

Finally, something should be said about articles 1 and 4. Clearly they are both rather vulnerable to criticism inspired by experience. Regarding article 1, it is easy for states to walk away from a signed treaty by claiming that the other parties have some secret reservation. Precisely because the alleged reservation is secret, one would have a hard time obtaining evidence of the existence of such a reservation. Regarding article 4, one might suspect that the prohibition against borrowing to fund aggressive plans in foreign policy could be easily overcome. The state might be using the money it obtains from regular revenues for its aggressive plans while using the money it has borrowed for domestic affairs (welfare, administration of justice, the police, and so on).<sup>11</sup> This offers us the opportunity to complete the point we made earlier about preliminary articles in general. They are rules meant to decrease the likelihood of war. Significant as they might be, they are not, and were never meant to be, solutions to the problem of war. In addition, we can now take notice of the following: While the definitive articles are derived directly from pure practical reason and remain valid independently of empirical considerations (for even if factually we were to discover that republics are not more peace prone than despotic regimes, the prescription that we should approximate our state to republican standards would still be valid), the preliminary articles are inspired by past experience and are as good as the reasons we hold for believing that they will deliver the result they promise.

## 2.2 The First Definitive Article

The first definitive article contains the prescription that each and every state should become “republican.” It reads: “The civil constitution in every state shall be republican” (ZeF 8:349). Three main features characterize a republican constitution: the *freedom* of each member of society; the *dependence* of everyone upon a single and unified legislation; and legal *equality* for everyone; that is, nondiscrimination before the law. Three additional requirements are: (a) the people must hold legislative power; (b) rulers must legislate by interpreting the general will; and (c) there must be a sharp distinction of powers – in particular, the legislative is to be well separated from the executive (ZeF 8:352). These constitutional features are thought to be relevant to the cause of peace because only in a republic can the people influence the decision of whether the state should go to war.<sup>12</sup> Since citizens would suffer from the atrocities of a violent

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a failed state situation; or large scale ‘ethnic cleansing,’ actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape” (ICISS 2001, 32).

<sup>11</sup> Thanks to Thomas Pogge for drawing my attention to these points.

<sup>12</sup> One may object that while people in a republic hold legislative power, the decision to wage war is usually made by the executive. This is true but of limited significance. To begin with, in most

conflict, there is reason to believe that they “will be very hesitant to begin such a bad game” (ZeF 8:351). The opposite is the case for a despotic regime. The despot here is not a fellow citizen, but the owner of the state. As such, he can wage war with great ease, because he “gives up nothing at all of his feasts, hunts, pleasure palaces, court festivals, and so forth” (ZeF 8:351). The despot, Kant goes on, can thus “decide upon war, as upon a kind of pleasure party, for insignificant cause, and can with indifference leave the justification of the war, for the sake of propriety, to the diplomatic corps, which is always ready to provide it” (ZeF 8:351).

Some points in this apparently linear argument need to be clarified. First of all, Kant does not say that it is *impossible* that citizens will choose to embark on a bellicose adventure. He merely says that it is *unlikely* (Guyer 2006). The first article leaves open the possibility that democratic citizens, after due reflection, might find the costs of war worthwhile. Security, greed, national pride, or some combination of these factors can outweigh the cost a people is expected to pay. This leads to the second point: The logic Kant is using in this context is merely utilitarian. As far as the first article is concerned, the republican people can be as attracted by violence (and by the gains one can attain through it) as any other kind of people (or despot). Of course, Kant does believe that good/just institutions help the morality of citizens (IaG 8:21, 26; ZeF 8:366), which – one would think – implies that citizens learn to resist the impulse to use violence against other peoples to advance their interests. But, *at this stage of the argument*, Kant has still attributed to democratic peoples no deontological opposition to war. Kant’s point can thus be reduced to this: As long as there is an owner of the state, there will not be a careful cost–benefit calculus that at least forestalls “inefficient” wars. But the first article leaves room for wars in the interest of republican peoples. After all, as history has abundantly shown, sometimes a republican or democratic people (or a large majority thereof) strongly desire war.

A closely related point completes said the argument we have made about the second preliminary article. If a republic’s army is professional, let alone mainly made up of private contractors, the cost–benefit calculation will more easily favor war than in a case in which the army is based on conscription. Instead of considering whether we or our nearest and dearest will have to risk our lives on the battlefield, we, as republican citizens, are asked to make the

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liberal democracies (probably the best approximation we have to Kantian republics), the executive decision (especially that of entering war) must be endorsed by parliament. Secondly, as I have explained elsewhere at length (Caranti 2022), for Kant even executive decisions – that is, decrees as opposed to laws – must ultimately reflect the general will, which in turn is obviously nothing but the will of people, in ideal circumstances.

considerably easier calculation of whether the costs of this semi- or fully private army amount to a good investment, all things considered.

The conclusion is that a republican government is by itself no assurance of peace. Contrary to what one sometimes reads (Archibugi and Beetham 1998), Kant did *not* believe that the problem of war could be reduced to a question of the right domestic institutions. The first definitive article, without the other two, does not guarantee *anything*, not even the elimination of conflicts between republics. That Kant's project presupposes the convergence of many peace-inducing factors, of which the internal republican constitution is only one, is a point as trivial as it is largely forgotten.

One less trivial point, equally overlooked, is that Kant's confidence in the pacific tendency of republics is to be read without passing in silence over his general distrust of democracy. Kant takes great care to make sure that "a republican constitution will not be confused with a democratic constitution (as usually happens)" (ZeF 8:351–2). Indeed, he thinks that in a democracy – at least in a democracy "in the strict sense of the word" (8:352) – despotism inevitably takes root. What Kant means by "democracy in the strict sense of the word," and why it should lead inevitably to despotism is not clear. He only offers two dense passages. On the one hand, he says, democracy "establishes an executive power in which all decide for and, if need be, against one (who thus does not agree), so that all, who are nevertheless not all, decide; and this is a contradiction of the general will with itself and with freedom" (ZeF 8:352). On the other hand, he praises the proclaimed attitude of Frederick II, who saw himself as the "servant of the state" – an emphatic way of saying that the supreme ruler makes decisions from the general will's perspective – only to point out that in a democracy this attitude on the part of political actors is impossible and the system is bound to be despotic. This is so, Kant says, "because there everyone wants to be ruler" (ZeF 8:353).

Byrd and Hruschka claim that the reason why democracy is always despotism is that if "the executive power is in the hands of all then there is no one left to hold the legislative power and the two cannot conceivably be separate" (Byrd and Hruschka 2010, 178). The dangerous overlapping between legislators and governors would happen only in a direct democracy where, literally, executive power (like the legislative) is in the hands of all. But in "representative" democracies, only a few can be elected governors. Hence, the problem of the necessary overlapping of those who hold legislative and executive power does not arise. Indeed, Byrd and Hruschka think that what we today call representative democracy is Kant's ideal form of state (Byrd and Hruschka 2010, 167).

Unfortunately, things are not so easy. Even if Byrd and Hruschka are correct that the abovementioned overlapping would by necessity only take place in

direct democracies, the problem Kant detects is deeper. Kant's main concern is that democracies make decisions against single individuals without their consent, and this obviously happens in representative democracies too. Of course, much depends on what we mean by "without their consent." This might apply when people disagree because their interests are damaged (or they think this to be the case), even if the general good is served. This case would not be problematic. But at times, representative democracies violate the legitimate interests of some citizens (with or without their explicit consent) simply because some citizens manage to use their predominant influence to put in place laws that serve their interests even at the costs of violating the interests of others. In these cases, all too familiar in our time of rampant inequality and of the degeneration of democracy toward plutocracy (Gilens and Page 2017), the sheer separation of powers is no guarantee that an elected body of legislators will not rule "against" some citizens. Kant's reservations are not valid for direct democracies only.

What, then, is the real problem with democracy (of all kinds)? We need to clarify (a) why democracy – at least democracy in the truest sense of the word – establishes an executive power in which all citizens may make decisions about and indeed against one individual, (b) why this leads to a contradiction of the general will with itself (and with freedom), and (c) why every citizen's desire to be a ruler displays an attitude diametrically opposed to Frederick II's style of ruling as a servant of the state.

- a. According to some interpreters (Pinzani 2008, Byrd and Hruschka 2010), Kant's model of democracy is ancient Athens. Therefore, the point that all citizens may make decisions against one individual may be taken as a reference to ostracism; that is, the practice of forcing individuals considered as dangerous (often mere political opponents, as in the case of Themistocles) out of the city. Even if this is true, we still need to understand what's wrong with democratic decisions similar to or modeled on ostracism. The problem cannot be the sheer dissent of the targeted (ostracized) individuals, because, of course, many rightful political decisions genuinely taken with the general good in mind will meet the de facto dissent of some individuals. One reasonable reading is that, as in the case of ostracism of political opponents, a decision by a faction *is masked as a decision taken by the whole people*, or as capable of expressing "the view of the city as a whole." While a king or an oligarchy must justify any decision taken against an individual as taken with the common good in mind, with a democratic vote, the urgency of such a justification diminishes. It is not a restricted circle that does the ostracizing. It is the *whole people* (or

a majority of them) who make that call, and this by itself is taken as a sufficient justification. The problem with this condition is evident. No matter how far it is backed by popular support, a partisan decision masked as a decision made “by the whole city,” or from the general will’s perspective, is still a partisan, hence illegitimate decision.

- b. The reading just offered would also help us to understand Kant’s very cryptic point that decisions made by a democratic executive power (necessarily? possibly?) generate a contradiction of the general will with itself (and with freedom). The people, merely because they are supposed to be the *whole* people, take themselves as the infallible interpreters of the general will. And yet, since partisan decisions are possible even if everybody votes (according to Rousseau even if everybody agrees – *la volonté des tous*), what was supposed to be a decision taken from the perspective of the general will may very well be in contradiction with it. Finally, since any partisan decision will impact illegitimately on the freedom of one or more individuals, also freedom will be “contradicted”; that is, the innate right to freedom Kant attributes to individuals as their sole innate right will be violated.
- c. Kant’s concern that in a democracy “everybody wants to be a ruler [*Alles da Herr sein will*],” and that this creates an attitude opposed to the disposition to serve the general good attributed to Frederick II, adds a further and illuminating dimension to the problems identified so far. At first sight, one can hardly perceive an intrinsic flaw in each citizen’s desire to be a ruler. What’s wrong with my ambition to be a ruler, if I am ready to concede as legitimate the same ambition to all other citizens, as happens in a democratic system? The problem cannot be that each citizen is called to give his or her best interpretation of the general will, because this is what must happen with every ruling body, given Kant’s standards, independent of whether they are made up of one, few, or all. What Kant seems to fear – at least this appears to me to be the sole plausible reading – is that in a democracy *all tend or are expected to represent their own interests only*.<sup>13</sup> This creates an attitude incompatible with the feature that should characterize the act of ruling, namely interpreting as well as possible the general will. While in a democracy I represent my will or that of my group, or even the will of

<sup>13</sup> An alternative reading could be that in a democracy each person wants to have something like the power of an oligarch or monarch: They feel empowered by their share in sovereignty and imagine they have more than is actually accorded by a democratically equal share. But this reading does not square with Kant’s idea that democracy is *necessarily* despotism. If citizens exercise power correctly, that is, trying to rule from the general will’s perspective, it does not matter whether they misperceive their share of power. They would be delusional about their power and yet good rulers, like Frederick II, according to Kant’s standards.

all citizens if they happen to agree (Rousseau's *la volonté de tous*), the only thing that a republican ruler is bound to represent is the general will.<sup>14</sup>

Notice again the difference with the other two forms of sovereignty. While in the case of a monarchy or an oligarchy one can at least hope that political authority is inspired by a sincere attempt to interpret the general will, and in any event the ruling class must explain how decisions serve the general good, in a democracy, so understood at least, this hope would be ill-placed and the expectation that one will be given an explanation ungrounded. Citizens are *allowed, if not expected*, to represent themselves only. In fact, they don't even need to justify their decisions as arising from an attention to the common good, in the way a king or an oligarchy in a constitutional system must do. In voicing their preferences as representing only their private interests, they need offer no explanation. By mistaking the sum of all private wills for the general will, or even more grossly the will of the majority for the general will, democratic citizens think that anything they choose is right. Actually, Kant thinks, the greater the number of people who hold power, the less likely it is they will remember the burden of representation – a burden that no political power, not even that “of the people by the people,” can escape.

This peculiarly democratic “perversion” – by the light of Kant's argument – is inevitable if we are dealing with a direct democracy. In this case, literally every citizen is allowed, if not expected, to voice his or her particular set of interests. But, less obviously (and in fact this is seldom if ever noticed), the same also holds also in a “representative” democracy, understood as a system based on the election of delegates. It does not matter whether democracy works through “representatives.” For Kant, a system is not “representative” because it has delegates and a parliament where they meet. A system is representative when rulers (no matter how numerous they are and no matter where, how, and how often they meet) do not represent sectarian interests but make decisions with the common good as their *sole* guidance.<sup>15</sup> Even less obviously – and in fact, to my

<sup>14</sup> In contemporary scholarship, representation is often conceptualized differently. For example, Urbinati emphasizes advocacy of specific interests as an essential component of representation. However, she differentiates between advocacy and mere partisanship (Urbinati 2000, 775).

<sup>15</sup> Interestingly, this “uneasy alliance” between democracy and representation is at the center of two classical studies of representation from the past century, Pitkin's *The Concept of Representation* (1967) and Manin's *The Principles of Representative Government* (1997). For both Pitkin and Manin certain undemocratic, inegalitarian elements were key to the good functioning of a representative system and representative democracies had to be conceived ultimately as elective aristocracies. Political decisions always had to transcend the will of the people, understood as an aggregation of preferences. A similar point is made by scholars like Gutmann and Thompson (2004), who defend deliberative democracy; that is, the idea that citizens or their representatives owe each other mutually acceptable reasons for the laws they enact. Notice, though, that for Kant what is important is not whether the reasons we give each

knowledge, this has never been observed – this remains true even if a majority acts within constitutional limits. A constitutionally scrupulous political power may very well enact laws that protect the interests of some, instead of serving the general good.

This criticism of democracy is obviously compatible with the fact, quite well established in history before and after Kant, that monarchy and oligarchy serve partisan interests (those of the ruling family or group) more often and more effectively than democracy. When Kant claims that democracy “necessarily” leads to despotism, we need to understand the point not as an empirical generalization, but as a way of pinpointing a degeneration (partisanship accepted as political strategy) to which democracy is naturally exposed, given its tendency to accept competition between different interests and groups as the essence of politics.

If all this is correct, the Kantian–Rousseauian republic is a system in which no parliamentary majority, merely in virtue of the fact of being a majority, can enact partisan laws that are discriminatory against some citizens. In order to avoid a despotic degeneration, it is not sufficient that majorities respect constitutional limits. If they do, and yet ordinary laws and decrees shape a society that some citizens might not consent to (not even in principle), the laws (all kinds of laws) are no longer “absolutely *incapable* of doing anyone injustice” and the prepolitical entitlements of human beings (their right to an equal share of external freedom) are violated.<sup>16</sup>

This should help us to see why Kant is so suspicious of democracy, but it should also help us to conceive a form of democratic regime that does not run the risks Kant foresees. If the supreme law and the spirit of republicanism have shaped the minds of the citizens in such a way that they elect representatives with a clear mandate to issue laws not only formally consistent with the constitution but also capable of furthering the principles there expressed – if, in other words, the “burden of representation” is accepted by electors and elected – then there is no reason why a democracy could not be republican.<sup>17</sup> Actually, if care for the general good is embedded in the polity, democracy has a clear advantage over the other two *formae imperii*. As Kant says, these two forms “are always defective” because the executive power is exercised by one or a few, who by definition cannot represent all. Especially if they are not

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other are mutually accepted but whether those laws *objectively* reflect the common good. For an updated overview of the current debate on representation, see Brito Vieira (2017).

<sup>16</sup> On Kant’s theory of innate rights, see Caranti (2012).

<sup>17</sup> This is roughly the idea, inspired by Rawls, of “Legitimation by Constitution,” defended in a forthcoming volume by Alessandro Ferrara and Frank I. Michelman (Ferrara and Michelman 2021).

elected, let alone unchecked by constitutional limits, one can at most hope that they freely choose to exercise their power in the right way. By contrast, in a republican democracy citizens vote on and influence political power and make sure that rulers further the general good and accept the burden of representation.

Important as this may be, it remains true that the logic of the first definitive article is a merely consequentialist one. Citizens will veto those wars that do not further the general good, something that is clearly compatible with the possibility that an aggressive foreign policy does further the general good of a specific nation. The cost–benefit calculation may suggest that war is in the best interest of a demos, not merely in the interests of absolute despots who use the lives of their subjects and resources of their countries to further their plans. To be sure, the argument could be made that citizens who have been socialized for long enough in the context of only republican institutions, and are hence habituated to deliberately taking into consideration the interests and rights of all fellow citizens (not only their own), will oppose “convenient” wars that are against the interests and rights of other human beings. Yet nothing in the way on which Kant explains the first definitive article suggests this further deontological argument. Without the other two articles, the first is limited to halting a bellicose attitude that is against the general good of a particular country.

### 2.3 The Second Definitive Article

The second definitive article contains the following prescription: “The right of nations shall be based on a *federalism* of free states” (ZeF 8:354). Here Kant envisages an institution that enables the diverse nations to overcome the anarchical state, or as it is usually referred to, “state of nature” which, by and large, still characterizes international relations. The transition resembles the move of individuals from the state of nature to the civil condition, but the analogy has its limits. For Kant, established states, unlike individuals in the state of nature, are already rightful entities whose autonomy is to be respected. For this reason, they cannot be forced to give up their sovereignty. As he puts it, “as states, they already have a rightful constitution internally and hence have outgrown the constraint of others to bring them under a more extended law-governed constitution in accordance with their concepts of right” (ZeF 8:356). But since reason dictates the duty to achieve peace, and peace requires “a pact of nations among themselves,” it follows that “there must be a league of a special kind, which can be called a *pacific league* (*foedus pacificum*)” (ZeF 8:356).

Among the many interpretative challenges posed by the second definitive article, two deeply interrelated questions are particularly relevant for contemporary debate. The first relates to Kant’s rationale for preferring a federation