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# Freedom and the Ideal Republican State: Kant, Jefferson, and the Place of Individual Freedom in the Republican Constitutional State

Theresa A. Creighton

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FREEDOM AND THE IDEAL REPUBLICAN STATE:  
KANT, JEFFERSON, AND THE PLACE OF INDIVIDUAL FREEDOM IN THE  
REPUBLICAN CONSTITUTIONAL STATE

By

THERESA “NESS” A. CREIGHTON

Under the Direction of Melissa M. Merritt

ABSTRACT

Of the questions concerning the many great minds of the European Enlightenment, the question of what constitutes right and proper government perhaps had the most enduring influence on the world stage. Both Thomas Jefferson and Immanuel Kant attempted to answer the question of what constitutes right government, in particular by basing the system upon the idea of human freedom as an inalienable right. This project is an attempt to compare the systems proposed by these two authors, as well as to critique each on its ability to protect and foster individual freedom. It is my opinion that neither manages to do what it is constructed to do, as each fails to fully protect individual freedom, and each has as part of it a component which conflicts with individual freedom.

Index Words: Immanuel Kant, Thomas Jefferson, Enlightenment, Political Philosophy, Freedom, Right to Freedom, Metaphysical Freedom.

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Georgia State University

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2008

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## DEDICATION

This work is dedicated to all of those who have encouraged my persuite and love of all knowledge, most of all, my Grandmother, Ethel Dellinger Rhyne.

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## **Chapter 1: Introduction**

### ***Introduction to the Project***

Of the questions concerning the many great minds of the European Enlightenment, the question of what constitutes right and proper government perhaps had the most enduring influence on the world stage. What constitutes a legitimate government, what is the proper form for said government, and what grants legitimacy to both a government and its laws were questions that concerned many during the period. And, at a time when political and social change were the standard of the day, the questions of government were not merely theoretical: new nations were being born, and old governments overthrown, while statesmen and philosophers alike struggled to craft new governmental structures which would, they hoped, correct the perceived problems and evils of the previous systems.

Bound up in this problem of what constitutes good and legitimate government was the question of how to reconcile laws and society with the new Enlightenment ideals: humans were rational, progressive, and, most importantly, free beings. How could good government exist which could govern people without, or minimally, infringing upon those features which define humanity? More importantly, the question was how to construct a government that did not do what previous governments had done — destroy the fundamental dignity of individuals for the benefit of rulers. Thus, key to the answer of how to develop a good government was how to incorporate human freedom into the system, both to prevent its violation, and to encourage its expression.

Many minds of the era attempted to answer such questions. Two in particular stand out due to their approaches: Immanuel Kant and Thomas Jefferson. While Kant's political philosophy is often overlooked, he presented it as a part of a unified system not just of practical philosophy, but as a system encompassing the metaphysical roots from which the practical was

developed. Kant's system offers a full description of human freedom, from the metaphysical origins to the practical, and then develops a political system with the notion of human freedom firmly in mind. Jefferson developed a system that, while containing a metaphysical grounding, was much less concerned with the metaphysical foundations than was Kant. Rather, Jefferson had a direct hand in actively creating a new government from the ground up, beginning from the critique of previously existing systems.

The first two sections of this work will detail the process by which each of the two authors develops his political system, wherein each defines and defends a conception of human freedom, then establishes the political based upon freedom of the individual. Once this explication is complete, it will become apparent that a fundamental flaw exists in each author's theories. I will argue that both Kant and Jefferson fail in their attempt to derive a political system that will protect and foster human freedom. On my view, Jefferson fails to account for how the constant involvement of a direct democracy in the lives of the citizens infringes upon their freedom as individuals, and how to compensate for an absenting individual, who by his abstention assents neither to the process nor law. On my view, Kant fails to account for how a single ruler making laws for a nation is any different than a democracy, which he rejects, as well as how this single ruler's laws can be viewed as legitimate based on his own understanding of what constitutes a legitimate law. However, as I will attempt to also show, Jefferson does far better at resolving the issues of his system than Kant, and as such, his proposed final system is preferable to Kant's in terms of maximizing individual freedom within the state.

### ***The Rationale of Comparison***

What is truly gained by this analysis, beyond the ability to conduct the previously mentioned critique, is an insight into two very different political trajectories that developed during the

enlightenment, and the conflict between their origins and sources. On the one hand, Kant can be seen as a representation of both the purest ideas of the classical republican in governmental form, an extension of the arm of political thought reaching back to Plato and Aristotle. On the other, Kant is deeply influenced by liberalism and its focus on individual freedom as fundamental to both a concept of morals, and to a political system. His influence, developed with both of these issues in mind, influenced the development of European political systems as the transitions from absolute monarchies to constitutional monarchies, to the now myriad of constitutional forms which exist in present day Europe. On the other side of the Atlantic, on the other hand, Jefferson helped to create a political system that was a radically different one from any previously seen, yet a synthesis of political thought throughout much of western history. Democracy was greatly decried in Europe, and the new nation of America demonstrated that it was in fact a sustainable political system. Jefferson synthesized much of his political philosophy from the Lockean liberals and classical republicans, but in the notion that a direct democracy was both a republican constitution and a feasible one, he departed radically from the majority of his sources.

Philosophically, Kant and Jefferson both share their roughly contemporary roots in Locke, Wolff, Montesquieu, and especially Rousseau; yet their shared sources also included classics of Greece and Rome, from Aristotle and Plato, to Cicero and Epicurus. They also were both familiar with Newton, as well as numerous other scientific authors of the early Enlightenment. As such, Jefferson and Kant had many of the same concerns philosophically: human freedom, free will, human rights (both political and civil), and the method and system of good government. Yet despite having such similar sources what the two produce is radically different in terms of content.

Of particular note is the focus each author places on the derivation and source of human freedom and free will. This was a common theme of the Enlightenment writers, but Kant and Jefferson can stand as representatives of the two of the opposing viewpoints of free will in human beings. Kant held that free will was antithetical to natural laws, and thus could only exist external to natural laws. Jefferson, on the other hand, saw human free will as extending directly from natural law, and existing in harmony with those laws as a product of them.<sup>1</sup> I do not intend to claim that Jefferson and Kant had identical conceptions of human freedom, nor that the type of concept they meant by that term was even the same. Rather, what I intend to show is that they used very similar terminology to discuss a blanket concept, for which each had very exact and different definitions, when establishing their political systems.

Too, both can be seen as fairly antithetical then in how they derive rights, and particularly inalienable rights, in light of their metaphysical beliefs. Kant derives only a single innate and therefore inalienable right for humans, while Jefferson draws up three primary and numerous other secondary inalienable rights. Kant develops his innate right as a product of the moral law via a very peculiar path, which I will trace in the sections below. Jefferson, on the other hand, derives his natural rights from natural law directly. Yet both agree that freedom is an innate right of all humans, and as such, must be considered when creating a good government.

This fundamental belief in the importance of individual freedom is the foundation for both Kant and Jefferson for their ideal political system. Both make the claim that the ideal political form is that of a republic, yet how each imagines this republic, and the role freedom plays within it, are wildly different. And it is this difference that truly highlights the contrast between each author and their derivation of human freedom and rights and how they understand

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<sup>1</sup> The third option being the denial of free will, for one reason or another, which was, to the best of my knowledge, uniformly rejected by most enlightenment writers.

them to exist. Yet, with this contrast, we can clearly see the fundamental problems that arise in the development of their political systems due to their focus on human freedom.

The final purpose of this comparison is to use the insights that it has given to construct a critique of each author's final political system. That is, given that each author approaches the idea of human individual freedom differently, and constructs the system of a republic in a different manner, the system of one author and the challenges they answer can be used to construct a critique of the other author's system. In each case, there is a fundamental problem that arises in the final system in that the form of government proposed cannot promote individual freedom in the manner that Kant and Jefferson see themselves as doing. This will be shown in the final chapter. I will also argue there that Jefferson's system is less problematic than Kant's, and as such presents a more practical approach to establishing a state designed to promote and protect individual freedom.

## **Chapter 2: The Kantian Approach**

### ***Introduction to Kant's System***

Immanuel Kant was a man of great regularity of habit but of innovative and remarkable thought. Many of the great historical events of his time occurred at much distance to his personal life, yet his works reflect a worldly mind keenly interested in all things around him (Höffe, 6-7). Throughout much of his work there is a focus on the importance of the notion of the free will of humans as rational beings. It is fundamental to his ideas of morality, as is widely known. Kant's moral philosophy extends into his political philosophy; and thus we find that freedom plays as fundamental role in its construction as it does in the moral philosophy. The concept of a rational being, for Kant, relies upon there being freedom for such a being. And since freedom is a necessary feature for rational beings to possess for Kant, there must be an acknowledgement of freedom in any political system that Kant accepts.

Kant fundamentally understands freedom in two ways. On the one hand, Kant has a metaphysical conception of freedom, and on the other he has a practical conception of freedom. These two conceptions are related, but are distinct from one another in the restrictions of their domains. It is from the metaphysical conception that the practical is understood. This practical conception then gives the ideas needed for a refined subset of the practical conception of freedom — political freedom. Political freedom for Kant is a limited notion of freedom in both scope and scale, but its lineage from the metaphysical and the moral law grants it special status for Kant. As such, freedom is the key to understanding Kant's ideas of government and law. But before any discussion of the political can occur, the underlying metaphysics must be first explained in detail.

### ***Kant's Freedom: The Rational Autonomous Will***

Kant's moral theory has as a part of its basis the concept that a rational being has an autonomous will. That is, that a rational being is not subject solely to the natural causal laws; rather, it has the capacity to act in such a way that is not caused by natural law alone. The autonomy of the will, for Kant, refers to the point that the will is properly self-determined (4:447).<sup>2</sup> The conception of freedom that is involved in this conception of the will is the metaphysical notion of the will's freedom from being determined by causal laws of nature. This autonomy — or freedom — of the will, is essential to his moral theory, and to any further process in his understanding of rational will (5: §1-6). The moral law must be law that we give

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<sup>2</sup> I am following the standard practice of referencing all of Kant's works, except for the *Critique of Pure Reason*, by the Academie volume and then page number. Citations for the *Critique of Pure Reason* are given with the page of either the first (A) or second (B) edition, or both, where necessary. The only additional exception to this will be where full chapters of certain works are cited, indicated by volume number and then (§) chapter number.

ourselves, according to Kant (4:432). But the question remains, what exactly does Kant mean by this freedom of the will? This is the question we are most interested in, for it is only after we pin down what Kant means by freedom, first in the metaphysical sense and then in the practical and political senses, that we can begin to see how it fits into his conception of a state.

To do this, we must broadly examine several cases in which Kant discusses the nature of freedom in relation to the moral law, for each treatment helps to flesh out the overall picture of what Kant means by freedom of the will. Kant begins his discussion first with a negative conception of freedom, and then more fully develops a positive conception. Yet neither of these can, alone, insists Kant, fully tell us what freedom of the will means without including a discussion of the moral law. As such, to be complete, we must examine how the moral law and the freedom of the will are bound together conceptually for Kant. This connection becomes essential for understanding the role freedom then plays when Kant shifts from a focus on freedom of the will to political freedom.

At the start of Section III of the *Groundwork*, Kant offers us a negative formulation of freedom in the following definition: "Will is a kind of causality of living beings insofar as they are rational, and freedom would be that property of such causality that it can be efficient independently of alien causes determining it, just as natural necessity is the property of the causality of all nonrational beings to be determined to activity by the influence of alien causes" (4:446). While we are still beings of the physical world and in many ways subject to it, our rational will grants us the capacity to act other than how mere natural law would determine us to act. More importantly, it is that by which we can set our own ends for ourselves, rather than having our ends set for us by instinct. More clearly, the individual will of a rational being is that which determines the actions of that rational being, and freedom which allows us to be

determined by our will rather than by the forces of natural law (that which determines nonrational beings). Kant rejects this negative formulation as "unfruitful for insight into its essence" but fruitful in that it points us towards the positive formulation of freedom "which is so much the richer and more fruitful" (4:446). To better understand why Kant rejects this negative formulation, let us look to the *Critique of Pure Reason*. In particular, the focus for this discussion will be on the Antinomies of Pure Reason — specifically the third antinomy — that concerns the compatibility of free will and the causal laws of nature.

The third antinomy presents a conflict between the positions of what could roughly be called determinism and freedom of the will. The thesis of the antinomy represents the position of free will: "The causality according to laws of nature is not the only causality, from which the appearances of the world can thus one and all be derived. In order to explain these appearances, it is necessary to assume also a causality through freedom" (A445/B473). On the other hand, the antithesis represents the deterministic position: "There is no freedom, but everything in the world happens solely in accordance with laws of nature" (A445/B473). As a whole, the third antinomy is deceptive in some respects. Rather than being solely focused on human freedom, as it would seem to be at first glance, it, as Alfred Ewing characterizes it (a characterization with which I agree), is concerned with the argument of first causes (218). "Its bearing," says Ewing, "on human freedom consists in the fact that, if the thesis of the antinomy is true, this proves the actuality of some freedom [...], while if the antithesis is true, this proves all freedom impossible" (218). It is important to note one thing before continuing: rather than freedom being the antithesis of causality, instead it is governed by its own set of rules in much the same way that causality is governed by natural law. For Kant, freedom is a type of causality in of itself, separate and differentiated from the causality governed by natural law. It is not, in any way, the



absence of laws governing cause and effect of some sort or another. This difference is fundamental in understanding the resolution that Kant reaches for this antinomy.

Prior to this, Kant has established a basic principle of causality in the Second Analogy, that “everything that happens, that is, begins to be, presupposes something upon which it follows according to a rule” (A189/B232). Put in a more clear phrasing, it is a fact that each event must necessarily have a cause, that things do not change without something affecting them and thus, causing them to change. In the world of appearances, there are no events that break this principle. As such, the Second Analogy forces the antithesis of the third antinomy to be true in the world of appearances. It must be the case that, per this principle, there are no original causes, because without a causal chain no events happen, and any such event would, according to Kant, destroy any coherent understanding of the world our senses tell us about (the world of appearances).

The issue that Kant faces then is that he determines the thesis to be just as justifiably true as the antithesis. The problem with the antithesis, as summarized by Justus Hartnack, is a function of its strongest supporting feature. If there is no first cause, then “there cannot be any beginning to the causal sequence, which is therefore unfinished and incomplete; consequently it cannot constitute a sufficient condition for a causal explanation in accordance with the laws of nature” (Hartnack, 117). As such, we are drawn to think that it must be the case that there is transcendental freedom in the world, and that the antithesis must be true, because of the problem this creates with causal chains and explanations. Returning to Ewing, it is apparent that the problem is that if there is no first cause, then “causation [can give] no ultimate explanation or reason at all, just as it would be futile to give a chain of reasons for accepting a proposition if none of them could, any more than the original proposition, be seen to be true in their own right”

(218). That is, if we have no first cause, an attempt to explain an event by its cause can never fully be successful. Transcendental freedom, as Kant proposes, would allow for this first cause, but this would then directly conflict with the previously established Second Analogy. As such, Kant is now faced with a problem: if transcendental freedom is needed to suppose a first cause, yet it contradicts with the previously established Second Analogy, how then can we understand freedom to exist other than in the world of appearances?

Kant seems to have stuck us between a rock and a hard place thanks to the seemingly conflicting demands that a causal explanation puts on our understanding of events. In order to explain causes fully, we must have a first cause that exists without a linking causal chain to create it, yet no such first cause seems to be able to exist by the laws of nature alone. Kant resolves this problem by restricting the thesis and antithesis of the antinomy each to their own domains of governance. If we restrict the thesis to things in themselves, and the antithesis to only relationships between phenomena, then the two propositions are no longer mutually exclusive (Beck, 25). Thus, by supposing a division between a world of appearances, where transcendental freedom does not exist, and a world of things in themselves, where transcendental freedom does exist, Kant has resolved the issue of first causes.

But where does this leave us in terms of freedom? It has allowed us to fully flesh out the nature of the negative formulation of freedom as Kant presents it in the *Groundwork*. That is, that freedom is our freedom from the causality of natural law, and, per the third antinomy, our ability to be first causes of ourselves. This negative formulation inherits with it the notion that freedom is not the antithesis of natural law causality (as pointed out before). Rather, it is governed by its own set of rules in much the same way that normal causality is governed by natural law. But there is a second, and more important, inheritance occurring here which Kant

does not deal with fully until the discussion of the topic in his practical philosophy. In the *Groundwork*, Kant more fully develops this point. The negative formulation, says Kant, directly implies a positive formulation. The positive formulation of freedom is, as Allison describes, “the property of the causality of the will of rational beings of ‘being able to work independently of determination by alien causes’” (95; quoting Kant at *Groundwork* 4:446). This positive conception is structured in the following way. Where "natural necessity was a heteronomy of efficient causes," freedom of the will is, by parallel, autonomy; "that is, the will's property of being a law to itself" (4:447). We are causes of ourselves, and more importantly, *first* causes, capable of giving to ourselves laws that govern our actions. Humans are not bound to the heteronomy of efficient causation (natural law causality), because of the nature of our wills as law-giving entities. Our wills give laws to ourselves, rather than being solely given laws from external objects of our wills (4:441). Our freedom of the will is our autonomy, and this autonomy is our ability to set the laws of our own causality of freedom.

On first glance, the positive conception of freedom would seem to be defended by a very simple logical argument on Kant's part. The freedom of the will is what differentiates us from natural necessity, and differentiates us from those things which lack rational wills and are causally determined by the natural laws. But rather than viewing humans as being simply free from natural-causal necessity, Kant claims that this understanding of freedom misses the mark: rather, freedom of the will is the freedom of being a law unto itself. And, by this freedom, we should take no law except those that are universalizable as our laws; as such, the moral law governs us. But it is not a law that restricts our freedom; rather, the freedom of a rational will is identical to the freedom of the will operating under moral law. They are equal and identical propositions for Kant: “a free will and a will under moral laws are one in the same (4:447). The

ability of a will to give law to itself is fundamental to the first formulation of the moral law, or the Categorical Imperative.<sup>3</sup> A rational will, for Kant, is an autonomous, free will (in as much as it is rational), because it is a first cause for the actions set in motion by that will. As Kant points out, the freedom of the will as a first cause is directly a part of the first formulation of the Categorical Imperative. The Categorical Imperative establishes the laws which govern the action of an autonomous, rational will. As Kant puts it: “a free will and a will under the moral law are one and the same”; “freedom and the will’s enactment of its own laws are indeed both autonomy” (4:447; 4:450). The first formulation of the Categorical Imperative (the “universal law formulation”), is formulated as follows: “I ought never act except in such a way that I could also will that my maxim should become a universal law” (4:421).<sup>4</sup> It establishes for Kant the primary governing principle of the actions of a rational, and therefore free, will. This is not, however, the whole picture of how freedom and the moral law are linked. The reader should not mistake this incorporation of freedom into the moral law as the whole of the connection between the moral law and freedom; rather, there are additional means by which the two are interconnected, as will be discussed below.

This previous hint at the link between freedom and moral law is at first somewhat confusing in its nature. Kant spends a great deal of time justifying the universality of moral law by way of an argument for the presupposition of freedom for all rational beings (not just humans), which is external to the scope of this discussion. However, that discussion does is

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<sup>3</sup> In addition to this first formulation, there are two additional formulations and a final summary formulation, and together they express for Kant the single expression upon which the moral law is grounded (Beck, 117). There is, for Kant, the possibility of only one Categorical Imperative, but to help explain it and perhaps illuminate its content, Kant offers various formulations (4:420-4421). It should be noted that additional links between freedom and the various formulations can be constructed, but have been omitted as a matter of simplicity.

<sup>4</sup> As noted above, I shall be invoking only the first formulation of the Categorical Imperative.

highlight an important point for Kant: " subjective principles of actions, that is, maxims, must always be so adopted that they can also hold as objective, that is, hold universally as principles, and so serve for our own giving of universal laws" (4:449). This is the founding principle of the Universal Law formulation of the Categorical Imperative. Yet despite this, it has done nothing to actually provide proof for the moral law; it only allows us to presuppose its existence, in addition to the presupposition of freedom. "It must be freely admitted," says Kant, "that a kind of circle comes to light here from which, as it seems, there is no way to escape" (4:450).

Rational beings take themselves as free in order to will particular ends as their own choices under moral law; the same rational beings then hold themselves to those moral laws because of the freedom of will they have assumed for themselves. "For," says Kant, "freedom and the will's own law-giving are both autonomy and hence reciprocal concepts, and for this very reason one cannot be used to explain the other" (4:450).

With all of this laid out, we come to the following question: if we cannot disentangle freedom from moral law, nor moral law from freedom, how then can we understand freedom? And, for the case of this investigation, can we even know what freedom is in any meaningful way beyond our rough positive conception, as first laid out by Kant? To this, Kant's answer is on the one hand frustrating, on the other insightful. Kant draws a distinction between theoretical and practical cognition, and states that we can only have a practical cognition of freedom, never a theoretical cognition. But what is the difference and why should it be of interest for this investigation?

For Kant, the key distinction between a practical cognition and a theoretical cognition is a matter of what is being recognized. Theoretical cognition, for Kant, is the knowledge of what is actually the case; practical cognition is knowledge of what ought to be the case (B ix-x). More

clearly, theoretical cognition is the cognition of objects as they exist while practical cognition is the cognition of objects as they ought to be. There is more to this distinction than this, but for this matter what is important is the point that, for Kant, freedom can only be known by our practical cognition of it, that is, the knowledge of how freedom should be or what it should be. How we do this, then, is the question to peruse. To clarify, the cognition we can have of freedom is of something that ought to be the case, but in any given instance, there can never be knowledge of whether an action is freely performed or not.

Kant supposes that it may be the case that "even with the most strenuous attentiveness and distinctiveness that the understanding can ever bring to [objects represented to us by the senses] we can achieve only cognition of appearances, never of the things in themselves" (4:451). That is, no matter the level of investigation and effort we put forward, we can never know the actual thing in and of itself, rather, we can only know the perceived appearance of the thing, the representation of the thing. This holds true both for things of the sensible world (things external to our minds) and of the internal world, those things we know through an "inner sense" (4:451). "For, since he does not as it were create himself and does not get his concept a priori but empirically, it is natural that he can obtain information even about himself [...] only through the appearance of his nature and the way his consciousness is affected" by these forces and things (4:451). This creates for Kant a division between two coexisting worlds — the world of sense, and the world of understanding. The world of sense is known through the sensory perceptions, and is variable in its content based on the perceptions of the observer.<sup>5</sup> The world of understanding, on the other hand, is the basis for the world of sense, and is static in its content,

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<sup>5</sup> This variable view is not the only view of the phenomenal world. There is a "static" view of the phenomenal world, namely the view of it as articulated *merely* through the principles of the pure understanding. This tells us *what it is* to figure in the domain of nature at all. Thanks goes to Dr. Melissa Merritt for pointing out that distinction and indicating how best to clarify it.

regardless of the observer. This distinction recalls the distinction previously drawn between the two realms Kant divided the world into as a solution to the third antinomy. Previously, Kant has relegated the two different causal types to their own domains: the domain of nature that is casually regulated by natural laws, and the domain of freedom that is presumably governed by the causal laws of freedom. This domain of freedom can only, as Kant has said, be understood by way of a practical cognition of freedom. That is, it can only be understood as something that ought to be the case.<sup>6</sup>

How humans develop this practical cognition is then the question. Human beings must, says Kant, regard themselves as belonging to the world of sense when subject to "mere perception and receptivity to sensations"; yet they must, "with regard to what there may be of pure activity [in themselves] (what reaches consciousness immediately and not through affection of the senses) [they] must count [themselves] as belonging to the intellectual world," with which, beyond this, we have no further understanding (4:451). Thus, because ideas are things of the intellectual world rather than the sensible world, a rational being "must regard himself as intelligence [...] as belonging not to the world of sense but to the world of understanding" (4:452). It is via this loophole of our ability to regard ourselves as belonging to the world of understanding rather than solely to the world of sense that Kant explains how we can understand freedom at all, without ever having a real theoretical cognition of freedom, and instead only have a practical cognition of it.

Recall that in the third antinomy, Kant invokes a metaphysical idea of freedom and connects it to the idea of free agency by way of the debate of first causes in order to explain the

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<sup>6</sup> However, regardless of our capacity to actually know freedom or not, Kant sees freedom as something which ought to be developed; our societies should further the development of individual freedom — the development of enlightenment.

role such an idea has as compared to determinism by natural laws. What he develops from this point is that practical freedom contains this metaphysical idea of freedom as its root, and as such it should be understood from its two part content. On the one hand, it is composed from our notion that we are autonomous agents capable of uncaused action, and on the other hand, there exists a set of rules that govern our autonomous action in some way. Since humans are rational beings, and as such belong to the intelligible world, humans must regard their own behavior as operating under the idea of freedom, for it can only be explained as such that we are capable of doing other than what natural law would determine that we do. "For," says Kant, "independence from the determining causes of the world of sense (which reason must always ascribe to itself) is freedom" (4:453). This idea of freedom is bound up in the idea of our own autonomy of the will, and this then is tied to the universal formulation of the categorical imperative, which is, for Kant, "the ground of all actions of rational beings" (4:453).

Katrin Flikschuh summarizes this previous point in the following way: "[Kant] insists that the intelligibility of practical freedom depends on the possibility of transcendental freedom" (81). As such, we see evidence of the transcendental freedom when we act in such a way as to bring about our will, because we perceive ourselves as free to act, and as such, the evidence of our action is the empirical evidence we need to support our understanding of practical freedom. Without the concept of transcendental freedom, we would be unable to understand what we observe, and only through our observations do we have a concept of practical freedom realized in some form. Freedom is thus an idea in light of which we consider ourselves to be members of the intelligible world, rather than the world of sense, and as such is that principle by which we understand our own autonomy, and, by way of this, understand morality as its logical implication (4:453).



Thus, we have seen how Kant arrives at a positive conception of freedom from the metaphysical conception and upon which he can base moral accountability. Kant first rejects a negative conception of freedom in place of a positive conception of freedom. Yet the actual existence of freedom is something that can never be determined in cognition; this is because freedom is an idea of reason, rather than a concept of the understanding — which means that no sensible intuition can ever be adequate to it. Instead, we can have a practical conception of freedom that gives us an understanding of transcendental freedom. Humans must operate under the assumption that they are free beings, else our actions make no sense to us in terms of gaining our own ends nor can we be seen as morally responsible beings if freedom of the will is not a given assumption.

With this groundwork set in place, we have enough of an understanding of what freedom is, and with what other concepts it is bound to, to begin to examine its place in Kant's political philosophy. In particular, this has set the stage for the next section, in which we will discuss Kant's claim of freedom as the only innate right (within a set of limits). This has also provided a context for a discussion of why freedom is such an important value for Kant within his political philosophy — even under restriction, it cannot be denied, else in its absence the entire framework of what makes humans subject to moral law crumbles. Political freedom for Kant is fundamentally tied to this primary definition as freedom, and via this concept to the moral law and our nature as rational beings. It is thus within the *Metaphysics of Morals* that he turns to the discussion of how the categorical imperative is to be applied within the everyday world and what consideration freedom has within this.

***Kant's Political Freedom: The Principle of Right and the External Domain***

Previously, we have derived from Kant a definition of freedom via the understanding of transcendental freedom that humans can gain from our knowledge of practical freedom. We have seen how freedom is required for the moral law, for without freedom there is no way for rational beings to be viewed as moral beings. This definition of freedom provides the groundwork needed as the discussion now shifts from that of moral philosophy to political philosophy. But to fully understand freedom as Kant uses the term, it is necessary to look towards his political philosophy to refine and adjust our definition to fit the use of the concept in the political domain. Kant limits his discussion of political freedom to a particular domain by providing a division between the doctrines of right and virtue. Right is an external domain, governing the interactions between individuals, and virtue is an internal domain, concerned with the disposition of character. For our purposes we are interested only in the doctrine of right, and its place in the metaphysical domain as an establishment and justification for the moral law's applicability to humans.<sup>7</sup>

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<sup>7</sup> Before continuing, I would be remiss not to bring forward two points. First, I should note that for the purposes of this discussion, I will proceed under the assumption that Kant's theoretical and practical (and thus, political) philosophies are intended to be understood as a single, universal framework wherein each section is compatible with the others. This does not mean we will always be able to show a direct logical link between principles; but that there will always be a clear implication of ideas from one principle to the next. This clear linkage of concepts seems to me to be far more in line with the structure Kant intended rather than an insistence on pure logical entailment. Secondly, it should be noted that Kant never actually published a volume focused solely on political philosophy. While he published a number of essays later in his life that focused on political issues (namely, "Perpetual Peace" and "A Universal History", and "Theory and Practice"), most of his political philosophy is contained within his practical philosophy. Most clearly however, the political ideas concerned with freedom that this section now focuses on stem from the first section of the *Metaphysics of Morals*.

As previously discussed, freedom of the will for Kant implies a determinacy under law — but not that of natural law, rather of the moral law.<sup>8</sup> For Kant, freedom is not ever, nor should it be mistaken for, the absence of laws or law-like governances of action, as was made clear by Kant’s commentary on the third antinomy. Kant makes a note to remind the reader of the difference between natural causation and human free will in his Introduction to the *Metaphysics of Morals*, stating that human choice is such that it “can indeed be affected but not determined by impulses, and is therefore of itself not pure but can still be determined to actions by pure will” (6:213). He continues then to remind the reader of the negative and positive conceptions of freedom, as previously established, as well as the direct relation of freedom to the moral law (6:214). It is from the discussion of the moral law which Kant introduces his distinction that outlines the division of the *Metaphysics of Morals* between the Doctrine of Right and the Doctrine of Virtue (6:220-221).

The Doctrine of Right is concerned, as Roger Sullivan points out, only with what Kant called duties of outer (or external) freedom, that is, “the manner in which one person’s behavior affects others” (Introduction to the *Metaphysics of Morals*, xi). More clearly, it is concerned with situations where external laws are at play on the individual’s actions. The second half of the text, the “Doctrine of Virtue”, on the other hand, concerns itself with the obligations an individual faces without any external law-giving in play. It is the former, rather than the latter, that is of concern here, since our interest is on individual freedom within a political system, and how considerations of that freedom shape the desired structure of government and state. This is not to say that we can ignore the “Doctrine of Virtue” wholesale when considering the form of a

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<sup>8</sup> This is not to say that natural law causality and freedom of the will work in similar ways as causal systems, but simply to say they are both governing structures for their own domains as previously discussed.

state for Kant. Rather, we find the discussion of the form within the “Doctrine of Right” as well as its principles and purposes, and as such shall focus on it. However, it cannot be forgotten that the content of the “Doctrine of Virtue” — being focused on the internal individual — will still play a role in the interactions between individuals that the “Doctrine of Right” is concerned with. We can quickly contrast the two domains of Virtue and Right with a pair of examples. The domain of right would be concerned with the interaction of two individuals when a contract is made in bad faith between them. The domain of virtue would pertain to the act of lying that occurred as one human set to deceive another. Thus, we can see that the domain of right is concerned with external affairs, while the domain of virtue is purely an internal one, yet how the internal influences the external. The next goal is thus then to define external freedom more completely in light of what we know of Kant’s idea of internal freedom.

Yet, as important as it would seem to be to distinguish between these two new kinds of freedom — internal and external — Kant actually devotes very little time to the subject before moving on into the system of rights itself. This is because he directly ties the idea of right into the idea of external freedom in the following way: just as external freedom has to do with the relation of one person to another, so too is the concept of right defined as belonging only to the external relation between individuals (6:230). As such, for both the sake of avoiding redundancy and needlessly wasting space, a definition of right and its concerns can give us an idea of the definition of external freedom in a much more full sense than an attempt at the definition of external freedom by itself.<sup>9</sup>

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<sup>9</sup> I am aware that Flikschuh has a slightly different but shorter attempt at a similar project in her article “Kantian Desires,” in *Kant’s Metaphysics of Morals: Interpretive Essays* (Mark Timmons, Ed.) however my own attempt is independently formulated from hers and comes at the issue from a different point of view.

For Kant, the concept of right is concerned directly with the preservation of the external freedom of individuals; it is the regulation of the form of external relation between agents with regard to their choices. Right is an idea of law and justice, of those things that are permissible in terms of a particular domain. Kant defines this domain in a three-part definition, as follows:

The concept of right [...] has to do, first, only with the external and indeed practical relation of one person to another, in so far as their actions, as facts, can have (direct or indirect) influence on each other. But, second, it does not signify the relation of one's choice to the mere wish of the other [...] but only a relation to the other's choice. Third, in this reciprocal relation of choice, no account is taken of the matter of choice, that is, of the end each has in mind with the object he wants (6:230).

Here, we can see each of the three aspects of right according to Kant. Firstly, it is an external issue, and as such, connects with the external freedom of individuals and how individuals affect one another and influence one another. Secondly, it refers to the choices of the individuals, not their wishes; thus it only refers to those actions undertaken as a rational agent. And thirdly, it is concerned not with the goals the individuals had in mind, but with their impact on one another in pursuit of their goal. How then do these three aspects connect to the idea of external freedom? Obviously, since the domain of right is external in its nature (versus the domain of ethics, which is internal), the domain of right must address the external freedom of individuals to act in some way.

What then makes something permissible in this external domain, and conversely what things are impermissible? Kant provides a simple rule for this, stating "Any action is right if it can coexist with everyone's freedom according to a universal law or if on its maxim the freedom of choice of each can coexist with every one's freedom in accordance with universal law" (6:230). With this, Kant echoes one of the formulations of the Categorical Imperative, in this case, the Universal Law formulation (see the previous discussion for the full formulation)

(Wood, 68). Kant does not intend this standard of right as a statement of moral law, but as a logical extension of the principles that produced the moral law so as to indicate those actions that should not be coercively opposed by the state (Wood, 68). Once more, the standard of right connects back to the idea of external freedom. Practical philosophy as it addresses political life cannot draw directly upon the autonomy of the will; rather, it must deal with only the external behavior of individuals because of the division of right and virtue which Kant imposes. It is a relation of governances upon external freedom, such that the question becomes not one of “freedom to act” but rather the prohibition against certain actions that would inhibit individual freedoms, and entitlements to expressions of individual freedoms. This is not clear at first, until one considers that part of what Kant is establishing in the “Doctrine of Right” is a systematic account of those things with which a rightful state may not interfere in order to respect individual freedom appropriately. In short: the Doctrine of Right is mostly concerned with what is permissible rather than what is required in terms of limits placed on external freedom.

The third aspect of this domain of right highlights two points of interest for this discussion of Kant’s state and political theory. First, Kant makes it clear that the domain of right has nothing to do with the goals of the individuals in question; rather it has to do with the effects the actions of individuals have upon one another, regardless of the motives or intentions of the individuals (6:230). Second, this third portion of the definition of the domain of right also gives us a key point about the domain of the state and governance and its on individuals.

The first point, again, is that the domain of right is separate completely from the goals of individuals, but is only concerned with the impact the actions of individuals have upon other individuals. That is, Kant views the domain of right as being based on an analysis of the consequences of the actions of individuals as they impact other individuals. This would seem to

be strangely antithetical to Kant's stance on the judgment of actions, as that Kant has, until this, point denied any sense of consequentialism in his moral theory, and instead insisted that "what is essentially good in the action consists in the mental disposition, let the consequences be what they may" (4:416). Yet here, Kant raises no objections whatsoever to the idea that the consequences of an action are what is important in the domain of right. The domain of right is a domain of legal and political matters, and as such is only loosely derived from the moral domain and the moral law. However, this concern for consequence rather than principle does not put the domain of right out of line with the rest of Kant's philosophy for one key reason: the foundational principle, while not derived from the moral law logically, is directly related to the moral law and has as a part of its principles a fundamental portion of the moral law, as we will see. It is only in its method of determination that Kant resorts to consequence. This portion will be made more precise, but at this point, what is important is to see that right is a question of consequence related to the principle of universalized external freedom of individuals.

The second point about how the domain of the state is related to an individual will become important later in this discussion. Kant states that the domain of right is limited to the external, and has no bearing on the wish or end of an individual internally. This internal end-setting is governed, says Kant, by virtue (ethical rules) and as such is beyond the domain of right, which is external only. By distinguishing internal and external freedom, and then limiting right to only pertain to external freedom, Kant's distinction entails that it is impossible for the government to legislate virtue. The reasoning for this exists in the two-fold way in which the moral law commands rational beings: one, to act in the right ways, and two, to act in those ways because they are right (Sullivan, xi). Right conduct can be legislated, but motivation cannot be (i.e. no law can force a person to be motivated in their actions in a particular way). Therefore,

the government is also denied any say into matters of ethics, as well as what is good or bad for individuals to do as individuals. This is particularly true in the affairs of the happiness of individuals, for all of these are, for Kant, based on internal motivations that are out of the domain of right. This will be crucial in the discussion of the role of freedom in a state. Kant clarifies that right as it is formulated here is not an incentive to action; rather, it is an authorization to use coercion in a particular manner to preserve individual freedom. As such, to preserve freedom, humans may be coerced into conforming to rules designed to prevent freedom from being trespassed upon beyond the limit placed on it by universalization. As Kant says, “right and authorization to use coercion therefore mean one and the same thing” if right is to be enforceable and thus able to function as Kant wishes it to (6:232).

Since the domain of right is solely that of external freedom, the definition of external freedom can be derived directly from the domain restriction Kant has placed upon it. Once more, external freedom is the freedom of external action of an individual, particularly the domain of such actions affecting other individuals. It is freedom formulated in terms of permissible limits that may be placed on freedom, as well as those aspects of individual freedom which cannot be limited. And finally, right places no claim on what is personally good to do or not to do. With this definition in mind, our attention now turns to what constitutes the bulk of the “Doctrine of Right,” the discussion of right in terms of a system of things which cannot be denied to an individual by a state, that is, Kant’s system of rights.

Kant divides this system into two sub groups of right: innate right and acquired right. “[A]n innate right is that which belongs to everyone by nature, independently of any act that would establish a right” while “an acquired right is that for which such an act [to establish the right] is required” for the individual to possess that right (6:237). That is, the division is between



those things that require the individual to do something to gain the right, versus those things that individuals without need of any additional action. Innate and acquired rights correspond to the division between internal and external possession of a right (and so also with internal and external freedom). Those things that are internal to us are innately ours, while those things that are external to us require some action on our part to become ours (6:237). This division centers on what it takes to make a right apply to a person — namely, if any action on the part of the person is required to give possession of the right to the person. What sort of right then, would require no action on the part of an individual to be a right of that person?

Kant's answer is that there is only one innate right: freedom. However, he defines freedom very specifically in this case, saying that it is freedom in the sense of “independence from being constrained by another's choice” to the limit that “it can coexist with the freedom of every other in accordance with a universal law” which is our innate right (6:237). This is external freedom. While other types of freedom presumably exist, particularly the internal version that is governed under the system of virtue, it is only external freedom that is the concern of the system of right. By extension, it is only this external freedom that is the domain of the state. To understand how this fits with Kant's metaphysics, and more importantly with his political philosophy as being derived from his metaphysics, it is necessary take a few steps back and reexamine the territory previously covered to understand exactly the progression from metaphysics to political theory. I have stated that it is remiss to view Kant's political and metaphysical philosophies as two separate domains that do not bear upon one another. There is a distinct consistency to the ideas and priorities of Kant's work across all of his philosophy, and to ignore this is to miss many of the fine grain details of his theories. All practical cognition, for Kant, and as such all of the discussion of freedom and right, come to us by way of the

Categorical Imperative, and this can be seen in the relation of the Universal Law Formulation to the principle of right and the innate right to freedom.

The Universal Law Formulation of the Categorical Imperative, as previously noted, states that a rational being should “act only according to that maxim whereby you can at the same time will that it should become a universal law” (4:421). Thus, the principle of right, stating “Any action is right if it can coexist with everyone’s freedom according to a universal law, or if on its maxim the freedom of choice of each can coexist with every one’s freedom in accordance with universal law” can be seen as making a universal law of freedom of the individual, and which yields a standard against which to measure actions (6:230). That the moral law, as previously mentioned, is the governing law of a rational will, and thus a free will, by extension, the doctrine of right can be seen as establishing laws to which a free being can give consent to be governed by in their external actions.

Kant claims this innate right of freedom entails several interesting consequences. First, it entails “innate equality, that is, independence from being bound by others to more than one can in turn bind them” (6:237-238). This reinforces the universality of the external freedom that the principle of right gave to us earlier. It is a mutual freedom that extends only as far as it can while having others be equally as free, and, in turn, human beings can only be bound as far as they can bind others. There can never be a disparity of freedom under this principle right, such that one human no longer has the capacity for freedom because of the actions of others upon her. This in turn entails that humans are their own masters, and as such autonomous, that is, able to direct and determine themselves without being constrained by any other any more than they can place constraint on that other. The independence of the individual also entails what Kant describes as “a human being beyond reproach,” that is, our innate state of having done no wrong prior to any

action (6:238). Individuals are not to be held accountable for any actions other than their own, nor for the circumstances of birth or family beyond their control.

These two points tease out of the first entailment that the innate right to freedom makes humans independent, self-governing beings within the external domain, to the extent that all other humans are equally the same way. Humans are self-governing, but interdependent on one another to the same extent through the network of society. The second point that an innate right to freedom entails what Kant describes as “being authorized to do to others anything that does not in itself diminish what is theirs, so long as they do not want to accept it” (6:238). This last point includes speaking, communicating or making promises to others regardless of whether these statements or promises are true or untrue. It places the concept of a lie in an odd place, as the lie, Kant says in a footnote, is one of the few forms of speech which can directly cause harm to another (6:238). Kant deals with this issue much more fully in the “Doctrine of Virtue” and for now it is outside the scope of our interest beyond mentioning it as an entailment of the only innate right.

The question that now remains to be answered is to what purpose Kant has detailed only one innate right, and in particular why this right, of all possible rights, is the only one innate to us as humans? Innate right serves as the groundwork upon which all acquired rights can be founded. Kant uses the innate right of freedom as the platform from which to extend all acquired rights by showing how they extend to serve the innate right to freedom. To go into depth on this is unnecessary for the present discourse, as it would only distract from the real focus. Political freedom, that is, external freedom, is the only universal rule upon which Kant feels it is possible to base the authority of all other rights, and by extension to base political power and authority. Other principles cannot, for Kant, function in the same way that external freedom does as a

foundational rule and still produce the desired form of a society. He has based coercion upon the principle of right, and by extension the sole innate right to external freedom. From this it is possible to discuss the role of freedom in the structure of a state and government as Kant describes them in “Theory and Practice”, “What is Enlightenment?” and “Perpetual Peace” while pulling from a few other sources along the way.

***Kant’s State and Government: Form and Function, Freedom and the Republic***

As seen in the previous section, Kant has established a domain of the political that is centered on a principle of universalized freedom. This universalized freedom is traceable back to the metaphysical concept of freedom that Kant establishes in his metaphysics, and the Categorical Imperative, as we have previously seen. For Kant, the authority of the government, all acquired rights, and any other question under the domain of the political must track back to the sole innate right, external universalized freedom of the individual, as their sole goal and principle purpose for existence (8:289-290). And, by proxy, it must track back to the metaphysical principle of freedom and the Categorical Imperative. From this foundation, Kant builds a discussion of the proper form and structure of a nation such that it can support this universalized freedom of the individual.

Before discussing what the structure of the state must be in order to ensure the freedom of its population, it is necessary to understand how Kant understands the categorization of types of government. This is spelled out for us in “Perpetual Peace” as well as in the section on public law in the *Metaphysics of Morals*, wherein Kant takes a two-fold approach to the understanding of the structure of a government. Here, Kant classifies these into a two-part system: the “form of sovereignty (*forma imperii*)” and the “form of government (*forma regiminis*)” of the state

(8:351-2). The former is characterized by Kant as being defined by the person or persons “who hold the position of highest authority in the state,” while the latter is defined by “the manner in which the head of state governs the people (whomever the head of state may be)” (8:352). Kant here borrows for Aristotle, but with his own twist, and describes several possibilities for both the form of sovereignty and form of government for a state (Orr, 113).<sup>10</sup>

Of these options, Kant takes one combination as the ideal form of a state’s complete structure — rule by a single sovereign individual over a government that is republic in form. Kant’s reasoning for rejecting the others is, for the sake of this investigation into Kant’s theories, not as interesting as his reasons for accepting the republic and the single ruler as the ideal form of government and form of sovereignty. However, before beginning this section, it is important to understand why exactly Kant makes the division between these two structures within a nation, and what exactly this allows Kant to do in terms of the structure of a nation.

The division between the form of government and form of sovereignty exists for Kant so that he is able to make clear a single point: any ruler or rulers under any of the forms of sovereignty can make use of either of the two forms of government. As Otto Dann points out, “any ruler [...] can use the republican form of government as the guide for his actions,” according to Kant, regardless of the sovereign form (59). Conversely, and more commonly, any form can be despotic given that “the state executes, on its own authority, laws that it has itself made” regardless of the will of its populace, and where the will of the ruler is assumed by the ruler to be the public will (8:352). Kant rejects a despotic system as counter to the freedom of

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<sup>10</sup> For each of these divisions there are a finite number of possible structures that can be used by a state. The form of sovereignty of a nation can only be one of three possible forms: rule by one person, rule by a small group of persons, or rule by every person within the nation (8:352, 6:339). The form of government is even simpler in its forms, having only two possible structures: the state can either be a despotism or a republic (8:352).

individuals, from which arises his critique of democracy as a form of sovereignty, as will be discussed later. However, Kant accepts that any form of sovereignty, other than democracy, can be a republican one if properly applied. As such, the significance of this division, more than anything, is that the form of sovereignty is not the most important aspect, beyond the rejection of a despotism; rather, that any form of sovereignty can use the republican form. With this understanding of the purpose of Kant's division given, a discussion of why the republic with a single ruler represents the ideal combination of the respective structures (sovereignty and government) can now take place.

In the *Metaphysics of Morals*, Kant characterizes the monarchy as "the simplest form of government in the state" (6:339). This is because it contains only the single relationship of ruler to the people, "so that there is one only who is the lawgiver" (6:339). This simplicity is desired, says Kant, because it is easier to unite behind a single ruler, rather than the complexity of the other forms of sovereignty (6:339). Kant is very much interested in as simple and least labor intensive a form of government as possible, and the monarchy solidifies most of the tedium of government into as few hands as possible, leaving the rest of the population unburdened by governing themselves. However, for a monarchy's very simplicity it is also very dangerous in that a monarchy easily slides into despotism if the individual monarch in question is not a good ruler (6:339; 8:352). This issue, however, pales in comparison to the danger Kant sees in spreading power between multiple individuals, because a single individual is more likely to actually represent the will of all of the people than all of the people themselves (8:353).

Kant's most detailed discussion of this "enlightened monarch" arises in "What is Enlightenment?", and it is there we find the answer to this problem. A good monarch will avoid this danger, for "he unites the collective will of the people in his own" (8:40) The simplicity of

uniting behind a single monarch, says Kant, makes the burden of being governed less than it would otherwise be on a people governed by any other form, while the enlightened monarch must respect the “sacred right of humanity” that is, the external freedom of a citizen as previously described (8:39).

But this has not answered the question of how the lone sovereign maximizes the freedom he is set to protect. According to Kant, “a greater degree of civil freedom seems advantageous to a people’s freedom of spirit and nevertheless puts up insurmountable barriers to it; a lesser degree of the former, on the other hand, provides a space for the later to expand to its full capacity” (8:41). This desire on Kant’s part can be interpreted in two possible ways, both of which point towards a desire to maximize individual freedom, one internally, one externally. On the one hand, against the background of a strict system of laws and civic duties, the individual comes to better appreciate their own internal freedoms. As such, the inner freedom of the individual becomes the focus of the individual and their own self-improvement. On the other, if a people have a single ruler whom they obey— a ruler who handles the laws and governances of their state without need of them to have any hand in the process beyond the expression of their wills —, they are more free than if they were bound up in constantly dealing with their government (8:41). Some would think this a contradiction on Kant’s part, but the reader must keep in mind Kant’s interest is not on maximizing political participation, rather, he is interested in maximizing freedom (both internally and externally). Thus, it should not be forced upon all of the citizens of a state to concern themselves with all aspects of government constantly; rather, they should be free to use their time as they see fit, be it in political critique or other occupations. Freedom of thought, and freedom of action, is maximized if they are not bound up in having to

deal with government; while freedom of the self is maximized against the background of authoritative and structured government.

Kant wishes for a nation in which the public is free to express itself as much as possible, but where the population will still obey the rule of law without debate, knowing that it is in their best interest and representative of their will. Thus, the sovereign of such a nation need not fear the public opinion so long as he is truly representative of it (8:41). And, with the internal and external freedom of the individual maximized within the system, Kant sees his monarchical system as enabling the population to strive towards their own betterment, and, inevitably, the realization of enlightenment. Yet none of this can occur with just the monarchical system alone, for the government must be, as Kant has already said, representative of the will of the people it rules. This then brings us to the second half of what constitutes the ideal state, and, per Kant, the more important of the two portions, that is, the state must exist under a republican constitution.

To fully discuss the importance of a republican constitution for Kant to an ideal state, there are two issues that must be fully covered. First, why Kant finds this form to be ideal in terms of the structure of a nation, and second, what it is exactly that Kant means by a “republic” or “republican constitution.” However, it is also equally important to keep in mind the political climate at the time, especially as related to the French Revolution.

Though the social and political unrest that lead to the French Revolution began as early as 1788, the first flames truly began in that year (Stone, 196). The economic struggle between the aristocracy and the newly established National Assembly (previously the Third Estate) spilled over into the general social unrest of the nation as a whole and ignited the first phases of the Revolution and the creation of the National Constituent Assembly (Stone, 197). This began a period of social and political turmoil which would last until the end of the century, and would put



France and the whole of Europe through one of its most trying political periods, as well as one of its most bloody, prior to the modern era.

Kant, of course, was acutely aware of the French Revolution, and it shaped, as previously said, much of his opinion on social and political change. Moreover, Kant puts forward his notion of republicanism in a manner that is mindful of the political climate at the time and of the dislike most of the European aristocratic and intellectual populations had of republics thanks to the French Revolution (Dann, 54). It was with the publications of first of the “Doctrine of Right” in 1797 and then of “Perpetual Peace” in 1795 that Kant introduced the term “republicanism” into the discourse of German thought at the time, defining it in a very particular way. Kant says that “republicanism is the principle by which the executive power (the government) of a state is separated from the legislative power” of that state, placing it in direct opposition, as previously mentioned, with despotism (Dann, 54; 8:352). The legislative power is bound to the sovereign, who enacts laws based only on the will of the people, but the executive power is purely from the sovereign himself, for he must make sure that the laws are obeyed as well (6:313).<sup>11</sup>

For Kant, however, this separation of power is not the only thing that defines republicanism. In order to be republican, says Kant, a government must be representative of the will of all its people (8:352). As such it is the form of the republic, with the will of the people represented, that is ideal for Kant for, “if it is to be in accordance with the concept of right, the form of government must include a representative system” (8:352-3). That is, if a government is to maximize the external universalized freedom of its citizens, it must be representative of their will. And as such, the government must be a republic, wherein the will of the people determine

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<sup>11</sup> This is very different from most systems with a separation of powers, where in the judicial arm is charged with seeing that laws are obeyed. Rather, Kant wishes the laws in general to be obeyed, rather than laws that remain inactive until enforced by judges (Waldron, 184-5).

and set the laws of the nation. In the Doctrine of Right, Kant says: “Every true republic is and can only be constituted by a representative system of the people. Such a representative system is instituted in name of the people, and is constituted by all the citizens being united together, in order, by means of their deputies, to protect and secure their rights” (6:340).

This two-fold definition gives us both the answer to what a republic is, and why Kant favors it rather than the sole alternative for a nation. A republic prevents the innate right of freedom from being overridden while at the same time maximizes this innate right. Yet it has not brought to light what is unique about Kant’s use of the term republic or republicanism, both in how he defines them and their actual use. The form of republican constitution Kant introduces in “Perpetual Peace” is conceptually very different from what the new French government saw itself as creating, as well as from the recently established American government.<sup>12</sup> While the new and young republics of the United States and France saw themselves in direct opposition to monarchies, Kant, it must be remembered, thought that a republican constitution could exist under any form of government except a democracy (Dann, 59). This is why there is the difference in his structure of nations, why Kant says that the forms of sovereignty and the forms of government are two separate parts of a whole government structure. Thus, Kant differentiates his notion of a republican constitution from the republics of the time, particularly the newly established French Republic of 1792 (Dann, 62).

Kant also lays out a definition for republican government in “Perpetual Peace” which goes beyond the two-fold definition previously given. It is in this definition that at last the threads of this conversation come together. Kant defines a republican constitution as a constitution which establishes itself on three core principles for the governance of a people:

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<sup>12</sup> For a full discussion on what it was exactly the new French Republic sought, see Bailey Stone’s *The Genesis of the French Revolution*.

“first, according to principles of the freedom of the members of a society (as human beings), second, according to principles of the dependence of all on a single common legislation (as subjects), and third, according to the law of the equality of the latter (as citizens of the state)” (8:349-350). These principles should come as no surprise to the reader, for they have already been established in the prior discussions on political freedom and the structure of the sovereignty of a state. External, universalized freedom is the lone innate right possessed by all human beings by the nature of being human, and protection of this innate right is the fundamental principle that justifies the existence of any government at all. This government exists as a single unifying factor for a state, and it is through its legislation that civil order is created and maintained for the benefit of all citizens. And finally, all human beings within a state are by their nature both free and equal in their freedom to the maximum amount possible, and by this fact are equally protected by the laws of the state that are to be enacted as representative of the will of all citizens within the state. The republican constitution has, as such, “sprung from the pure source of the concept of right” according to Kant, and as such, is the ideal constitutional form (8:351).

### ***Conclusions on Kant***

Human freedom, for Kant, is the fundamental basis upon which governmental authority and purpose originate, and upon no other foundation can a government be built that will be legitimate. Yet this freedom, as we have seen, is a very particular form, limited and confined to its own domain, such that other forms and domains of freedom remain beyond the reach of the government and laws. Human freedom for Kant is fundamental to our existence as moral beings, and this existence as moral beings is for Kant of utmost importance. As such, we must be free to be self-determined, for without this freedom, we are not fully human. Even in the limited scope of the political realm, much reduced and separate from the full metaphysical freedom Kant first

concerns himself with, human beings must be as free as can be universally possible. For it is this freedom, says Kant, which is our sole innate right that we have by reason of our humanity alone.

This right of freedom, of external, universalized freedom, is the foundational principle of government authority. The protection of this right is the sole reason which governments exist, to protect and foster this right in all of its citizens as maximally as possible. To do this, the government must take a form of government and a form of sovereignty that are maximally conducive to this freedom. For Kant, only one form, the republican constitution overseen by the enlightened sovereign, does this — for all other forms fail to be truly representative of the people and truly inspiring individual freedom.

### **Chapter 3: The Jeffersonian Approach, and Comparisons to Kant**

#### ***Thomas Jefferson: Introduction***

In the previous sections, we have spelled out the ways in which freedom is intrinsically linked to political philosophy and governmental form for Immanuel Kant. But Kant was not the only individual at the time concerned with individual freedom — if anything individual freedom, along with rationality, could be seen as the maxim of the many minds of the Enlightenment era, both in Europe and the Americas (Dupre, 7). By way of comparison, let us now examine a younger contemporary of Kant who was, in his way, as influential to the world of political theory as Kant was to philosophy in general: Thomas Jefferson. What this section will attempt to do is present first Jefferson's views on the same topics as have been previously discussed for Kant, and then present these views in contrast and comparison to Kant's views.

Thomas Jefferson never published a single volume containing the essentials of his philosophy, political or otherwise. Yet across his articles, letters, single book, and other works there is undeniably a unity of thought and a consistency of theory and belief that remains unchanged from his early years until his death (Appleby Ball, xi). Throughout his work there is

a profound respect for humanity, its capacities and capabilities, and the human spirit. He placed faith in the “common man” above all else, holding that if “rightly educated and freed from sophistry, superstition and meddlesome government” the common man is capable of achieving the extraordinary (Appleby and Ball, xxii). Thomas Jefferson was an unswerving optimist in this regard, believing in humanity’s ability to progress and surpass its limits if only given the freedom to do so (Appleby, Ball, xxii).

Fundamental to his beliefs is the fact that human beings are free beings with the capability to determine themselves, and that this freedom is one of the core, inalienable natural rights of human kind. This belief in freedom as natural right for all humans comes from a more fundamental belief that he held in natural law as the fundamental governing force for the universe and all beings within it (Appleby, Ball, xxii). Jefferson was an amateur natural scientist, and he had a “belief that the orderly and predicable processes of nature offered a better model for society than any that could be devised” by human governments (Appleby, Ball, xxvi). The fundamental laws of the land were, for Jefferson, not man-made, but natural laws that grounded and produced natural rights for all human beings.

It is the protection of these natural rights that all humans possess that Jefferson saw as the reason for which governments exist. Beyond this, they exist to express the will of the people through law (Tessitore, 134). The authority of the government stems from the people. As governments exist to protect these rights, they cannot infringe upon them in any way. Any government that infringes on the rights of its citizens becomes illegitimate in its authority, according to Jefferson (Tessitore, 135).

It was Jefferson’s opinion that the governmental form which would least likely trespass upon the natural rights of its citizens and that would most fully secure those rights against

trespass was a republic (Walter, 32). Jefferson's idea of a republic, however, was slightly different from those of his politically minded contemporaries in pre- and post-revolutionary America, as he saw no distinction between a republic and a pure democratic government. However, Jefferson acknowledged the fundamental problems with a pure democracy on a large scale, and accepted representative democracy as a more practical replacement (Thomas Jefferson to John Taylor, 1816. ME 15:19). Throughout his writings, Jefferson views the only genuine form of a republic as a pure or representative democracy, and all but uses the terms completely interchangeably, especially later in his writings (Thomas Jefferson to John Taylor, 1816. ME 15:23).

With this outline in mind, and the previous sections that discuss Kant's theories, the points of comparison for the two authors are fairly clear. Both Kant and Jefferson are intensely focused on the notion of individual freedom, yet their methods for deriving the reality of individual freedom are quite different. Jefferson, like Kant, makes a claim about the existence of each individual's right to freedom when it comes to the political aspect of individual freedom, but once again, the derivation and implications of this rights claim are vastly different. However, the authors are closely similar in the framework and limitation they apply to individual freedom within the context of a state: equality of the right to freedom among all citizens is as important as the existence of the right itself. The truly fascinating point of comparison, however, lies in the governmental structure that each author then invokes based on the preservation of this right. Both claim to support a republican constitution, yet each reveals an almost polar opposite framework to support this republican constitution in terms of governmental methodology. However, before this last section can begin, a discussion of the basics of Jefferson's ideas of

rights and freedom and their foundation must first be presented, and each comparison as mentioned should be dealt with in turn.

***Thomas Jefferson: Nature, Natural Law, and Natural Rights***

Thomas Jefferson considered himself a scientist more than a philosopher), and his interest in the natural world extended into a study of the rules that governed nature (Bergh, v). He studied natural history, geography, physics, meteorology, mechanics, and astronomy, as well as civil engineering and agriculture (Bergh, v). In these many pursuits his fascination was always with the discovery of the principles that made nature predictable and, more importantly, beneficial to mankind (Bergh, v). This firm belief in natural law provided for Jefferson a foundation on which he constructed an idea of natural rights that were a part of and grounded in natural law. Of these natural rights were a central core of three rights which Jefferson saw all other natural rights as extending from, the principle of which was the right of liberty. This right of liberty is the fundamental right to individual freedom, and to understand how it exists for Jefferson, we must first examine the ideas of natural law and natural rights as they operate for Jefferson.

Jefferson was an avid supporter of Sir Isaac Newton, and often referred to him as one of the three great minds he admired most (the other two being Francis Bacon and John Locke), calling him one member of "my trinity of the three greatest men the world had ever produced" (Thomas Jefferson to Benjamin Rush, 16 January 1811, ME 11:168). As such, Jefferson believed he was strongly Newtonian in his scientific endeavors, searching for the principles at work as much as the actual results themselves when he conducted experiments. Jefferson applied this not just to the natural sciences, but to his approach to politics as well. He saw the

entire world as governed by natural law, including the interactions of human beings. He often spoke of the laws of nature and states as being one in the same, even going so far as to lump them into a single category of study when proposing a system of education (Thomas Jefferson to Peter Carr, 7 September 1814, ME 19:213). For Jefferson all things were first and foremost subject to natural law, including humanity.

It is of course then to the laws of nature that Jefferson always appeals when seeking to ground nearly any normative claim, including claims about rights. Rights are, for Jefferson, founded in natural law and exist by virtue of natural law. As such, they are external to the realms of government. As he said in “Rights of British America” human beings claim “their rights as derived from the laws of nature, and not as the gift of their chief magistrate” (1774. ME 1:209, Papers 1:134). But how exactly did Jefferson understand natural rights to operate, and what rights were contained within these rights? Much of Jefferson’s natural rights theory was a synthesis of a number of sources, and there is a great bulk of scholarship focused on attempting to understand Jefferson’s source material for his concept of natural rights.

This scholarship on the whole identifies two primary sources of influence for Jefferson, with no consensus as to which was the major influence: John Locke and his liberalism and the classical republicans (Aristotle, Machiavelli, Harrington and Sidney among others) (Janye, 2). John Locke was held in the same high regard by Jefferson as Newton, a member of the same intellectual, yet Jefferson attributed his inspirations to the classical republicans and their historical champions as much as he did to Locke (Thomas Jefferson to Henry Lee, 1825 FE 10:343, WE 7:407).<sup>13</sup> To me, it seems that the best way to read Jefferson is to take into account

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<sup>13</sup> The debate has been primarily with respect to whether the Declaration of Independence, as well as later political documents by Jefferson, should be best interpreted in terms of the classical republican ideas or Lockean liberalism (Janye, 2). On my view, neither reading gives a full



exactly what he was reading—all of it—and extrapolate from this a view of his ideas in light of all influences, rather than to cherry-pick one set of influences over another.<sup>14</sup> With so many influences at play, it seems irresponsible to assign primary influence to any one author or school, and more important to reflect the synthesis which occurred in Jefferson's works. As such, what I will attempt to show is that Jefferson's philosophy is a synthesis of these influences, rather than a direct derivation from one or the other schools in question. This is not to say that Jefferson has no original developments of his own, but rather develops his foundations in a syncretic manner before moving forward to contribute his own ideas. What then does natural right mean for Jefferson? A natural right is a right to something, be it an action or possession or some other sort of object, that a human has first, by virtue of being human, and secondly which exists prior to and external from any civil, social, or governmental existence or interference. They are "rights as derived from the laws of nature" which exist regardless of whether society or government exists ("Rights of British America" 1774. ME 1:209, Papers 1:134). Both the classical republicans and Lockean libertarians hold similar stances. The difference between these two theories is based upon to what purpose individuals give up their rights when governments and societies come into existence. Locke held that when human beings enter into a society, they consent to give up some of their natural rights whole or in part for the good of themselves as individuals; the classical republican idea, however, states that they consent to give up some of

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version of exactly what Jefferson intended because the ideas Jefferson presents in terms of natural right are in fact a synthesis of the classical republican and Lockean views. Other writers such as Wills and Mathews have attempted to put forward similar readings, but each, as Janye and several others point out, has his own cast to the reading which bends it towards a purely Hutchesonian or even Marxist view which I disagree with as well (Janye, 5).

<sup>14</sup> Jefferson was given a classical education from an early age, and read many Greek and Roman authors in their original language, including Cicero, Seneca, and Socrates (Lerner, 12). But in his library were to be found not only the classical texts, but also Locke, Hume, Sidney, Montesquieu, Rousseau, Bolingbroke, and many others (Jefferson, To Robert Skipwith, 1771, Peterson, 1984).

their natural rights for the good of the society (Kramnick, 91). For Jefferson, the purpose of a government is aimed towards the protection of, and the good of, the individual, rather than the good of the society (Thomas Jefferson to A. Coray 1823. ME 15:482). How then could Jefferson's natural rights be seen as also belonging to the camp of the classical republicans if it seems so staunchly Lockean?

The answer is in Jefferson's conception of the right to happiness. Locke held that there were three natural rights: life, liberty, and property (Locke, 1960, 1689, pp.387, 420). In the first draft of the Declaration of Independence, Jefferson writes "We hold these truths to be self-evident, that all men are created equal; that they are endowed by their Creator with inherent and inalienable rights; that among these, are life, liberty, and the pursuit of happiness" (Jefferson, 1776. ME 1:29, Papers 1:315). There are those who read Jefferson as purely Lockean, such as Jan Lewis, and say "that 'happiness' might mean 'property' was one of the harmonizing sentiments of the day" (656). Yet the classical republicans would have disagreed, and it is likely that the change of wording from property to pursuit of happiness by Jefferson was not simply a substitution, but a deliberate change of tone to show both of his philosophical allegiances at once. For the classical republican, happiness was the result of civic virtue and devotion to the public good (McMahon, 324). For the Lockean, happiness is derived from property and its use (Lewis, 656). For Jefferson, happiness is derived both from benefiting the public good and from using one's property as one sees fit. Thus Jefferson's conception of natural right is both classical republican and Lockean.

Now that it has been shown that Jefferson had his own syncretic reading of natural right and its source, the discussion can now turn to Jefferson's understanding of the right of liberty.

Liberty for Jefferson is a personal, individual matter, and it is virtually equivalent to his understanding of individual freedom.

Liberty has two forms in the works that influenced Jefferson: a positive, classical republican liberty, and a negative Lockean liberty. Negative liberty is liberty characterized by freedom from the imposition of others upon individual freedom; positive liberty is liberty characterized by freedom to live one's life as one wills, just as all others have freedom to do as well (Berlin, 231, 234). Jefferson provides a synthesis of these two ideas in his conception of liberty, and shows himself to be sympathetic both notions when he characterizes liberty. "Of liberty," Jefferson says, "in the whole plenitude of its extent, it is unobstructed action according to our will. *But rightful liberty is unobstructed action according to our will within limits drawn around us by the equal rights of others.* I do not add 'within the limits of the law,' because law is often but the tyrant's will, and always so when it violates the right of an individual" (italics mine) (Thomas Jefferson to Isaac H. Tiffany, 1819). And as such, we can understand Jefferson's conception of freedom to be both a positive and negative conception in the same breath, for there must be both freedom from constraint and freedom to act in order for this open proclamation of liberty to exist as Jefferson wishes it to. For, says Jefferson, if we have a right to liberty, then we must both have a right to freedom of action and freedom from constraint on that action. This stems from the "principle that the right to a thing gives a right to the means without which it could not be used, that is to say, that the means follow their end" (Thomas Jefferson: Report on Navigation of the Mississippi, 1792. ME 3:180). Jefferson thus intends it to be the case that the right to a thing entails in that right not only possession of that right, but also the means to bring about that to which the right ensures access. Therefore, the right to liberty entails not just a freedom from limitation by others and the laws of the land, but also guarantees the capacity to

remove those limitations when inflicted by others without consent. This point sets Jefferson apart from both Locke and the classical republicans in the following way. Jefferson says that rights are expansive, to the point that a right includes not just the end (being free) but also the means to bring about that end (freeing ourselves). Neither the classical republicans nor Locke is quite willing to go so far as Jefferson is on this point.<sup>15</sup> As noted by Jefferson, however, there is a single limit upon individual freedom that must be accepted to complete this right.

To characterize Jefferson's notion of liberty as allowing pure unrestricted individual freedom would be a gross disservice to the notion. Jefferson, following Locke once again, very specifically allows for only one limit on the freedom of an individual, that is, that it must be "within limits drawn around us by the equal rights of others" (Thomas Jefferson to Isaac H. Tiffany, 1819). This equality of all citizens is important for Jefferson, but has unfortunately been overshadowed by modern criticisms of Jefferson's inconsistency with respect to his conception of equality. What these critics have failed to address is that, in Jefferson's worldview, there were clear distinctions between different groups of people (based on race, gender, etc.), and as such, when speaking in terms of equality, he meant equality among those who were full citizens (white males). What is important is that his theories still remain consistent and applicable even if the definition of who has full citizenship changes after the fact. Equality for Jefferson is equality for all citizens of the state, even if that definition of citizen does not match the modern definition. For Jefferson, all citizens should be "free to do whatever does not violate the equal rights of another" (Jefferson, Public Papers, 460). Equality, however, is fundamental in another respect. Equality must be guaranteed for all citizens in all rights not given up whole or in part to the

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<sup>15</sup> It is by this that Jefferson justifies an undeniable right to rebel against an oppressive government. If one is not free, one has the right to make themselves free by any means possible — including revolution.

government by consent, not just liberty. And it is in this way that the role of government comes into existence, as we will see in the next section.

It would seem thus far that little has been said about political freedom by Jefferson, until a single point is recalled. Natural rights for Jefferson extend undiminished into the civic realm, and as such, the natural right of liberty, and therefore human freedom, extend into the political realm. Individual freedom includes political freedom, just as much as it includes the freedom of choice of religion, freedom of speech, and freedom of action because it includes all types of freedom under the umbrella of the natural right to liberty.

This discussion has shown how Jefferson's conception of individual freedom was a hybrid conception that was both positive and negative. Freedom stems from the natural right of liberty, which, like all natural rights, stems from natural law. Because Jefferson was both a Lockean and a classical republican, he uses both conceptions of natural right, and both conceptions of liberty (positive and negative) to describe a freedom that is absolute in all respects except that it must be equal among all individuals. It is to protect this equality of rights that Jefferson invokes the power of a government, and it is from this duty to protect the rights of its citizens that the authority of a government comes to be. This freedom extends into the political for Jefferson, because natural rights extend undiminished into the political realm, and as such, the right of liberty extends to political freedom.

By way of contrast with Kant, Jefferson's natural law theory of natural rights is a very different derivation of freedom. Whereas Kant saw the natural laws that govern the normal interactions of the natural world as incompatible with human freedom, Jefferson had no problem deriving a natural right to liberty from these natural laws. Jefferson was echoing Locke primarily in terms of his natural law origin of natural rights, with doses of Hutcheson, Cicero,

and Vattel along the way (Randall, 56). Kant, on the other hand, was breaking from these traditions and rejecting a mechanistic view of human behavior that Jefferson seemed to have not considered a problem. Jefferson was raised an Anglican but rejected his upbringing during his time at university in favor of a more deist personal theology; that is, Jefferson understood natural law as originating from God, and thought that the universe existed in a form such that reason could reveal these laws to mankind. As such, he had no issue with the notion of a human existence governed by natural laws, and “that [the] overruling Providence which governs the destinies of men and nations” was at play in natural laws (DE 6:352; Sanford, 92-3). Kant, on the other hand, could not accept that humans were solely causally determined and held, rather, that we have a capacity to act in ways other than those dictated by natural law alone.

For Jefferson, since natural law governs all things in the universe and establishes natural rights for all human beings to certain things, there is no reason for a differentiation between metaphysical freedom and practical freedom. Kant’s metaphysical freedom is unknowable, but it must be assumed to exist in that sense, or else our normal everyday actions cannot be viewed to be possibly free actions. For him, we must operate *as if* free, for we cannot do otherwise, even if we cannot really know if we are actually free or not in our actions. Jefferson does not consider the epistemic question. Rather he begins with a naïve view of the universe, according to which: of course we are free beings, for we have a natural right to freedom that is derived from natural law. The natural rights of Jefferson extend from the laws of nature to the everyday operations of human life, and as such, for Jefferson, the right to liberty means a right to all freedoms of all sorts. Thus, Jefferson sees no need for Kantian derivations of an external individual political freedom; for Jefferson, humans have political freedom on the basis of the natural right to liberty.

There are two points on which Kant and Jefferson agree wholeheartedly: a human right to freedom exists, and it must be a right that is equally possessed by all citizens within a state. Kant makes freedom the only innate right of humans, while Jefferson holds there to be a slew of natural rights, such as liberty, the pursuit of happiness and livelihood; yet each says that freedom (or liberty) exists as a right which all citizens have and which governments must respect. For Jefferson, since liberty is a natural right, it exists prior to and independent of governments and laws, and is preserved within all citizens under law. For Kant, since freedom is an innate right, it belongs to all humans by virtue of their humanity, without any action by them, and thus exists prior to government and law. Both agree that this innate freedom serves as the foundation, or at least part of the foundation, for the system of laws that a government enacts. This later aspect will be discussed further in the next section.

Secondly, both Jefferson and Kant place a single limitation on the freedom of the individual that is guaranteed by the right in question: no citizen in the state can be any more or less free than any other. That is, if the right to freedom exists, it must exist so that all citizens in the state are as equally free as all other citizens within the state. The limit then is the degree to which individuals can be free to act while all others around them are as equally free to act. Both Kant and Jefferson insist on this caveat for a simple reason. If a right exists by natural law or simply by virtue of being human, then all humans must equally possess that right and cannot have it taken from them by the actions of others and still be a right. As such, for both authors, freedom is fettered by the equality of all individuals in possession of that right — all human beings are as free as all other human beings, and this is the sole limitation upon the freedom of an individual.

For two authors with such dissimilar sources for a right to human freedom, even with radically different notions of the relation of human freedom to natural laws, it is remarkable to see how each arrives at two startlingly similar points with regards to freedom as a right. As we will see in the next section, this common starting point in terms of political freedom (though very differently conceived political freedom) also leads to a very similar understanding of the purpose of government, and the authority of government. Yet this is where the similarities end. When Jefferson begins to lay out his notion of an ideal state structure, he departs radically from anything with which Kant would agree — with one exception. A government for Jefferson must be republican to some degree to be a good one, but the form this republican government takes is the antithesis of Kant’s republican form, as we will now see.

***Thomas Jefferson: Securing Equal Liberty, the Purpose of Government***

Thomas Jefferson holds that there is only one purpose for government: “The equal rights of man, and the happiness of every individual, are now acknowledged to be the only legitimate objects of government” (Jefferson, To M. Coray, 1823. WE 7:319). This purpose comes in two forms: protecting citizens from transgression upon their rights by other citizens, and protecting the citizens from transgression upon their rights by their own governments or the governments of other states. For Jefferson, the government protects the right of liberty, and as such, the protection of individual freedom in all forms. To fulfill these functions completely, a government must be representative of the people, and be of a form that is least likely itself to transgress on the rights of its citizens. For Jefferson, this form was a republican form, and, most fully, a democratic republic. This was because, for Jefferson, the source of authority for a government comes only from the consent of the citizens. As Jefferson says in the Declaration:



to secure these [inalienable] rights [to life, liberty, and the pursuit of happiness], governments are instituted among men, deriving their just powers from the consent of the governed[...] Whenever any form of government becomes destructive of these ends, it is the right of the people to alter or abolish it, and to institute a new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness (Thomas Jefferson: Declaration of Independence, 1776. ME 1:29, Papers 1:429).

Before any discussion of form can occur, the two questions concerning the purpose and authority of a government for Jefferson must be discussed in order to understand why Jefferson takes the republican form of government to be the ideal

Jefferson is most concerned with equality in rights. In the state of nature, prior to society and government, humans are equal. Government attempts to return that equality and protect it, both from other individuals and from the government itself. In his *Commonplace Book*, Thomas Jefferson had the following quote from Montesquieu's *Spirit of the Laws*, VIII,c.3: "In the state of nature, indeed, all men are born equal; but they cannot continue in this equality. Society makes them lose it, and they recover it only by the protection of the laws" (date unknown). This was a sentiment with which he certainly seems to agree. Jefferson says, "it is to secure our rights that we resort to government at all" (Thomas Jefferson to Francois D'Ivernois, 1795. FE 7:4). Thus, it is the purpose of government to protect the natural rights and civic rights of its citizens from any attack. This attack could be from other individuals or from any foreign or domestic government.

The first purpose of a government in protecting its citizens is to protect the rights of its citizens from incursion by other citizens. Jefferson said in his first inaugural Presidential address that "a wise and frugal government" should "restrain men from injuring one another" and their rights (Walter, 18). But more than this, it must protect the minority interest from the abuses of the majority. In his first inaugural address, Jefferson says to "bear in mind this sacred principle,

that though the will of the majority is in all cases to prevail, that will, to be rightful, must be reasonable; that the minority possess their equal rights, which equal laws must protect, and to violate would be oppression" (Thomas Jefferson: 1st Inaugural, 1801. ME 3:318). The equal rights of the minority must be respected and protected, and it is the government that must make sure this occurs. Here Jefferson appears to foreshadow John Stuart Mill's warning about the "tyranny of the majority" (Mill 1895, 13).

The second purpose of a government in protecting its citizens is to protect the rights of its citizens from its own interference with them. "A bill of rights," Jefferson wrote, "is what the people are entitled to against every government on earth, general or particular, and what no just government should refuse, or rest on inference" (Thomas Jefferson to James Madison, 1787. ME 6:388, Papers 12:440). Jefferson was wary of leaving the basic natural rights of citizens unprotected in the creation of a new government. As such, when the Constitution was being written, Jefferson insisted on a section spelling out these rights as protected, and this insistence, along with a number of other political forces at work, produced the addition of the Bill of Rights to the Constitution (Thomas Jefferson to James Madison, 1787. ME 6:387). For Jefferson, the purpose of the Bill of Rights was to specifically spell out rights which were to be protected against any interference by laws the government might put in place, specifically "to guard the people against the federal government" interfering in their rights, and he was relatively unconcerned with the other issues which the Bill of Rights was drafted to answer to beyond this sole point (Thomas Jefferson to James Madison, 1788. ME 7:98).

If laws and government are what guarantee and protect an equality of rights, especially an equality of freedom, where then does the government gain the legitimacy to create such laws as are needed? And, conversely, if a government makes such laws as infringe upon the rights of

citizens, what consequences are there for that government? Jefferson answers these two questions very simply: authority and sovereignty in a state lay only in the people as a whole, and it is the right of the people to remove the authority they grant to a government if it infringes upon their rights.

Most famously, Jefferson states the following in a letter to Pierre Samuel Dupont de Nemours, a noted French writer and economist: "[The people] are in truth the only legitimate proprietors of the soil and government" (1813. ME 19:197). As such, the people of a nation can be thought of "as the source of all authority in that nation" (Thomas Jefferson: Opinion on French Treaties, 1793. ME 3:227). Thus, as the Declaration states: "Governments are instituted among men, deriving their just powers from the consent of the governed" (Thomas Jefferson, 1776. ME 1:29, Papers 1:429). And, just as authority is granted by the consent of the governed, it can be removed at the whim of the governed for any number of reasons. Jefferson says that "every nation has a right to govern itself internally under what forms it pleases, and to change these forms at its own will; and externally to transact business with other nations through whatever organ it chooses," so long as it is in conformation with the will of the people of the nation (Thomas Jefferson to Thomas Pinckney, 1792. ME 9:7). If a government does not protect the rights of its citizenry, or infringes upon the rights of the citizens, it is born of their natural right to liberty to overthrow that government. Thus the justification is given in the Declaration to the American Revolution, "whenever any form of government becomes destructive of these ends, it is the right of the people to alter or abolish it, and to institute new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness" (Thomas Jefferson: Declaration of Independence, 1776. ME 1:29, Papers 1:429).

We have thus seen that for Jefferson freedom is both a positively and negatively defined result of a natural right to liberty: it includes freedom from restraint upon the self, as well as freedom to be self-determined as an individual. It is the protection of that natural right to liberty, among many other rights, which is the primary goal of government. A government must protect these rights and guarantee them equally to all its citizens against both individual action and its own laws, else it loses its legitimate power. This legitimacy is only granted to it by the will of the people, and it is by that will that the power can be revoked and the form of government changed to any form as the population sees fit. Yet the question remains, what form then is the ideal form for a government to take?

***Thomas Jefferson: The Republic and the People***

In the previous section we established that Jefferson has grounded our natural right to liberty in the natural laws that he saw as the governing principles of the universe. This natural right to liberty creates a conception of freedom that is posed both positively and negatively in such a way as to maximize the freedom available to the individual. This right to liberty was one of many natural rights that Jefferson conceived of, but it was among the most important for Jefferson. This is because liberty, both personal and political, forms most of the groundwork for the political theory that he puts forward. The natural right to liberty, as well as other natural rights, grants the people of a state the ability and freedom to choose whatever form of government they see fit for their state, according to Jefferson. A legitimate government protects the rights of its citizens, chiefly liberty, from others and from the actions of the government itself. What form then would be ideal to preserve the natural rights of a population with minimal possibility for transgression against those rights? Jefferson's answer is that the ideal form of

government to represent the will of the people and to protect the rights of the people is a democratic republic. “The republican is the only form of government which is not eternally at open or secret war with the rights of mankind” (Reply to Address, 1790, WE 3:128). Yet Jefferson’s notion of a democratic republic is an interesting one, as hybrid as his notions of natural right, liberty, and freedom. As such, it must be explained in detail in order for Jefferson’s claim to its superiority to make full sense.

Jefferson was in a unique position historically in terms of the developing new republics of his day and age. At thirty-one, Jefferson drafted the first set of documents which would lead to his writing the initial drafts of the Declaration of Independence a year later (Shuffleton, x). He was directly in the midst of the American Revolution both as a revolution of political ideas and as a war. He had his hands directly in the drafting of the Articles of Confederation, and much of his notes from those debates survive. From 1779 to 1781 he was governor of the state of Virginia, and oversaw many of its fundamental political foundations in terms of the state’s constitution. Upon leaving Virginia, Jefferson was appointed Minister to France from 1785 to 1789, and as such was right in the heart of the first moments of the French Revolution (Randal, 364). Yet even as he watched the beginnings of the French Revolution, he influenced the composition of the new Constitution that would govern the United States when the Articles of Confederation were found lacking (Randal 378). He was at first hopeful that the French Revolution would be as successful as the American Revolution had been, yet was disheartened by the turns of events which lead first to atrocity and then to Napoleon’s reign (WE 3:285, WE 3:504). Yet despite the disillusionment he suffered as a result of the French Revolution, Jefferson was a staunch supporter of the republic as the ideal form of government. However, his notion of a republic is different from the notion of most of his contemporaries, and shows a

unique hybrid nature of many philosophies synthesized in a manner that he saw as most conducive to individual liberty and freedom.

Jefferson points out the vagueness associated with the use of the term “republic,” when he offers his own use: “It must be acknowledged that the term republic is of very vague application in every language[...] Were I to assign to this term a precise and definite idea, I would say purely and simply it means a government by its citizens in mass, acting directly and personally according to rules established by the majority; and that every other government is more or less republican in proportion as it has in its composition more or less of this ingredient of direct action of the citizens” (Thomas Jefferson to John Taylor, 1816. ME 15:19). This remark enables us to identify two fundamental features of a republic, according to Jefferson: one, that it is a governmental form where in the will of the majority of the people is the basis of the laws, and two, that it is a government where in that will is democratically expressed by direct vote. To fully understand these points, let us now look at them each in turn.

A government must be representative of the will of its people, says Jefferson (ME 8:437). A government for Jefferson is “republican in proportion as every member composing it has his equal voice in the direction of its concerns” (Thomas Jefferson to Samuel Kercheval, 1816. ME 15:33). As such, it seems obvious to draw the conclusion that if all of the people have equal voice in their government, then that government is purely republican (on Jefferson’s understanding). The reverse is also true: if a government is a republican one, then all people will have an equal voice in it. This follows of course from Jefferson’s previous statements with regard to the source of the authority of a government. Since the authority of a government to create and enforce laws stems from the will of the people, it seems necessary that a government be maximally representative of the will of the people when it enacts those laws. The republican

form has as one of its principles the full representation of the will of the people in the government. As such, the republican form maximizes the representation of the will of the people in the government, and as such, it should have the full permission of the populace to enact its laws.

The second principle of a republic for Jefferson is that it is, at its most perfect, a pure democracy. “A democracy” says Jefferson, “[is] the only pure republic,” (Thomas Jefferson to Isaac H. Tiffany, 1816. ME 15:65). This is because “All [...] being equally free, no one has a right to say what shall be law for the others. Our way is to put these questions to the vote, and to consider that as law for which the majority votes” (Thomas Jefferson: Address to the Cherokee Nation, 1809. ME 16:456). Thus, given an ideal situation, a republic should be a pure democracy, with each individual given equal voice by way of a single vote in his or her name. This fundamentally guarantees equality of the voice of each individual in a state, and reinforced the previous principle, the representativeness, of the republic.

Yet for Jefferson, there was a problem faced by a pure democracy that could not be overcome. A pure democracy, thought Jefferson, was geographically limited in scope. “Such a government,” says Jefferson of his ideal democratic republic “is evidently restrained to very narrow limits of space and population. I doubt if it would be practicable beyond the extent of a New England township (Thomas Jefferson to John Taylor, 1816. ME 15:19). So, for Jefferson, the ideal form was not truly an obtainable form on the scale needed to govern the new American nation. It would be sufficient, thought Jefferson, that representatives selected by the various townships and states handle those decisions that could not be handled via a direct democratic

vote.<sup>16</sup> This form, thought Jefferson, was more than able to secure the equality in rights of all citizens if properly administered (ME 8:6, Papers 16:225). Thus, for Jefferson, the desired form of government for a state was a republic founded on the principles of representative democracy and representativeness of the will of the people. This idea of a republic, however, differs in a key way from both of his source schools of thought, the Lockean libertarians and the classical republicans. Both groups, like Kant, preferred the idea of a constitutional monarchy (or at least aristocracy), and rejected a democracy and total monarchy as equally problematic. Too, both groups agreed that a mixed constitution was the best option, where in the different aspects of the government would balance out and counter the other aspects from becoming too powerful. Jefferson, however, sought to answer these challenges and to defend democracy, direct or otherwise, as being preferable to a monarchy in any form, even with a constitution. It is in this way that Jefferson diverts from both of his source groups, and develops something that is special to his own political philosophy.

Both Locke and the classical republicans were in agreement that a division of power, and thus a mixed constitution was the ideal design for a republic. And both were in agreement that a constitutional monarchy, or at least a constitutional aristocracy, was the best mixed system possible. Yet their differences still show in terms of their reasoning behind this decision. Locke was opposed to an absolute monarchy, and rather supported the idea of a constitutional

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<sup>16</sup> Because of this geographical constraint, Jefferson realized that a pure democracy simply could not work as a functional governmental form. Thus, he acquiesced to the ability of an individual to choose for herself a representative when they themselves could not directly participate. He proposed, “where the citizens cannot meet to transact their business in person, they alone have the right to choose the agents who shall transact it” (Thomas Jefferson to Isaac H. Tiffany, 1816. ME 15:65). Thus, Jefferson says “action by the citizens in person, in affairs within their reach and competence, and in all others by representatives, chosen immediately, and removable by themselves, constitutes the essence of a republic” in a practical and workable form (Thomas Jefferson to Pierre Samuel Dupont de Nemours, 1816. ME 14:490).



monarchy in which the monarch derived their power from the consent of the people, rather than divine right (Thomas, 27). He favored a mixed government where a monarch and a representative democratic assembly shared power and balanced out one another. This would control the tendency of a monarch to become an absolute monarch without any checks and balances in place to control his power. But he rejected a pure democracy on the same grounds as he rejected any other absolute governmental form, for “he cannot trust the rationality or industriousness of any individual or body, arguing rather that unrestrained political power tends to corrupt its possessor” (Weinberger, 141). The classical republicans, similarly, sought a government based in a limited aristocratic democracy, and shunned the notion of a pure democracy as dangerous and unstable (Bresser-Pereira, 131). This conception of the republic as separate and distinct from a democracy in this manner traces its lineage back to Plato and Aristotle, by way of Cicero and Machiavelli and many others (particularly in Florence), and appears in the eighteenth century in the works of Montesquieu and Harrington, whom Jefferson had read, and his contemporary Madison (Bresser-Pereira, 131). They too supported a division of power between legislative and executive, but saw the danger to the system not in the leader becoming too powerful, but rather in the fickle nature of the general public. The eighteenth century classical republicans saw the most danger to a mixed constitutional form from its democratic element (Miller, 113). Instead the idea was to permit “commoners to elect their leaders from a slate of aristocrats” as Cicero, and much later Montesquieu, has suggested (Miller, 113). The common man could not be given total power in the government, said the classical republicans, or even more than minimal involvement. This idea goes back to Aristotle, who said “there is still a danger in allowing [common men] to share the great offices of state, for their folly will lead them into error, and their dishonesty into crime” (1281b25). Both groups, shared

Kant's dislike of democracy in its pure form, and yet, with all of these sources at Jefferson's fingertips, he adopted a very unpopular and unusual conception of an ideal republic as a pure democracy, with representative democracy as an option.

How then did Jefferson defend a system which was inherently unpopular to other republicans, either of the classical or Lockean persuasion, and which historically had been viewed as something very different from a republican system? First and foremost, Jefferson traces the democratic ideal to the laws of nature themselves, just as he did liberty. Secondly, Jefferson attempted to answer the charges against the will of the majority as being fickle and unreliable, as well as to the problems of the minority's voice.

For Jefferson, democracy as the preferred form stems from natural law just as liberty does. Self-government, says Jefferson, is a right inherent in all men. "Every man, and every body of men on earth, possesses the right of self-government. They receive it with their being from the hand of nature. Individuals exercise it by their single will; collections of men by that of their majority; for the law of the majority is the natural law of every society of men" (Thomas Jefferson: Opinion on Residence Bill, 1790. ME 3:60). As a part of this right of self-government there exists the rule of *lex majoris partis* (law of the greater part), upon which Jefferson saw the idea of a republic to be based. "The first principle of republicanism is that the *lex majoris partis* is the fundamental law of every society of individuals of equal rights; to consider the will of the society enounced by the majority of a single vote as sacred as if unanimous is the first of all lessons in importance," (Thomas Jefferson to Alexander von Humboldt, 1817. ME 15:127). The rule of law is the rule of the majority's will, naturally, for Jefferson, and it should be no other way if at all possible. The only alternative is that of a rule by

the strongest, and that is unacceptable (Thomas Jefferson to Annapolis Citizens, 1809. ME 16:337).

Jefferson was not ignorant of the objections to democracy, and addressed both the fear of the unreliability of the majority and the rights of the minority being in question under such a majority rule. First and foremost, Jefferson insisted that one of the keys to a properly functioning democratic republic was a universally educated population, thus eliminating the primary fear of the classical republicans that the population would be unable to govern itself wisely. “Above all things,” said Jefferson, “I hope the education of the common people will be attended to; convinced that on their good sense we may rely with the most security for the preservation of a due degree of liberty,” (Thomas Jefferson to James Madison, 1787. Madison Version FE 4:480). Education to some degree, enough so that the population could be informed about political matters, was necessary to a functioning democracy — it could never be the case that a country could be a well functioning democracy without universal education. Jefferson was “convinced that the people are the only safe depositories of their own liberty, and that they are not safe unless enlightened to a certain degree,” and as such he viewed “our present state of liberty as a short-lived possession unless the mass of the people could be informed to a certain degree” (Thomas Jefferson to Littleton Waller Tazewell, 1805). Jefferson was a supporter of education provided for all of the populace in a country, particularly the future citizens of that country, because it was a necessity for his idea of a republic. As such, it was in the best interest of the current generation and its government to provide education for the future generations to sustain the strength and functionality of the democratic republican system. Education would raise “the mass of the people to the high ground of moral respectability necessary to their own safety and to orderly government, and would [complete] the great object of qualifying them to

secure the veritable aristoi for the trusts of government, to the exclusion of the pseudalists[...] I have great hope that some patriotic spirit will[...] call it up and make it the keystone of the arch of our government” (Thomas Jefferson to John Adams, 1813. ME 13:400). Education must exist for all citizens, at the least, to the level where they can wisely govern themselves as a voting member of the democratic republic.

What then of the challenge that both Locke and Kant make to the rights of the minority within a democracy? Recall that Kant’s objection to democracy was that “it establishes an executive power in which "all" decide for or even against one who does not agree” and that as such it is contrary to freedom (8:352). Jefferson counters this challenge on the grounds that to be just, majority decisions must be in the best interest of all the people, not just the majority’s interest alone. “Bear in mind this sacred principle,” says Jefferson in his first Inaugural address, “that though the will of the majority is in all cases to prevail, that will, to be rightful, must be reasonable; that the minority possess their equal rights, which equal laws must protect, and to violate would be oppression” (1801. ME 3:318). The majority cannot set the law alone without the consideration of the good of all citizens, and any law that is set that oppresses the minority is unacceptable. “The majority, oppressing an individual, is guilty of a crime, abuses its strength, and by acting on the law of the strongest breaks up the foundations of society,” (Thomas Jefferson to Pierre Samuel Dupont de Nemours, 1816. ME 14:490). But this is not the only support of the minority that Jefferson represents. “[Sometimes] the minorities are too respectable, not to be entitled to some sacrifice of opinion, in the majority,” says Jefferson, meaning that the majority should be aware of not only the well being of the minority and its rights, but also listen to its opinions and advice (Thomas Jefferson to James Madison, 1788. ME 7:184).

As well, it should not be the case that a majority alone should always be the rule, especially in the cases of close majorities or majorities based on geography. "Great innovations should not be forced on a slender majority," (Thomas Jefferson to John Armstrong, 1808. ME 12:42).. Again, this stems from the idea that the rights of the minority are equal to those of the majority, and as such, any major changes should require a significant majority to be enacted. Jefferson was also keenly aware of geographic differences and the role they would play in a democracy, and as such, any majority that existed solely on a geographic distribution should not be the rule of law. "A geographical division[...] is a most fatal of all divisions, as no authority will submit to be governed by a majority acting merely on a geographical principle" (Thomas Jefferson to Samuel H. Smith, 1821. FE 10:191).

Yet despite his concern for the minority and their rights, Jefferson still held that a democracy was founded upon the principle of the *lex majoris partis*, and as such, the will of the majority should be provable in law. And as such Jefferson says, "If the measures which have been pursued are approved by the majority, it is the duty of the minority to acquiesce and conform" (Thomas Jefferson to William Duane, 1811. ME 13:51). The democratic republic must rely on an educated, informed population that is willing to put forward its opinions, and abide by the will of the majority when given in the best interests of all people in the country.

Jefferson's republic differed from the republics of his contemporaries in the fact that he envisioned it as a pure democracy in the ideal, and a representative democracy as minimally as possible in the practical. All decisions which could be decided by a direct vote should be decided by such; all things that could not be dealt with in a pure democratic form should be decided by a representative democratic vote. Too, he answers the challenges put forth by his contemporaries as to the dangers of a democracy, with his faith in the common man when he is

informed and educated, and with the principle that the minority does not surrender their fundamental rights to the majority. As such, Jefferson upholds his universalized right to liberty for all citizens of his democratic republic, and embraces a form of government that he sees as maximizing the individual freedom of each citizen in terms of their ability to govern themselves. Freedom is the foundational principle that must be respected for Jefferson, as a product of the natural right of liberty of the individual. It can thus be seen how his conception of natural rights, particularly the right to liberty, is fundamental to the structure of his republican state.

### ***Jefferson and Kant: The Republican Constitution***

Here the contrast with Kant is most evident. Both Jefferson and Kant hold that the protection of rights as the fundamental purpose of a government, that a government that does not represent the will of the citizens is illegitimate, and therefore, that the desired form of a government should be republican. However, these beliefs lead Jefferson and Kant to two radically different ideas of what the ideal form of a state should be. Kant and Jefferson each agree that humans create governments in order to protect and preserve the rights of individuals. In particular, governments exist to enforce laws that are created to preserve rights. The government, in order to be legitimate, must enact laws only at the consent of the governed, and such laws must be laws that the citizens agree to obey, thus representative of their will. It is this representativeness of the will of the people that both Kant and Jefferson invoke to support the idea of a republican constitution. A government must represent the will of its citizens, and therefore, to the degree it does so it is republican. Thus, the goal for both Kant and Jefferson is a form of government that maximizes the representativeness of the people while minimizing the infringement of the government on the rights of its citizens.

Kant claimed that a democracy could never fulfill the requirements for a republic, because it was “necessarily a despotism” for “it establishes an executive power in which "all" decide for or even against one who does not agree” (8:352). This was a rejection of democracy not only as an acceptable form of government at all, but also as a real form of government. A real government is representative in some fashion, but a democracy pretends to be representative without actually being as such. Thus, a democracy for Kant is the antithesis of a government that represents the will of its entire citizenry. It also minimizes individual freedom, for a democracy requires that all its members be constantly involved in the process of government, rather than activities of their own choice. Thus, for Kant, the desired form is one that removes the burden of government from the population as a whole, and places it in the hands of a single individual that can represent the will of the people (8:39-40). For Kant, this rule by an “enlightened monarch” under a republican constitution is the ideal combination of form of government and form of sovereignty.

Jefferson, on the other hand, rejects the idea of a monarchy as a desirable form almost completely. While he does accept “that every nation has a right to govern itself internally under what forms it pleases, and to change these forms at its own will,” be it “a King, Convention, Assembly, Committee, President, or whatever,” Jefferson views monarchs with disdain in general (to Thomas Pinckney, 1792. ME 9:7; to James Madison, 1787. ME 6:64). Rather, Jefferson views the republic of his conception, one governed by as direct a democracy as possible, as the ideal form of government and sovereignty for a state. The people alone are the sovereign power of a state, and as such, “all power is inherent in the people; that they may exercise it by themselves in all cases to which they think themselves competent (as in electing their functionaries executive and legislative, and deciding by a jury of themselves in all judiciary

cases in which any fact is involved), or they may act by representatives, freely and equally chosen” as they see fit (Thomas Jefferson to John Cartwright, 1824. ME 16:45). Thus, for Jefferson, the claims of Kant that a democracy is antithetical to freedom could not be more wrong.

The difference between Kant and Jefferson on the form that a government must take to maximize the freedom of its citizens as individuals is a puzzling one. Jefferson was an optimist about human nature, as previously discussed. Kant, too, can be viewed as an optimist about humanity, believing that human history was a continued trajectory of improvement of both the individual and society (Williams, 1). In light of this latter point, it seems difficult to attribute Kant’s dislike of the democratic form to a view that average citizens were incapable of governing themselves wisely, as was the fear of the more classically republican minded opponents of Jefferson, such as John Adams and Alexander Hamilton (Wheelan, 169). In fact, Kant specifically spoke against paternalistic government on much the same grounds as Jefferson did, saying that it would be “the worst conceivable despotism” were a government enacted “on the principle of benevolence towards the people as a father’s toward his children” such that the government must act not necessarily as just the will of the people, but rather as in the best interest of the people (8:291). How then are we to understand why Kant supported a monarchy as a more ideal form than a democracy for a republican state?

For Kant, and for so many others of his time frame and before, a democracy represented something very different than what it represented for Jefferson or what it represents to readers today. It was rule by the uneducated masses, at the whim of the mob, where in the majority ruled through strength of opinion rather than rationality. It was not, as Jefferson saw it, a rule by rational and educated men acting on informed opinions; rather, it was something to be feared as



chaotic and unstable. Thus, a system that was only prone to corruption when not properly executed, such as a monarchy, not corrupt absolutely, as democracy was, was much preferable. As Matthew Levinger says, quoting Kant, “under a democratic constitution, ‘everyone[...] wants to be a ruler’; but an absolute monarch, such as Frederick the Great, who considers himself ‘the highest servant of the state,’ may function as the protector of the rights of man and the truest representative of the people” according to Kant (Levinger, 34). Only an enlightened ruler, thought Kant, could provide the freedom of thought needed in an enlightened state, while still providing a strong rule of law to protect the freedom of its citizens. The Kantian constitutional monarchy exists in the reverse of how the modern reader would think it should: the freedom of thought Kant sought could only be obtained in a society with a strong grip on civil liberty (Zurbuchen, 249-50). As such, one could almost view Kant as a classical republican in the most classically rooted sense: the goal of political reform for Kant was the protection of civil liberty and freedom of thought by the mutually agreed upon law (Zurbuchen, 249). Also, Kant was in a delicate position politically in Prussia as a supporter of the French Revolution (Levinger, 33). He was, as a professor at Königsberg, a civil servant, and also the most famous philosopher in the country. As such, he could not easily speak out against the government without fear of his livelihood (Levinger 34). He also was, as previously mentioned, greatly opposed to violent revolution, even without governmental pressure, as the first solution to governmental transformation. Violent revolution was greatly unpopular in the wake of the trajectory of the French Revolution, and Kant felt the need to set his ideas apart from any possibility of being misread as revolutionary (Levinger, 34).

Jefferson, on the other hand, was not only a revolutionary, but rejected any subtle transition of governmental forms to some enlightened perfection. Rather, the American

Revolution was the action that brought the citizens of the new nation from oppression to a new freedom, a new ideal form of government, and it was the step to a grand new project of enlightenment (Thaddeus Kosciusko, 1799. ME 10:116; to John Wayles Eppes, 1813. ME 13:430). Revolution was a necessary process for change for Jefferson, who said “God forbid we should ever be twenty years without such a rebellion” for such changes and challenges to a government keep the nation healthy in its structure (William S. Smith, 1787. ME 6:372). But beyond this, Jefferson honestly saw the American Constitution as something new and radically different, a next step in the evolution of human society and government. “We can no longer say there is nothing new under the sun,” says Jefferson, “for this whole chapter in the history of man is new. The great extent of our republic is new. Its sparse habitation is new. The mighty wave of public opinion which has rolled over it is new” (Thomas Jefferson to Joseph Priestley, 1801. ME 10:229). For Jefferson, his new republic was the final step in the enlightenment of mankind, at least politically, breaking away from tyranny and oppression.

### ***Thomas Jefferson: Conclusion***

Jefferson’s conception of freedom is one that stems from his belief in natural right. For Jefferson, natural rights originate in the natural laws of the universe, which govern all things including human behavior and nature, and exist separate from and before any human constructed systems. Natural rights exist as fundamental rights that all humans have prior to the existence of society and government. Primary among these for Jefferson is the right of liberty. For Jefferson, liberty is a right to both a positively and negatively defined individual freedom with only a single limitation placed upon it. This limitation is the equality of liberty (and all other natural rights) among all humans. The equality of liberty, and as such the equal freedoms liberty as natural right guarantees, is endangered by the existence of societies. For this reason, human beings

create governments to protect the rights and equality of rights of their citizens. It is Jefferson's stance that the authority of governments comes from the consent of the governed, and that the population as such can revoke the authority of the government if it ever fails in its purpose.

The ideal form of government to protect the rights and equality of rights for its citizens is, according to Jefferson, the republic. For Jefferson, the republic is a concept different from, but composed of elements from, the classical republican conception of a republic and the Lockean liberal conception of a republic. For Jefferson, it is a democratic system wherein the ideal expression of the will of the people is a pure democratic system, but where this is not possible representative democracy is the preferred alternative. This idea of a republican government is envisioned in a way that he saw to be maximally conducive to individual freedom, as it has been shown.

Along the way we have shown how Jefferson's ideas compare and contrast to Kant's ideas that were discussed previously. Kant and Jefferson held many points in common, but it is the way in which these similarities play out to produce radical differences which has been most interesting. Jefferson was in general far more interested in sudden, revolutionary change, whereas Kant was far more in favor of reform and change within the systems which preexisted. Yet each held fundamentally the same key ideas of the purpose and function of government, and had the same focus on which factors were most important as the foundational principles of that government. Protection of the freedom of the individual for both Jefferson and Kant, be it a natural right or an innate right (though the two terms can be used almost synonymously), was the key to good government and the foundation for any system of laws. And it was from the citizens, the individuals that the government gained its authority to govern. Thus, any violation of these rights of the citizens, then, de-legitimized the government. As such, the government

must be of a republican nature to be a legitimate one, and the more the government respected and reflected the will of the people the more republican, and thus, more desirable it was, regardless of who was in charge.

#### **Chapter 4: Conclusions and Summary**

As we have seen, individual freedom is the fundamental concern for both authors as they attempt to describe their version of an ideal state. Both view freedom as something of prime importance, which must be preserved and protected, and it is upon this basis that they seek to establish what they view as a good government. However, both authors, on my view, have failed in this project in a very similar way: neither system actually does protect and foster individual freedom. Jefferson's system falls victim to the very problem that Kant points with complex forms of government: too much time is taken from too many individuals. To establish laws that are created by the will of the people, all people must be involved, and as such, all must participate in the voting, even if they do not desire to. On the other hand, Kant's system fails because it consolidates power in too few hands, and thus raises the question of consent to the laws, for a law established in *accordance with* the will of the people cannot be seen as equivalent to one *established by* the will of the people.

Jefferson's system of pure democracy is fundamentally problematic in that it would seem to require the involvement of all citizens in the political process, independent of their own personal desire to be involved. This is sufficient reason, says Kant, to reject complex forms of sovereignty. That is, Kant would see Jefferson's style of democracy as actually robbing individuals of their freedom of choice on the matter of governmental participation. A direct democracy requires laws to be established by the will of the people, so if someone chooses not to participate, they have endangered the legitimacy of that vote. Kant would seem to say, and I

agree, that a pure democratic system, such as Jefferson suggests as his ideal form, cannot be completely compatible with maximized individual freedom. This applies both to internal freedom and external freedom for Kant, but most importantly for this discussion, external freedom as established in the Doctrine of Right. The reason for Kant's rejection is because democracy removes a fundamental aspect of that freedom from the citizens: the freedom to choose to participate in the government of their state or not. By requiring participation, individuals must abandon whatever other activity they would have freely chosen to engage in otherwise. A pure democracy, and really a representative democracy as well, depends on the complete participation of its citizens in order for any law or decision made by vote to be considered truly legitimate because, even if a single citizen does not vote, the vote cannot be considered to be representative of the will of all citizens. While Jefferson has dealt with the issue of the minority and their consent to be governed by laws established by the will of the majority, he has not dealt with the issue of one who chooses not to vote. Those who vote but are in the minority have still consented to the entire process of establishing a law by democratic vote; one who does not vote at all has not consented to the process, nor the law established by it.

However, even though I would agree with Kant that Jeffersonian democracy takes away too much freedom, there is also a fundamental problem with the Kantian republic. It is supposed by Kant that the ideal republic is one where in a monarch governs over it, setting law and policy according to the will of the people. This enlightened monarch should establish no law that all members of the state could not consent to be governed by, nor should the monarch establish any law or policy that is not in accordance with the will of all of the people of the nation. Yet, even assuming that this is possible — he still remains one individual who alone may set and establish the laws for all individuals within the nation, to which they must conform and obey. Even if the

laws are *in accordance with* the will of the people, the decisions of a single man are not the *determined* will of all people, and as such, the populace would be required to obey laws not of their own making. Even if the people would be willing to consent to these laws, and be governed by them, they are not laws *established by* the will of the people, only by an individual's *interpretation* of the will of the people.

It seems inconsistent of Kant to dismiss democracy as not being republican in nature, yet support a system where in it seems even more difficult to guarantee the republican nature of the government. It seems inconsistent of Kant to criticize democracy because “ ‘all’ decide for or even against one who does not agree” when his monarch would be “one” deciding for “all” (8:352). To reiterate, even if the laws created by this monarch were *in accordance with* the will of the people, it is still not directly their wills which are *determining* the laws as they are set. Even Kant himself says that we have the freedom to obey no law other than one to which we give our consent to, and as such it seems very hard to make the argument that a law made by a monarch such as Kant supposes could be legitimate without the direct consent of the citizens to it, for which Kant makes no allowances (8:350).

It seems to me to be virtually impossible to reconcile this problem within Kant's republic and still maintain either the spirit or word of his system, i.e., his goal that government protect and foster individual freedom. The goal of removing the burden of government involvement from the individual is a worthy one, yet this issue of direct consent is just as problematic to me as Jefferson's problem of citizen involvement. In both cases, attempts to maximize individual freedom instead end up reducing it. And, in each case, it seems very hard to resolve either issue while still maintaining the rest of the political system.

The question seems now to be which system is less flawed and more plausible. On my view, Jefferson's issue of the abstaining voter is problematic, however, the issue with Kant's system is far more devastating. While Kant is willing to accept that his "enlightened monarch" would enact laws in accordance with the will of the people, I, like Jefferson, think such a system could be far too easily corrupted such that the laws would only be by the will of the monarch. In fact, such a system is inherently already corrupted in this way, since even if the laws are in accordance with the will of the people, it is still the will of the monarch which enacts them. Thus, the fact that the monarch's laws may be in accordance with the will of the people is merely a pleasant side effect.

Jefferson's was, of course, not unaware of the problematic nature of his democratic system. As previously discussed, he did admit that a pure direct democracy was simply untenable on a large geographic scale. In fact, Jefferson wished to limit direct democracy to areas no larger than a contemporary New England township, an area generally no larger than six miles square, with a population generally of no more than 500 individuals at the time of Jefferson's proposal (Thomas Jefferson to John Taylor, 1816. ME 15:19; McLaughlin, Hart, 94). Thus Jefferson proposed that a limited representative system would be an acceptable substitute for a direct democracy in some cases. These small regions would then elect representatives for the local, state, and federal levels, leaving most of the large scale votes to these representatives, where in the small regions could govern themselves largely independently and without concern for the higher areas of government. This system was what Jefferson referred to as the "ward system," a principle which has never fully been put into practice. As he envisioned it, "every state again is divided in to counties, each to take care of what lies within its local bounds; each county again into townships or wards, to manage minuter details; and every ward into farms, to be governed

each by its individual proprietor” (Thomas Jefferson: Autobiography, 1821. ME 1:122). By this system, where in the majority of local affairs were dealt with locally, rather than by a remote authority, not only separated the powers of federal and local government, but also removed governmental decisions from the day to day voting of the individual, and rather placed it in the hands of carefully selected (by popular vote) regional representatives.

I do not believe this system solves the matter of the absenting voter, but it does greatly decrease the burden placed upon the individual, while still giving the powers of self government and self determination to the individual in matters of local, and therefore personal, importance. However, it does raise for Jefferson a similar criticism levied at Kant, that at the federal level, laws would be made by representatives in accordance with, rather than determined by the will of the people. And thus, it seems again that neither system can be declared to truly accomplish what it sets out to accomplish. Neither system is truly one in which individual freedom is maximized, though I find Jefferson’s democratic republic a more practical proposal than Kant’s republican monarchy.

### ***Summary***

These two discussions have sought to better illuminate both similarities and differences between the ideas of these two great Enlightenment thinkers. Yet by way of the contrast and comparison of the two, many of the issues at stake have become more apparent. The debate over the source of human freedom and its expression as a right, as well as the purpose and structure of good government in light of this right, are made highlight by the divisions and unions of thought between the two writers. Both Jefferson and Kant were fundamentally concerned with human freedom, both as a metaphysical and as a practical matter. While Jefferson conflates the



metaphysics and practicality of freedom into a single notion, Kant separates the two notions of freedom, linking them only by implication. Each acknowledges the freedom of the individual citizen as fundamental to the notion of good government and a legitimate state, as well as to the idea of governmental authority. In addition, both agree that freedom is one of the key rights inherent to all humans, the defense of which is one, if not the only purpose of a government. The difference lies in how each characterizes the structure that such a government should take.

Kant and Jefferson agree on the idea that a government must be representative of its citizens' wills, and as such, should be republican in nature. Yet what each means by the notion of a republic—and of its being “representative of its citizens' wills” is quite different. Kant's republic is a government that represents its citizens, but does not involve their action directly in the structure of government. Jefferson wishes every individual to be as involved in government as possible, either through direct vote or representative democracy. Kant sees the republic as being possible in any form of national sovereignty except for a democratic one. Jefferson, on the other hand, views the democratic form as the most legitimate expression of a republican government. Jefferson rejects a monarchy as being too easily corruptible, while Kant sees it as the least corruptible focus of power in a nation. The discussion has spelled out in great detail the full extent of these differences beyond these few previously mentioned points.

It is useful to compare and contrast these two authors to show how approaches to a topic that at first seem similar in concept can produce radically different ideas, even while following very similar fundamental beliefs. Both Kant and Jefferson were optimists when it came to human nature as both being of a rational mind and moral judgment, though Jefferson decidedly more so than Kant in many ways. Both held that a legitimate government only exists in so much as it represents the will of its citizens in its laws and actions. And both held that human freedom,

above all else, was a fundamental right to all human beings upon which good government should be founded, and which good government should work to defend from any encroachment. These similarities, more than the differences, might point the way to a more wide reaching treatment of the concepts of good government and freedom in the Enlightenment, or even over all.

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