

Independence and Kant's Positive Conception of Political Freedom

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1. Introduction

- Current republican theorists focus on freedom as independence, non-domination (what Kant calls the 'negative' conception of freedom).
- Kant's legal and political theory stands in the republican tradition.
- Discussions of Kant's legal and political philosophy focus on his negative conception of freedom as independence. Problem: this ignores Kant's *positive* conception of freedom, as well as the *relation* between these two conceptions of freedom.
- Thesis: on Kant's view, freedom in the negative sense (independence) requires and is realized by freedom in the positive sense (joint self-legislation).

2. The innate right to freedom

Kant claims there is only one innate human right, viz., the innate right to external freedom:

Freedom (independence from being compelled by the arbitrary choice of another), insofar as it can coexist with the freedom of every other in accordance with a general law, is the only original right belonging to every human being by virtue of his humanity.

(Metaphysics of Morals 6:237)

This right is at the same time a right to equality. It is a right to

innate *equality*, that is, independence from being bound by others to more than one can in turn bind them; hence a human being's quality of being *his own master (sui iuris)*, as well as being a *respectable* human being (*iusti*).... (MM 6:237-8)

3. The necessity of the state

Kant argues that acquired rights can be determinate and secure ('peremptory') only in a civil condition:

[I]t is possible to have something external as one's own only in a rightful condition, under a public-legislative power, that is, in a civil condition. (MM 6:255).

- Why? Unilateral acquisition requires omnilateral authorization (cp. Ripstein, *Force and Freedom*, 148-159)
- Worry: Doesn't the civil condition introduce just another form of domination?

4. Independence and self-legislation in the republic

Q: Who can give coercive laws without thereby dominating others?

- Ripstein: elected officials in the state who give laws *to* the people that the people *could* give themselves. Ripstein employs a 'trustee' model of representation.
- Kant (in the mid 1780s): an enlightened autocrat.
The touchstone of whatever can be decided upon as law *for* a people lies in the question: whether a people *could* impose such a law upon itself. (WiE 8:39)
- Kant (in the mid 1790s): only the united citizens *themselves*, collectively.
In the republic, legislation is to be enacted '*by* the state citizens, *through* their delegates' (MM 6:341). Here Kant employs a 'delegate' model of representation.

In MM, Kant does not drop the earlier 'touchstone' but *adds* a further normative condition for rightful legislation: in addition to the criterion that laws should be such that they *could be* adopted by the people, he now also requires that they *actually be* adopted by the people.

Kant writes:

When someone decrees something against *another* [etwas gegen einen *anderen* verfügt], it is always possible that he thereby wrongs the other, but he can never do wrong in what he decides about himself (...). Therefore, only the concurring [übereinstimmende] and united will of all, insofar as each decides the same thing for all and all for each, and hence only the general united will of the people can be legislative. (MM 6:313-314)

- Kant claims that ‘the only qualification for being a citizen is being fit to vote’ (MM 6:314).
- He describes the freedom of the citizen as the ‘legal attribute’ of ‘obeying no other law than that to which he *has* given his consent’ (MM 6:314, emphasis added). In *Toward Perpetual Peace*, he similarly describes freedom as ‘the authority to obey no external laws other than those to which I *have* been able to give my consent’ (PP 8:350n., emphasis added).
- In a genuine republic, each citizen is a ‘co-legislating member’ of the body politic (*mitgesetzgebendes Glied*, MM 6:345, also 6:335).

Freedom in the negative sense—independence from being compelled by others at their discretion—is possible and secure only through everyone’s subjection to jointly self-given laws. That is: it requires positive freedom. Only if and when the united citizens jointly give *themselves* the laws to which they are subject are they no longer subject to the arbitrary choice (discretion) of *another*.

Kant calls this political system a *republic*. The ideal political system is a ‘genuine’ or ‘pure republic’, and Kant claims that this is ‘the only constitution that accords with right’ (MM 6:340).

His description of the legal properties of citizens in a republic echoes the description of the different aspects of innate right that he provided in the Introduction (MM 6:237):

Lawful *freedom*, obeying no other law than that to which he has given his consent; civil *equality*, not recognizing among the people any superior with regard to him, except one that he has the moral capacity legally to bind, just as the other can bind him; and third, the attribute of civil *independence*, of owing his existence and preservation to his own rights and powers as a member of the commonwealth, not to the arbitrary will of another among the people; and hence his civil personality, not needing to be represented by another in juridical matters. (MM 6:314)

5. Not all humans become *Herren*

Tensions between

(1) Kant’s claim that the innate right to freedom ‘belongs to *every human being* by virtue of his humanity’ and includes the right to equality and independence (being ‘one’s own master’ [*Herr*]) and

(2) Kant’s claim that large numbers of humans do not qualify for genuine freedom: women, minors, socio-economically dependent persons.

E.g., he claims that women are naturally unfit for the right to vote, and that a husband should have the right to command over his wife as *her master* [*Herr*] (MM 6: 279). This is why I followed Kant in his use of male pronouns. (For discussion, see my ‘On Dealing with Kant’s Sexism and Racism’, 2019).

Conclusion

Kant conceives of freedom, negatively, as independence; and positively, as being subject to one’s own legislation. On his view, the mutual independence of a plurality of agents can be achieved only through their joint subjection to collectively self-given public and coercive laws. The innate right to freedom requires the realization of freedom in *both* senses, as two sides of one coin.

Current defenders of Kant’s republicanism tend to focus on his negative conception of freedom as independence. The argument of this paper suggests that they overlook Kant’s account of the importance of collective self-legislation for realizing individual independence. They would do well to focus more on Kant’s account of citizenship and the appropriate mode of political representation.