

"TRUE REPUBLIC." KANT'S LEGALIST REPUBLICANISM IN ITS HISTORICAL AND SYSTEMATIC CONTEXT

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extra rempublicam nulla salus

(Kant 1900, vol. 19, p. 566; *Reflexion* 7964)

Abstract

The article places Kant's thinking about republican rule into the larger context of ancient and modern republicanism. Historically, the dual focus is on the anti-monarchical bent of classical and neo-classical republicanism and on the pro-monarchical proclivities of a specifically legalist understanding of republican governance that crucially involves the rule of law. Systematically, the core concern is with the distinction between the general forms of the state and the specific mode of government in the modern sovereign territorial state, as the latter emerges in political thought from Bodin and Hobbes through Montesquieu and Rousseau to Kant and his distinction between an inner or spiritual and an outer or literal republicanism.¹

Keywords: republic; freedom; law; right; Kant, Immanuel.

1. Res publica antiqua

Linguistically as well historically, the term and concept "republic" goes back to Rome's political set-up between the expulsion of the kings and the advent of imperial rule – a span of some five hundred years during which the political power rested not

in the hands of a monarch but was allocated, in various and varying ways, among a system of civic forces epitomized by the ubiquitous acronym "SPQR," referring to the senate and the people of Rome as the joint tenants of the republic (*senatus populusque romanus*). Beyond its negative characteristic of an anti-monarchical conception of

¹ A German translation of this article appeared as Zöller (2021a).

civic governance, the Roman republican legacy comprised the political philosophy of legalism, according to which rule rests not with human individuals (“men”) and their particular preferences but with regulations and statutes (“laws”) that bind together ruler and ruled in the pursuit of the common good, thus turning political rule from a private and personal matter to a common and public affair (*res publica*).

Moreover, the common concern for the public good instilled in Rome’s leading citizens an intense identification with the republic, effectively linking politics with patriotism and citizenship with service and even sacrifice. To be sure, much of the Roman republican ethos was theory rather than practice, philosophy rather than politics and wish rather than reality – especially when it came from the late adherents and advocates of a civic culture that was already vanishing (as in the case of Cicero) or had long since ceased to exist (as in the case of Tacitus). Still Ciceronism and Tacitism proved influential philosophico-historical legacies in early modern political theory as well as practice.

Prior to the Roman republic’s institution of the rule of law, which went along with the very instauration of civil law (*ius civile*) by its rhetorician-jurists, anti-monarchical modes of reign had been developed and defended in late archaic and classical Greece. The theoretical and practical rejection of kingship here occurred against the double background of previous princely rule in the proto-Hellenic bronze age cultures (Mycenaean Age), along with the recent return of tyrannical rule in many Greek city states in late archaic times, and against the

contemporary threat and challenge posed by the emerging and expanding Persian empire. The Greek response to royal rule past and present focused on civic equality, primarily understood as the citizens being equal before the law (*isonomia*), but – in the case of fifth-century Athens – including increasingly the citizens’ direct involvement in the governance of the city state (*polis*), thereby adding the further features of free public speech (*parrhesia*) and popular rule (*democratia*).

The Greeks’ political experience with multiple types of civic constitution (*politeia*) and different modes of rule to be found among themselves as well as their “barbaric” neighbors found expression in the development of a typology of political regimes that classified rule according to the numerical size of the ruling party, i.e., as rule by one, by few or by many. Classical Greek political thought, as chiefly advanced by Plato and authoritatively consolidated by Aristotle, also showed a keen sense for the volatile nature of each constitutional type, with the rule of one varying between royal rule (*monarchia, basileia*) and despotic rule (*tyrannis*), the rule of the few changing from the rule of the best (*aristocratia*) to that of the rich (*oligarchia*), and the rule of the many from that of the people (*democratia*) to that of the rabble (*ochlocratia*). The *locus classicus* is Aristotle’s *Politics* 3.7.²

Moreover, in the Greek political imagination the two times three types of rule were linked in a sixfold typified cycle of genera-

²To facilitate reference across editions and translations, citations of classical texts are by “chapter and verse,” typically employing the title of the work in the current English translations listed in the bibliography at the end of this article.