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Dictatorship and Insurrection **in Schlegel's Republicanism**

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Motivated by the irruption of Kant's critical project in the domain of political philosophy and the events surrounding the French Revolution, Friedrich Schlegel published a short essay in 1796 titled *Essay on the Concept of Republicanism Occasioned by the Kantian Tract Perpetual Peace* [*Versuch über den Begriff des Republikanismus, veranlaßt durch die Kantische Schrift zum ewigen Frieden*].¹ In this essay, Schlegel praises the "spirit" of Kant's republicanism, based on principles of freedom, equality, and justice, which he sees as containing "a rich abundance of fruitful ideas and new insights for politics, morals, and the history of humanity" (KA, VII 11).² However, Schlegel does not always agree with the "letter" of Kant's political ideas and arguments, as expounded in *Perpetual Peace*. In effect, he challenges Kant's views on several points, starting with the very notions of republicanism, freedom, and equality and then moving on to other important issues such as democracy, despotism, revolution, sovereignty, citizenship, and the relationship between morals and politics. The *Versuch* should therefore not be seen as a trivial repetition of Kantian ideas, or as a plain rejection of them, but rather as an insightful contribution to the Enlightenment project, in particular the problem of how to conceive, implement, and strive for a form of political community

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¹ The essay appeared in *Deutschland*, a Berliner journal edited by C.F. Reichardt which served as a venue for spreading the ideas of the *Aufklärung*.

² Schlegel's works will be cited by the notation of the *Kritische Friedrich-Schlegel-Ausgabe* (Munich, Paderborn, Vienna, Zürich, 1966). The English translation of the *Essay* is taken from *The Early Political Writings of the German Romantics*. Edited and translated by Frederick Beiser. Cambridge: Cambridge University Press, 1996.

based on the true freedom and equality of all human beings through an investigation of the principles of reason.³

In what follows, I will explore Schlegel's view on transitional forms of republicanism, that is to say, provisional forms of political organization that accord with republican principles. These rightful – but necessarily temporally limited – types of collective action are *insurrection* and *provisional dictatorship*. As we will see, these forms of republicanism are absent in Kant's theory of right, since they are manifestly incompatible with his account of popular sovereignty. Hence, because Schlegel endorses a different view of sovereignty, the people, and the state, he is able to combine Kantian principles of justice with a defense of revolution and dictatorship as legitimate ways of implementing the republican ideal. To unpack Schlegel's condensed arguments on these issues, I will first examine his account of the republican ideal vis-à-vis Kant's notion of a republic by analyzing what I take to be its three main principles: the principle of the general will, the principle of representation, and the principle of the separation of powers (Section I). This will show that Schlegel grounds the legitimacy of the republic in the principle of the general will but rejects the separation of powers as a necessary republican principle. I will then turn to the problem of implementing the ideal regime and discuss provisional dictatorship and insurrection as forms of political organization that can be implemented for a limited amount of time (Section II). Schlegel's argument for the rightfulness of revolution and dictatorship is not consequentialist; that is, it does not ultimately appeal to their end or final purpose (establishing a republic). Rather, it rests on the principle that guides them: they are legitimate because they involve a form of collective action that, insofar as it aims to accelerate the transition to a just political regime, is authorized by the *general will*. This means that they would be illegitimate if they were brought about by a *private will*, e.g. by the individual decision of a revolutionary or a dictator. I will conclude by suggesting that this makes Schlegel's argument on transitional forms of republicanism Kantian in "spirit," although it is based on two claims that oppose the "letter" of Kant's view, namely an account of the people as having the power to depose the ruler or to suspend the law and an understanding of the state as a means rather than an end in itself (Section III).

I. The republican ideal and the general will

³ For a general view on the relationship between the Enlightenment and early Romantic political theory, see Beiser 1992.

In the *Versuch*, Schlegel aims to examine the nature of the *republican ideal* and *republicanism*, as well as their relation to other forms of government (KA VII, 11). To do so, he discusses Kant's view of the state, sovereignty, and political regimes, as expounded in *Perpetual Peace*. Schlegel does not simply endorse Kant's view of the republican ideal. Although he considers the general will to be the main principle that gives shape to the republican state, he distances himself from Kant in other key respects. In this section, I will sketch Schlegel's revision of Kant's political ideal by examining its three pillars: the principle of the general will (I.a), the representation of the people (I.b), and the division of powers (I.c).⁴

I.a. The general will

The *Versuch's* point of departure is the claim, advanced by Kant in *Perpetual Peace*, that the ideal political regime *must be* a republican one. To support this claim, Kant argues that the republican constitution is the only one that follows from the idea of an original contract, according to which the people constitutes itself as the sovereign (TP, 8: 295; ZeF, 8: 350; MS, 6: 314-315). In the *Versuch*, Schlegel does not employ the language of social contract theory, and therefore he does not refer to the notion of a contract, or pact, to explain the legitimacy of the state. He follows Kant, however, in stating that a constitution that agrees with pure principles of right must be based on the principle of the general will. The general will is, in effect, the "necessary condition" of republicanism (KA VII, 15).

To justify this, Schlegel argues, as Kant did, that it is only by means of the a priori principle of the will of all, united to give laws, that a political constitution can be compatible with the freedom and equality of all human beings.⁵ In the *Versuch* we read: "equality and freedom demand that the *general will* be the basis of all particular political activities (not only the laws, but also their application and

⁴ I discuss Schlegel's revision of Kant's idea of a republic in these terms in Tomassini 2022.

⁵ Cf. Kant ZeF, 8: 349-350, TP, 8: 290; MS 6: 314, 315-316. However, Schlegel criticizes Kant's account of freedom and equality. In the essay, he argues that "civil freedom" is an idea that we can strive for only through an "infinite progressive approximation." In this progression, there are different stages: a minimum, a medium, and a maximum. Kant's concept of freedom as "the right to obey no external laws except those to which the individual could have given his consent" should be understood only as the "medium of civil freedom" (KA VII, 11). The highest form of political freedom consists in precisely the definition that Kant rejects in *Perpetual Peace*: "the right to do whatever one wants as long as one does no injustice to others." According to Schlegel, this definition is not tautological (as Kant held). Rather, it refers to an "ideal moment" in which a coercive state is no longer necessary and political freedom is "limited only by the moral law" (KA VII, 11). In sum, according to Schlegel, the manifestation of freedom in the state, which Kant takes to be central to the political sphere, is "democratic" freedom, but this is not the most absolute form of political freedom. See also Millán 2021, 189.

execution). But just this is the character of *republicanism*’ (KA VII, 14). The opposite of republicanism is *despotism*. While in a republican regime the political power is grounded in, and exercised by, the general will, in a despotic one “the basis of political activity” is a “private will” (KA VII, 14). As Kant argues in *Perpetual Peace*, a despotic regime is one in which “the public will is treated by the monarch as his individual will” (ZeF, 8: 352).

Schlegel clearly distinguishes the idea of a republic, as designating the “ideal state” or “the state in the idea” (using Kant’s terminology), from the concept of the state. Any form of association or “society” of human beings who stand in an unavoidable relation of reciprocal influence, whose end is the “community of humanity” [*Gemeinschaft der Menschheit*], can be called a “state” (KA VII, 15). Schlegel argues that even though only a republic should be considered a “genuine” form of the state, a despotic regime can be deemed as a “quasi-state” [*Quasistaat*] or a “degenerate form of the state” [*Abart des Staats*]. In this regard, Schlegel agrees with Kant in conceding some degree of legitimacy to non-republican states, since they “carry the germs of a genuine state within [themselves] and gradually bring republicanism to fruition” (KA VII, 15). After all, the existence of the state, the historical origin of which is marked by the unilateral use of force and violence, is in itself a condition for the realization of republicanism, and it is the ruler who might first promote the common interest by progressively introducing reforms under the guidance of rational principles.⁶

I.b. The representation of the people

Having presented the general will as the fundamental principle of the republican ideal, Schlegel poses the following question: “how is republicanism possible? The general will is its necessary condition; but the absolute general will (and therefore absolute enduring) does not occur in the realm of experience and exists only in the world of pure thought” (KA VII, 15). The problem of the relationship between the ideal character of the general will and the actual exercise of sovereignty, as formulated by Schlegel, leads to the second pillar of republicanism as conceived by Kant: the principle of political representation. Kant holds that the pure republic, whose core is the united will of the people giving laws to itself, has a noumenal character, and as such it does not constitute a possible object of experience.⁷ A perfect juridical constitution, described elsewhere as

⁶ Cf. KA VII 15; ZeF 8: 371; V-MS/Vigil, 27: 514.

⁷ In the *Conflict of the Faculties*, Kant refers to the idea of a constitution based on the people’s giving laws to itself as a “Platonic ideal (*respublica noumenon*),” as opposed to “a civil society organized conformably to this ideal (*respublica phaenomenon*)” (SF, 7: 91).

a “thing in itself,”⁸ will never take place in an existent political community. Thus, for the a priori principle of the general will to be effective in the phenomenal world, *it must be represented* by a physical person (namely, the sovereign) (MS, 6: 338). Kant argues that a true republic is indeed a “*representative system* of the people” and that the people can only exercise its legislative power through representatives acting on its behalf (ZeF, 8: 353; MS, 6: 342). Depending on who actually holds the legislative power, sovereignty can take one of three different forms and constitute either an autocracy, an aristocracy, or a democracy.⁹

Schlegel partially adheres to Kant’s view of political representation. He holds that the general will, as a “universal separated from the individual by an infinite gulf,” must be represented. However, the absolute general will cannot be represented by just any legislative body but only by the *will of the majority*. Schlegel claims that since the general will is an ideal principle that cannot take place in experience, we should admit, by means of a “fiction,” an empirical will as a “surrogate” of that absolute will (KA VII, 15). Now, the empirical will should approximate, as far as possible, the a priori absolute will. A private individual will (e.g. a monarch) cannot act as a surrogate of the general will because this would infringe natural equality, which demands that all citizens have the same rights and obligations and are free from arbitrary domination (KA VII, 12). Therefore, Schlegel concludes, “the only valid political fiction is that based on the law of equality: *the will of the majority should be the surrogate of the general will*” (KA VII, 16, italics are mine).¹⁰ In sum, while Kant considers that republicanism, as a *forma regiminis*, admits of different forms of sovereignty,¹¹

⁸ Cf. MS, 6: 371.

⁹ Cf. ZeF, 8: 352, MS, 6: 339. Some interpreters claim that the difference between the three *forms of sovereignty* [*Form der Beherrschung, forma imperii*] concerns only the executive task (e.g. Byrd & Hruschka 2010, 176). However, when Kant introduces the classification of forms of state in *Perpetual Peace*, he talks about a division “according to the different persons *who have supreme power* within a state [*oberste Staatsgewalt*]” (ZeF, 8: 352), and the supreme power always corresponds to the legislative power (cf. MS 6: 317).

¹⁰ Later in the essay, Schlegel qualifies this statement. On the one hand, a monarchical form of sovereignty can be preferable for a political community that has not reached a certain degree of maturation or of “political culture” (KA VII, 19). A monarch can thus govern in a republican manner, and “the degree of approximation of the private will of the monarch to the absolute universality of the will determines the degree of its perfection” (KA VII, 19). On the other hand, a democracy seems to be compatible with a particular form of aristocracy, one that is based not on hereditary privilege but a weighted voting system. Yet, if the institution of a “political nobility” is to be democratic, it must be based on a decision by the general will: “the majority of the people must have willed the patriciate, determined its privileges and members” (KA VII, 16).

¹¹ Kant’s definition of republicanism in terms of representation, and its compatibility with constitutional monarchy, has been linked to Sieyès’s view of the state; see e.g. Jones 1994, Dann 2002, 61, Maliks 2014, 104, 118-119, and Schöning 2017, 241). It must be noted, however, that Kant seems to view representative democracy as being closer to the republican ideal than monarchy: “monarchy aristocracy and democracy.

Schlegel categorically affirms that “republicanism is necessarily *democratic*” (KA VII, 16). Let us now turn to the third principle of republicanism.

I.c. The division of powers

In *Perpetual Peace*, Kant argues that the sovereign cannot, at the same time, represent the general will and exercise both executive and legislative power: if he holds the sum of powers, he is not representing the will of the people. Kant maintains that “republicanism is the principle by which the executive power (the government) of a state is separated from the legislative power” (ZeF, 8: 352). Hence, a form of government in which the ruler executes norms legislated by himself is, by definition, despotic.¹²In his essay, Schlegel criticizes this claim on two grounds. On the one hand, he maintains that the principle of the division of powers does not exclusively belong to republican forms of government (and thus cannot be their defining property). To illustrate this point, he presents the following example: Imagine that political power is shared by a hereditary ruler and a hereditary nobility, where the former has the executive power, and the latter retains legislative authority. In this case, there would be a separation of powers within a despotic regime (for both the hereditary monarch and the nobles exercise their power according to their private interests) (KA VII, 12).¹³

Consequently, the division of powers does not necessarily entail political representation. On the other hand, Schlegel argues—and this is his main point—that a ruler *can*, under certain conditions, execute *and* legislate the law and *still* act on behalf of the united will of the people. Even though “the separation of powers is the rule of a republican state,” there is a way of governing that implies an *exception* to this rule while remaining compatible with republicanism. This type of state is called a *dictatorship* and should be clearly distinguished from *despotism*. Dictatorship is “a politically possible form of representation” since “the general will of the people” has the legitimate power to “decree to delegate (not surrender) all power to one person for a definite time” (KA VII, 13).

The representative system of democracy is that of the equality of society or the republic, that of aristocracy is that of inequality since only some together represent the sovereign- of monarchy that of the equality which is the effect of inequality since one (monarch) represents all” (VAMS, 23: 342 italics are mine; cf. Refl, 19: 609).

¹² ZeF, 8: 352, cf. MS, 6: 317.

¹³ In any case, the example shows that the division of powers may be present in both types of government (republican and despotic), but it does not prove that the claim “republicanism necessarily includes a separation of powers” is false.

In sum, Schlegel agrees with Kant in the ideal and normative character of the general will. However, he believes that republicanism necessarily requires democracy: only the will of the majority can legitimately represent the general will. Moreover, he defends a republican version of dictatorship. In times of crisis, the sovereign can hold the sum of powers and still represent the will of the people. This allows Schlegel to account for provisional forms of republicanism that are based on the ideal of the people deciding over itself. Let us examine these in more detail.

II. Transitional forms of republicanism

Kant's theory of right includes not only an account of the political ideal but also a discussion of how to identify and implement actual forms of rule that agree with a priori juridical principles. The problem of the relationship between a normative idea of the state and political praxis is terminologically reflected in the notion of *republicanism*. While Kant usually employs the notion of a *republic* to denote the "state in the idea" (as in "*respublica noumenon*" and "pure republic"),¹⁴ he defines *republicanism* as a "principle of the state" [*Staatsprinzip*], using this term to refer to a rightful form of government (Zef, 8: 353; VAMS 23: 159, Refl. 19: 603). Thus republicanism constitutes a legitimate "way of governing," based on the representation of the general will and the separation of powers, which should be implemented not by revolution but through gradual reform originating within a political system (SF, 7:87, VAMS, 23: 432, MS, 6: 370, MS, 6: 340).¹⁵ Along with Fichte and the German Jacobins, Schlegel adopts this terminology to precisely discuss modes of rule and political representation that allow for the establishment and full development of republican regimes.¹⁶ Both the title and the first paragraph of Schlegel's essay indicate that its main concern is an examination of the nature of *republicanism*, rather than the concept of a republic. Among the types of state that are oriented towards an ideal political order, Schlegel considers two forms of republicanism that can only be implemented temporarily: provisional dictatorship and insurrection. These transitional forms of political organization share a common ground that is absent in Kant's

¹⁴ Kant defines the "state in the idea" as "the form of a state as such [...] as it ought to be in accordance with pure principles of right; this idea serves as norm (*norma*) for every actual union into a commonwealth" (MS, 6: 313). Cf. Refl, 19: 609: "it is only a concept of a completely pure state constitution, namely the idea of a republic, where all those entitled to vote together have all power." On the concept of a republic in the German Enlightenment, see Bödecker 2002.

¹⁵ Cf. Dann 2002, 55; Kersting 2009, 262. According to Dann, the notion of *Republicanism* (also spelled *Republikanism*) is a neologism introduced by Kant himself into the German-language debate on the republic and the French Revolution, which responds at the same time to the "dynamization and temporalization of political concepts" by means of the addition of the suffix "-ism" (in this case, to the concept of a republic).

¹⁶ Dann 2002, 57.

theory of right, namely an account of the people as having the legitimate power to depose the ruler or suspend the law, and a notion of the state as *conditionally* necessary. In what follows, I will first examine provisional dictatorship (II.a) and then turn to the case of insurrection (II.b.). I will then compare, although roughly, Schlegel's and Kant's views on popular sovereignty and the state (II.c.).

II.a. Provisional dictatorship

In the *Versuch*, Schlegel presents dictatorship as a transitory condition that occurs when “the general will of the people decrees to delegate (not surrender) all power to one person for a definite time” (KA VII, 13). Before him, many early modern political theorists, such as Bodin, Grotius, Montesquieu, and Rousseau, defended the legitimacy of dictatorship as a necessary institution for protecting the state in times of crisis and referred to its allegedly decisive role in safeguarding the Roman Republic. Among these theories, Rousseau's is particularly relevant to illuminating Schlegel's ideas on provisional dictatorship.

In the *Social Contract*, Rousseau connects the republican figure of the dictator with his theory of popular sovereignty by grounding his (conditional) authority on a decision made by the united will of the people.¹⁷ He argues that the people holds the legitimate power to establish a political constitution and to change it when it decides to do so: “in the State there is no fundamental law which could not be revoked, not even the social pact” (CS, III, 18: 436). In exceptional cases, e.g. when the public order is in danger and the state is about to perish, the united will of the people can “provisionally *suspend* the sovereign authority” and name a supreme ruler “who *silences* all the law” (CS, IV, 6: 456, italics are mine).¹⁸ Rousseau emphasizes the conditional character of dictatorship and indicates that “it is important that its duration be fixed to a very brief term which can never be extended” (CS, IV, 6: 456). If the dictator remains in power even after the crisis that made his appointment necessary has passed, he becomes a tyrant, and the state is destroyed. Rousseau's discussion on dictatorship concludes by praising the role played by the dictator in the “salvation” [*salut*] of the Roman Republic in its earliest stages and by remarking that this institution neither involved an abusive exercise of authority nor posed a threat to public freedom.

¹⁷ For a detailed discussion of Rousseau's account of dictatorship, see Pasquino 2013, de Wilde 2019.

¹⁸ Rousseau argues that the dictator has the power to *silence* the law but not to *make* laws (CS, IV, 6, 4; cf. de Wilde 2019, 1115). In Schlegel's account, the dictator appears to have provisional legislative authority (since he claims that “all power” is delegated to him).

Schlegel endorses Rousseau's notion of dictatorship as an exceptional and time-limited form of government in which—and this is its salient feature—the highest authority of the general will is not abolished.¹⁹ He claims that a provisional dictatorship does not entail a “cession of all political power,” “for the general will cannot destroy itself through an act of the general will” (KA VII, 13). Rather, it involves a temporary form of government grounded in the decision of the people. And since the dictator still represents the general will, it is a way of governing that accords with republican principles.²⁰ Like Rousseau, Schlegel emphasizes the commissarial and temporary character of the dictatorship. If the dictator remains head of state for a longer period than he was appointed to, an initially provisional dictatorship can develop into a perpetual one, causing the “annihilation of the constitution” and, consequently, the destruction of “the foundation of its juridical existence” (KA, VII: 24). Once the juridical basis of the state has been destroyed through the usurpation of the general will, the people has the right to establish a new constitution.

II.b. Insurrection

In the essay, Schlegel rejects Kant's argument against revolution as expounded in *Perpetual Peace*. He claims that “insurrection is not politically impossible or absolutely illegitimate, for it is not completely incompatible with publicity” (KA, VII: 23). Recall Kant's thesis in the short piece from 1795: a maxim of rebellion cannot have the shape of a rightful claim because its publicity would frustrate the very aim of establishing a state. Kant claims that if the people were to include an article in the constitution permitting the use of force against the sovereign in certain circumstances (e.g., if he were to become a tyrant), the people would have legitimate power over him, and the sovereign would not be the head of state. Therefore, if a constitution were to contain such an article, “no state at all would be possible” (Zef, 8: 382). Schlegel responds to this argument by saying that a constitution certainly cannot include an article that grants individuals the permission to rebel “whenever it seems right to them,” because this would lead to the destruction of the constitution itself. He argues, however, that “it is indeed possible that an article in the constitution

¹⁹ Cf. de Wilde 2019, 1116. According to de Wilde, Rousseau follows Bodin's notion of dictatorship by emphasizing its “commissarial” nature (i.e. the dictator does not himself become sovereign but exercises his authority as a “commission” on behalf of the sovereign). However, unlike Bodin, Rousseau “democratized” the figure of the dictator by making his authority dependent on the united will of the people.

²⁰ Beiser claims that there is some inconsistency in Schlegel's thesis, since the independence of powers is needed in order to avoid ochlocracy (which in the *Versuch* is characterized as “the greatest physical evil” “among all political aberrations”) (Beiser 1990, 251). Beiser misunderstands Schlegel, however. The problem with ochlocracy is not the separation of powers but the fact that the majority (or “mass”), in this case, rules but does not represent the general will (on the general will as a normative principle distinct from the “will of all,” see footnote 21).

determines the cases in which the constituted power can be regarded as *de facto* nullified, so that insurrection can be allowed” (KA, VII: 23).

Schlegel provides two examples of a constituted power’s “being nullified”: perpetual dictatorship and absolute despotism. In the former case, as we have seen, the dictator remains in power for a period exceeding the duration decided by the people and in doing so ceases to represent the general will and destroys the constitution. In the latter case, the despot, in contrast to certain types of despotism that gradually evolve towards republicanism, “strives to crush and destroy the republican principles of development” (KA, VII: 25). In both cases the general will has been usurped, and hence the state no longer exists. Moreover, Schlegel goes on to argue, “since *the general will cannot will such a destruction of republicanism* through usurpation and *necessarily wills republicanism*, it must also permit the only means to destroy usurpation (insurrection) and to organize republicanism anew (provisional government)” (KA, VII: 24, italics are mine).²¹ Like a dictatorship, a rightful insurrection must be limited in time. It should entail a *transitional* political action (against the usurpation of the public will) that gives rise to a *provisional* representation of the will of the people. Schlegel affirms that a *permanent insurrection* is not “politically possible” (KA, VII: 25), since it is incompatible with the principles of republicanism.

In a nutshell, Schlegel incorporates insurrection and dictatorship into his ‘Kantian’ view on republicanism by arguing that they entail a rightful, albeit provisional, representation of the general will. To support this argument, he embraces a notion of popular sovereignty closer to Rousseau’s than that conceived by Kant. I will next present some remarks on this.

II.c. Schlegel and Kant on popular sovereignty and the state

²¹ One might wonder why “the general will cannot will a destruction of republicanism and necessarily wills republicanism.” Schlegel does not clarify this rather obscure claim. Nevertheless, Rousseau’s distinction between the “general will” (*volonté générale*) and the “will of all” (*volonté de tous*) can help to shed light on it. In the *Social Contract*, Rousseau says: “the general will is always upright and always tends to the public utility: but it does not follow from it that the people’s deliberations are always equally upright” (CS, II, 3: 371). Accordingly, he distinguishes between the general will and the will of all, i.e. the “mere sum of particular wills.” While the former “looks only to the common interest,” the latter “looks to private interest” (ibid.). Returning to Schlegel’s assertion, we could say that the reason why the general will *cannot will* the destruction of republicanism is that, in his view, this is the only political system that aims at a true community of freedom and equality. If the people decided to act to the detriment of the preservation of a republican regime, then this deliberation would be the result of the “will of all,” of citizens concerned only with their private interests, but not of the general will, which is always “upright” (*droite*).

Schlegel's justification of the legitimacy of dictatorship and insurrection is rooted in the idea, as articulated by Rousseau, that the people has a right to alter its political constitution.²² The people can temporarily delegate its legislative authority to a provisional dictator or rightfully depose its representatives if they are not governing on behalf of the general will. By contrast, Kant holds that the people does not retain the power to establish a new form of sovereignty or to change the constitution. The sovereign can depose the ruler [*Regent*], i.e. the person who holds executive authority, but there is no institutional mechanism through which the people can act as a political unity and depose the sovereign itself.²³ Kant conceives of the general will as inherent to the notion of sovereignty: in an existent political community, it is always the sovereign (whether *one, some* or *all*) that represents the united will of the people.²⁴ And once the sovereign power is constituted, once a multitude becomes a people and gives itself a constitution, the decision of the general will is *irrevocable*, and the authority of the legislator *irreproachable* (MS, 6: 316). In addition to this, Schlegel defends the exceptional nature of the republican dictatorship by arguing that it can, at the same time, (temporarily) hold the sum of power and represent the general will. In so doing, Schlegel rejects Kant's claim according to which any republican form of government should include a division of powers.

Moreover, according to Kant, suspending the authority of the law (i.e. instituting a dictatorship) or the authority of the sovereign (i.e. starting a revolution) amounts to bringing about a lawless or anarchic condition. On his view, both courses of action conflict not only with the concept of sovereignty but also with the juridical duty to abandon the state of nature (ZeF, 8: 349, footnote; cf. TP, 8: 209, 301; MS 6: 320, 340, 372). In the essay, Schlegel does not explicitly address this issue; however, his view on freedom and republicanism suggests that there is no moral obligation

²² See Maliks 2012, 657. This claim can also be found in Fichte's *Contribution to the Correction of the Public's Judgments on the French Revolution*: "no constitution is unchangeable; it is in their nature that they all change [...] A clause in the social contract [stipulating] that the contract shall be unchangeable would therefore be the harshest contradiction to the spirit of humanity" (GA I, I: 254). On Fichte's reception of Rousseau in his early writings, see Damiani 2015, Beiser 2017.

²³ See MS, 6: 317, cf. Maliks 2012.

²⁴ Cf. MS, 6: 318: "since a people must be regarded as already united under a general legislative will in order to judge with rightful force about the supreme authority (*summum imperium*), it cannot and may not judge otherwise than as the present head of state (*summus imperans*) wills it to"; on this point, see also Flikschuh 2008, 394. Kant argues that the people could only oppose the authority of the sovereign as a political unity if it were united through the idea of the general will. However, in that case, both the people and the actual sovereign would have the *summum imperium*, and the people would both be and not be the head of state, which is contradictory (cf. TP, 8: 302). This means, on the other hand, that in the absence of a sovereign who rules with coercive laws, the people has no unity and thus cannot act as a collective agent. In fact, the people "owes its existence only to the sovereign's legislation" (MS, 6: 322; cf. MS, 6: 371-372).

to enter or remain in the civil condition, in this respect following Rousseau's and Fichte's theory of social contract.²⁵

Relatedly, while Kant conceives of a rightfully constituted state as an "end in itself," an "end that is itself a duty" (TP, 8: 289), Schlegel advocates a notion of the state as a certain *means* to achieve an ultimate *end*, namely a "community of humanity." Schlegel entertains the thought that a moral community of absolute freedom and equality would no longer need a form of political organization based on coercion. This is suggested by his definitions of freedom and equality. In the essay, he describes the *highest political freedom* as one "equivalent to moral freedom, which is only limited by the moral law, completely independent of all coercive laws". The *highest political equality* is defined as "the absolute equality of rights and duties for all citizens, and thus ending all domination and dependency" (KA, VII: 11-12). Accordingly, Schlegel argues that the necessity of the state, and thus the necessity of "political domination" and "dependence" on the law, *are not unconditional* but dependent on an empirical condition, namely the fact the "the will of all individual citizens will not correspond always with the general will" (KA, VII: 12). The state as a coercive institution is hence a necessary step in the development of freedom and equality and in the progressive formation of a moral community, but it is not needed in its final (ideal) form. This claim is found in Fichte's early writings, which likely influenced Schlegel's view. In *Some Lectures Concerning the Scholar's Vocation*, presumably alluding to Kant's view on the state, Fichte says: "despite what a very great man has said, life in the state is not one of man's absolute aims. The state is, instead, only a *means for establishing a perfect society*, a means which exists only under specific circumstances." He immediately adds, "like all *human institutions* which are *mere means*, the state aims at abolishing itself. The goal of all government is to make government superfluous" (GA I, 3:36, italics are mine).²⁶ Schlegel does not speak of "the abolition of the state," but his view of the state as an artificial society the ultimate end of which is a community of humanity regulated by the moral law suggests that it will eventually become superfluous, at least as a coercive legal institution.

²⁵ In the *Contribution to the Correction of the Public's Judgments on the French Revolution*, Fichte says: "thus, our question was where does the *binding character* of civil laws come from? I answer: from the voluntary adoption of them by the individual. And the right to acknowledge no law but that which one has given oneself is the basis of Rousseau's indivisible, inalienable *souveraineté* (GA I, I: 238)"; cf. Beiser 2017, 45. For a general view of Schlegel's engagement with Fichte's philosophy, see Behler 1987, Millán 2007, 71ff.

²⁶ As David James puts it, "this is because coercion and rights would no longer be necessary once individuals had developed the appropriate moral disposition, allowing them to become members of the cultural and ethical community of the nation alone" (James 2015, 145); see also Wood 2017.

In a nutshell, the categorical command to enter the state is central to Kant's theory of right. On this ground, opposing the authority of the sovereign cannot be morally permitted because this would entail a return to a lawless condition. By contrast, a transit through a "moment of anarchy" does not pose a conceptual problem for Schlegel's account of republicanism, for he conceives of the state as having a *conditional* rather than a *necessary* nature.²⁷ "Abandoning" a civil condition, organizing anew the exercise of the sovereign power, may be transitionally required for the people to advance a more rightful form of the state.

III. Concluding remarks

In the *Versuch*, Schlegel presents an insightful theory of popular sovereignty and the state that is meant to give an answer to the problem of how to implement the republican ideal. On his view, there are transitional forms of republicanism—insurrection and dictatorship—that are crucial to our emancipatory path towards the ideal political regime. They refer neither to a lawless condition in which the use of force and violence prevails nor to an authoritarian exercise of power. Rather, they involve forms of collective action that are authorized and established by the united will of the people.

Since Schlegel takes the principle of the general will to be a universal criterion that gives unity to the people to judge any existent political constitution, his argument regarding transitional forms of republicanism can be considered Kantian in "spirit." In *Theory and Practice*, Kant criticizes attempts to justify a right to resist the power of the sovereign that appeal to eudaemonistic political principles (i.e. the idea that the welfare or happiness of the people is the ultimate end of the state).²⁸ He says: "the people is not willing to give up its universal human claim to its own happiness and becomes rebels. Had it first been asked what is laid down as right [...] then *the idea of the social contract* would remain in its incontestable authority [...] *as a rational principle for appraising [Beurtheilung] any public juridical constitution*" (TP, 8: 302, italics are mine). Thus, the problem is not

²⁷ Moreover, Schlegel contends that an anarchic condition is preferable to an extremely unjust regime. Absolute despotism, which he calls an *antistate* [*Antistaat*] is "(even if perhaps physically more tolerable) an incomparably greater evil than *anarchy*" (KA, VII: 25).

²⁸ His main target is Achenwall's theory of natural law (TP 8: 301), which Kant employed as a basis for his lectures on the discipline. In his *Ius Naturae*, Achenwall maintains that the people constitutes a social unity prior to the establishment of a political authority and can judge whether the ruler fails to procure the citizens' public welfare or external happiness. He argues that "if the *right of the group as a whole* is violated or a *prominent part of the people* is wronged by the overlord," the people is allowed to use force against the ruler and depose him (NL II, §203). Achenwall's view on resistance was common among German natural law thinkers; cf. Maliks 2018.

that the people judges the sovereign. On the contrary, the citizens *can* and *should* critically assess their existing government. Kant argues that “since every human being still has his inalienable rights, which he can never give up even if he wanted to and about which *he is authorized to judge for himself*, [...] a citizen must have, with the approval of the ruler himself, *the authorization to make known publicly his opinions about what it is in the ruler’s arrangements that seems to him to be a wrong* against the commonwealth” (TP, 8: 302, italics are mine). What is crucial, then, is the *principle* the people adopts in assessing the sovereign: citizens should not judge the ruler in reference to their happiness, i.e. the benefits they can obtain from a certain law, rule or policy, but only by considering their rights as members of a political community. And the only rational principle that allows the people to form judgments about its rights as a political unity is the a priori principle of the general will, for the idea of the collective will of all as lawgiving grounds the legitimacy of any political constitution. Schlegel’s justification of the legitimacy of insurrection and dictatorship is not eudaemonistic; he does not appeal to the happiness or welfare of the citizens to defend the rightfulness of such transitional forms of political organization. Their legitimacy rests not on their *end* but on the *principle* that causes and guides them, namely, the principle of the general will. As Kant argues, the rational idea of the people giving laws to itself is both the basis of a legitimate state and a universal standard for judging any political constitution. This means that, in Schlegel’s account, a revolution brought about by the individual decision of a revolutionary, or a dictatorship established unilaterally by a ruler, would be illegitimate: rather than representing the *general* will, it would be the result of a *private* will who unjustly acts on behalf of the people.

Now, there are two significant points of disagreement between Schlegel and Kant regarding the possibility of the people’s judging the sovereign power as a political actor. *First*, Kant claims that citizens can examine an existing government by considering their “inalienable rights.” As we have seen, however, the “authorization to judge by themselves” and to make their opinion public is not accompanied by the power to alter the constitution. For his part, Schlegel maintains that citizens can judge the constituted power but also determine whether the general will has been usurped. If this is the case, the people has the power to give itself a new constitution. *Second*, for Kant, the people can only constitute a unity, and thus judge as such, *within* the state. *Outside* a juridical condition, the people cannot act as a unified entity, since its unity is produced by the sovereign through the representation of the general will. By contrast, Schlegel contends that the people is a political body that continues to exist even if the constitution is manipulated or destroyed. Therefore, although Schlegel’s view of republicanism may be regarded as Kantian in “spirit,” it is rooted in a central claim that goes against the “letter” of Kant’s account, namely, a

notion of the people as a central political actor that can democratically exercise a power to temporarily intervene, change or transform the organization of the state.

Finally, Schlegel's "Kantian" republicanism also opposes a thesis that lies at the core of Kant's theory of right: the idea that the highest form of political freedom and equality can only be realized within coercive institutions. For Schlegel, a republican government should eventually aim at its own dissolution and thus contribute to the formation of a moral community of human beings that is free from domination and dependence on coercive laws.

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