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Censorship from Rulers, Censorship from Book Piracy: The Strategies of Immanuel Kant

John Christian Laursen

I have placed the main point of enlightenment – mankind's exit from its self-imposed immaturity – primarily on religious matters since our rulers have no interest in playing the role of guardian to their subjects with regard to the arts and sciences and because this type of immaturity is the most harmful as well as the most dishonourable. But the manner of thinking of a head of state who favours such enlightenment goes even further and sees that even with regard to his own legislation there is no danger in allowing his subjects to make public use of their reason and to lay publicly before the world their thoughts about a better formulation of this legislation as well as a candid criticism of laws already given. We have a shining example of this, in which no monarch has yet surpassed the one we honour.

*But only a ruler who, himself enlightened, does not himself fear shadows, and at the same time has at hand a large, well-trained army as a guarantee of public peace, can say what a republic cannot dare: argue, as much as you want and about whatever you want, only obey!*¹

The German philosopher Immanuel Kant (1724–1804) is well known for his contribution to the debate about the meaning of Enlightenment in an article entitled 'What is Enlightenment?' of 1784. He is perhaps less well known for his strategies for dealing with censorship, although some of them appear in the article. The ruler he honours in the passage quoted above was Frederick II of Prussia, known as Frederick the Great. It was true that the latter possessed a large army, and that he did not often interfere in German intellectual life via censorship. But some years after he published the paragraphs cited above, Kant was the subject of censorship by the king who succeeded Frederick on the throne. Kant was also very aware of a threat to writers that could amount to censorship

broadly construed: book piracy, which deprived writers of royalties and thus of a way to make a living from their writing. As we shall see, he developed several strategies for working around censorship in its various forms.

One of Kant's strategies is disingenuousness. This includes flattery, heading off censorship by currying favour with the authorities. Asserting that the ruler is himself enlightened and does not fear shadows is designed to appeal to his vanity and his desire to be seen as brave and self-confident. Only the weak would need to use censorship. And there is more to Kant's appeal here. He has indeed devoted most of the article to justifying criticism of religion, but that is not entirely because, as he says above, religious immaturity is the most harmful and dishonourable. Rather, it is because Kant knew that Frederick was not very respectful of religion and would approve of criticism of it. Kant's justification of criticism of religion serves as an entering wedge for criticism of other matters such as the ruler's own laws. Indeed, mention of criticism of the ruler's own laws is limited to the paragraph cited above, which is the second to last paragraph in the article. Kant's most subversive point is undeveloped, all but hidden, just suggested at the end of the article.

Kant is also somewhat disingenuous when he asserts that rulers have no interest in supervising the arts and sciences. He knows that changes in the hearts and minds of people and their rulers caused by progress in the arts, sciences and enlightenment in all of its forms will eventually change their attitudes towards laws and governments. Note also that in the passage quoted above Kant appears to take the side of monarchism by disparaging republics for being unable to afford true liberty. Some scholars have taken this as part of a flirtation with enlightened despotism, the strategy by which an all-powerful ruler is persuaded to accept enlightened values and reform his country accordingly. This was the tactic of Voltaire and Diderot at times.² This was also the strategy of Johann Friedrich Struensee, a German physician who became Prime Minister of Denmark in 1770 and almost immediately declared unlimited freedom of the press – the first in the world to do so.³ However, the enemies he made by many other well-intended reforms and his dalliance with the queen led to his overthrow in 1772 and the reimposition of police controls over the press. Press freedom by despotic fiat was subject to the revocation of press freedom by fiat. In 'What is Enlightenment?', Kant remarked that a change of those in power brought about by a revolution will not change the way they do business unless their hearts and minds are also changed (59).

In any case, by the time of his political writings of the 1790s, Kant was fully in favour of a republican government as a requirement of reason. In *Perpetual*

Peace of 1795 he asserted that the civil constitution of every state should be republican. In *The Contest of Faculties* of 1798, he updated the Platonic ideal republic as 'the idea of a constitution which is compatible with the natural rights of man, so that those who obey the law should also act as a unified body of legislators', called it 'the eternal norm for all civil constitutions' and asserted that we have a duty to work towards this condition. But it cannot be created overnight; so meanwhile 'it is the duty of monarchs to govern in a republican (not a democratic) manner, even although they may rule autocratically'. If they do, 'violence will gradually become less on the part of those in power, and obedience to the laws will increase'.⁴ If a ruler can be persuaded to govern in a republican way, then we are on our way to actually having a republic.

At least one republic of Kant's day had declared a right to freedom of the press. The Virginia Declaration of Rights of 1776 declared: 'That the freedom of the Press is one of the greatest bulwarks of liberty, and can never be restrained but by despotick Governments'.⁵ The Bill of Rights of the fledgling United States, proposed in 1789 and ratified in 1792, had provided that 'Congress shall make no law ... abridging the freedom of speech, or of the press'.⁶ But a right to freedom of the press enforceable against a ruler was not available to Kant because, as he argued in 1793, subjects cannot have rights that imply a right to coercion against the ruler without becoming, in effect, the real rulers. One could only try to persuade the ruler to do the right thing, as we have seen Kant doing in the passage quoted above. 'Thus freedom of the pen is the only safeguard of the rights of the people', he wrote in *Theory and Practice*.⁷

In our passage, Kant repeats his definition of enlightenment earlier in the article as 'mankind's exit from its self-incurred immaturity' (58). This was the meaning he read into the slogan he borrowed from Horace, *Sapere aude*, dare to know, or 'have the courage to use your own understanding!' (58). As he puts it in this article, one must think for oneself. But this is also a bit disingenuous because we know that in Kant's overall understanding of thinking one cannot think alone. In another article two years later, 'What is Orientation in Thinking?', he argued that one cannot think only by and for oneself:

We do admittedly say that, whereas a higher authority may deprive us of freedom of speech or of writing, it cannot deprive us of freedom of thought. But how much and how accurately would we think if we did not think, so to speak, in community with others to whom we communicate our thoughts and who communicate their thoughts to us!⁸

One of the purposes of ending censorship is to enable us to think in common. This is the meaning of his stress on the public use of reason in our passage above, by which he means the use of reason in print.

In 1792, one of the royal censors in Berlin refused permission to Kant to publish book two of his *Religion Within the Limits of Reason Alone* because of its heterodox religious implications. Rather than leave it unpublished, he sent it on with books three and four to a different censor in a different city, received approval and published it. In 1794, King Frederick William II, who took an interest in religious matters, rebuked Kant for this evasion of the censor, ordered him to refrain from publishing on religion in the future, and demanded a commitment from him. Kant wrote an elaborate defence of his writings, and pledged: 'As your majesty's most faithful subject, I hereby solemnly declare that I will entirely refrain from all public statements on religion, both natural and revealed, either in lectures or in writing.'⁹ Yet after Frederick William II died in 1797, he published again on religion, reasoning that the promise not to publish applied only as long as he was 'your majesty's faithful servant', i.e. as long as his majesty was alive. It is probably safe to say that the king did not realize that Kant's pledge was for his lifetime only, and that Kant must have known that. So yet another of Kant's strategies for getting around censorship was equivocation about words.

Kant's disingenuousness and his refusal to admit rights against rulers are part of his usual strategy of step-by-step reform rather than calling for revolution. One scholar has argued that his political theory is best understood as 'provisional theory for an uncertain world'.¹⁰ Kant knew that he would not have the beneficial effect he wanted to have if he openly denounced the authorities of his time for their violations of the rights of reason and demanded radical change. He knew he needed to massage them into making incremental improvements that may amount to substantial change in the long run.

Kant's strategies of flattery, disingenuousness and misrepresentation in his efforts to persuade rulers and the public to eschew censorship stand in contrast to his contemporary as a writer in defence of freedom of the press, Carl Friedrich Bahrdt, who became known as 'the notorious Dr Bahrdt'. Bahrdt expressed in-your-face opposition to the rulers. In *On Freedom of the Press and its Limits* of 1787, he wrote:

Oh, you tyrants of humanity who keep and protect the iron sceptre of violating conscience! Step forward... I will make things so clear to you, that only an extreme level of stupidity or the blindest dependence on prejudices will be able to keep you from being persuaded. It is true, your minds are armoured with

metal and your backs are covered with Russian leather, but I will smash the bronze and tear the skin.¹¹

We can ask ourselves which strategy, Kant's or Bahrdt's, was more likely to be more effective at that time and in that place. A later proponent of wide press rights in Prussia, Frederic Ancillon, argued for them respectfully from within the absolute monarchy, and later became Minister of Foreign Affairs for the years 1831–1837. Some of his best arguments for freedom of the press include the point that no government is qualified to draw the line between truth and error ('there is some truth in all errors, and some error in all truths') nor to decide when an idea is really dangerous and when it is not (which must be always in flux).¹²

Kant's incrementalism and indirect approach to political problems can also be observed in his treatment of one of the biggest threats to authors of his time: book piracy, or the unauthorized reprinting of books. Book piracy amounted to a sort of censorship because it meant that booksellers could not pay authors much of a royalty because their competitors could then reprint the book without having paid more than the cost of a copy. If booksellers could not pay royalties, authors could not make a living from their writing and thus were discouraged from writing. In Kant's day, this may have been more of a systematic impediment to freedom of the press than the sporadic interventions of the authorities. We know this was an important issue because one publisher brought out a book in 1794 with his comments on a debate on this issue consisting of more than sixty books, pamphlets and journal articles which had appeared in the previous decades.¹³ Some of them made the point that not only were writers discouraged from writing because they could not make a living from it but the public was thus deprived of what may have been good ideas.

Kant responded to book piracy in a magazine article of 1785 entitled 'On the Wrongfulness of Unauthorized Publication of Books' and in a small section of his great work on legal philosophy, *The Metaphysics of Morals* of 1797.¹⁴ Kant's strategy concerning book piracy was not that of some contemporaries who tried to attribute to purchasers an implicit agreement not to reprint books. This would have been an author's right, enforceable against buyers. But that would have required judges to find an implied right where no one had found one before and where no book buyer thought he or she was buying with that implied contractual obligation, and it left it up to the author to sue a bookseller who violated the implied contract. It was unlikely that most authors would be in a position to hire a lawyer to sue the book pirate. Other contemporaries sought legislation by the enlightened rulers, which might have required a long

campaign of persuasion. Kant's strategy was subtler: it was to construe the author/publisher relationship as a matter of agency law, according to which the publisher acted as an agent for his or her authors, and thus it was the publisher's right that was violated and it was the publisher that could sue. Kant argued that this was part of natural law and needed no new legislation if judges could be persuaded that this right already existed, so publishers could sue right away, without waiting for political change. And by making it a publishers' right, he made it more likely that it would be enforced simply because publishers were wealthier on average than authors and thus in a position to sue. So, Kant is arguing for a change in the way things are understood by judges which might have a real effect on the way things are done rather than for changes in what all book buyers are thinking or in legislation. Once again, he was looking for the path of least resistance.

By the time Kant's *Metaphysics of Morals* appeared, the legal status of book piracy had begun to change. The Prussian Code of 1794 contained one of the first provisions for copyright in European law, and this was followed over the following decades with copyright legislation in many countries. Eventually the Berne Convention established an international copyright union in 1887. Authors and publishers could now make such arrangements as they wished for assigning copyright, but as a matter of practice over time it seems likely that more publishers than authors have actually brought legal action against pirates. If that is the case, it accords with Kant's strategy for preventing censorship by book piracy.

Kant's responses to political problems like censorship were never openly revolutionary. As we have seen, he preferred an indirect approach, persuading people, including rulers, to do the right thing. In the process, he resorted to disingenuousness, equivocation and also creative legal interpretations. In doing so, he was drawing on the strengths of the intellectual and philosopher, and those of a pragmatist. He was not a heroic revolutionary in political life, although his ideas eventually worked a revolution in people's minds.