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### Autonomy, Enlightenment, Justice, Peace – and the Precarities of Reasoning Publically

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# Autonomy, Enlightenment, Justice, Peace – and the Precarities of Reasoning Publically

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## Abstract

*The First World War was supposed to end all wars, though soon followed WWII. Since 1945 wars continued to abound; now we confront a real prospect of a third world war. Many armed struggles and wars arise in attempts to end repressive government; still more are fomented by repressive governments, few of which acknowledge their repressive character. It is historically and culturally naive to suppose that peace is normal, and war an aberration; war, preparations for war and threats of war belong to ‘normal’ human life. Our tolerance, acceptance or fostering of such repeated injustices and atrocities indicate pervasive failures to understand fundamentals of justice, and what we owe morally to ourselves and to all others, together with our responsibilities to preserve the biosphere, not merely our own store(s) of reserves. As matters both of justice and prudence we must re-orient ourselves, individually and collectively, to promote justice, peace and ecological responsibilities by identifying and instituting just forms of social cooperation, domestically and internationally. All of these are our problems, whether we recognize them or continue our pervasive negligence. We urgently require cogent understanding of the social dimensions of human judgment, rational assessment, right action, and public reason. This requires understanding (inter alia) how Kant’s explication of rational judgment and justification is fundamentally social, how these features of rational judgment and justification are constitutive of Kant’s account of individual autonomy, and how they are central to Kant’s account of proper public use of reason. Reasoning publically remains precarious, not because – as often alleged – the ‘Enlightenment project’ has failed. It has not failed, it has been thwarted, and in our public responsibilities we have too often failed it.*

**Keywords:** rational judgment; rational justification; dilemma of the criterion; *petitio principii*; criteria of justice; legal positivism; moral orientation; negligence

For Marina Bykova,  
in friendship, gratitude and solidarity

## I. Introduction

The First World War was supposed to end all wars, though soon followed WWII. Wars continued to abound since; today we confront a real prospect of a third world war. Some armed struggles and wars arise to end genuinely repressive government; still more are fomented by repressive or imperialistic governments, few of which acknowledge their repressive or imperialist character. It is naive to suppose that peace is normal, and war an aberration; war, preparations for war and threats of war belong to ‘normal’ life in many societies. Our tolerance, acceptance or fostering of such repeated injustices and aggressions indicate pervasive failures to understand fundamentals of justice, and what we owe morally to ourselves and to all others, together with our responsibilities to preserve the biosphere, not merely ‘our’ store(s) of reserves. As matters both of justice and prudence we must re-orient ourselves, individually and collectively, to promote justice, peace, and ecological responsibilities by identifying and instituting just forms of social cooperation, domestically and internationally. All of these are *our* problems, whether we recognize or neglect them. We urgently require cogent understanding of the social dimensions of human judgment, rational assessment, right action, and public reason. This requires understanding how Kant’s explication of rational judgment and justification is fundamentally social, how these features of rational judgment and justification are constitutive of Kant’s account of individual autonomy, and how they are central to Kant’s account of proper public use of reason.<sup>1</sup> Reasoning publically remains precarious, not because – as often alleged – the ‘Enlightenment project’ has failed. It has not failed, it has been thwarted, and in our public responsibilities we have too often failed it.

I begin with fundamental issues regarding identifying and justifying sound moral principles (both ethics and justice), which are required to

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<sup>1</sup> Kant is often charged with individualism, formalism or even racism; such contentions are as common as they are erroneous. Kant’s actual views about human varieties are examined thoroughly and judiciously by Cinzia Ferrini, *Alle origini del concetto di razza. Kant e la diversità umana nell’unità di specie* (Trieste: EUT Edizioni Università di Trieste, 2022); more concisely by Georg Geismann, “Why Kant Was Not a ‘Racist’. Kant’s ‘Race Theory’ Within the Context of Physical Geography and Anthropology – A Philosophical Approach Instead of Ideologically Motivated Ones,” *Jahrbuch für Recht und Ethik/Annual Review of Law and Ethics* 30 (2022): 263-357. For detailed historical and systematic analysis, see Christoph Haar und Matthias Kaufmann, *Gerechter Krieg und Niemandsland. Rechtfertigungsideologien für Kolonisierung und Versklavung durch europäische Mächte c. 1500-1800* (Darmstadt: Wissenschaftliche Buchgesellschaft, 2023).

specify and to monitor the scope and limits of legitimate policy debate (§§II-IV). Some of my remarks are pointed; some observations are hard. In advance I reaffirm my abiding commitment in principle and in practice to optimism, though when examining social history and practices, to unflinching realism. Most of my examples are from the USA (§V), so that none may fault me for besmirching another's nation; similar examples elsewhere are pervasive and obvious, nationally and internationally. I consider European juridical history sufficiently to show that my US examples typify a broad sweep of Enlightenment struggles, including Kant's and Hegel's, for justice against mere legality: The principle of 'rule of law' does not require rule by *just* law; it may curtail arbitrary actions, but cannot curtail arbitrary law. This contrast is Kant's point of departure in his Doctrine of Justice (*Rechtslehre*),<sup>2</sup> and Hegel's in his *Philosophical Outlines of Justice*.<sup>3</sup> The domestic examples considered below have obvious international implications and counterparts, as unjust domestic policies and practices foster their counterparts in international relations.

## II. *Petitio principii* and problems of rational justification

The problems now tearing apart the USA were already manifest during my childhood; their basis and implications have not changed, merely their virulence and brazen irresponsibility are now shamelessly dis-

<sup>2</sup> Immanuel Kant, *Die Metaphysik der Sitten* (1798), GS 6:205-493; cited as 'MS' (introductory materials) or by 'S' of its first (RL) or second (TL) Parts: *Rechtslehre* (Doctrine of Justice) and *Tugendlehre* (Doctrine of Virtue), GS 6:229-230. *Kants Gesammelte Schriften*, 29 Bde. Königlich Preussische Akademie der Wissenschaften. Berlin: Reimer, 1902, is cited as 'GS' by vol.: p. or by Kant's § numbers; *Kritik der reinen Vernunft*, 1<sup>st</sup> ed. (1781) GS 4:1-386 (to A405), 2<sup>nd</sup> rev ed. (1786) GS 3, is cited as 'KrV', by pagination of the two editions, 'A' and 'B', respectively; *Die Grundlegung zur Metaphysik der Sitten* (1785), GS 4:387-463 is cited as 'GMS'; "Was heißt: Sich im Denken orientieren?" (1786), GS 8:133-147 is cited as 'DO'; "Zum ewigen Frieden. Ein philosophischer Entwurf" (1795), GS 8:343-386, is cited as 'ZeF'. Unless otherwise noted, all translations are my own.

<sup>3</sup> Georg Wilhelm Friedrich Hegel, *Die Philosophie des Rechts/Philosophical Outlines of Justice* ('*Philosophy of Right*', 1821; cited as 'Rph'), Rph §3R. *Die Phänomenologie des Geistes* (1807) is cited as 'PhdG'; *Die Wissenschaft der Logik*, Bk. I, 2. rev. Aufl. (1832)/*The Science of Logic*, Bk. I; cited as 'WdL'; *Georg Wilhelm Friedrich Hegel's Werke*, 19 Bde. Vollständige Ausgabe durch einen Verein von Freunden des Verewigten (Berlin: Duncker & Humblot, 1832-1845), is cited as 'SW', by vol.: p. or by Hegel's § numbers; 'R' for Hegel's published remarks, indented in petit font; 'Z' for Zusätze or 'Additions' of lecture materials appended by Hegel's editors; *Gesammelte Werke*, 31 vols, ed. Deutsche Forschungsgemeinschaft (Hamburg: Meiner, 1968-2017) is cited as 'GW' by vol. p. or by Hegel's § numbers; *Werke in 20 Bänden*, eds. Eva Moldenhauer and Karl Markus Michel (Frankfurt am Main: Suhrkamp, 1970) is cited as 'MM' by vol.: page or by Hegel's § numbers. Abbreviations for Hegel's works follow *The Palgrave Hegel Handbook*, eds. Marina F. Bykova and K. R. Westphal (London: Palgrave/Macmillan, 2020), xxxi-xxxvii.

played in public, even claiming the good name of patriotism. In brief, the USA has never been the *Rechtsstaat* which to an extent may have been envisioned by its Declaration of Independence. Although the Unionists won the civil war, they lost the continuing battle for the supremacy of just federal law, before which all are equal not only in principle but also in practice, as a matter of due course. Legislation in the USA remains contested between individuals and groups competing for maximal benefits for themselves; ‘consensus’ means nothing outside one’s own faction or coalition. Justice, the common weal, and cogent public reasoning routinely lose. Such debates and contests exhibit an ancient problem, classically formulated by Sextus Empiricus.

a. *The dilemma of the criterion*

[...] in order to decide the dispute which has arisen about the criterion [of truth], we must possess an accepted criterion by which we shall be able to judge the dispute; and in order to possess an accepted criterion, the dispute about the criterion must first be decided. And when the argument thus reduces itself to a form of circular reasoning the discovery of the criterion becomes impracticable, since we do not allow [those who claim to know] to adopt a criterion by assumption, while if they offer to judge the criterion by a criterion we force them to a regress *ad infinitum*. And furthermore, since demonstration requires a demonstrated criterion, while the criterion requires an approved demonstration, they are forced into circular reasoning.<sup>4</sup>

This dilemma is fully general; it concerns rational justification in any and all domains, whether cognitive or moral, whether theoretical or practical. It is widely regarded as insoluble; if solving it requires no less and no more than strict deductive proof, it is insoluble.

b. *Deduction and justification*

If justifying deduction or likewise justifying induction require nothing but strictly *deductive proof*, they too are ‘unjustifiable.’<sup>5</sup> Deduction requires

<sup>4</sup> Sextus Empiricus, *PH* II.4, cf. I.116-117. Cited are: *Sexti Empirici Opera*, 5 vols., eds. H. Mutschmann, J. Mau, and K. Janáček (Leipzig: Teubner, 1912, 1954), vol. 1; *Outlines of Pyrrhonism*, in *Works*, 4 vols, trans. R. G. Bury (Cambridge, MA: Harvard University Press, 1933), vol. 1; cited as ‘PH’ by Bk. line numbers.

<sup>5</sup> Cf. Lewis Carroll, “What the Tortoise Said to Achilles,” *Mind* 4, no. 14 (1895): 278-280;

monotonic inferential *links* between premises; as such, deduction cannot assess the accuracy, truth, relevance or cogency of any *premiss* (nor any term or symbol) used in a formally stated argument. Any formal *statement* of a deductive proof contains *no* cognitive justification. Whatever cognitive justification is provided by deductive (or also by inductive) proof is within the understanding of whomever comprehends the proof, by comprehending the accuracy and cogency of the premises, the validity of their inferential links and the sufficiency of supporting evidence (if any). Comprehension involves much more than merely reiterating or ‘rehearsing’ the proof: It requires assessing one’s own understanding and use of the premises and inferential links (and evidence, if any), to distinguish so well as one can between merely apparent cogency and sound proof. In fleeing psychologism, too many philosophers abandoned judgment to focus solely upon propositions, but propositions themselves do no work; we must work with them, and assess *how* and *how well* we work with them, in order to assess, to reason or to know anything by using propositions *properly*.<sup>6</sup>

These elementary points about deductive proof and the ineliminability of critical self-assessment do not solve the Dilemma of the Criterion, yet they point in the right direction. Critical self-assessment can enable us to assess the merits of any principles, premises, terms, inferences, or evidence used in justificatory reasoning, our own as well as others’. Critical self-assessment requires, however, that our principles, premises, evidence and our current or proposed use of them are not exhausted by our occurrent thoughts, beliefs or statements about them; it requires our capacity to assess and as needed to revise and improve our comprehension, formulation or use of our principles, premises or evidence *as* we grapple with the issues or circumstances we seek to understand and assess. Resolving that Dilemma requires rescinding Cartesian self-transparency and the apparent ‘transparency’ of one’s own present thoughts.<sup>7</sup> This may appear stipulative, but is not: One can construct any conceptual structure one likes, but thinking *about* any genuine issue concerns *that issue*: its actual character, context

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Susan Haack, “The Justification of Deduction,” *Mind*, New Series 85, no. 337 (1976): 112-119; W. V. O. Quine, “Truth by Convention,” in *Philosophical Essays for A. N. Whitehead*, ed. O. H. Lee (New York: Longman’s, 1936), 90-124; rpt. in *idem.*, *Ways of Paradox and Other Essays*, 2<sup>nd</sup> rev. ed. (Cambridge, MA: Harvard University Press, 1976), 77-106. (Quine merely ran into the problem, but failed to understand why and how he had made the problem invincible to his own dogmatically extensionalist views.)

<sup>6</sup> See Catherine Elgin, *Considered Judgment* (Princeton, NJ: Princeton University Press, 1999), and K. R. Westphal, *Kant’s Critical Epistemology: Why Epistemology must Consider Judgment First* (London and New York: Routledge, 2021).

<sup>7</sup> K. R. Westphal, *Grounds of Pragmatic Realism: Hegel’s Internal Critique and Transformation of Kant’s Critical Philosophy* (Leiden and Boston: Brill, 2018), §§65-70.



and implications. Hence what we think, how we think and what we ought best to think must answer to that issue, its actual context, and its actual implications; what we may happen presently to think about these is no ultimate standard. All this is involved in conceptual *explication*, in contrast to (strict) conceptual analysis. Conceptual explication is fundamental to Kant, Hegel and Carnap, all of whom recognize that properly explicating any key concept, principle or term seeks to improve clarity, accuracy, and usage *in its (or their) proper contexts*.<sup>8</sup> Conceptual explications must and can only be assessed within humanly possible contexts of their actual use; not in merely imaginary contexts of their logically possible use.<sup>9</sup>

On this basis Hegel worked out a subtle, cogent solution to the Dilemma of the Criterion in his Introduction (not Preface) to the *Phenomenology of Spirit* (1807), and used it throughout his book to assess internally the insights and oversights involved in each apparent form of knowing, within his comprehensive, systematic taxonomy and assessment of them, winnowing and integrating the successes of each whilst remedying their inadequacies.<sup>10</sup> Due to highly fractious contemporaneous philosophy, Hegel kept quiet about his sources and many of his findings to forestall mere cavil, and to foster critical assessment and self-assessment. One key if implicit connection is this: Hegel's *Phenomenology* develops in comprehensive detail the topic merely mentioned in Kant's final chapter of the *Critique of Pure Reason*, "The History of Pure Reason."<sup>11</sup>

### c. Kant's critical lead

Here it will be most helpful to note core features of Kant's account of rational judgment and justification which (implicitly) feed into Hegel's solution to that Dilemma. Central to Kant's critique of our human powers of rational judgment and justification are five basic points:

<sup>8</sup> Kant *KrV* B25-8, 108-9, 755-8; Hegel *WdL I* (1832), *GW* 21: 127.7, 157.3; cf. *Enz.* §§10, 84, 280z, 334r, 464r, 573r; Rudolf Carnap, *Logical Foundations of Probability* (Chicago, IL: University of Chicago Press; London: Routledge & Kegan Paul, 1950), §§1-7.

<sup>9</sup> The contemporary 'semantic' counterpart to Cartesianism is to restrict one's ontology, 'ontological commitments' or one's view of any issue to one's preferred meta-linguistic framework, a fundamental blunder purveyed by Quine; Carnap knew much better from the outset. For concise discussion with further references, see K. R. Westphal, "Carnap vs. Quine: Descriptive Semantics vs. Semantic Ascent. More Reasons why Paolo [Parrini] Was so very Right!" *Humana Mente – Journal of Philosophical Studies*, S.I.: "La terza via di Paolo Parrini," eds. Roberta Lanfredini and Silvano Zipoli Caiani (2024).

<sup>10</sup> K. R. Westphal, *Hegel's Epistemology: A Study of the Aim and Method of the Phenomenology of Spirit* (Dordrecht: Kluwer, 1989).

<sup>11</sup> *KrV* B880-4; cf. K. R. Westphal, "Kant, Hegel and the Historicity of Pure Reason," in *The Palgrave Hegel Handbook*, eds. Marina F. Bykova and Kenneth R. Westphal, 45-64 (Cham: Palgrave Macmillan, 2020).

1. Reasoning using rules or principles always requires *judgment* to guide the proper use and application of the rule or principle to the case(s) at hand. Specifying rules of application cannot avoid this, because using rules of application itself requires judgment.<sup>12</sup>
2. Rational judgment is inherently *normative*, insofar as it contrasts to mere response to circumstances by forming or revising beliefs, because judgment involves considering whether, how or to what extent the considerations one now draws together to form and consider a specific judgment (conclusion) are integrated as they *ought best* be integrated to form an accurate, justifiable judgment.<sup>13</sup>
3. Rational judgment is in these same regards inherently *self-critical*: judging some circumstance(s) or consideration(s) involves and requires assessing whether or the extent to which one assesses those circumstances or considerations as they *ought best* be assessed.<sup>14</sup>
4. Rational judgment is inherently *social* and *communicable*,<sup>15</sup> insofar as judging some circumstance(s) or consideration(s) rationally involves acknowledging the distinction in principle between merely convincing oneself that one has judged properly, and actually judging properly by properly assessing the issue(s) and relevant consideration(s) at hand.
5. Recognizing one's own *fallibility*, one's own potentially incomplete information or analysis and one's own theoretical or practical predilections requires that we each check our own judgments, first, by determining as well as we can whether the grounds and considerations integrated in any judgment we pass are such that they *can* be communicated to all others, who *can* assess our grounds and judgment, so as also to find them adequate;<sup>16</sup> second, by actually *communicating* our judgments and considerations to others to seek and consider their assessment of our judgments and considerations.<sup>17</sup>

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<sup>12</sup> KrV A130-6/B169-75.

<sup>13</sup> KrV A261-3/B317-9, B219; cf. KU Einl., 5:182.26–32.

<sup>14</sup> Ibid.

<sup>15</sup> KU §40.

<sup>16</sup> KrV A829/B857.

<sup>17</sup> Immanuel Kant, "Was heißt: Sich im Denken orientieren?" (1786; GS 8: 133-147, 'DO'), 8:145-7.



Kant's stress upon self-assessment and communicability of our judgments, in a phrase: his publicity requirement, serve to distinguish as well as humanly possible, individually and collectively, what merely appears to anyone (or to any group) to be accurate and well-justified, and what *is* accurate and well-justified, to the best of our knowledge of any and all public topics, *i.e.*, features of our natural world, of our social and historical circumstances, and of our beliefs, attitudes and actions regarding any and all of these. Kant's findings about rational judgment, justification and publicity directly inform the universalizability tests of the Categorical Imperative and the Universal Principle of Justice.<sup>18</sup> To corroborate and augment these findings, Hegel argues cogently that our mutual recognition of one another *as* rationally competent, sufficiently informed, yet finite and fallible cognizant agents is *constitutive* of our *being* rationally competent, sufficiently informed, though finite and fallible cognizant agents.<sup>19</sup>

### III. Natural law constructivism

Securing peace requires securing justice, so that each and all are secure in their just acquisitions and actions, which requires our security against others' infringement or invasion of our legitimate rights and their exercise, whether innocent or malicious. How if at all can we identify and distinguish whatever *is* just from mere appearances of or pretenses to justice? Here the Dilemma of the Criterion looms large, as it should: it cannot be addressed cogently by any of the typical approaches pursued by moral philosophers or jurists, which inevitably take as basic premises whatever people may think, believe, feel, claim, or codify to be just. The most such approaches afford is identifying and systematizing the commitments of whatever group(s) sufficiently share those purported basic premises. Justice, however, cannot be justice merely for agreeable people, for effective majorities nor for vocal minorities; it must address those issues and problems posed by the morally ignorant, negligent, vicious, erroneous, obstinate, belligerent, *and* by victims and casualties of injustice. Who are these exactly, and why so? These questions, too,

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<sup>18</sup> See Westphal, "Kant's 'Critical Philosophy'?" Kant's Categorical Imperative, Formula of Universal Law: "Act only in accord with that maxim through which you can at the same time will that it become a universal law" (*GMS* 4:221); Kant's Universal Principle of Justice: "An act is *right* if it, or if according to its maxim, one's freedom of will can coexist with everyone's freedom in accord with a universal law" (*MS*, *Einl.* §C, 6:230). (The latter principle indicates the universality basic to the former, *per* below.)

<sup>19</sup> Westphal, *Grounding Pragmatic Realism*, §§71-91.

raise the Dilemma of the Criterion. Appealing to a transcendent being won't help because such appeals are so often controversial, factional, fractious, disingenuous, or even murderous.<sup>20</sup> Appealing to positive law won't help, because legal enactment, whether constitutional or statute, does not suffice to identify or distinguish between justice and injustice, in contrast to legality and illegality (within some jurisdiction). Appealing to what Kant calls the 'dignity' or incommensurable value of humanity within each and every person won't help, because whether there are incommensurable values remains hotly contested by utilitarians and disregarded by today's virtue theorists. Appealing to empirical facts won't suffice, because facts as such do not suffice to identify or resolve issues of legitimacy, including permissibility. Indeed, none of the typical moral theories or methods prominent today nor in the previous three centuries can address these basic issues about identifying and justifying fundamental principles of ethics and justice.<sup>21</sup>

Fortunately, there is a cogent method for identifying and justifying the core principles of a universally valid natural law morality, *without* appeal to moral realism, nor to (purportedly) moral motivations, 'values,' utility (however calculated or distributed), manifest preferences, validity claims, game theory, nor to Kant's account of 'dignity.' This method was discovered by Kant, adopted and augmented by Hegel, yet the core principle is quite common historically and globally. One formulation is found in the Hippocratic Oath: "[...] above all, I shall do no harm, nor commit injustice."<sup>22</sup>

Versions of this principle can be found globally, across cultures, religions, and history. To use this principle requires identifying – accurately, of course – what counts as just and unjust, and what counts as (im)permissible) 'harm.' Kant's universalizability tests using the Categorical Imperative or the Universal Principle of Justice stress the publicity of just

<sup>20</sup> This remark solely concerns religious (or pseudo-religious) *claims* made within public debate; the present analysis is strictly independent of, hence entirely *neutral* about, living religious faith.

<sup>21</sup> See Onora O'Neill, *Constructing Authorities: Reason, Politics and Interpretation in Kant's Philosophy* (Cambridge: Cambridge University Press, 2015), 56-85; Onora O'Neill, "Justice Without Ethics: A Twentieth Century Innovation?" in *The Cambridge Companion to the Philosophy of Law*, ed. John Tasioulas, 135-151 (Cambridge: Cambridge University Press, 2020); K. R. Westphal, *Hegel's Civic Republicanism: Integrating Natural Law with Kant's Moral Constructivism* (London and New York: Routledge, 2020), §§8-11; K. R. Westphal, "Gilligan, Kohlberg and 20<sup>th</sup>-Century (C.E.) Moral Theory: Does Anglophone Ethics Rest on a Mistake?" *Jahrbuch für Recht und Ethik/Annual Review of Law and Ethics* 30 (2022): 199-234.

<sup>22</sup> Hippocrates, *Oath*; cf. *Epidemics* 1.11; CW 1: 298.17-18, 164.11-12, resp., in *idem.*, *Collected Works*, 2 vols., ed. and tr. W. H. S. Jones (Cambridge, MA: Harvard University Press, 1868); cited as 'CW' by vol:p.line numbers.

or morally permissible maxims or actions, by proscribing as wrong any action or any maxim (*i.e.*, any principle of action) which requires for its success the evasion or over-powering of anyone's rational agency. Any action or maxim which can only succeed by evading or over-powering anyone's rational agency cannot be rationally justified because it fails Kant's explication of rational judgment and justification (*per* §§2.1, 2.2), as signalled by his publicity requirement (*per* §2.3).

Using this criterion of right action requires us to know and understand human agency and our human circumstances of action here on Earth, within in our present circumstances. Using Kant's moral principles requires, he insists, a 'practical anthropology' which catalogues our (attitude-independent) human capacities and incapacities for reasoning, acting and suffering.<sup>23</sup> To this Hegel adds, the proper use of Kant's moral principles requires a comprehensive political economy and theory of social institutions to understand our principles and our actions within our actual social circumstances, so that we can and do attend to the unintended consequences of our actions and collective interactions. Hegel expressly upholds Kant's fundamental principles and their use; Hegel addresses core issues of their actual use within our actual societies,<sup>24</sup> invoking strict liability for consequences of one's actions, defending freedom of thought and action, and devising a comprehensive institutional theory, including political representation, provisions for adequate public education and for sufficient public information regarding actual institutional functioning so that unintended consequences of group activities can be identified, assessed and as needed remedied.<sup>25</sup> Hegel's political institutions are not impracticable; they were incorporated into the modern Finnish republic by Johan Vilhelm Snellman, which served as a model for Nordic and Scandinavian countries.<sup>26</sup>

<sup>23</sup> K. R. Westphal, *How Hume and Kant Reconstruct Natural Law: Justifying Strict Objectivity without Debating Moral Realism* (Oxford: The Clarendon Press, 2016), §§21, 38.

<sup>24</sup> Westphal, *Hegel's Civic Republicanism*.

<sup>25</sup> I criticize several common presumptions which occlude Hegel's Kantian principles, *sans* transcendental idealism, in "Was heißt es, sich in der kritischen Philosophie zu orientieren? Heterodoxe hermeneutische Briefe zur Beförderung der Humanität," in Werner Flach und Christian Krijnen, *Kant und Hegel über Freiheit. Mit Diskussionsbeiträgen* (Leiden: Brill, 2021), 201-216. Hegel was the first philosopher to recognize that Kant's properly Critical philosophy consists in his comprehensive Critique of Reason, which holds altogether independently of Kant's transcendental idealism; cf. Westphal, *Grounding Pragmatic Realism*, and K. R. Westphal, "The Question Answered: What is Kant's 'Critical Philosophy'?" In *The History of Philosophy as Philosophy: The Russian Vocation of Nelly V. Motroshilova*, ed. Marina F. Bykova (Leiden: Brill, 2023).

<sup>26</sup> See Johan Vilhelm Snellman, *Läran om Staten [Staatslehre]* (Stockholm: Z. Hæggström, 1842); Westphal, *Hegel's Civic Republicanism*, §§47, 6.2, 77.1.

## IV. Training to autonomy

### a. Moral autonomy

Literally, ‘auto-nomy’ means being law unto oneself, or self-legislating. Confusions about Kant’s account of moral autonomy persist by assuming that individual autonomy consists in creating one’s own moral code. That is quite the opposite of Kant’s account, for it insures total mutual mis-understanding and interference. Just, equitable solutions to a host of social coordination problems are fundamental issues of justice. ‘Legislating’ requires not only a rule of action (or omission), but also enacting it *as obligatory*, the *Gebung* (legislating) of moral requirement *to oneself*. What we ourselves author and authorize in Kant’s account of moral autonomy is holding *ourselves* accountable to moral requirement.<sup>27</sup> Moral imperatives are ‘categorical’ insofar as they are obligatory *regardless* of one’s contingent wants, hopes or aims. This has its exact parallel regarding cognitive autonomy: that we hold ourselves accountable to the requirements of accurate, justifiable cognitive judgment. Such autonomy of individual rational judgment is required to understand and assess evidence, testimony, theory, explanations, advice, expert opinion, or proposed policy, in contrast to merely accepting or rejecting them; this holds both in morals and in cognition; *this* is Kant’s autonomy of rational judgment and justification (*per* §II).

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<sup>27</sup> GMS 4:333, 440, 453, 454; TL 6:383, 444. As Kant’s view remains so widely misunderstood, here are key statements of *his* account of autonomy: “Der Gegenstand der Achtung ist also lediglich *das Gesetz* und zwar dasjenige, *das wir uns selbst und doch als an sich nothwendig auferlegen*. Als Gesetz sind wir ihm unterworfen, ohne die Selbstliebe zu befragen; *als uns von uns selbst auferlegt*, ist es doch eine Folge unsers Willens [...]. Alle Achtung für eine Person ist eigentlich nur Achtung fürs Gesetz (der Rechtschaffenheit etc.), wovon jene uns das Beispiel giebt.” (GMS 4:401-2 Anm.); “Der schlechterdings gute Wille, dessen Princip ein kategorischer Imperativ sein muß, wird also, in Ansehung aller Objecte unbestimmt, bloß die Form des Wollens überhaupt enthalten und zwar *als Autonomie*, d.i. *die Tauglichkeit der Maxime eines jeden guten Willens, sich selbst zum allgemeinen Gesetze zu machen, ist selbst das alleinige Gesetz, das sich der Wille eines jeden vernünftigen Wesens selbst auferlegt*, ohne irgend eine Triebfeder und Interesse derselben als Grund unterzulegen.” (GMS 4:444); “Die übersinnliche Natur eben derselben Wesen ist dagegen ihre Existenz nach Gesetzen, die von aller empirischen Bedingung unabhängig sind, mithin zur *Autonomie* der reinen Vernunft gehören. Und da die Gesetze, nach welchen das Dasein der Dinge vom Erkenntniß abhängt, praktisch sind: so ist die übersinnliche Natur, so weit wir uns einen Begriff von ihr machen können, nichts anders als *eine Natur unter der Autonomie der reinen praktischen Vernunft*. Das Gesetz dieser Autonomie aber ist *das moralische Gesetz* [...]” (KpV 5:43); “Also ist das allgemeine Rechtsgesetz: handle äußerlich so, daß der freie Gebrauch deiner Willkür mit der Freiheit von jedermann nach einem allgemeinen Gesetze zusammen bestehen könne, zwar *ein Gesetz, welches mir eine Verbindlichkeit auferlegt* [...]” (RL 6: 231); “Da [der Mensch] sich aber nicht bloß als Person überhaupt, sondern auch als Mensch, d.i. als eine Person, die *Pflichten auf sich hat, die ihm seine eigene Vernunft auferlegt*, betrachten muß [...]” (TL 6:435). See further O’Neill, *Constructing Authorities*, 103-150.

## b. Education

Nothing is automatic about individual rational autonomy. Kant agrees entirely with both Aristotle and Hegel about our manifold mutual interdependencies, including birth, nurture, upbringing, education (both informal and formal) and commerce. Hence Kant agrees entirely with both Aristotle and Hegel about our being a *ζῷον πολιτικόν*, and about the decisive importance of our fidelity to reason. All three highlight that anyone's recognizing and affirming one's decisive obligation to hold oneself responsible to moral and to cognitive requirement requires sufficient education. Given a good enough start, each of us can with diligence continue developing our rational autonomy and acquiring relevant, accurate information to inform our properly judging whatever matters come before us, or to identify good sources of information or expert advice whenever needed. So doing requires that we learn to suspend our own presumptions, prejudices or beliefs pertaining to that topic so that these, too, can be re-assessed, and either revised, replaced or corroborated. The 'universality' fundamental to Kant's universalization tests is the universality required for publicity, to scrutinize one's own best judgments, and to afford their public scrutiny, so that we can identify objectively actual states of affairs, and distinguish these from error, insufficient accuracy or insufficient justification, whether innocent or malicious.

## c. Enlightenment: Individual and collective

Accordingly, enlightening individuals through proper education and 'training to autonomy,' as Barbara Herman aptly calls it,<sup>28</sup> is feasible, as Kant notes at the end of "What is Orientation in Thinking?":

To employ one's own reason means simply to ask oneself, whenever one is urged to accept something, whether one finds it possible to transform the reason for accepting it, or the rule which follows from what is accepted, into a universal principle governing the use of one's reason. Everyone can apply this test to oneself; and then superstition and zealotry will be seen to vanish immediately, even if the individual lacks sufficient knowledge to refute them on objective grounds. [...] Hence it is easy to lay the basis of enlightenment in individual *subjects* by education; one must merely begin early to accustom young minds to this reflection.<sup>29</sup>

<sup>28</sup> Barbara Herman, *Moral Literacy* (Cambridge, MA: Harvard University Press, 2007), 130-153.

<sup>29</sup> Kant, "Orientation in Thinking" (DO), 8:146-7 ftnt. Note that Kant here counters mere

There Kant also notes a key problem confronting public reason and reasoning publicly; in contrast,

To enlighten an age [...] is arduous; for there are numerous external obstacles which either proscribe that manner of education or burden its implementation.<sup>30</sup>

Accordingly, Kant notes that his own ‘age of enlightenment’ is not itself an enlightened age.<sup>31</sup> The problems confronting enlightenment Kant notes in answering the Akademie prize question, What is enlightenment? remain problems today, indeed more pervasively and urgently so.

Nevertheless, training to autonomy and the enlightenment this fosters is not at all optional! In his Doctrine of Virtue, Kant addresses the difficult challenge to properly explicate a crucial class of strict self-regarding duties.<sup>32</sup> Central among these is the strict duty to hold oneself responsible to moral requirement; this is the duty to become and to maintain one’s moral autonomy, and to assess one’s own moral conscientiousness. So doing is no luxury. Kant argues, soundly I submit, that acquiring any individual (or ‘subjective’) right requires understanding that right, its scope and limits, and its constitutive strict juridical duty to exercise one’s right *only* rightfully, by identifying and omitting any abusive mis-uses of that right, to which one is not at all entitled, neither by one’s right, nor by general juridical principles. Both *Rechtsfähigkeit* (juridical competence) and moral imputability require individual autonomy; nothing less and nothing else can do.<sup>33</sup>

From these considerations we can also grasp the fundamental moral, juridical and civil principle of *humility*! Of refraining from believing or acting so as to impose one’s own views or actions upon others, merely because one supposes one may so believe or act. With this,

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acceptance of another’s word; he does not at all claim, nor believe, that we each can acquire all relevant information and understanding solo.

<sup>30</sup> Ibid., 8:147 ftnt.

<sup>31</sup> “What is Enlightenment?” (WA, 1785), 8:14.

<sup>32</sup> *Die Metaphysik der Sitten* (1798), GS 6:205-493; Part II: *Tugendlehre* (Doctrine of Virtue; ‘TL’), §§13, 14, 21, 22.

<sup>33</sup> For an independent and illuminating account of conscience and conscientiousness which coincides with and corroborates Kant’s account of autonomy, without using the term, see Thomas Green, *Voices: The Educational Formation of Conscience* (Notre Dame, IN: University of Notre Dame Press, 1999).

we return to the injunction classically formulated in the Hippocratic Oath.<sup>34</sup>

## V. The precarities of public reasoning

### a. Theory and practice redoux

The theoretical challenges reviewed above (§§II-IV): the Dilemma of the Criterion, the character and requirements of rational judgment and justification, and the individual rational autonomy involved in holding oneself responsible to moral and to cognitive requirement, are not merely theoretical: they are profoundly practical. Born near Chicago in 1955, I grew up in the Cold War, the fallout of the McCarthy era, the stifling conservative conformism of white middle class respectability, yet for a *goy* I learned about the atrocities of the two world wars and the Holocaust before I was ten, thanks to my best friend, Dick Purdy, and his father's historical library. Neighboring Chicago was a civics lesson in *Realpolitik* of the sort shunned by US civics classes. I was confronted with virulent, ignorant white racism when Evanston schools introduced a bussing program to bring black students to much better, predominantly white schools (1966). I heard Martin Luther King Jr. preach at the First Methodist Church of Evanston following his march through segregated neighborhoods on the near West side of Chicago (5.08.1966); my memories of the occasion remain fresh to this day. Already quite alert to events and to issues of justice, I grew up through the US Civil Rights Movement, the (predominantly white middle-class) student protests against the Viet Nam War, third-wave feminism and the rise of environmentalism. I was a very interested observer; too young to participate, but only so avoiding doing anything stupid, harmful or counter-productive. In each of these hotly contested issues, I witnessed the same fundamental problem: Each side of each issue insisting ever more loudly that it alone was right and righteous, and that the opposing faction was wrong and deluded or wicked (or both). All of these manifest *in concreto* the Dilemma of the Criterion, with a very morbid lesson: Either we solve that Dilemma, in theory *and* in practice, or we are at one another's throats. Accordingly, I devoted my studies and career to determining whether the Dilemma of the Criterion can be solved, and whether cogent criteria of objectivity can be identified and justified in moral philosophy (ethics and justice) and

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<sup>34</sup> A strongly convergent account of fundamental moral-juridical principles and their justification is developed by Deryck Beyleveld; see *Ethical Rationalism and the Law*, eds. Patrick Capps and Sean Pattinson (Oxford: Hart Publishing, 2017).



in epistemology (including history and philosophy of science). Finding positive, insightful resolutions of these issues required neglecting philosophical factions and fads and painstaking scrutiny of (especially) Kant's and Hegel's texts and views. These theoretical successes etch yet more deeply the problems of implementing sound principles within our very unruly, fractious practices, both within philosophy and within our social lives, domestically and internationally.

## b. Liberal education

The aim of liberal education was identified by Aristotle: it is the public education required to be and to conduct oneself as a free citizen within one's polity.<sup>35</sup> This education was fostered and beautifully illustrated by Herrad von Landsberg in 'Hortus deliciarum.'<sup>36</sup> These methods were examined and illustrated by Kant, both as matters of general pedagogy and specifically pertaining to moral education. These pedagogical methods were used by Hegel, as Rector and Professor of Preparatory Philosophical Studies at the Nürnberg Gymnasium (1808-1816),<sup>37</sup> and are central to his civic republicanism.<sup>38</sup> The deleterious encroachment of professional schools upon the proper tasks of liberal university education were detailed and urgently decried by J. S. Mill in his Rectorial Address to the University of Edinburgh (1867),<sup>39</sup> the fountainhead a swelling current of detailed diagnostics into the present day.<sup>40</sup> The problem remains the same: Occidental cultures and nations have stressed individual rights of various sorts, without proper attention to the responsibilities constitutive of any such individual right and its rightful exercise, nor to the kind of education required for any putative right holder to understand these crucial issues and to act according-

<sup>35</sup> Randall Curren, *Aristotle on the Necessity of Public Education* (Lanham, MD: Rowman & Littlefield, 2000).

<sup>36</sup> Herrad von Landsberg, "Hortus deliciarum," ca. 1180, <http://www.plosin.com/work/Hortus.html>.

<sup>37</sup> See Friedrich Kapp, *Georg Wilhelm Friedrich Hegel als Gymnasial-Rektor. Oder die Höhe der Gymnasialbildung unserer Zeit* (Minden: Eßmann, 1835); Kristina Bosakova and Marina Bykova, "Hegel and Niethammer on the Educational Practice in Civil Society," *Journal of Philosophy of Education* 55, no. 1 (2021): 99-125.

<sup>38</sup> Westphal, *Hegel's Civic Republicanism*, §§29.4, 37.5-6, 72, 74.

<sup>39</sup> John Stuart Mill, "Inaugural Address Delivered to the University of St. Andrews," in *The Collected Works of John Stuart Mill*, 33 vols., ed. J. M. Robson (Toronto: University of Toronto Press, 1963-1991), 21: 217-257.

<sup>40</sup> Catalogued in K. R. Westphal, "Higher Education and Academic Administration: Current Crises Long Since Foretold," *Social Epistemology Review and Reply Collective* 7, no. 1 (2018): 41-47.

ly.<sup>41</sup> I was lucky; I received much of the core of such education from my mother, Alice, who early taught me (and my sisters) not to settle for easy answers, and from my high school training in library research and thesis papers, with which I made the most of my university and graduate studies. I have done all I can to impart these same skills to my students, often with great (if not always immediate) success.<sup>42</sup>

In the USA, the public education required for enlightened, responsible citizenship was well understood by Thomas Jefferson, who proposed its legislation to the Commonwealth of Virginia.<sup>43</sup> No such education has been mandated in the USA, though individual schools or school districts may undertake its provision. The reasons constantly urged against liberal education for proper citizenship in the USA are ever the same: penny wisdom complaining about costs, coupled with pound foolishness disregarding the devastating and far greater costs of inadequate education.<sup>44</sup> Due to its original federation of states, the USA has no Ministry of Education setting national standards or curricula; standards and curricula are entirely the responsibility of individual states and local school districts. (The US Department of Health, Education and Welfare handles only some funding issues in education.) This situation is exacerbated by publishers aiming to produce textbooks for national use. Expanding markets in this way requires limiting content to national consensus. In such a fractious nation, that consensus is very meager; textbooks are vetted and rewritten by committee to preclude offending anyone. Thus, historical and current offences are avoided or expurgated. The resulting expository ‘style’ is awful; no wonder student achievement continues to decline in the USA, especially (though not only) in history. Angered by liberal reforms to improve justice, the ‘Republican’ party has shamelessly promoted appointing Supreme Court justices solely due to conservative convictions; the Historical School of Jurisprudence countered by Hegel recurs in the vacuous ju-

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<sup>41</sup> Cf. K. R. Westphal, “Back to the 3 R’s: Rights, Responsibilities and Reasoning,” *SATS* 17, no. 1 (2016): 21-60.

<sup>42</sup> They are summarized in my ‘Guidelines for Philosophy Essays’, which are guidelines for thesis papers across the disciplines, posted on my webpage under ‘Study Aids’, together with a sample writing intensive syllabus, by which these methods and skills are best taught and learned at university level.

<sup>43</sup> Thomas Jefferson, “Bill for the More General Diffusion of Knowledge,” in *Report of the Committee of Revisors appointed by the General Assembly of Virginia in MDCCCLXXVI*. Published by order of the General Assembly and printed by Dixon & Holt, in the city of Richmond [VA], November 1784; Bill no. 79, ch. LXXIX, 53-55.

<sup>44</sup> K. R. Westphal, “A Republic, If You Can Keep It,” *Social Epistemology Review and Reply Collective* 11, no. 7 (2022): 22-32.

ridical slogan of ‘original intent,’ which is used to block any laws which cannot be rooted in the black letters of the US Constitution – as if there were no ‘original intent’ of the US Constitutional Convention and the ratification of the US Constitution to ‘form a more perfect union,’ as Lincoln later put it.

### c. Legality vs. justice

As Hegel’s philosophy is so deeply Kantian in principle, allowing Hegel to attend extensively and intensively to institutional, legal, and juridical history, I draw from Hegel to more sharply focus the precarities of public reason and public reasoning. The Enlightenment aspirations for freedom, justice and liberty for all expressed in the US Declaration of Independence (1776) are thwarted by the US Constitution (1787) which conceded to chattel slavery in the South, which denied both liberty and justice to blacks, each of whom was nevertheless counted as 3/5 of a human being for calculating ‘proportional’ representation in the US House of Representatives.<sup>45</sup> Nearly a century later (1868) this shameful legal compromise was expressly repealed by §2 of the 14<sup>th</sup> (constitutional) Amendment. Despite this legal improvement, the USA remains deeply racist to this day, as is now widely reported in news regarding white supremacist groups, too many chronically corrupt police departments and practices, and a vitally urgent nationwide movement so absurdly yet suitably named: Black Lives Matter; no such group nor name should be required in any democratic republic!<sup>46</sup>

### d. Hegel vs. Restauration

Hegel recognized – in print – the abomination of slavery, also in the USA.<sup>47</sup> Leopold von Henning testified that Hegel’s philosophy of history always, also in its final presentation (WS 1830/31), celebrated the ideals of the French Revolution,<sup>48</sup> whilst Eduard Gans, expert in Hegel’s philosophies of justice and of world history, expressly noted that Hegel’s *Philosophical Outlines of Justice* expand upon, further undergird and aug-

<sup>45</sup> US Constitution, Article 1, Section 2, Clause 3.

<sup>46</sup> For subtle, informative examination of this important movement see Vincent Lloyd, *Black Dignity: The Struggle against Domination* (New Haven, CT: Yale University Press, 2023), whose findings strongly converge with the present analysis.

<sup>47</sup> Hegel, *Rph* §§57R, 66+R, 270R, n.2.

<sup>48</sup> Carl Ludwig Michelet, “Sitzungsbericht der Philosophischen Gesellschaft,” *Der Gedanke. Philosophische Zeitschrift* 2 (1861): 76.

ment Rousseau's and Kant's republican principles of justice and liberty.<sup>49</sup> Indeed, Hegel's *Outlines of Justice* details the most robust account of civic republicanism we have.<sup>50</sup> There Hegel argues cogently, incisively, and persistently for inclusive republican justice, against the conservative historical school of jurisprudence headed by Haller, Hugo, and von Savigny. The historical school of jurisprudence is positivist: Law is whatever is codified within some specified jurisdiction. The historical school merely preferred *old* positive law, especially Roman law, and countered (*inter alia*) attempts to revise Germanic law to provide uniformity across German regions, such as *Das allgemeine Landrecht*.<sup>51</sup> Hegel argued expressly against the historical school,<sup>52</sup> and argued repeatedly against the views of Haller and Hugo by name. In many footnotes Hegel singles out absurdities and irrationalities in Roman law, demonstrating why Roman law, so cherished by the historical school, can be a key source (which it is), yet no ultimate foundation for jurisprudence.

Hegel witnessed Prussia's abandoning further legal and social reforms after 1815. In 1810 Friedrich Wilhelm III took a decidedly conservative turn, reverting to a cabinet-based government of precisely the kind vom Stein abolished in 1807. Friedrich III emphatically asserted his absolutism in the Karlsbad decrees (1819). In brief, Hegel lived through the struggle between sheer positive law wielded by conservative or reactionary powers to block, counter or repress the republican principles of *just* law Kant and Hegel articulated, justified and defended in no uncertain terms in print.<sup>53</sup> Indeed, Hegel knew this conflict between rule by edict, the key principle of state power, and natural law principles of justice is ancient, dramatized by Sophocles in the figures of Creon and Antigone.<sup>54</sup>

<sup>49</sup> Eduard Gans, "Vorrede," in Georg Wilhelm Friedrich Hegel, *Grundlinien der Philosophie des Rechts oder Naturrecht und Staatswissenschaft im Grundrisse*, ed. Eduard Gans, v-xvii (Berlin: Duncker & Humblot, 1833), SW 8:v-xvii; trans. M. Hoffheimer in M. Hoffheimer, *Eduard Gans and the Hegelian Philosophy of Law* (Dordrecht: Kluwer, 1995), 87-92; Gans, "Vorrede," in Hegel, *Philosophie der Geschichte*, SW 9:v-xxi; trans. J. Sibree, and repr. in Hoffheimer, 97-106.

<sup>50</sup> Westphal, *Hegel's Civic Republicanism*.

<sup>51</sup> *Allgemeines Gesetzbuch für die preussischen Staaten*, 4 Bde (Berlin: Königliche Hofbuchdruckerei, 1791).

<sup>52</sup> *Rph* §§3R, 211R.

<sup>53</sup> *Rph*, and already in his reports on the Estates Assembly of Württemberg, 1815-1816 (MM 4:462-597).

<sup>54</sup> See K. R. Westphal, "L'ispirazione tragica della dialettica fenomenologica di Hegel," translated by C. Ferrini, in *Antichi e nuovi dialoghi di sapienti e di eroi. Etica, linguaggio e dialettica fra tragedia greca e filosofia*, ed. Linda M. Napolitano Valditara (Trieste: ETS Edizioni Università di

The conservative hegemony of purely positive law persisted in Prussia under Friedrich Willhelm IV (reign: 7.06.1840 - 2.01.1861) and Bismarck (high offices: 1862 - 1890), who skillfully out-manoeuvred liberal reform. Indeed, this hegemony of sheer positive law persisted after Bismarck, through Hindenberg, right up to WWII;<sup>55</sup> it has always been ruthlessly deployed by autocrats, and by would-be autocrats. Yet autocrats have no monopoly on legal positivism, nor its use to evade or suppress justice.

#### e. Our continuing history of injustice

Freedom, justice, republicanism and popular representation all require and deserve educated, competent, engaged, responsible citizens.<sup>56</sup> However, from the outset the USA persistently blocked, and continues to block, proper public education due to short-sighted budgetary priorities, thus underscoring the adage: 'If you think education is expensive, ignorance is more so!'<sup>57</sup> As commercial and technological developments have made our societies ever more complex and interlinked, our publics have (on the whole) become ever more poorly educated and informed, hence ever less prepared to understand these developments and deal with them responsibly. This situation is exacerbated by the huge expansion of state security organs during and following the Cold War, allowing ever more government activities and putative *raison d'état* to be cloaked in secrecy. Conversely, the US 'two party system' mostly works to share power between these established parties, suppressing representation of other political voices, regardless of the merits of their aims or proposals. 'Democracy' in the USA is restrict-

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Trieste, 2002), 151-177, or K. R. Westphal, *Hegel's Epistemology: A Philosophical Introduction to the Phenomenology of Spirit* (Cambridge, MA: Hackett Publishing Co., 2003), §§3-8. On the genesis of German conservatism, see Klaus Epstein, *The Genesis of German Conservatism* (Princeton, NJ: Princeton University Press, 1966).

<sup>55</sup> Hermann Jahrreis, "Expert Opinion by Defense Witness Professor Jahrreis concerning the Development of German Law," in *Trials of War Criminals before the Nuernberg Military Tribunals under Control Council Law No. 10, Nuernberg October 1946-April 1949* (Washington, D.C.: US Government Printing Office, 1951), vol. 3: USA vs. Josef Altstoetter, *et al* (Case 3; "The Justice Case"), 3:252-284; [https://www.loc.gov/rr/frd/Military\\_Law/NTswar-criminals.html](https://www.loc.gov/rr/frd/Military_Law/NTswar-criminals.html); on Hindenberg, see 261-262.

<sup>56</sup> Westphal, "Back to the 3 R's"; and K. R. Westphal, "Universal Moral Principles and Mother Wit, or: Étienne Tempier and Cold War Rationality," in *Regelfolgen, Regelschaffen, Regeländern – die Herausforderung für Auto-Nomie und Universalismus durch Ludwig Wittgenstein, Martin Heidegger und Carl Schmitt*, eds. Manuela Massa, *et al.*, 313-356 (Frankfurt am Main: Peter Lang, 2020).

<sup>57</sup> The adage developed at the turn of the 20<sup>th</sup> C. (C.E.); on its origins and refinement see <https://quoteinvestigator.com/2016/05/03/expense/>.

ed to the sufficiently affluent, politically influential few.<sup>58</sup> Those who try to raise such points publically are routinely rebuffed for fomenting class war, whereas in the USA there are supposedly no classes; Cold War ideology and rhetorical strategy remain politically effective.<sup>59</sup>

The constitutional reform made by the 14<sup>th</sup> Amendment (§2) to the US Constitution was thwarted in practice, not only in former confederate states, but throughout the country by commerce dominated by whites.<sup>60</sup> Black citizens of the USA, especially working class and poor blacks, have remained disenfranchised by law, not least by crafty voter registration regulations, and voting districts constantly re-drawn to serve those already holding state office, and by various illicit real estate practices. Reliable, accurate information regarding racial or economic justice is available,<sup>61</sup> but is chronically shunted aside by ‘mainstream’ US media, most of which require advertising revenues, which inevitably compromise reliable, independent, comprehensive news reporting.<sup>62</sup> One brief, illuminating example is this: When world heavy-weight champion boxer, Cassius Clay, converted to Islam and adopted the name Muhammad Ali (6.03.1964), he did so to protest the slaughter of blacks in the USA and black youth deployed by the USA to Southeast Asia to fight a misguided, undeclared, protracted war.<sup>63</sup> Ali’s conversion was reported in mainstream US media as no more than the latest surprising stunt of the master showman he always was. Martin

<sup>58</sup> Michael Parenti, *Democracy for the Few* (New York: St. Martins, 1970); 9<sup>th</sup> ed.: Boston, MA: Wadsworth/Cengage, 2010.

<sup>59</sup> In Germany, political parties have resisted measures for greater public participation in politics, expressing various forms of demophobia; see Gertrude Lübke-Wolff, *Deomophobie. Muss man die direkte Demokratie fürchten?* (Frankfurt am Main: Klostermann, 2023).

<sup>60</sup> Manning Marabel, *How Capitalism Underdeveloped Black America* (Boston, MA: South End Press, 1983).

<sup>61</sup> E.g., Richard Wright, *Black Boy: A Record of Childhood and Youth* (Cleveland & New York: World Publishing Co., 1945); John Howard Griffin, *Black Like Me* (Boston: Houghton Mifflin, 1961; 2<sup>nd</sup> corrected ed.: Antonio, TX: Wings Press, 2004). The Southern Poverty Law Center (<https://www.splcenter.org>) provides detailed recent and current information about hate groups and hate crimes in the USA. In accord with the Hate Crimes Statistics Act (1990), the FBI collects national statistics on hate crimes. The FBI reports ‘Supplemental Hate Crime Statistics, 2021,’ showing an increase of 11.6% over 2020, mostly against Asians, though for technical reasons it was unable to collect all relevant reports from local law enforcement agencies; see Federal Bureau of Investigation, “Report: Supplemental Hate Crime Statistics, 2021,” March 3, 2023, <https://www.documentcloud.org/documents/23706818-supplemental-hate-crime-statistics-2021?responsive=1&title=1>.

<sup>62</sup> The US Public Broadcasting Service is ever more frequently burdened by ‘Republican’ grip on their purse strings, so that PBS news is no longer as comprehensive or searching as it once was.

<sup>63</sup> David Zirin, “How Cassius Clay Became Muhammad Ali,” *The Progressive Magazine*, March 16, 2016, <https://progressive.org/magazine/cassius-clay-became-muhammad-ali/>.



Luther King, Jr. made his dream of freedom and justice for *all* powerfully and eloquently in his famous speech, stressing that the US Declaration of Independence speaks of ‘all men,’ not restricting their lofty ideals solely to whites, to men, nor to any other group.<sup>64</sup> The 1963 March on Washington King addressed was a march for jobs, for constructive employment. Instead, the US Congress devised the Welfare System; those who need such aid have been excoriated by conservatives ever since.<sup>65</sup>

Yes, progress has been made, *e.g.*, by the landmark Supreme Court decision in *Brown v. Board of Education* (1954) which outlawed segregated schooling across the USA, and by the Voting Rights Act (1965). Such progress was aided by TV news of freedom marches by Southern blacks, of their March on Washington (1963), of the potent hostilities when the high school in Little Rock, Arkansas, was officially desegregated (1957) under the many watchful, well-armed eyes of the National Guard, called in (and required) to preserve peace. TV reporters such as Eric Sevareid knew in advance what exposing Southern racism on national television news would achieve, as later it achieved in turning public opinion against the undeclared, abominable US war in Viet Nam. However, each of these advances suffered subsequent degradation in practice as conservatives restricted their implementation or buttressed segregationist practices by other means, including statute law (*cf.* Rooks 2017). Johnson signed the Voting Rights Act into law on 2 July 1964; that evening he predicted, ‘we just delivered the South to the Republican Party for a long time to come.’<sup>66</sup> That is why the main trend is as indicated here, despite apparent counter-evidence.<sup>67</sup> In brief,

<sup>64</sup> In his speech at the March on Washington for Jobs and Freedom (28.08.1963); *cf.* Hansen (2003, 53, 56), as he stressed in his delivered speech (*ibid.*, 73, 91, 123), though also in a longer version of his prepared speech (*ibid.*, 92), just as Frederick Douglass made the same point about ‘we the people’ in Glasgow (1860), in a speech well-known to King (*ibid.*, 136); see Drew Hansen, *The Dream. Martin Luther King, Jr., and the Speech that Inspired a Nation* (New York: Harper Collins, 2003).

<sup>65</sup> Francis Fox Piven and Richard Cloward, *Regulating the Poor: The Functions of Public Welfare* (New York: Pantheon, 1971; 2<sup>nd</sup> rev. ed., 1993); William Ryan, *Blaming the Victim* (New York: Pantheon, 1971; 2<sup>nd</sup> rev. ed. Knopf/Doubleday, 1976).

<sup>66</sup> According to some accounts, this remark followed his signing the Civil Rights Act (1965); see Ken Germany, *Lyndon B. Johnson and Civil Rights: Introduction to the Digital Edition* (Charlottesville, VA: University of Virginia, 2010), available online.

<sup>67</sup> For present purposes it suffices to identify this arc of purely positive law prevailing from Hegel’s day to our own. Much more belongs to this prevailing arc, including persistent undercutting of Native Americans’ and women’s rights. On the very hard right turn taken by what still calls itself the “Republican” party, see *e.g.* John Dean, *Conservatives without Conscience* (New York: Viking, 2006); John Dean, *Broken Government: How Republican Rule Destroyed the Legislative, Executive, and Judicial Branches* (New York: Penguin, 2007); Jane Mayer, *The Dark Side: The inside Story of How the War on Terror Turned into a War on American*



this is how the US polity shifted from the interest groups championed by David Truman<sup>68</sup> to the now obvious rule of powerful, predominantly white elites, *per* C.W. Mills,<sup>69</sup> all at the expense of public goods, such as pollution control,<sup>70</sup> which because they benefit everyone, don't foster sufficiently wealthy, politically active groups whose favor, funds and votes can be carried by political officials promising to serve those groups' interests.<sup>71</sup>

With domestic politics so gerrymandered to thwart rather than support 'government of the people, by the people, for the people,' as Lincoln declared at Gettysburg (19.11.1863), citizens are unable to do what Kant expected in republics: to cautiously and prudently resist foreign wars.<sup>72</sup> Instead, with so much political influence wielded by major industries and wealthy individuals, US foreign policy often and readily turns to 'gunboat diplomacy', *i.e.*, using military means to enforce US strategic aims abroad;<sup>73</sup> US foreign aid programs too often serve corporate interests – equated with national interests – more than the legitimate interests of recipient states,<sup>74</sup> a phenomenon also exhib-

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*Ideals* (New York: Doubleday, 2008). The 'Republican' lurch ever father to the right began under Nixon, who apprenticed under Joseph McCarthy and his 'House Un-American Activities Committee' (HUAC); this time-line cannot be detailed here, see Dan Carter, *The Politics of Rage: George Wallace, the Origins of the New Conservatism, and the Transformation of American Politics* (Baton Rouge, LA: Louisiana State University Press, 1995; 2<sup>nd</sup> rev. ed., 2000); Dan Carter, *From George Wallace to Newt Gingrich. Race in the Conservative Counterrevolution, 1963-1994* (Baton Rouge, LA: Louisiana State University Press, 1996). One significant detail from 1980 was first reported on 19.03.2023 (*sic!*) by the *New York Times*; see Chas Danner, "Lawmaker Confirms 'October Surprise' Plot to Sabotage Jimmy Carter's Reelection," *New York Intelligencer*, March 19, 2023, <https://nymag.com/intelligencer/2023/03/lawmaker-admits-1980-gop-plot-to-prolong-iran-hostage-crisis.html>.

<sup>68</sup> David Truman, *The Governmental Process: Political Interests and Public Opinion* (New York: Knopf, 1951).

<sup>69</sup> Charles Wright Mills, *The Power Elite* (New York: Oxford University Press, 1956).

<sup>70</sup> Matthew Crenson, *The Un-politics of Air Pollution. A Study of Non-decisionmaking in the Cities* (Baltimore, MD: Johns Hopkins University Press, 1971).

<sup>71</sup> The Republican National Committee now shamelessly requires a minimum number of campaign donors for anyone to qualify as 'Republican' candidate for the US Presidency. At least the RNC now prudently requires candidates to sign an oath of loyalty to the US Constitution (!).

<sup>72</sup> ZeF 8:351.

<sup>73</sup> Smedley D. Buttler, *War is a Racket* (New York: Round Table Press, 1935); expanded edition ed. Adam Parfrey (Los Angeles, CA: Feral House, 2003). On Brigadier General Smedly D. Butler, US Marine Corp., the most highly decorated soldier in US history, see Hans Schmidt, *Maverick Marine: General Smedley D. Butler and the Contradictions of American Military History* (Lexington, KY: University Press of Kentucky, 1988).

<sup>74</sup> Cf. e.g., Andrew Bacevic, ed., *The Imperial Tense: Prospects and Problems of American Empire* (Chicago, IL: Ivan R. Dee, 2003); Amy Chua, *World On Fire: How Exporting Free Market Democracy Breeds Ethnic Hatred and Global Instability* (New York: Doubleday, 2003);

ited by Western Europe,<sup>75</sup> and more generally between our Northern and Southern hemispheres.<sup>76</sup> The US ‘War on Terrorism’ has taken on many features of McCarthyism, becoming equally a war upon domestic civil rights and ‘American ideals.’<sup>77</sup> Kant expected the ‘spirit’ of international trade would foster peaceful international relations;<sup>78</sup> though concerned about colonial injustice,<sup>79</sup> Kant underestimated the ease and extent to which *free* exchange would be preempted by imperialist or colonialist commerce.

Public reason and reasoning cogently in public are decisive; little wonder they remain thwarted in practice: Those who benefit most from present social arrangements have vested interests in preserving such arrangements. Hence typically they reject counter-proposals out of hand, *modus tollendo tollens*. Hence the urgency of both the Dilemma of the Criterion, and its sole alternative: cogent, responsible public reasoning. Kant is right that the *bello omnium contra omnes* in Hobbes’ state of nature has its exact counterpart in the life of the mind,<sup>80</sup> which can only be rectified by thorough Critique of reason – and training to autonomy. This predicament is pervasive: people asserting their freedom of expression, whilst neglecting their correlative duty to speak constructively within the public sphere.<sup>81</sup> In the USA unbridled pursuit of rent-seeking behavior, now triumphant as managerialism, wrests control of all sorts of public institutions to which rent-seeking behaviors are utterly unsuited, indeed antithetical, supplanting the ancient Roman motto for sustained rule, ‘bread and circuses,’ with (proportionally) ever less ‘bread’ (earnings) plus an unbridled media onslaught of commercial and pop-cultural distractions, promoting ever more the imperatives to ‘shop till you drop,’ to ‘dance all night and party all day’ and by all means keep up with the latest fashions, much of which are

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Ilia Xypolia, *Human Rights, Imperialism, and Corruption in US Foreign Policy* (Cham: Palgrave Macmillan, 2022).

<sup>75</sup> Walter Rodney, *How Europe Underdeveloped Africa* (Washington, D.C.: Howard University Press, 1982).

<sup>76</sup> Ruth Blakeley, *State Terrorism and Neoliberalism: The North in the South* (New York: Routledge, 2009); Haar and Kaufmann, *Gerechter Krieg und Niemandsland*.

<sup>77</sup> Mayer, *The Dark Side*.

<sup>78</sup> ZeF, 8:364, 368.

<sup>79</sup> See Inés Valdez, “It’s Not about Race: Good Wars, Bad Wars, and the Origins of Kant’s Anti-colonialism,” *American Political Science Review* 111, no. 4 (2017): 819-834.

<sup>80</sup> KrV B780.

<sup>81</sup> Cf. Onora O’Neill, *Speech Rights, Speech Wrongs* (Amsterdam: Vangorcum, 2016).

ever more exhibitionist<sup>82</sup> – of course only if you're sufficiently affluent to afford such distractions.

In his prescient novel, *1984*, George Orwell envisioned tele-screens, devices inundating people with relentless government propaganda whilst recording their every word and deed.<sup>83</sup> Well, nothing so crude these days! Today we have instead (so-called) smart phones to do those jobs – for any industry or government who seeks to have them done. The closing passages of Orwell's novel merit attention still today: There he states that full implementation of Newspeak is so portentous that it was planned for the year 2050! One key portent is that Newspeak would render utterly unintelligible such declarations of human rights as the first paragraph of the US Declaration of Independence, quoted *verbatim* by Orwell. Sound-bite 'news' and so-called 'social media' selecting for 'high impact', *i.e.*, panic responses, are serving these ends all too effectively. Having now unwittingly created the Anthropocene – by neglecting the sociological law of unintended consequences and everything known about population dynamics – we have much negligence and denial to answer for, and much urgent work to accomplish if we are to secure justice, peace, liberty and indeed life for all. The principles of rational judgment and public reason are clear and cogent, whilst public reasoning has become ever more precarious. That is our urgent dilemma, which requires robust liberal education to remedy.<sup>84</sup>

In complex, risky decisions, algorithms or decision procedures may be useful, but both in principle and in practice, their use is subject to *ceteris paribus* clauses and to limits upon both required and presently feasible approximations. All causal information we have about material processes, and all social regularities we know, both of which are crucial to public policy and to decision-making, including military decisions, are subject to *ceteris paribus* clauses. Action is future-oriented and can at best anticipate how things can or most likely shall turn out: We always decide how to act on the basis of imperfect information, knowledge and forecasting. We may often anticipate well enough for many activities, but the more complex is the situation or more crucial is the decision, the more important are these kinds and sources

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<sup>82</sup> Carmine Sarracino and Kevin M. Scott, *The Porning of America: The Rise of Porn Culture, What It Means, and Where We Go from Here* (Boston, MA: Beacon Press, 2009).

<sup>83</sup> George Orwell, *Nineteen Eighty Four* (London: Secker & Warburg; New York: Harcourt, Brace & Co., 1949).

<sup>84</sup> See Randall Curren and Charles Dorn, *Patriotic Education: Realizing America in a Global Age* (Chicago, IL: University of Chicago Press, 2016); Randall Curren and Ellen Metzger, *Living Well Now and in the Future: Why Sustainability Matters* (Cambridge, MA: MIT Press, 2017).

of fallibility. Regarding physical processes, planning to act can attain engineering tolerances; not so for social processes, much less the ‘human factors’ inevitably involved in strategic gamesmanship; the greater complexity or urgency of the situation, the more sources of insufficient approximation and error. Excessive hopes for and reliance upon algorithms and decision procedures during the Cold War nearly drove reason to lose its mind.<sup>85</sup>

Hegel knew history to be a slaughter bench,<sup>86</sup> but subsequent history belies his youthful optimism, that once our philosophical comprehension is revolutionized, the actual world does not hold out.<sup>87</sup> Instead, our recent history confirms Frederick Douglass’ (1857) observation, quoted and endorsed by Robeson,<sup>88</sup> seconded by Lewis<sup>89</sup>: “If there is no struggle, there is no progress. Power concedes nothing without a demand. It never did and it never will.”<sup>90</sup>

Our challenge is, How can *de jure* justice triumph over *de facto* power, domestically and internationally? Nothing less will limit illicit state action, domestically or internationally. Kant’s account of rational judgment and justification do not directly address the knotty questions of ethics within war, yet they provide crucial moral orientation and criteria of rational justification, without which those knotty questions cannot be addressed properly and cogently.<sup>91</sup> Furthermore, Kant’s comprehensive moral theory, embracing

<sup>85</sup> Paul Erickson, et al., *How Reason almost Lost Its Mind: The Strange Career of Cold War Rationality* (Chicago, IL: University of Chicago Press, 2013).

<sup>86</sup> Hegel, *Vorlesungen über die Philosophie der Geschichte*, MM 12:35.

<sup>87</sup> To Niethammer, 28.10.1808; For illuminating, concise reflections on Kant’s and Hegel’s philosophies of history, see Hans-Dieter Klein, “Of Eternal Peace,” in *The History of Philosophy as Philosophy: The Russian Vocation of Nelly V. Motroshilova*, ed. Marina F. Bykova (Leiden: Brill, 2023). Regarding Hegel’s constructive contributions to international relations, see Max Erdmann, *Die Vernunft zwischen den Staaten. Zur Grundlegung des Völkerrechts im Werk von G. W. F. Hegel* (Tübingen: Mohr Siebeck, 2023). Although Hegel held (implausibly) that war fosters civic unity, which during peace tends to ossify into factions, much more effective provisions for sustaining civic unity would be (e.g.) two years of mandatory national service for young adults, one year domestic, a second year international. Hegel’s civic republican government would readily support such programs.

<sup>88</sup> Paul Robeson, *Here I Stand* (London: Dodo Books, 1958), 97.

<sup>89</sup> John Lewis and Michael D’Orso, *Walking with the Wind: A Memoire of the Movement* (New York: Simon & Schuster, 1998), 473.

<sup>90</sup> Frederick Douglass, “West India Emancipation,” speech in Canandaigua, New York, 1857, in *Two Speeches, by Frederick Douglass: One on West India Emancipation, Delivered at Canandaigua, Aug. 4<sup>th</sup>; and the Other on the Dred Scott Decision, Delivered in New York, on the Occasion of the Anniversary of the American Abolition Society, May, 1857* (Rochester, NY: C. P. Dewey, 1857), 3-24; reprinted in *Frederick Douglass: Selected Speeches and Writings*, eds. Philip S. Foner and Yuval Taylor (Chicago, IL: Lawrence Hill Books, 1999), 358-368, available online at <https://www.blackpast.org/african-american-history/1857-frederick-douglass-if-there-no-struggle-there-no-progress/>.

<sup>91</sup> Cf. Onora O’Neill, *Justice Across Boundaries: Whose Obligations?* (Cambridge: Cambridge University Press, 2016), 153-169.

both ethics and justice, affords a rich and important account of non-ideal normativity within actual institutions and practices, domestic and international.<sup>92</sup> Hence the urgent practical dilemma just noted is no ground for despair. Among Kant's quartet of key Critical questions is, 'What may I hope?' Kant quietly yet comprehensively answered the more fundamental question: What *should* we hope? – this 'should' is both moral and prudential.<sup>93</sup> Sustaining our hopes for sufficient justice for all, and promoting these hopes – our own and others' – by how we act and interact, all belong to moral requirement, to moral integrity and to proper public reasoning.

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<sup>92</sup> Christoph Horn, *Nicht-Ideale Normativität. Ein neuer Blick auf Kants politische Philosophie* (Berlin: Suhrkamp, 2014); O'Neill, *Justice Across Boundaries*, *idem.*, *From Principles to Practice: Normativity and Judgement in Ethics and Politics* (Cambridge: Cambridge University Press, 2018).

<sup>93</sup> Seniye Tilev, "What Should We Hope?" *Philosophia* 50, no. 5 (2022): 2685-2706.

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