

'All Politics must bend its knee before Right': Kant on the Relation of Morals to Politics

1. Introduction¹

Kant argues that "all politics must bend its knee before right" (PP: 8:380), and this means that "right must never be accommodated to politics, but politics must always be accommodated to right" (SRL: 8:429).² Kant's uncompromising stance on the relation of morals to politics has often been branded unrealistic and impractical. Indeed, it has often been argued that putting Kantian morality into political practice would, according to Alasdair MacIntyre, amount to "a dereliction of political duty".³ While justice (and morality) can afford to be blind, politics must keep its eyes wide open. Does this accusation of naïve impracticality against Kant stand up to criticism?

There are (at least) three general ways that we can conceive of the relation between morals and politics. On the idealist tradition, of which Kant is an exemplar, morals trumps or underwrites politics. On the realist tradition, of which Machiavelli and later Carl Schmitt are exemplars, politics trumps or overrides morals.⁴ On what can be called the negotiator tradition, of which Max Weber and later Jacques Derrida

¹ Abbreviations used for Kant's work are: CJ -Immanuel Kant, *Critique of the Power of Judgment*, ed. Paul Guyer, trans. Paul Guyer and Eric Matthews (Cambridge: Cambridge University Press, 2000). GW - Immanuel Kant, "Groundwork of the Metaphysics of Morals," in *Practical Philosophy*, ed. Mary J Gregor (Cambridge: Cambridge University Press, 1996). LE - *Immanuel Kant, Lectures on Ethics*, ed. Peter Heath and J B Schneewind, trans. Peter Heath (Cambridge: Cambridge University Press, 1997). MM -Immanuel Kant, "The Metaphysics of Morals," in *Practical Philosophy*, ed. Mary J Gregor (Cambridge: Cambridge University Press, 1996). SRL - Immanuel Kant, "On a Supposed Right to Lie from Philanthropy," in *Practical Philosophy*, ed. Mary J Gregor (Cambridge: Cambridge University Press, 1996). TP - Immanuel Kant, "On the Common Saying: That May Be Correct in Theory, but It Is of No Use in Practice," in *Practical Philosophy*, ed. Mary J Gregor (Cambridge: Cambridge University Press, 1996). REL - Immanuel Kant, "Religion within the Boundaries of Mere Reason," in *Religion and Rational Theology*, ed. Allen Wood and George Di Giovanni (Cambridge: Cambridge University Press, 1996). CF - Immanuel Kant, "The Conflict of the Faculties," in *Religion and Rational Theology*, ed. Allen Wood and George Di Giovanni (Cambridge: Cambridge University Press, 1996). PP - Immanuel Kant, "Toward Perpetual Peace," in *Practical Philosophy*, ed. Mary J Gregor (Cambridge: Cambridge University Press, 1996). WOT - Immanuel Kant, "What Does It Mean to Orient Oneself in Thinking?," in *Religion and Rational Theology*, ed. Allen Wood and George Di Giovanni (Cambridge: Cambridge University Press, 1996). WE - Immanuel Kant, "An Answer to the Question: What Is Enlightenment?," in *Practical Philosophy*, ed. Mary J Gregor (Cambridge: Cambridge University Press, 1996).

² In my interpretation of Kant I shall emphasise certain texts (including the *Lectures on Ethics*) more than others, and I may even go against what Kant actually says in some places (but not in others). This argumentative method is therefore neither simply reconstructive nor simply interpretative, but somewhere in between. It is a method that seeks to be faithful to the overall spirit of Kant's philosophical position, if not always to the precise letter of each individual text, while also attempting to make Kant's thought relevant to today's moral and political problems (rather than just those in Kant's day).

³ See Alasdair MacIntyre, *Ethics and Politics: Selected Essays, Volume 2* (New York: Cambridge University Press, 2006) 134.

⁴ See Niccolò Machiavelli, *The Prince*, trans. George Bull (London: Penguin, 1995), Carl Schmitt, *The Concept of the Political*, trans. George Schwab (Chicago: The University of Chicago Press, 1996).

are exemplars, neither morals nor politics are trumps, and as such a negotiated compromise must be worked out between the two normative regimes when they conflict.⁵ The question of lying in politics throws these various positions into a clear light. For the idealist like Kant, lying is, supposedly, always immoral and therefore has no place in politics, no matter what. For the realist, lying is permissible whenever it is a necessary means to secure a political goal. For the negotiator, principles and prudence must be weighed up. If the costs of adhering to one's convictions about lying become too high, then it would be irresponsible to hold on to those convictions in that situation.⁶

The conflict between morals and politics arises when an action seems both politically legitimate and yet also immoral. This conflict has been portrayed as one between church and state, between 'other-worldly' principles and worldly responsibility, and between care for the world and care for the self.⁷ Of course, this conflict does not arise when political prudence and moral principle are in agreement, as they often are. As Kant notes, even a nation of purely self-interested devils could agree to live by principles of justice (PP: 8:366). Nonetheless, as Machiavelli reminds us, it is often politically prudent to depart from morals.⁸ Lying, which Hannah Arendt correctly notes has never been counted among the political virtues,⁹ is a particularly clear case in point. On this view, given that humans can be such deceptive and malicious creatures, only an idealistic fool (such as Kant perhaps) imagines that politics can function based solely on principles of complete candour, openness and truthfulness. Lying may be immoral, but it is the very grease that keeps the political wheels in motion. As such, a politics completely subservient to morality would seem

⁵ See Jacques Derrida, *Negotiations: Interventions and Interviews*, trans. Elizabeth Rottenberg (Stanford: Stanford University Press, 2002) 295-314, Max Weber, "The Profession and the Vocation of Politics," in *Political Writings*, ed. Peter Lassman and Ronald Speirs (Cambridge: Cambridge University Press, 1994), 357-69.

⁶ For Weber a compromise must be worked out between a Kantian "ethic of principled conviction" and an "ethic of responsibility" - see Weber, "The Profession and the Vocation of Politics," 359. The term that is translated here as 'conviction' is '*Gesinnung*', which is the same term that Kant uses (translated as 'disposition') for the supreme maxim of the power of choice. For a discussion of *Gesinnung* see my paper, Paul Formosa, "Kant on the Radical Evil of Human Nature," *The Philosophical Forum* 38, no. 3 (2007): 229-36.

⁷ See the discussion in Norberto Bobbio, *In Praise of Meekness: Essays on Ethics and Politics*, trans. Teresa Chataway (Cambridge: Polity, 2000) 39-71.

⁸ See Machiavelli, *The Prince* 48, 55.

⁹ However, Arendt distinguishes between the "traditional lie", which merely puts a "hole in the fabric of factuality", and the "modern lie", which seeks to completely replace the fabric of factuality with an ideological replacement. The former lie is political, because at heart it wishes to change the world, whereas the latter undermines the very ground of facts from which political action can begin something

to be not only unrealistic but also undesirable. In the face of this problem the challenge for the Kantian is to defend the practicality and the intuitive desirability of the 'morals trumps politics' position. Of course, the Kantian could simply pride themselves on their impractical moral purity, but such pride is of the type that comes before a fall.

However, in order to investigate the relation of morals to politics in Kant's work, we need to first deal with the competing interpretations of Kant's moral and political theory. Some, such as Allen Wood, read Kant as a moral realist who offers a teleological theory of ethics based on the supreme value of humanity. Others, such as John Rawls, read Kant as a moral constructivist who offers a deontological theory of ethics based on the dictates of practical reason.¹⁰ Still others have read Kant as offering a virtue theory of ethics where it is character dispositions, and not actions, that are primary.¹¹ Likewise, the nature of Kant's political theory is also contested. While there is general agreement that Kant is a liberal of some sort, there is debate about what sort of liberal he is. Both libertarians on the right, such as Robert Nozick, and liberals on the left, such as Rawls, and even socialists, have invoked Kant's name to further their cause.¹²

With these difficulties in mind, this paper will address the question of the relation of morals to politics in Kant's work by first offering an interpretation of Kant's moral and political theory. In section two I reject those readings of Kant, which are not uncommon, that claim that his moral theory absolutely forbids lying under any circumstances. In section three I also reject those readings of Kant, which again are not uncommon, that claim that his political theory absolutely forbids civil disobedience and rebellion under any circumstances. Drawing upon this reconstructive exegesis, I argue in section four that Kant's position on the relation of morals to politics is both morally uncompromising and yet politically flexible, both principled and practical. Further, I also examine in depth the claim that political

new. See Hannah Arendt, "Truth and Politics," in *Between Past and Future: Eight Exercises in Political Thought* (New York: Viking Press, 1968), 253.

¹⁰ See Eric Watkins and William Fitzpatrick, "O'Neill and Korsgaard on the Construction of Normativity," *The Journal of Value Inquiry* 36 (2002).

¹¹ See the discussion in Robert B Louden, "Kant's Virtue Ethics," *Philosophy* 61, no. 238 (1986).

¹² See the discussion in Roger Scruton, "Contract, Consent and Exploitation: Kantian Themes," in *Essays on Kant's Political Philosophy*, ed. Howard Williams (Cardiff: University of Wales Press, 1992).

progress is impossible without accompanying moral progress. A fully politicised public realm requires not only a rights-respecting but also a virtuous citizenry.

2. Kant on Morality and the Duty to Lie

Kant argues not simply that politics *ought* not to conflict with morals, but that politics properly conceived *cannot* conflict with morals. This is because politics *is* primarily (but not only) the instantiation of right in practice via the necessary means of the free and open use of public reason. Morality demands nothing less.¹³ While there can be a "subjective" conflict between morals and the likes of self-interest, prudence, passions, or ideology, there cannot be an "objective" conflict between morals and politics, because politics *is* primarily about right and not about self-interest, prudence, passions, or ideology (PP: 8:370, 79). In order to see what this implies in practice, we need to turn to Kant's account of lying. But what exactly we take Kant's account of lying to look like will depend on how we read his moral theory.

Kant's position on lying might seem straightforward enough. The Categorical Imperative seems to unconditionally forbid lying, no matter what the circumstances or consequences. Lying, in deontological terms, is intrinsically wrong. As such, we have a perfect duty to never lie to ourselves or others. While this is the way that Kant is commonly understood (see Alasdair MacIntyre for a recent example),¹⁴ I shall argue that it is seriously misleading. In order to see why, we need to examine Kant's distinction between political and ethical duties as set out in the *Metaphysics of Morals*. The former are contained in the *Doctrine of Right (Rechtslehre)* and the latter in the *Doctrine of Virtue (Tugendlehre)*.

In the *Rechtslehre*, Kant aims to establish a set of rules for coercively protecting the maximum amount of external freedom for each that is compatible with a like amount of freedom for all. Kant argues that: "Any action is *right* if it can

¹³ Whether morality is merely in accord with or actually grounds politics depends on whether Kant's moral theory, as set out in the *Groundwork*, underwrites not only the *Tugendlehre* but also the *Rechtslehre*. The 'separationists' (to use Robert Pippin's terms) argue that it does not (or at least need not, as Thomas Pogge argues), and the 'derivationists' argue that it does and needs to. In either case, morals and politics are not in conflict. See Paul Guyer, "Kant's Deductions of the Principles of Right," in *Kant's Metaphysics of Morals: Interpretative Essays*, ed. Mark Timmons (Oxford: Oxford University Press, 2002), Robert B Pippin, "Mine and Thine? The Kantian State," in *The Cambridge Companion to Kant and Modern Philosophy*, ed. Paul Guyer (Cambridge: Cambridge University Press, 2006), Thomas W Pogge, "Is Kant's *Rechtslehre* a 'Comprehensive Liberalism'?", in *Kant's Metaphysics of Morals: Interpretative Essays*, ed. Mark Timmons (Oxford: Oxford University Press, 2002).

coexist with everyone's freedom in accordance with a universal law" (MM: 6:230). We each have only one "innate right" that applies to us *qua* human beings, and that is a right to freedom, where this is understood as "independence from being constrained by another's choice, insofar as it can coexist with the freedom of every other in accordance with universal law" (MM: 6:237). Such a system of right is not, as it is for Hobbes, based on a self-interested agreement to restrict one's freedom for the sake of protection. For Kant we do not limit or give up in any way our freedom by entering into a rightful condition. Indeed, it is only in such a state that we realise or achieve our freedom by living in accord with the law of freedom (MM: 6:231). Freedom is not, for Kant, a complete lack of external hindrance, but the presence of the right sort of hindrance – namely, the legally enforced rule of right. As such, the "*hindering of a hindrance to freedom*" is "consistent with freedom in accordance with universal laws, that is, it is right" (MM: 6:231). It is not the liberal right to pursue one's own private conception of the good, but the public enactment of freedom in accordance with universal law (i.e. public autonomy), that is the founding value of Kantian justice.

The *Tugendlehre* outlines a system of perfect and imperfect duties to oneself and others.¹⁵ Perfect duties are based on respect, imperfect duties on love. We have a perfect duty to respect the dignity of rational nature in both our own humanity and that of all others. We have an imperfect duty to love rational nature in both ourselves and others. This love gives rise to the two ends which Kant claims it is a duty to have: the ends of self-perfection and the happiness of others (MM: 6:385-6). The vices, which express disrespect and hatred for humanity, arise from the misuse, rooted in our radical propensity to evil, of our natural predispositions to animality and humanity (REL: 6:27-8).¹⁶

Is the veto against telling lies one that belongs to right or ethics, or both? Can I rightfully demand, and not just ethically expect, truthfulness from others? Unfortunately, Kant gives two conflicting answers to this question. In the *Metaphysics of Morals*, Kant argues that the duty to never lie is a matter of ethics

¹⁴ MacIntyre, *Ethics and Politics: Selected Essays, Volume 2* 122.

¹⁵ For a wider discussion of Kant's account of the virtues see, for example, Marcia Baron, "Moral Paragons and the Metaphysics of Morals," in *A Companion to Kant*, ed. Graham Bird (Oxford: Blackwell, 2006), Lara Denis, "Kant's Conception of Virtue," in *The Cambridge Companion to Kant and Modern Philosophy*, ed. Paul Guyer (Cambridge: Cambridge University Press, 2006).

and not right, except in legal matters (MM: 6:238), whereas in *On a Supposed Right to Lie from Philanthropy*, Kant argues that the duty to never lie is a matter of right and not just ethics (SRL: 8:427). Given these inconsistencies, what is the best way to interpret Kant's position?

In *On a Supposed Right* Kant presents his infamous example of whether or not it is permissible to lie to a murderer who asks you whether a friend of yours, who he is pursuing and intends to kill, has taken refuge in your house. Presumably you know that if you answer truthfully, the murderer will enter your house and kill your friend, but if you lie, then the murderer will leave and your friend will live. Kant argues that there is an unconditional duty of right not to lie, which applies even in this case, and for this reason you can be held "legally accountable for all the consequences that might arise" were you to lie (SRL: 8:425-7). This seems like a 'clean hands' policy gone mad. Do your duty, tell the truth (and if you don't you will be held legally accountable), and morally wipe your hands of the outcome (even if that outcome is the murder of a friend who you have offered refuge). Such a view seems morally repugnant.

However, Kant offers a different position in the *Metaphysics of Morals*. Because of this difference, R. F. Atkinson is mistaken to claim that Kant's position in *On a Supposed Right* in regard to lying is "no aberration but an expression of fundamental commitment".¹⁷ On Kant's theory, rights protect our freedom. But lying, unlike say physical violence, does not in general infringe upon another person's basic freedoms. Indeed, in the *Metaphysics of Morals*, Kant argues that we have a protected right (but not a duty) to lie, covered by our right to free speech, as the other person remains free to believe or disbelieve what we say (MM: 6:238). There is only a juridical duty not to lie, Kant argues, in cases where lying "directly infringes upon another's right, e.g.," by bearing false witness in a legal matter in order to deprive another of what is rightfully theirs (MM: 6:238-9).¹⁸

Kant's *Metaphysics of Morals* position therefore avoids the counter-intuitive and even bizarre implication of *On a Supposed Right* that, because truthfulness on

¹⁶ See Formosa, "Kant on the Radical Evil of Human Nature," 222-26.

¹⁷ See R F Atkinson, "Kant's Moral and Political Rigorism," in *Essays on Kant's Political Philosophy*, ed. Howard Williams (Cardiff: University of Wales Press, 1992), 236.

¹⁸ Kant repeats this point later: "In the doctrine of right an intentional untruth is called a lie only if it violates another's right" (MM: 6:429).

all occasion is a duty of right, we can be held *legally* responsible ("even before a civil court") for the bad consequences of *any* lie (SRL: 8:427). This not only places significant curbs on our freedom of speech, it also creates a legal nightmare. Kant's *Metaphysics of Morals* position avoids these difficulties, and should therefore (I claim) be taken to represent Kant's definitive view of the matter. On this reading, lying, except in legal matters pertaining to the rights of others, does not violate a duty of right and thus has no legal consequences. When in the *Metaphysics of Morals* Kant asks whether we must "answer for all the consequences it [the lie] might have", he means answer before one's "own conscience" and not a civil court (MM: 6:431). This makes sense only when we consider the prohibition on lying (except in legal cases) to be an ethical and not a juridical issue. We are therefore within our rights to lie to the murderer at the door.

But this does not mean, as yet, that it is morally permissible to lie in such a case. In at least the *Lectures on Ethics* and perhaps also in the *Metaphysics of Morals*, Kant does argue that lying is *sometimes* morally permissible. However, it is far from clear how or even whether Kant can justify this position in the light of his wider moral theory. Alasdair MacIntyre, for one, argues that Kant cannot justify this position.¹⁹ In contrast, Christine Korsgaard and Tamar Schapiro argue that he can, although they give (or so I shall argue) the wrong reasons for the right position.

Kant, in the *Lectures on Ethics*, claims that "a moral casuistry" will not only do much "sharpening of our judgment," but will also reveal "how far *we may be authorised* [my emphasis] to conceal the truth without detriment to morality" (LE: 27:701). Kant asks whether "an untruth from mere politeness (e.g. the 'your obedient servant' at the end of a letter) [can] be considered a lie? No one is deceived by it" (MM: 6:431). When does holding something back, giving the wrong impression, joking, bragging, or flattery become morally impermissible (LE: 27:444-56, 699-702)? Kant's position here is that lying, or a lack of truthfulness, is not morally impermissible in just those cases where nobody is seriously deceived about any "serious matters" (MM: 6:431; LE: 27:444-56, 699-702). But what about cases

¹⁹ MacIntyre rejects Sedgwick's use of the *Lectures on Ethics* view of lying on the grounds that the position expressed there conflicts with Kant's underlying ethical theory – see MacIntyre, *Ethics and Politics: Selected Essays*, Volume 2 130.

which do deal with "serious matters"? What if I lie in order to protect what I or someone else has a right to, such as one's own life or property? Kant argues:

Since men are malicious, it is true that we often court danger by punctilious observance of the truth, and hence has arisen the concept of the necessary lie... The lie is a weapon of defence; the declaration extorted, that is then misused, permits me to defend myself (LE: 27:448).

Kant repeats this claim in a later lecture series: "we may knowingly deceive the other in a permissible way, if we try by our action or utterance to ... avert an evil; e.g. a pretended journey, to uncover and thwart a crime" (LE: 27:700). Thus, in at least the *Lectures on Ethics*, Kant claims that it is morally permissible to lie to others in just those cases where others intend to wrongfully use the truth to perpetrate a rights violation. The 'murderer at the door' is clearly one such case, and so on this view it is permissible to lie in that case.

But how, given that lying seems to disrespect the rationality of others, can this position be made compatible with Kant's view that we have an unconditional duty to treat others with respect, presumably including would-be murderers? There are at least two ways for the Kantian to defend the claim that lying is sometimes permissible. First, argue that certain exceptional situations warrant exceptions being made to principles which absolutely forbid lying. Second, argue that principles themselves, applied to exceptional situations, do not absolutely forbid lying.

Christine Korsgaard and Tamar Schapiro defend this first view. Korsgaard defends a two-level theory whereby in non-ideal situations (i.e. when *everyone* is not acting as if they were in a kingdom of ends) the Formula of Humanity (FH) and the Formula of the Kingdom of Ends (FKE) are merely ideals that we should try to live up to but from which we can depart when and only when "to live up to it would make you a tool of evil". However, even in non-ideal situations, the Formula of Universal Law (FUL) is the point where "morality becomes uncompromising", for "we cannot possibly be justified in doing something which others in the same circumstances could not also do".²⁰ Drawing on her two-level theory, Korsgaard argues that lying to the murderer at the door is permissible (even obligatory) because: one, such a maxim of action passes the FUL (but not the FH and FKE); and

two, because living up to the requirements of the FH or FKE would make you a tool of evil, and for this reason such requirements are not binding. Schapiro similarly argues that in non-ideal situations we simply *cannot* treat others honestly, because honesty is a two-way street. Schapiro argues that "where ideal conditions are not fulfilled ... the only form of honesty open to us is degenerate, and it is on this ground that constrained forms of deception can become permissible".²¹ Like Korsgaard, Schapiro argues that in non-ideal situations we can make an exception from the ideal morality of unconditional respect for others. Once again, the conclusion is that it is permissible to lie to the murderer at the door.

The problem with this line of reasoning is that it is premised on the claim that lying is never compatible with the respect that humanity deserves. In contrast, I shall argue that respect for humanity sometimes *requires* lying.²² This justification has the advantages that, unlike Korsgaard's and Schapiro's solutions, it does not go beyond claims that Kant explicitly endorses. My argument relies upon a reading of Kant's moral theory, which has been defended by Wood among others,²³ whereby human dignity, which is grounded in the potential for autonomy,²⁴ is the foundational value from which moral duties are derived.²⁵ Far from being an empty formalism, Kant's theory is based on the absolute value of human autonomy and the unconditional respect and love that this dignity warrants. On this reading of Kant's moral theory, the foundational reason why lying is forbidden is that it fails to express the respect toward others and oneself that their human dignity entitles them (and you) to (GW: 4:421, 429; MM: 6:429). As the example of false promising in the

²⁰ See Christine M Korsgaard, "The Right to Lie: Kant on Dealing with Evil," *Philosophy and Public Affairs* 15, no. 4 (1986): 349.

²¹ See Tamar Schapiro, "Kantian Rigorism and Mitigating Circumstances," *Ethics* 117, no. October (2006): 56.

²² For a similar view, though with a different justification, see Thomas E Hill Jr., "Making Exceptions without Abandoning the Principle: Or How a Kantian Might Think About Terrorism," in *Violence, Terrorism and Justice*, ed. R G Frey and Christopher W Morris (Cambridge: Cambridge University Press, 1991), Allen Wood, *Kant's Ethical Thought* (Cambridge: Cambridge University Press, 1999) 385.

²³ Wood argues that "all conduct [in Kant's theory] is regarded fundamentally from the standpoint of what it *expresses* about the agent's attitude toward humanity. Morally good conduct expresses respect for humanity as an existent end... The intermediate premises connecting FH [Formula of Humanity] with conduct are *hermeneutical* in nature: they involve interpreting the *meaning* of actions regarding their respect or disrespect of the dignity of rational nature." See Wood, *Kant's Ethical Thought* 117, 54-5. See all Hill Jr. on the "dignity principle" in Hill Jr., "Making Exceptions without Abandoning the Principle: Or How a Kantian Might Think About Terrorism."

²⁴ For Kant, we do not act autonomously merely by choosing something on the basis of reflection, and being able to give reasons for that choice in terms of our values. We only act autonomously when we act in accord with and for the sake of pure practical reason, that is, when we act morally.

²⁵ As Guyer notes: "this is the full sense in which Kant's ethics is teleological: the moral law requires an end with absolute worth, namely human freedom," - Paul Guyer, "Ends of Reason and Ends of Nature: The Place of Teleology in Kant's Ethics," *Journal of Value Inquiry* 36, no. 2-3 (2002): 184.

Groundwork illustrates, this implies that it is never right to lie, and thus to sacrifice human dignity, for any amount of material gain. But what if it is not material gain but the freedom and dignity of others that is at stake? Does lying always and in all cases express disrespect for the absolute value of humanity?

The best way, or so I shall argue, to square Kant's claims about the permissibility of lying in the *Lectures on Ethics* with his wider moral theory is to argue that lying does *not* always express disrespect for the absolute value of humanity. Clearly the rationale for lying cannot be prudential, such as: if the consequences are bad enough, it is permissible to make exceptions to morality and lie.²⁶ Nor can the rationale be based on a "supposed *right* [of necessity] to do *wrong* when in extreme (physical) need", which Kant clearly rejects (MM: 6:235-6; TP: 8:300). Nor can the rationale be: the potential murderer or wrongdoer has put themselves outside the moral community and therefore is of no ethical concern.²⁷ Rather, the rationale must (or should be reconstructed to) be that lying in such cases is permissible as it does not express disrespect for humanity as it effects a hindering to a hindrance of freedom. This is the same reason that Kant gives to justify all rightful coercion. As such, the lie in such cases is analogous to self-defence, whereby certain means, such as violence or deception, become permissible in order to prevent a rights violation.²⁸

It is not truthfulness but human dignity that has absolute worth. In the 'murderer at the door' example, there is more than one source of dignity to consider (i.e. the person at the door, the potential murderer and the potential victim), and in light of this we must judge which maxim best expresses respect for that dignity. Of course, for Kant this is never simply a question of numbers because human dignity is not a commodity that can be traded, so that the loss of one human can be made up by the gain of another. Each human is uniquely valuable as a source of dignity. Even so, lying to protect my own rights or the rights of others is permissible because (and when) this, rather than the punctilious observance of the truth when I know that this

²⁶ Kant characteristically claims that "utility, indeed, can furnish no moral justification for any action" (LE: 27:702).

²⁷ See Guyer, "Kant's Deductions of the Principles of Right," 51-4.

²⁸ Kant argues that we have a "*ius inculpate tutelae* [right to blameless (self-)defence]" against "a *wrongful* assailant upon my life". In this case the use of violence, even lethal violence, is a right, although a "recommendation to show moderation (*moderamen*) ... belongs not to right but only ethics" (MM:

will lead directly to another's wrongdoing, is the way to express respect for the value of human dignity. Such an act, as with any other hindering of a hindrance to freedom, actively expresses respect for human autonomy by protecting rational agency when it is violently and wrongfully threatened by an aggressor. Just as the rightful use of coercion to effect a hindering of a hindrance to freedom is not a *restriction* but the *realisation* of freedom, so too is the moral use of a lie not an *infringement* but an *expression* of respect for human dignity. For Korsgaard, lying *always* expresses disrespect for the value of human dignity, and this forces her to develop her complex two-level theory, which Kant nowhere endorses. In contrast, I claim that lying *sometimes* expresses respect for the value of human dignity, and is therefore not only permissible but obligatory in just those cases. Morally speaking, we ought to lie to the murderer at the door in order to show our respect for human dignity by hindering a hindrance to freedom.

It is not by blindly adhering to a code of duties but only by sharpening our judgment and reason through casuistry and by paying attention to the nuances of situations that we can hope to fulfil our moral duty to respect and love humanity. As such, there is *only* a duty not to lie when such an act expresses respect and love for the value of humanity. The principle employed here is that whenever there is a conflict between the perfect duties listed in the *Tugendlehre* and the dictates of the supreme law of morality, the latter must 'trump' the former.²⁹ Telling the truth (along with all the other duties in the *Tugendlehre*) usually, but not always, does this, as we can see in the 'murderer at the door' case. This has important political implications. It implies that it is sometimes permissible to lie in order to protect the dignity and rights of members of a political community, but not in order to garner mere material gain or profit at the expense of the dignity of others. However, to further investigate these issues we need to examine Kant's political theory in more depth.

6:235). However, self-defence has its limits – see Kant's discussion of the shipwreck survivor (MM: 6:235-6; TP: 8:300).

²⁹ This view has also been defended, although in a different context, by Thomas E Hill Jr., "Kant's Opposition to Revolution," *The Journal of Value Inquiry* 36, no. 2-3 (2002): 295.

3. Kant on Politics and the Duty to Disobey

Kant's political theory is often criticised for offering a stagnant, spectator's account of politics, whereby citizens are to passively and silently wait for history to force enlightened despots to gradually implement reforms when and as they see fit.³⁰ One of the implications of this reading of Kant is that resistance against tyrants, even in the form of peaceful civil disobedience, is absolutely forbidden. We can disagree, but no matter what, we must obey. At the extreme, this reading of Kant seems to offer what John Silber calls the 'Kantian defence' for those, such as Nazi bureaucrat Adolf Eichmann, who merely follow orders, no matter how evil.³¹ To see how Kant can avoid this charge we need to examine his claims concerning political obedience.

For Kant, the state of nature need not be the violent world that Hobbes envisages. But while a state of nature need not be a state of *injustice*, it is necessarily a state *devoid* of justice, because in it there is no authority "competent to render a verdict having rightful force" (MM: 6:312). In the state of nature each person is his or her own sovereign, executive and judge.³² In leaving the state of nature these powers are given up and invested in a higher civil authority. Such an authority must establish a rightful condition where "the *right* of human beings [is secured] under *public coercive laws*" (TP: 8:289). A rightful condition embodies three principles: the *freedom* of each citizen to pursue their own ends, the *equality* of each citizen under public coercive laws, and the *independence* of each citizen as a legislator of the state. Such a state is based on autonomy, the founding value of morality, writ large. But once a civil condition is established, however it is established (legitimacy does not arise from an actual social contract, but from conformity with reason), Kant famously argues that there is no *right of forceful* resistance against a sovereign or ruler, seemingly no matter how tyrannical or unjust

³⁰ See, for example, Andrew Cutrofello, "Is the Human Race Constantly Progressing? Reflections on September 11," *Human Studies* 25 (2002): 277, Howard Williams, "Kant's Optimism in His Social and Political Theory," in *Essays on Kant's Political Philosophy*, ed. Howard Williams (Cardiff: University of Wales Press, 1992), 12-14.

³¹ John R Silber, "Kant at Auschwitz," in *Proceedings: Sixth International Kant Congress*, ed. Funke and Seebohm (Washington, D.C.: The Center for Advanced Research in Phenomenology, 1985), 177-94.

³² In a Kantian state of nature we each have rights, which we may try to enforce, but others have no reason to respect our competency either as a lawgiver or a judge. A civil condition is only established when there is "universal execution" of public laws and an "effective *public authority*" to render judgment in accordance with those laws (REL: 6:95).

they become.³³ Sovereignty cannot be forcibly removed from the authorities, even if they violate the terms of the social contract as set out by reason. While rulers are obliged to abide by the social contract and respect the rights of their citizens, they cannot be forcibly coerced into doing so. Citizens have a "duty" to "put up with even ... an unbearable abuse of supreme authority" (MM: 6:320).

Kant's justification for this position is primarily political and not moral. Thus, Thomas Hill's argumentative strategy, which tries to show that some maxims for revolution can pass the Categorical Imperative and therefore that revolution in those cases is morally permissible, misconstrues the nature of Kant's opposition to revolution.³⁴ Kant's opposition to revolution is instead based (at least at times)³⁵ on the following considerations. Disputes about rights between citizens in a civil condition can only be rightfully resolved by referring the matter to a higher authority. But in a dispute between the citizens and the authorities there is no higher authority to refer the matter to. In order for there to be such an authority there would have to be "another head above the head of state", which is "self-contradictory" because in that case the head of state would not *be* the head of state (TP: 8:300). Authority and the final competency to render a verdict of rightful force must stop somewhere, and for Kant it stops with the sovereign. Citizens can never employ *rightful force* against the civil authority, because the established civil authority has an exclusive monopoly on rightful force. This is what it *means* for a people to have left the state of nature, and for the citizens to forcefully reclaim their right to be their own judge and executor is to wrongfully dissolve the social contract and re-enter a state devoid of justice.³⁶

While Kant rejects the use of force as a means of resistance in any circumstance, there are ways that the Kantian can support such resistance by drawing upon the sorts of arguments that can be found in the work of Hobbes and Locke. First, one can argue for resistance along the lines of self-defence, to which Kant thinks we have a right. When the state becomes a thug who violently quells

³³ "A people cannot offer any resistance to the legislative head of state which would be consistent with right, since a rightful condition is possible only by submission to its general legislative will" (MM: 6:320).

³⁴ See Hill Jr., "Kant's Opposition to Revolution," 295-6.

³⁵ Kant offers a number of different arguments against revolution and rebellion. Hill's argument makes more sense in the light of PP: 8:386, whereas mine draws more heavily upon TP: 8:300 and MM: 6:320.

peaceful public demonstrations, silences public reason, and unjustifiably violates the citizens' rights then, as against any other thug, the people have a right of self-defence. However, because the state is such a big and powerful thug, the citizens may be forced to band together to overthrow the unjust regime and install a new one if they are to adequately defend themselves and thereby fully exercise their right to self-defence.³⁷ Alternatively, it can be argued that an unjust and tyrannical regime, by its actions, loses its legitimacy and authority, and thereby surrenders its competency to employ rightful force. This, in effect, creates a vacuum of legitimacy that necessarily plunges the people back into a state of nature, whether they will it or not. In such a state the people have a right and a duty to employ forceful means if required to overthrow the now illegitimate regime and re-establish a civil condition under just public laws.

However, rather than take this path, I wish to bring out another element in Kant's political philosophy that gives us grounds to reject the 'obey the leader in power no matter what' reading of Kant that those such as Silber have defended. Kant makes an important distinction (rarely mentioned in the secondary literature) between active or violent resistance, and negative or peaceful resistance in the form of critique, protest and civil disobedience. Kant, far from advocating blind obedience, argues that we ought to *disobey* unjust laws, command and decrees and thereby employ negative resistance. Only laws which are in "conformity with right" are "joined with authorisation to coerce and ... a prohibition against actively resisting the will of the legislator" (TP: 8:299). It is reason, and not power or force, that ultimately grants authority its legitimacy, and only a legitimate authority warrants obedience. We may therefore resist the will of the unjust legislator. Indeed, Kant claims that it is a sure sign of a "corrupt" (and we might add 'unenlightened') people that they blindly accede to "every demand the government puts forth" and do not employ "*negative* resistance" when it is required (MM: 6:322). Negative resistance can even justifiably result in a peaceful revolution, in which the sovereign 'passes' sovereignty back to the people (MM: 6:341). It is not the rejection of Monarchy, or

³⁶ As Kant notes: "the head of state can as well urge that his harsh behaviour toward his subjects is justified by their recalcitrance as they [the people] can urge that their rebellion is justified by their complaints against him of their undeserved suffering" (TP: 8:300).

peaceful moves to establish a new form of government, but the "formal *execution* of a monarch" that Kant absolutely forbids (MM: 6:320-22). As such, Kant vetoes only "active [my emphasis] resistance" (MM: 6:322; see also TP: 8:300, 304) on the grounds that violence can never be rightfully employed by the people, because a civil condition is a condition where the government has that exclusive power.³⁸ Nonetheless, the duty to obey the civil authorities is always conditional.

But how does reason wield this authority as judge of what is in conformity with right and therefore worthy of obedience? In *Theory and Practice* Kant argues that a public law is unjust if:

a whole people *could not possibly* give its consent to it (as, e.g., that a certain class of *subjects* should have the hereditary privilege of *ruling rank*) ... But if it is *only possible* that a people could agree to it, it is a duty to consider the law just, even if the people is at present in such a situation or frame of mind that, if consulted about it, it would probably refuse its consent (TP: 8:297).

Kant claims that a people cannot give their consent to a law if it is "self-contradictory that an entire people should agree to such a law" (TP: 8:299). Kant thus offers what may be called a 'hypothetical unanimous consent' or 'possible universal agreement' test for the justness of laws.³⁹ Only laws that *all* people could *possibly* consent to are just.⁴⁰ A law that is judged to fail such a test is unjust and does not, on my reading of Kant, thereby warrant obedience.⁴¹ Judgment is needed to decide whether or not a proposed law can possibly garner the consent of all because merely surveying everybody's opinion (although everyone's opinion must be heard) will rarely achieve unanimity. Instead we must judge whether the proposed law embodies justice and is in the spirit of freedom. This process requires taking into account the perspective of each in order to reach a representative judgment that is communicable to all. Only those laws that respect *equally* the *freedom* and *independence* of each can possibly

³⁷ For a similar set of arguments, see Peter Nicholson, "Kant on the Duty Never to Resist the Sovereign," *Ethics* 86, no. 3 (1976), Peter Nicholson, "Kant, Revolution and History," in *Essays on Kant's Political Philosophy*, ed. Howard Williams (Cardiff: University of Wales Press, 1992).

³⁸ Further, Kant also suggests that apart from its impermissibility, a quick and bloody revolution is unlikely to be successful in achieving its goal of genuinely progressive outcomes (see, for example, WE: 8:36).

³⁹ I thank one of the journal's anonymous referees for the second formulation.

⁴⁰ See the excellent defence of hypothetical consent in chapter three of Thomas E Hill Jr., *Human Welfare and Moral Worth: Kantian Perspectives* (Oxford: Oxford University Press, 2002) 61-96.

⁴¹ Kant repeats this point in *Metaphysics of Morals* with his claim that "there is a categorical imperative, *Obey the authority who has power over you* (in whatever does not conflict with inner morality)" (MM: 6:381). As morality compels us to place justice above virtue, this would in practice mean that we do not owe obedience to authorities that act unjustly.

garner the support of all. This is consistent with the supreme value of autonomy and the three founding principles of a rightful condition.

Kant argues that a just law is one that is in accord with the "*spirit of freedom*", and this means that all laws must submit to a process of critical publicity in order to (potentially) convince each and every citizen "by reason that this coercion is in conformity with right" (TP: 8:305). In *Perpetual Peace* Kant further expands on publicity as a test for justice. There he argues that: "All actions relating to the right of others are wrong if their maxim is incompatible with publicity" (PP: 8:381). This negative publicity test is not, however, sufficient to indicate that the law is not unjust.⁴² As such, Kant also presents an "affirmative principles of public right" which reads: "All maxims which *need* publicity (in order not to fail in their end) harmonise with right and politics combined" (PP: 8:386). It is publicity that provides the crucial link between morals and politics in Kant's theory.

Publicity, justice and freedom are the three interdependent pillars of Kant's political theory. A law or regime deserves obedience only if it is just, and it is just only if it can be judged to pass the hypothetical unanimous consent test. Only laws that are in accord with the spirit of freedom and the dictates of reason can pass such a test, and only the process of enlightened critical publicity is competent to render such a judgment. Therefore at the very heart of Kant's political theory and its conception of justice lies a vibrant, robust, free and critical public realm. We misunderstand Kant if we fail to recognise the central role of critical publicity in his theory, a failure that mars those readings of Kant, such as Silber's, that mistakenly attribute to him a stagnant, passive, spectator's account of politics based on blind obedience to authority. While Kant argues that all change must be *implemented* from top to bottom, that is, legislation must be enacted from above by legitimate authorities, this does not imply that the *movement* for change, perhaps under the pressure of civil disobedience and negative resistance, cannot come from bottom to

⁴² As Kant notes, any head of state "possessing *irresistible* supreme power" (PP: 8:382) can publicly proclaim any injustice if they have the power to enforce it. However, this also weakens Kant's argument against the right of revolution on the grounds that it must be kept secretive if it is to succeed, as in situations where the revolutionary party is very strong and the government is very weak, the revolutionary party could publicise their goals and yet still succeed. For this reason the version of Kant's argument against revolution that I defend above seems the most plausible.

top. Indeed, as Elisabeth Ellis emphasises,⁴³ a highly critical public realm is essential both as a motor for political progress and as a measure of political legitimacy. A state without a politically active citizenry and a vibrant public realm is in danger of stagnation and injustice. It is only by appreciating the centrality of a culture of critical publicity to Kant's political theory that we can make sense of Kant's opposition to violent resistance *and* his stress on the importance of obeying only reason and not the whims of tyrants.

We can better understand Kant's position here by way of a contemporary illustration. For Kant, "public well-being" is obtained when the civil condition "conforms most fully to principles of right" (MM: 6:318). While instantiating the rule of right is the primary goal of politics, politics must also ensure the "commonwealth's flourishing ... not in order ... to make the people happy against its will but only to make it exist as a commonwealth" (TP: 8:299). But economic considerations are always merely of secondary importance on Kant's conception of politics. Justice and human dignity must never be sacrificed for material gain. However, it is a different matter when, as in the case of lying to save the life of another, it is human dignity (and not economic gain) that is weighed against human dignity. We can illustrate this point in terms of the recent debates about terrorism that focus on the question of how to balance civil liberties and rights against the public good of security. The sorts of questions that are asked are: is it ever permissible to temporarily violate a person's right to due legal process or privacy, or even to use torture, in order to potentially save lives (and the dignity of people) by ensuring public security?

The purpose of civil laws is, for Kant, to create, maintain and defend a rightful condition. But we have a right only to the maximum amount of freedom that is compatible with a like freedom for all. This maximum amount of freedom may be more or less limited depending on prevailing circumstances. For Kant, the rule of right itself is the only political absolute. In times of crisis, when public security is under attack, it is arguably politically and morally legitimate (on Kantian grounds) to temporarily restrict basic civil rights and liberties in order to secure and maintain a

⁴³ Elisabeth Ellis, *Kant's Politics: Provisional Theory for an Uncertain World* (New Haven: Yale University Press, 2005) 6.

rightful condition.⁴⁴ However, this would be legitimate only if it is "not self-contradictory that an entire people should agree to it" (TP: 8:2999). That each could agree to temporarily restrict the rights of all in order to protect the security (and therefore dignity) of each is arguably not, under certain circumstances, self-contradictory.⁴⁵ Indeed to do so may (again, depending on circumstances) be the only way to protect a rightful condition and thereby express respect for autonomy.

Of course, this is not to say that the threat presently posed by global terrorism in any way justifies some such restrictions. But it does show us that what the rule of right, as decided by a fair process of critical publicity, requires in one situation may differ in another. Kantian justice is thus not blind to changing circumstances, while remaining unshakeable in its commitment to the unconditional value of human autonomy. Kant's theory is not therefore, as it is often claimed, blind to political reality.

4. The Relation of Morals and Politics

As argued above, there are three general ways to conceive of the relation of politics to morals: in the idealist tradition morals trumps politics, in the realist tradition politics trumps morals, and in the negotiator tradition a negotiated compromise must be made between the competing demands of morals and politics. However, all these

⁴⁴ Compare this to Kant's similar discussion in *Perpetual Peace* of laws that are of "the *strict* kind, holding without regard for differing circumstances, that insist on his putting a stop to an abuse at once", and those that take "into consideration the circumstances in which they are to be *applied* ... and contain permission, not to make exceptions to the rule of right, but to *postpone* putting these laws into effect... He is permitted only to delay doing so, lest implementing the law prematurely counteracts its very purpose [which is the establishment of a just and peaceful international order]" (PP: 8:347). Kant's article forbidding standing armies, for example, is one that he considers to be of the latter kind, for were it implemented at once, given prevailing circumstances, it would make one state defenceless against the aggression of another and thereby put the civil condition of that state in danger. Likewise, under certain conditions of threat it may be legitimate to temporarily postpone or restrict certain rights and liberties in order not to put the civil condition itself, which alone can guarantee justice, in danger.

⁴⁵ However, the question of whether not merely the restriction of rights and liberties but state-sponsored torture would be permissible under such circumstances is another question altogether. In a discussion of the case of a "state at war with another [state]", Kant explicitly rejects the use of "dishonorable stratagems", such as the use of assassins and poisoners, on the grounds that they are *means* that "unavoidably" lead to a "war of extermination" and are therefore "absolutely forbidden" (PP: 8:346-7). However, it is far from clear that the use of torture, for example, even if it counts as a 'dishonorable stratagem', would *necessarily* lead to a 'war of extermination'. In any case, Kant is thinking here only of wars between states, and thus it is a mistake to assume that the same rules necessarily apply to a state at war with a non-state terrorist group. This is because in such a case what Kant calls a "punitive war" seems at least thinkable as, unlike in a traditional inter-state war, there is potentially a "relation of a superior to an inferior between them" (PP: 8:346-7). In any case (assuming that torture is the only effective method for acquiring accurate information that could prevent atrocities, which it often is not), I am not convinced that Kant's theory absolutely rules out the legitimacy of state-sponsored torture no matter what the situation. Of course, this is not the same thing as asserting that present conditions or circumstances warrant the use of state-sponsored torture – I, for one, think they clearly do not. But this is because the conditions arguably do not warrant it and not because the theory forbids it absolutely *a priori*. I would like to thank one of the journal's anonymous referees for suggesting I clarify this point.

views assume that morals and politics *can* conflict. In contrast, Kant argues that politics and morals *cannot* conflict because politics *is* the rule of right that morality demands. The rule of right respects equally the freedom and independence of each citizen. Human dignity, the founding value of morality, demands nothing less. The norms of respect, decency, openness and honesty are therefore central to political life properly understood. When such norms are absent the people cannot *be* sovereign, in the sense of autonomously legislating their own laws, because the very conditions that can make public autonomy a reality, namely genuinely free and fair public debate open equally to all, are absent. The lies, secrecy, manipulation, lack of publicity, deceit and deception that is inherent in the political machinations of realists are, according to Kant, beneath the dignity of humanity and undermine political progress toward autonomy, peace and freedom (PP: 8:376). Of course, realists might well be unimpressed by such arguments. They may simply deny that humanity *does* possess an unconditional value that all political action must respect. To challenge this position one would need to argue that humanity does possess a dignity that is worthy of unconditional respect. But *that* is another argument.

Kant charges negotiators with insincerity and the undermining of their own convictions. Negotiators are willing to abandon their convictions concerning human dignity if the cost becomes too high. But Kant argues that to make exceptions to principles for prudential reasons, as negotiators do, nullifies the universality of principles and thereby undermines their unconditional status (SRL: 8:430). This cheapens human dignity into a commodity. In light of such trade-offs, negotiators can be accused of self-deception or even insincerity. We may well ask: in what sense do negotiators really *have* the convictions they claim to have, if they are willing to abandon them whenever it is convenient? Do they not really have at best *pseudo-convictions*?⁴⁶ Convictions are not made of rubber. You cannot bend them without breaking them.

Kant even accuses realists and negotiators of a lack of prudence. He argues that because of the complexity of large-scale political problems and the difficulty of

⁴⁶ This criticism applies, though, only to Weber and those who by 'conviction' mean something similar to Kantian moral principles (e.g. treat people with respect, etc.). Derrida means something very different to Kant by moral convictions because for Derrida, following Levinas, moral requirements are literally *impossible* to meet, and thus negotiations are inevitable no matter what. See Marguerite La Caze, "At the Intersection: Kant, Derrida, and the Relation between Ethics and Politics," *Political Theory* (2007).

predicting the outcomes of political decisions, it is more prudent to adhere unconditionally to principles as the best guide to action under uncertain conditions.⁴⁷ While this argument might have clout in some situations, there are many simple cases where it is obvious that to act immorally, to unjustifiably lie or break a promise, has a clear and direct payoff over following principles. But prudence and morality will only part company for Kant when it is considered prudent to sacrifice human dignity for the sake of material gain. But when prudence is judged in terms of what best expresses respect for human dignity, rather than what is best for me or what is best for the economy (as an end in itself), then (as the examples of the previous section make clear) prudence and morality need not part company.

As such, Kant's principled position is neither impractical nor dangerously imprudent. As we have seen in the previous sections, lying, the temporary restriction of rights and even war are sometimes morally and politically permissible,⁴⁸ although never for mere material, personal, or party gain, but only in defence of human autonomy. When human dignity must be weighed up against human dignity, as happens in the most difficult and important moral and political problems, Kant's theory requires acts that practically seek to express respect for human dignity without abandoning principles. This largely undermines the attractiveness of Weber's negotiator position, which is premised on the supposed impracticality and blindness of convictions. On Weber's view, negotiation is necessary because he thinks that a Kantian morality implies, for example, that the conviction 'lying is wrong' holds absolutely regardless of the situation. But to hold to such a Kantian conviction, come what may, is something Weber considers politically irresponsible. However, Kant's theory, as we have seen, implies no such thing. Thus Kant's political theory can occupy something like the middle ground that Weber wants to occupy, but can, unlike Weber, do so on robust principled moral grounds. For Kant, moral principles cannot be blindly applied in political practice. While principles must not change to suit the situation, the particularity of each concrete situation must be considered with sound judgment to determine how principles are to be applied in that case.

⁴⁷ See the discussion in Ellis, *Kant's Politics: Provisional Theory for an Uncertain World* 102.

⁴⁸ For an account of Kant's just war theory see Brian Orend, "Kant's Just War Theory," *Journal of the History of Philosophy* 37, no. 2 (1999).

Justice is not blind to reality, and therefore Kant's position on the relation of morals to politics is not hopelessly impractical and naïve.

Further, for Kant, realists not only fail to place moral restrictions on political action and negotiators not only fail to take seriously their own convictions, but both misconceive the very essence of politics. The three pillars of Kant's political theory, publicity, justice and freedom, are interdependent. We are free only under the rule of justice, and justice can reign only where there is a vibrant public realm in which publicity acts as a motor of progress and a measure of legitimacy. At the heart of such a system lies neither the calculation of interests nor the tyranny of reason, but openness and discussion from which alone reason can emerge confidently. As Kant in the *Critique of Pure Reason* (A738/B766) argues:

Reason depends on this freedom for its very existence. For reason has no dictatorial authority; its verdict is always simply the agreement of free citizens, of whom each one must be permitted to express, without let or hindrance, his objections or even his veto.⁴⁹

Without the three pillars of publicity, justice and freedom, reason itself cannot emerge in its full glory.⁵⁰

To illustrate this point I shall turn to two familiar arguments, ostensibly against liberal theories such as Kant's, in the forms given them by Carl Schmitt and Hannah Arendt respectively. Schmitt argues that discussion and openness are essential to the institution of liberal parliamentarism. Kant's political theory is ideally centred upon such an institution as the organ from which reason can confidently emerge. But, Schmitt argues (writing in 1923), parliaments have become a "mere façade" (a claim that seems even more relevant today in many parts of the world than in 1923). By and large, political decisions are often not made as a result of parliamentary debate and parliaments are not an organ of reason but of party division. According to Schmitt, decisions are instead often made behind closed doors and are based on "calculating" the interests of "social or economic power-groups" and the ability of the party to win over the "masses" through manipulative

⁴⁹ Quoted and discussed in Onora O'Neill, "The Public Use of Reason," in *Judgment, Imagination, and Politics*, ed. Ronald Beiner and Jennifer Nedelsky (Lanham: Rowan & Littlefield, 2001), 74.

⁵⁰ Hence Kant's claim that "one can very well say that this external power which wrenches away people's freedom publicly to *communicate* their thoughts also takes from them the freedom to *think*" (WOT: 8:144).

"propaganda apparatus".⁵¹ Parliamentary democracy, if Schmitt's analysis has any weight, is too often not the rule of right that Kant envisages, but the rule of leadership charisma and dominant economic and social interests.

Arendt shares Schmitt's fear concerning modernity's loss of a properly political public realm.⁵² For Arendt, the loneliness of labouring and the social sphere of entertainment and consumption have usurped the political public realm of action and plurality. Within these structures political action, which (according to Arendt) is communal action undertaken with the power that the voluntary support and consent of others grants, becomes for most people all but impossible. This political disempowerment results, according to Arendt, in an apolitical society of conformist jobholders who simply 'behave' by consuming and thoughtlessly adhering to meaningless conventions, and thereby avoiding the angst and meaningfulness that comes from authentic action.⁵³ Liberal-democratic modernity, on Arendt's analysis, has given rise to a largely apolitical, alienated and compartmentalised social order.⁵⁴

Kant's political theory is often taken to be one of those subject to the sorts of criticisms raised by Schmitt and Arendt. However, I shall argue that Kant's theory is not vulnerable to these standard attacks and that in fact his theory actually echoes similar concerns (although the details and solutions differ). For Kant, just public laws must arise out of and be subject to reasoned public debate. It is the spirit of freedom and not the calculation of brute interests that must be the condition in terms of which policies are judged. Post-facto rationalisations of decisions reached for private interests are central to modern power politics. But realist power politics is simply not politics for Kant. This is the radical implication of Kant's view that morals and politics cannot conflict. To the extent that a realist model of politics as power dominates today's political environment, nationally and internationally, the public realm itself

⁵¹ See Carl Schmitt, *The Crisis of Parliamentary Democracy*, trans. Ellen Kennedy (Cambridge, Mass.: MIT Press, 1988) 6.

⁵² Although in both cases the fear is somewhat overplayed. The loss is a matter of degree, and not an all or nothing affair.

⁵³ See Hannah Arendt, "Crisis in Culture: Its Social and Political Significance," in *Between Past and Future: Eight Exercises in Political Thought* (New York: Viking Press, 1968), 4-14, Hannah Arendt, *The Human Condition* (Chicago: The University of Chicago Press, 1958) 320-25. Of the secondary literature, Pitkin is particularly helpful – see Hanna Fenichel Pitkin, *The Attack of the Blob: Hannah Arendt's Concept of the Social* (Chicago: The University of Chicago Press, 1998). See also my analysis of Arendt in, Paul Formosa, "Thinking, Conscience and Acting in the Face of Mass Evil," in *Hannah Arendt and the Dilemmas of Humanism*, ed. Danielle Celermajer, Vrasidas Karalis, and Andrew Schaap (Newcastle upon Tyne: Cambridge Scholars Press, 2008).

⁵⁴ This familiar critique has its roots in the work of Marx. On the relation of Marx and Arendt on the issue of alienation, see Pitkin, *The Attack of the Blob: Hannah Arendt's Concept of the Social* 127-44.

has become depoliticised. To the extent that politics in modern democracies is about interest groups and leadership charisma, and not about the discussion of policies in terms of justice and freedom, democracy itself has become depoliticised. To the extent that economic well-being, rather than the well-being of justice, has become the political end-game, politics itself has become depoliticised.

This process of depoliticisation occurs whenever the openness of freedom, public reason and representative judgment is replaced by the silent forces of violence, power, or private interests. The depoliticisation of the public realm is a matter of degree. Those living under repressive authoritarian regimes are far more depoliticised than those living under modern liberal democratic regimes. What degree of depoliticisation there is in liberal democracies is due less, on Kant's analysis, to institutional deficiencies (although there are such deficiencies, as Schmitt points out)⁵⁵ than to primarily moral failures in the form of (as Arendt shows us) the hegemony of 'entertainment', consumerism and unthinking conformism.⁵⁶ However, for Kant the solution is not to accept Schmitt's conclusion that we need to strip democracy of its liberal façade, but rather to transform the liberal façade of democracy into a robust foundation. This would bring Kant closer to Arendt's idea of a more participatory deliberative democracy,⁵⁷ built upon a hierarchy of public spaces which, at the base level, are open to all who wish to participate, and which strive to achieve a genuinely "rational formation of opinion".⁵⁸ This has the potential to transform a disempowered and "manipulated electorate" into one where each and every person, who so chooses, may enjoy the public happiness that can arise from the experience of political action.⁵⁹

⁵⁵ Such as the party political system that tends to suffocate the free use of reason in parliaments, the difficulty that minorities have in receiving justice and getting their voices heard in the public realm, the often prominent role of irrational hysteria, fear and prejudice in public debate, and a lack of opportunities for civic participation by ordinary citizens.

⁵⁶ See Arendt, "Crisis in Culture: It's Social and Political Significance," 9. According to Leo Strauss, Schmitt also sees a world without politics as one under the spell of "entertainment", a world full of things that are "very interesting", complete with all manner of "competitions and intrigues". But such a world "is only possible if man has forgotten what genuinely matters", that is, politics – see Strauss in Schmitt, *The Concept of the Political* 100-01.

⁵⁷ See the excellent collection of essays in, James S Fishkin and Peter Laslett, eds., *Debating Deliberative Democracy* (Oxford: Blackwell, 2003).

⁵⁸ This is encapsulated in Arendt's idea of the "council-state". Those best suited to express the views of each local council would be elected to represent that council at the next higher council and so on, finally leading to a parliament. This system would make genuine political action at (at least) the local level open to all who wish to take part. See Hannah Arendt, "Thoughts on Politics and Revolution," in *Crisis of the Republic* (New York: Harcourt Brace Jovanovich, 1972), 230-3.

⁵⁹ *Ibid.*, 232-3.

While such political reforms may be necessary to achieve the Kantian ideal of a fully politicised public realm, such political progress must be complemented by moral progress. Although Kant seems to have changed his mind, or at least been equivocal, about whether political progress comes from the moral progress of the people, or whether the latter could only follow the former, it is clear that the progress of both goes hand-in-hand (whichever leads the way).⁶⁰ Arguably central to such progress is Kant's vision, set out in *Religion within the Boundaries of Mere Reason*, of diverse cosmopolitan ethical communities (REL: 6:93-100). Such voluntary communities are to be made up of those engaging in a communal effort to overcome their radical propensity to evil by developing a virtuous disposition,⁶¹ and thereby living a virtuous life centred upon the obligatory moral ends of self-perfection and public benevolence. Political justice not only protects such voluntary ethical communities, but strengthens them by promoting the norms of respect, decency and tolerance that underwrite genuinely free public debate. Kant's ethical communities encourage the aesthetic, intellectual, physical, cultural and moral improvement of its members as they strive for self-perfection and a benevolent concern for the welfare of others.⁶² The political community, as a space for the open and free use of reason, is strengthened when it is built upon cosmopolitan ethical communities based in friendship (the ideal mix of respect and love),⁶³ (MM: 6:469) social harmony, self-perfection and benevolence. These virtues complement, embolden and encourage public reason. Politics is thus a moral force for candour, debate, openness and respect, and morality is thus a political force for self-

⁶⁰ In a 1784 paper Kant argues that progress will be achieved by the enlightenment of the people, which will in turn force political change upon the government (WE: 8:42). However, by the 1790's Kant seems to have grown more pessimistic, given that the state uses "all the money for war" and has none left to pay for the education of the youth (CF: 7:92-3; TP: 8:310). Kant instead argues that it is the positive force of the "*spirit of commerce*" and the "*power of money*" (PP: 8:368) which will be the engine and guarantor of progress toward a peaceful cosmopolitan world order. As such, Kant seems to reverse his earlier formula, and argue that good enlightened citizens can only be expected as a result of, and not as the cause of, a just state constitution, which in turn is grounded in self-interest (PP: 8:366-7). In any case, political progress can be achieved either through the political means of publicity and reason, or it will be forced upon us (Kant thinks) via the unpolitical means of nature. The path of the former is paved with dignity and autonomy, the latter with heteronomy and a lack of self-respect. It is clear which path we should take.

⁶¹ See Robert B Loudon, *Kant's Impure Ethics: From Rational Beings to Human Beings* (Oxford: Oxford University Press, 2000) 126-32.

⁶² Wood similarly argues that for Kant "our nature as social beings gives us a profound need for this kind of community ... our moral vocation is an ethical (hence non-coercible) duty to belong to a free ethical community" - Wood, *Kant's Ethical Thought* 316.

⁶³ See the discussion of civic friendship and public reason in Mark Button, "Arendt, Rawls and Public Reason," *Social Theory and Practice* 31, no. 2 (2005).

perfection, benevolence and social harmony. Each reinforces the other, and only in combination can a fully enlightened, just and peaceful community be established.

The problem of alienation is thus not one that applies to Kant's brand of liberalism. On standard accounts of liberalism, it is freedom of choice and the individual's private right to pursue their own conception of happiness or the good life that must be publicly protected. This freedom partly finds expression in free markets and in choices between competing consumption goods. On Kant's account, however, it is not private choice per se but autonomy, which is the ground of human dignity, which must be publicly protected. For Kant, human autonomy is not expressed through the choice between competing means of desire-fulfilment. Human autonomy is only expressed through acting morally by respecting rights, and achieving the morally obligatory ends of self-perfection and public benevolence. It is the pursuit of our own *virtue* and not *happiness* that is of primary importance for Kant. Isolated and alienated preference-maximising monads, even if they are (from self-interest) rights-respecters, are still moral failures on Kant's account if they fail to *also* pursue the obligatory ends of self-perfection and public benevolence. Kant's moral and political ideal is therefore a mixture of liberal rights, self-perfectionism, and public benevolence. All of these elements need to be present.

An alienated and compartmentalised social order is not conducive to private virtue as it tends to produce withered and selfish persons.⁶⁴ Virtue cannot be pursued in isolation. Indeed, reason itself, which is the foundation of virtue and justice, must be cultivated through critical engagement with one's peers. On a moral level, we can see Socrates' interplay with his interlocutors as an attempt to create such a moral community of excellence through the cultivation of reason. Unsurprisingly, Kant recommends the Socratic method as the preferred pedagogical method for moral education (MM 6:477-84).⁶⁵ By cultivating communities of virtue, we enlighten ourselves and our peers and thereby overcome alienation not only with ourselves and each other, but also with our species-being (as Marx would put it),⁶⁶ by aiding the progress of humanity toward a state of perpetual peace. Liberal rights

⁶⁴ Of course, the claim that liberal modernity *is* to be described as alienated and compartmentalised is a matter of much contention.

⁶⁵ For a general discussion of these issues see G Felicitas Munzel, "Kant on Moral Education, or 'Enlightenment' and the Liberal Arts," *The Review of Metaphysics* 57, no. 1 (2003).

not backed up by the moral virtues can become hollow and can lead to alienation. The Kantian solution is not the abandonment of rights, or the replacement of individual rights with group rights, but the overcoming of alienation through communities of charity and excellence that cultivate well-rounded perfectionism and benevolence.

The future progress of politics and virtue are therefore intimately intertwined on Kant's account. A political community that is not built upon diverse and flourishing cosmopolitan moral communities, where self-perfection and benevolence are cultivated, will almost of necessity suffer some degree of depoliticisation. Further politicisation requires not only more responsive governments and better institutions to protect public reason, but also a more enlightened and benevolent, and therefore virtuous, citizenry. A more virtuous citizenry is needed as a robust organ of public reason, as a more representative motor for progress, and as a stronger defence against apathy, alienation, brute selfishness, and utter indifference. Justice and freedom depend upon publicity, and publicity depends not only upon institutions but also upon the critical acumen and moral candour of a diverse plurality of enlightened citizens. Only the rule of virtue can provide the latter. A fully politicised and just public order requires not only a rights-respecting but also a self-perfecting and benevolent citizenry. It is not only the duties of respect but also the duties of love that are of political importance.

5. Conclusion

Kant's claim that morals ought to trump politics is not the hopelessly otherworldly, naïve, or impractical one that his critics have taken it to be. Rather, it supplies an inspiring vision of a just, peaceful and flourishing cosmopolitan world order of free republican states, which are home to politicised public realms and diverse ethical communities. This vision is both inspiring and practical, morally uncompromising and yet also politically flexible. The demands that morality and justice make are not independent of changing circumstances. Morality and justice usually demand truthfulness, civil obedience and a full suite of basic rights and liberties, but depending on circumstances, can demand lying, civil disobedience and the

⁶⁶ See Karl Marx, "Economico-Philosophical Manuscripts of 1844," in *The Portable Karl Marx*, ed. Eugene

temporary restriction of rights and liberties. Kant does not dictate, *a priori* as it were, the solutions to all the problems of politics that we may face, but he does defend the *a priori* principles by which we must live at all costs. But such principles remain blind without the light of publicity and the vision of judgment. Only when the coerced rule of right is coupled with the non-coerced rule of virtue will humanity's end of an enlightened age of peace be realised.⁶⁷

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Kamenka (New York: Penguin, 1983), 191-41.

⁶⁷ I would like to thank the journal's two anonymous referees for their excellent comments, and all those who have read or commented on earlier versions of this paper.