it is clear that the ruler fills a civil office or role which is defined by its task of representing the general will. Second, we cannot describe the ruler as acting in his own name in carrying out the task of his office, since that would be to concede that the people are subject to his will. Thus, we should describe the ruler as carrying out the commission of the people. Third, the ruler's use of reason is employed in the service of ends set by the authority of another, namely by the authority of a people whose end is here conceived as that of being in a rightful condition or of securing the rights of all under public coercive laws. Fourth, the ruler derives his

authority over the subjects from the general will, but the general will is also the source of normative constraints on his authority. This supports the claim that the ruler exercises private reason since he is authorized to act only within the limits set by a possible general will.

If this analysis of the relation is correct, then it must be possible to conceive of the relation between ruler and people as a private-reason relation. What makes it possible to conceive of the relation between ruler and people in these terms? One suggestion would be to claim that the ruler exercises private reason insofar as he attempts to use his reason to track what the concept of right actually requires. In other words, the ruler stands under a moral duty to legislate in accordance with the principle of right. As long as he does his best to track what the norm requires and imposes those laws only on the people who he judges to be required to promote the legitimate ends of the commonwealth, this is sufficient to preserve the idea that the ruler's use of reason is private.

This view cannot be correct. Of course, it is true that the ruler is required to legislate in accordance with the principle of right. But we can see the problem for this view when we ask *why* this is so. The answer to this question that arises from the criterion of public law must be that the will of the people requires it of him. That is, the ruler has the authority and duty to legislate for the people only because he stands in a prior relation to the general will which confers that authority on him. Because this relation to the general will is the source of the duty to legislate in accordance with the principle of right, the relation between the ruler and the people is prior to the duty and cannot be understood in terms of it.

The failure of this strategy suggests that we need to approach the question about what is required in order to make sense of the private-reason relation between general will and ruler in a different way. A better way to approach the question is to ask, not what the ruler is required to do, but what allows us to conceive of the people as the source of the ruler's authority. The first thing to say here is that, at the very minimum, we must attribute to the people a status that is distinct from their private-reason role as subjects. Insofar as each member of the people possesses a status that is distinct from the "passive" role of subject, there is room to view the people not only as directed by the ruler towards the ends of the commonwealth, but as forming a general will which authorizes the ruler to carry out the end of securing the independence of all.

I claim that it is possible to attribute this separate status to the people only if each member possesses the freedom of public reason. Recall that the public use of reason involves a status in which you are not directed by the will of another but act in your own person. We need to regard each member of the people as possessing this status if we are to view them as members of the general will that is the source of the ruler's authority. If this is correct, then the freedom of public reason is necessary in order to preserve the possibility of regarding the people as more than passive subjects coercively directed by the will of the ruler.

The crucial claim here is that membership in the commonwealth of the public and the freedom to reason publicly is a *necessary* condition of a private reason relation between general will and ruler. In order to make this claim more plausible, it may be helpful to consider an alternative proposal. It might be thought that the

right to periodically choose a ruler by vote is sufficient to ensure that the people are the source of the ruler's authority. If this is the case, then the freedom of public reason is not a necessary condition of the general will.

A right to vote of this sort is not sufficient to ensure that the people possess the required independent status. The problem with this alternative proposal can be brought out by noting a point made by Rousseau in *The Social Contract*. As Rousseau makes clear, the contract that founds political society must not be a contract of submission. That is to say that it must not be a contract to give up your freedom or submit to a master, but a contract that guarantees each person the status of a free and equal member of the political society.⁵⁹ The difficult question that Rousseau brings out in *The Social Contract* is that of how a political arrangement can avoid being an arrangement to submit to a master. The proposal that we are considering cannot address this difficulty. The right to choose a ruler by vote does not rule out the possibility that the vote is merely a mechanism for choosing a master. To put this slightly differently, a right to vote of this sort can ensure that the people have some control over to whom they submit, but it cannot ensure that they are *preserved* in the status of free and equal members of the political society. Any candidate for a sufficient condition of a general will must be capable of ensuring that the people are not merely choosing which master it is to whom they will submit themselves. As such, this alternative proposal fails as an account of the sufficient conditions of a general will.

Pointing out the failure of this alternative view does not provide a complete defense of the view that public reason is necessary in order to regard the people as forming a general will. Nevertheless, I suspect that other alternative accounts of the sufficient conditions of the private reason relation between general will and ruler will fall to similar considerations. If this is the case, it does provide strong support for the claim that the freedom of public reason is among the necessary condition of legitimate authority. It is important to note that I am not claiming that the freedom of public reason is sufficient to make it possible to regard the people as forming a general will, but only that it is necessary. If this argument is plausible, however, then it is enough to show a connection between public reason and the idea of a people. A people united for the purpose of being in a rightful condition will be committed to the possibility of seeing the ruler as carrying out their commission. If the possibility of regarding the ruler in this way depends on the freedom of public reason, such a people must will the freedom of public reason.

This allows us to derive our practical contradiction: since a people directed towards the end of securing the rights of all must will the freedom of public reason, it would be self-contradictory for it to also will a law that was incompatible with the freedom of public reason. Since it would be self-contradictory for a people to will a law that is incompatible with the freedom of public reason, such a law is unjust. This gives us grounds to reject the binding creed by appeal to considerations arising from Kant's theory of right.

⁵⁹Jean Jacques Rousseau, *The Basic Political Writings*, ed. and trans. Donald A. Cress (Indianapolis: Hackett Publishing Company, 1987), 144, 148.

5. CONCLUSION

In this paper, I have presented a Kantian defense of the freedom of public reason. I have tried to show that a defense of the freedom of public reason can be grounded in the basic concepts of Kant's theory of right and need not appeal to a conception of autonomy, of ethical duty, or of consequences. This account opens up conceptual space for a richer understanding of the role of the state with respect to public reason and enlightenment. Insofar as the freedom of public reason is connected to independence, the state has a duty to respect it. However, the freedom of public reason is understood in terms of speaking in one's own name, rather than of a sphere free of interference. It is this independent status that the state has a duty to respect, and there is no principled reason to hold that this duty can be carried out merely by refraining from interfering in a sphere of public reason or a marketplace of ideas. Kant's essay on enlightenment is distinctive in the connection it draws between enlightenment and rightful freedom. As such, it can claim to ground a distinctively liberal view of the role of the state with respect to cultural and scientific progress.⁶⁰

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