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Kant's Republican Account of Citizenship

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ABSTRACT

Kant's political philosophy has experienced a recent revival, largely due to influential interpretations that frame his concept of right as a republican account of "non-domination." One of the major challenges in reconstructing Kant's concept of law within neo-republican terms is his notion of citizenship. While neo-republicans have made substantial efforts to distance themselves from the traditional view that restricted voting rights to mainstream white men, Kant's distinction between "active" and "passive" citizens still echoes this conventional line of thought. Without dismissing the prevalence of the sexist and classist prejudices inherent in Kant's active/passive dichotomy, this paper argues that Kant introduces this distinction with the republican aim of securing a state governed by non-arbitrary laws. I contend that this aim explains Kant's concern with the civic character of citizens and their ability to contest structures of domination—a line of argument that aligns him more closely with contemporary neo-republicanism.

1 | Introduction

Kant's political philosophy has experienced a recent revival, largely due to influential interpretations that frame his concept of right as a republican account of "non-domination." In the neo-republican literature, non-domination is contrasted with liberal accounts of non-interference, arguing that even in situations in which individuals are not interfered with, they can still be dominated.[1] Philip Pettit illustrates this thought with his example of the kind slave master: The mere fact that one has a master, and that one is vulnerable to possible interference without redress, is sufficient for domination.[2] According to these accounts, a wife married to a non-violent husband, who is legally or culturally permitted to beat his wife, is dominated despite the lack of actual interference. Likewise, an employee who lacks institutional backing in cases of abuse is dominated even when the employer refrains from behaving in an abusive way. Kant's account of innate right—which he describes as independence from being limited by another's coercive power of choice, to the extent that it can coexist with the freedom of all others—has been read in this manner (MM, 6:237).[3] Rather than placing his political philosophy in the liberal camp, scholars have demonstrated that Kant's republicanism is best understood as setting out the conditions under which a republic free from "forms of domination" becomes possible (Ripstein 2009, 42).[4]

One of the major challenges in reconstructing Kant's concept of law in neo-republican terms is his notion of citizenship. In premodern republicanism, it was common to argue for a restricted notion of adult suffrage, according to which only "a small elite," namely property-holding, mainstream white men, were allowed to vote (Pettit 1997, 48). Neo-republicans have made significant efforts to distance themselves from traditional positions that justified the domination of women and workers.[5] Kant's notion of

Abbreviations: A, Anthropology from a Pragmatic Point of View; CPrR, Critique of Practical Reason; MM, Metaphysics of Morals ("Doctrine of Right" and "Doctrine of Virtue"); PP, "Perpetual Peace"; TP, "On the Common Saying: That May be True in Theory But it is of No Use in Practice" ("Theory and Practice"); WIE, "An Answer to the Question: What is Enlightenment?" ("What is Enlightenment?").

citizenship is not devoid of this line of thinking: In "Theory and Practice" and *The Metaphysics of Morals*, Kant distinguishes between "active" and "passive" citizens, granting only male property owners a right to vote (TP, 8:290; MM, 6:314).[6] Although he states that every member of the state must be free, equal, and independent (TP, 8:290), some individuals are considered "dependent" citizens and thus only a "part" rather than a full "member" of the state (MM, 6:314). Women, apprentices of merchants or artisans, domestic servants, woodcutters, blacksmiths in India who enter people's homes for work, private tutors, shop clerks, day laborers, and barbers are named as examples of so-called "passive citizens" (TP, 8:295; MM, 6:315). Kant stresses that passive citizens can become active citizens; however, he refrains from explicitly denoting adult passive citizenship as a sign of a defective state that requires change.

Scholars have argued that even though Kant did not overtly disapprove of adult passive citizenship, ascribing passive citizenship status to adults with normal cognitive abilities would conflict with the rational constraints imposed on us by Kant's notion of innate right (Weinrib 2008; Vrousalis 2022).[7] On this reading, Kant's characterization of "independence" compels us to view the existence of adult passive citizens as indicative of a flawed condition that requires societal transformation.

The "republican" reading proposed here challenges this interpretation. I shall argue that deriving civil independence from innate right not only misrepresents Kant's conception of the active/passive distinction, but also overlooks the intended republican goal of establishing a state governed by laws free from arbitrary power. More specifically, I shall defend two claims. First, I will highlight textual passages in Kant, which are difficult to make sense of if political participation is seen as logically following from Kant's notion of innate right. I will demonstrate that the republican interpretation of citizenship—concerned with the rule of non-arbitrary law—is better equipped to account for those passages.

Second, I shall show that Kant's active/passive distinction plays a pivotal role in his republicanism as it is intended to secure four conditions of non-domination: (i) the empire-of-law condition; (ii) the dispersion-of-power condition; (iii) the countermajoritarian condition; and (iv) the contestability condition. By situating Kant's account of citizenship within his broader republican framework, my reading reveals that Kant's active/passive distinction is justified by a notion of legitimacy that has thus far been overlooked. In contrast to the more common interpretation, according to which legitimacy is derived from the consensus of the public will,[8] I shall argue that we find another line of argument in Kant, according to which the legitimacy of public decisions is derived from the possibility of publicly minded citizens contesting forms of domination—an idea that aligns him more closely with contemporary neo-republicanism.

In making this argument, I will be relying on the interpretative assumption that reconstructing Kant's philosophy of right as a philosophy of non-domination does not imply that it neatly aligns with the views of Skinner or Pettit.[9] As I see it, reconstructing Kant's concept of right through a neo-republican lens situates his distinctive republicanism within a tradition of philosophical theories that regard non-domination as the fundamental basis for normative claims and share similar views on how non-domination is best realized.

The paper unfolds as follows. In Section 2, I examine influential interpretations that portray Kant as an advocate for enhancing political participation. In Section 3, I propose an alternative interpretation that links active citizenship to one's ability to reason publicly. In Section 4, I situate Kant's active/passive distinction within his republicanism, demonstrating how it satisfies various conditions shared by neo-republicans. In Section 5, I argue that the "republican" interpretation offers three textual advantages. In Section 6, I outline a systematic advantage of this interpretation, which holds that legitimacy is granted by publicly minded citizens capable of criticizing forms of domination. Finally, in Section 7, I summarize the paper's main argument.

2 | Innate Right and Political Participation

One of the key differences between neo-republicans and democratic theorists is their justification for political participation. While neo-republicans emphasize that democratic participation is valuable because it promises non-domination, democratic theorists argue that a necessary (though perhaps not sufficient) condition for securing non-domination is that public decisions are democratically formed.[10] Kant scholars such as Weinrib (2008) and Vrousalis (2022)—on whom I will mainly focus—have placed Kant's political philosophy in the latter camp, arguing that Kant's notion of innate right prescribes that every adult citizen with normal cognitive abilities be granted active citizenship status.

According to their interpretations, the right to political participation is grounded in the innate right section of the *Doctrine of Right*. Kant defines "innate right" as "independence from being constrained by another's necessitating power of choice insofar as it can coexist with the freedom of every other in accordance with a universal law" (MM, 6:237).[11] Although this account of freedom governs our external and interpersonal relations, it is considered *innate* because it grounds the "original right" that every person possesses "by virtue of their humanity" (6:237). A crucial aspect of Kant's account of innate right is that being a human being not only grounds my innate right to not be dominated, but it also imposes a duty toward myself, prescribing that I must interact with others in such a manner that I am never "a mere means for others but [...] at the same time an end for them" (6:237). To be free from arbitrary interference in the public sphere, we must treat others and ourselves with respect. This sets the foundation for the "equality" criterion of innate right: Because we are beings with the same dispositions, we must be equally bound by and subjected to "coercive laws" (TP, 8:290). Kant defines the equality criterion of innate right as "independence from being bound by others to more than one can in turn bind them" (MM, 6:237–8).[12]

In Weinrib's and Vrousalis' view, the normative constraint of the equality feature grounded in innate right prescribes that every citizen be afforded the same rights, including the right to active citizenship. This interpretation is supported by passages in which Kant asserts that civil independence is a necessary criterion for a state to be just. In "Theory and Practice," Kant argues

that the concept of the state is comprised of three principles: (i) freedom; (ii) equality; and (iii) independence, which refers to "the independence of every member of a commonwealth as a citizen" (TP, 8:290). "Independent" are those "citizens of a state (*cives*)" who possess the "attribute of civil independence," meaning they owe their "existence and preservation to [their] own rights and powers as a member of the commonwealth, not to the choice of another among the people" (MM, 6:314). According to this interpretation, we only achieve legal personhood status as a civilly independent citizen: If equality is achieved only when every adult citizen has equal rights, including voting rights, it follows that every citizen must be granted the status of civil independence, or so the argument goes. The existence of adult (working) passive citizens is seen as a problem for Kant because active citizens are granted legal prerogatives that passive citizens do not possess.

Weinrib (2008, 21) captures this idea by stating: "the rightful condition is generated by the requirements of innate right, which include 'innate equality,' that is, independence from being bound by others more than one can in turn bind them". A state is legitimate only if the same rights, including the rights to political participation, are granted to everyone. Thus, a state that allows for passive citizenship has yet to embrace the "conditions of universal active citizenship" necessary to meet the state's formal requirements (23).

Although Vrousalis' reading differs from Weinrib's in other respects, he echoes this interpretation. Vrousalis argues that adult passive citizenship creates a tension between the formal equality of individuals and their real economic and social dependence on others. For Vrousalis, the issue extends beyond passive citizens merely lacking the right to vote. He contends that any capitalist society that has not yet established the labor conditions necessary for rightful "interdependent independent" relationships to thrive is fundamentally unjust. In current capitalist societies, we would observe that the liberal capitalist state procures inclusion at the cost of legitimacy (Vrousalis 2022, 456).[13]

According to these interpretations, civil independence is a status that every citizen must possess as a human being. This is emphasized by their choice of language: we fully realize our human nature or "purposiveness" only under a government that creates the conditions under which everyone has the same rights, including voting rights. According to Weinrib (2008, 8), an individual's "purposiveness" is defined as the right to pursue their aims without interference, equally and independently. Vrousalis (2022, 449) also understands one's human "purposiveness" as being fulfilled only when the "interdependent independence" criterion is met. Although I agree that "independence" is, for Kant, a necessary condition for civil equality, I do not believe that it is tied to the requirement of being an active citizen.

3 | Kant, Political Participation, and Republicanism

Although the reading defended by Weinrib and Vrousalis offers a fruitful way of addressing Kant's problematic notion of passive citizenship, it does not fully capture Kant's view, which emphasizes that freedom and equality are assured even for passive citizens who vote only indirectly "through their delegates" (TP, 8:294; MM, 6:315). I will argue that Kant's notion of citizenship aligns more closely with the republican line of thought, which, broadly speaking, holds the "free state" that enables "individual liberty" as a core value (Skinner 2012, 60). While democratic participation is highly important to neo-republicans, it is not regarded as a "bedrock value" (Pettit 1997, 8).[14] As I see it, this becomes evident once we understand that Kant distinguishes between "independence" as a feature of the equality criterion of innate right, and the "independent" form laws take when they are created by following the constraints of the general will.

I am not the first to notice a difference between the two notions of "independence" at play here. Davies (2023, 120) has recently drawn out the importance of differentiating between "civil self-sufficiency" (*Selbstständigkeit*)—a trait of active citizens—and "independence" (*Unabhängigkeit*). Davies provides a good starting point to disentangle the different notions of "independence" at issue here. However, he fails to differentiate between the self-sufficient status that co-legislators *ascribe to* passive citizens when making legislative judgments and the civilly self-sufficient status that active citizens actually have.[15] Jordan Pascoe's (2022, 8) reading is more accurate on this point. In her interpretation, "civil independence" and "innate right" are distinct: the former comes with the right to self-representation and active participation, which only active citizens enjoy; the latter is a right that even passive citizens possess. However, similarly missing from Pascoe's account is the crucial nuance between the "civilly self-sufficient" status of active citizens and the self-sufficient status that co-legislators attribute to passive citizens when forming their legislative judgments.

Throughout his practical philosophy, Kant uses "independence" in various ways to denote different second-order or rational desires we adopt under the presupposition of freedom. One important notion of independence refers to the independent form of the "general will." Kant stresses that the general or omnilateral will "determines what is laid down as right among human beings" that is "given a priori" (PP, 8:378). The omnilateral will renders a specific *judgment form* independent from private interests. We see this, for instance, when Kant claims that "every legislator [must] give his laws in such a way that they *could have* arisen from the united will of a whole people and regard each subject, insofar as he wants to be a citizen, *as if* he has joined in voting for such a will" (TP, 8:297, emphasis added). This does not preclude a collective decision procedure, since there must always be people in place deploying this judgment form. However, for a decision to be legitimate, it "requires a will that is omnilateral, united not contingently but a priori and therefore necessarily" (MM, 6:263). The a priori omnilateral will does not, by itself, ground a specific decision procedure we must employ in our legislative decisions; rather, it refers to the "independent" shape that laws must exhibit for our innate right to be externally substantiated. As we will see, this requirement is separate from the question of who is eligible to count as an active citizen. We can differentiate between four distinct notions of independence:

A. "Independence" as freedom (*Freiheit* or *Unabhängigkeit*): the innate and civil freedom of rational beings to be independent from another person's choice;

B. "Independence" as equality (*Gleichheit*): the innate and civil equality that demands not to be bound more by law than others;

C. "Independence" as the general will (*Allgemeiner Wille*): the form of legislative judgments, which requires that co-legislators consider everyone as if they were civilly self-sufficient (*selbstständige*) members making choices independently of private interests;

D. "Civil independence" or actual self-sufficiency: the a posteriori trait of a citizen who takes on the role as a co-legislator.

(A) and (B) correspond to the innate right of individuals. (A), (B), and (C) are a priori principles grounding the external conditions of the concept of the state. (D) is the a posteriori condition for active citizenship. Let me unpack this.

A-Independence is the principle of freedom, defined as "each may seek his happiness in the way that seems good to him, provided he does not infringe upon that freedom of others to strive for a like end which can coexist with the freedom of everyone in accordance with a possible universal right" (TP, 8:290). In the innate right section of the *Metaphysics of Morals*, this notion is translated into "freedom" as "independence (*Unabhängigkeit*) from being constrained by another's necessitating power of choice, insofar as it can coexist with the freedom of every other in accordance with a universal law" (MM, 6:237).

B-Independence (*Gleichheit*) requires that one be equally bound and subjected to coercive laws, which are independent of any "empirical ends" (TP, 8:290, 8:292). In the section on innate right, this notion translates into "innate equality, that is, independence from being bound by others more than one can in turn bind them" (MM, 6:237–238). Everyone ought to be considered equally bound by law "since before he performs any act affecting rights he has done no wrong to anyone," and he continues to do no wrong as long as he does not "diminish what is theirs" (MM, 6:238).

C-Independence refers to a formal law to which every citizen must be subjected in order to have their innate freedom and equality (A-Independence and B-Independence) *externally* or *civilly* substantiated. For Kant, the "rightful condition" comprises three a priori principles:

1. The *freedom* of every member of the society as a human being.
2. His *equality* with every other as a subject.
3. The *independence* of every member of a commonwealth as a citizen. (TP, 8:290)

(A) corresponds to (1), (B) to (2), and (C) to (3), while (D)—as we will discuss shortly—does not correspond to any of these principles. In contrast to freedom (A) and equality (B), independence (C) does not appear in the section on innate right. It appears when Kant discusses the necessary criterion for the concept of the "state," which deals with the "rational principles of *external* human right" (TP, 8:290, emphasis added). "Independent lawgiving"—the general will—is a condition for the external instantiation of innate right. It requires considering everyone as *selbstständige* citizens in legislative judgments, however, this does not align with their actual *Selbstständigkeit*. To be innately free and equal, I must be subjected to laws that have a public shape, but I do not need to participate as an active citizen in forming legislative judgments.

Though Kant seems to tie the equality criterion to active citizenship when he argues that innate equality requires one to be "his own master" as well as "a human being beyond reproach" (MM, 6:237–238), it is important to keep in mind his distinction between the "noumenal" citizens and their "phenomenal" situation (MM, 6:335). C-independence is the *formal* feature of the "general will," prescribing how we must consider citizens so that laws have the correct shape for innate right to be externally realized. This is to be distinguished from the a posteriori notion of *Selbstständigkeit* (D-independence), which determines whether one is *phenomenally* eligible to take on the role as a co-legislator. While the equality criterion of innate right prescribes that we must be considered self-sufficient masters of ourselves, being so phenomenally is not a necessity to be free and equal.

Prima facie, this might appear strange. What does it mean to have a right to be free, equal, and independent if this right is not substantiated in the phenomenal world? Here, a closer look at the section on the "right to punish" is instructive. Kant states that the criminal's "*innate* personality" protects him from being "treated merely as a means to the purposes of another or be put among the objects of rights to things" (MM, 6:331, emphasis added). However, through the punishable act, the criminal loses "his *civil* personality" within civil society, that is, the rights he had enjoyed before committing the criminal act (6:331, emphasis added). This includes the right to co-legislate. For Kant, what I factually (phenomenally) will and what I rationally (noumenally) will can easily be in contradiction with one another. If I murder someone, I may factually wish to remain unpunished. However, it is irrational for me to will to live in a state that punishes those who commit murder, while simultaneously willing to live in a state that grants me the legal prerogative to go unpunished for committing murder (6:335). We arrive at this logical inconsistency by reasoning omnilaterally (C-independence). Giving laws a public form means shaping them in an "independent" manner, free from subjective desires.

To protect the public form of laws, citizens can legitimately be deprived of their right to co-legislation. Kant argues that it would be unwise to place trust in a criminal to reason omnilaterally if he were to co-legislate, as we can reasonably assume that he would opt for laws serving his private interests.

> As a co-legislator in dictating the penal law, I cannot possibly be the same person who, as a subject, is punished in accordance with the law; for as one who is punished, namely as a criminal, I cannot possibly have a voice in legislation (the legislator is holy).
>
> (MM, 6:335)

Kant emphasizes that while "pure reason (as a homo noumenon)" compels the criminal to support penal laws that serve the omnilateral interest, the unlikelihood of him actually giving

laws in such a manner as a "homo phenomenon" makes him ill-suited for being a co-legislator (MM, 6:335). According to Kant, the criminal's innate personality is not respected by him escaping punishment but rather by him living in a state subjected to an omnilateral will that deprives him of the right to act as a co-legislator.

The same reasoning explains Kant's discussion of dependent citizens. Like the criminal, the dependent citizen is a being with innate personality. However, because of their phenomenal dependency, they are empirically disqualified to act as a co-legislator. This is not only consistent with the omnilateral will; it is what Kant's rationality requires: If legislative choices must be omnilateral to secure my freedom and I am unable to reason omnilaterally, it is in my rational interest to delegate legislative decisions to those more capable of doing so.

One might object, however, that viewing "civil self-sufficiency" (D-Independence) as a contingent trait of phenomenal beings rather than as a necessary requirement for the realization of the just state does not fully resolve the tension between innate right and passive citizens. Even if it is true that all citizens are endowed with innate personality and only those who "owe their existence and preservation to their own rights and powers" have civil personality (6:314), Kant still could not deem passive citizenship unproblematic or even desirable. If that were the case, he would be endorsing the legal enshrinement of status inequalities that his concept of innate right seeks to overcome, or so the objection goes.[16]

Kant is sensitive to this concern. He argues that passive citizenship is justified only on the condition "that anyone can work his way up from this passive condition to [an] active one" (6:315). Thus, although one's status as a passive citizen is enshrined in positive law, these laws must be designed to ensure that attaining active citizenship status remains possible.

On this account, political participation is not a fundamental value derived from the rational constraints of innate right. Rather, the active/passive distinction is intended as an attempt to realize a state guided by laws that have a public form. This distinction is not a logical necessity; however, it might be an empirical one. There are, and likely always will be, individuals—for example, children—whom we deem ill-suited to fulfill their role as active citizens.

4 | Kant's Republican Account of Citizenship

Kant's active/passive distinction plays a pivotal role in establishing three key republican conditions aimed at combating arbitrary rule: (i) the empire-of-law condition; (ii) the dispersion-of-power condition; and (iii) the counter-majoritarian condition. Further below, I will focus on another republican aspect of Kant's account of citizenship: the contestability-of-law condition.

In the republican tradition, the focus is less on the procedure by which a state gains its legitimate form and more on whether the laws to which we are subjected are shaped in a manner that ensures non-domination. Pettit (1997, 174) articulates this idea in the "empire-of-law" condition, which "prescribes that laws should assume a certain sort of shape". This is also why Kant focuses on the moral character of citizens and their capacity to reason publicly: to ensure that citizens are subjected to laws with a public shape.

We see this, for instance, in the Anthropology. In his discussion of the best organization of the household, Kant highlights a fundamental difference between female and male characters: "The woman should rule, and the man should govern, for inclination rules, and reason (*Verstand*) governs" (A, 7:309, my translation). Whereas women excel at applying and executing laws ("ruling"), their inclination-driven character makes them unsuitable for legislation ("governing"). In the Doctrine of Virtue, we also learn that economic dependency is a factor that leads to a character unsuitable for governing. Kant argues that "to seek prosperity (*Wohlhabenheit*) for oneself is not directly a duty, but indirectly it can indeed be one: namely, to ward off poverty as a great temptation to vices" (MM, 6:388). Though neo-republicans would reject this reasoning as it invites arbitrary power, Kant's active/passive distinction is republican in spirit as it aims to safeguard the legal system from arbitrary governance.

Kant's active/passive distinction also plays a crucial role in maintaining the separation of powers. In the neo-republican literature, the "dispersion-of-power" condition states that the "powers of legislation, execution, and adjudication must be distributed among different parties and bodies" (1997, 178). In the Second Critique, Kant introduces the concept of the "holy will" as the idea of a fully rational entity, free from sensual inclinations that lead to selfish behavior and corruption. This idea is discussed in terms of the "holy lawgiver (and creator), the beneficent governor (and preserver), and the just judge" (CPrR, 5:131). If a holy entity were to rule the state, it could embody all three functions simultaneously. However, because the state consists of a "multitude of human beings" that are sensual and prone to undermining the rationality of the state, it is necessary to separate these powers and assign mandates to individuals capable of representing the "state in idea" (MM, 6:313, see also PP, 8:352–2).

To define the respective functions of the division of powers, Kant allocates different forms of judgment to each branch, comparing them to a practical syllogism. To illustrate Kant's thought, consider the following example:

> Legislative will (major premise): If people living in poverty are to receive support, it ought to be provided through taxes levied on citizens by the state.
>
> (MM, 6:325–6)[17]

> Executive will (minor premise): People in poverty ought to be supported.

> Judicative will (conclusion): Therefore, citizens ought to pay taxes.

The first (major) premise reflects the omnilateral choices of the legislative will, which defines the legal framework; it "contains the law of that will" (MM, 6:313). The second (minor) premise

reflects the executive choices within the boundaries of the given legal framework; it "contains the command to behave in accordance with the law" (6:313).[18] The conclusion consists of a positive law individuals must adhere to, as otherwise they face legal consequences; it "contains the verdict (sentence), what is laid down as right in the case at hand" (6:313).

Importantly, for a state to have a "republican" form, Kant emphasizes that these powers must be kept separate. A state has a republican form if mandates are held by individuals who represent the relevant branch and reason in accordance with its prescribed principles. Those representing one branch cannot simultaneously represent another branch. In this vein, Kant criticizes both absolute monarchy and direct forms of democracies. In both cases, it so happens that the "legislator" attempts to also act as the "executor" (PP, 8:352–3).

Kant expresses the same concern regarding those holding mandates in the judiciary and executive branches. As a representative of the judiciary, the judge must interpret, defend, and apply laws impartially—even when they believe the laws are unjust, meaning that they do not have the required public form (MM, 6:300). In his role as a judge, he must not take on the role of co-legislator, as he cannot *apply* the law and *change* it at as he sees fit. The public officer, too, holds a "civil post," which deems him a "passive member" (WIE, 8:37). Those occupying such a mandate "must behave merely passively, so as to be directed by the government, through an artful unanimity, to public ends" (8:37). While the officer is allowed to point out the "errors in the military service" as a "scholar," he is prohibited from doing so "while on duty" (8:37).

The co-legislator also holds a mandate. In this capacity, he acts as a representative of the legislative branch, tasked with questioning the shape of laws. Dependent citizens are denied this mandate because their judgment may be influenced by private interests or the will of others. Though the officer, representing the executive branch, and the judge, representing the judiciary, occupy—like the active citizen—a mandate, they share with dependent citizens their passive status, as their involvement would risk undermining the substantiation of the idea of the state.

Finally, Kant's active/passive distinction also serves as a safeguard against majority domination—a concept referred to in neo-republican literature as the "counter-majoritarian condition." Republicans are concerned with "good law-making," which refers to laws that reflect the interests of minorities, not merely "popular majority support" (Pettit 1997, 182). The constraints imposed by the general will reflect this criterion: by assigning the role of "co-legislator" to citizens he considers reasonably capable of voting rationally, Kant aims to establish a legal system that aligns with the interests of everyone, including minorities. In this context, he asserts that any "sovereign" who does not "represent the *entire* people" is a "despotic" state (MM, 6:338, emphasis added). Kant's concern with active citizenship is about implementing measures that ensure the interests of all those affected by government decisions—not just the majority.

Although Kant's articulation of the distinction between active and passive citizenship fosters forms of class and gender domination, we see that he introduces this distinction for republican reasons. Concerned with the public nature that laws must embody, passive citizenship is intended to protect laws from arbitrary interference.

5 | Three Textual Advantages of the Republican Reading

In this section, I will outline three textual advantages of the republican interpretation over accounts that view political participation as logically derived from innate right. First, Kant claims that passive citizens are still free and equal: "not all who are free and equal [...] are to be held equal with regard to the right to give these laws" (TP, 8:294). He does not abandon this idea in his later work. In the *Doctrine of Right*, he emphasizes that the dependent status of passive citizens is "not opposed to their freedom and equality as human beings" (MM, 6:315). While accounts that ground political participation in innate right gloss over these passages—arguing that equality and passive citizenship are contradictory—the republican interpretation, which distinguishes between innate right (freedom and equality), independence of the public will, and civil self-sufficiency, offers a more coherent reading. According to the republican interpretation, freedom and equality are civilly instantiated when citizens are subject to laws with a public form. To meet this condition, co-legislators must necessarily regard everyone as if each citizen were civilly self-sufficient, though civil self-sufficiency is not necessary for one's innate right to be externally substantiated.

Second, accounts that view political participation as a necessity have troubles explaining representation as a constitutive feature of the state. If political participation is understood as a bedrock value stemming from his account of innate right, then representation appears as a means to overcome the challenges of implementing a self-legislating system. However, Kant claims that any "true republic is and can only be a system of *representing* the people, in order to protect its rights in its name, by all the citizens united and acting *through their delegates* (deputies)" (MM, 6:341, emphasis added). Although a state consisting of a large number of active citizens is conceptually not precluded, Kant fears that such a state would empirically forfeit its independent form of lawgiving.

> [T]he smaller the number of persons exercising the power of a state (the number of rulers) and the greater their representation, so much the more does its constitution accord with the possibility of republicanism, and the constitution can hope by gradual reforms finally to raise itself to this.
>
> (PP, 8:353)

Kant's concern is not to make the state more democratic by increasing the number of active citizens. Rather, he fears that expanding the number of rulers may lead to a process in which unsuitable individuals gain a vote, thereby undermining the omnilateral form of legislative decisions. Kant's distinction between a despotic and a republican sovereign—which informs his skepticism toward direct forms of democracy (PP, 8:352)[19]—underscores that representation is not a principle following from the challenges of implementing democratic

self-legislation. Rather, representation is a necessary condition of the republican state. Unlike a despotic sovereign, the republican sovereign remains a "thought entity," carried out through *representatives* who instantiate the idea of the state (MM, 6:338). For Kant, reducing the legislative power of individuals to those who effectively execute their roles as state representatives is not a flaw, as intrinsic accounts of political participation might suggest; rather, it is a defining feature of a truly "republican" state (MM, 6:338).

Third, the republican interpretation does not encourage us to overlook the sexist and classist implications in Kant's active/passive distinction. Interpretations that view political participation as logically following from innate right argue that "sex" and "class" are not determining factors in his active/passive distinction. According to them, Kant is describing, not justifying, existing structures of domination. As Weinrib states: "Although the women in Kant's own society lacked independence, there is nothing about women *as such* that renders them perpetually dependent" (2008, 14, emphasis added). Similarly, Vrousalis (2022, 448) considers Kant's active/passive distinction to be entirely structural, independent of "psychological" factors. According to their interpretation, sex and class are not seen as determining factors for the exclusion of passive citizens; rather, they are treated as incidental traits of citizens who happen to fall under "private authority" (2008, 20). Based on an analysis of Kant's examples, they conclude that the only feature accounting for all cases is that passive citizens are subjected to a private will, while active citizens are subject to a public will.[20]

The republican interpretation, however, argues that the crucial factor is not whether individuals are subjected to a private or public will, but whether they are well-suited to reason publicly—that is, whether we can reasonably expect that their participation would lead to non-arbitrary laws with an omnilateral shape. This is evident not only in the examples of dependent citizens but also in those of the criminal, the public officer, and the judge. These examples demonstrate that Kant bases his account of passive citizenship on expectations regarding one's ability and likelihood to reason in accordance with the prescribed rational principle tied to one's mandate.[21] If judges and public officers were to question the rules from an omnilateral standpoint, they would undermine the task specific to their mandate. In the case of women and workers, the omnilateral standpoint is undermined because they are perceived as beings who, due to their dependent status, are allegedly more prone to legislate based on private decisions.

Reducing Kant's active/passive distinction to whether one stands under private or public authority is not just inaccurate; it obscures the sexist and classist ideas that inform his problematic distinction.[22] Actualizing Kant's political ideas cannot mean ignoring that, in Kant's republic, "womanhood" and "poverty" are markers of domination, which Kant himself failed to recognize as such. Rather than dismissing these problematic passages (A, 7:309; MM, 6:388, 2000), the republican interpretation draws attention to the empirical markers in Kant's work that uphold domination,[23] while emphasizing that a consistent application of the general will—which mandates the removal of any laws permitting arbitrary interference—compels us to reject such measures.

6 | A Systematic Advantage: The "Contestatory" Character of Active Citizens

The republican interpretation of citizenship also offers a systematic advantage. On my proposed reading, the publicly minded citizen takes center stage, revealing a fruitful account of legitimacy that Kant scholars have not yet fully explored. Typically, scholars take the legitimacy of public decisions to be derived from a notion of *consensus*.

Arthur Ripstein and other influential Kant commentators[24] stress passages that say that public decisions must be shaped in such a manner that the people *could* have given their consent (Ripstein 2009, 47; TP, 8:297). According to this line of interpretation, the validity of collective decisions does not arise from people actually consenting to laws but from a hypothetical scenario in which everyone is considered as if they had rationally consented to them. Legitimacy, in other words, is rooted in the *implicit* consent we would give as rational beings.

Neo-republicans, however, are skeptical of consensus-based notions of legitimacy. They worry that implicit consent makes non-domination too easily attainable, rendering it an "empty" ideal (Pettit 1997, 184). Pettit even uses Kant as an example to illustrate the problem with implicit consent (2025 142–144; MM, 6:319). He notes that once we have entered the civil condition, revolution is strictly prohibited according to Kant, as the social contract prescribes obedience even to a despotic ruler. Only if the form of domination is so severe that the underlying conditions for a civil state are violated do we find ourselves in a situation where the contractual agreement is terminated and the implicit consent justified by it canceled. Since this model only addresses very severe cases of domination, we are left with a system in which even "the most appalling regimes" are considered legitimate (Pettit 2012, 143).

Although Pettit's reading of Kant is quite selective, the issue he highlights is significant. If the state represents a public will solely because it acts in accordance with a public purpose, then the general will bears troubling similarities to that of a slave master given that the mere possibility of domination is enough to constitute actual domination. Kant's sexist and classist measures determining active and passive citizenship constitute an illustrative example of this problem: while his suggested measures enable arbitrary interference, they do not break with the underlying contractual agreement. The potential for active citizens to infringe upon the wills of passive citizens at any time and for any interest is enough to render it dominating.

At first glance, Kant seems better equipped to address this problem when read as an actual consent theorist. Pauline Kleingeld has recently argued that, in the *Metaphysics of Morals*, "the general united will of the people" should be understood as a collective judgment grounding a positive notion of liberty (Kleingeld 2025). According to Kleingeld's interpretation, Kant views a decision as legitimate only if it "springs" from the citizens' "own legislating will" (2025). It is true that, in the passages to which Kleingeld refers, Kant appears to have in mind a collective decision procedure conducted by active citizens (see MM, 6:316). However, even if a collective decision procedure is a necessary condition for deeming a legislative judgment legitimate,

it cannot be a sufficient one. According to Kant, a collective decision is sufficiently legitimate only if co-legislators legislate in accordance with the omnilateral will. This is evident, for instance, when Kant discusses the justification for rightful external acquisition:

> [T]he [... will] can *justify* an external acquisition only in so far as it is included in a will that is *united a priori* (i.e., only through the union of choice of all who can come into practical relations with one another) and that commands absolutely. For a unilateral will (and a bilateral but still particular will is also unilateral) cannot put everyone under an obligation that is in itself contingent; this requires a will that is omnilateral [...].
>
> (MM, 6:263, emphasis added)

Given that, for Kant, a collective decision is considered particular if it lacks the proper general form, it cannot derive its legitimacy solely from actual consent.

Mike Gregory has opted for a reading that emphasizes the two-fold character of the general will, arguing that public decisions are legitimate only if, in addition to their hypothetical consent, citizens also provide their actual consent. Gregory finds textual evidence for this in passages where Kant discusses the conditions under which a sovereign is permitted to go to war, claiming that co-legislators "must [...] give their free assent, through their representatives, not only to waging war in general, but to every particular declaration of war" (MM, 6:346; see Gregory 2023). According to this interpretation, Kant presents a two-level approach to the legitimacy of the public will: first, one that requires individuals to vote so that everyone could potentially consent to it; and second, one where the citizens who vote consent to the law through a majority voting system (2023, 7–8).[25]

Though this interpretation allows for understanding the general will as deriving legitimacy not only from hypothetical but also actual consent, it remains insufficient to address the concerns of a neo-republican. The issue with explicit consent is that non-arbitrariness inevitably becomes an "inaccessible ideal" (Pettit 1997, 184). Consider, for instance, a referendum in which the majority vote results in the implementation of a law that discriminates against a group. If we seek to deem this outcome illegitimate, it is still a notion of hypothetical consent that performs the normative work, since the justification for deeming it illegitimate is based on the idea that rational citizens would not have voted in this manner. Conversely, if we follow Gregory's argument that we consent to the "sufficiency of majority legislation" rather than "the law directly" (2022, 10), then the problem of majority domination re-enters through the backdoor: even when the majority decides on laws that enable arbitrary power, we are compelled to accept this decision, as it has gained legitimacy through the procedure. The problem with the actual consent reading is that non-domination becomes an ideal so inaccessible that it can only be imperfectly realized, often at the expense of legitimizing other forms of domination (Pettit 1997, 183).[26]

Rather than viewing legitimacy as a form of consensus, republicans derive it from the "effective contestability" condition—specifically, the ability created within a state to "more or less effectively contest the decision if we find that it does not address our relevant interests or relevant ideas" (1997, 185). While in Pettit's account the virtuous citizen is primarily expected to keep powers in check, more recent accounts emphasize that virtuous citizens play a pivotal role as they are a crucial force in pushing "society in the right direction" (Costa 2009, 2).[27] In my view, Kant's active citizen can be understood in these terms. The active citizen who reasons publicly and actively challenges forms of domination is essential for promoting non-domination and, consequently, progress.

If we understand the omnilateral will as a form of judgment—as I have suggested—then legitimacy is not only derived from consensus but from a culture in which laws must withstand the critical scrutiny of publicly minded citizens. This idea is defended in Kant's early essay "What is Enlightenment?" where he emphasizes that only "the public use of one's reason [...] can bring about enlightenment among human beings" (WIE, 8:37). The crucial "touchstone" for the legitimacy of public decisions is the judgment form of the general will as expressed by those who are in a position to reason publicly; that is, "whether a people could impose such a law upon itself" (8:39). The scholar serves here as an example of someone who is free to deliberate omnilaterally on how to improve society. For Kant, a just republic is not solely defined by specific democratic procedures; rather, to gradually move toward a fully republican state, we need active citizens who, free from "laziness" and "cowardice," have cultivated the "courage" to reason publicly—that is, to use reason "without direction from another" (8:55).

If we look beyond his discussion of citizenship in *Theory and Practice* and the *Doctrine of Right*, we see that Kant's active/passive distinction is intended to enable a republic composed of critical thinkers who actively contest laws that enable domination and deliberate about laws that have the intended public shape. In this vein, we find that Kant's active/passive distinction—alongside the empire-of-law condition, the dispersion-of-power condition, and the counter-majoritarian condition—also encompasses the contestability-of-law condition, which is the fourth feature that aligns Kant's notion of citizenship more closely with the concerns of neo-republicans.

7 | Summary

In this paper, I have argued for a republican interpretation of Kant's account of citizenship. In contrast to interpretations that regard democratic procedures as a necessary criterion derived from Kant's concept of innate right, I have demonstrated that Kant's notion of citizenship is primarily concerned with laws shaped by the general will—a criterion I consider to be "republican" in nature. The "general will" is not understood as a collective agreement but as a judgment form that prescribes how laws should be formulated to serve the public interest.

More specifically, I have defended two claims. First, I argued that the republican reading is better supported textually, as it can accommodate Kant's assertions that passive citizens are free

and equal, that the republic is necessarily representative, and that certain individuals are ill-suited to co-legislate. Second, I contended that this account provides a stronger foundation for understanding the legitimacy of the public will in neo-republican terms as establishing a culture of "contestability." While Kant is more commonly interpreted as deploying a notion of the general will that gains legitimacy through consensus, my reading emphasized that legitimacy is derived from the judgment form of the public will. Despite his morally problematic assumptions about women and workers, Kant's notion of citizenship aims to establish a republic of critically minded citizens who seek to dismantle and overcome dominating structures.

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Conflicts of Interest

The author declares no conflicts of interest.

Data Availability Statement

Research data are not shared.

Endnotes

[1] As Skinner notes, "knowing that we are free to do or forbear only because someone else has chosen not to stop us is what reduces us to servitude" (Skinner 2002, 248).

[2] This is because the "dominating party can interfere arbitrarily with the choices of the dominated" (Pettit 1997, 22). The "freedom of choice" designates certain choices that are freely made by a free person (Pettit 2024, 519).

[3] In what follows, references to Kant's works refer to the volume and page numbers of the *Akademieausgabe* (Kants gesammelte Schriften, Berlin, 1902). Throughout the paper, I use the translations from The Cambridge Edition of the Works of Immanuel Kant. Where I depart from this translation, I make this visible. See the bibliography for full details.

[4] The most influential defense has been put forward by Arthur Ripstein in *Freedom and Force*. See also Helga Varden's "Kant's Non-absolutist Conception of Political Legitimacy—How Public Right 'Concludes' Private Right in the 'Doctrine of Right'" (Varden 2010), "Kant and Dependency Relations," *Sex, Love, and Gender: A Kantian Theory* (Varden 2020), Lois-Philippe Hodgson, "Kant on the Right to Freedom: A Defense" (Varden 2010), and Rafeeq Hasan, "Freedom and Poverty in the Kantian State" (Hasan 2018).

[5] Pettit notes that the idea that "human beings are equal and should be equally well served by their social and political institutions" emerged later in "the century of Enlightenment" (Pettit 1997, 48). He incorporates the idea of enlightenment such that in a "just state, ... all adult, able-minded, relatively permanent residents should count as full citizens, with special provision for individuals outside of those categories: say, for children, for certain atypical adults, for refugees and temporary immigrants" (Pettit 2023, 10).

[6] Kant has a unique way of defining property, which includes skills and trade (Maliks 2014, 109). Hasan (2018) and Moran (2021) argue that the account of property has less to do with wealth than the systemic features of the labor market.

[7] Weinrib and Vrousalis provide the most explicit defense of this view. However, this perspective is often assumed in interpretations that portray Kant as a defender of republican democracy.

[8] See, for instance, Arthur Ripstein, *Freedom and Force* (2009, 47), also B. Sharon Byrd and Joachim Hruschka, *Kant's Doctrine of Right* (2010), and Jakob Huber, "Legitimacy as Public Willing: Kant on Freedom and the Law" (2019).

[9] To be sure, there are notable differences between Kant and the neo-republican accounts of Skinner and Pettit. One of the most fundamental differences is that Skinner and Pettit are receptive to consequentialist arguments about how to "maximize non-domination." As Skinner puts it, "if we are to speak of constraints on liberty, we must be able to point to some identifiable act of hindrance, the aim or *consequence* of which was to impede or interfere" (2002, 257, emphasis added). Pettit, too, stresses the consequentialist basis of this thought, arguing that "[t]he more promising step is always the step that makes for greater equality," which is why we should strive for the maximization of non-domination (1997, 116). Attempts, such as those by J. P. Messina, which seek to show that there are crucial differences between neo-republicans and Kant, are fruitful and important (Messina, manuscript); however, they do not undermine efforts to explore Kant's republicanism as deploying features that align his account with this tradition. In my view, this holds true for every republican author, and even Skinner and Pettit deviate from one another in crucial respects. As Pettit outlines the difference: "I hold that for republicans freedom means non-domination, period, whereas he [Skinner] says that it means non-domination and non-interference" (Pettit 2002, 342).

[10] This, of course, does not mean that republicanism and democratic theory are mutually exclusive. Various democratic theorists endorse a republican government, and likewise neo-republicans stress the importance of democratic procedures. However, their justifications differ. While democratic theorists typically see political participation as an "intrinsic" value, neo-republicans understand it as an "instrumental" value (Brennan and Lomasky 2006, 229–230). Philip Pettit highlights this difference when he discusses what he calls the "populist" view (1997, 8). Pettit has also emphasized this aspect in highlighting his deviation from Rainer Forst's democratic republicanism (Forst 2024, 530).

[11] I rely here on Katrin Flikschuh's (2021) translation—as defended in "Innate Right in Kant"— which includes the term "necessitating" (*nötingend*) and thus aligns more closely with the original text than Gregory's translation.

[12] As Ripstein (2009, 17) highlights, innate right comprises a series of authorizations: (i) the authorization to not be more bound by others than they are by you; (ii) the authorization to be held accountable solely for your own actions (MM, 6:238); and (iii) the authorization to be held accountable only for actions that are legally (not morally or epistemically) wrong (MM, 6:238).

[13] Jordan Pascoe provides a labor theory reading, where the "independence" criterion is "consistent with innate right" (Pascoe 2022, 10). As I shall show below, I believe that this is a textually more accurate reading.

[14] It is in this vein that Skinner finds inspiration in Machiavelli, who, rather than prescribing that everyone become active citizens, seeks a legal state which ensures that the freedom of those who tend to dominate is not realized to a greater extent than that of those who simply "wish to avoid any intervention in their affairs on the part of a legitimate government" (Skinner 1984, 205).

[15] This is evidenced by Davies' interchangeable use of "independence" and innate right, referring to the "entitlement to be free from the necessitating choice of another" (2023, 120).

[16] I am grateful to an anonymous reviewer at *Ratio* to press me on this matter.

[17] See Ripstein (2009, 274, 278) who interprets Kant as claiming that living in a civil condition governed by the omnilateral will cannot mean that only the wealthy have protected their freedom through property laws, but also that the poor have protected their freedom via non-arbitrary state measures of redistribution (MM, 6:325–6).

[18] The distinction between the legislative and executive appears to trace back to the *Wille*/*Willkür* distinction in *Religion within the Bounds of Mere Reason*. As Henry Allison notes, the legislative will (*Wille*) establishes the law, while the executive will (*Willkür*) adopts a specific course of action (Allison 1990, 137).

[19] For a closer engagement with this argument in Kant, see Luigi Caranti's work on this issue, in particular, "Why Does Kant Think that Democracy is Necessarily Despotic?" (2023).

[20] For Weinrib, this is where the logical conflict arises: the state creates the dependency of passive citizens by removing them from the state of nature, where private wills are not subject to an omnilateral will, and forces them to live within the rightful condition, where their private dependencies render them unfit to contribute to the general will (2009, 20). Vrousalis expresses the same thought for different purposes, claiming that "*Selbstständigkeit* precludes alien unilateral control over the exercise of their rightful powers, including their productive powers" (2022, 450). Davies echoes this argument, stating that "members of a state are civilly self-sufficient if they do not depend on private relations of authority for their survival" (2023, 138).

[21] Vrousalis emphasizes this point strongly, asserting that Kant would never mention psychological dispositions (2022, 451). We also find this point made by Arthur Ripstein (2009). Although it is true that Kant largely refrains from making his empirical assumptions explicit in the Doctrine of Right, I read the Metaphysics of Morals against the backdrop of the Anthropology.

[22] Huaping Lu-Adler has recently claimed that "a colorblind Kantianism is unequipped to confront the racial injustices that still beset our societies today" (Lu-Adler 2023, 226). The same can be said about a class- and gender-blind Kantianism.

[23] Here I follow Susan Shell who reads the active and passive citizenship distinction as a "concession to the empirical human condition" (Shell 2016, 14).

[24] B. Sharon Byrd and Joachim Hruschka, *Kant's Doctrine of Right* (2010), and Jakob Huber, "Legitimacy as Public Willing: Kant on Freedom and the Law" (2019).

[25] Gregory believes that this claim can be found in "Theory and Practice," where Kant addresses the issue that if the standard of universal agreement is not met, then "the principle of letting such a majority be sufficient" should form the basis of a civil constitution (TP, 8:297, see also Gregory 2023, 8).

[26] Although Gregory argues that his view is compatible with Pettit's account, he does not acknowledge that Pettit's neo-republicanism does not regard majority voting as either a necessary or sufficient criterion for legitimacy. By defending the general will as an "ideal" that must be supplemented by a majority voting system as the "sufficient option in the absence of universal agreement among citizens," this account overlooks Pettit's concern that such interpretations are dismissive of minority rights (2023, 10). Gregory does not address this issue, arguing that the "outvoted voter" is considered free from domination because the voter is "consenting not to the law directly, but to the sufficiency of the majority for legislation" (10).

[27] See also Otonelli, "Citizen's Political Prudence as a Democratic Virtue" (Otonelli 2018); Honohan, "Non-domination, Civic Virtue and Contestatory Politics" (Honohan 2014); Dagger, "Civic Virtues: Rights, Citizenship and Republican Liberalism" (Dagger 1997); Calhoun, "The Virtue of Civility" (Calhoun 2000); Aitchison, "Rights, Citizenship and Political Struggle" (Aitchison 2018).

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