Kant’s *appell an das Publikum*  
(draft)

One of the most common feelings that happen with Kant scholars, specially those that work Kant’s political thought, is a certain feeling of being overthrown by so many different texts, from different natures (systematic treatise and texts of circumstance, drafts and simple notes) and presenting a great number of conflicting political ideas. We can say that we have a proper Kant for each political vision, from Jacobinism to a defender of the house of the Hohenzollern, passing through girondism; from defender of a strict legalism to the defender not only of the execution of Luis XVI of France, but of a resistance against a tyrannical power even though this resistance cannot be labeled as a right. But almost all agree about the importance of the French Revolution in Kant’s thought. Not that Kant was a fond reader of Rousseau, but, what seems much more important to me, and this may be seen as something new, in the attention he pays to what was going on in the debates at the National Assembly.

The French Revolution was an enormous experience, an experience that imposed a revision of all the important concepts and idea about the political, an experience that open new possibilities to and through the imagination. When Kant says, in the Conflict of the Faculties, that what is in question in the French Revolution is the cause of the Right, it is mean also that all our political and juridical concepts will suffer a revolution in their contours. What I propose here is to present some notes about two of these concepts, the concept of sovereignty and that of political representation. The idea is to show that Kant makes himself distant from Rousseau not only in the possibility (legitimacy) of the state power – of the sovereign power - to be represented, but also in the fact that he no longer consider the sovereign power as an absolute power, a power that know no limits and has no accountability whatsoever. It will also be shown that politics must always be mediate by the institute of representation, and that representation is not only a second best, i.e., when an immediate exercise of power is not possible. For Kant, politics without representation is despotism, and
this because of reasons grounded in his theory of judgment and its transcendental topic.

The arch of Kant’s political thought begins in 1784, with the figure of an ethical head of the state, and goes until 1798, if not even further, trying to have established institutional form for a government of freedom and equality. But in 1784 the greatest problem for the human species, i.e., the establishment of a perfectly just civil constitution depends on the nature of the head of the state, and these is thought not in term of representation. The head of the state is the authority that comes with the law, and that works for its implementation, i.e., the head of the state is the greatest possible irresistible power that has to be combined with the law. Kant says, effectively, that the highest supreme authority (das höchste Oberhaupt) must be just in itself, but then there is not many more, I mean, he doesn’t say much more. The head of the state has a function, even a function of unity between law and power, but it is neither a representative nor a Stellvertreter. In the Idea of a universal history what is at stakes is to know whether or not the humanity is in a continuum progress toward the better, despite the ambitions of the head of the state (Staatsoberhaupt). Human history is read as the realization of perfect political constitution, both inward and outward. But again, nothing is said about the nature of this constitution.

But during the same period we can find some formulations that will be in the core of Kant conception of political representation. In What is Enlightenment Kant states that “what a people may never decide upon for itself, a Monarch may still less decide upon for a people” (VIII, 39). So our epoch is the epoch of Friedrich, who represents in the scenario of world politics not his people, but reason itself. Friedrich, as he represents the Aufklärung, represents reason. It is against reason to decide against Enlightenment. So the limit Friedrich impose to himself is the limit imposed by reason. And if he goes beyond these limits, he makes an attempt not against his people, but against his on majesty, i.e., against him as the darstellung of reason.

Things change quite a bit after the French Revolution. It is astonishing how Kant’s reflections about political questions are dictated by the events in France, specially the events that happens inside the National Assembly. The focus shifts from an ethical vision of politics to a properly political one. So
Friedrich the Great, that was, as head of the state, the most eminent representative of the Aufklärung, in *Toward Perpetual Peace* following Kant, is the Monarch that declares himself to be only the highest servant of the State (VIII, 353). Now, what happens from 1784 to 1793 is that political power is determined as representation, that the one that exercise political power, exercise it in the name of another. As Kant states, “any form of government (*Regierungsform*) which is not *representative* is, strictly speaking, *without form* (*Unform*)” (VIII, 352). In Perpetual Peace, Kant stresses to distinguish between democracy and republic, between a democratic constitution and a republican one. The republican constitution is the only one that is in complete agreement with the very idea of right. But this is not only a scholastical question. Kant writes these pages as if he was part of the French National Assembly. So a passage of a discourse from Barnave, date from August 31 1791 says exactly this, against the calling of primary assemblies:

> on replace le pouvoir représentatif, le plus parfait des gouvernement, par tout ce qu’il y a... de plus subversif, de nuisible au peuple lui-même, l'exercice immédiat de la souveraineté, la démocratie, prouvée par l'expérience le plus grand des fléaux, dans les plus petits États même où le peuple peau se réunir.

So the distinctions made by Kant, *forma imperii*, from one side, *forma regiminis*, from the other; so the focus on the republicanism as a *forma regiminis*, the definition of a true republic as a representative system, this all are ways to capture something new: democracy as a representative system. But for this, he must first make echo at Mounier and distinguish between the sovereignty as a principle and the exercise of the sovereignty power. The Revolution, once in movement, its main problem can be seen in how to build new institution without been crystalized, how to keep its spirit alive in the new letter of a constitution. So this sprite is presented in “this kind of government in conformity with the spirit of a representative system” (VIII, 352). So in the *Vorarbeiten zum ewigen Frieden*:

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1 Probably the first time we find the expression representative democracy is in a letter of Alexander Hamilton, dated from 1777. Condorcet make use of in 1788.
Die Regierungsform aber als die das Gesetz ausübende Gewalt kann nur in zwei Arten eingeheilt werden: sie is nämlich republikanisch, d. i., der Freiheit un Gleichheit angemessen oder despotisch ein sich an diese Bedingung nicht bindender Wille. Die erste ist eine demokratische Verfassung in einem repräsentativen System (XXIII, 166)

Here democratic and republican are taken – it looks like - as being the same. What we have in one side, is an exercise of power; on the other, a kind of constitution:

Die erste Eintheilung geht auf die Substanz des Staats die zweite auf die Form – Wenn einmal eine Staatsverfassung sein muss d. i. eine Obere constituerte Gewalt die iedermann sein Recht bestimmt und sichert (justitia distributive) so ist vor der hand nur erst auf die Person zu sehen diese Gewalt haben könne [...] Die Substanz der Obersten Gewal kan sein: entweder einer, oder einige, oder alle zusammen neben einander in dieser Absicht befinden (Autokratie, Aristokatie, Demokratie ) (XXIII, 165).

It seems to me that we must also distinguish the constitution in to aspect: as a constituierende body of legislation but also as the legislation for the constituirende body, that is to say . And it is this second meaning that attracts Kant’s attention. It is this second meaning that was known as Revolutionary Government. From this point of view, we can now say that the people is the sovereign, while the head of the state in only its representative. This is what can be read in the Doctrine of Right:

Any true republic is and can be only a system representing the people in order to protect its right in its name, by all the citizens united and acting through their delegates. But since a person who is head of the state (whether it be a king, nobility, or the whole of the population, the democratic union) also lets itself be represented, then the united people do not merely represent the sovereign: it is the sovereign. (VI, 341)

But it is sovereign in the sense that is in the origin of all legitimate decision and body of legislation; not in the sense that it is the organ of decisions making and of legislation. This is certainly an explosive formula. And one of its less radical versions can be found in Bergasse: "Je voudrais beaucoup que vous examinassiez si ce n'est pas dans l'exercice de l'opinion publique que consiste la souveraineté d'un grand peuple"(AP IX, 120). The idea is that in case of a conflict between the
idea of right, of morals as a theory of right, and positives Retch’s, an positive legislation, the people must be heard, at least by the way of primary assemblies. This is exactly Kant transcendental formula of public right, and this formula can be seen in the debates about the royal veto. Public opinion is thought as the tribunal that can unify objective and subjective, universal and particular.