# OBEDIENCE, JUSTICE & PROGRESS:
# A KANTIAN ACCOUNT OF REVOLUTION

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ABSTRACT

EVA HOFFMAN: Obedience, Justice & Progress: A Kantian Account of Revolution
(Under the direction of Thomas Hill, Jr.)

In his political writings, Immanuel Kant explicitly denies the right to revolution. In this thesis, I argue that this denial is inconsistent with Kant's teleological view of history and the duty to work towards political progress. Given Kant's understanding of human nature as selfish and violent, we cannot always rely on a top-down model of progress and must not assume a passive role of civil obedience on in all circumstances. Kant's duty to obey should be tempered by the right to resist in political societies where the constitution restricts or destroys mechanisms for future change. Contrary to the views of Christine M. Korsgaard, whose interpretation of the "good revolutionary" I refute, a modified Kantian account permits a principled justification for revolution.

To my father

and Patrick,

my favorite historians of philosophy.

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## PART I

### KANT ON REVOLUTION

Kant lays out his political philosophy in a teleological framework. In describing our rights and duties under the state, Kant's underlying assumption is that humankind is slowly and inevitably progressing toward a perfectly just civil society.[1] He asserts that nature's plan is that humanity will work toward and eventually arrive at an ideal civic union.[2] Nature's mechanism for ensuring human progress is societal antagonism, what Kant calls "the unsociable sociability" of humans, and the hardship it produces.[3] Humans are naturally inclined to associate with one another, but they are also self-interested. In an initial state of unrestrained freedom, humans struggle against each other to advance their own interests. They inflict such harm upon each other that they eventually choose to give up some of their freedoms and enter into civil society.[4] The nature of the social contract will gradually improve, Kant argues, until ultimately the legal rights and duties prescribed by the civil union will be those that morality endorses; in other words, the law will encourage morally right action.[5]

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[1] Kant 2006, page 8.

[2] Kant 2006, page 14.

[3] Kant 2006, pages 6-8.

[4] Kant 2006, page 8.

[5] Kant 2006, page 161.

Because Kant believes that progress towards this ideal end is inevitable, dictated by nature, a question is raised: what is our duty in promoting justice? On Kant's view, nature works through us to ensure progress, but our natural traits could be exercised in many different ways. Should we take an active or a passive role in advocating a more just state? When and how should we employ our natural traits - for example, our tendency to violence?

Kant's portrayal of the average human's role in political progress is conservative: he repeatedly advocates a passive role of civil obedience. In this chapter, I will first outline a plausible interpretation of Kant's position. I will then raise a concern about his schema, and finally offer several possible solutions. I will argue that Kant's teleological view of history and his top-down model for progress are incompatible, and attempt to resolve the problem by weakening his ban on revolution.

First, I will offer some contextual evidence for my view that Kant sees human beings as having a duty to aim for a just civil society and perpetual peace. One might contest the claim that Kant believes that individual subjects of the state have any role to play in progress at all. Kant frequently indicates that unless one finds oneself in a position of power, one should merely obey. However, Kant explicitly points to a duty as regards perpetual peace. He writes,

> If…[nature's purposiveness] is understood as the underlying wisdom of a higher cause which is directed toward the objective final end of the human species and which predetermines this course of events in the world, this plan is called Providence. To be sure, we do not actually *cognize* it as such based on the artifices of nature or *infer* its existence on the basis of such artifices…To imagine the relation between these acts [human acts of artifice] and their movement in concert toward…the moral end…is an idea that is transcendent from a *theoretical* perspective. From a practical perspective, however (for example, in view of the concept of perpetual peace and the duty to work toward it by using that mechanism of nature), this idea is dogmatic and its reality is well established."[6]

[6] Kant 2006, pages 85-87.

Kant goes on to give concrete evidence for his argument that Nature has guaranteed that humans will necessarily secure peace. From the above passage, it is clear that Kant recognizes a practical duty to contribute to bringing about perpetual peace that arises merely from being human. He adds the proviso, "by using that mechanism of nature." This leaves open the question of whether Nature's mechanism would manifest itself in a passive inclination to avoid war or in conscious striving to attain peace, or some combination of the two. At least at first glance, Kant conceives of the duty as largely automatic, offering very little opportunity for purposeful action toward political progress.

What concerns us here is the duty of an individual who is no longer living in the state of nature and is already within a commonwealth, but a commonwealth whose law is as yet imperfect. The case is of interest because when an imperfect state is in place, there is further progress to be made, but the drive for progress must be balanced against the preservation of the rights that the existing state upholds. In Kant's time and in ours, most individuals are, arguably, members of such a state. Let us assume that the legislature passes a law (say, a war tax law – an example that Kant himself uses) that is in fact unjust. A subject rightly recognizes that the law funds a war that only serves to line the legislature's pocketbooks, and concludes that other laws would better preserve the freedom of citizens and would promote a more conciliatory foreign policy. Kant limits the action the subject can take in such a case. He gives three stipulations about permissible action: 1) the subject may not revolt; 2) the subject may not resist the law; 3) the subject may express his disapproval of the law by exercising his intellectual freedom.

Kant delivers his proscription against revolution many times: in "What is Enlightenment?" in "On the Common Saying," and in the *Metaphysics of Morals*. In the *Metaphysics*, he states

> This idea should not be brought about in a revolution, in one leap, that is, through a violent overthrow of a previously existing faulty constitution – (for then a moment would occur in the meantime where the entire juridical condition was nullified).[7]

The problem with revolution, Kant explains here, is that it jeopardizes all existing rights. When the people overthrow their government, they cease to observe the law. There is no executive that has the authority to hold the previous constitution's provisions as binding. For a time, the former members of the commonwealth return to a state of nature, where no rights are guaranteed and everyone has the freedom to do anything. Revolution, therefore, is not progress but rather the destruction – even if temporary – of right, according to Kant. Kant has good reason to worry here. Surely we want rights to be permanent and guaranteed, not liable to be snatched away at a moment's notice. Gradual reform, which Kant advocates, has the advantage of holding right intact.

Kant's second objection to revolution is that does not encourage people to use their own intellects. For Kant, the ideal end of human existence is the exercise of one's rational powers. Breaking out of immaturity and thinking independently is necessary, and revolution only promotes crowd mentality and new ideologies. Kant writes

> A revolution is perhaps capable of breaking away from personal despotism and from avaricious or power-hungry oppression, but it can never bring about a genuine reform in thinking; instead, new prejudices will serve as a guiding rein for the thoughtless masses.[8]

[7] Kant 2006, page 149.

[8] Kant 2006, page 18.

Kant acknowledges that revolution offers a certain kind of progress – freedom from a particular oppressive regime – but raises doubts that it could bring about genuine improvement. That, he indicates, requires freedom from prejudice, which in turn depends on the independent exercise of one's own rationality. Here too, Kant's line of thought is reasonable: it seems unlikely that prejudiced rebels would implement a constitution that upholds right. However, Kant does not consider the possibility that the rebels, even if prejudiced, might form a state that is more conducive to independent thought and thereby make significant progress. His objection to rebellion does not seem to hold for a revolt that overthrows a government which had severely censored its citizens, for example. For the moment, we will set this objection aside.

Kant's second stipulation is against civil disobedience. He gives numerous examples of unacceptable resistance: a military officer cannot disobey his superior's orders, a citizen cannot refuse to pay his taxes, and a citizen cannot fail to adhere to a religious law with specific doctrinal content.[9] His primary concern seems to be that the people will tend to resist laws that they see as contrary to their happiness. Kant argues that happiness is as an inadequate foundation for law; instead, law secures right, which enables citizens to pursue happiness as they see fit. It is up to the legislature, not the individual, to determine the bounds of the people's freedom. Otherwise, right would be threatened by the whims of each individual's pursuit of happiness.[10] Thus, civic freedom, which Kant characterizes as the right to resist laws that one disagrees with, would also endanger right and is not permitted. In arguing against resistance in this way, Kant relies on the assumption that people are likely to be mistaken about what laws promote right. This indicates that his prohibition of

[9] Kant 2006, pages 18, 58.

[10] Kant 2006, page 52.

disobedience is pragmatic, not theoretical. But Kant also argues that even in cases where the people agree that the government is acting unjustly, resistance is forbidden. Even if the government were to become tyrannical and use violence to accomplish its ends, Kant concludes that, "under an already existing civil constitution the people has no right to judge how the constitution is to be administered"[11] and therefore cannot resist. Kant reasons that both the people and the head of state cannot have the right to interpret the constitution because there would have to be a third party to adjudicate their disputes, which would strip the head of state of his authority. To avoid this contradiction, the only action the people can take is to obey, no matter how blatantly unjust the law.[12]

Although Kant denies the right to active resistance, he grants the people the right to freedom of expression in a scholarly context. He argues that when an individual disagrees with a law, he may express his views, "as a *scholar* before the *reading world*," in written argument.[13] Freedom of expression is essential, on Kant's view, to the exercise of one's rationality.[14] For progress to occur, the citizen must be both required to obey and yet encouraged to think independently. This fits into Kant's deterministic picture, wherein advancement occurs through freedom, which allows for the competition and discord that spur innovation. Without freedom, Kant suggests, humans could become complacent and stagnation would overcome civilization. However, too much freedom threatens to let antagonism and selfishness engulf right. Kant argues that a right to intellectual freedom

[11] Kant 2006, page 53.

[12] Kant 2006, page 53.

[13] Kant 2006, page 19.

[14] Kant 2006, pages 18-19, 23.

strikes an ideal balance between these two extremes.[15] In "What is Enlightenment?" Kant identifies intellectual freedom as a causal force behind political progress. He writes

> the tendency and calling to free *thinking*…will gradually extend its effects to the disposition of the people…and finally even to the principles of *government*, which find it to be beneficial to itself to treat the human being, who is indeed *more than a machine*, in accordance with his dignity.[16]

Thus, freedom of expression is the sole mechanism that the people can rightfully employ to affect political change.

We now have a clear picture of what the duty to promote civil society and perpetual peace consists in. For a subject (not a politician), much of the duty consists in obeying the law. Thus far, it is entirely passive. It also includes, however, the responsibility to develop one's rational capacities, think for oneself, and contribute to intellectual debate in political matters. This is duty's active element. In keeping with this picture, Kant conceives of political progress as being in the hands of the head of state and the legislature. In "The Contest of the Faculties," he writes that "progress toward the better" is only possible not "*from the bottom up*, but rather from the *top down.*"[17] Gradual change occurs as intellectual freedom brings greater enlightenment to the people and its rulers. Above all, Kant cautions against haste in political change.[18] The conditions required to bring about rapid change – violence, resistance, abandonment of imperfect constitutions – risk the entire elimination of right. In placing the power of change in the government, Kant aims to preserve a juridical

[15] Kant 2006, pages 7-8, 23.

[16] Kant 2006, page 23.

[17] Kant 2006, page 162.

[18] Kant 2006, pages 71, 97, 101.

condition, though an imperfect one, at all times, and assumes that government's slow enlightenment will indeed stimulate progress.

My worry is that we have little grounds for confidence in the assumption that governments will be enlightened. In Kant's schema, the head of state has such great power that progress depends on his (or the legislature's collective) good will. On Kant's account of human nature, expecting the head of state to be just seems implausible. Kant argues that humankind is predetermined to advance towards a perfect civil society. The natural traits that he identifies as ensuring progress – selfishness, antagonism, vanity, appetite for property and power – are only reigned in by the hardship that unrestricted indulgence of these traits produces.[19] This is plausible reason to think that a people would be motivated to consent to a social contract. However, I think that once an (imperfect) state is in place, these deterministic forces cease to act on the head of state and the legislature. The head of state has enough power that he could pursue his own ends without facing any hardship at all. Not only is there little to prevent him from doing so, but, given his natural selfishness, it seems likely that he will do so. Kant does not offer a convincing account of mechanisms in nature that cause the improvement of the juridical constitution (once a state has been formed) rather than corruption. Thus, his teleological account falls short, leaving us wondering whether progress really is guaranteed.

Kant writes, "The nonrebellious subject must be able to assume that his ruler does not *want* to do him harm."[20] If the ruler has passed a law that seems unjust, then the subject should have some other reason for confidence in the ruler's good intentions. Is there such a reason in the civil society envisioned by Kant? Kant advocates a republican monarchy, in

[19] Kant 2006, pages 6-8.

[20] Kant 2006, page 57.

which the executive power is invested in one person, the monarch, and the legislative power resides in a separate body of elected representatives. Kant stipulates that, "The head of state alone is authorized to coerce without himself being subject to coercive laws."[21] Although the head of state cannot be coerced to obey the law, there are checks on his power. The legislature has the right to "strip [the head of state] of his power, remove him from office, or reform his administration, but may not *punish* him."[22] Even if the head of state does not aim to protect the people's rights, his own self-interest should prevent him from violating them, for fear of being removed from power by the people's representatives in the legislature. If the legislature is not corrupt, then, the subject has good reason to assume that the ruler's intention is not to do him harm. However, if both the legislature and the monarch are motivated by selfishness and are not concerned with the preservation of right, then great harm could be done to the subject. Even though the legislative representatives are elected, there would be little that a subject could do to resist a corrupt representative. A self-interested legislature could employ violence to ensure re-election, change the law to narrow the electorate, extend term limits, or raise taxes and use the revenue to bribe voters. The subject would have to obey, and his only means of resistance would be the exercise of his freedom of speech. As Kant himself admits, "freedom of the pen is the only protector of the people's rights."[23] It seems at least possible, if not likely, that scholarly writings would not have much effect on a corrupt government and that progress would permanently stall as impotent subjects continued to obey. Furthermore, as I indicated earlier, Kant does not address the case where a government ensures certain rights but denies the right to free speech. It is

[21] Kant 2006, page 46.

[22] Kant 2006, page 116.

[23] Kant 2006, page 57.

unclear whether or not Kant thinks such a juridical condition would be worth preserving, or if it would be acceptable for subjects to resist in that case.

These considerations suggest that progress is not as assured as Kant would have us think. There is tension between Kant's view of human nature, his vision of Nature marching humans toward a positive end, and his belief that progress will come from rulers. Kant pinpoints selfishness and antagonism as the human traits through which Nature ensures progress, but these traits are likely to produce corrupt rulers, not ones who are concerned with preserving right. It therefore seems that either humankind is not progressing toward a positive end, or that Kant must be wrong about how predetermination asserts itself: perhaps human progress occurs via different natural traits or a bottom-up progress.

I think this tension might be resolved in several ways. First, one might agree with Kant in thinking that revolution can never establish a better way of thinking and therefore take the skeptical view that even if humankind may not be capable of much progress (since its rulers are bound to be corrupt), we are best off trying to preserve what rights we have through obedience.[24] Second, one might take a position that is sympathetic to Kant's teleological view of history and argue that although legislators might be corrupt for a time, their selfishness will eventually and inevitably result in hardship that motivates them to preserve the rights of all. Third, one might depart from Kant's theory and argue that the duty to obey has exceptions, and that resistance or revolution will play a role in human progress, contrary to Kant's claims. I will briefly consider this last possibility.

[24] There is some textual evidence that Kant himself holds an optimistic view of human progress in theory, but a skeptical view in practice. In "The Contest of the Faculties," he writes, "For we must not expect too much of human beings in their progress toward the better, in order that we not earn with reason the derision of the politician, who is keen on holding the hope of this progress to be the dream of an exaggerating mind" (161).

To endorse revolution would be clearly contrary to Kant's intention. However, while discouraging rebellion, he implicitly acknowledges that it is nonetheless bound to occur, since he discusses, on several occasions, the status of a constitution that arises out of a revolution. In *Toward Perpetual Peace*, he writes, "Even if the impetuosity of a revolution provoked by a bad constitution were to bring about a more lawful one illegitimately it should no longer be deemed permissible to return the people to the previous constitution."[25] Here, Kant allows that a constitution that had illegitimate origins is nonetheless legitimate, and must be honored. Furthermore, he admits that a revolution could result in a constitution that is more just than the previous one. With this in mind, I conclude that Kant's prohibition of revolution is too strong. Once a state has advanced to the point that its constitution is of decent quality, Kant seems right to say that slow progress is best. Revolution, which dismantles the juridical condition, is much more risky when it attacks a fairly just constitution: more might be lost than is gained. However, revolution might be the only source of change in less enlightened states. If a constitution (or a specific law) restricts or destroys mechanisms for future change, then resistance or rebellion is appropriate.

A constitution that does not grant free speech, which on Kant's view is so important to progress, is thus an example of a constitution that should be actively resisted. Another example is a law that restricts freedom of religion. Kant disagrees; he questions the validity of a law that permanently establishes "certain doctrinal content and forms of external religion."[26] He writes, "One must thus ask whether it would be permitted to hinder itself in its descendants from progressing in its religious insights or changing earlier errors," but concludes that, even if it does, "one can pass general and public judgments on it but could

[25] Kant 2006, page 96.

[26] Kant 2006, page 58.

never resist it in either word or deed."[27] This law, however, is not only contrary to right, but also hinders future religious debate and practice. It seems to me consistent with Kant's view to conclude that there is no guarantee of progress if the law restricts the forums in which rationality might be exercised. If a constitution denies important rights and obstructs progress as regards those rights, then the juridical condition will not improve and revolution is both permissible and worthwhile. In the case of other laws – for example tax laws, which might be unjust but do not inherently impede progress – Kant is correct and obedience, not resistance, is the right course of action.

Kant argues that political progress must be brought about through a top-down progress in which the subject's duty is 1) to obey and 2) to exercise his rational capacities and his right to scholarly free speech. Kant sees this duty as consistent with his deterministic thesis that nature guarantees progress. However, he may be mistaken: his own account of human nature suggests that people in positions of power will act selfishly and will subvert the right, not protect it. Placing political progress in the hands of powerful rulers therefore makes that progress less than certain. This calls into question Kant's advocacy of an essentially obedient populace. Progress will not be guaranteed unless the duty to obey is tempered by the right to resist in certain circumstances, which provides a much-needed check on the ruler's selfish tendencies.

[27] Kant 2006, page 58.

## PART II

JUSTIFICATION AND THE "GOOD REVOLUTIONARY"

Christine Korsgaard argues that the Kantian must deny the right to revolution. However, she argues for a more complex understanding of Kant's stance on revolution. She contends that while Kant's account of duties of justice undoubtedly prohibits revolution, he leaves the door open to the possibility that the ethical duty not to revolt is not absolute.

In this chapter, I will first summarize Korsgaard's interpretation of Kant's account of revolution. I will then argue that her characterization of the revolutionary as moral outlaw is unattractive, contending that her view that the revolutionary lacks justification at the moment of action is implausible. In order to show that the revolutionary does indeed have a principled justification for rebelling, I will argue that Korsgaard misunderstands Kant's views on the legitimacy of governments. Her resulting overemphasis on procedural justice obscures the natural distinction between two kinds of injustice, injustice in outcome and injustice in procedure, which cuts a principled line between circumstances in which one has the duty to obey and those in which one has the right to resist.

Korsgaard argues

> It is by no means obvious that a person who makes the rights of humanity his end would never, under any circumstances, oppose the extant government. If this is correct, nothing in Kant's theory absolutely commits him to the view that a good person would never revolt. Nor, I believe, is this what he himself thought.[28]

[28] Korsgaard 1997, page 317.

Korsgaard emphasizes that a good person is one who is concerned to act in accordance with the rights of humanity. This concern might be manifested either by actions that merely respect the rights of humanity or in ones that aim to advance those rights. On rare occasions, Korsgaard argues, obeying the extant government is inconsistent with respecting the rights of humanity. Therefore, a good person might decide to revolt, but in doing so he cannot appeal to any "reasonable" moral justification. In acting outside the sphere of justice, the good person acts against any articulate commands of morality. To better illuminate Korsgaard's view, I will briefly explain how she employs Kant's distinction between duties of justice and duties of virtue to arrive at her paradoxical conclusion.[29]

A duty of justice is a duty that others may coerce you to perform or comply with. Kant writes that duties of justice are "those for which external legislation is possible."[30] Justice, according to Kant, guarantees the mutual freedom of the wills of each and every person. An action is right or just if it does not interfere with the freedom of everyone else. Duties of virtue consist in adopting ends as duties. These duties are not subject to external legislation because they are concerned with motivation for action and therefore can be governed only by internal law.[31] Korsgaard characterizes duties of virtue as follows: in the realm of virtue, "'this is your duty' means 'insofar as you are autonomous, you demand this of yourself.'" [32] Korsgaard claims that justice forbids revolution in any circumstances. She asserts, however, that the sphere of justice does not have the final word on what ethics (the sphere concerned with duties of virtue) requires. She argues that we have an ethical duty to

[29] Korsgaard herself calls her view paradoxical. Given Kant's complexity, she considers it a compliment.

[30] Kant 1999, page 25.

[31] Kant 1996, page 525. Kant 1999, page 25.

[32] Korsgaard 1997, page 300.

do duties of justice, but that that duty is grounded in the fact that justice is a virtue.[33] "Kant says that the virtue of justice is possessed by one *who makes the rights of humanity his end*," she writes.[34] Korsgaard believes that the importance of rights of humanity creates serious tension in Kant's account. On Korsgaard's interpretation, Kant insists that there can be no right without government, and that the existence of procedures of justice is of prime importance in creating and preserving the juridical condition.[35] However, procedures of justice can be used to deny rights and oppress the subjects of a government.[36] All too frequently, injustice is done in the name of justice. Korsgaard writes that in severe cases, "justice is turned against itself, perverted."[37] This results in a paradox for a good person, someone who takes justice as a virtue. On the one hand, the duty to take the rights of humanity as an end requires that one act in accordance with external rules of justice, for without these procedures there is no justice. On the other hand, acting in accordance with external rules of justice is contrary to caring for the rights of humanity, for justice has ceased to preserve those rights and instead serves to undermine or eliminate them. Korsgaard concludes that the duty to humanity "implodes when we try to act on it in an unjust world."[38] The good person is left with no guide for action.

Korsgaard clearly thinks that when injustice is great and no other course of action is available, the good person will decide to revolt. As to whether or not the revolutionary acts in

[33] Korsgaard 1997, pages 316-317.

[34] Korsgaard 1997, pages 317.

[35] Korsgaard 1997, pages 309-310, 317.

[36] Korsgaard 1997, page 317.

[37] Korsgaard 1997, page 317.

[38] Korsgaard 1997, page 321.

accordance with morality, Korsgaard's precise view is hard to pin down. She carefully avoids any language that would suggest that the revolutionary is *right* or *just*. In fact, she holds that the opposite is true: That a revolution is always wrong, insofar as questions of right go. She writes, "The claims of right remain clear, but the demands of virtue become ambiguous…good people may do things that are, in one fairly clear sense, wrong."[39] Since any language of "right" is off the table, we must ask whether there is an ethical duty to revolt in dire circumstances. Korsgaard is unwilling to answer this question directly. She reasons that morality cannot provide an answer because to revolt is necessarily to disobey the moral law in order to promote morality.[40] It is important to note that she does not go quite so far as to say that the agent acts *outside* morality. Rather she seems to want to carve out a category of paradoxical actions that are moral, but which have no justification and which morality cannot command or endorse. Therefore, it is up to the agent to decide whether or not he has an ethical duty to revolt: morality, Kant, and Korsgaard are silent.

Other thinkers in the Kantian tradition would likely object to Korgaard's interpretation. Allen Wood, for example, argues that "the pursuit of our ends, once they have been decided upon, is constrained only by juridical duties, perfect duties to ourselves, and duties of respect to others."[41] Here, he suggests that duties of justice take precedence over our commitment to (even) virtuous ends. A duty of virtue is delineated by duties of justice, which tell us how we may or may not pursue our ends. Korsgaard runs afoul of this account because, in leaving open the possibility that there is an ethical but not a juridical duty to revolt, resists placing an absolute constraint on the pursuit of virtuous ends.

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[39] Korsgaard 1997, page 321.

[40] Korsgaard 1997, page 320-321.

[41] Wood 1999, page 325.

I object to Korsgaard's characterization of the conscientious revolutionary as a moral outlaw. Like the heroic outlaws of literature or film, who break rules in the name of justice, the moral outlaw defies morality's dictates in defense of morality itself. The analogy is perhaps most apt insofar as Korsgaard sees each outlaw as autonomous, beholden to no law but his own.[42] Korsgaard emphasizes the fact that a good person who takes the rights of humanity as an end and recognizes that the extant government is profoundly, perversely unjust must make the decision whether to revolt on his own, independent of any appeal to moral law. She writes

> [T]he difference between imperfect justice and perverted justice is a matter of pure judgment. There is no criterion for deciding when imperfection has become perversion, when things have gone too far. If we turn for help to the Universal Principle of Justice, all it says is: Do not revolt. The revolutionary cannot claim he has a justification, in the sense of an account of his action that other reasonable people must accept.[43]

It is not entirely clear how to interpret the last sentence of this passage. One might take it to mean that the revolutionary does have justification, but cannot offer it, since one cannot expect other reasonable people to condone clear violations of explicit duties of justice. I, however, take it to mean that there is no objective justification for the revolutionary's action at the moment that he revolts. A later passage supports my interpretation; Korsgaard argues that the outcome of the revolution determines whether or not it is justified. "Revolution may be justified," she writes, "but only if you win."[44] Korsgaard insists that only perverted justice can be an occasion for revolt and, in the passage quoted above, argues that there are no objective standards we can use to decide which cases are ones of perverted, not imperfect,

[42] Korsgaard 1997, page 320.

[43] Korsgaard 1997, page 319.

[44] Korsgaard 1997, page 320.

justice.[45] She claims that a failed revolution is merely a wrong action that harmed its victims, but a successful revolution is an action that made the world more just. Her stance is that the moral outlaw, who makes his own law, remains in the wrong unless he overturns the old juridical condition and determines the new, more just one.[46]

This account of the revolutionary cannot be correct. The very fact that we attempt to distinguish between imperfect and perverted justice suggests that the condition of the state before the revolution is the primary factor in justifying revolution. Unless injustice of a certain degree or type is present before the uprising, winning cannot possibly justify the revolution. Our intuitions substantiate this view. We have strong intuitions that certain types of injustice justify revolution and others do not, and, more importantly, these intuitions remain the same no matter what the outcome of the revolution. For example, if a person gathers supporters and overthrows the government because one innocent person was wrongly convicted, we are disinclined to say they are justified, even if they are successful. To return to an example from the previous chapter, we do not commend the person who wins the revolution he began in the name of an unjust war tax.[47] Furthermore, I think our judgment of the failed revolutionary is much less harsh than Korsgaard believes it to be. She writes, "Failure…means that he has destroyed justice for nothing, that he is guilty of murder and treason, an assailant of the general will, and the enemy of everyone."[48] Imagine a state where a quarter of the people are enslaved and another quarter are propertyless serfs with no right to vote. The fact that a small elite has a monopoly on resources and information makes it

[45] Korsgaard 1997, page 319.

[46] Korsgaard 1997, page 320.

[47] Let's assume, for the sake of argument, that there was a net gain for justice in these cases.

[48] Korsgaard 1997, page 320.

unlikely that any positive change will occur in the foreseeable future. If a serf led a revolt and lost, we would admire the attempt. Far from judging him a murderer and a traitor, we might consider him to be a great leader, a persecuted visionary, or even a martyr.[49] Perhaps we are mistaken in our evaluation, as Korsgaard might argue. But I think our strong conviction that losing revolutionaries are sometimes in the right is evidence that the failed revolutionary has not "destroyed justice for nothing." Just the opposite is true: losing revolutionaries often have excellent prior justification for rebellion. They act for reasons, reasons that reasonable people should (and do!) recognize and accept.[50]

Thus, a plausible account of revolution must rescue the revolutionary and allow that he has reasonable prior justification for action, if the account intends to show that revolution is justified in any sense. My aim is to show that there are clear criteria that we can and should use to draw a principled line between kinds of injustice. Even though Korsgaard denies that the revolutionary has justification, she identifies the revolutionary's motivation as the sense that justice is being perverted. Her point that perverted justice seems somehow different from imperfect justice (despite our not having any criterion to judge the difference, on her view) is helpful because it hints at the conclusion that some instances of injustice are different in kind from others. I agree with Korsgaard, however, that relying on the notion of perverted justice is not going to elicit a clear-cut distinction between kinds of injustice. After all, we apply the concept of perverted justice on a small as well as a large scale. We say that a single wrongful conviction is "a perversion of justice," but we do not think it is revolution-worthy. The term

[49] Ex. Sparticus.

[50] I grant that there may be a gray area between categories of injustice such that there is not fact of the matter about whether an injustice is severe enough to warrant a revolt. Only subjective judgment could yield a categorization in such instances. However, all instances surely do not fall within the gray area; when injustice reaches an extreme we are quite certain that the revolutionary is justified even when he loses.

"perverted justice" thus compounds the problem of explaining the revolutionary's justification. In the last chapter, I argued that resistance or rebellion is appropriate if an unjust constitution (or a specific law) restricts or destroys mechanisms for future change. Focusing on the mechanisms for future change is one way that we might begin to flesh out the distinction between minor injustices and revolution-worthy injustices.

Korsgaard is sympathetic to the view that there are circumstances that mediate the revolutionary's decision. The good person, she says, will be unable to rely on the law to protect human rights when the extant government's "institutions systematically violate human rights."[51] There is an important element of the "last resort" in her account: the good person who decides to revolt waits until it is clear that he is helpless to effect change in any other way.[52] Although Korsgaard seems to recognize that it is only under these conditions that we applaud the (winning) revolutionary, she does not conclude that the presence of these conditions counts as a justification. She cannot allow him to have a justification, for to do so would be to admit that he is right to revolt. This is no different from saying that he has a right to revolt, which cannot be the case because – and here is the crux of Korsgaard's interpretation of Kant - all governments are legitimate.[53]

Kant does not say outright that all governments are legitimate. In fact, he says that "the one and only legitimate constitution" is "a pure republic."[54] Korsgaard, not unreasonably, interprets Kant as equating legitimacy with representing the general will of a

[51] Korsgaard 1997, pages 318-319.

[52] Korsgaard 1997, pages 298, 319.

[53] Korsgaard 1997, pages 303-304.

[54] Kant 1999, page 149.

state's people.[55] She then claims, "Kant thinks that any government represents the general will of the people."[56] Therefore, she concludes, all governments are legitimate. This is a clear misinterpretation of Kant. In fact, he might be interpreted as claiming the exact opposite, that governments do not actually represent the general will of the people.

> To substantiate her view, Korsgaard appeals to the following passage:
> When a people are united through laws under a suzerain, then the people are given as an object of experience conforming to the *Idea in general* of the unity of the people under a supreme powerful Will. Admittedly, this is only an appearance; that is, a juridical constitution in the most general sense of the term is present. Although the [actual] constitution may contain grave defects and gross errors and may need to be gradually improved in important respects, still, as such, it is absolutely unpermitted and culpable to oppose it. If the people were to hold that they were justified in using violence against a constitution, however defective it might be, and against the supreme authority, they would be supposing that they had a right to put violence as the supreme prescriptive act of legislation in the place of every right and Law.[57]

Korsgaard suggests a key issue in the passage is whether or not extant governments are governments at all. She writes

> When Kant says that actual governments are only 'appearances' he does not mean that they are not real. He means that they are imperfect participants, in the Platonic sense, in the form of justice...Kant is clearly confident that, despite their imperfections, we recognize these objects as governments, as imperfect approximations to a perfect form.[58]

This interpretation misses the mark. Kant's text does not seem to make any statement about whether governments are real or not; rather, he simply assumes that governments do exist and are real. Let us take a close look at the passage. Kant does not refer to actual governments as "appearances." "This" refers to the immediately preceding noun phrase, "the unity of the people under a supreme powerful will." Kant is claiming that the unity of the

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[55] Kant 1999, pages 304, 307.

[56] Korsgaard 1999, page 311.

[57] Kant 1999, page 181.

[58] Korsgaard 1997, page 308.

people under one will is only apparent, thus admitting that actual governments do not in fact represent the general will of the people. Therefore, Korsgaard's claim that Kant holds that all actual governments embody the general will is incorrect. If Korsgaard is right that legitimacy, for Kant, just means that the government represents the united will of the people, then Kant holds all governments to be illegitimate.

Where does Korsgaard go wrong? Her first assumption, as stated above, is that legitimacy requires that the government in question represent the general will of the people. Kant thinks that the ideal government unites all people under one will that legislates for all, thus creating the juridical condition. It is reasonable to extrapolate from the ideal case and judge that governments are legitimate if they do in fact embody the general will. Therefore, Korsgaard's conclusion that Kant defines legitimacy in terms of voicing the general will of the people seems right. Korsgaard's second assumption is that Kant is right that all actual governments are imperfect, which is indisputable, at least at this point in history. Given that no actual governments live up to the ideal of the unified general will, the conclusion that actual governments are illegitimate seems to follow. Indeed, Korsgaard's discussion of the passage expresses considerable concern over whether or not some governments are legitimate. However, she concludes that admitting any illegitimacy at all would force us to say that some supposed "governments" are not real governments. She points out it that many historical regimes would not qualify as "real" governments by potential standards of legitimacy. For example, most regimes prior to the twentieth century did not have universal suffrage. Korsgaard is unwilling to accept this result because, after all, we have traditionally considered them to be governments, and the subjects under their rule certainly did. Therefore, she decides that they are governments and are legitimate, in virtue of their partaking in the

form of justice. This grounds her claim that all governments are legitimate, that all represent the general will.

Korsgaard fails to consider the possibility that not a government could be both real and illegitimate. Implicit in her argument is the assumption that illegitimate governments are not "real" governments; i.e. are not governments at all.[59] On her view, the functionality of a government, and therefore its very existence, entails that the people act from a general will. Government is indeed a largely functional concept, in that a large percentage of its population must obey its laws and recognize its institutions most of the time, or we cease to regard the supposed government as government and judge its people to be in anarchy. However, although collective action is required if a political society is to function, collective action is not the same as the presence of a general will, which requires an additional component: collective decision. Korsgaard writes, "If someone has enough authority to make and execute laws, and the people are living and acting and relating to one another under those laws, then that is their general will."[60] But people might act in accordance with the law, living and relating to one another in accordance with its dictates, because they are coerced to do so. In such a state, genuine collective decision making does not occur. Korsgaard implies that if a sovereign makes laws and people abide by them, then he has authority, but he may only have authority in the sense of coercive power. Kant, I think, recognizes the difference between collective functionality and general will. The two may appear to be similar, as far as the operations of political society go. This is what Kant means when he says that an actual state has "only an appearance" of a unified will.

[59] Korsgaard 1997, page 311.

[60] Korsgaard 1997, page 311.

Thus, Korsgaard mistakenly takes the very concept of government to have general will built into it. From that, she reasons that to be real, a government must embody the general will, and if it embodies the general will, then it is legitimate. She takes all governments commonly so-called to be real, and concludes that all actual governments are legitimate. This is contrary to Kant's intention. Properly interpreted, Kant admits that actual governments do not embody the general will. Recall, also, that he stated that the only legitimate government is the ideal one, the pure republic. From this, we might conclude either that Kant all supposed governments are not governments at all or that all actual governments are illegitimate. I prefer the latter interpretation, since I find little textual evidence in support of the view that nonideal governments are not real ones. Thus, the most plausible reading of Kant is that all actual governments are illegitimate.

Korsgaard's argument against the right to revolution is now in jeopardy. The grounding premise of her argument is: "To revolt, where that means to oppose the decisions of the government, is therefore to oppose the general will."[61] She points to two reasons why opposing the general will is wrong: first, opposing the general will is necessarily illegitimate (by the definition of legitimacy she attributes to Kant), and second, opposing the general will necessarily dissolves the juridical condition, which is wrong because it returns us to the state of nature, thus destroying right. The relationship between the presence of a unified general will and the juridical condition is more complex in actuality (though straightforward ideally) than Korsgaard would have us think. To return to Kant's oft-quoted passage, Kant claims that where there is "only an appearance" of a general will, there exists a juridical constitution,

[61] Korsgaard 1997, page 311.

though only in "the most general sense of the term."[62] Thus, on Kant's view, even if opposing the government does not oppose the general will, it still destroys the juridical condition. We can therefore dismiss Korsgaard's first reason against opposing the general will, but the spirit of the second reason, that revolution destroys the juridical condition, appears to hold true. Kant states his opposition to this destruction on several occasions.[63] But, as I argued in Chapter 1, reverence for the juridical condition has little justification in highly unjust states. If the juridical condition were, in actuality, the unification of the people under one will, then that would be reason to protect it. Absent a unified general will, we might ask what the juridical condition has to recommend it. This requires that we determine exactly what the "juridical condition the most general sense" is, and whether its claim on the title is strong enough to justify the conclusion that holding it intact holds right, or justice, intact.

In conflating the existence of actual governments with the presence of a general will, Korsgaard makes the critical error of confusing functionality with justice. Korsgaard distinguishes between two different elements in our conception of justice, which she calls procedural justice and substantive justice. She defines procedural justice as the idea that "to be just, any sort of decision, outcome, or verdict…must be the result of *actually following* these procedures;" that is, "the procedures by which the three functions of government are carried out."[64] Judgments of substantive justice are based on "independent criteria…of what is just… [or] right or best."[65] There are cases in which substantive justice and procedural justice are at odds: for example, when an innocent man is found guilty in a trial by jury. We

[62] Korsgaard 1997, page 308.

[63] Kant 1999, page 163.

[64] Korsgaard 1997, page 308.

[65] Korsgaard 1997, page 309.

might then ask where justice truly lies. Korsgaard seems to think that what matters most is procedural justice. Her reasoning is that without procedures there can be no general will and therefore no justice. This is true, but from this is does not follow that procedures necessarily reflect the general will and therefore justice. Korsgaard points out, rightly, that to an extent, our judgments of substantial justice – of what is right or best - depend on procedural justice. She gives the following example:

> [T]he distinction between the procedurally just and the substantively just, right, or best, is a rough and ready one, and relative to the case under consideration. Who should be elected? The best person for the job, the best of those who actually run, the one preferred by the majority of the citizens, the one preferred by majority [sic] of the registered voters, the one elected by the majority of those who actually turn out on election day…"[66]

I do not dispute that we judge it right that the person who is elected by fifty-one percent of the citizenry gets the job, even if there is a better candidate. However, this does not prove the primacy of procedural justice. Korsgaard writes, "the normativity of these procedures…does not spring from the efficiency, goodness, or *even the substantive justice* of the outcomes they produce. The reverse is true."[67] To refute Korsgaard, we need not claim that our acceptance of procedures or our pronouncements of procedural justice are grounded in the justice of the procedure's *outcome*. Procedures themselves are subject to evaluation based on substantive justice. Some procedures are inherently more just than others, regardless of outcome.

Consider again an election. In this case, a seventy-five percent majority of voters who turn out on election day elect a candidate for the legislature. At first glance, we are inclined to say that it is right that she take her seat and legislate, but that judgment is based on a number of assumptions. If it turns out that the constitution of that country only permits white

[66] Korsgaard 1997, page 309.

[67] Korsgaard 1997, page 309.

women to vote in a society where they make up 35% of the population, then we are likely to judge that it is not right that the candidate legislate. That judgment is grounded in our assessment of the justice of the procedure, not the justice of the outcome. The woman could be the best person for the job and yet if 85% of those denied the vote preferred another candidate, we would not say that justice had been done.

I will not attempt to state the exact criteria for a just procedure here, for it would require considerable time and space, and take us far afield. It is sufficient to notice two facts. First, justice of outcome is not the only factor we would use if we wished to design the most just procedures possible. As Korsgaard points out, even the most carefully thought-out procedures, designed by good people, might have substantively unjust outcomes on occasion.[68] Second, our assessment of a procedure's justice depends, in part, on that procedure's potential to elicit or embody the general will. When only a third of the population participates in the constitutional decision-making procedure, decisions, laws, and policies are unlikely to reflect the general will. Since the Kantian ideal of justice depends upon the unity of the general will, the justice of a procedure depends on whether or not it tends to advance or hinder the unity of the general will. Wherever procedures function as institutions and dictate the actions of the people, there is government. Whenever a government exists, there is justice in the sense of procedural justice. I have shown, however, that substantive justice is *prior* to procedural justice, since at the root of our judgments about justice, there is a substantive issue about which procedures are most just. Therefore, if a procedure is highly unjust, then there is another, more fundamental, sense in which there is no justice at all.

[68] Korsgaard 1997, page 310.

Thus, when Kant uses the phrase "a juridical condition in the most general sense of the term,"[69] I take him to be referring to procedural justice. All governments, no matter how unjust, give the appearance of justice because they have laws and institutions that claim to be authoritative. Once we recognize that, on Kant's view, these laws and institutions do not necessarily embody the general will of the people, the door is open to our evaluating actual governments based on how close or far they are to ideal of the unified will. Korsgaard argues that all governments are imperfect, and that there are no criteria which a good person could use to decide which are unjust enough to justify a revolt. A good person, however, could appeal to one of two fundamentally different kinds of injustice. One type of injustice is injustice in outcomes, what Korsgaard thinks of as substantive justice. It is practically impossible, given human nature and the fact that even just procedures result in error, that no government would avoid occasional unjust outcomes. Another type of injustice is injustice in procedure, which is not to say that the procedures of the government are not followed, but rather that the procedures themselves are unjust. When procedures are generally just, the good person should not rebel, for to say that procedures are just is just to say that they have the potential to reflect the general will. If a procedure has potential to reflect the general will, there are two reasons not to oppose it: (1) it might reflect the general will on occasion, and in such a case opposing it would be illegitimate; and (2) even if (1) is not the case, the procedure allows for change. It is only if the laws and institutions of a government impede change that the entire (momentary) destruction of the juridical condition is justified. When procedures are not generally just, which is to say that they do not have the potential to reflect the general will, then the system is rotten at core, and rebellion is right.

[69] Korsgaard 1997, page 308.

The revolutionary's justification for rebelling is that systematic and grave injustice is endemic to the institutions of the extant government, and further that these institutions thwart, or do not permit, mechanisms for future change.

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