

Kant on the Future of Representative Democracy

Kant sobre o futuro da democracia representativa

Martin Welsch (Heidelberg)*

Abstract

Kant's *Staatsrecht* in his "Metaphysics of Morals" likely represents the sharpest analysis and critique of democratic modernity after 1789. At the same time, it provides a unique outlook on the future of modern representative democracy. This has gone largely unnoticed, with scholars often lamenting the problematic nature of the late text, blamed either on the author's supposed senility or on the inscrutable composition resulting from confusion during the printing process. Rather than affirming these readings, I will argue that they are merely attempts to wrestle with the brilliance of Kant's philosophical rhetoric. Through a new reading of a key passage in the *Staatsrecht*, I substantiate this claim by reconstructing Kant's late account of representative democracy and its future.

Keywords: Immanuel Kant, Emmanuel Joseph Sieyes, Jean-Jacques Rousseau, representative democracy, democratic self-representation, authorization, authoritarian democracy, popular sovereignty, constitutional law, philosophical rhetoric.


Resumo

O Direito do Estado (*Staatsrecht*) de Kant em sua "Metafísica dos Costumes" (*Metaphysics of Moral*) provavelmente representa a análise e a crítica mais aguçada da modernidade democrática depois de 1789. Ao mesmo tempo, oferece uma perspectiva única sobre o futuro da democracia representativa moderna. Isto passou em grande parte despercebido, com os estudiosos frequentemente lamentando a natureza problemática do texto tardio, seja em razão da suposta senilidade do autor ou da composição inescrutável resultante da confusão durante o processo de impressão. Ao invés de afirmar estas leituras, argumentarei que são meramente tentativas de lutar com o brilhantismo da filosofia retórica de Kant. Através de uma nova leitura de uma passagem chave no Direito do Estado (*Staatsrecht*), eu consubstancio esta afirmação reconstruindo a antiga leitura de Kant sobre a democracia representativa e seu futuro.

Palavras-chave: Immanuel Kant, Emmanuel Joseph Sieyes, Jean-Jacques Rousseau, democracia representativa, auto-representação democrática, autorização, democracia autoritária, soberania popular, direito constitucional, retórica filosófica.

1 Introduction

When thinking about the future of modern democracy, it is worth taking a look at its past. In its history of ideas, one text stands out in particular: Kant's *Staatsrecht* in the "Metaphysics of Morals" from 1797. It is one of the most startling, even outrageous texts in the history of modern representative democracy.¹ In terms of reception, Kant's *Staatsrecht* is the work that secured the most lasting effect for Sieyes' doctrine of representative democracy and French constitutional thinking in Germany (HOFMANN, 1974, p. 411). Today, Kant's *Staatsrecht* is almost unanimously read as a plea for modern representative democracy as we know it.² Upon closer inspection, however, this work presents perhaps the sharpest analysis and critique of democratic modernity after 1789. In 1797, Kant brought to light fundamental structural deficits and basic contradictions that representative democracy had exhibited from its inception – without thereby proclaiming the end of democratic modernity. For Kant, it was much more a matter of a new beginning: the *Staatsrecht* provides a new ground for modern constitutional thinking by establishing a hitherto unrecognised variety of radical popular sovereignty.

*  Is a visiting scholar at the Interdisciplinary Centre of European Studies at the European University Flensburg. He works on the philosophy of law and state, philosophical rhetoric, enlightenment and anthropology as well as critical theory. E-mail: martin.welsch@uni-flensburg.de

¹ I first presented this claim in my Kant monograph (WELSCH, 2021), on which the following interpretation is based.

² At present, the only discussion in the literature is on whether Kant (a) does consider non-democratic systems to be normatively equivalent to the representative democracy he supposedly advocates (cf. HIRSCH, 2017, p. 319, 329; JOUNG, 2006, p. 105-108; HANISCH, 2016, p. 71-73), or whether Kant (b) normatively prefers a radical democratic popular sovereignty à la Rousseau to representative democracy under certain circumstances (see MAUS, 1994 [1992], p. 196-200; THIELE, 2014, p. 76-91; BREITENBAND, 2019, p. 83-86; MAREY, 2018, p. 556-580).

However, all this has remained unrecognised in the reception history of the Staatsrecht, which spans over 200 years. In fact, Kant's sharp criticism of representative democracy was not even taken notice of. On the contrary, the text was interpreted only, ironically, as an enthusiastic support of Sieyes' doctrine of the representative state and as a philosophical affirmation of French constitutional thinking. Thus it is explicitly stated towards the end of the Staatsrecht in the most quoted passage of the text: "Any true republic is and can only be a *representative system* of the people" (KANT, 1797, § 52,3).³ The allusion to Sieyes' "système représentatif" is clear, as are the parallels with modern representative democracy (SIEYES, 1793).⁴

And yet, appearances are deceptive. In the history of modern representative democracy, the Staatsrecht is perhaps the most outrageous text, for it systematically misleads the reader: the misreadings of the last 200 years are largely provoked by the Staatsrecht itself – and by an ingenious textual rhetoric that can be seen as the culmination and *pièce de résistance* of Kant's oeuvre.⁵ Kant's Staatsrecht, a part of his Rechtslehre, is known as "a brittle, unwieldy late work, which is compositionally unbalanced and sometimes erratic in its thought processes" (KERSTING, 2007 [1984], p. 71). Thus, the repeatedly lamented problematic nature of the late writing was attributed early on to the author's alleged senility. Later, confusion created in the course of the printing process was blamed for its inscrutable composition. But it is precisely this formulation of the text that deliberately misleads the reader. For the irritations, which have repeatedly been criticised as textual defects or philosophical errors of thought, are in fact textual clues. They encourage a counter-reading in which the immediately visible (exoteric) level of representation of the text is suspended (*aufgehoben*) in the threefold Hegelian sense: it is made recognizable in its falsity and denied, but at the same time it is also affirmed and raised to a higher level.

2 A New Reading

This is also the case with the most quoted, yet unfortunately least read sentence at the end of the Staatsrecht: "Any true republic is and can only be a *representative system* of the people" (§ 52,3). For in the closer context of this sentence, a kind of predetermined breaking point is integrated, which reveals France's democratic representative system as a system of deliberate denial of freedom – whereby both systems are even exactly identical according to the wording. The key sentence on the representative system, together with another sentence, forms the last paragraph (*Absatz*) of the main text of the Staatsrecht;⁶ and in this further (second) sentence there is an element built in that both undermines and recodes the entire concluding passage.

On the surface, this second sentence seems to reflect simply a restatement of John Locke's philosophy of popular sovereignty, which famously served as the basis for Sieyes' constitutional thinking. According to the former, the original sovereign is indeed the people; but the people must make use of their sovereignty first and foremost by placing it in the hands of a deputy, who then exercises the supreme power as a fiduciary power (LOCKE, 1988, § 134). But as soon as such a deputy sovereign, authorized by the people, allowed himself to be represented in the exercise of sovereignty, sovereignty would immediately revert to the people (LOCKE, 1988, § 141). Accordingly, the Kant text says in the aforementioned second sentence: "But as soon as a person who is head of state [...] also lets itself be represented, then the united people does not merely *represent* the sovereign: it *is* the sovereign itself."⁷

In the context of the concluding passage of the Staatsrecht, this qualification presents an "elegant solution" (HENRICH, 1976, p. 361) to the question of how the transition from a non-democratic to a democratic, or more

³ Translation is my own. Various editions were consulted, see the bibliography at the end of this text. For reassurance, the original version in German: "Alle wahre Republik aber *ist* und kann nichts anders sein, als ein *repräsentatives System* des Volks"

⁴ In the literature on Kant's Staatsrecht, there are repeated reminders that we should not project our present-day understanding of representative democracy onto Kant's in an "unhistorical reading", especially onto his plea for "a *representative system* of the people", quoted above (cf. MAUS, 1992, p. 137, 140; more recently MAREY, 2018, p. 578-79; HANISCH, 2016, p. 71-73; EISFELD, 2015, p. 235-36, 240-42). However, since the passage very clearly refers to the democratic representative system of France, while at the same time also literally alluding to Sieyes, one can very well assume that Kant was familiar with this thoroughly modern variant of representative democracy. § 52,3 clearly refers to it.

⁵ On this form of philosophical rhetoric, see Welsch (2022).

⁶ The passage is followed only by an indented paragraph (*eingerückter Absatz*), which is to be counted as "notes", but not as "text" in the strict sense, cf. Kant (1797, Vorrede, 2).

⁷ Note my resort to the Mary Gregor's translation here. In German: "Sobald aber ein Staatsoberhaupt, der Person nach [...] sich auch repräsentiren läßt, so *repräsentirt* das vereinigte Volk nicht bloß den Souverän, sondern es *ist* dieser selbst."

precisely, to a representative-democratic form of state can take place. The concluding passage deals with this on first glance (exoterically).⁸

However, if a seemingly insignificant detail is considered, the possibility of a completely different reading is opened up. For, as it is so often the case with Kant, the most important point is made in an inconspicuous place, namely quite casually in a parenthesis. With the bracketing (*Einklammerung*), the sentence now reads as follows: “But as soon as a person who is head of state (*whether it be a king, nobility, or the whole of the population, the democratic union*) also lets itself be represented, then the united people does not merely represent the sovereign: it is the sovereign itself.”⁹

Accordingly, sovereignty reverts to the people not only when a non-democratic deputy sovereign wants himself to be represented (the “king” or the “nobility”). It also reverts when the people (“the democratic union”) seek to place the sovereignty, originally vested in them, in the hands of such a deputy, be this an individual or a parliamentary body. Consequently, the second sentence only apparently affirms Locke’s and Sieyès’ model of popular sovereignty. In fact, Kant brings it to solution: the people cannot delegate their sovereignty.

If the parenthesis is taken literally, then a final and, in a certain sense, also initial element of popular sovereignty (*erster Anfangsgrund der Volkssouveränität*) becomes recognizable in the reading: the double proposition of the impossibility of the external representation (*Fremdrepräsentation*) of the people as sovereign and legislator on the one hand, and of the necessity of the self-representation (*Selbstrepräsentation*) of the people as that same sovereign and legislator on the other.

This element is extremely substantial. On the one hand, it presents a fundamental critique of all non-democratic rule, *including* modern representative democracy. All these forms are equally impossible as forms of dominion. Kant hereby undermines not only the justification of the Prussian authoritarian state, but also of the French representative system. On the other hand, the element also claims that Rousseau’s radical democratic popular sovereignty is the only possible and at the same time the only *real* form of sovereign state rule. All other forms in human history existed only in appearance; only the originally sovereign peoples have ever commanded authority, even if they have been unwilling to admit it to themselves.

3 Explication and Conclusion

Now, I briefly explicate the two elements of this first and last *Anfangsgrund der Volkssouveränität* in terms of philosophy of freedom with a look back at Rousseau’s philosophy. First of all, the question arises as to why the external representation of the sovereign people is impossible. Rousseau’s answer, but also the general freedom-philosophical answer is: because such a delegation would mean slavery out of freedom. From the modern perspective of freedom, sovereign rule as a form of ultimate determination of the will is only possible through *authorization*.¹⁰ The ruled must make himself the author of the ruler’s actions, and more precisely, of *all* of his actions, so that the ruler can determine his will in the last instance, making rulership the expression of a supremely superior, sovereign will. This, however, does not only apply to state sovereignty, but to rule in general (as Rousseau (2010 [1762], I, 4) explained in the chapter on slavery of his ‘Contrat Social’). From the view of freedom, the immaturity of naturally mature people is only possible as a practice of freedom: as self-induced immaturity (*selbstverschuldete Unmündigkeit*). Another expression for this is slavery out of freedom.

Like Rousseau, Kant also thinks of this state in terms of the Roman republican tradition of freedom as a state in which people cease to be genuine actors capable of action (SKINNER, 2008, p. 11-13, 45-46, 97-98). Thus, the condition of being under a master (serfdom) is for him one in which the human being “ceases to be a *person*” (KANT, 1797, A194, B224). Kant (1797, AB 22-23) further speaks of “people without personality”, which in Kantian terms refers to the state of being only a “thing”, and thus of being no longer a person at all.

⁸ To my knowledge, Ulrich Thiele (2010, p. 103-126, especially 15-20) has presented the most coherent interpretation of this passage.

⁹ The translation by Mary Gregor is also used here. Emphasis is my own. In German: “Sobald aber ein Staatsoberhaupt, der Person nach (es mag sein König, Adelstand, oder die ganze Volkszahl, der demokratische Verein) sich auch repräsentiren läßt, so *repräsentirt* das vereinigte Volk nicht bloß den Souverän, sondern es *ist* dieser selbst”

¹⁰ The basic text in this respect is Hobbes’ *Leviathan* (2004), especially chapters 16, 17, 21 and 30. See also Skinner (2008), p. 108-9, and Duso (2006), p. 85-88. What characterizes the tradition of modern state thinking after Hobbes is: that it uses the authorisation technique as a matter of course, cf. exemplarily Locke (1988), § 134, but that in doing so it is far from maintaining the level of reflection from which Hobbes took the floor for this state technique in 1651.

Under these conditions, one must also imagine the state under non-democratic sovereignty: as one in which the people have all, without exception, disposed of their freedom quasi contractually qua 'political' authorisation and thereby constituted a state of will-less and ultimately externally controlled slaves.

Against this background, the French system of representation seems to be just another system of denial of freedom. For its allegedly democratic principle of representation is no other than the principle of representation qua 'political' authorization (DUSO, 2006, p. 86, 18-29). Viewed in this light, the French system, for all its revolutionary enthusiasm and the pathos of popular sovereignty, represents a simple repetition of the same old mistake, defying better judgment: that of trying to constitute a better, democratic form of rule by means of the familiar authoritarian principle of denying freedom. The old deficient structures are simply made permanent by the new form.

Both Kant and Rousseau, however, offer a decisive twist that gives the matter a surprising turn – one that, to my knowledge, only Kant, in the text-rhetorical agenda of his *Staatsrecht*, makes recognizable in its full consequence. The point is simply that a denial of freedom out of freedom is an impossibility: “a contract by which [... someone] would completely renounce all his freedom, thus ceasing to be a person, [...] would be self-contradictory, that is, null and void” (KANT, 1797, § 30,3).¹¹ This point is crucial for the judgement of all non-democratic forms of sovereignty as conceived by the modern tradition: as forms of rule, they are all impossible – but impossible is also the French representative system. In terms of the philosophy of freedom, such a system of negated freedom cannot exist. It is impossible.

This impossibility, however, not only guarantees the *possibility* of Rousseau's popular sovereignty, but also its *reality*. The self-representation of the people as the ultimate deciding, sovereign instance in the state is inevitable; the people take responsibility for their circumstances, whether they want it to or not. Seen in this light, Rousseau's popular sovereignty is not a concrete utopia in the sense that it is dependent on a historical founding act in order to become part of our social reality. Rather, it has been real and effective since and as long as the freedom of ultimate self-determination has existed.

However, one could easily take this to mean that non-democratic states and modern representative democracies do not and never have existed. This is obviously not the case. Rather, viewed from the perspective just presented, they are political systems for which a very specific basic contradiction is constitutive: In fact, they are founded on a 'political' authorisation that is supposed to constitute external domination. This is why they are systems of deliberate denial of freedom. Since such a constitution of rule (*Herrschaftskonstitution*) is impossible, however, external domination can only exist as a pseudo-domination. What actually rules are the common wills of the peoples – even if they are not aware of it, even if they may deceive themselves about it.

This basic contradiction of every non-democratic form of rule finally comes to light in modern representative democracy as a constitutional contradiction. Modern representative regimes are systems of declared popular sovereignty whose constitutions certainly provide democratic procedures for the formation and exercise of will by the people itself. However, modern representative democracy as we know it is also a form of rule in which the citizens of the state regularly relinquish their competence of final self-determination in public-law matters via 'political' authorization and thus exclude themselves as sovereign actors from political affairs.

Yet if the people have allegedly always been the sole sovereign and this is not to change in the future, what does this mean for democratic modernity as a constitutional project? Why do we need democratic constitutions at all if the democratic form of government has always existed? Are democratic procedures for the formation of popular will not thoroughly meaningless if the common wills of the people can prevail without these procedures?

The answer is simply: No. All this would only amount to a denial of popular sovereignty again. It should not be forgotten, after all, that the place of democratic self-representation is, according to the *Staatsrecht*, a true republic, which by its letter (*dem Buchstaben nach*) is just as much a modern representative democracy as the false republic of France. The true republic is also a “*representative system* of the people,” one in which, however, the freedom-negating qualities of external representation are suspended in democratic self-representation.¹² But getting there is still an unfulfilled task of modern representative democracy. Its future will be decided by it.

¹¹ In German: “ein Vertrag [...], durch den [...] jemand] auf seine ganze Freiheit Verzicht thut, mithin aufhört, eine Person zu sein, [...] ist] in sich selbst widersprechend, d. i. null und nichtig”

¹² This must not be confused with a simple demand for more 'direct democracy'. As numerous cases show, the common practices often lead to a 'political' representation of particular interests and not to a genuine democratic self-representation of the people. Rather, established structures of parliamentary representation need to be transformed in order to reach such a form of self-representation. In other words, democratic experimentalism is called for. This topic is taken up in a very productive manner by Hauke Brunkhorst (2022a; 2022b; see also EBERL, 2022). On democratic experimentalism, see Brunkhorst (1998).

References

- BREITENBAND, Detlef. **Konsens – der Grund der Legitimität**. Studie zu Kants und Habermas' Theorien der Legitimation des Rechts. Wiesbaden: Springer, 2019.
- BRUNKHORST, Hauke (ed.). **Demokratischer Experimentalismus**. Politik in der komplexen Gesellschaft. Frankfurt am Main: Suhrkamp, 1998.
- BRUNKHORST, Hauke. Radikale, das heißt selbstreflexive Demokratie als Selbstrepräsentation. *In*: FLÜGEL-MARTINSEN, Oliver; JÖRKE, Dirk (eds.). **Vom Nutzen und Nachteil der Politischen Theorie und Ideengeschichte**. Rainer Schmalz-Bruns zum Gedenken, Baden-Baden: Nomos, 2022a, p. 25-46.
- BRUNKHORST, Hauke. **Selbstrepräsentative Demokratie – Zur Gleichzeitigkeit von Volkssouveränität und Repräsentation**. Unpublished draft, 2022b.
- DUSO, Giuseppe. **Die moderne politische Repräsentation: Entstehung und Krise des Begriffs**. Translation: Peter Paschke. Berlin: Duncker & Humblot, 2006.
- EBERL, Oliver. Reflexive Demokratie als Theorie gesellschaftlicher Selbsteinwirkung ohne Reflexion hierarchischer Fremdeinwirkung? Anmerkungen zum Verhältnis von Staat und Demokratie. *In*: FLÜGEL-MARTINSEN, Oliver; JÖRKE, Dirk (eds.). **Vom Nutzen und Nachteil der Politischen Theorie und Ideengeschichte**. Rainer Schmalz-Bruns zum Gedenken. Baden-Baden: Nomos, 2022, p. 47-68.
- EISFELD, Jens. **Erkenntnis, Rechtserzeugung und Staat bei Kant und Fichte**, Tübingen, 2015.
- HANISCH, Christoph. Kant on Democracy. **Kant-Studien**, Mainz, vol. 2, p. 64-88, 2016.
- HENRICH, Dieter. Kant über die Revolution, *In*: BATSCHA, Zwi (ed.). **Materialien zu Kants Rechtsphilosophie**. Frankfurt am Main: Suhrkamp, 1976, p. 359-365.
- HIRSCH, Philipp-Alexander. **Freiheit und Staatlichkeit bei Kant**. Die autonomietheoretische Begründung von Recht und Staat und das Widerstandsproblem, Berlin: De Gruyter, 2017.
- HOBBS, Thomas. **Leviathan**. A Critical Edition by G. A. J. Rogers and Karl Schumann, Band 2, Bristol: Thoemmes Continuum, 2004.
- HOFMANN, Hasso. **Repräsentation**. Studien zur Wort- und Begriffsgeschichte von der Antike bis ins 19. Jahrhundert. Berlin: Duncker & Humblot, 1974.
- JOUNG, Ho-Won. **Volkssouveränität, Repräsentation und Republik**. Eine Studie zur politischen Philosophie Immanuel Kants. Würzburg: Königshausen & Neumann, 2006.
- KANT, Immanuel. **Metaphysische Anfangsgründe der Rechtslehre**, Königsberg: Nicolovius, 1797.
- KANT, Immanuel. **Metaphysische Anfangsgründe der Rechtslehre**. Zweite mit einem Anhang erläutender Bemerkungen und Zusätze vermehrte Auflage, Königsberg: Nicolovius, 1798.
- KANT, Immanuel. **Die Metaphysik der Sitten**, Werkausgabe VIII, Frankfurt am Main: Suhrkamp, 1968.
- KANT, Immanuel. **The Metaphysics of Morals**. Translation: Mary Gregor. Cambridge: Cambridge University Press, 2017 [1996].
- KERSTING, Wolfgang. **Wohlgeordnete Freiheit**. Immanuel Kants Rechts- und Staatsphilosophie, Paderborn, Brill, 2007 [1984].
- LOCKE, John. **Two Treatises of Government**, Cambridge: Cambridge University Press, 1988.
- MAREY, Macarena. The Ideal Character of the General Will and Popular Sovereignty in Kant. **Kant-Studien**, Mainz, vol. 4, p. 557-580, 2018.

MAUS, Ingeborg. **Zur Aufklärung der Demokratietheorie**. Rechts- und demokratietheoretische Überlegungen im Anschluß an Kant. Frankfurt am Main: Suhrkamp, 1994 [1992].

ROUSSEAU, Jean-Jacques. **Du contrat social ou Principes du droit politique. Vom Gesellschaftsvertrag oder Grundsätze des Staatsrechts**. Stuttgart: Reclam, 2010 [1762].

SIEYES, Emmanuel Joseph. Des intérêts de la Liberté dans l'état social et dans le système représentatif. **Journal de l'instruction social**, vol. 2, p. 33-48, 1793.

SKINNER, Quentin. **Freiheit und Pflicht**. Thomas Hobbes' politische Philosophie. Frankfurt am Main: Suhrkamp, 2008.

THIELE, Ulrich. Souveränität und Revolution. In: VOIGT, Rüdiger; SALZBORN, Samuel (eds.). **Souveränität**. Theoretische und ideengeschichtliche Reflexionen, Baden-Baden: Franz Steiner Verlag, 2010, p. 103-126.

THIELE, Ulrich. **Die politischen Ideen**. Von der Antike bis zur Gegenwart. Wiesbaden: marix Verlag, 2014.

WELSCH, Martin. **Anfangsgründe der Volkssouveränität**. Immanuel Kants ‚Staatsrecht‘ in der ›Metaphysik der Sitten‹. Frankfurt am Main: Klostermann, 2021.

WELSCH, Martin. Scheitern und Verstehen? Zum "Forgotten Kind of Writing"-Ansatz der Erforschung philosophischer Rhetorik. **Zeitschrift für Kulturphilosophie**, Hamburg: Meiner, 2022, p. 149-162.

Received on: 19.12.2022

Accepted on: 20.01.2023