

## Publicity and right: the Kantian connection

*Marcelo de Azevedo Granato*<sup>1</sup>

### Abstract

In the second Appendix of *Toward Perpetual Peace*, Immanuel Kant enunciates his transcendental principle of public right, whereby “All maxims that require publicity (in order not to fail their end) are in agreement with both politics and right”. He then adds that “if they [maxims] can attain their end only when that end is made public, then they must also conform to the general end of the public (happiness)”, and that “if this end can be reached only through publicity, that is, by dispelling all mistrust toward the maxims of politics, then these maxims must also be in harmony with the right of the public, for it is in public right alone that the ends of everyone can be unified”. Since Kant himself did not elaborate the connection between (i) the need of publicity, (ii) happiness, and (iii) agreement with public right, the purpose of this paper is to clarify this connection (on Kantian grounds). The first part of the paper is dedicated to understanding the maxims’ *need* of publicity (to attain their ends), and Kant’s reference to maxims, not to actions in the principle. Secondly, it is argued that happiness may be a legitimate aim of State actions by showing the cases under which this aim would *contradict* Kantian right, understood as “the totality of conditions, under which the will of one person can be unified with the will of another under a universal law of freedom”. Finally, the agreement of maxims that require publicity with right is approached. It is argued that such agreement results from the fact that the large coincidence of ends spontaneously raised by those maxims reflects said unification of wills.

**Keywords:** Transcendental Principle of Public Right. Maxims. Publicity. Happiness. Right.

---

<sup>1</sup> Ph.D. in Law at *Universidade de São Paulo* (Brazil) and *Università degli Studi di Torino* (Italy).

In the second Appendix of *Toward Perpetual Peace* (1795)<sup>2</sup>, Immanuel Kant enunciates his two transcendental principles of public right<sup>3</sup>, the second of which<sup>4</sup> states that “All maxims that require publicity (in order not to fail their end) are in agreement with both politics and right”. Kant adds the following in his brief commentary to the principle:

For if they [maxims] can attain their end only when that end is made public, then they must also conform to the general end of the public (happiness), and it is the proper task of politics to attain this harmony (to make the population satisfied with its condition). But if this end can be reached only through publicity, that is, by dispelling all mistrust toward the maxims of politics, then these maxims must also be in harmony with the right of the public, for it is in public right alone that the ends of everyone can be unified [...].

This passage, which Kant himself intended to elaborate (but did not<sup>5</sup>), indicates that if the maxim of an action, *i.e.* a political action, needs to be shared with the public in order to attain its particular end, then that maxim conforms to the “general end of the public”, which is happiness according to Kant. At the same time, that maxim is “in harmony with the right of the public, for it is in public right alone that the ends of everyone can be unified”.

But when would (the end sought by) a maxim of political action *require* publicity? And why would that imply the harmony of the maxim both with happiness as the “general end of the public” and with the right of the public?

---

<sup>2</sup> Translations are based on the *Akademie* edition. Most quotations are from *Toward Perpetual Peace and Other Writings on Politics, Peace, and History*. Ed. P. Kleingeld, trans. D.L. Colclasure (Yale University Press 2006), and were compared to translations in Portuguese and Italian (with minor changes).

<sup>3</sup> The term “principle” may raise objections, as the heading of the second Appendix is “On the agreement between politics and morality according to the transcendental *concept* of public right”. But the use of “principle” derives, among others, from what Kant writes in the same Appendix when introducing the “principle” in reference: “With this aim I propose another, transcendental and affirmative principle of public right, which would be formulated as follows [...]” (ZeF, AA 08: 386. 10-11).

<sup>4</sup> The first transcendental principle of public right enunciated by Kant, which will not be examined here, states that “All actions that affect the rights of other human beings, the maxims of which are incompatible with publicity, are unjust”. ZeF, AA 08: 381.

<sup>5</sup> “I must postpone the further explanation and discussion of this principle for another occasion, but the fact that it is a transcendental formula can be seen from the removal of all empirical conditions (of the doctrine of happiness) as the matter of the law, and from the regard only for the form of universal lawfulness”. ZeF, AA 08: 386.

The purpose of this paper is to answer these questions raised by Kant's principle, henceforth "Publicity Principle", by focusing on (i) the maxims' *need* of publicity (to attain their ends); (ii) the reference to maxims, not to actions; (iii) the possibility to delineate, on Kantian grounds, a 'permissible happiness' for State actions; and (iv) the agreement of maxims with public right, in which "the ends of everyone can be unified".

## **I. The need of publicity**

Our first task is to understand what it means to say that the end of political maxims "can be reached only through publicity", that they "can attain their end only when that end is made public". We may begin with a concrete, non-Kantian, approach to this task.

Let us imagine a legal act reducing taxation applicable to certain goods, with the aim of enhancing their consumption in times of weak industrial and economic performance. Let us also assume that this intention to stimulate a declining economy is the maxim, *i.e.* the subjective principle of (political) action to be tested through the Publicity Principle<sup>6</sup>. Is it necessary that such maxim be made public for its end to be attained?

At first glance yes. Publicity (divulgence) of the maxim, and of the corresponding legal act, would be necessary for the attainment of its end since economic agents, or the potential consumers in particular, must know that consumption of the tax-favored goods has become less expensive in order to purchase such goods in quantities that, without the tax favor, would probably not be purchased (intensifying thus the economic activity).

In principle, the above 'necessity of publicity' illustrates the Publicity Principle, and the maxim of stimulating a declining economy (by reducing taxation applicable to certain goods) seems to be "in harmony with the right of the public".

---

<sup>6</sup> The Kantian concept of maxim (must and) will be briefly discussed below.

Other examples could be raised in this concrete approach to our principle, such as that of a maxim of environmental preservation setting forth a selective waste collection program in which citizens would be invited to sort their own waste, thus improving the public waste treatment system<sup>7</sup>.

But that would lead us beyond the limits of this paper, which intends to highlight here that *this ‘necessity’ of publicity should be construed not in terms of mere awareness of the (political) maxims by the individuals<sup>8</sup>, i.e. the public<sup>9</sup>, but of a disclosure (divulcation) intended to provoke their voluntary adherence to the line of action/behavior arising from the maxim or its specification (in a legal act for example). In the absence of such voluntary adherence, the maxim cannot be effective.*

This suggests, moreover, that adherence excludes coercion, so the cases that fit the Publicity Principle reflect behaviors that individuals have the right not to adopt. Thus they should be (informed and) encouraged, not forced, into those behaviors/lines of action.

In the case of the above mentioned maxim of stimulating a declining economy (by reducing taxation applicable to certain goods), the behavior or line of action arising from that maxim is the purchase of those goods.

## **II. Maxims or actions in need of publicity?**

The above implies that it is the line of action/behavior arising from the maxim that, in practice, makes *necessary* the publicity of maxims, that is to say, their publicity is necessary because only through their disclosure (divulcation) is it possible to gain the

---

<sup>7</sup> One can say that such maxim would require publicity to attain its end, as all citizens would have to be aware of it so as to carry out the selective waste collection, without which the effectiveness of the intended environmental protection would entirely or partially fail (a maxim that, again, seems to be “in harmony with the right of the public”).

<sup>8</sup> Though nowadays such awareness is definitely not commonplace.

<sup>9</sup> Kant does not comment on the nature and range of the “public” in the second Appendix. It could be argued that it would not be a real, but an ideal/rational public, especially if the maxim is one that requires publicity -- in the above mentioned sense of ‘voluntary adherence to the line of action/behavior arising from the maxim or its specification’ -- and is clearly contrary to (Kantian) moral standards. But that does not prevent one from considering that the Publicity Principle refers to a real public, and thus explore/criticize that principle.

adherence of the public to the line of action/behavior through which the end of the maxim can succeed.

The problem is that said line of action/behavior may not be stated in the published maxim, especially if we define (Kantian) maxims as subjective principles of action equivalent to “rules of life” (*Lebensregeln*)<sup>10</sup>.

If we had limited ourselves, in our previous example, to the maxim of stimulating a declining economy, *i.e.* without mentioning the tax reductions, we would not have been able to affirm that such maxim *needed* publicity since that stimulation could have been sought through a public infrastructure investment program, for example. And this program would not require publicity, *i.e.* the public’s adherence to a line of action or behavior, to attain its end.

Does it require us to reconsider the Publicity Principle, focusing not on the maxims of action, but on the actions that specify them, as only the consideration of these actions would allow us to see if the public’s adherence to a line of action/behavior is necessary for the end of the maxim to be attained -- and so our principle should be “All actions [not maxims] that require publicity (in order not to fail their end) are in agreement with both politics and right”? Or is it the Kantian concept of maxim that should be reconsidered, maybe admitting more specific formulations<sup>11</sup> (and then some of the above “actions” could be called “maxims”)?

This issue cannot be properly examined here<sup>12</sup>. In summary, a first response is that the Publicity Principle, by referring to maxims, *i.e.* subjective principles of action,

---

<sup>10</sup> BITTNER, Rüdiger. “Máximas”. In: *Studia Kantiana* (Revista da Sociedade Kant Brasileira), No. 5, Vol. I, 2003. P. 14.

<sup>11</sup> Besides “rules of life”.

<sup>12</sup> On the Kantian concept of maxim, see ALBRECHT, M. Kant’s Justification of the Role of Maxims in Ethics. In: AMERIKS, Karl; HÖFFE, Otfried (Ed.). *Kant’s Moral and Legal Philosophy*. New York: Cambridge University Press, 2009. p. 134-155; ALLISON, Henry E. *Kant’s theory of freedom*. 5. ed. New York: Cambridge University Press, 2003; BECK, Lewis White. *A commentary on Kant’s Critique of Practical Reason*. 3. ed. Chicago & London: The University of Chicago Press, 1984; BITTNER, Rüdiger. “Máximas”. Trad. de Mauro Luiz Engelmann e Rogério Passos Severo. *Studia kantiana*: Revista da Sociedade Kant Brasileira, São Paulo, v. 1, n. 5, p. 7-24, nov. 2003; BUBNER, Rüdiger. Another look at maxims. In: *Kant’s legacy: essays in honor of Lewis White Beck*. Rochester: University of Rochester Press, 2000. p. 245-259; HÖFFE, Otfried. *Immanuel Kant*. Trad. de Christian Viktor Hamm e Valério Rohden. São Paulo: Martins Fontes, 2005; LONGUENESSE, Béatrice. Moral judgment as a judgment of reason. In: *Kant on the human standpoint*. Cambridge University Press. New York: 2005. p. 236-264;

focuses on the real, not on the declared motives of agents. This can be decisive: imagine if the above mentioned tax reductions had as their real/primary (but undeclared) motive to benefit the companies that sell the tax-favored goods; companies related to the public agent responsible for the reduction.

In this case, the maxim of that agent would certainly not be to stimulate a declining economy, but to take advantage of the economic situation. Such maxim would not require publicity in the above mentioned sense, and the corresponding action, the tax reduction, would probably not be supported, but resisted by the public if it could only become aware of the agent's 'real' maxim (which, in fact, should avoid publicity<sup>13</sup>). From this perspective, we should not adapt our principle to "All actions [not maxims] that require publicity (in order not to fail their end) are in agreement with both politics and right".

Moreover, Kant himself gives examples of maxims whose contents do not fit broad definitions of maxims, such as "rules of life". This is the case of the maxims "of the intention to revolt"<sup>14</sup> and of preventive attack against "a neighboring state that has grown to a formidable size"<sup>15</sup> in *Toward Perpetual Peace*<sup>16</sup>. Maxims with such a specific scope/formulation seem to be *indispensable* for the application of the Publicity Principle, as it is difficult to think of maxims that *require* publicity unless they present some detail in their wording.

Therefore, we need not substitute "maxims" for "actions" in the Publicity Principle, but understand that these maxims should have a more specific formulation for the principle to be applied<sup>17</sup>. As Henry E. Allison notes, "Kantian maxims come in

---

O'NEILL, Onora. Universal laws and ends-in-themselves. In: *Constructions of reason*. Explorations of Kant's practical philosophy. 5. ed. New York: Cambridge University Press, 2000. p. 126-144. The author discusses the Kantian concept of maxim in "A interação latente. Moral e política em Kant". In: *Teoria política*. BOVERO, Michelangelo (Org.). Madrid/Barcelona/Buenos Aires: Marcial Pons, 2012. p. 307-321.

<sup>13</sup> The first transcendental principle would apply: "All actions that affect the rights of other human beings, the maxims of which are incompatible with publicity, are unjust".

<sup>14</sup> ZeF, AA 08:382.

<sup>15</sup> ZeF, AA 08: 384. 06-12.

<sup>16</sup> Another example, in the *Groundwork for the Metaphysics of Morals*, is the maxim of borrowing money knowing that one will not be able to repay.

<sup>17</sup> Thus, in the case of the maxim of stimulating a declining economy, the related tax reduction would be construed as part of that maxim (not as a specification of other nature). An issue, then, would be that the public's actual adherence to the line of action/behavior arising from the maxim could depend on how

various degrees of generality and [...] some, but by no means all, may be characterized as *Lebensregeln* or as underlying (as opposed to specific) intentions”<sup>18</sup>.

### III. The admissible happiness

Having construed the maxims’ ‘necessity of publicity’, it is time to remember that “if they can attain their end only when that end is made public, then they must also conform to the general end of the public (happiness)”. So happiness (of the public) is a reflection of the adoption of a maxim that requires publicity in order to attain its end, in other words, a maxim that depends on its own disclosure (divulgence) to the public to attain its end sets forth end(s) that match(es) some end(s) of the public or, in general, as all the empirical ends “are conceived under the general name of happiness”<sup>19</sup>, that are in accordance with “the general end of the public (happiness)”.

But it is one thing to accept that a maxim that depends on the adherence of the public to attain its end sets forth an end that is shared by the public -- *i.e.* that is somehow able to provide it contentment, so as to motivate it to carry out the line of action/behavior required for the maxim to succeed --, and yet another thing to ignore Kant’s negative assertions regarding the role of happiness in State matters, such as that “the temporal conditions as well as the very conflicting and thus always changing illusions in which each person expects to find happiness [...] make all fixed principles impossible and happiness unfit as a principle for legislation”<sup>20</sup>. Or that “the political maxims must not be based on the welfare and happiness that an individual state can expect to derive from following such maxims [...] but rather should be based on the pure concept of the duty of right”<sup>21</sup>.

Right, for Kant, is “the totality of conditions, under which the will of one person can be unified with the will of another under a universal law of freedom”<sup>22</sup>. So how

---

technically or legally correct would it be, on its view, to stimulate the economy by means of tax reductions. In such scenarios, we would be able to affirm that the maxim requires publicity (in the above mentioned sense), but that could not mean the public’s actual adherence to its corresponding line of action/behavior.

<sup>18</sup> *Kant’s theory of freedom...*p. 93.

<sup>19</sup> TP, AA 08: 290.10 – 11.

<sup>20</sup> TP, AA 08: 298.09 – 13.

<sup>21</sup> ZeF, AA 08: 379.11-18.

<sup>22</sup> MS, AA 06: 230. 24-26.

could happiness fit a Kantian institutional legal order? Our answer, in summary, is that Kant's focus on the rational unification of wills in a State does not imply that this State is forbidden to act in favor of its citizens' happiness.

This is confirmed by some passages of *Theory and Practice*<sup>23</sup>, where Kant speaks of "laws that are aimed primarily at happiness (the prosperity<sup>24</sup> of the citizens, increased population, etc.)"; laws that are *not* passed "with the purpose of establishing a civil constitution, but rather only as a means of securing the juridical condition primarily against external enemies of the people", *not* "in order to make the people happy against its will, but rather only such that it exists as a commonwealth". In other words: one need not think of 'public happiness' as establishing a civil constitution, but rather as securing it, in the name of its "strength and steadfastness internally, as well as against external enemies".<sup>25 26</sup>

Therefore, in the legal-political field, Kant's condemnation of happiness is not applicable to each and every State action. Happiness, as that "general name" under which all the empirical ends are conceived, *cannot* guide State action (i) as a principle of political-institutional organization, *i.e.* the goal of happiness cannot overcome right in the construction and coordination of liberties in the State, or (ii) as a principle of social organization, *i.e.* government cannot want to direct, as a father, the citizens' private choices<sup>27</sup>.

If we are not dealing with one of these two (broad and significant) cases, happiness -- or: "to make the population satisfied with its condition" -- may legitimately be an aim of State action, occasionally also an auxiliary to the "juridical condition", as seen above.

---

<sup>23</sup> Full title: *On the Common Saying: This May Be True in Theory, but It Does not Hold in Practice*.

<sup>24</sup> Some translations use richness or well-being.

<sup>25</sup> TP, AA 08: 298f.21-01.

<sup>26</sup> This argument is developed by the author in "Wicked happiness?". In: *Kant und die Philosophie in weltbürgerlicher Absicht. Akten des XI. Kant-Kongresses 2010*. BACIN, Stefano; FERRARIN, Alfredo; LA ROCCA, Claudio; RUFING, Margit (Orgs.). Berlin: De Gruyter, 2013. P. 677-682.

<sup>27</sup> "The sovereign wants to make the people happy according to his own concepts and becomes a despot; the people does not wish to give up on the universal human claim to happiness and become rebels". TP, AA 08: 302.10 – 13.

So the ‘happiness of the public’, as an end to be aimed at, according to the Publicity Principle, should be construed as an end that politics (the State) seeks *inside the pre-established borders of (Kantian) right*. Moreover, the Publicity Principle is not concerned with happiness of one or one thousand persons, but with that of the public, thus related to matters of general interest.

#### **IV. The agreement of maxims with right**

“But if this end [of maxims] can be reached only through publicity, that is, by dispelling all mistrust toward the maxims of politics, then these maxims must also be in harmony with the right of the public, for it is in public right alone that the ends of everyone can be unified”. So, as maxims depend on their disclosure (divulcation) to the public to attain their ends, these ends must be in harmony with some end(s) of the public<sup>28</sup>. And given that, for Kant, “it is in public right alone that the ends of everyone can be unified”, those maxims would agree with (Kantian) right.

If we remember that right, for Kant, is characterized by the rational coordination of external wills<sup>29</sup> -- and in this manner it enables “that the ends of everyone can be unified” --, his point seems to be that the large coincidence of ends spontaneously<sup>30</sup> raised by the maxim that requires publicity reflects such a coordination<sup>31</sup>. It would be a sort of variation of the ‘formula’ indicated by Kant in his essay on Enlightenment: “The touchstone of anything that can serve as a law over a people lies in the question: whether a people could impose such a law on itself”<sup>32</sup>.

#### **V. Conclusions**

In summary, the foregoing indicates that (*i*) by connecting the realization of a (political) maxim to publicity, the Publicity Principle conceives of the public as a ‘coauthor’ of the maxim’s end, thus publicity should be construed not in terms of mere awareness of the maxim by the public, but of a disclosure (divulcation) with a specific

---

<sup>28</sup> Or: “they [maxims] must also conform to the general end of the public (happiness)”

<sup>29</sup> Or “the totality of conditions, under which the will of one person can be unified with the will of another under a universal law of freedom” (MS, AA 06: 230. 24-26).

<sup>30</sup> *I.e.* by “dispelling all mistrust”, not by coercion.

<sup>31</sup> Whether or not the maxim’s end is ultimately realized.

<sup>32</sup> WiA, AA 08: 039. 13-15.

intent, that is to obtain the voluntary adherence of the public to the line of action/behavior arising from the maxim (without which the latter cannot attain its end); (ii) happiness/contentment of the public, as an end at which State actions may and should aim, is construed as an end that politics (the State) seeks inside the pre-established borders of (Kantian) right, so happiness *cannot* guide State action as a principle of political-institutional organization or as a principle of social organization; and (iii) the agreement of maxims that require publicity with (Kantian) right, understood as rational coordination of external wills, and thus enabling “that the ends of everyone can be unified”, results from the fact that the large coincidence of ends spontaneously raised by these maxims reflects such a coordination.

These comments derive from Kant’s own presentation of the Publicity Principle. It would be interesting to extend this analysis in order to see if and how consistent would that principle be today. Our purpose, however, was to discuss, in particular, this peculiar way of approaching right devised by Kant, see how an appeal to the public could make it possible, and confirm that Kant’s objections to happiness, at least when it comes to State matters, deserve some reassessment.

Our examination also showed that the Publicity Principle itself deserves further discussion and criticism. As previously noted, the above ‘coincidence’ between the end(s) of the maxim and of the public may occur also in the case of an ‘evil’ maxim unless the public to which Kant refers is construed as an ideal/rational public (but Kant is not clear on that). Moreover, if we consider not only the ends of maxims, but also the public’s actual adherence to the line of action/behavior arising from them, it is possible that a maxim whose end is shared by the public is nevertheless rejected by the same public because of the means set forth by the maxim to attain its end. In this case, that ‘coincidence of ends’ should be understood in a more restricted way. These and other issues, however, only confirm the originality and richness of Kant’s principle.