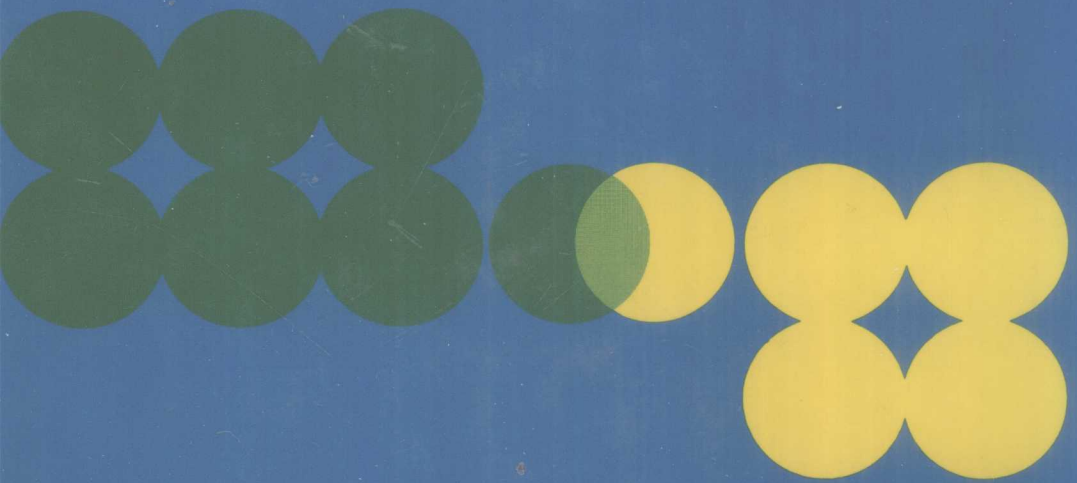


Kant's Political Philosophy



Patrick Riley

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Philosophy

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Preface

This study does not aim to provide, except incidentally, a descriptive account of Kant's political writings. Anyone seeking an intelligent précis of *Eternal Peace*, *Metaphysical Elements of Justice* (*Rechtslehre*), *Theory and Practice*, and *Conflict of the Faculties*—Kant's main political works—will find it in Hans Reiss's Introduction to his edition of *Kant's Political Writings*. It would be superfluous to repeat an excellent performance. The object here is quite different: it is an attempt to answer the question, what place does politics or public legal justice occupy within the Kantian critical philosophy? This question arises because Kant treats politics as very important and—simultaneously, paradoxically—holds it at arm's length. Universal republicanism and eternal peace *ought to be*, because they help to realize part of morality; but it would plainly be better if the whole world, no longer a world of particular states, were a universal ethical commonwealth living under noncoercive laws of virtue—that is, under the categorical imperative that enjoins good will or respect for persons as ends in themselves. The question then is, how could someone who believed, as Kant did, that a morally good will is the only unqualifiedly good thing on earth, argue for a republicanism and an eternal peace that at best realize some moral ends or purposes (such as peace itself) even in the total absence of good will? If politics is so very qualified a good—and sometimes, perhaps usually, a qualified evil that has historically used people as mere means—why try to make a case for it?

The question, then, is why Kant had a political philosophy at all. The attempted answer to that question will seek to place Kantian republicanism and eternal peace in the context of that reading of Kant's entire philosophy that best accommodates his politics. To anticipate, that reading is the one that holds that teleology or purposiveness is the notion that best unifies Kant's philosophy; that republicanism and eternal peace are moral ends or purposes that can be pursued politically through legal motives, even without good will; that the decisive work for a unified, politics-accommodating Kantian-

ism is thus the *Critique of Judgment*, which is Kant's chief examination of teleology—and, in its Section 83, of a civic culture viewed as something that realizes moral ends on a legal basis. Of course there is nothing novel in taking *Judgment* to be a kind of clue to the whole of Kant. In early times that was done by Goethe, Schelling, and Hegel; later it was done by Windelband; and in more recent years *Judgment* and its theory of culture have been given primacy in valuable studies by Ernst Cassirer, Leonard Krieger, Hannah Arendt, and Yirmiahu Yovel. It is not novel, then, to read Kant through *Judgment*, but then novelty is not the purpose. The end is to find the purpose of Kant's politics within his *own* doctrine of purpose.

* * * *

I owe more than I can possibly acknowledge here to the good will of those who have helped me to understand Kant over the past twenty years.

My undergraduate introduction to Kant was through *Religion within the Limits of Reason Alone*—a happy chance, since the opening of the work contains one of Kant's finest brief accounts of his moral philosophy and particularly of his doctrine of persons as objective ends, while the final section draws a striking contrast between a potentially coercive juridical commonwealth under political laws and a purely voluntary ethical commonwealth under laws of virtue. This remarkable *summa* of Kant's practical thought I had the good fortune to learn from the late T. M. Greene, the translator of the standard edition of *Religion within the Limits*. He was a remarkable teacher, even at that very late point in his career.

During graduate work at Harvard University in the mid-1960s I was able to study Kant more fully—a study made wholly enjoyable by the efforts of Judith Shklar and John Rawls. Thanks to Mrs. Shklar I learned the then neglected *Rechtslehre* or *Metaphysical Elements of Justice*. I was assigned "Kant's Theory of Law" in her seminar on the Enlightenment, the most remarkable course I ever attended; and the wish to present that theory as carefully as possible (not a very Kantian incentive!) had the desired effect. In later years she has helped my Kant studies by commenting on manuscripts, devoting a great deal of time to conversations that mainly benefited me, and agreeing to serve on panels in which my papers were being discussed. Her constant generosity is deeply appreciated. And her knowledge of Kant is simply extraordinary, as anyone who has read her splendid Hegel book, *Freedom and Independence*, will know.

If I learned the *Rechtslehre* from Shklar, it is to John Rawls that I owe

my first thorough reading of the *Fundamental Principles of the Metaphysics of Morals*; one can only hope that he will publish his very illuminating lectures on that work and on the *Critique of Practical Reason*. But all Kant scholars owe to John Rawls an enormous debt of gratitude for having, almost singlehandedly, revived Kant's reputation as a great political philosopher; this has been one of the incidental benefits of that magistral neo-Kantian work, *A Theory of Justice*. The mere fact that my book stresses teleology in a way that Rawls's studies do not seems to me unimportant, compared with the fact that no one would have asked me to produce such a work at all had not John Rawls brought Kant the political theorist back from near-eclipse. If Kant is once again, properly, mentioned in the same breath with Hobbes, Rousseau, and Hegel, that can be traced to Rawls's efforts. And his well-known kindness, which in my case took the form of letting me read his unpublished Kant lectures, should be even better known.

I could never have begun serious work on Kant as a political thinker without the aid of Judith Shklar and John Rawls; in later years I was helped to carry on work-in-progress by George Armstrong Kelly, the charming and generous scholar whose Kant chapter in *Idealism, Politics and History* remains much the best thing on Kant's social thought in English. Over the years I have benefited from his careful and knowledgeable, but always encouraging, remarks—most recently in September 1981, when I presented parts of Chapters I and IV at a conference in New York, and was delighted and moved by the depth and generosity of his commentary.

There are others to thank. I have enjoyed and learned from conversation with William Galston, whose *Kant and the Problem of History* I greatly respect; I am grateful for the helpful comments on my reading of Kant made by Michael Sandel after my presentation of a paper before one of his Harvard classes; I am always stimulated by exchanges with Susan Shell, since we disagree so radically over Kant interpretation but still manage to treat each other as co-members of the kingdom of ends. I am, finally, grateful to Marshall Cohen for asking me to write *Kant's Political Philosophy* and to Benjamin Barber, editor of *Political Theory*, for kindly permitting me to refashion and reuse various Kant pieces published in his journal between 1973 and 1981.

I dedicate this book to my parents, who taught me the meaning of good will long before my formal introduction to Kant.

Patrick Riley
January 1982

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CHAPTER ONE

Practical Reason and Respect for Persons in the Kantian Republic

I

Strictly speaking, the respect for persons as “ends in themselves” that Kantian pure practical reason demands is fully attainable, if at all, only in the “kingdom of ends” of the *Fundamental Principles of the Metaphysic of Morals*,¹ or in the “ethical commonwealth” of *Religion within the Limits*,² or in the *corpus mysticum* of all rational beings of the first *Critique*,³ and not in a mere republic, which rests on coercive laws, rather than on respect or virtue or good will.⁴ So when Kant says, in the very late *Conflict of the Faculties* (1798), that if earthly sovereigns treat man as a mere “trifle” by “burdening him like a beast and using him as a mere instrument of their own ends, or by setting him up to fight in their disputes and slaughter his fellow creatures,” then this is “not just a trifle but a reversal of the ultimate purpose of creation,”⁵ he must be thinking of his own doctrine in *Eternal Peace*. There he states that humanity under moral laws sets a “limiting condition” to what is politically permissible⁶—a limiting condition that should somehow bear on politics, even if rulers lack the good will that would lead them to respect persons.

But what is the nature of this “somehow”? How does morality as limiting condition limit and condition Kantian politics? If a Kantian politics could be properly limited and conditioned, would persons be—if not indeed respected from moral motives—at least not used as mere means to “relative” ends? Might the notion of “objective” ends set those limiting conditions? This leads to the question whether the

general concept of ends could be used as a clamp to hold Kant's whole practical philosophy together. The rest of this work is an attempt to answer that question.

II

It is plainly Kant's conviction—perhaps his central political conviction—that morality and politics must be related, since “true politics cannot take a single step without first paying homage to morals.”⁷ At the same time, however, Kant draws a very strict distinction between *moral* motives (acting from respect for the moral law) and *legal* motives,⁸ and insists that their definitions must never be collapsed into each other. This is why he argues, again in *Conflict of the Faculties*, that even with growing enlightenment and republicanism, there still will not be a greater number of moral actions in the world, but only a larger number of legal ones that roughly correspond to what pure morality would achieve if it could.⁹ (At the end of time, a purely moral kingdom of ends will not be realized on earth—though it *ought* to be—but one can reasonably hope for a legal order that is closer to morality than are present arrangements.) To put the matter a little overstarkly: politics needs to reflect morality but cannot count on moral motives, only legal ones; morality must have a relation to Kantian politics without collapsing the meaning of *public legal justice* into that of *good will* and *respect for persons*. Put another way: morality and public legal justice must be related in such a way that morality shapes politics—by forbidding war and insisting on eternal peace and the rights of man—without becoming the motive of politics.

Given this tension between morality and public legal justice, which must be related but which equally must remain distinct, one can tentatively and cautiously suggest that the notion of ends may help to serve as a bridge between them. For public law certainly upholds some moral ends (e.g., nonmurder), even though that law must content itself with any legal motive. (“Jurisprudence and ethics,” Kant says in the *Rechtslehre*, “are distinguished not so much by their different duties” or ends as by different “incentives.”)¹⁰ Using *telos* as a bridge connecting the moral to the political-legal realm is not a very radical innovation, since Kant himself bridged far more disparate realms, those of nature and freedom, with a notion of end or purpose (subjectively valid for human “reflective” judgment) in the *Critique of Judgment*; and then threw a further bridge from nature and freedom—now linked by a *telos* thought of as a possible supersensible ground uniting nature and freedom—to art.¹¹ He did all of this by arguing that nature can be “estimated” (though never known) through pur-

poses and functions that mechanical causality fails to explain; that persons, hypothetically free, both have purposes that they strive to realize and view themselves as the final end of creation; and that art exhibits a "purposiveness without purpose," which makes it not directly moral but the "symbol" of morality.¹² Surely, then, if *telos* (sometimes confined to a "reflective" or "regulative" role) can link, or be thought of as linking, nature, human freedom, and art, it can link, much more modestly, two sides of human freedom: the moral and the legal realms.

Admittedly the "continuity" at this point is not perfect, since Kant says that purposiveness is only a "reflective" principle when it is used in estimating nature and art, while morality by contrast has "objective ends" that are "proposed by reason" and that everyone "ought to have."¹³ But a possible continuity is reestablished when Kant says, rather incautiously, that there must be "a ground of unity of the supersensible, which lies at the basis of nature, with that which the concept of freedom practically contains."¹⁴ In simpler language, an intelligence other than ours might see real purposes in nature that are as objective as the objective ends that our intelligence knows through the moral law. This could mean that *Judgment*, with its numerous teleological bridges, helps to establish the "unity of reason" that is always a central Kantian concern. (For the moment these bridges must be abridged; a full examination of them, the core of this study, will come later. Provisionally, pontification is unavoidable.)

Now, if *good will* in the purely moral realm is construed to mean never universalizing a maxim of action that fails to respect persons as ends in themselves,¹⁵ then morality and politics/law could be connected through Kantian teleology. If all persons had a good will, they would respect all others as ends, indeed as members of a kingdom of ends, for a "rational nature" such as a person is "not an end to be effected" but an "independently existing end".¹⁶ However, this does not actually happen, though it ought to, thanks to the "anthropological" fact that man is "radically evil."¹⁷ Thus Kantian public legal justice is a kind of intersection between the facts of anthropology and the categorical imperative; if there were a kingdom of ends, the kingdoms of the earth would vanish. If, in sum, good will means respect for persons as ends in themselves, and if public legal justice sees to it that some moral ends (such as nonmurder) get observed, if not respected, then public legal justice in Kant might be viewed as the partial realization of what would happen if all wills were good. Beyond that, of course, Kant frequently suggests that law creates a kind of environment for good will, by bracketing out occasions of political sin (such as fear of others' domination) that might tempt,

though never determine, people to act wrongly.¹⁸ One might, indeed, say that the notion of a legal facilitation of morality does not seem very Kantian;¹⁹ but he does say that one has a duty to remove from the world the occasions of wrong-doing ("whatever diminishes the obstacles to an activity furthers this activity itself").²⁰ even though one is not excused, *qua* malefactor, simply because occasions of sin are still there. Occasions are not causes.

Overall, then, Kantian public legal justice is purposively related to morality in two ways, one of them stronger than the other. In the slightly weaker sense, it simply creates legal conditions for the exercise of a good will by expanding "negative" freedom so that one can be "positively" free, or self-determining through the moral law. In the somewhat stronger sense it legally enforces (part of) what ought to be, even where good will is absent and only legal incentives are present. If in the weak sense Kantian public legal justice simply facilitates morality, in the strong sense it produces good conduct (though this conduct is only qualifiedly good because it depends on legal motives). This strong sense is illuminated by Kant himself in his unpublished commentary on Baumgarten's jurisprudence. The moral law "suffices in itself to constrain objectively" in "making known what each [person] ought to do," Kant urges in this commentary; but for "subjective constraint"—which means that each man may be "constrained to conform himself" to what he ought to do "when *motiva moralia* are insufficient"—one needs what Kant calls a *potestas executoria*, i.e., a civil state.²¹ This *potestas executoria* will be instrumental to morality, or at least to some of the ends of morality, in the sense that it will see to it that what ought to happen does in fact happen. In a word, the strong sense of instrumental politics, or legality, sees to it that some of the ends of morality get enforced, even where *motiva moralia* are absent; the weak sense of instrumental politics, or politics as context, creates a state of affairs in which those *motiva moralia* themselves have a better chance to operate. On either view, public legal justice is "for" morality, is morality's instrument.

III

But why, one might reasonably ask, attempt to bridge morality and public legal justice through ends that are shared by the moral and legal realms? Does not the advantage of appealing to a Kantian teleology that links nature, freedom, and art, as well as morality and legality, pale before the plain fact that there are better and simpler bridges to be found—bridges that are at least as genuinely Kantian? The two most obvious links between morality and legality in Kant,

telos aside, are those of *freedom* and *contract*. Before pursuing the teleological path, those other links should be glanced at.

1. Why not link morality and public legal justice in Kant mainly through freedom? After all, freedom is the *ratio essendi* of the moral law,²² and the moral law must receive the "homage" of any "true" politics. Therefore politics must somehow pay homage to the freedom that is the essence of the moral law. Moreover, for Kant justice is the coexistence of everyone's freedom under general laws;²³ and so public legal justice, because its aim is external freedom, pays homage to a morality whose inner law is freedom. Beyond all this, Kant himself insists in *Practical Reason* that freedom is "the keystone of the whole architecture of the system of pure reason."²⁴ Why, then, look for a new keystone for the critical philosophy in *Judgement* if one is already given in *Practical Reason*? Why prefer the *Third Critique* to the *Second*?

This notion of freedom-paying-homage-to-freedom should indeed be stressed—but arguably not first. The reason for this is that what comes first in Kant is the moral law *qua* "fact of reason."²⁵ This fact of reason is, for Kant, indubitable. Freedom, by contrast, is a "necessary idea of reason" that is revealed through the moral law, but whose "objective reality" is indemonstrable.²⁶ Therefore one does better to start with the moral law and its objective ends, and to see politics/law as the external realizer of some of those ends (without benefit of "good will"). Besides, in politics/law one has freedom in part *because* law realizes some ends (nonmurder, nontheft, nonfraud). One is then free to do in security (a) what the moral law enjoins and (b) what is morally indifferent. None of these considerations makes freedom marginal or trivial in Kant; he remains *the* philosopher of freedom. But since he says that consciousness of our obligation under the moral law leads us to think of ourselves as necessarily free, it seems reasonable to stress that law, and its attendant objective ends, first. The decisive text is surely the following passage from *Practical Reason*:

The question now is whether our *knowledge* of the unconditionally practical [moral] takes its inception from freedom or from the practical law. It cannot start from freedom, for this we can neither know immediately, since our first concept of it is negative, nor infer from experience, since experience reveals us only the law of appearances and consequently the mechanism of nature, the direct opposite of freedom. It is therefore the moral law, of which we become immediately conscious as soon as we construct maxims for the will, which first presents itself to us; and, since reason exhibits it as a ground of determination which is completely independent of and not to be outweighed by any sensuous condition, it is the moral law which leads directly to the concept of freedom.²⁷

2. Why not link morality and public legal justice in Kant mainly through contract, perhaps through a contract between free beings, which encompasses both concepts? After all, Kant's political writings are full of quasi-Rousseauian contractarian claims ("the basic law, which can only come from the general, united will of the people, is called the original contract"),²⁸ and his moral philosophy has been seen by some as a "deepened" Rousseauianism²⁹ in which one "gives the law to oneself" as a "legislative" member of the kingdom of ends. In this view Rousseau, placed on a proper metaphysical *Grundlegung*, and not *telos*, is the bridge uniting the whole of Kant's practical thought.

To this no simple answer can be returned; indeed, much of Chapter 4 will be given over to the attempt. But even if Kant turns out not to believe consistently that what is right, both morally and politically, is "constructed" by "autonomous" agents through a contractarian "procedure" (to use John Rawls's term),³⁰ it may remain true that he is a great contractarian in the special sense that he alone provides a theory of *will* adequate to underpin the voluntarism of pure contractarianism—adequate to shore up Hobbes's claim that "wills . . . make the essence of all covenants"³¹ and Locke's insistence that "voluntary agreement gives . . . political power to governors."³² Kant, in short, may have provided a groundwork for a contractarian structure that he did not fully build. (That is cryptic, but must be until the "Rousseau possibility" is fully treated later on.)

Even a bare mentioning of the "Rousseau possibility," of course, reminds one that there are two main reasonable, or at least familiar, readings of Kant's moral theory, and that those two main readings are reflected in a politics that pays homage to morals. If one stresses, as the core of Kant's ethics, the teleological notion that "a rational nature exists as an end in itself,"³³ that such a rational nature (e.g., man) is an objective end that is the "source" of the categorical imperative,³⁴ then one will rule out murder, and all lesser crimes, on grounds of counterpurposiveness. Public legal justice, as a reflection of morality so conceived, will be thought of mainly as enforcing objective ends. But if one stresses, in the manner of Lewis White Beck, the notion that Kant agrees with Rousseau that "obedience to a law that one has prescribed is the only real freedom," and that in Kant's hands Rousseau's "doctrine of self-government" is "deepened into a moral and metaphysical doctrine,"³⁵ one will surely say that the moral law is made, not "found," and by reasonable analogy that state law is also made, and not found in objective ends. All readings of Kant's politics, then, turn on a reading of his moral philosophy.

A quasi-Rousseauian contractarian reading of Kant, according to

which we give the law, rather than find it, would, if correct, have an additional advantage—a very large advantage, given Kant's interest in unity and in architectonic symmetry.³⁶ This advantage Beck goes so far as to call Kant's "second Copernican revolution."³⁷ The governing idea is simple: if Kant's original Copernican revolution is the thought that our "understanding" constructs or constitutes nature, rather than reflects it, might not the second revolution be the thought that our "reason" constructs or constitutes the moral law, and then a politics flowing from it?

Now the first Copernican revolution is clearly formulated by Kant himself in the Preface to the second edition of *Pure Reason* (1787):

Hitherto it has been assumed that all our knowledge must conform to objects. But all attempts to extend our knowledge of objects by establishing something in regard to them *a priori*, by means of concepts, have, on this assumption, ended in failure. We must therefore make trial whether we may not have more success . . . if we suppose that objects must conform to our knowledge. This would agree better with what is desired, namely, that it should be possible to have knowledge of objects *a priori*, determining something in regard to them prior to their being given. We should then be proceeding precisely on the lines of Copernicus' primary hypothesis.³⁸

In the original edition (1781) of *Pure Reason*, "Transcendental Deduction," A127, Kant insists that "however exaggerated and absurd it may sound to say that the understanding is itself the source of the laws of nature," by producing a "synthetic unity" of experience out of the "manifold of sensible intuition" through the use of organizing "categories" such as "casuality," such an assertion "is nonetheless correct." For this reason "understanding is . . . the lawgiver of nature." For without understanding's legislative work, "nature, that is the synthetic unity of the manifold of appearances according to rules, would not exist."³⁹

The first Copernican revolution, then, treats understanding as the "lawgiver of nature," not as a passive reflection of nature. The obvious sequel, particularly for those inclined to read Kant as "deepened" Rousseau, would be to ask: if understanding gives the law to nature, might it not be the case that (our) reason gives the law to morals? And might that parallel not illuminate Kant's famous claim that Rousseau is the "Newton of the moral world?"⁴⁰ For that would mean that Newton revealed the natural law, and Rousseau the moral law.⁴²

That such a reading of Kant—in which understanding and reason are given "legislative" powers to constitute two realms, nature and morals which are in turn linked only by being law-ordered—is

obviously possible, is confirmed by a typical claim by Kant himself, this time in the *Critique of Judgment*. In that work's Introduction, Kant argues that

Understanding prescribes laws *a priori* for nature as an object of sense, so that we may have a theoretical knowledge of it in a possible experience. Reason prescribes laws *a priori* for freedom and its peculiar causality as the supersensible in the Subject, so that we may have a purely practical knowledge.⁴²

All of this, if tenable, would constitute a powerful architectonic reason for viewing Kant as a contractarian (in a broad sense) who thinks that we "construct" a natural world through our understanding and a moral world through our reason. Everything, including politics, would then be the product of a universal, intersubjective, constructive capacity. Since, however, architectonic reasons have force only in proportion to the real existence of illuminating parallels, one still must wait to see how far it is true, for Kant, that our reason constructs the moral law (and then a politics and law supportive of that law). If a "legislative" reading of Kant's ethics turns out to be a weaker reading than others—say a teleological reading—then contractarian architectonic parallels will lose much of their force. But justice requires the admission that if understanding and reason are equally "legislative," that fact might supply the unity and the system that the present reading tries to find in reconceived purposiveness. *Nomos*, then, would prevail over *telos*.

IV

Having arrived at what Michael Oakeshott calls a "platform of conditional understanding"⁴³ (though in this case "platform of provisional understanding" might be better), one can press on to a slightly fuller, though still provisional, view of the general shape of Kant's politics. So far only very large (and therefore very abstract) systematic considerations have been taken into account: how Kantian politics relates to Kantian morals, and above all to respect for persons as objective ends; how politics as the legal realizer, via republicanism and eternal peace, of (some) objective ends fits into a larger Kantian doctrine of ends or purposes; how Kant's much-wished-for architectonic unity of reason might be found precisely in a reconstructed, critical teleology that accommodates not just moral ends (and the legal realization of some of them) but also nature and art; how teleological architectonic considerations might be thought to outweigh contractarian architectonic considerations. One must descend from these heights—which