

論反抗權在康德法政哲學思想中的 合法性與正當性問題 ——另一種解讀的可能性

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本文嘗試為「反抗權」在康德法政哲學思想中的「合法性」與「正當性」問題提出不同以往的解讀方式，說明在「法權的普遍原則」下，康德雖未肯認反抗的「正當性」，但他依據同樣原則對「言論自由」作為一項「消極的反抗」的強調，卻說明了「理性立法」相較於「實定立法」在「證立上的優位性」，以致人民的反抗作為即使難以受到實定法律的保障，也應當被視為一項「超越實定法的、道德上的權利」。

關鍵字：康德、反抗權、合法性、正當性、言論自由

On Legality and Legitimacy of the Right of Resistance in Kant's Legal and Political Philosophy —A Heterodox Reading

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ABSTRACT

Kant defined the “right to resist” as a “coercive power” against the head of state. Therefore, under the requirement of the “principle of separation of powers”, people’s rebellion is no doubt illegal. However, Kant also emphasized that in addition to revolution and rebellion, there is also a “passive resistance”. It is not a kind of “coercive power” per se, but “a right that cannot be abandoned or given up of an individual who lives in any society.

This article attempts to make a different reading on the legality and legitimacy problem of the right of resistance in Kant’s legal and political philosophy, and to discuss in which sense Kant’s emphasis on the freedom of speech did suggest the idea to which the right of resistance should be regarded as an over-positive right of people.

Key Words: Immanuel Kant, right of resistance, legality, legitimacy, freedom of speech