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The Incongruity Between Kant's Republicanism and His Conception of Sovereignty

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Abstract. This paper is based on the conviction that a reading of Kant's political-legal philosophy centred on his republican conception of "freedom as independence" (as the irrevocable status of every individual) might be of great value in understanding correctly, and dealing adequately with, the issue of the rights. However, his archaic conception of sovereignty as the supreme power that should be assigned to a determinate person stands as a stumbling block for that purpose. This paper argues that this conception is indeed at odds with his republican theory of law too and might better be discarded.

Key words: Kant, republicanism, sovereignty, forms of state and forms of government, Skinner.

The situation of people who are exposed to civil war, discrimination and persecution in their countries, either because of their identities or because of political views, has again turned out to be a major issue for human rights in our period. As these people flee their countries, are expulsed from them and seek refuge in western-liberal countries, they become much more than a matter of humanitarian concern about calamities experienced out of the borders of western liberal-democracies. They become a vexed public issue for such countries because these countries have constitutionally committed themselves to universal respect for human rights.

The rights of people who have lost their civil rights assured by their membership in decent systems of rule of law is a difficult problem with various aspects. One aspect is the deficiencies of the mainstream-liberal conception of rights, which seems still to be prevalent in the mind-set of public opinion and policy makers in western countries. According to this conception, rights and human rights are substantial entitlements to be assured to individuals, which can be enumerated conclusively in positive law. Hence, when you have a look at the public debates concerning the rights of refugees, you will see that the whole debate turns on the issue of figuring out which substantive list of specific rights these people are entitled to. For instance, whether they are entitled to a right to residence in the long term, or to be permanent guests, or to the rights to work, or to benefit from certain social security measures typically assured to citizens in a welfare state. There is yet a fundamental deficiency in this conception. It blinks at the fact that these people have also lost their very status as equal right-holders when they lost their civil rights assured to them as members of a political community. As Arendt impressively diagnosed in the wake of the calamities of the Second World War, the people pushed to such a situation are indeed deprived of legality; they are put "out of the pale of law" (Arendt 1949, 29). Even in the lucky cases in which they persist and enjoy certain fundamental freedoms, such as freedom of movement or freedom of opinion, the kind

of treatment they receive is a matter of "charity" on the part of others rather than that of rights respected by others.

It is not surprising that we owe one of the most impressive diagnosis of this problem to such an author with strong republican convictions as Arendt. Only from a republican point of view can we fully grasp the link between citizenship and rights. All specific rights presuppose equal legal standing, a status she called the "right to have rights" and formulated as the right "to live in a framework where one is judged according to actions and opinions" (Arendt 1949, 30). When one is deprived of this status, her interests and needs can still be protected by the society, as certain interests and needs of slaves were protected in their societies or certain interests and needs of animals have been protected in many societies. However, what one cannot have is the kind of treatment that would be in accord with her quality as a human being, which Arendt designated as "human dignity" and Kant calls "rightful honour" in Roman-Ulpian terms (MS, AA 06: 236).[1]

I think that Kant also had a similar republican insight when he argued that external freedom, i.e., freedom as independence, is the only one innate right belonging to everyone by virtue of her humanity and gave a constitutive role to this right in his *Doctrine of Right* (MS, AA 06: 238). For Kant, freedom as independence marks the status of legal personality that a decent order of law (a civil union) should recognize as the fundamental status of every mature individual. As Arendt argued that there is one single right, the right to have rights, "without which no other [right] can materialize" (Arendt 1949, 37), Kant suggested that all our specific rights presuppose this constitutive right to freedom. As I elaborated elsewhere (Demiray 2020), the innate right to freedom is not a first level right to be understood as a specific entitlement, namely a "liberty-right" or a "claim-right". Rather, we should consider it as a right of superior level, which contains the features of what Hohfeld called "immunities" and "powers" (Hohfeld 1978). It is an immunity pertaining to each person because it is the irrevocable right to be a person, a being with rights and obligations. It is also a power because it is the right to have rights and thus the ground of all "acquired rights", which we need in order to instantiate our freedom as independence, and which bring forth normative consequences conditioning others' uses of their freedoms. Akin to Arendt's right to have rights, it is thus a prior empowerment to claim and take rights in the civil condition. The major difference between Arendt's and Kant's conceptions lies in the fact that Arendt's conception empowers individuals as active co-authors of civic-political life, while Kant's more characteristically Roman-republican conception empowers them primarily as independent authors of their civil lives and, by virtue of this, as *capable* of taking part in civic-political life on an equal footing with others. Hence, political rights (rights to participation) constitute the core of Arendt's conception, while Kant's conception is centred around the rights that enable one to choose and pursue her way of life freely.

1] Citations from Kant's texts refer to volume and page numbers in the Akademie edition. All translations are from *The Cambridge Edition of the Writings of Immanuel Kant.*

It is a pity that Kant's idea of cosmopolitan law is frequently discussed in a misleading way in the debates turning around what specific rights people escaping from civil wars, discrimination and persecution should have. By misleading reading, I mean the tendency to take Kant's cosmopolitan law as a self-standing system of rights and thus to make it into an edifice of mainstream-liberal conception of rights, while it is indeed the complementary part of a single republican system of law including public law and a law of nations at its prior levels. Kantian cosmopolitan law presupposes republican public law and law of nations. Particularly, Kant's discussion of cosmopolitan rights presupposes that all individuals are already citizens of a particular political society. This is the reason why it is almost completely silent on how the people who have lost their citizenship or were ostracized from their native political communities should be treated by other states.[2]

Another aspect of the complicated problem with the rights of people who have lost their civil rights assured by their membership to decent systems of rule of law is the principle of the sovereignty of states that is still respected as a basic principle both at the national and the international levels. I would not contend that some Kelsenian abstract conception of sovereignty designating the legal order as the supreme order might be essential for the rule of law. However, such abstract sovereignty that could be traced back to the general will of the people should have always been latent in the sense that no power within a legal system could claim sovereignty for itself. It would merely mean that all power should be wielded by public institutions simultaneously authorized and limited by the constitution. This is yet not the case. Even in democratic states, sovereignty tends to make itself concrete and active in the hands of powerful actors presuming to be representatives of the popular or national will. As might be well observed in today's shifts of liberal democracies towards radical right populism as well, this leads to the deterioration of the rule of law, making all laws and rights subordinate to some allegedly supreme interests or vital needs of nations and their states. The claim to sovereignty is put forward as the alleged reason in almost every case wherein people are discriminated, persecuted or expulsed in specific countries. It is also one of the major reasons that the international Human Rights system is incapable of setting right the mistreats of human dignity/rightful honour.

Up to now, I have submitted two contentions. First, if we want to correctly understand – and adequately deal with – the issue of the rights of people with no civil rights assured by membership to a decent rule of law, we must go beyond the mainstream liberal conception of rights and human rights modelled after Natural Rights Theories. We should think about rights from within a more republican perspective, emphasizing the insoluble relation between having rights and the assurance of equal status of rightful

2] Indeed, Kant comes up with a very problematic proviso in the only instance he speaks up about the states' rights to turn away strangers. He argues that "[a stranger] can indeed be turned away, if this can be done without destroying him […]" (ZeF, AA 08: 358).

honour under the rule of law. Second, sovereignty is the reason why this problem rises recurrently and why we fail to set it right.

These two contentions constitute the background of what I will be talking about from now on. I think that Kant's political-legal philosophy provides us with an invaluable point of orientation in dealing with this issue. Yet, there is an important reservation to be made in this regard. The kind of Kantian theory that puts us in a better position in understanding and dealing with the problem at hand can neither be the kind of interpretation of him as a Natural Rights Liberal in the vein suggested by Byrd and Hruschka (2010), nor the one presenting him as a Democratic Popular Sovereignty Theorist in the vein suggested by Maus (1994). It should be a reading of him as an author of Republican Constitutionalism. I think that such an interpretation will be more fitting, both with the text and spirit of Kant's political-legal philosophy. Nevertheless, I should admit that there is an element which is like a stumbling block for his republican theory of the legal-political order and his idea of citizenship as the essential status of subjects in a republic. It is his conception of sovereignty, which I try to problematize in what follows.

In order to do this, I will first rehearse the distinction Kant draws between the "forms of sovereignty" and the "forms of government" (Part II). I will then make a detour via Quentin Skinner's historical analysis of the political theory of the commonwealthmen of the civil-war-period Britain to provide a brief account of major republican contentions against liberalism (Part III). In the subsequent part, I will claim that Kant subscribes to the republican contentions, while also intending to fight off certain riotous implications of republicanism through introducing the distinction between the forms of sovereignty and the forms of government. However, I will contend, this distinction engenders significant problems in his theory, which are particularly evident in his views concerning political-constitutional change (Part IV). I will conclude that Kant's distinction would work only if the forms of sovereignty are recast as the forms of despotism and a republic is considered as a form in which there is no place for a sovereign understood as a determinate office or person within the political-legal order (Part V).

II. KANT'S DISTINCTION BETWEEN THE FORMS OF SOVEREIGNTY & THE FORMS OF GOVERNMENT

Kant introduces the distinction between the "forms of sovereignty"/"forms of state" [*Form der Beherrschung/Staatsform (forma imperii)*] and the "forms of government" [*Form der Regierung/ Regierungsart (forma regiminis)*] both in *Perpetual Peace* (AA 08: 352-53) and in *Doctrine of Right* (AA 06: 338-41). Let us first have a look at *Perpetual Peace*. There, Kant strikingly introduces the aforementioned distinction in order to make clear that a republican constitution is not identical with a democratic constitution. He argues that "the forms of a state (*civitas*) can be divided either according to the different persons who have supreme power within a state or according to the *way* a people *is governed* by its head of state, whoever this may be" (ZeF, AA 08: 352). He then labels three forms of

state depending on whether the power is in the hands of an individual, or of a group, or of all citizens, namely as autocracy, aristocracy and democracy. Then, he defines the second classification, the form of government, as the one indicating the way a state makes use of its supreme power. There are two different forms in this regard. The first is the republican form in which the legislative power is separated from the executive power (the government). The second is the despotic form in which there is no such separation, that is, the ruler (or the rulers) make and execute the laws. In Kant's view, this amounts to an identification between the public will and the ruler's will; and this is a crucial problem because it makes the entire process of ruling arbitrary while it is the basic function of the laws to prevent arbitrariness.

If arbitrariness characterises despotism, *representativeness* characterises its opposite, republicanism, in Kant.[3] Representativeness means that the ruler cannot identify herself with the public will (omni-lateral will) and cannot set up herself as the owner (dominus) of the state and of the people. Kant suggests that despotism is indeed an anomaly of political rule and this anomaly recurs much more frequently in democracies rather than autocracies and aristocracies. Indeed, he goes far to arguing that

> It can therefore be said that the smaller the number of persons exercising the power of a state (the number of rulers) and the greater their representation, so much the more does its constitution accord with the possibility of republicanism, and the constitution can hope by gradual reforms finally to raise itself to this. On this basis it is already harder in an aristocracy than in a monarchy to achieve this sole constitution that is perfectly rightful, but in a democracy it is impossible except by violent revolution (ZeF, AA 08: 353).

He then makes the point that from the standpoint of the concept of right, what matters is the form of government rather than that of the state, that is, whether it is the laws that are ruling rather than individuals, whoever they are and what number they might have. In his view, laws can rule only when legislative authority is separated from the executive authority.

The paragraph introducing the same distinction in *Doctrine of Right* comes out towards the end of the first section on Public Right (The Right of a State). In a way that seems to conflict with his previous identification of the legislative authority exclusively as the sovereign,[4] Kant now refers to all three authorities in a state as heads of the state and the sovereign. His emphasis now lies on the point that the sovereign should not remain an abstract idea but be clearly designated as a specific natural or artificial person. The form of a state raises as a result of such designation: autocracy when a single person has command over all; aristocracy when several persons, equal among themselves,

3] More precisely, the republican form is characterized by the interconnected principles of separation of powers, representativeness and the rule of law, while the despotic form is conversely characterized by the monopoly over powers, arbitrariness and the rule of the mighty by Kant.

4] MS, AA0 6: 316-17. Kant refers there to the executive authority as "the ruler", to legislative authority as "the sovereign", and to the judicial authority as "the judge".

command; and democracy when "all together have command over each other and so over themselves as well" (MS, AA 06: 338). Kant revises his comparison of the advantages of the different forms of the state in this text as well: although autocracy is still the most advantageous with regard to the administration of right, it is now regarded as "the most dangerous for a people, in view of how conductive it is to despotism" (339).

Concerning the comparative significance of the classifications, however, Kant repeats his argument in *Perpetual Peace*: the form of a state (i.e., the form of sovereignty) is its letter while the kind of government is its spirit (MS, AA 06: 341). Here, however, the distinction is discussed with a view to the question of political-constitutional change, and Kant points out to the idea of a "pure republic" or "true republic" as the final end of all public right. He says that it is

> the only constitution that accords with right, [whereby] the old (empirical) statutory forms, which served merely to bring about the *submission* of the people, are replaced by the original (rational) form, the only form which makes *freedom* the principle and indeed the condition for any exercise of *coercion*, as is required by a rightful constitution of a state in the strict sense of the word (MS, AA 06: 430).

It is the form of state in which "*law* itself rules and depends upon no particular person" (MS, AA 06: 431). Again, a true republic is designated as a representative state; however, Kant now emphasises the relation to the collective will of the people rather than the separation of legislation and executive. With regard to the right of supreme legislation, i.e., the sovereignty in the strict sense, he argues that "whoever has it can control the people only through the collective will of the people; he cannot control the collective will itself, which is the ultimate basis of any public contract" (341).

III. REPUBLICAN CONTENTIONS (TO LIBERALISM)

I think that Kant's distinction between the forms of states and the forms of governments is particularly interesting when it is related to the debates between liberalism and republicanism, as they are staged by the Anglophone neo-Roman republican authors in contemporary political theory. Quentin Skinner's *Liberty before Liberalism* formulates very lucidly the core of the republican political thought as it was raised in the context of the civil war in Britain. He argues that republicanism was more than the idea of popular sovereignty understood as the contention that "the people, naturally free and originally sovereign, merely delegate their sovereign powers to be exercised for their benefit, while retaining ultimate rights of sovereignty and in consequence the right to remove any ruler acting to their detriment rather than benefit" (Skinner 1998, 21). According to him, not only republicans but also such other groups as Monarchomachs, which defended the parliament in the civil war, shared this assumption.

Skinner suggests that two main ideas concerning freedom characterise the republican tradition and the same ideas have turned out to be major republican contentions against the dominant political paradigm in the modern age, namely

liberalism. The first one is the idea of freedom in a free state, namely the idea that an individual can be free only as a citizen of a free civil association (Skinner 1998, 23). Concerning what a free civil association means, he argues, "the bodies of nations and states are likewise free if and only if they are similarly unconstrained from using their powers according to their own wills in pursuit of their desired ends." (Skinner, 25-26) As most of the republicans of the civil war period in Britain believed, such a free civil association should constitutionally rest on actual consent of the people and the principle of majority rule as the optimal solution, enable equal participation, and have a federative structure and features of a mixed constitution (Skinner, 27-35).

The second idea lies in the very definition of freedom as one's being *sui juris*, i.e., one's being her own master (Skinner 1998, 36). The republicans understood freedom as the opposite of slavery, i.e., "living at the mercy of other people" (Skinner 1998, 94). While liberalism inherited the conception of freedom as the (actual) absence of interference, masterfully formulated by Hobbes, Skinner argues (2008), republicans proposed a broader but still negative conception of freedom according to which actual coercion is neither necessary nor sufficient to amount to the lack of freedom:

> The thesis, on which the neo-roman writers chiefly insist, however, is that it is never necessary to suffer this kind of overt coercion in order to forfeit your civil liberty. You will also be rendered unfree if you merely fall into a condition of political subjection or dependence, thereby leaving yourself open to the danger of being forcibly or coercively deprived by your government of your life, liberty or estates. This is to say that, if you live under any form of government that allows for the exercise of prerogative or discretionary powers outside the law, you will already be living as a slave. Your rulers may choose not to exercise these powers, or may exercise them only with the tenderest regard for your individual liberties. So you may in practice continue to enjoy the full range of your civil rights. The very fact, however, that your rulers possess such arbitrary powers means that the continued enjoyment of your civil liberty remains at all times dependent on their goodwill. But this is to say that you remain subject or liable to having your rights of action curtailed or withdrawn at any time. And this, as they have already explained, is equivalent to living in a condition of servitude (Skinner 1998, 69-70).

Hence, the republican idea is that freedom is forfeited not only under the condition of an actual coercive interference, but in any condition wherein we lack independence and self-governance.[5]

One should note that a basic conclusion to be drawn from these two ideas about freedom considered together was that republicans oppose not only tyrannies but also all monarchies and any other regimes wherein the right to rule (*imperium*) is anchored to a particular person or group (Skinner, 45). To put it simply, the idea of a republic designates the rule (*imperium*) of laws and this is the exact opposite of the rule of a person or a particular group.

5] For a systematic presentation of the republican idea of freedom in the contemporary political theory, see Philip Pettit's influential work, *Republicanism: A Theory of Freedom and Government* (1997).

I think that Skinner's account of the Anglophone republican tradition during the civil war period in Britain is interesting not simply from the standpoint of a historian but also from that of a political theorist. The two ideas he identifies as characterizing the civil-war-period republicanism in Britain might be taken as the basis of the republican political standpoint as such. Having said that, however, I need to note that there is one aspect that seems to me a bit downplayed in Skinner's *Liberty before Liberalism*. It is the republican disposition to contest the existing political authorities, i.e., the right to revolt/rebellion or the people's "right to remove any ruler acting to their detriment rather than benefit" (Skinner 1998, 21). To emphasize this aspect is important because Hobbes develops his distinctive idea of negative freedom in order to fight off the rebellious/seditious republican political doctrines, as Skinner himself impressively established in another work (Skinner, 2008). Hence, the Hobbesian idea of freedom inherited by the liberal tradition implies an aversion against the right to revolt/rebellion, while such a right seems to be entailed in the republican idea of freedom.

IV. KANT'S REPUBLICANISM

Let's now think about what would be Kant's position in relation to the republican-liberal debate, as I believe this would provide us with valuable insights concerning both difficulties and prospects of Kant's theory. We should better start with the obvious aspect, namely the republican conception of freedom as one's being her own master. There might be no controversy about the republican character of Kant's conception of freedom. Indeed, the innate right to (external) freedom understood as independence from arbitrary constraints from others plays a pivotal role for Kant's entire political-legal philosophy; and this right involves one's being her own master as well as an innate right to equality, being beyond reproach and being authorized to do anything that does not in itself diminish other's rightful entitlements (MS, AA 06: 237-38). I will not elaborate Kant's conception of external freedom and its pivotal role for his political-legal philosophy.[6] It will suffice to note that Kant's conception is paradigmatically republican in the following respects: freedom is a matter of everyone being subject to law (not the absence of law); law is a matter of not living under the arbitrary yoke of anyone else, no matter how benevolent this other person might be; freedom is thus a matter of a status that we have against others rather than a happenstance of the absence of actual interference; this status is never compromised when we are subjected to the limitation by just laws in contrast to the choices of others.

When we think about the other aspect of the republican conception of freedom, namely the idea of freedom in a free state, the issue turns out to be more complicated in Kant. At first glance, Kant seems to express the republican thesis in a straight-out manner.

6] In this respect, see Arthur Ripstein's masterful systematic treatment, Ripstein, *Force and Freedom: Kant's Legal and Political Philosophy* (2009). Also, see Demiray (2016).

He argues that "legislative authority", which he designates as the sovereign, "can only belong to the united will of the people" (MS, AA 06: 314). Indeed, this seems to be even stronger than what Skinner pointed out as the thesis of popular sovereignty shared by all parliamentarians in the civil-war-period Britain. Parliamentarians in Britain contented that sovereign powers should be understood as delegated from people and thus are indeed a trust to be used to the benefit of the people in any case. However, Kant seems to be considering the legislative authority of the people as entailing the idea of citizenship, and he considers "being fit to vote" as "the only qualification for being a citizen" (MS, AA 06: 314). For him, it is a feature of the republican, i.e., rightful, constitution that subjects are also citizens in that state (ZeF, AA 08: 350). Indeed, he once argues that if the law assigns the right to citizenship only to a certain class of subjects, this would be an instance wherein the rules fail the test of the rightfulness of public laws.[7]

However, Kant's commitment to the republican thesis of freedom in a free state is indeed compromised. Although he is always committed to it as the ideal case of a pure republic, he seems to be much concerned about its seditious implications for actually existing states and tries to fight off such implications at the price of remarkable inconsistencies in his political-legal philosophy. Indeed, I think, the distinction between the forms of state and forms of government arises out of this concern. On the basis of it, Kant seems to argue that the form of state, i.e. the question of who actually holds the sovereign power in a political community, should not be considered very important by a republican, and thus cannot underlie the justification to rebel against the state. I will now highlight certain inconsistencies that result in Kant's political and legal philosophy. I will then point out to a way out of those difficulties in a later step, which will amount to an impeccable republicanism.

First, Kant's distinction between the forms of state and the forms of government culminates in a position that contradicts even the moderate versions of popular sovereignty as defended by the groups supporting the cause of parliament in civil-war Britain. As we saw above, Kant argues that the sovereignty should not be left as an abstract idea, but a physical person should be designated as the sovereign in any case. In line with this, he really means that an autocrat is the sovereign and not the representative of the sovereign in an autocracy. This becomes clear, for instance, when he argues that "the autocrat is the sovereign, whereas the monarch merely represents the sovereign" (MS, AA 06: 339).[8] The same goes with an aristocracy as the rule of a privileged group.

7] "If a public law is so constituted that a whole people could not possibly give its consent to it (as, e.g., that a certain class of subjects should have the hereditary privilege of ruling rank), it is unjust" (TP, AA 08: 297). According to Kant, the universal principle with which we judge the rightfulness of public laws is contained in the following proposition: "*What a people cannot decree for itself a legislator also cannot decree for a people*" (TP, AA 08: 304).

8] In passing I would like to note that given Kant's argument for the sovereign as a person not subject to laws (TP, AA 08: 291) and his argument against the "moderate constitution" as an absurdity (MS, AA 06: 320), it is also controversial to make a distinction between the monarchical power as the

It is then clear that Kant meant to defend a conception of sovereignty that is not a fiduciary conception. He does not think that sovereignty is a trust if this would imply commitments and obligations on the part of trustees that the people as beneficiary/trustor could demand. Hence, when Kant argues that rulers can rule the people only through the collective will of the people but cannot rule the collective will of the people itself (MS, AA 06: 341), it is difficult to give any credit to his argument, if we also take seriously his foregoing view of the sovereign authority. He should have dismissed either the personalistic conception of sovereignty or the democratic/republican conception according to which the sovereignty cannot pertain to any specific person but only to the people as a whole.

The contradiction between his conception of sovereignty and Kant's view of citizenship as a right to which all independent individuals should be entitled to is even sharper. He claims that autocracy in which a single person rules and all others are merely subjects without being also citizens is one of the forms of the state that are not necessarily incompatible with the republican form of government. This cannot be squared with his claim that subjects are also citizens in a republic. He should have dismissed either the idea that an autocracy might be a form of legitimate (republican) government or the idea that all independent individuals in a republic are also citizens there.

Furthermore, the distinction between the forms of state and the forms of government has a crucial repercussion in Kant's theory of political/constitutional change. Indeed, he well encapsulates the core of his position when he argues that "a change in a (defective) constitution, which may certainly be necessary at times, can therefore be carried out only through reform by the sovereign itself, but not by the people, and therefore not by revolution; and when such a change takes place this reform can affect only the executive authority, not the legislative" (MS, AA 06: 321-22). Kant has then two major theses concerning political/constitutional change. The first is the reformism thesis that changes should take place through gradual and peaceful reforms rather than through violent revolutions. I do not think there is any contradiction that this thesis in itself engenders in Kant's republican political-legal philosophy. However, the second thesis, which I call the thesis of the irreplaceability of the sovereign, seems directly going against the republican scripture. Kant presents this thesis in a more overt way in another passage after restating the reformism thesis:

> insurrection in a constitution that already exists overthrows all civil rightful relations and therefore all right, that is, it is not change in the civil constitution but dissolution of it. The transition to a better constitution is not then a metamorphosis but a palingenesis, which requires a new social contract on which the previous one (now annulled) has no effect. But it must still be possible, if the existing constitution cannot well be reconciled with the idea of the original contract, for the sovereign to change it, so as to allow to continue in existence that form which is essentially

highest authority and the autocratic power as the plenary power, as Kant makes in the same passage (MS, AA 06: 338-39).

> required for a people to constitute a state. Now this change cannot consist in a state's reorganizing itself from one of the three forms into another, as, for example, aristocrats agreeing to submit to autocracy or deciding to merge into a democracy, or the reverse, as if it rested on the sovereign's free choice and discretion which kind of constitution it would subject the people to. For even if the sovereign decided to transform itself into a democracy, it could still do the people a wrong, since the people itself could abhor such a constitution and find one of the other forms more to its advantage. (MS, AA 06: 340)

Whatever you might think of the value of this thesis for the irreplaceability of the sovereign, I think it is hardly compatible with Kant's republicanism, particularly with his arguments that republicanism is a form in which subjects of laws are also citizens, and that the restriction of the right to citizenship to certain persons or groups is a paradigmatic example of public laws failing to be rightful.

V. A WAY OUT OF THE DIFFICULTY: THE FORMS OF SOVEREIGNTY VS. REPUBLIC?

Yet, I think one interpretation that would make Kant's republicanism internally consistent is conceivable. As hinted at by Hannah Arendt,[9] Kant might be considered as claiming that the only distinction that matters is the one between republican constitutions and despotisms, and the forms of sovereignty are indeed not a separate distinction but specify the different forms that despotism can take. In line with this, his genuine point would be formulated as the claim that a republic cannot be established through a simple change of the form of sovereignty, because it is a form in which sovereignty, supreme power, is absorbed so that power belongs to no men or no group of men but to laws alone, in other words, to no particular instance or office within the political-legal order but to this order in its entirety (see MS, AA 06: 355). Hence, the progress towards a true republic can only be conceived as a metamorphosis rather than a palingenesis. Any revolutionary undertaking targeting the specific form of sovereignty works only to exacerbate the fight for sovereignty and thus results in violence. Any such undertaking is necessarily backward looking. It can only ignite a palingenesis, i.e., the revival of the historical origin. The historical origin, that is, the founding moment

9] "Kant's point is that all these forms of domination (as the word 'domination' itself indicates) are, strictly speaking, illegal. Constitutional or lawful government is established through the division of power so that the same body (or man) does not make the laws, execute them, and then sit in judgment on itself. According to this new principle, which comes from Montesquieu and which found unequivocal expression in the Constitution of the United States, Kant indicated two basic structures of government: republican government, based on the division of powers, even if a prince is at the head of the state; and despotic government, where the powers of legislation, execution, and judgment are not separated. In the concrete political sense, power is needed and incorporated in the possession of the means of violence for the execution of laws. Where, therefore, the executive power is not separated from and controlled by legislative and judicial powers, the source of law can no longer be reason and consideration, but becomes power itself. That form of government for which the dictum 'Might Is Right' rings true is despotic-and this holds regardless of all other circumstances: a democracy ruled by majority decisions but unchecked by law is just as despotic as an autocracy." (Arendt 1994, 330-31)

of a state, is in any case a situation in which the despotic dictum "Might is Right" is valid, regardless of whether a single autocrat, or an elect group, or the majority holds this might. Then, Kant suggest, the republic is like a butterfly that can grow out of a caterpillar that shall willingly transform itself into a different form of existence that has been developing in its body for a long time.[10] This means that a republic is conceivable only through a forward-looking perspective that will rely not on the archaic principle of might – understood as raw power – but on the principle of the rule of law that blossoms and gradually consolidates under the condition of pacification, of withering away of sovereignty in other words.

The only textual difficulty for such an interpretation originates in Kant's insistence on a conception of sovereignty as the supreme power that the head of state should have. Here, I am aware that many readers of Kant will insist that this conception of sovereignty plays a systematic role in Kant. They might argue that since his "doctrine of right wants to be sure that what belongs to each has been determined (with mathematical exactitude)" (MS, AA 06: 233), institution of a unitary sovereign is necessary for the Kantian rule of law rather than a dismissible idea. Although I find this analogy a bit too hyperbolic, I would agree with them and Kant on the point that the rule of law aspires to provide determinate rule and judgment concerning any issue about rights. In that sense, it cannot construct itself as anything other than the supreme and final coercive authority. However, there is nothing in such a construction that necessitates that some specific office or person should be the supreme and final authority in a comprehensive way concerning what is right and what is wrong in every case. Legal rights and duties may be still determinate and are much more effective when powers are divided among different organs of the rule of law. Indeed, Kant's unitary conception of sovereignty is at odds not only with the principle of the separation of powers characterising the Kantian rightful state; It is also incompatible with Kant's idea of a republic as a constitution in which the supremacy belongs not to men but to laws and his idea of citizenship as the essential status of subjects in a republic. The way to mend this difficulty would be to restrict Kant's arguments for sovereignty to the despotic constitution, that is, to argue that sovereignty might have been a concept historically necessary in the path towards a republican constitution but should be overcome to advance further toward the same ideal.

VI. CONCLUSION

The following was the initial conviction underlying my paper: a reading of Kant's political-legal philosophy centred on his republican conception of "freedom as independence" (as the irrevocable status of every individual) might be of great value in

10] For a historically informed elucidation of Kant's use of the notions of metamorphosis or palingenesis as the basis of his theory of political change, and an impressive account of his reformism, see Williams 2001.

understanding correctly, and dealing adequately with, the issue of the rights of those who have lost their civil rights assured by their membership to a decent system of rule of law. Such a reading will see international law and cosmopolitan law not as different self-standing systems, but as necessary parts of a republican system of law that assures universal respect for everyone's rightful honour. However, I highlighted that there is an obstacle in Kant's philosophy, namely his archaic conception of sovereignty as the supreme power that should be assigned to a determinate person or office within a legal-political order. I showed that this conception is indeed at odds with his republican theory of law and should be discarded.

As we all know too well, given the political experiences of the recent centuries, the archaic conception of sovereignty continues to be at work, when the holders of power discriminate, persecute certain groups of people, and expulse them from civil life. It is also the same conception that stalls the international Human Rights system in setting right the situation of these people.

However, there is nothing in the idea of the rule of law that makes necessary taking recourse to this archaic conception of sovereignty. Rather, the ideal of the rule of law refers to an order in which all powers are separated among different authorities and used exclusively in legally authorized ways. As illustrated by the federal states and the regional supra-national political associations of our time, it is a matter of fact that even the use of the same power, e.g. legislation, might be divided among different authorities, which mutually check and balance each other. This means that the rule of law is not compromised when the claims to sovereignty by specific actors are pushed back in our conception of legality. Quite reversely, the rule of law will always remain open to deterioration insofar as we insist keeping up with the archaic conception of sovereignty. From the standpoint of the rule of law, sovereignty should mean nothing more than a pure abstraction designating the principle that all powers should be used by the organs of law and in the ways prescribed by the law, i.e., the anti-despotic principle that no one is above laws and there should be no authorization without limitation and supervision. In line with this, the rule of law is not only compatible but also requires the creation of international and cosmopolitan authorities that will have certain legislative and judicial powers necessary to assure that no one is deprived of her status as a legal person, i.e., her rightful honour as a free being living under the protection of law rather than the discretion of others.

Finally, I would like to conclude by noting an essential incompleteness that haunts not only the Kantian republican constitutionalism I defend, but any attempt to develop institutional solutions to the issues of the rights of people who have lost their civil and civic contexts. Institutions can provide people only with the *opportunity* to take part in civil and political life on an equal footing with others. However, if standing as a person of dignity or of rightful honour is a matter of one's taking and claiming her rights in the context of civil and political life, this can be actualized only by those people themselves. At the end of the day, these people should be the saviours of their rightful honour and

thus the actors keeping alive the republican project in the countries they have sought refuge. This means that political contestation will be a necessary aspect of the story if it is ever to have a happy end.

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