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# Kant on Free Speech: Criticism, Enlightenment, and the Exercise of Judgement in the Public Sphere

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## Abstract

In this article, I offer a novel and in-depth account of how, for Kant, free speech is the mechanism that moves a society closer to justice. I argue that the criticism of the legislator preserved by free speech must also be the result of collective agreement. I further argue that structural features of judgements of taste and the *sensus communis* give guidance for how we should communicate publicly to succeed at the aims Kant has laid out, as judgements of taste, like politics, belong fundamentally to a transitional sphere between nature and freedom.

**Keywords:** Kant; free speech; enlightenment; progress; transition; judgement; taste

## 1. Introduction

Kant is well-known for his defences of the right of free speech. Despite a lack of systematic treatment of the topic in his political writings, we nevertheless find that it is of central importance to his theory of the state, of good governance, and of progress in bringing about a more just society. Free speech secures the legitimacy of state authority: he goes so far as to name it the ‘palladium’ of a peoples’ rights (TP, 8: 304).<sup>1</sup> It is what safeguards rights in general in a state and insures against Hobbesian absolutism. This is because free speech is the mechanism by which a people may register its dissent with those who govern. Such dissent, however, is meant to be instructional for legislators and aimed at justice – it is meant to bring about laws, practices, and institutions that better accord with norms of universality. As the instrument of such progress, free speech secures our ‘original vocation’, such that taking it away would be ‘a crime against human nature’ (WA, 8: 39).

Free speech is not only for exercising criticism of governance, however. It is also the means by which a populace can enlighten itself. In fact, as I aim to show here, Kant argues for a deep and inextricable interconnectedness between these two principal functions of free speech. Scholars have typically focused on one or the other of these features in their writings – especially, perhaps, on the link between discourse and public enlightenment.<sup>2</sup> In this article, however, I argue that these two aspects of free

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speech must be understood together given Kant's articulation of the ideal political community. This ideal political community is one in full conformity with reason, where the laws have attained the form of universality, and the citizens have authorized and consent fully to them. In practice, the touchstone for this measure is given, according to Kant, in asking 'whether a people could impose such a law upon itself' (WA, 8: 39). Here, I will argue that free public discourse is how this norm (however asymptotically) comes to be instantiated in practice. In this, the aim of free speech is for a public collectively to come to agree, as much as possible, on its recommendations to the sovereign. This agreement cannot be merely widespread shared opinion, but rather must be the kind of agreement that constitutes the exercise of *good judgement*.

The aim of collective enlightenment – indeed, of agreement – as the ideal ground of criticism brings into relief a further problem, one treated only cursorily by Kant himself: how should we speak when we engage in public discourse? The difficulty of this problem comes into further relief when we emphasize the systematic place of free speech for Kant, namely it is the very site of reason's efficacy in the world. The arc of Kant's practical philosophy can be traced along reason's ever-outward reaching scope to remake the world into its image, attendant with the apparent impossibility of such a task.<sup>3</sup> The sphere of politics – of right and law – is one moment in reason's attempts to transform nature into a rational whole. But, as Kant scholars are well aware, the *problem* of reason's efficacy in the world is likewise central to the critical enterprise. Free speech is meant to be the very mechanism of reason's causality in the political order. As Hans Saner argues, free speech 'is the sole inalienable right which every sovereign must accord to his subjects, in the interests of all, *if there shall be reason in the world*' (1973: 239, my italics). Free speech is how reason may come to be the cause of the rational institutions to which we belong, and thus, how such speech is practised must be understood by way of the systematic concerns Kant holds in his critical project. In answer, then, to the question of 'how should we speak?', I suggest that we turn to the third *Critique*, which Kant expressly argues offers a *transition* between reason and nature. Indeed, Kant's famous opening to the third *Critique* reminds us of the practical demands to which we are subject in making reason real in the world, the obstacle we confront in realizing these demands, and the importance of judgements of reflection in overcoming this obstacle:

Now although there is an incalculable gulf fixed between the domain of the concept of nature, as the sensible, and the domain of the concept of freedom, as the supersensible, so that from the former to the latter . . . no transition is possible . . . yet the latter **should** have an influence on the former, namely, the concept of freedom should make the end that is imposed by its law real in the sensible world; and nature must consequently also be able to be conceived in such a way that the lawfulness of its form is at least in agreement with the possibility of the ends that are to be realized in it in accord with freedom. (KU, 5: 176)

If free speech is going to function as the concrete causal mechanism by which reason is made real in the world, I argue, we must speak in accord with its transitional and transitioning character. What this character is can be discerned in the power of

judgement – and its pure form of judgement in reflective judgements – as described in the third *Critique*.

The turn to the third *Critique* as a resource for political thought in Kant was famously proposed by Hannah Arendt. Arendt, too, focused her attention on the centrality of the public sphere for political life. Her motivation, however, was starkly different from anything Kant would recognize as a legitimate political concern: the *particularity* of human beings. Kant, rather, is concerned with what is universal about human beings and the achievement of universal norms to govern just that. These differences are crucial to understanding certain important connections between the exercise of free speech and judgements of taste. While Arendt is concerned with inter-subjectivity as such, Kant is concerned with a practical rule given in reason itself. They thus propose different measures for success in political life: for Kant, it is coming into accord with reason, and for Arendt, it is coming into accord with particular others. Where Arendt nevertheless finds kinship with Kant is that both of the measures they lay out are met in establishing agreement *without* objective measure. But they each take the lack of objective measure to come from different sources. For Kant, it is from the unconditioned character of reason and its relation to the natural order, and for Arendt, from the irreducible plurality of human subjects. Thus, public discourse for Kant aims at a collective bringing reality closer to reason, and not individuals into better relation with one another, as for Arendt. The agreement sought for Kant, then, aims at good judgement about what is *rational* to do.

It is nevertheless the fact that reason does not have a legislative and determining relation to the world that necessitates that public discourse be carried out in a certain mode. Reason, Kant insists, ‘needs attempts, practice and instruction’ to progress in the world (IaG, 8: 19). I argue here that the modes of discourse requisite to such concretization are given in structures specific to judgements of taste, which likewise aim at agreement without determinate objectivity. These are humility about the lack of objectivity of our judgements; confidence in eventual mutual agreement; recognition of the shared world to which we belong and a common way of being in this world. These are the structures Kant outlines, respectively, for the self-relation involved in judgements of taste; the relation we have with particular others in such judgements; and the broader, universal human community that underlies all such communication to begin with.

## 2. Bringing about the ‘system of freedom’

Kant marks the sphere of right – the political – as belonging as a part of a ‘system of freedom’ (MS, 6: 218). This system of freedom constitutes the unconditioned end of reason in the human will and includes individual virtue, the highest good, the sphere of right, and religion. Kant takes his Doctrine of Right to be a ‘metaphysics of right’, which is a ‘system derived from reason’ (MS, 6: 205). The metaphysical principles in the Doctrine of Right, however, are meant to be brought into being in the world through practice, application, and judgement. The Doctrine of Right in *The Metaphysics of Morals* – Kant’s principal and most sustained work in political theory – is what we may now refer to as ‘ideal theory’. That is, he puts forth not only the transcendental and metaphysical grounds that legitimate a state and its exercise of authority, but he

also argues for what the norms of the ideal political community are. These norms are meant to govern our external freedom – the choices of our will whose causality in the world affects the ability of others, too, to use their external freedom. These norms ultimately take shape in governmental institutions and laws. In the ideal state, he argues, these must conform to the principles of reason and the concept of right; specifically, just laws are laws that are genuinely universal. Right, he asserts, ‘is therefore the sum of conditions under which the choice of one can be united with the choice of another in accordance with a *universal law of freedom*’ (MS, 6: 320, my italics). The government that best promotes such laws is republican, which involves a separation of powers and is representative.<sup>4</sup> This form alone preserves the original contract and legitimacy of the state, which is predicated upon a people giving the law unto itself (see ZeF, 8: 350ff., MS, 6: 311ff.).<sup>5</sup>

As this ideal of the state, however, is not met in reality, there must be a mechanism to advance laws and institutions toward it. This is not the question of how a state is first established, or even what grants authority to the body that legislates. Rather, it is a concrete question: in an already established state, how do laws and institutions become more just? Kant famously eschews violence as a solution and disavows a possible right to revolution. This is because all rights derive from the constitution of a civil condition. Violence is contrary to right itself, and revolution puts out of effect such a constitution and civil condition altogether, fundamentally returning us to a state of nature and a condition without any rights. Violence as a means of political change is not only a violation of a right; it violates the condition of the possibility of right itself. As Lewis White Beck puts it in his now seminal examination on ‘Kant and the Right of Revolution’, ‘Revolution abrogates positive law; therefore positive law and its system condemn revolution. Revolution means a return to nature, which the contract establishing positive law renounces’ (1971: 414).

The question of how laws and institutions are changed refers us to the creation of laws in the first place in Kant’s theory of the state. Kant argues for a republican form of government, namely, the ‘separation of the executive power (the government) from the legislative power’ and from the judiciary (ZeF, 8: 352). It is the legislating power that has sovereignty, as its ‘authority can belong only to the united will of the people’ (MS, 6: 313). The legislator may be one person for Kant (indeed, he regularly refers to it as a single person) – there is no requirement that there be a body of legislators. On the one hand, citizens do vote for the legislator – it is through this that they are considered ‘colegislator[s]’ (MS, 8: 294), a status from which the criteria for citizenship are derived. On the other hand, the legislator has full autonomy with respect to the laws:

A head of state must be authorized to judge for himself and alone whether such laws pertain to the commonwealth’s flourishing, which is required to secure its strength and stability both internally and against external enemies, not in order, as it were, to make the people happy against its will but only to make it exist as a commonwealth. Now the legislator can indeed err in his appraisal of whether those measures are adopted *prudently*, but not when he asks himself whether the law also harmonizes with the principle of right; for there he has that idea of the original contract at hand as an infallible standard. . . . For,

provided it is not self-contradictory that an entire people should agree to the law, however bitter they may find it, the law is in conformity with right. (TP, 8: 298–9)

For Kant, the legislator, of his own accord, is the source of the laws, and it is the legislator who has authority over those who rule – who administer governmental institutions (MS, §49). His authority and legitimacy are derived from the united will that gave rise to the civil condition in the first place, and his judgement is meant to conform with that standard.

Kant's argument about progress in legislation is best laid out in his 'On the Common Saying: That May be Correct in Theory, but It is of No Use in Practice'. Crucially, the context for this particular discussion about progress within a state is part of a broader analysis Kant means to give about how it is that seemingly abstract ideals can be brought into being in reality. The purpose of this essay, as Kant announces in its Introduction, is to present the 'relation of theory to practice' in different arenas of practical life. More specifically, he argues that there must be a 'transition' between theory – here, a 'sum . . . of practical rules' – and practice, a means by which we discern whether something is a case of a rule (TP, 8: 275). It is *judgement* that provides such a function, in keeping with his descriptions of that faculty both in the first *Critique* as well as the third. In the third *Critique*, we find that Kant develops his system, in fact, with reference to the mediating and transitional function that the power of judgement plays (KU, Introduction II-IV).<sup>6</sup>

The argument in 'On the Relation of Theory to Practice in the Right of a State' follows the movement from the ideal of the state, to the origin of laws and then to their improvement. The section begins with the establishment of a civil constitution out of a united will, gives the principles to which right must conform (*freedom, equality, independence*; TP, 8: 290), posits the legislator as the source of these laws, and free speech as the *necessary* source of correction for the legislator. Kant's target here is Hobbes' view that the 'head of state has no obligation to the people' (TP, 8: 304). On the contrary, Kant argues that the legislator must repetitively enact the origin of their very legitimacy by giving 'laws in such a way that they could have arisen from the united will of a whole people and to regard each subject . . . as if he has joined in voting for such a will' (TP, 8: 297). We find this measure given over and over again in Kant's writing about the activity of the legislator, i.e., the judgement they render takes this 'practical rule' against which laws are tested as cases: 'whether a people could impose such a law upon itself' (WA, 8: 39).

The legislator, however, is only human and, as such, is subject to error in the exercise of their judgement about whether a specific law is a case of the rule. While they cannot err, it seems, about the standard or measure of the law, the application of the principle to actual laws is subject to the vicissitudes of human finitude. Kant argues that 'to assume that the head of state could never err or be ignorant of something would be to represent him as favored with divine inspiration and raised above humanity' (TP, 8: 304). It is precisely because of the finitude of human judgement that Kant immediately follows with a prescription for free speech: 'Thus *freedom of the pen* . . . is the sole palladium of the people's rights' (8: 304); it is a right to 'make known publicly . . . what . . . seems to him to be a wrong against the

commonwealth' (8: 304). Kant continues to emphasize the need the legislator has for input in the rest of this section of the essay. He argues that to deny freedom of speech is to withhold crucial knowledge the ruler needs to govern, 'all knowledge of matters that he himself would change if he knew about them'; and also that such knowledge is 'require[d] for its own essential purpose' (8: 305). That is, freedom of speech is necessary for government to fulfil its vocation in securing a universal system of rights.

While Kant does not invoke his theory of the necessary relation between communication and thought here, we can see that it must be a premise of his assertion that the legislator can err in the use of their judgement. The question we must answer is: what is the character of this errancy? There are, I think, two principal possibilities. One is *empirical*: the legislator must be able to find out in practice how laws and institutions are affecting the citizens, that is, what the consequences of legislation are. In her essay outlining the scope and limits of the public and private aspects of the right to free speech, Helga Varden appears to invoke this condition for errancy in her discussion of why free speech is necessary to aid the legislator in making good laws. She writes, 'It is only through public discussion protected by free speech that the public authority can reach enlightenment about how and whether its own laws and institutions *really do* enable reciprocal freedom under law for all' (2010: 49–50; my italics). She likewise goes on to note that the legislator needs 'knowledge of how the decisions affect the citizens' (2010: 50). The second possibility is *a priori*: the errancy is an inherent feature of individual judgement about the relation of rules to cases. This inherency is predicated on the impossibility of bringing the rules of reason to bear determinately on concrete cases without engagement with others in speech about the matter. Kant, I submit, emphasizes this second possibility. Human understanding, as finite and inevitably errant, is contrasted with 'divine inspiration'. Human errancy is rooted in his doctrine of the faculties (in particular the unconditioned character of reason, which cannot be accessed by the understanding and which likewise does not relate directly to reality) and is evidenced in his emphasis on communication in the cultivation of our discernment of what reason requires.

Even when an empirical dissatisfaction or experience of injustice leads to a grievance, this grievance must be adjudicated.<sup>7</sup> That is, a grievance must be subject to *judgement* – the legislator still must ask whether the plaintiff's claim of a 'wrong against the commonwealth' is a case of injustice. Kant's claim about errancy invokes his insistence on communal deliberation as key to good judgement; errancy is a constitutive possibility of the use of judgement to apply rules to cases that can only be curtailed through dialogue with others. While Kant is well-known for arguing that the demands of reason are absolute, he likewise argues that human beings only come to be able to grasp these demands *in concreto* dialogically and over generations. Onora O'Neill's account in *Constructions of Reason* is one of the most systematic on the topic, and there she argues that 'the emergence of standards of reason is a gradual matter' (1989: 40). *Thinking, Kant argues, is something we must do together in order to do it well.* This is part of his defence of free speech in his 'What Does it Mean to Orient Oneself in Thinking?' essay:

The freedom to think is opposed first of all to *civil compulsion*. Of course it is said that the freedom to *speak* or to *write* could be taken from us by a superior

power, but the freedom to *think* cannot be. Yet how much and how correctly would we *think* if we did not think as it were in community with others to whom we *communicate* our thoughts, and who communicate theirs with us! Thus we can very well say that this external power which wrenches away people's freedom publicly to *communicate* their thoughts also takes from them the freedom to *think* – that single gem remaining to us in the midst of all the burdens of civil life, through which alone we can devise means of overcoming all of the evils of our condition. (WO, 8: 144)

Kant could hardly be clearer in this passage that thinking well is dependent upon dialogue – communicating one's thought with others and listening, in turn, to theirs. We must test our ideas and measure them against and with others. Kant forwards this view not only in his more occasional essays, but even in the first *Critique*. Of freedom of speech, he argues:

To this freedom, then, there also belongs the freedom to exhibit the thoughts and doubts which one cannot resolve for judgment without thereupon being decried as a malcontent and a dangerous citizen. This lies already in the original right of human reason, which recognizes no other judge than universal human reason itself, in which everyone has a voice; and since all improvement of which our condition is capable must come from this, such a right is holy, and must not be curtailed. (*KrV*, A752/B780)

The sole responsibility and authority of law-making may fall to the legislator. However, the capacity of the legislator to bring to bear the principle of reason on laws that actually shape our external freedom in relation to each other is limited. This finitude is overcome only insofar as the legislator is able to receive good counsel from the people.

### 3. Collective enlightenment

Now that we have laid out the principal context in which Kant introduces free speech, we can turn more specifically to how Kant describes the purpose of free speech and how it is meant to work, before turning to the particular features that would constitute successful speech in the final section of this article. From the perspective of the ideal state, we have seen that free speech functions as a necessary means to the proper exercise of the judgement of the legislator. That is, the legislator's judgement about whether the principles of right are being met in actual laws needs the supplement of the judgement of the citizens. To this end, free speech, in one regard, is meant to offer critical instruction to those who govern with the aim of improving our laws and institutions. In another regard, this speech is not simply the speech of individuals, but is meant to be a *collective* endeavour. The 'improvement of our condition', Kant insists, comes not from insightful individuals, but from a thinking public that has enlightened itself through dialogue. I will here argue that the recommendations made to the legislator are meant to come from a public that has, at least to some degree, reached *agreement* in their judgement about the application of reason to present laws and institutions. Free speech thus has an inherently dual

directionality – individual members of the public addressing each other to come to a good judgement, and this collective then addressing the sovereign. If the legislator is meant to measure the creation of laws against a united will, the public is likewise meant to approximate a united will in arriving at a *collective* good judgement about what to do.

We find this dual directionality in Kant's 'What is Enlightenment?'. The basic question free speech addresses is: how is it possible to bring about positive political change? It is an old question in political philosophy, but one that returned with renewed urgency in the Enlightenment during the establishment of new governmental regimes and a new, democratic, spirit. Genuine political change and progress toward ideals of justice require two interrelated and mutually dependent things: a just form of government and a body of citizens with the capacity to construct good laws and promote that government's aims. The problem, though, is how to cultivate citizens with such a capacity without already having good laws and a good government in place, and vice versa. The severity of the problem is evidenced in the proposition from Book VII in the *Republic*, in which everyone over 10 years old is sent away, and the philosophers take over the rule of those children remaining in order successfully to begin a city that can attain justice (Plato 1968: 541a-b).<sup>8</sup> Enlightenment is the Modern era's attempt to solve this age-old problem and is thus the name for this dialectical process of gradual and mutually reinforcing improvement.

Kant famously opens his 'Enlightenment' essay with a definition: '*Enlightenment is the human being's emergence from his self-incurred minority. Minority is inability to make use of one's own understanding without direction from another*' (WA, 8: 35). Enlightenment is thus the process of human beings becoming able to think and judge for themselves. Notably, Kant explicitly argues that this is not an individual project, but rather a collective one: 'that a public should enlighten itself is more possible' than for an individual (WA, 8: 35). Here, as in the 'Theory and Practice' essay, Kant's hidden premise is his conception of reason as in need of dialogue and testing in order fully to develop. Thus, the enlightenment that belongs to an individual, that is, 'the maxim of always thinking for oneself' (WO, 8: 146n.; cf. KU, 5: 294), succeeds only in virtue of thinking publicly. Thinking for oneself – specifically, thinking properly or correctly for oneself – requires thinking with and alongside others. The use of one's own reason is already dependent on interaction with others. As Katerina Deligiorgi has it, there is an 'irreducibly *social* dimension of critical self-reflection' (2002: 148). Andrea Esser observes this aspect of Kant's notion of Enlightenment as well: 'Thus "Enlightenment" is defined by Kant as an essentially social process which can be accomplished by individual persons only in connection with other individuals' (2016: 73). We see this too in the maxims of enlightenment, where he includes the need both to think for oneself and 'to think in the position of everyone else' (KU, 5: 294). The overcoming of one's own limitations is found only in the elevation we meet in communication with others – it is no accident these maxims are invoked in Kant's discussion of the *sensus communis*, which is expressly about the possibility of communicating with others in the first place. These suppositions about the public character of thinking and its cultivation are thus built into Kant's claim in the 'Enlightenment' essay that 'a public should enlighten itself . . . is inevitable, if only it is left its freedom' (WA, 8: 36).

Yet he qualifies how public enlightenment should proceed, namely 'slowly', so as to bring about a 'true reform in one's way of thinking' (WA, 8: 36). If the process is

engaged in too quickly, the inability to reason well will simply lead to ‘new prejudices’ replacing the old. Kant famously defines enlightenment as ‘[l]iberation from superstition . . . liberation from prejudices in general’ (KU, 5: 294; he also opposes enlightenment and superstition at WO, 8: 145). Not only, then, does the development of reason require dialogue and communication with others, it must work itself out over time in order to succeed. Going too quickly simply trades one set of superstitions or prejudices for another. This is what leads Kant to claim in the ‘Universal History’ essay that ‘reason itself does not operate instinctively, but rather needs attempts, practice and instruction in order *gradually* to progress from one stage of insight to another’ (IaG, 8: 19; my italics). As the application of reason requires incremental stages to progress, improvements must be made only gradually. We can see then that it is not a question of *what*, specifically, one holds about a matter at issue. Rather, becoming enlightened is a *manner* or way of thinking about things that is unprejudiced. In his *What is Enlightenment*, Samuel Fleischacker nicely emphasizes this aspect of Kant’s account, making a distinction between being ‘well informed’ and enlightened. Being enlightened focuses ‘on how we know rather than what we know’ (2013: 23). This ‘how’ requires that we enact enlightenment gradually, deliberately and communally.

The thing that will facilitate this process of the populace becoming more enlightened in their way of thinking is the guarantee of the public use of reason, namely the freedom to speak publicly. Public discourse answers, then, to how the citizenry becomes the kind that can initiate good laws and institutions. All of the examples in the ‘Enlightenment’ essay are constituted by two aspects: the addressee and the subject matter. The addressee of free speech is the *public*, namely other citizens. The subject matter of free speech is a defect in the laws and institutions to which we are subject. For example, he argues that the public use of reason is for ‘making remarks about errors [in the military . . .] and putting these before the public for appraisal’; ‘express[ing] . . . thoughts about the inappropriateness or even injustice of [tax] decrees’; ‘communicat[ing] to the public . . . carefully examined and well-intentioned thoughts about what is erroneous’ in church doctrine (WA, 8: 37–8).

This does not, however, answer yet to the initial purpose of free speech indicated in the ‘Theory and Practice’ essay, namely to make a recommendation to the sovereign. When Kant finally does turn to the moment when an enlightened public makes a recommendation, however, it is a most remarkable passage summing up, in practice, how Kant envisions political change to be effected (the example he gives is with respect to religion). In the context of a less than perfect state, the public must abide by whatever order has already been issued. This is nothing other than his initial claim that citizens must conduct themselves with an ‘artful unanimity’ and that we are bound to obey the law, even as we argue. But he goes on:

[D]uring that time each citizen, particularly a clergyman, would be left free, in his capacity as a scholar, to make his remarks publicly, that is, through writings, about defects in the present institution; meanwhile, *the order introduced would last until public insight into the nature of things became so widespread and confirmed that by the union of their voices (even if not all of them) it could submit a proposal to the crown . . .* (WA, 8: 39; my italics).

Here, we finally find that speech is directed toward the sovereign. It is so, however, only after the public has considered the matter. The end of this consideration is described remarkably by Kant: public insight into the nature of things, where this insight is not only widespread but validated as a good judgement in the fact that it is widespread. It is not enough simply to be able to make recommendations to the legislator. The legislator, we have already seen, may err in their judgement. Individuals, too, may be errant in theirs. If the task is to approximate justice by way of correct application of the rule of universality to specific laws, then at some point we must be concerned not just with criticism or judgement, but with *good judgement*. It will be good judgement that can discern whether a case is an instance of a rule and thereby allow for reason to come to be present in reality more fully in laws. Further, the good judgement of the collective can only be met through robust discourse and will be evidenced by widespread agreement.

Kant thus proposes that free speech aims to reach a particular kind of agreement. It is not a contingent agreement, where each of us happens to share the same view, opinion, or ideology. Rather, it is an agreement predicated on an insight into the nature of things, that is, agreement formed by shared good judgement that we have reached together, about whether something is or is not a case of a practical rule. We can sharpen this idea by way of contrast, of a sort, with Deligiorgi's description of the relation between legitimacy and publicity. While she rightly emphasizes the communal character of proper thought in her account of Kant's view of enlightenment, she nevertheless contrasts Kant with Rousseau on law-giving. For Rousseau, laws are produced by the united will of the people. For Kant, however, this is not the case, but only 'must be regarded as if they had been agreed by them' (2005: 67). She goes on, 'Kant thus replaces the need for actual agreement, which is the defining feature of Rousseau's participatory political model, with the idea of a possible agreement that functions as a limiting condition for the legislator' (p. 67). This is, of course, correct about the legislator, as we have seen above. For Rousseau, the act of law-giving is in fact a re-enactment of the original contract each time; for Kant, that simply gives the measure.

But when we consider the necessity of community for good judgement, which is then what gets put forward to the legislator as a recommendation, we find that Kant is closer to Rousseau than we might initially think. Agreement, in the context of judgement – the application of a universal or rule to a particular or case – is something actively produced and not passively observed. While Kant may not *require* agreement for legitimacy, given his views on discourse, thought and agreement, free speech as outlined here is certainly recommended as a kind of best practice. Agreement functions like a mark of legitimation. When we look at agreement in the Critique of Aesthetic Judgement, we find that it serves as a kind of 'proof' that our judgement of taste has correctly subsumed the object under the conditions for taste (KU, 5: 290). To assert a judgement of taste, which is grounded on a subjective feeling, one need not actually wait for the consent or assent of others (5: 216, 237); but he argues that each of us nevertheless 'solicits assent from everyone else' in order to confirm our '[wish] that everyone should approve of the object in question' (5: 237). Kant's idea here is predicated on his association of communicability with truth. He writes, 'Cognitions and judgments must, together with the conviction that accompanies them, be able to be universally communicated, for otherwise they would

have no correspondence with the object: they would be a merely subjective play of the powers of representation, just as skepticism insists' (5: 238). There is something remarkable about this claim, namely, objectivity is underwritten by communicability – the inter-subjective validity is what gives the proof of the truthfulness of a claim. Likewise, in his analysis of opinion, knowing and believing in the first *Critique*, he argues that for judgements that are not knowledge claims, we can still hold them to be true. They have a 'touchstone' of truth in communicability: the 'possibility of communicating' a judgement is that 'through which the truth of a judgement is proved' (*KrV*, A820-1/B848-9). Agreement in speech serves as a living measure of the rightness of the use of judgement for Kant and thus also in the public sphere. I think what Kant is getting at here is in some way a mundane experience we all have. When a course of action remains unclear to us, we may discuss it with someone else. Through that discussion, two people are likely to arrive at a shared, agreed-upon judgement about what is best to do. No determinate measure may be given to adjudicate the judgement, but the mere fact of coming to agreement about it solidifies and even indicates the rightness of the judgement made: both parties have gained insight into the nature of things and how to proceed.

Judgement, then, which is about the relation of a particular to a rule, not only is sharpened by public discourse but also even more than this finds a mark of legitimacy in the agreement reached. In this way, the recommendations made to the legislator that are arrived at through free public deliberation are not merely the view of a majority, but the majority has arrived at insight about the nature of things. They have become enlightened collectively about a matter.

#### 4. Proper formation of public speech

The aims of free speech we have just argued for entail speaking in a certain way. Free speech aims at collective agreement about a good judgement with regard to whether a law or institutional practice is a case of the rules of practical reason given in a theory of right. These aims, further, are taken to be met when we find widespread agreement or conviction about the soundness of the judgement being made; recommendations that have achieved insight into the nature of things are those made through the open discourse of an enlightened populace. Indeed, for Kant, such open discourse is a requirement for coming to a good judgement. How, then, ought we speak when our aim is not to communicate or even reach a determinate cognition, but precisely to communicate in a sphere that is, constitutionally, indeterminate? And, even more than this, a sphere whose *a priori* indeterminacy is meant nevertheless to bring us closer to the norms of reason? Other scholars have observed the need to lay out an answer to the question: how should we speak? Fleischacker, for example, argues that one needs 'to understand the modes of argument and evidence gathering established in her society' (2013: 169). O'Neill, in *Constructions of Reason*, emphasizes the role of communication in Kant's theory of the development of reason as well as in the improvement of our civic institutions. She further recognizes the need for, but at same time lack of, pre-given rules we can apply:

Because the structure of human communication is not preestablished, its conduct is a *practical* problem. We are not guaranteed coordination with

others, so we must ask which maxims or practical principles can best guide us when we seek to communicate, and must try to avoid principles that could not regulate communication among a plurality of separate, free and potentially reasoning beings. If we find such ‘principles of communication’, their justification must be recursive; they will simply be principles by which practices of communication can be maintained and developed rather than stultified. (O’Neill 1989: 43)<sup>9</sup>

I will answer this question by turning to Kant who describes the use of *judgement* in a judgement of taste. In this section, I will first lay out why the third *Critique* is the proper place to turn for guidance about how to speak in such an indeterminate sphere and then outline what those features are that the text recommends.<sup>10</sup>

I am not the first to observe the potential the third *Critique* may harbour for instructing us in efficacious political speech. Hannah Arendt likewise argues that there are resources for the political in Kant’s third *Critique*, principally for the public sphere.<sup>11</sup> However, Arendt’s aims for political life differ from Kant’s in fundamental ways that inform her appropriation of the third *Critique*, and thus form a helpful contrast with what I argue here. Arendt’s interest in the third *Critique* is principally in securing the possibility of the *plurality* of human individuals having a sphere into which they may each enter in their particularity. She turns to Kant’s notion of judgement because she (rightly) finds that it allows for agreement without objective measure. As James P. Clarke argues of her turn to Kant on judgement, it ‘holds out the possibility of agreement, even in the absence of objective criteria . . .’ (1994: 142). Her emphasis on accommodating plurality leads her, then, to privilege inter-subjectivity and *inter-subjective agreement*. When she describes the aim of communication in the public sphere, for example, it is for a movement through *particular standpoints* (Arendt 1992: 43ff.). She returns to these particular others when she describes judgements of taste as reflecting upon ‘others and their taste, [and taking] their possible judgements into account’ (p. 67). This differs from Kant’s clear emphasis on reason and rationality as both ground and measure of political life. Arendt thus offers the following criticism of Kant’s understanding of the new, more general standpoint we reach through public discourse: ‘It does not even tell one how to apply the wisdom, found by virtue of occupying a “general standpoint,” to the *particulars* of political life’ (p. 44; my italics). Andrew Norris’s essay comparing Kant and Arendt drives it home repeatedly that Kant’s political philosophy is unable ‘to meet legitimate Arendtian demands for plurality’ (1996: 168). However, Arendt’s criticism of Kant reveals a deep difference between their aims and what we are doing when we speak in the public sphere. For Arendt, the *agreement itself* is the goal of the inter-subjectivity of the public sphere.

For Kant, however, judgement does not find its *telos* in mere agreement, but in agreement about a matter, where this agreement is indicative of the proper use of the faculty as relating universals to particulars. And it is in such exercise of judgement that it fulfils its function as a faculty, namely to allow for a transition between freedom and nature. Thus, there are deeper, systematic issues that recommend turning to the third *Critique* given Kant’s *own* aims.

Judgement offers a transition between nature and freedom – between how things are and how they *ought to be* – in virtue of its independence as a sphere of human life. Nature (cognition) and freedom (moral judgements) belong to what Kant names

'domains', and are both determining judgements. That is, they both are properly legislative in that they are characterized by the successful and legitimate enforcement of rules or laws over a set of objects (KU, 5: 174). Nature is the domain where objects are lawfully subject to the rules of the understanding; freedom is the domain where objects are lawfully subject to the rules of reason. In these domains, errancy is not at issue. By contrast, he names the sphere of judgement proper – which finds its fulfilment in its reflective capacity – a 'territory', where there is no delineated set of objects which are subject to being legislated over. With this in hand, we can see that laws or government practices are not *determined* by the practical rules of reason, but are only *judged* to be cases of them or not. Reason only has a determining relation to the human will, namely itself. It does not and cannot determine objects in the world. For reason to relate to things in the world, then, the relation needs to be mediated by judgement, which judges whether something is a case of a rational rule. Thus, while political judgements are not what Kant will call *merely* reflective judgements, as they maintain a reference to a practical rule, they nevertheless remain in the territory on account of not belonging to a legislative domain. The use of judgement in this context brings the way things are closer to the way they ought to be – that is, transitions nature towards freedom – by holding them up to and then remaking the law with reference to reason itself. In this, too, there is no further rule or proof we can give as to why we have made the judgement we have. Insofar as judgements of taste are the pure enactment of judgement itself, they are instructive about its proper structure and use, and therefore can serve as a model for how to come into agreement about a matter that remains without proof.

Significantly, Kant holds that we can only be successful in this when we transform and enlarge our thinking in order to move beyond the way things *are* – either specific laws and institutions or our own established prejudices – toward how things *ought to be*. Kant associates just this expansion or enlargement of our thinking with the exercise of judgement.<sup>12</sup> It is this growth in thinking that he names the 'original vocation' of humanity in the Enlightenment essay, namely, for us to 'enlarge our cognitions' as a condition of improving our institutions (WA, 8: 39). Progress in reason is an expansion of our thinking – the path to overcoming our prejudices and commitment to the current way things are. Kant uses the term 'to enlarge' or 'to expand' (*erweitern*) to describe not only the development of our thinking over time in this context, but, notably, it is the word he uses in the third *Critique* to describe the broad-minded way of thinking we cultivate through engagement with the arts (specifically, aesthetic ideas: KU, 5: 315) and, too, the word he uses to describe synthetic *a priori* judgements in the first *Critique*. In all cases, something is *added* to our way of thinking in the expansion of concepts. Progress requires good judgement about the application of the rule of reason to our current situation, which simultaneously requires that we expand the way we currently think. Crucially, that our goal in public speech is the enlarging or expanding of our thought suggests that public discourse ought to be *transformative*, and not merely a 'debate' we must win.

What are the features of the exercise of judgement, as found in Kant's account of judgements of taste, that give insight into how we should speak to achieve these aims? Judgements of taste, Kant argues, have what he calls 'two peculiarities'. On the one hand, we make claims about beauty *as if* they were objective, that is, 'with a claim to the assent of everyone else' (KU, 5: 281). On the other hand, and at the same time, we

understand that our claim is ‘not determinable by grounds of proof at all, just as if it were merely subjective’ (5: 284). When we claim that something is beautiful, we do so with a sense of conviction of our own rightness; but we also recognize that this sense has no ground outside of us in anything objective that we can appeal to in order to prove it to others. Indeed, when we claim that something is beautiful, we comport ourselves to our own judgement in two seemingly contradictory ways: on the one hand, we expect that others should agree with us; on the other hand, we recognize that there is a good chance that others will not agree with us. These two features open up the possibility for *arguing* but also for coming to agree. In describing the ‘antimony of taste’, Kant draws this distinction: ‘It is possible to argue about taste (but not to dispute)’ (5: 338). To dispute (*disputieren*) is only ‘feasible’ when there are ‘determinate concepts as grounds of proofs, and so [one] assumes objective concepts as grounds of the judgment’ (5: 338). In a dispute, one attempts to prove they are correct by way of the objective concepts employed. Since in these cases there are no such concepts, we are permitted only to argue (*streiten*). Yet, in arguing, we still have ‘hope of coming mutual agreement; hence one must be able to count on grounds for the judgment that do not have merely private validity and thus are not merely subjective’ (5: 338). A dispute aims at proving one’s rightness; arguing aims at coming to mutual agreement, which, as we saw above, is what gives legitimacy both to the judgement made as well as to the appeal from the people to the government.

For Kant, proper political discourse shares these peculiarities. While political speech is expressly about the rational measure of particular laws or practices, their rightness or wrongness is not given objectively nor logically, despite our inner conviction that we have a moral ground for our insight. Moral ideas of political justice are not *objectively evident*. Kant is clear that the application of the practical rules of right to particular cases of law or practices are instances of judgement, and that the legislator (and other individuals) can err. This recommends that when we engage in speech in the public sphere, we do so explicitly embodying a cognizance of the kind of claim we are making – one that is not subject to objective determination. Political judgements, like judgements of taste, are not subject to a regime of ‘truth’ or ‘falsity’, they are not given to *disputes*. We are making a claim that is inherently contestable in virtue of the possibility of errancy, with no objective determination by which to adjudicate it, while at the same time one for which we can hope of coming to ‘mutual agreement’. Indeed, as we saw above, it is agreement that can provide a mark of a judgement’s rightness. It is, for sure, a strange middle ground to stand on in this transitional sphere. But we do this, Kant thinks, whenever we discuss a work of art with someone who does not initially share our judgement of it. Using judgements of taste as a model for political judgements that are reached by way of public discourse recommends, first, that we should not bring forward claims with dogmatic surety but humility; we should appropriate the inherent possibility of errancy. Second, we should likewise not dismiss our interlocutors out of hand; we should be open-minded. This follows from the possibility that we ourselves may be errant – indeed, that our judgement is almost surely incomplete and thus requires discourse with others in order to become enlightened. With this, we must comport ourselves with the openness that we ourselves are highly likely to change our own minds in the process of speaking freely. Third, we should approach discourse with the expectation of eventual mutual agreement. Agreement surpasses mere compromise, as only in

agreement can there be some surety that the judgement is a good one, and fitting for the subject matter. This is what it would mean, for Kant, for us to have an attitude that could lead to becoming enlightened and ultimately enlarge our cognitions about political life.

It should be noted that none of this recommends thinking that political judgements are judgements of taste, that is, aesthetic judgements. While discourse in the public sphere may take orientation from the structure of aesthetic judgements, they do not, and cannot, share their grounds. The ground of aesthetic judgements will always be a feeling; granted, it is a feeling Kant argues is universal and communicable. Political judgements are meant to be rational, however, as they are explicitly about conforming our laws and institutions to the practical rules of reason. And, for Kant, there is no contradiction here. Reason, as both the unconditioned and the source of the demand for the unconditioned in us, cannot be expressed discursively. We find this over and over again in Kant's thought. It is perhaps most evident in his practical philosophy, where he argues that we cannot reason our way to the moral law. The moral law is simply how reason's demand for the unconditioned shows up to us, practically; it 'forces itself upon us of itself' (*KpV*, 5: 31). We cannot, he argues, 'reason it out from antecedent data' (5: 31). Kant later reminds us that 'the morally good as an object is something supersensible, so that nothing corresponding to it can be found in any sensible intuition' (5: 68). For this reason, we cannot even represent the moral law to ourselves except by way of analogy. The formulations of the moral law are simply one way we bring the 'idea of reason' 'closer to intuition' (*G*, 4: 436). Heiner Bielefeldt argues, in consequence, that we thus only present the moral law to ourselves *symbolically*, that is, by '*indirect mediation*' (2003: 48). If the matter of political discourse is whether or not a law or practice is a case of a rule of reason, we could not then communicate about it in a way that is evident or direct. The matter itself simply does not admit of such discursivity or direct communication. Our aptitude for communication, Kant argues in the third *Critique*, is given in the 'relation between the imagination and the understanding in order to associate intuitions with concepts and concepts in turn with intuitions, which flow together into a cognition' (*KU*, 5: 295). Yet neither is adequate to reason. Kant's third *Critique* discussion of aesthetic ideas is clear on the failure of the imagination to 'make sensible rational ideas' (5: 314). As we know from the first *Critique*, the concepts of the understanding are not adequate to the ideas of reason either. Hence, ideas of reason, the universality of the moral law that gives the measure of justice, for example, are not ideas that can be presented directly either discursively (through the understanding), imaginatively (aesthetically) or communicatively. But this inadequacy only means that the discourse about these matters is always incomplete or indeterminate – it is not wrong or misguided. It is just that there is always more to be said than has already been or can be said. The ideas of reason serve as asymptotes of a perpetually ongoing discourse whose progress is marked by continually enlarging our cognitions to accommodate what is rational.

Judgements of taste make one further recommendation for political discourse: referring exclusively to the subject matter at issue. As there is no proof for adjudicating claims of whether a case is an instance of a practical rule, we may be tempted to appeal to our inner state, especially given that we may often have experience of the law or practice at issue. However, as we find in a judgement of taste, the fact of one's feeling is not, of itself, evidence of anything; indeed, we may say that

the legitimacy of the feeling of injustice is itself at issue. If the goal of communication is to arrive at a shared good judgement, referring to one's feeling will not bring this about. An interlocutor may describe a feeling *ad infinitum*, but this will not alter the other's judgement about the object in question. That is because while the feeling of pleasure is the ground of a judgement of taste, for example, the judgement is, in the end, about the *object*; reflection on the object is what gives rise to the pleasure in the first place. Only by engaging one's interlocutor about the object itself is it possible for communication to yield agreement about something. They themselves may be led to a free play of the faculties through this engagement; even in this, they do not agree about a feeling, but about the object. Likewise with political discourse, one's personal, subjective experience cannot be what makes its way into communication as evidentiary. It may serve as the ground of one's own judgement, but only in directing attention to the broader matter at hand from which the experience is derived can a conversation be had. What is *public* and therefore what it is possible to agree about is the subject matter – whether a law or practice is a case of a practical rule. This is to say that like judgements of taste, communication in political discourse can only work if it remains focused on the *object* of consideration, and is not about the private, subjective experiences of the discussants. Only then may interlocutors come into agreement about a matter.

We find further recommendations for successfully making judgements in the transitional sphere of politics by looking to the *sensus communis*. In the Deduction of judgements of taste, Kant asks: by what right can one make such a judgement? That is, what is it that undergirds the legitimacy of a claim made when there are no rules governing it and no objective measure by which it can be adjudicated?<sup>13</sup> His answer to this is what he names the *sensus communis*. It is beyond the scope of this article to reconstruct in detail the problem of the Deduction in the text and Kant's arguments.<sup>14</sup> Rather, I will here draw our attention to what is significant about the *sensus communis* itself as what legitimates judgements made without a determinate measure (internal or external) and what it recommends for public discourse.<sup>15</sup>

Kant's definitions of the *sensus communis* can be elusive. However, there are elements of it that stand out clearly:

By '*sensus communis*', however, must be understood the idea of a communal sense, i.e., a faculty for judging that in its reflection takes account (*a priori*) of everyone else's way of representing in thought in order as it were to hold its judgment up to human reason as a whole and thereby avoid the illusion which, from subjective private conditions that could easily be held to be objective, would have a detrimental influence on the judgment. (*KU*, 5: 294)

The *sensus communis* is a sense we have that we are communal beings; our communal being, further, is found in a shared form of thinking – of representing things to ourselves and of reasoning. Kant associates the commonality of the conditions of thinking with the possibility of communicating. As Karl Ameriks argues, 'Kant probably holds the traditional theory that communication involves the having of matching subjective states' (1982: 298). Indeed, Kant argues explicitly that all human beings have the same set of transcendental *a priori* faculties. This is why he asserts that the deduction of judgements of taste is 'so easy': the pleasure of a judgement of

taste 'must necessarily rest on the same conditions in everyone, since they are the subjective conditions of the possibility of a cognition in general' (KU, 5: 292). The deduction further 'asserts that we are justified in presupposing universally in every human being the same subjective conditions of the power of judgment that we find in ourselves' (5: 290).

The *sensus communis*, then, is fundamentally about the shared and universal structure of the conditions for the possibility of human experience itself. With this, too, at some level all human beings, Kant believes, have the world in the same way. This does not, of course, preclude empirical differences. But the transcendental and essential features of human experience and the way the world is given to us through them are universal. Indeed, this also recommends, given Kant's idealism, that human beings belong to the same *world*, insofar as we have the way things *are* in a common way. We belong to a world that is *shared*, it is *in common*. Communication – and the possibility of communicability at all – is inextricably linked with this idea in Kant. Successful communication, then, *may not belie this fact*. This means: our political speech may not presume that what one is claiming is inaccessible to another, or vice versa. We cannot say: 'you could never understand me'. When we exercise our right to speak in public, we are precluded from having a sceptical attitude about the communicability or interpretability of what we ourselves say, or what others say to us. Such scepticism is not about motivations, but rather about the possibility of sharing our judgements with others in a way that may ultimately lead to mutual enlargement of our thinking and agreement about a good judgement.

The commitment to acknowledging that we both share a common world and that we are capable of communication with each other can further be linked with the claim that political discourse must remain about the object or matter under consideration. The *matter* is what is essentially public or shared, and as the structures of our experience are themselves universal and shared, we should be able to come to agreement. Again, it may be that a person's or group's experience is the ground of their own judgement about injustice; but, as above, the shared character of experience and the world means ultimately that the conditions that lead to this experience can be communicated with and ultimately understood by others. Even if I myself have not been subject to a political wrong, I can come to judge that a particular case fails to instantiate the norms of reason. Indeed, as we saw above, Kant himself links these two aspects: 'Cognitions and judgments must, together with the conviction that accompanies them, be able to be universally communicated, for otherwise *they would have no correspondence with the object*: they would be a merely subjective play of the powers of representation, just as scepticism insists' (KU, 5: 238; my italics). The entire point of the *sensus communis* is that judgements made in the 'territory' of transition have legitimacy, even if we cannot prove that any particular judgement made there is an instantiation of these formal structures. Discursing with others and coming into accord about what should be done thus requires that we embody in our speech the structures of universality that underlie this very possibility.

What Kant essentially has mapped out is what features of communication would have to be enacted in order for reason to be made real in the world. The transitional character of the sphere of the political, as well as of reflective judgements in the third *Critique*, is Kant's way of articulating what kind of mediation is needed for reason to take shape concretely, in reality. Since reason does not directly determine the world

in which we live, we must use judgement to measure the extent to which it conforms and what to do about it. On account of this, Kant argues, first, that the application of reason itself requires communication in order to develop in individuals. It is this premise – which we find throughout both the theoretical and practical works – that underlies his claim that civic enlightenment must be a collective endeavour. He further holds, we saw, that the validity of political change must come from the collective – only here has reason been fully activated and led to a good conclusion, and only then are those subject to the law genuinely authorizing it through their own agreement with it. He does not, however, give norms that would guide such speech to foster its success. For these, though, we can discern fundamental structures of judgements that are made in a transitional, mediating sphere, namely, reflection. What these recommend are aspects of free speech we find, sadly, sorely lacking today. The aim of mutual agreement and cognitive expansion or transformation can be met only in dealing earnestly with the lack of determinate grounds for political judgements. We must have some humility about our own claims, but also maintain confidence in eventual accord; we must also remain cognizant of the shared world to which we belong and a common way of being in this world. Above all, perhaps, we must each remain committed to the idea that we only arrive at the best judgement about what to do through the proper exercise of free speech, aimed at agreement as described here. There is a kind of steadfast commitment to the idea that eventual agreement will, in fact, be what happens when we have arrived at a good judgement. Scepticism about these presuppositions or grounds only undermines the possibility of the unified voice that Kant has posited.

## Notes

1 References to Kant's work utilize abbreviations of the original German titles as given in the Akademie editions of his corpus, and standard citations by volume and page number, except for the use of the standard A/B pagination for the first two editions of *KrV*. Abbreviations and translations used: *G* = *Groundwork for the Metaphysics of Morals* (in Kant 1996a), *IaG* = 'Idea for a Universal History with a Cosmopolitan Aim' (in Kant 2007), *KpV* = *Critique of Practical Reason* (in Kant 1996a), *KrV* = *Critique of Pure Reason* (Kant 1998), *KU* = *Critique of the Power of Judgement* (Kant 2000), *MS* = *Metaphysics of Morals* (in Kant 1996a), *SF* = 'Conflict of the Faculties' (in Kant 1996b), *TP* = 'On the Common Saying: That may be correct in theory but it is of no use in practice' (in Kant 1996a), *WA* = 'An Answer to the Question: What is Enlightenment?' (in Kant 1996a), *WO* = 'What Does it Mean to Orient Oneself in Thinking?' (in Kant 1996b), *ZeF* = 'Toward Perpetual Peace' (in Kant 1996a).

2 An excellent place to begin for accounts of this is Onora O'Neill (1989: Chapter Two [The Public Use of Reason]). More recent extensive accounts can be found in Katerina Deligiorgi (2002) and Samuel Fleischacker (2013). Notably, Helga Varden (2010) focuses on the necessity of offering criticism of the government, as do treatments of free speech as a kind of antidote to political violence or revolution (see, for example, Beck 1971).

3 For a comprehensive account of reason's demand and its deferred possibility, see Sweet (2013).

4 Kant's views on the proper form of the state evolve over time. What he thinks about this is not relevant to my argument here; but a nice summation of his views can be found in Byrd and Hruschka (2010: 175ff.).

5 In this article, I focus on the legislator and specifically laws. However, Kant argues that the legislator, as supreme sovereign, has authority over the ruler, who oversees the administration of the government, issues decrees, etc. (*MS*, §49). In virtue of this, the criticism that will be discussed throughout is directed at the legislator, even if the recommendation is for something governmental other than a specific law.

6 Kant's language for the role of judgement is consistent across these texts: it allows for a 'transition' (*Übergang*) and provides a 'middle term' (*Mittelglied*).

- 7 Although, as I observe below, the addressee of the public use of reason in ‘What is Enlightenment?’ is always the public, and not the legislator. I do think Kant is ultimately ambiguous on this point.
- 8 This is also the central problem in Friedrich Schiller’s *On the Aesthetic Education of Man*.
- 9 O’Neill then goes on to note, though not develop, what she observes are Kant’s ‘scattered’ discussions of ‘maxims of communication’. She points out his commitment to the idea that we cannot seek victory over others and that others must be able to follow what we are saying; her emphasis, however, is given from the point of view of ‘toleration’, and not the achievements of discourse (O’Neill 1989: 44).
- 10 It is worth noting that the idea that *how* we speak has political import has not gone unnoticed. First, we may look to Kant’s own prohibition on deceptive public speech in his ‘Supposed Right to Lie’ essay (in Kant 1996a). Second, Shell draws out Kant’s observation that Rome’s success depended on the discovery of a ‘communicative art’ that was not manipulative (2022: 60).
- 11 Arendt famously goes much further than this, disavowing what we may consider Kant’s political writings as such, and arguing that it is in the third *Critique* that he becomes a genuinely political thinker (see 1992: 7ff.).
- 12 Arendt also appeals to Kant on enlargement, but again, for her it is gained through a process of imagining particular other standpoints.
- 13 It is beyond the scope to reconstruct the argument in this article, but we can see that this Deduction does not simply legitimate judgements of taste, but the use of the faculty of judgement in general. As Nuzzo points out, ‘taste reveals the way in which the faculty of judgment in general works’ (2005: 297). Thus the deduction of taste will be about the ‘power of judgment in general’ (*KU*, 5: 286ff).
- 14 For a longer account of the Deduction in the *Critique of Aesthetic Judgement*, please see Sweet (2020).
- 15 Readers may here recall that, in her *Lectures on Kant’s Political Philosophy*, Arendt (1992) associates the *sensus communis* with political discourse. It is beyond the scope of this article to counter Arendt’s descriptions of the *sensus communis*. In brief, her interest is not in the universal. Her account is intersubjective, which is about individual subjects treating each other in their empirical selves. Kant’s notion elides this and proposes a transcendence of what is individual. In this ironic way, Arendt is more traditionally ‘liberal’ than Kant.

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