

Kant's Contribution to the Idea of Democratic Pluralism

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The literature comparing Kant and Maritain is minimal, especially with respect to their political philosophies. Yet Maritain's disagreement with Kant is clear enough; as McNerny puts it, "Maritain wrote [in *Principes d'une politique humaniste*, New York, 1944] of the false political emancipation and false conception of human rights which derive from the anthropocentrism of Rousseau and Kant based on the autonomy of the human person. One is free if he obeys only himself."¹ In *Man and the State*, Maritain writes that Kant and Rousseau reject any measure or regulation derived from the world of nature because regulations originating from the natural order of things would destroy the autonomy and supreme dignity of the human person.² But while it is certainly true that Kant does not derive his Categorical Imperative from an ontological standpoint, it is not entirely fair to say that Kant's practical philosophy is in no way objective.³ The German Enlightenment was in no way a revolutionary movement. At least according to its basic structure, the German Enlightenment was faithful to tradition. Kant's practical project was precisely to save morality and religion from relativism; as he writes in a famous text from the "Preface" to the second edition of the first *Critique*, "I therefore had to annul *knowledge* in order to make room for *faith*."⁴ Indeed, Maritain's position with respect to

¹ Ralph McNerny, *Art and Prudence: Studies in the Thought of Jacques Maritain* (Notre Dame, Indiana: University of Notre Dame Press, 1988), p. 79.

² Jacques Maritain, *Man and the State* (Washington, D.C.: The Catholic University of America Press, 1998), pp. 83-84.

³ Kant's disagreement with Maritain would be essentially epistemological; for Kant reason is the only purely objective moral principle knowable by a finite rational being such as ourselves, and therefore the only possible ground of a principle that can be recognized by human persons as absolutely necessary. As Korsgaard points out, Kantian laws of autonomy are positive laws; moral laws exist because we legislate them. (Christine M. Korsgaard, *Creating the Kingdom of Ends* (Cambridge: Cambridge University Press, 1996), p. 66. For Kant, this is the necessary result of his critical epistemology. Maritain's disagreement with Kant concerns the proper object of a free will, the good as such, which is an ontological principle. For Maritain, Kant's transcendental freedom implicitly deprives the will of its very purpose. See, for example, James V. Schall, *Jacques Maritain: The Philosopher in Society* (Lanham, Maryland: Rowman & Littlefield Publishers, 1998), p. 130.

Kant would soften somewhat later in his career; Kant does derive his practical philosophy from an essential human nature, and were Kant alive today, he would appreciate the force of Maritain's critique. An attempt at such a reconciliation may be seen in the postwar Christian Democratic movement in Europe and Latin America, although Maritain believed they failed for the most part to prepare, through the necessary lengthy process of education, for an authentic Christian politics.⁵

Although the term "pluralism" occurs only once in Kant's published works,⁶ Kant's political philosophy embodies the principles that Maritain includes under the term "pluralism" in *Man and the State*. In the *Anthropology from a Pragmatic Point of View* (1798) he contrasts pluralism, by which he means a state of mind in which the self understands that it is not the whole world, to egoism, by which he means solipsism.⁷ The purpose of this paper will be to present some of Kant's arguments that prepare the way for the modern concept of a pluralist democratic state. Section one will present Kant's account of the distinction that must be made between juridical and ethical lawgiving. Section two will review the constitution of the state according to Kant, and the third section will consider Kant's view of the relationship between church and state.

I

Maritain describes "pluralism" as "an organic heterogeneity in the very structure of civil society."⁸ A pluralist commonwealth is understood by Maritain to be one that gives the fullest measure of autonomy to the groupings that make it up; that is to say, a pluralist commonwealth is one that will diversify its own internal structure in accord with the typical claims of the various natures of the groups that comprise it.⁹ It is opposed essentially to the twentieth-century totalitarian state.

Kant, too, is committed to a political structure that gives the fullest measure of autonomy to its members. His Universal Principle of Right, which is given in the "Introduction to the Doctrine of Right" of the *Metaphysics of Morals* (1797),

⁴ Immanuel Kant, *Critique of Pure Reason*, trans. Werner S. Pluhar (Indianapolis, Indiana: Hackett, 1996), p. 31; AK 3:19.

⁵ John DiJoseph, *Jacques Maritain and the Moral Foundation of Democracy* (Lanham, Maryland: Rowman & Littlefield Publishers, 1996), pp. 144-45.

⁶ *Kants gesammelte Schriften*, Herausgegeben von der Königlich Preußischen Akademie der Wissenschaften. Volumes 1-9, 10, 11, 12, 13, floppy disk edition (Bonn: Institut für angewandete Kommunikation und Sprachforschung, 1988-94).

⁷ Anthropology for Kant is, of course, a science that deals with the human being as phenomenon, and so the question as to whether I, as a thinking being, have any reason to assume that beside my own existence there exists a totality of other beings that I call a world and with whom I am in relation, is a metaphysical and not an anthropological question. Immanuel Kant, *Anthropology from a Pragmatic Point of View*, trans. Victor Lyle Dowdell (Carbondale, Illinois: Southern Illinois University Press, 1978), pp. 12-13; AK 7:130.

⁸ Jacques Maritain, *True Humanism* (New York: Charles Scribner's Sons, 1938), p. 157. The same locution is used in his earlier work *Freedom in the Modern World*, trans. Richard O'Sullivan (New York: Charles Scribner's Sons, 1936), p. 61.

⁹ *Ibid.*, pp. 156-57.

exemplifies this principle; it states that “any action is right if it can coexist with everyone’s freedom in accordance with a universal law, or if on its maxim the freedom of choice of each can coexist with everyone’s freedom in accordance with a universal law.”¹⁰ “The Doctrine of Right” deals with the totality of laws for which an external lawgiving is possible,¹¹ while the second part of the *Metaphysics of Morals*, “The Doctrine of Virtue,” deals with subjective principles of choice, or, in other words, internal lawgiving.¹² This distinction between external and internal lawgiving is the underpinning of a pluralist society; it is the distinction between civil law and morality, and indeed Maritain regards such a distinction as unavoidable in *Man and the State*.¹³ As he writes in Chapter VI of that work, the sound application of the pluralist principle means that care must be taken not to impose by force of law rules of morality too heavy for the moral capacity of large groups of the population.¹⁴

In “The Doctrine of Right” Kant intends to provide a rational account for this distinction. That is to say, Kant systematically investigates the purely rational conditions, independent of experience, under which a community of empirically free subjects is possible. Freedom is defined by Kant in “The Doctrine of Right” as independence from being constrained by another’s choice.¹⁵ This is an empirical or outward freedom; it is not the transcendental freedom upon which morality depends. Nevertheless, it is clear that Kant’s “Doctrine of Right” is a natural outgrowth of his critical practical philosophy. His definition of “Right” (*Recht*) as the sum of the conditions under which the choice of one can be united with the choice of another in accordance with a universal law of freedom¹⁶ is the natural empirical corollary to the Categorical Imperative, especially in its articulation as the formula of autonomy, which states that the supreme condition of the will’s conformity with universal practical reason is the idea that the will of every rational being is a will that legislates universal law. This, as everyone knows, leads to the concept of a Kingdom of Ends, which is a principle of transcendental freedom but which has its corresponding empirical principle in the Universal Principle of Right.

¹⁰ Immanuel Kant, *The Metaphysics of Morals*, trans. Mary Gregor (Cambridge: Cambridge University Press, 1991), p. 56; AK 6:230.

¹¹ *Ibid.*, p. 55; AK 6:229.

¹² As we shall see, the central point in the distinction between rights and virtues lies in the distinction between the two possible kinds of incentives. Leslie Arthur Mulholland, *Kant’s System of Rights* (New York: Columbia University Press, 1990), p. 147.

¹³ *Man and the State*, pp. 76-79, Maritain distinguishes between practical conclusions regarding the various rights possessed by man in his personal and social existence and the rational justification of these practical conclusions and rights. Maritain argues that practical conclusions regarding the various rights possessed by human beings in their personal and social existence required that the speculative/theoretical justification of those rights and the attendant moral and metaphysical certainties to which each individual subscribes must be put aside.

¹⁴ *Ibid.*, pp. 169-70.

¹⁵ *Metaphysics of Morals*, p. 63; AK 6:237.

¹⁶ *Ibid.*, p. 56; AK 6:230.

Will is defined in the *Grounding for the Metaphysics of Morals* as a kind of causality belonging to living beings insofar as they are rational; freedom, then, would be the property of this causality that makes it effective independent of any determination by alien causes.¹⁷ This is transcendental freedom, without which there is no morality, and although Kant believes that theoretical reason cannot demonstrate that freedom is a property of the will of all rational beings, he holds that it is a postulate of pure practical reason that must be assumed if the antinomy of practical reason is to be resolved, i.e., if there is to be a rational account of morality.¹⁸ Perhaps more to the point, Kant holds that every being which cannot act in any way other than under the idea of freedom is for that very reason free from a practical point of view. Hence all moral laws, which are inseparably bound to the idea of freedom, are just as valid for such a being as they would be if speculative philosophy could demonstrate that the will of a rational being is indeed free. We cannot possibly think of a reason that consciously lets its judgments be determined by some alien cause; in such a case the subject would ascribe the determination of his judgment to some impulse instead of to his reason. We must, therefore, necessarily attribute to every rational being who has a will the *idea* of freedom. The will of a rational being can be a will of its own only under the idea of transcendental freedom.¹⁹

In the *Metaphysics of Morals*, the will is considered specifically in relation to the determining ground for action. Will is desire determined by reason. Choice is desire related to action. Insofar as will determines choice, it is practical reason. Will chooses the determining ground for action, or in less Kantian terminology, will chooses the reason to do something. Choice that can be determined by pure reason is called free choice; choice determined only by inclination (i.e., sensible

¹⁷ Kant, Immanuel, *Grounding for the Metaphysics of Morals*, 2nd ed., trans. James W. Ellington (Indianapolis, Indiana: Hackett, 1981), p. 49.

¹⁸ The antinomy of practical reason is as follows: The highest good is the synthesis of the concepts happiness and virtue (worthiness to be happy). Since the combination is not analytic, it must be thought as the connection of cause and effect, for it concerns a practical good, i.e., one that is possible through action. Either the desire for happiness is the motive to maxims of virtue, or the maxim of virtue is the efficient cause of happiness. The former is absolutely impossible because maxims which put the determining ground of the will in the desire for happiness (understood as the satisfaction of inclination) cannot be the ground of virtue. The latter is also impossible because practical connections of causes and effects in the world, as a determination of the will, is dependent on knowledge of natural laws and the capacity to make use of them and not moral intentions. Yet the furthering of the highest good is an *a priori* necessary object of our will. The resolution of this antinomy is to regard oneself as *noumenon*, as pure intelligence, existing without temporal determination, and thus as a being possessing transcendental freedom. When we regard ourselves as *noumenon* in an intelligible world it is not impossible that moral intention is a cause of happiness in the sensuous world, but this relation is indirect, mediated by an intelligible Author of nature. Hence the highest good, which is the union of virtue and happiness, is practically possible as the necessary highest end of a morally determined will. From this solution of the antinomy of practical reason it follows that in practical principles a natural and necessary connection between the consciousness of morality and the expectation of proportionate happiness as its consequence may be thought at least possible although it is by no means understood. Immanuel Kant, *Critique of Practical Reason*, trans. Lewis White Beck (New York: Macmillan, 1956), pp. 117-23; AK 5:113-19.

¹⁹ *Grounding*, p. 50; AK 4:447-8.

impulse) is called animal choice. *Human* choice is a capacity for choice that can be *affected* but not *determined* by impulses, and is therefore not in itself pure (apart from an acquired aptitude of reason), but it can still be determined to actions by pure will. Freedom of choice is this independence from being *determined* by sensible impulses.²⁰ This does not mean that happiness can have no part in morality, Kant's point is that we must abstract from such considerations as soon as the Idea of duty supervenes. We are not expected to *renounce* our natural aim of attaining happiness as soon as the question of following our duty arises; as finite rational beings, this is impossible in any case. What is required is that we on no account make considerations of our happiness the condition of obeying the moral law.²¹

Moral laws, which are laws of freedom, are contrasted to laws of nature, which are laws of cause and effect. Laws of freedom directed merely to external actions are called juridical laws; they operate through coercion; one speaks of their legality. Laws that are the *determining grounds* of actions are ethical laws; one speaks of their morality. Juridical laws speak to freedom in the external use of choice; ethical laws speak to freedom in *both* the external and internal use of choice (insofar as choice is determined by laws of reason).²²

Whether a law prescribes internal or external actions, and whether it prescribes them *a priori* by reason alone or by the choice of some other lawgiver, there are two elements involved, the law itself and an incentive. A law represents an action to be done as objectively necessary. An incentive subjectively connects a ground for determining choice to the action prescribed by the law, i.e., the incentive provides the will with a motive. The difference between ethics and legality lies in the motive. Ethical law makes an action a duty and at the same time makes this Idea (*Idee*) of duty itself the incentive.²³ Laws that do not include the incentive of duty and so admit an incentive other than the Idea of duty itself is *juridical*. Juridical laws draw

²⁰ *Metaphysics of Morals*, p. 42; AK 6:213.

²¹ That Kant's moral theory excludes happiness is, of course, an old objection, and Kant speaks to it in his 1793 essay, *On the Common Saying: 'This May be True in Theory, but it does not Apply in Practice.'* In that essay, Kant responds to an earlier essay by Christian Garve, in which Garve interprets Kant as having asserted that adherence to the moral law, regardless of happiness, is the one and only ultimate end for man, and that it must be considered as the creator's unique intention. Kant's reply is that his theory is that the creator's unique intention is neither human morality in itself nor happiness in itself, but the highest good possible on earth, namely the union and harmony of both. Immanuel Kant, "On the Common Saying: 'This May be True in Theory, but it does not Apply in Practice,'" in *Kant's Political Writings*, ed. Hans Reiss and trans. H. B. Nisbet (Cambridge: Cambridge University Press, 1970), pp. 64-65; AK 8:279. As Kant tells us in the first *Critique*, in Section 2 of "The Canon of Pure Reason," the highest good is really an idea of reason since the sensible world holds no promise that any such systematic unity of ends can arise from the nature of things (A814). Yet a world in accordance with all moral laws is *possible* by means of the freedom of rational beings, and so we are obliged to strive towards it—the answer to the question what ought I to do? is necessarily do that through which I become worthy of happiness (A808-9). Can implies ought in this case, and therefore we are obliged to regard the idea of a moral world (which includes God and a future life (A811) as having objective reality, i.e., as referring to the sensible world viewed as a *corpus mysticum* of the rational beings in it insofar as the free will of each being is under moral laws in complete systematic unity with itself and with the freedom of every other (A808).

²² *Metaphysics of Morals*, pp. 42-43; AK 6:214.

²³ Duty is the necessity of an action done out of respect for the law. *Grounding*, p. 13; AK 4:400.

their incentive from sensibly dependent determining grounds of choice, namely aversions. Conformity of an action with a law is called its *legality* irrespective of the incentive (it could be accidental); conformity of an action with a law when the Idea of duty arising from the law is the incentive is called its *morality*. Ethical lawgiving is that in which the incentive *cannot* be external (not even the external lawgiving of a divine will), since the incentive can only be the Idea of duty; this is what Kant means when he says a person is only subject to the law he gives himself.²⁴ In the end, one chooses to obey any law, be it Divine Law or the Categorical Imperative.²⁵ Juridical lawgiving is that in which the incentive can be external as well. Juridical laws have to do with rights and involve coercion; there is no coercion possible with respect to duties of virtue. Ethics may have specific duties in common with juridical law (Right), for example, in the precept that it is ethical to obey civil law generally, but it differs fundamentally in the kind of obligation.²⁶ For Kant, in one sense, namely from coercion, it is possible to “legislate morality.” But in the moral sense, it is not possible to legislate morality precisely because morality is a good will, which is beyond the reach of juridical lawgiving.

II

Kant holds that there is only one innate human right, namely, external freedom, or independence from being constrained by another’s choice. Freedom, insofar as it can coexist with the freedom of everyone else in accordance with a universal law

²⁴ In *Man and the State*, Maritain adduces a quote from the “Introduction to the Metaphysics of Morals” (AK 6:223) as follows: “A person is subject to no other laws than those which he (either alone or jointly with others) gives to himself.” He goes on to say that this rationalist philosophy has built no solid foundations for the rights of the human person because it led men to conceive rights as escaping every objective measure and denying every limitation imposed upon the claims of the ego, which leads to the expression of the absolute independence of the human subject and to a so-called absolute right to unfold one’s cherished possibilities at the expense of all other beings. (*Man and the State*, pp. 83-84).

This is certainly not Kant’s intention. Although Kant does try to ground morality through a *priori* principles of pure reason, he does so precisely for the sake of providing an objective (in a rational sense) principle of morality. As he says in the *Grounding for the Metaphysics of Morals*, if a law is to be morally valid, it must carry with it absolute necessity, in other words, it must be purely objective (AK 4:389). In the passage Maritain cites, Kant is trying to articulate the concept of moral personhood. Kant defines a person as a free subject whose actions can be imputed to him; moral personality is the freedom of a rational being under moral laws. From this it follows that a person is subject to no laws other than those he chooses for himself. The point is that the individual subject must choose to obey the law whatever its origin; in this sense, a person is subject to no other laws than those which he gives to himself.

Moreover, the point of the Categorical Imperative is precisely to subordinate the subjective ego to an objective (in the rational sense) principle. For Kant, moral autonomy is the ability of the person to choose maxims independent of any subjective principle or determination of nature. The point is that our essential moral capacity is the ability to transcend the influence of the spatio-temporal empirical world. Although Kant derives his principle from a *priori* principles of reason, reason and freedom as well as moral feeling are taken by Kant to be essential qualities of human nature, and the object of a good will is always morality. These are points on which both the neo-Thomist and the neo-Kantian can agree.

²⁵ Korsgaard points out that this is an old Hobbesian thought (*Leviathan*, Part I Chapter 14), that nothing can be a law for me unless I am bound to obey it, and nothing can bind me to obey it unless I have a motive for obeying it. Kant goes one step farther than Hobbes, however, to say that nothing except my own will can make a law normative for me (*Creating the Kingdom of Ends*, p. 65).

²⁶ *Metaphysics of Morals*, pp. 45-47; AK 6:218-20.

(and so equality is included in the concept), is the only original right belonging to people by virtue of their humanity.²⁷ In Section II of Kant's essay *On the Common Saying: 'This may be True in Theory, but it does not Apply in Practice'* (1793), entitled "On the Relationship of Theory to Practice in Political Right (against Hobbes)," Kant examines the original constitution of the commonwealth.²⁸

Kant argues that the contract establishing a civil constitution is of an exceptional nature in that it involves an absolute and primary duty in all external relationships among human beings (who cannot avoid each other) to regard their union as an end in itself in which all ought to share. Such a union is found only in a society insofar as it constitutes a civil state. The end of a civil state is to secure the right of persons under coercive public laws by which each can be given what is due him and is secured from attack by others.²⁹ This is the highest formal condition of all other external duties.³⁰ Kant defines the state as a union of persons under laws of right. Since all members of a state are united through their common interest in being in a rightful condition, the state is called a commonwealth.³¹

From the innate right of freedom it follows that the civil state is based on three *a priori* principles which define the only way a state can be established in accordance with pure rational principles of external human right. The first principle is that of the freedom of every member of society as a human being. The only conceivable government for persons who are capable of possessing rights is one in which everyone in the state, including its head, regards himself as authorized to protect the rights of the commonwealth by laws of the general will, but not to subject the commonwealth to his personal use at his own absolute pleasure. An individual cannot legislate for a commonwealth since in general the will of one person cannot decide anything for another without injustice. The second principle is that of the equality of each member of the commonwealth as a subject. This is an argument primarily against hereditary privilege. Each member of the commonwealth has rights of coercion in relation to all the other members except in relation to the head of state. In this context, the head of state is not strictly speaking a member of the commonwealth, but rather its creator or preserver; and, as such, the head of state alone is authorized to coerce others without being subject to any coercive law himself. The third principle is that of the independence of each member of a commonwealth as a co-legislator, i.e., as a citizen (although Kant does not grant

²⁷ Ibid., p. 63; AK 6:237.

²⁸ This essay predates by some four years "The Doctrine of Right" of the *Metaphysics of Morals* (1797), but it contains the same principles found in that work.

²⁹ Right, considered as the capacity for putting others under obligation, is divided into innate and acquired right. Natural Right rests only on *a priori* principles; positive (statutory) right proceeds from the will of a legislator. An innate right is one that belongs to everyone by nature, an acquired right requires some establishing act *Metaphysics of Morals*, p. 63; AK 6:237.

³⁰ Immanuel Kant, *Kant's Political Writings*, ed. Hans Reiss and trans. H. B. Nisbet (Cambridge: Cambridge University Press, 1970), pp. 73-74; AK 8:289-90.

³¹ *Metaphysics of Morals*, p. 123; AK 6:311.

universal suffrage). That is to say, all rights depend on laws, and a public law is an act of a public will from which all right proceeds. Of course, unanimity of opinion is not to be expected, but the principle of being content with majority decision reached by the voters or their representatives must be accepted unanimously and embodied in a contract; this is the ultimate basis on which a civil constitution is established.³²

The original contract is an idea of reason, which nevertheless has practical reality since it can oblige every legislator to frame laws in such a way that they could have been produced by the united will of the whole nation, and to regard each citizen as if he had consented within the general will.³³ This is the test of the rightfulness of every public law. As long as it is not self-contradictory to say that an entire people could agree to a particular law, no matter how painful it might seem, the law is in harmony with right. Happiness cannot be the basis of a generally valid principle because everyone has a different view as to what constitutes the empirical end of happiness; it is impossible to unite the will of everyone under such an empirical concept.

Every state contains three authorities in it, the sovereign authority in the person of the legislator, the executive authority in the person of the ruler (in conformity to law), and the judicial authority in the person of the judge.³⁴ The legislative authority can belong only to the united will of the people, and since all Right proceeds from it, it cannot do anyone wrong by its law. These three distinct authorities are the authority by which a state has its autonomy, i.e., the authority by which it forms and preserves itself in accordance with laws of freedom. A state's well-being, understood to be the condition in which its constitution conforms most fully to principles of Right, consists in the unity of these three authorities, and this condition of well-being is that condition which reason, by a categorical imperative, makes it obligatory for us to strive after.³⁵

³² *Kant's Political Writings*, pp. 74-79; AK 8: 290-6.

³³ Indeed, in the first edition of *The Critique of Pure Reason* (1781) we read (A 316) that a constitution (*Verfassung*) consisting of the greatest human freedom according to laws through which the freedom of each can coexist with the freedom of the others is a necessary idea; an idea that must lie at the foundation not only when first drafting a political constitution (*Staatsverfassung*), but in all law. The more legislation and government are established in harmony with this idea, Kant writes, the less would punishment (and coercion) be needed, and so Plato was right to hold that in the perfectly arranged government no punishment would be needed at all. And although such a perfect arrangement may never come about, it is right to hold this idea as an archetype in order to bring the legal organization of human beings ever closer to the greatest possible perfection. *Critique of Pure Reason*, p. 364; AK 4:201.

³⁴ *Metaphysics of Morals*, p. 125; AK 6:313. Maritain, of course, argues that the concept of sovereignty is a very troublesome one; he argues that if the term sovereignty is properly understood, it is nothing other than absolutism (*Man and the State*, p. 38). As such, it is necessarily opposed to the pluralist principle (*Ibid.*, p. 51). Maritain prefers to speak of *autonomy*; the body politic has a right to full autonomy internally with respect to itself and externally with respect to other bodies politic (*Ibid.*, p. 40). Of course we are free to say "sovereignty" when we really mean full autonomy (*Ibid.*, p. 49). At this point, it seems that what Kant has in mind when he refers to the sovereign authority of the legislative branch is autonomy. Kant does not speak of absolute freedom in the context of right; his principle is one of maximizing the freedom of individuals *consistent with the freedom of all other individuals*, be they persons or states. But when it comes to the problem of the people's redress against the government, Kant does come up against the problem that Maritain describes under the topic of sovereignty.

³⁵ *Metaphysics of Morals*, p. 129; AK 6:318. A categorical imperative represents an action as good in itself and hence as necessary in a will that conforms to reason as a principle of the will as opposed to inclination. *Grounding*, p. 25; AK 4:415.

The principle that the presently existing legislative authority ought to be obeyed, whatever its origin, is to be considered a holy and inviolable law, and from this principle follows the proposition that the head of a state has only rights against his subjects and no duties that he can be coerced to fulfill. Kant holds that a people cannot offer any resistance to the legislative head of a state that can be consistent with right, since a rightful condition is only possible through submission to its general legislative will. There is, therefore, no right to sedition, much less rebellion. The contradiction inherent in such actions is evident as soon as one asks who is to be the judge in this dispute between people and sovereign.³⁶ Kant holds that changes in the constitution, which may be necessary at times, can only be carried out through reform by the sovereign itself. No active resistance by the people combining at will to coerce the government to take a certain course of action is permitted, only negative resistance, a refusal of the people (in parliament) to accede to every demand the government puts forth as necessary for administering the state, is allowed.³⁷

Nevertheless, Kant does hold that the people have inalienable rights with respect to the head of state. Citing Hobbes' declaration that the head of state has no contractual obligations towards the people, can do no injustice to a citizen, and can generally act towards the citizen as it pleases, Kant says that although the proposition in its general form is quite terrifying, it would be perfectly correct *if* injustice were taken to mean any injury which gave the injured party a *coercive* right against the head of state.³⁸ Kant is clearly trying to walk the tightrope here. He does not want to say that the members of the commonwealth have no rights with respect to the head of state but without the commonwealth there are no rights at all, and so its preservation must be the paramount concern. Sovereignty is a problem Kant wrestles with, and it is difficult to see the difference between the Hobbesian sovereign and the Kantian head of state.³⁹

Ultimately, Kant depends on the good will of the sovereign authority. The non-resisting subject must be able to assume that his ruler's attitude is one of good will, and that any injustice suffered is the result of error or of ignorance on the part of the supreme authority as to certain consequences of the laws it has made. Therefore the citizen must be entitled to make public his opinion on whatever of the ruler's measures seem to him to constitute an injustice against the commonwealth. The freedom of the pen is the only safeguard of the rights of the

³⁶ *Metaphysics of Morals*, p. 131; AK 6:320.

³⁷ *Ibid.*, p. 133; AK 6:321-2.

³⁸ Reiss and Nisbet, *Kant's Political Writings*, p. 84; AK 8:303-4.

³⁹ Mulholland argues that the essential difference between Hobbes and Kant is that Kant denies that the idea of a social contract is the basis of an obligation to submit to civil authority. For Kant the idea of the social contract supplies the idea of a general will uniting individuals who have the attributes of citizenship and does not include tacit or actual consent. According to Mulholland, Kant's treatment of the constitution as an application of his principle of innate right distinguishes it from a constitution based on the ideals of the social contract as expressed in classical contractual theory (*Kant's System of Rights*, pp. 346-47). This distinction is not always apparent in Kant's account, however.

people, and to try to deny the citizen this freedom means not only that the subject can claim no rights against the ruler, but that the ruler is prevented from gaining knowledge of matters which he would rectify himself if he knew of them. To encourage the head of state to fear that independent and public thought might cause political unrest, which Kant believes Hobbes has done, is tantamount to making the ruler distrust his own power and feel hatred towards the people.⁴⁰

The general principle is this: Whatever a people cannot impose upon itself cannot be imposed upon it by the legislator. As an example, Kant argues that the state cannot enshrine a particular set of ecclesiastical doctrines into law on the grounds that such legislation prevents the further progress in knowledge of the people and the correcting of past mistakes. This is something they could not will for themselves since it frustrates the natural purpose of mankind.⁴¹

III

Kant, of course, took a famous pledge not to discourse publicly on religion during the reign of Frederick William II, who did not share the liberal attitude of his predecessor, Frederick the Great, and who was offended by Kant's book *Religion Within the Limits of Reason Alone* (1793).⁴² In that work, Kant calls for the establishment of an "ethical commonwealth." In a juridical commonwealth the general will sets up an external legal control of individual actions. But in an ethical commonwealth, the general will of the people cannot be regarded as legislative. In an ethical commonwealth, the purpose of legislation is to promote the morality of actions, which is something *inner* and not subject to public laws. But if ethical laws are thought of as emanating merely from the will of a superior being, they would be no different from juridical laws. Morality lies in the motive, which cannot be coercion; it must be the free duty of virtue. Ethical laws, which are known by pure practical reason, must be represented as also being divine commands, which means that there must be someone able to see into the innermost parts of the disposition of each individual *and* to see that each receives whatever his actions are

⁴⁰ Reiss and Nisbet, p. 85; AK 8:304. As Williams points out, Kant believes this point puts him at odds with Hobbes, whom he argues demands the uncritical allegiance of the citizens to their sovereign. The absolutely irreproachable power of the *Leviathan* is neither justified nor just, Howard Williams, *Kant's Political Philosophy* (Oxford: Basic Blackwell Publisher Limited, 1983), p. 150.

⁴¹ Reiss and Nisbet, p. 85; AK 8:304-5. The idea that the state should sanction the establishment of a certain set of ecclesiastical doctrines is impossible. In *What is Enlightenment?*, Kant writes that a contract of this kind, concluded with a view to preventing the further enlightenment of mankind forever, is absolutely null and void even if ratified by the supreme power, by Imperial Diets and the most solemn peace treaties. This would be to put succeeding generations in a position where it would be impossible for them to extend and correct their knowledge, or to make any progress whatsoever in enlightenment, which would be a crime against human nature, *whose original destiny lies precisely in such progress*. (Reiss and Nisbet, p. 57; AK 8:38-9). Kant does not address the possibility of a supreme legislator who is *not* of good will; interestingly he rationalizes the French Revolution, which he admired, saying that the King had abandoned his sovereign power to the Third Estate (Ibid., p. 30).

⁴² Kant published the letter from the King's Minister Woellner as well as his reply in the preface to *The Conflict of the Faculties* (1798). In a footnote he explains that he chose the words of his pledge carefully so as not to renounce his freedom to discourse on religion forever, but only during the reign of Friedrich Wilhelm II.

worth. This is the concept of God as the moral ruler of the world, and an ethical commonwealth can only be thought of as a people under divine commands, i.e., under laws of virtue.⁴³ The promotion of an ethical commonwealth is the proper role of religion, according to Kant.

Kant argues that only rational faith, which he calls pure religious faith, or moral faith, can be believed in and shared by everyone. This is because by pure religious faith he simply means the considering of the precepts of pure practical reason, which are objective, as divine commands. All religion consists in the fact that in all our duties we look upon God as the lawgiver. We may think of the divine legislative will as giving commands either through merely statutory laws or through purely moral laws. If we consider the divine commands as purely moral laws, each individual can know through his own reason the will of God which lies at the basis of his religion, namely, to act solely out of respect for the moral law. This is, for Kant, because the concept of God really arises from the consciousness of moral laws, which he thinks is innate, and from the need of reason to postulate a power which can bring about results conformable to them, i.e., happiness in accordance with virtue. The concept of a divine will determined according to pure moral laws alone allows us to think of one purely moral religion. But if we think of divine laws as merely statutory commands, knowledge of such laws is possible not through our own reason alone but only through revelation, which, whether it is given publicly or to each individual in secret, would have to be an historical and not a pure rational faith. Historical faith, which is grounded solely on empirical facts, is limited to the extent that it can promulgate itself and is subject to circumstances of time and place as well as the capacity of individuals to judge its veracity.⁴⁴

Given Kant's understanding, it cannot be the case that a government can establish ethical laws, much less an ethical commonwealth. Religion concerns the inner disposition of the subject, which is beyond the reach of the state, and so religious pluralism is the only legitimate governmental stance. In his essay, *An Answer to the Question, What is Enlightenment?* (1784), Kant writes that "enlightenment" is man's emergence from his self-incurred inability to use one's own understanding without the guidance of another. This immaturity is self-incurred when its cause is not a lack of understanding, but rather a lack of courage and resolution to use it without the guidance of another. The motto of enlightenment is therefore: *Sapere aude*, "Dare to be wise." Have the courage to use your own understanding.⁴⁵

⁴³ Immanuel Kant, *Religion Within the Limits of Reason Alone*, trans. Theodore M. Greene and Hoyt H. Hudson (La Salle, Illinois: Open Court Publishing Co., 1934), pp. 90-91; AK 6:98-9.

⁴⁴ *Ibid.*, pp. 94-95; AK 6:102-4.

⁴⁵ Reiss and Nisbet, p. 54; AK 8:35. It is so convenient to be immature, Kant writes; I need not think so long as I can pay. If I have a book to provide me with understanding, a spiritual adviser to provide a conscience for me, a doctor

All that is needed for enlightenment of this kind is the freedom to make public use of one's reason in all matters. But some restrictions, instead of hindering enlightenment actually promote it, insofar as such restrictions are necessary to the preservation of civil society, without which there is no progress towards enlightenment. Kant makes a distinction between the public and *private* use of reason; the private use of reason is that of a person in his or her capacity of holding a particular civil post or office. In such cases, for example, in the case of a military officer, obedience is imperative if the well-being of the commonwealth is to be preserved. But insofar as this individual who acts as part of the establishment is considered as a member of a commonwealth, he or she may indeed argue. For example, it would be very harmful if an officer receiving orders from a superior were to openly question the order while on duty, but the officer cannot be reasonably banned from making observations as a man of learning concerning the errors in the military service and from submitting these observations to the public for judgment. The case is similar for the taxman and the clergyman. This Kant considers the *public* use of one's freedom, namely that use which anyone can make of it as a person of learning addressing the entire reading public.⁴⁶

Here Kant gives a hint as to the means by which the people may correct the government. The test as to whether any particular measure can be agreed upon as a law for a people is to ask whether a people could well impose such a law upon itself. Each citizen, therefore, should be given a free hand as a scholar to comment publicly, i.e., in writing, on the inadequacies of current institutions. The established order would continue to exist until public insight into the nature of such matters had progressed to the point where by general consent (if not unanimously) a proposal could be submitted to the crown (the authorities). This would protect congregations who had, for example, agreed to alter their religious establishment in accordance with their own notions as to what higher insight is in such a way as to not to obstruct those who want things to remain the same. But it is absolutely impermissible to agree to a permanent religious constitution which no one can publicly question.⁴⁷

Kant remarks that he has portrayed religious matters as the focal point of enlightenment because in the first place rulers have no interest in acting as guardians over the arts and sciences, and in the second place because religious immaturity is the most pernicious and dishonorable of all. But the head of state who favors freedom in the arts and sciences should also realize that there is no danger to his legislation if he allows his subjects to make *public* use of their reason and to put

to judge my diet for me, I need not make any effort at all. Thus it is difficult for each individual to work his way out of the immaturity that has become like a second nature. Dogmas and formulas are the ball and chain of his personal immaturity. Indeed, there is more chance of an entire public enlightening itself, in fact public enlightenment is almost inevitable if only the public concerned is left in freedom. (Ibid., pp. 54-55; AK 8:36).

⁴⁶ Ibid., pp. 55-56; AK 8:36-8.

⁴⁷ Ibid., pp. 57-58; AK 8:39-40.

before the public their thoughts on better ways of drawing up laws, even if this means criticism of current legislation. Kant cites his then current monarch, Frederick the Great, as an example of such an enlightened head of state. But only an enlightened ruler who also has on hand a well-disciplined and numerous army to guarantee public security would dare to say what no *republic* would dare to say - argue as much as you like about whatever you like, but obey! Kant's conclusion is that although a high degree of civil freedom seems advantageous to a people's intellectual freedom, it also sets up insuperable barriers to it in terms of a lack of public order. Hence a lesser degree of civil freedom gives intellectual freedom enough room to expand to its fullest extent. Once the human inclination and vocation to think freely has developed sufficiently it will eventually influence the principles of governments.⁴⁸

Conclusion

Kant's argument from pure practical reason aims at maximizing the freedom of the individual in the body politic as most conducive to the common good, which he understands as the maximizing of justice and public virtue. The concepts of tolerance, freedom, universal human reason and universal human rights which underlie the concept of pluralism embodied in the idea of modern democracy advocated by Maritain are to be found in Kant's political philosophy. Of course, Kant struggles with the problem of sovereignty, which, as Maritain argues in *Man and the State*, is hard to distinguish from absolutism when properly understood. Maritain might well charge the Kantian supreme authority with absolutism, but Maritain himself struggles with the problems of the means by which the people can effect a change in the regime. Maritain's strongest argument with respect to replacing the concept of sovereignty with the concept of autonomy is in the context of international relations, but Kant might well respond that even if governments were to renounce the idea of sovereignty in favor of autonomy within some international framework such as the United Nations,⁴⁹ we are still left with the problem of an infinite ascension in the hierarchy of subordination, for who is to decide a dispute between the United Nations and a member state? Maritain's answer is that only God is sovereign, while Kant would appeal to pure practical reason. But the German Enlightenment was in no way atheist or hedonistic; certainly Kant holds that the Idea of God is a necessary postulate of pure practical reason, and that we are obligated to promote the highest good in all our actions. Ultimately, we are left with good will; whether the principle is Maritain's or Kant's only individuals can choose to give their assent. Kant's project is to find a solution for the problem of moral relativism and to promote civil society based on the

⁴⁸ Ibid., p. 59; AK 8:41-2.

⁴⁹ Indeed, Kant calls for just such a solution in his discussion of Cosmopolitan Right, which this paper did not address. See, for example, *Metaphysics of Morals*, pp. 150-59; AK 6:343-53.

proper use of freedom, in this respect there is substantial agreement between Maritain and Kant. Given this common goal, and given the significant parallels in the way the two philosophers develop arguments supporting the concept of pluralism in the modern state, were they alive today, they would clearly find grounds for continued and fruitful dialogue.