

KANT'S FOURTH DEFENSE OF FREEDOM OF EXPRESSION¹

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What I shall argue here is that Kant has at least four distinguishable defenses of free expression, that it is important to distinguish them (because they are, while consistent with one another, far from being alike), that some fit neatly into Kant's general political philosophy (while others flap in the wind outside), that one is not quite like anything discussed in the literature of free expression today, and that that defense is nevertheless worth consideration by contemporary theorists independent of its connection with Kant.

I. Four Defenses of Free Expression

Kant's *Metaphysical Elements of the Theory of Right* is silent on freedom of expression. Kant's discussions of free expression are scattered through his minor works, including "Perceptual Peace" (1775), "An answer to the Question: What is Enlightenment?" (1784). "What is Orientation in Thinking?" (1786), "An Old Question Raised Again: Is the Human Race Constantly Progressing?" (1795), and "On the Common Saying: This may be Right in Theory but it Won't Work in Practice" (1793). Together those scattered discussions amount to a dozen or so pages. In a philosopher as systematic as Kant, it is natural to suppose such scattered discussions to fit into a single argument. They do not. What they fit into is four distinguishable (though loosely related) arguments. Let us consider them one by one.

1. One defense of free expression Kant makes is concerned with information. Let us call it "the argument for public philosophizing." The argument is consequentialist and appeals to the contingent purposes of government:

Kings and sovereign peoples (i.e., those governing themselves by egalitarian laws) should not, however, force the class of philosophers to disappear or to remain silent, but should allow them to speak publicly. This is essential to both in order that light may be thrown on their affairs. And since the class of philosophers is by nature incapable of forming seditious factions or clubs, they cannot incur suspicion of disseminating propaganda.²

The argument for public philosophizing appears in Kant's discussion of the "Secret Article of Perpetual Peace" (which requires governments to

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consult what philosophers have to say about war and peace). But the argument seems more general than that. If it is good at all, it is a good argument for letting experts write (or speak) freely on all matters of public concern within their competence. The weakness of this argument is its dependence upon the contingent inclinations of the government to which it is directed. Not all governments care to have light publicly shed upon their affairs. Like burglars, they may prefer the dark because, though inconvenient for them, it is more inconvenient for those they prey upon or fear.

2. A second consequentialist defense of free expression Kant makes is more elaborate. We may call it "the argument from civil liberty." It is a curiously indirect argument:

... [Once] the germ on which nature has lavished most care--man's inclination and duty to *think freely*-- has developed within this hard shell [restrictions on his freedom to act], it gradually becomes increasingly able to *act freely*. Eventually, it even influences the principles of government, which find that they can themselves profit by treating man (who is *more than a machine*), in a manner appropriate to his dignity.³

The argument assumes that, as a matter of fact, permitting freedom of thought now will prepare a people for the full civil liberty for which they may now be unfit, that government has a duty to grant full civil liberty when that is possible (because civil liberty is appropriate to man's dignity), and that it also has a duty to do what it can to make that possible (for the same reason). Because freedom of thought and freedom of expression are not quite the same thing, the argument requires one more assumption to be a defense of free expression:

The public use of man's reason must always be free, and it alone can bring enlightenment among men ["enlightenment" being for Kant the freeing of one's thought]. . . . But by the public use of one's own reason I mean that use which anyone may make of it *as a man of learning* addressing the entire *reading public* [as opposed to]. . . the private use of reason. . . which a person makes. . . in a particular *civil* post or office with which he is entrusted.⁴

The argument thus moves from man's dignity to civil liberty in general, from there to free thought in particular, and only then to free (public) expression. The argument seems to use very strong assumptions for a relatively weak conclusion. The assumption that a government has a duty to grant full liberty when it can seems itself to imply that it should grant freedom of expression now if it can, whatever good consequences may or may not follow. This second argument, though it moves recognizably among ideas distinctly Kantian, is still not what we would expect of Kant. Yet, at least one writer has treated it as *the* Kantian argument for freedom of expression.⁵

3. The argument from civil liberty appears beside (what we may call) the "argument from natural right." This third argument is just what we might expect from Kant (and is, in fact, assumed by the argument from civil liberty):

... [To] renounce such enlightenment completely, whether for our person or even more so for later generations, means violating and trampling under foot the sacred rights of mankind. But something which a people may not even impose upon itself can still less be imposed on it by a monarch; for his legislative authority depends precisely upon his uniting the collective will of the people in his own.⁶

This argument, like the previous one, assumes a connection between enlightenment and the public use of reason. But, once that assumption is made, the argument immediately yields both a duty in each individual to seek enlightenment and a duty in the government not to stand in the way by restricting what a subject can say in public. The argument does not require any assumption about what government may wish, nor does the argument depend upon any contingent connection between free expression and the prosperity of society, wisdom of government, or preparation for civil liberty. The argument does, however, require (something like) the theory of legitimacy Kant develops in *The Metaphysical Elements of the Theory of Right*. The just powers of government are limited by the idea of the original contract. What all citizens could not rationally agree to must be beyond the just powers of the government.

If there is a weakness in this argument, it is in that flat appeal to justice. The weakness is at least practical. A government may not be concerned with justice. If it is not, an argument from "sacred right" will (by itself) be unappealing to it. It will be merely formal. Unlike the two consequentialist arguments discussed above, this argument does not seem to provide government with a motive (in addition to justice) for acting against its inclinations.

4. The fourth argument I have identified, though almost as Kantian as the third, does provide such a motive. The argument turns upon what a government can consistently will:

[The] citizen must, with the approval of the ruler, be entitled to make public his opinion on whatever of the ruler's measures seem to him to constitute an injustice against the commonwealth. ... [To try to deny] the citizen this freedom. ... means withholding from the ruler all knowledge of those matters which, if he knew about them, he would himself rectify, so that he is thereby put into a self-stultifying position. For his will issues commands to his subjects (as citizens) only in so far as he represents the general will of the people. But to encourage the head of state to fear that independent and public thought might cause political unrest is tantamount to making him distrust his own power and feel hatred toward his people.⁷

Let us call this argument "the argument from contradiction." The argument, though concerned with error as much as the argument from public philosophizing discussed above, differs from that argument in being concerned with the *possibility* of error rather than with the *effects* of error. The argument is concerned with what *can* be willed, not with what will actually happen. The argument is "Kantian" in a way that the first consequentialist argument is not.

As Kant presents it, the argument from contradiction assumes (something like) his theory of legitimacy (just as the argument from natural right did). The ruler is supposed to "represent the general will of the people." The argument provides government with a motive for doing what justice in fact requires (as well as with a reason to act justly from a sense of duty) because (it may be assumed) no government wishes to put itself in a "self-stultifying position." What I shall argue in Section III is that something much like this argument can be made without Kant's theory of legitimacy, that the new argument seems to be quite powerful, and that its power should be as great in Moscow or Peking as in Washington or Paris. But, before I can argue that, I must, I think, present the argument as Kant made it, explain *its* power within Kant's political philosophy, and so prepare us to rethink the argument outside Kant's political philosophy. The argument from contradiction has, I think, been overlooked in part because its central notion (what I shall--with a nod to Edmund Burke--call "virtual participation") is not at all familiar.

II. The Argument from Contradiction as Kant Makes It

The argument from contradiction does not defend all freedom of expression. Like two of the three arguments already discussed, it defends only a subclass of such expression. The argument from contradiction is a defense only of the public use of reason concerned with the just exercise of public power. The freedom of expression must not "transcend the bounds of respect and devotion toward the existing constitution."⁸ Opposition must be "loyal opposition."

The freedom of expression defended is, I believe, not substantially more circumscribed than that. In particular, though Kant's language usually suggests that he is concerned only with *written* expression (note, for example, his use of "*reading public*" in the argument from civil liberty), there is nothing in any of his arguments to confine them to such expression. So, I shall assume hereafter that, just as we often describe as "*free speech*" what a reporter or novelist *wrote* (and published), so Kant intended his arguments to protect spoken as well as written expressions of public reason. I shall hereafter use the word "debate" (or, for emphasis, the words "public debate") for both written and spoken expression satisfying Kant's other requirements. By "censoring," I shall mean restricting such debate (*beyond* the limits Kant sets). I shall *not* be concerned with restricting debate to keep it within the bounds of respect for the constitution, to preserve its reasonableness, or to hold it to the subject of the *just* exercise of public power.

The argument from contradiction appears in the "Conclusions" of the second part of Kant's essay "On the Common Saying: 'This May be True in Theory but it does not Apply in Practice.'" That part bears the title "On the Relationship of Theory and Practice in Political Right"

(with the subtitle "Against Hobbes"). The main section of that part briefly foreshadows the analysis of the original contract, civil society, and political obligation to be found in the later *Metaphysical Elements of the Theory of Right*. The "Conclusions" are applications of that "theory" to the practical question of the relationship between revolution and the actual constitution of the state. As in *The Theory of Right*, Kant recognizes that subjects have (non-coercive) rights against the ruler but declares any attempt to enforce those rights by resisting the ruler to be immoral. The argument from contradiction provides the last conclusion Kant draws in this part of his essay. He seems to take the argument very seriously. "[Freedom] of the pen," he observes, "is the only safeguard of the rights of the people. . ."⁹ Let us begin our study of the argument by examining those three pages closely.

"[The] citizen must," Kant says in the passage already quoted, "with the approval of the ruler, be entitled to make public his opinions on whatever of the ruler's measures seem to him to constitute an injustice against the commonwealth."¹⁰ To the question, why "must" a ruler (or government) approve such a right, Kant replies first (in a sentence omitted from the passage quoted) that "to assume that a head of state can neither make mistakes nor be ignorant of anything would be to imply that he receives divine inspiration and is more than a human being."¹¹ Such an assumption seems sufficiently absurd for Kant to put aside the possibility that any rational ruler (of a civil state, at least) might accept it. The ruler must then recognize the *possibility* that in any particular matter before him he may be ignorant of a crucial fact or may make a mistake even if he has all the facts. This recognition does not, however, seem to entail that the ruler "must" concede to his subjects the right to criticize his acts. All it seems to entail is that a ruler may stand to benefit from public debate in one way. It leaves open the possibility that he stands to benefit from censorship in others. That open possibility invites some cynical questions. Must a ruler not sometimes at least stand to benefit more from censorship? For example, if he makes a mistake, would a ruler not be more likely to preserve his subjects' respect if he kept them from hearing of it?

To such cynical questions, Kant makes, it seems to me, a *double* reply. Both parts attempt to provide a decisive motive for not censoring (rather than simply showing once again that censorship is morally wrong). The first half of the reply is that "to deny the citizens this freedom. . . means withholding from the ruler all knowledge of those matters which, if he knew about them, he would himself rectify. . . [for] his will issues commands to his subjects. . . only insofar as he represents the general will."¹² Free debate will, Kant seems to say, keep a ruler from doing what he does not (and should not) wish to do. The second half of the reply is that "to encourage [the ruler] to fear that independent and public thought might cause political unrest is tantamount to making him distrust his own power and feel hatred towards his people."¹³

self-assurance. What are we to make of this double reply? At first it seems to be no reply at all (and that may explain why it has been overlooked). If, for example, someone wanted to be a tyrant, he might, it seems, prefer to censor debate, replace as much as he can of the rest rather than have his use of spies, and put up with the loss of the information so lost by people know what he was up to. His subjects' vague distrust may well seem preferable to their outraged certainty. Kant has, it may seem, no reply for such a ruler.

If we understand by "tyrant" a ruler who does injustice ("to the commonwealth") either for the sake of doing injustice or for some private advantage, it is fair, I think, to say that Kant was not concerned to reply to tyrants. His was the age of Frederick the Great and Louis XVI, not of Caligula or Idi Amin. Kant's concern was "despotism," that is, ruling for the good of one's subjects but without regard to their rights. The despot is paternal, not predatory. His is an "attitude of good will," though he does not will the good.¹⁴ Still, it would not be fair to say that Kant has nothing to say to the would-be tyrant (though he, like everyone else, might be at a loss what to say to the tyrant already so deep in blood that he must continue killing just to survive). What tyrants and despots have in common is more important than what distinguishes them. Both want to remain in power. Both rule in a way violating their subjects' "sacred rights." Both renounce in practice all claim to legitimacy though they want to hold on to what in theory only legitimacy entitles them to. These common elements have, for Kant, grave practical consequences as well as (and because of) their theoretical consequences. To be a tyrant or despot is, for Kant, "self-stultifying" in a sense even a merely prudent ruler might find decisive. Before we can see why that should be so, we must remind ourselves of certain special features of Kant's political philosophy.

Reason is as central to Kant's political philosophy as it is to his philosophy in general. For Kant, the foundation of government is an idea of reason, the "original contract," that is, the "coalition of the wills of all private individuals in a nation to form a common, public will for the purpose of rightful legislation."¹⁵ The original contract is not an empirical fact. It tells us not what happened but what reason requires. The original contract provides a way to understand civil society consistent both with our freedom as moral agents (our "sacred rights") and with the law's power to coerce us. The original contract does this by limiting rightful legislation to those laws to which all rational agents subject to it can agree:

[A] public law which defines for everyone that which is permitted and prohibited by right, is an act of a public will, from which all right proceeds and which must not therefore itself be able to do an injustice to anyone. And this requires no less than the will of the entire

people (since all men decide for all men and each decides for himself). For only towards oneself can one never act unjustly.¹⁶

Because the original contract is an idea of reason rather than an empirical fact, it is irrelevant for the purposes of legitimacy whether everyone does in fact agree to the actual constitution of a state. A government is legitimate if all *would* agree insofar as they are rational. What rational agents would agree to insofar as they are rational is binding on all *insofar* as they are rational, actual agreement or no.

The original contract provides the ruler with "an infallible *a priori* standard of just legislation," for "so long as it is not self-contradictory to say that an entire people could not agree to such a law, however painful it might seem, then the law is in harmony with right."¹⁷ A ruler who departs from that standard acts beyond his rightful power. Such an act is illegitimate. The ruler does not, however, by acting illegitimately, free his subjects from their duty to obey him. His departure from justice is an empirical fact, but the original contract is an idea of reason. As long as he is their ruler, however unjust he becomes, that idea of reason directs his subjects to treat him as if he observed the contract:

The reason for this is that the people, under an existing constitution, has no longer any right to judge how the constitution should be administered. For if we suppose that it does have this right to judge and it disagrees with the judgment of the actual head of state, who is to decide which is right? Neither can act as judge in his own cause [without injustice]. Thus there would have to be another head above the head of state to mediate between the ruler and the people, which is self-contradictory.¹⁸

Thus, for Kant, once one has entered civil society, one must, on pain of contradiction (or doing injustice--which, given the categorical imperative, amounts to the same thing here), suffer injustice rather than resist, no matter how tyrannical or despotic the government may in fact become. Insofar as one is rational, one is obliged to submit.

If asked why any rational person would agree to enter civil society on such terms, Kant would answer that he would agree because there is no rational alternative. Kant does not discuss the alternative in the essay we are now considering. He does that in *The Theory of Right*. But, that discussion illuminates the passage we are now considering.

For Kant, the only alternative to civil society is the state of nature. The state of nature is not necessarily a state of war or of injustice. What it is necessarily is a state *without* justice. It is a state without justice because it is a state without a "competent judge to pronounce legally valid decisions" (and there can be no justice where there is no judge competent to enforce right).¹⁹ Because there is no competent judge, everyone is free to "use force to impel the others to abandon this state for a state of right."²⁰ Even a rational person will use such means, if necessary, for that purpose because as soon as he finds himself in the state of nature

. . . the first decision the individual is obliged to make, if he does not wish to renounce all concepts of right, will be to adopt the principle that one must abandon the state of nature

in which everyone follows his own desires, and unite with everyone else (with whom he cannot avoid having intercourse) in order to submit to external, public and lawful coercion. . . . In other words, he should at all costs enter into a state of civil society.²¹

Because the alternative to civil society is a state of affairs without justice, the "right" to remain in such a state, like the "right" to throw everyone back into such a state by revolution, is self-contradictory. The appeal to such a right is an appeal to justice. But there is no justice outside civil society and in civil society there can be no right to end civil society even if the purpose is to make a juster society. To "renounce all concepts of right" is to deny justice to others and no one has the right to do that. For Kant, then, the original contract is "made" the minute rational agents have *any* sort of government over them and endures so long as there is any government at all.

Such a conception of the original contract makes the state different from what it might otherwise be. For our purposes, it is worth noting three distinctive features of Kant's state.

First, the state is necessarily a community. The state is a relationship among rational agents. Insofar as each is rational, he shares certain values with everyone else. Because those values include the idea of the original contract (and ordinary morality), they are exactly those values upon which everyone can act without coming into conflict with the moral freedom of any other.

Second, the state cannot, acting within the contract, wrong any of its citizens except by mistake. It cannot because, insofar as the state is itself the consequence of "pure rational principles of external human right", its public law cannot be concerned with anything more than making the freedom of each harmonize with the freedom of the rest.²² And while it succeeds in doing that, it cannot (by definition) do wrong.

Third, the state will be a "relationship among *free* men who are subject to coercive laws."²³ They will be free in that they will obey what is in accordance with their own (rational) will. They need not actually legislate for themselves. It is enough that, as rational agents, they might so have legislated.²⁴ The laws will be coercive in that they will compel subjects insofar as they are *not* rational. Kant here follows the classical (and often criticized) tradition of understanding the state to be a rational and moral, as well as a pacifying, force. But he gives that tradition a peculiarly Kantian twist. The rational and moral aspect of the state is an idea of reason not necessarily realized to any great extent by this or that actual state.

We can now restate Kant's double reply to our cynical questions about the possible advantages of censorship.

The first half of that reply emphasized the importance of *not* censoring. The ruler commands *only* because he represents the general will. To censor debate would be to deny him information needed to represent the general will. Therefore, a ruler who censors public debate to preserve his power to command does what he does not want to do. He

compromises his power to command. The act of censoring to preserve one's power to command is self-contradictory.

As the first half of Kant's reply emphasized the importance of not censoring, so the second half emphasizes the importance *of* censoring. If a ruler wants to hide what he is doing, he must be afraid of what people will think if they knew. He must be especially afraid of their coming to distrust his motives or judgment. But censorship itself necessarily generates such distrust among rational persons. So, the ruler who censors public debate to preserve his people's trust necessarily brings about what he meant to prevent. The act is self-contradictory.

What is the force of this double reply: Insofar as a people are rational, they know the terms of the original contract as well as their ruler does. In particular, they know that, because their ruler needs public debate in order to act in accordance with the general will, they could not consent to censorship and so, that his imposing censorship violates their rights. They must also suppose that their ruler knows that. He is in the same position to know the terms of the original contract as they, since he too is rational. So, when their ruler imposes censorship, they must take that act both as itself a violation of their rights and as an admission of other wrongdoing as well. The censorship itself is enough to put in question both the ruler's good will and his past acts. Insofar as his subjects are rational, a ruler's censorship instills in them a distrust at once specific and certain. If the purpose of censorship is to preserve the trust of the people, censorship is self-defeating.

Kant's double reply now has a certain cogency it did not have before. Even a would-be tyrant would have to admit that, insofar as his subjects are rational, censorship is self-defeating and that he would be better off permitting public debate and finding some other way to conceal his wrongdoing. Still, the argument is not yet all that cogent. There is something too philosophical about it, too much talk of what is rational. We can well imagine some would-be tyrant remarking to himself after hearing the argument, "If that is what it would mean to have rational subjects, I thank my lucky star for the wild, half-rational fools I in fact rule." And we might well suppose that Kant did not imagine such a possibility. But, as a matter of fact, he did. Though his language shows his concern to be despots rather than tyrants, the following objection he raises is plainly the one we just imagined:

The only objection which can be raised against this is that, although men have a mental notion of the rights to which they are entitled, their intractability is such that they are incapable and unworthy of being treated as their rights demand, so that they can and ought to be kept under control by a supreme power acting purely from expediency.²⁵

To this objection Kant makes the following short but suggestive response:

But this counsel of desperation. . . means that, since there is no appeal to right but only to force, the people may themselves resort to force and thus make every legal constitution

insecure. If there is nothing which commands immediate respect through reason, such as the basic rights of man, no influence can prevail upon man's arbitrary will and restrain his freedom.²⁶

How does this response meet the objection?

The response, though suggestive, is only suggestive as it stands. We cannot easily make out what Kant is getting at. The response is not an appeal to any right of revolution (though there is certainly a threat of revolution in it). To appeal to any such *right* would (as we have seen) presuppose rational agents and it is just the point of the objection that the subjects are "incapable. . . of being treated as their rights demand". The response is also not an appeal to what would happen if one ruled over mere unthinking animals. Human beings, however debased, are never that debased (at least not while they maintain any kind of government). And, anyway, government does not exist among mere unthinking animals (at least in a sense of interest here). The response is equally not an appeal to any "law of the jungle". No political questions arise unless there is a government of some kind. What then did Kant have in mind? It seems to me that he must have had in mind some interplay between what subjects are insofar as they are rational and what they are insofar as they are not. Given what Kant says here and in his other defenses of free expression, he might, I think, reasonably be supposed to be making something like the following argument:

By acting against his duty and his subjects' rights, the ruler who censors public debate puts himself (to that extent) outside the community to which his subjects belong insofar as they are rational. To say that is not to say that his subjects have a right to revolt in consequence. Insofar as they are rational, his subjects have a duty to submit to the censorship; and insofar as they are not rational, they can have no rights at all. What it is to say is that, insofar as he acts wrongly, the ruler may *provoke* acts as wrong as his own. His wrongful acts may provoke wrongs from his subjects not insofar as they are rational but insofar as they are not. Insofar as his subjects are not rational (in Kant's special sense connecting reason and morality), the ruler cannot call upon their sense of duty, only upon their interests and fears. For this reason, the cynical recommendation to depend upon the irrationality of one's subjects is a "counsel of desperation". "Expediency" is an uncertain guide in a way reason is not. To depend upon one's subjects' interests and fears is to be reduced to the desperate calculations of the Hobbesian sovereign. A prudent ruler would not want to be reduced to such a condition.

That may seem enough to dispose of our cynical questions, but there is, I think, a little more. Giving up the protection of reason may, we might suppose, sometimes be prudent in the short-run. But, Kant would say, ultimately it cannot even be that. What we called the argument from civil liberty can be reversed. Just as public debate would prepare subjects for full civil liberty by training them in the use of public reason, so (it seems) censoring public debate would tend to weaken the

subjects' reasoning power by denying the public space necessary for its exercise. The ruler himself sets a bad example by acting against reason and then so arranges his domain that there is nothing to compensate for his example. Censorship thus does not leave the subjects as they were but actually tends to make them less reasonable. The spreading darkness must in time weaken the rational community upon which the ruler's legal power (and therefore much of his actual power) depends. Censorship courts revolution. The revolution occurs only when the state can no longer call upon the rationality of its subjects for defense. A revolution is not (on this analysis) so much the overthrow of a state as its breaking up once enough of the foundation has rotted. That, of course, is not to say that censorship, however severe, inevitably leads to revolution. The consequences of one's acts cannot be foretold with certainty, though their tendency can be demonstrated. Inertia may, as a matter of fact, serve in place of reason, people coming to prefer a "passive state to the dangerous task of looking for a better one".²⁷ No doubt such passivity is more likely in an old despotism than in a new tyranny. And no doubt too, in both, the ruler would have to take care not to do anything to shake his people out of their passivity. But, however that may be, the ruler who censors debate has lost one important prop of power. He has lost the capacity to call upon his subjects' rationality.

III. The Argument from Contradiction without Kant

That is the argument from contradiction as Kant made it. What contribution can it make to contemporary discussions of free expression? Let us begin our answer by stating what the argument seems to achieve for Kant. We may, I think, fairly put the achievement this way:

Rousseau thought that the state could make free individuals and good citizens only insofar as each citizen participated in the actual legislating, that this could not be unless the people itself was the legislature, and that any state in which the people was not the legislature was illegitimate. Because he thought that, Rousseau had to condemn representative government just as he did despotism and tyranny. Though Kant attached the same importance to making free individuals and good citizens, he could not accept an analysis like Rousseau's that makes all sorts of apparently good governments into deceptive chains. There seemed to him to be an important *political* difference between Frederick the Great and, say, Ivan the Terrible. For that reason, he also could not accept Hobbes' suggestion that all governments are equally legitimate because in all the original contract makes the ruler the representative of the people and so gives him the right to bind them however he wishes (so long as he does not try to kill them). Kant conceived an alternative: The people and the ruler may be distinct (as in Hobbes). The people should nevertheless participate in the making of

law (as in Rousseau). But they may do so *virtually* even though they cannot do so actually (virtual participation being quite different from representation). The people has a right to that participation, but the right is not enforceable. A government that does not recognize the right is illegitimate and unwise, but its subjects have no right to resist it. The argument from contradiction both provides an argument for censorship being unwise (because it is self-defeating) and offers a mechanism by which any government can satisfy the requirement of popular participation in legislation (*without* changing the *form* of government). Public debate is Kant's means of giving great states the virtues of Rousseau's democracy.²⁸

Putting Kant's political philosophy to one side, how might we restate the argument from contradiction while preserving this achievement? Here is my suggestion:

If a ruler (or government) concedes to people the right to engage in public debate free of censorship, to have whatever information the debate generates, and to make whatever criticism of official acts may seem reasonable based on that information, he (or it) will be more likely to make rational decisions (that is, decisions to which rational persons subject to those decisions might be supposed to agree). So long as he is not a tyrant, a ruler loses nothing he values by that concession. The people will usually, after study and debate, reach the same decision he has (sometimes before and sometimes after he has). Insofar as that is so, his decisions will correspond to what the people want and will seem to be theirs. The decision will seem to be the people's because they have gone through the same reasoning as their ruler has and come to the same decision (though their decision has no legal force). That seeming is not a trick but the reflection of a deeper reality. The correspondence between the ruler's decision and the people's is not (except for tyrants) a mere contingent fact. The ruler and people came to the same decision because they both aimed at the public good and reasoned accordingly. What moved them, moved him. Because they have participated in his decision virtually, they can see that it is not arbitrary.

On those rare occasions when the ruler and people disagree, the ruler might--if he believes that he is certainly right, that is, that his people will later agree with him--act as he believes right, giving his reasons. The lasting (though not the immediate) effect of his action would be to strengthen his warrant. If it turns out that he was right, his subjects would come to recognize him as an authority to whom, on such matters, they should defer. If, however, it turns out that he is wrong, he should admit the error. Such deference to reason would strengthen his warrant (provided he does not then repeat the error). He would show that he knew what he was supposed to do and that he could tell when he had failed. If the ruler is not certain he is right, he should yield to his subjects' reasoning, since they too are rational and capable of judging. If it is clear that he yields to their arguments (or to their authority), that too

should strengthen his warrant by showing his good will and by setting a good example of reasonable behavior. The ruler can teach his people to be reasonable (in part) by himself respecting their reasoning.

The more a people participate in public debate, the more reasonable they will become. The more reasonable a people, the more complete the community. The more complete the community, the stronger the state. The stronger the state, the more secure the ruler. Even a tyrant would do well to pay to public debate that deference vice is said to pay to virtue. If he cannot avoid censorship without giving up what he aims at, he should at least try to avoid the appearance of censoring, hard as it may be to do. To be seen to censor is to make one's position insecure.

That, I think, is the argument from contradiction without Kant. As it stands, it is not at all the same argument. What is strikingly missing is the contradiction. To make the argument again an argument *from* contradiction (without making it again Kant's argument), we must make it an argument *ad hominem* (in a non-fallacious way). We must, that is, address the argument to a ruler or government accepting certain assumptions. I shall now state those assumptions (or, rather, the ones I suppose most likely to raise eyebrows), making plain both what they amount to and why I think it reasonable to suppose most rulers would share them:

1. *That the government is fallible.* Few governments today believe themselves to be infallible. Even those claiming "scientific" knowledge of what should be done admit that they may be mistaken about "material conditions."

2. *That the people may (as individuals) have information relevant to decisions of public policy that the government may have missed.* Any government willing to admit its own fallibility should be willing to admit that someone outside the government may have a piece of information the government could use. The interesting question is, I suppose, how often individuals are likely to have such information when the government does not (and how valuable such information would prove). The assumption should be read as claiming that it will be often enough (and valuable enough) to be worth taking into account.

3. *That the government aims at the common good* (whatever that might be). The common good need not be understood as the sum of the good of each individual, but it must be understood as something good for individuals or as some end individual subjects have in common. Perhaps there are today governments that would not satisfy this assumption, their aim being to aggrandize the rulers themselves, to serve some class of persons outside the country they rule, or to institute some ideal their subjects do not share. Such governments would be tyrannies (in the sense we have been using the word). The argument would not be addressed to them (except insofar as it might give them reason not to appear to censor). If, however, a government's aim is to serve a class of persons within the country smaller than the entire population but much

greater than the class of rulers, the assumption may be satisfied, but "its people" would be restricted to that class. The argument would justify permitting that class (but not the entire population) to participate in free debate.

4. *That the people are not children but relatively sensible adults much like those in the government.* While assumption 1 might be derivable from this one, this one makes a different point. Its point is that the people are sensible (as well as informed). In some countries, the government may be willing to make this assumption only about the educated. For our purposes, that does not much matter so long as the educated include people beyond the government itself, especially academics and writers. The arguments would then apply only to censoring the educated when they debate public policy among themselves.

5. *That deliberation in common is at least somewhat more likely to yield a better decision than solitary deliberation* (supposing there to be time for such deliberation). "Common deliberation" is not meant to exclude any particular decision rule. Even a general who decides alone after listening to staff debate various options, deliberates in common (in the sense relevant here). "Common deliberation" also does not mean "*public* deliberation." The point of this assumption is just to recognize the advantages of deliberating in common with others. Only a ruler who believes exclusively in intuition or divine inspiration would, I think, reject this assumption.

6. *That those closest to a decision-maker are often those least likely to speak frankly to him.* If this assumption is accepted, then a ruler has reason to believe that on many questions, the only way really to deliberate in common is to listen to public debate (since deliberating only with those close to one may be very much like deliberating alone). Why accept this assumption? Most persons in a position to make or break those they consult have, I think, noticed how slow those they consult are to say anything that might seem foolish, show them not to be a "team player," or just turn out not to be what the person consulting wanted to hear. This assumption is the most controversial of all. But it is, nevertheless, among the easiest to prove (or disprove).

7. *That public debate enhances the ability of individuals participating in it to think about the relation of public policy to the common good.* This is one of those claims about the relation between doing and knowing that, I think, most people accept.

8. *That people are more likely to cooperate with policies insofar as they recognize them as serving the common good.* People are, it seems, better able to cooperate when they understand what they are trying to accomplish and more willing to cooperate when they can see how the policy benefits them or those they are concerned about.

It is, I take it, pretty easy to see how a ruler who accepted these eight assumptions (and the usual background assumptions of common sense)

could engage in a general policy of censorship only on pain of (at least implicit) contradiction. To a philosopher, that may itself make the argument seem decisive. After all, for a philosopher to be caught in contradiction is much like a Catholic priest being caught naked behind the altar committing adultery with a parishioner's wife. There just does not seem to be much left to say. But, for a ruler, to be caught in a contradiction may be no more painful than for a physicist to be caught with an entity that is a particle for some purposes and a wave for others. The discovery makes things interesting, but everything remains to be said. For a ruler, the contradiction the argument from contradiction reveals may at first seem just one more cost of doing business--and not much of a cost at that.²⁹

Because a ruler may not find the pain of contradiction all that painful, it is important to notice that our reconstruction of the argument from contradiction (like Kant's original) does more than demonstrate a contradiction among a ruler's beliefs. The argument also purports to demonstrate that a policy of censorship is *self-defeating* if the policy is supposed to serve the common good. A ruler who both accepts the eight assumptions and adopts a policy of censorship to serve the common good is defeating himself and has the information available to realize that. While rulers in general have, I think, a high tolerance for contradiction, they do not have much tolerance for defeating themselves. Only under the rarest of circumstances would a ruler adopt a policy he knows to be self-defeating. That is as true in Moscow or Peking as in Washington or Paris.³⁰

The argument from contradiction as reconstructed certainly has its forebearers and contemporary cousins. Mill, of course, long ago stressed the role of free speech in enlightening the government and cultivating the private intellect. He even had some good things to say about participating in public affairs.³¹ Rawls has pointed out the connection between liberty in general and self-government, self-respect, and the maintenance of a just society.³² Carl Cohen has even argued for an unqualified right to free speech in a democracy with an argument similar to the argument from contradiction.³³ But no one else has, I believe, proposed Kant's argument from contradiction (or our reconstruction). Focus on *representative institutions* seems to have blinded everyone to the possibilities of *virtual participation*, and it is virtual participation which distinguishes the argument from contradiction from its many relatives.

NOTES

¹ An earlier version of this paper was read before the Philosophy Colloquium, Illinois State University, 4 November 1981. I should like to thank those present for their comments. I should also like to thank my colleague Clark Zumbach for help with the punctilios of Kantian scholarship, Mary Gregor for calling my attention to *The Conflict of the Faculties* as another source of the ideas discussed here, and Frank Grace for first

introducing me to Kant's political writings in the fall of 1966 (when such things were not taught in the Philosophy Department).

² "Perpetual Peace", in *Kant's Political Writings*, ed. Hans Neiss and trans. H. B. Nisbet (University Press: Cambridge, 1970), p. 115 (VIII, 369). The parenthetical notation gives the corresponding volume and page in the standard *Königlich Preussische Akademie der Wissenschaften* edition of Kant's works. I shall hereafter use this double citation for the convenience of scholars (who will want to check the original) and nonscholars (who may wish to check the translation I used).

³ "An Answer to the Question: 'What is Enlightenment?'" in *Kant's Political Writings*, pp. 59-60 (VIII, 41-42).

⁴ *Ibid.*, p. 55 (VIII, 37). Compare this with the following passage from Kant's "What Is Orientation in Thinking?":
How much, and how correctly, would we think if we did not think as it were in common with others, and with whom we mutually communicate? Thus one can well say that the external power which rests from one the freedom publicly to communicate his thoughts also takes away the freedom to think.

⁵ Donald Meiklejohn, "Kantian Formalism and Civil Liberty", *Journal on Philosophy* (University of Chicago Press: Chicago, 1949), p. 287 (VIII, 141).

⁶ "What is Enlightenment?", p. 58 (VIII, 40).

⁷ "On the Common Saying: 'This May Be True in Theory, but it Does Not Apply in Practice'", in *Kant's Political Writings*, pp. 84-85 (VIII, 304). Another recent version translates the German as "contradiction with himself" rather than as "self-stultifying". See Immanuel Kant, *On the Old Saw: That May be Right in Theory But It Won't Work in Practice*, trans. E. B. Ashton (University of Pennsylvania Press: Philadelphia, 1974), p. 72. In general, Ashton's translation is closer to the German; Nisbet's, closer to English.

While I follow Reiss in using "self-stultification" for "ihn mit sich selbst in widerspruch setzen", I must admit that it seems to me that "contradiction with himself" would have made the passage both sharper and more accurate. I have stuck with Reiss to keep terminology consistent throughout the paper and to make checking references convenient.

⁸ *Kant's Political Writings*, p. 85 (VIII, 304).

⁹ *Ibid.*, p. 84 (VIII, 304).

¹⁰ *Ibid.*, p. 85 (VIII, 304).

¹¹ *Ibid.*, p. 74 (VIII, 290-291).

¹² *Ibid.*, p. 79 (VIII, 297).

¹³ *Ibid.*, p. 77 (VIII, 294).

¹⁴ *Ibid.*, pp. 80-81 (VIII, 299).

¹⁵ *Ibid.*, p. 81 (VIII, 299-300). Cf. p. 75 (VIII, 291). While Reiss accepts this interpretation of Kant for traditional despotisms and tyrannies, he rejects it for modern totalitarian governments. He has, I think, here misrepresented Kant. See "Kant and the Right of Rebellion", pp. 190-191.

¹⁶ *Kant's Political Writings*, p. 137 (VI, 312).

¹⁷ *Ibid.*, pp. 137-138 (VI, 312).

¹⁸ *Ibid.*, p. 137 (VI, 312). Cf. p. 73 (VIII, 289-290).

¹⁹ *Ibid.*, p. 74 (VIII, 290).

²⁰ *Ibid.*, p. 73 (VIII, 290).

²¹ *Ibid.*, p. 84 (VIII, 304). Consider, for example, the following two sentences finishing off the argument from contradiction.

In every commonwealth, there must be *obedience* to generally valid coercive laws within the mechanism of the political constitution. There must also be a *spirit of freedom*, for in all matters concerning universal human duties, each individual requires to be convinced by reason that the coercion which prevails is lawful, otherwise he would be in contradiction with himself.

²⁵ Ibid., p. 86 (VIII, 306).

²⁶ Ibid., pp. 86-87 (VIII, 306).

²⁷ Ibid., p. 86 (VIII, 306).

²⁸ The same idea appears in "An Old Question Raised Again: Is the Human Race Constantly Progressing?":

A being endowed with freedom in the consciousness of his superiority over the irrational animal, can and should therefore, according to the formal principle of his will, demand no other government for the people to which he belongs than one in which the people are co-legislative; that is, the right of men who are supposed to obey must necessarily precede all regard for well-being, and this right is a blessing that is exalted above all price (of utility), and one upon which no government, however beneficent it may persistently be, is permitted to infringe. But this right is still always only an Idea of which the realization is restricted to the condition of accord of its means with the morality which the nation may not transgress; and this may not come to pass through revolution which is always unjust. To rule autocratically and yet to govern in a republican way, that is, in the spirit of republicanism and on an analogy with it—that is what makes a nation satisfied with its constitution.

In *The Conflict of the Faculties*, translation and introduction by Mary J. Gregor (Abaris Books, Inc.: New York, 1979), p. 157 note (VII, 87). The same point is made again (but less fully) at p. 159 (VII, 88) and p. 165 (VII, 91).

²⁹ I owe this point about rational individuals to a discussion with my colleague, Gregory Trianosky-Stillwell, but I myself made the same point about deliberative bodies several years ago. See "Avoiding the Voter's Paradox Democratically", *Theory and Decision*, vol. 5, no 3 (October, 1974), pp. 295-311. For a recent and important work where the possibility that *implicit* contradiction might *not* be a decisive reason (much less a decisive motive) needs to be considered (separately from the question of "express" contradiction), see Alan Gewirth, *Reason and Morality* (University of Chicago Press: Chicago, 1978), especially pp. 191-198.

³⁰ I might point out that, if the argument shows this much, it may also show somewhat more. Censorship is just one way to end public debate. Another way is to deny participants the information to speak intelligently and then remind them of their ignorance when they choose to speak. The argument seems, then, also to be an argument against governmental secrecy as a general policy aimed at serving the common good. The class of exceptions would have to be worked out on analogy with exceptions to the prohibition of paternalism.

³¹ John Stuart Mill, *On Representation* (Henry Regnery Company: Chicago, 1962), pp. 70-74. Mill's participation is, however, only the participation of representatives (not the virtual participation of the people as a whole). See, example, pp. 111-114.

³² John Rawls, *A Theory of Justice*, (Harvard University Press: Cambridge, 1971), pp. 234, 541-548, and elsewhere.

³³ Carl Cohen, *Democracy* (University of Georgia Press: Athens, 1971), pp. 139-143.