Chapter 8: Conclusion

8.1 The Kantian Constitution

As with many political theories, especially contractarian theories of a sovereign where a reciprocal obligation is said to hold, the absence of a formal contract execution date or a dedicated positive means of reaffirmation does not invalidate the principles of operation. It is only the possibility that the existing laws could have been positively affirmed by the people that is required. But even this does not require, according to Kant, that people do consent, via some sort of referendum, nor that they must consent. Consistent with the other requirements of his moral theory, Kant does not allow individual, subjective judgments as a determining ground of, or substitute for, the law. So, for example, a justly imposed tax (i.e., proportionately distributed and earmarked for a legitimate purpose) could not be overturned on the basis that people did not want to pay any more money. If put to a referendum, said tax might be rejected, but if it is possible that the citizenry could consent to the use of the tax and its method of collection, apart from their judgment regarding their perceived ability to pay, the consent of the people is taken as a fact. The relevant consideration, then, is that the policies reflect the reasonable dispositions of the collective. In this way we can read the Rousseauian influence of the notion of a ‘general will.’ It also provides an explanation for Kant’s commitment to a republican form of government that is representative but not a ‘majority rules’
democracy. Likewise, the agreement of all by which a civil constitution comes to exist is not necessary as an historical fact to give the established constitution legitimacy. Instead, it is

*only an idea* of reason, which, however has its undoubted practical reality, namely to bind every legislator to give his laws in such a way that they could have arisen from the united will of a whole people and to regard each subject, insofar as he wants to be a citizen, as if he has joined in voting for such a will. For this is the touchstone of any public law’s conformity with right.\(^2\)

Since an original contract is not necessary for a civil state to obtain a ‘rightful condition,’ the practical application of the Kantian political theory is to bring the existing state into highest conformity with the concept of right and thereby to reorganize the state in a way most conducive to that principle. According to Kant, “the *republican* constitution is the only one that is completely compatible with the right of human beings.”\(^3\) Recalling Mary Gregor’s call for “high level principles” discussed in Chapter 7, we can see Kant’s principles in his embracing of the motto of the French Revolution: *Liberty, Equality, Fraternity*. The liberty of civil society is defined as “the warrant to obey no other external laws than those to which I could have given my consent.”\(^4\) The equality required for civil society is the idea that “no one can rightfully bind another to something without also being subject to a law by which he in turn *can* be bound in the same way by the other.”\(^5\) The concept of fraternity is the key to establishing a republican government, as opposed to a despotic

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1 For more on the Kantian endorsement of a republican form of government, see *Perpetual Peace* trans. Hans Reiss, p. 102.
3 *Toward Perpetual Peace*, 8:366.
4 *Toward Perpetual Peace*, 8:350n.
5 Ibid.
one. In a despotic government, the legislative and executive powers are vested in a single authority (even if that authority is, itself, comprised of multiple members as in a democracy). This means that the coercive power is granted directly to those making laws, as opposed to a collective agreement to laws and consent to enforcement of those laws by a sovereign authority. As Kant argues, such a system is inherently corruptible because there is no arbiter of individual interests. Returning to the tax example, in a despotic government, subjective approval of the tax implies collection of it; opposition prevents it. But again, it is not asked if it should be approved, but merely if it is (and worse yet, the test in a democracy is simply a preponderance of opinion rather than unanimous agreement) which takes legislation out of the realm of universality and places it clearly on subjective, empirical, lawless grounds. Moreover, if the legislators are also the executives, there is no reciprocity of obligation between them, so members are bound arbitrarily both in scope and purpose. The public will is handled as a private will and makes the members subjects but not citizens. This explains why Kant favored a republic and rejected democracy as a suitable form of government. As Kant viewed it, democracy was simply a demonstration of the dominant private will. Democracy is merely an aggregation of private interests, rather than an embodiment of collective effort within which agents were suitably other-regarding. The idea of fraternity amongst citizens of a state is the acceptance of “the dependence of all upon a single common legislation.” Fraternity goes beyond mere equality in that it requires a collective, communitarian perspective.

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6 Ibid.
on the civil condition. Kant’s discussion of the decision to go to war highlights the role of fraternity in the republic:

Nothing is more natural than that they will be very hesitant to begin such a bad game [war], since they would have to decide to take upon themselves all the hardships... on the other hand, under a constitution in which subjects are not citizens of the state, which is therefore not republican, [starting a war] is the easiest thing in the world; because the head of state... gives up nothing at all of his feasts, hunts, pleasure palaces, court festivals, and so forth, he can decide upon war, as upon a kind of pleasure party, for insignificant cause, and can with indifference leave the justification of the war, for the sake of propriety, to the diplomatic corps, which is always ready to provide it.7

Fraternity is a concept of shared fate, of being your brother’s keeper to the extent that he can also, equally be considered your keeper as well. When Kant opposes Hobbes’ opinion that a head of state has no obligation to the people and nothing he does to them can be considered wrong, Kant is asserting the principle of fraternity that extends even to the sovereign. The sovereign has coercive power (i.e., right) to demand obedience from the citizens of the state. But the restriction on the sovereign’s power is contained in the negative assertion of the rights of citizens in general. Namely, “what a people cannot decree for itself, a legislator also cannot decree for a people.”8 As executive of a state, the sovereign is thereby bound to observe the legislative boundaries set by the inviolable rights of man. An example given by Kant in the text, and of supreme concern to him in the time of his later political writings, is “the freedom of the pen.”9 The protection of the publicity of ideas is a necessary right that protects both the citizen and the sovereign. With regard

7 Ibid.
8 *Theory and Practice*, 8:304, emphasis removed.
9 Ibid.
to the former, the ability to publicly share ideas, even criticism of the government, assures citizens that they are possessed of said rights and prevents a representation of the sovereign as “favored with divine inspiration and raised above humanity”\textsuperscript{10} from taking hold. Put another way, public discussion and/or debate highlights the fact that while the sovereign—by virtue of his position—is not equal to his subjects with regard to coercive power, he \textit{is}—by virtue of his humanity—still a member of a civil condition and himself subject to the limits of the public will. Each citizen is thereby, both literally and figuratively, an author of the very laws that hold for all. For the head of state, free speech makes him aware of errors in his actions such that he can correct any contradictions between his actions and those mandated by the public will. It shows, according to Kant, a trust between the citizens and the head of state that power is being exercised to the fullest extent and within the proper limits.

\subsection*{8.2 A Cosmopolitan Constitution}

The aim of the Kantian political theory is to secure a condition in accord with every man’s right of freedom. A civil constitution of individuals, as a state, achieves that objective amongst people joined together by shared territory, and if people were able to regard the whole of the Earth as shared territory, to represent themselves as citizens of the world, then there would be a collective act of freedom as the power to form a “\textit{world republic}.”\textsuperscript{11} But even if the collective will lacks the power to resist the

\footnotesize{\textsuperscript{10} Ibid.\newline \textsuperscript{11} Toward Perpetual Peace, 8:357, emphasis original.}
inclination to protect the influence of their particular nation, then the freedom of nations, negatively considered, still necessitates the formation of a “league that averts war, endures, and always expands [to] hold back the stream of hostile inclination that shies away from right.” This parallels the duty of the individual to, at minimum, enter into a condition that subordinates each person’s individual inclinations, but also to strive to create a condition whereby the observance of right, both in the individual and in others, becomes the motivating force of actions of individuals within the society. The conception of a cosmopolitan right, whereby every individual is perceived as a member of a world community such that he cannot be mistreated so long as he is behaving peaceably,

is no fantastic and exaggerated way of representing right, it is, instead, a supplement to the unwritten code of the right of a state and the right of nations necessary for the sake of any public rights of human beings and so for perpetual peace. And this, again, makes clear the necessary connection between politics and ethics, for making use of one’s rights “with utmost rigor” conflicts with one’s ethical duty to promote the happiness of others. So, too, with the interaction between states, Kant articulates the restriction that reason places on that interaction as well by stating that “political maxims must not issue from the welfare and happiness of each state that is to be expected from following them, and so not from the end that each of them makes its object.” This is the same requirement of virtue in the individual, that each reject personal happiness and other subjective, conditioned representations as objects of

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12 Ibid.
13 Toward Perpetual Peace, 8:360, emphasis added.
14 Toward Perpetual Peace, 8:379.
action and instead use the idea of humanity as the complete, unconditioned object of action. The duty to self and others that is the content of virtue must guide actions in politics such that we assume both that the pure principles of right have objective reality and that the right of humanity is held as “sacred, however great a sacrifice this may cost the ruling power...all politics must bend its knee before right, but in return it can hope to reach, though slowly, the level where it will shine unfailingly.”

The right each human being has—by virtue of his humanity—is inviolable and the duty to respect those rights is unconditional. The scope of those rights—and the obligations therein—is not limited to an immediate sphere of influence. As we saw in Chapter 7, Kant rejects the Christian doctrine of original sin and the endorsement of paternalism that follows from that doctrine. The two-pronged indictment of man in the Augustinian Christian tradition is that: a. Man cannot know what is in his own best interest; and b. that an external lawgiver is necessary for human flourishing to protect against evil ‘predispositions’. To respond and effectively overturn this prescription for paternalism, Kant must demonstrate that what we ought to do is something we can do. Our duties of self-perfection and the happiness of others require of us first, that we can know ourselves and know our predisposition to the good (rather than to sin) and that we can identify and respect the humanity in ourselves and in others. This marks a commitment to knowing the reality of things. At bare minimum, we must recognize a distinction between things-as-they-are and things-as-they-appear. At most, we should establish the identity of things-in-themselves. Kant discusses, in the

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15 Toward Perpetual Peace, 8:380.
Religion, the way in which outward deeds seem to provide evidence of the evil character of man, but this is simply the sensible, empirical character which is not the end of the story. As he states in the Conflict of the Faculties, a recognition of the ability to do what we ought (which serves as the basis of assigning culpability to one’s deeds that are regarded as evil) creates an awareness of our ability to:

sacrifice our sensuous nature to morality…This ascendancy of the supersensible human being in us over the sensible, such that (when it comes to a conflict between them) the sensible is nothing, though in its own eyes it is everything, is an object of the greatest wonder, and our wonder at this moral predisposition in us, inseparable from our humanity, only increases the longer we contemplate this true (not fabricated) ideal.¹⁶

Therefore, if knowledge of humanity, as discussed in Chapter 4, yields duties to self and others by virtue of that humanity, the scope of our work towards a ‘rightful condition’ cannot stop at the perimeter of our city or at the ocean’s shore. Instead, the commitment extends wherever and whenever humanity is. Kant’s notion of perpetual peace is the condition under which those rights of man, by virtue of his humanity, will be universally respected. Therefore, it is a duty of all to work to create a condition of perpetual peace.

8.3 The Critical and pre-Critical Works Reconsidered

Kantian political theory is essential to understanding the interplay between reason’s speculative and practical use. That interplay is, essentially, the definition of human freedom. The Critique of Pure Reason explains the possibility of experience;

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¹⁶Conflict of the Faculties, 7:58-59, emphasis original.
as it discusses the way in which reason can “cognize objects a priori.”\(^\text{17}\) All of the concepts involved in the speculative use of reason are assigned exclusively to appearances. But, the practical use of reason requires a concept that goes beyond appearance to a thing-in-itself. Put another way, pure practical reason requires a concept that is also an object, because the ability to cognize an object a priori and thereby ground the reality of that object is the power of the faculty of reason. The objective reality of freedom, given by the moral law, “determines that which speculative philosophy had to have undetermined.”\(^\text{18}\) Because speculative reason dealt only with intuitions of appearances, there was no content to the concept of non-empirical (i.e. noumenal) causation. However, non-empirical causation remained think-able, therefore possible, and it is practical reason via the moral law that gives content to the concept. The very idea of a will contains the concept of a non-empirically-determined causality. The power of choice would be contradictory to a strictly mechanistic order. The power of choice is the content, the objective reality that noumenal causation gives to all other categories of experience. That objective reality is necessary for practical purposes of action. This is the will’s \textit{productive} power. The will, with the moral law as its determining ground, chooses an action (i.e. \textit{intends} an action) and with it gives the moral possibility of an action that itself becomes a necessary object. This is the “morality of dispositions”\(^\text{19}\) that empiricism deems impossible. To an empiricist, such as Hume, subjective necessity (i.e. custom)

\(^{17}\text{Critique of Practical Reason, 5:45.}\)

\(^{18}\text{Critique of Practical Reason, 5:48.}\)

\(^{19}\text{Critique of Practical Reason, 5:71.}\)
is “assumed in place of any objective meaning of necessity in the concept of cause, so as to deny to reason any judgment about God, freedom, and immortality.”

Empiricism denies the idea of the moral law as the supreme practical principle and puts in its place either individual desires or enthusiasm for collectively-affirmed customs which are, at their base, an aggregation of individual desires. According to Kant, this theory of action “destroys at its roots the high worth that humanity can and ought to procure for itself.” For Kant, “our human worth depends on the measure of our achievements…so a man must be active and courageous.” Activity is, for Kant, the measure of life, observing that “the busier we are, and the greater our feeling of living, the more conscious we are of our existence…we die in fullness of life if throughout our life-time we have acted much and done much.”

A life based simply on the pursuit of individual happiness and/or guided simply by custom, as the empiricists describe, is a life devoid of meaning because any activity undertaken on that basis is merely subjective, mechanistic, and ultimately determined to be without merit. An individual can only claim to be acting freely if he is, indeed, the author of his actions. No merit can be ascribed to actions that were not freely performed. This means that man must exercise both the faculty of will in intention and the power of reason in production of an object of action. To do this is to act from the moral law, a synthetic a priori principle of human freedom. Just as the synthetic a priori propositions of mathematics were rescued by Kant and from them he developed the

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21 *Critique of Practical Reason*, 5:71.
23 Ibid.
Metaphysical Foundations of Natural Science, so too did Kant develop a Metaphysics of Morals as the principle of human action. In the second chapter of the Transcendental Doctrine of the Method, Kant states that “the entire armament of reason, in the undertaking that one can call pure philosophy, is in fact directed only at three problems:… 1. What can I know? 2. What should I do? 3. What may I hope?” And it is the third question that most directly ties Kant’s works on natural science with his works on political theory, and explains his description as both as considerations of Nature. As Kant says,

all hope concerns happiness, and with respect to the practical and moral law it is the very same as what knowledge and the natural law is with regard to theoretical cognition of things. The former finally comes down to the inference that something is (which determines the ultimate final end) because something ought to happen; the latter, that something is (which acts as the supreme cause) because something does happen.

In this context it is plain to see that Kantian political theory was not a mere footnote to his critical philosophy, nor a disjointed addendum to his moral theory. Kantian politics is, in fact, part and parcel of the duties of man to order himself and his world in accordance with the true nature of humanity. And this project was not taken up by Kant as an additional area of inquiry once the main work of the first Critique was completed. Instead, the chronology of Kant’s writings indicates that the conditions of human action, and the ability of man to achieve his purpose in life (to appear as he is, i.e., to exercise a good will) was the consistent theme and purpose of his thought from his earliest writings. The Critique of Pure Reason was necessary for

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24 Critique of Pure Reason, A800-805/B828-833.
25 Critique of Pure Reason, A805-806/B833-834
a “merely negative purpose, the avoidance of stupidity” but it prepares the way for “a positive one.”

Kant writes, in a 1773 letter to Marcus Herz, that “the highest ground of morality must not simply be inferred from the pleasant...for it is no mere speculative idea; it must have the power to move.” So, he continues, “I shall be glad when I have finished [the first Critique] as then I can turn to metaphysics.”

He repeatedly refers to his work on the first Critique as clearing a plot of land upon which to cultivate the positive theory. He refers to the Critique as giving “the sources of metaphysics, its methods and limits. After that I will work out the pure principles of morality.”

He also commends another theorist for referring to the Critique’s system of categories as “the place you would look for help in setting up a system of civil law. I think that here, too, you are correct.” Clearly Kant intended for his moral theory (and therein also his political theory) to be looked upon not as a mere afterthought of the critical project. His pre-Critical writings set the stage for discussion of the concepts of necessity and causation, as well as a distinction between substances and appearances. Kant knew that confusion about those very ideas had lead to misguided dogma concerning predestination, the nature of God and man, human freedom, and the moral law. The first Critique was an investigation of “the sources of intellectual knowledge, without which one cannot determine the nature and limits of

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26 Correspondence Kant to Mendelsohn, 8 April 1766.
27 Correspondence Kant to Marcus Herz, end of 1773.
28 Correspondence Kant to Marcus Herz, 21 February 1772.
29 Correspondence Kant to Jung-Stilling, 1 March 1789.
metaphysics”
but, Kant believed, metaphysics itself “objectively considered…[has]
its proper place in human knowledge and that the true and lasting welfare of the
human race depends on it.”

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30 Correspondence Kant to Marcus Herz, 21 February 1772.
31 Correspondence Kant to Mendelsohn, 8 April 1766.