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Kant's Cosmopolitics Contemporary Issues and Global Debates

Edited by Garrett Wallace Brown
and Áron Telegdi-Csetri

KANT'S COSMOPOLITICS

In memory of
Gary Banham and B. Sharon Byrd

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CONTEMPORARY ISSUES AND
GLOBAL DEBATES

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Áron Telegdi-Csetri

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The history of this project is rather long, troubled and sombre. The idea of putting together this volume originally arose from a conference entitled ‘Cosmopolitanism and Philosophy in a Cosmopolitan Sense’, an event organised under the research project ‘The Political Radicalisation of the Kantian Idea of Philosophy in a Cosmopolitan Sense’, supported by UEFISCDI, contract nr. 61 / 05.08.2010 and the project number PN-II-ID-WE-2011-014, at the New Europe College in Bucharest on 21 and 22 October 2011. At this conference, many of the questions and themes explored in this volume were debated and discussed. It was from these conversations that the late Gary Banham (Founder and Editor of Kant Studies Online) and I decided that there was much more to say on the subject of Kant’s cosmopolitics and his principle of publicity. It was also at that conference that Gary and I became good friends and collaborators.

Enthused, we joined forces with the organiser of the conference, Áron Telegdi-Csetri, and identified the most promising papers from the conference for publication. From that original list, we then commissioned a number of additional scholars to fill out and solidify the volume. One of the people we commissioned was B. Sharon Byrd, who wanted to submit a chapter on Kant’s cosmopolitan law and its vital role as a ‘gap-filler’ in Kant’s understanding of juridical states. In late 2012, everything seemed on course and a contract was secured with Edinburgh University Press (EUP).

However, things did not go as planned and this book has had a number of setbacks and tragedies. The first was the sudden death of Gary on 7 March

2013 in Rome. He died within minutes of having a stroke. This was a huge loss to the field of Kant studies as well as to this project. The book stalled for a considerable amount of time as we mourned and reflected upon whether to go forward with it. We posed this question to our contributing authors and to Gary's partner, and through a series of emails there was agreement to finish the volume and to dedicate it to Gary. It was around this time that Tom Bailey joined the editorial team. It was also during this time that Tom and I worked together to put the final touches to Gary's draft chapter, which was nearly done but required some polishing.

A second setback came a year later with the death of B. Sharon Byrd. This second loss again forced the editorial team to rethink the value of finishing the volume and to consider whether to replace Sharon's chapter and prolong the process. In addition, a few of the commissioned authors were not delivering their chapters as agreed and there was now a general sense that this project had fully stalled and that some chapters would not be delivered.

A third setback came a few months later when complications arose from a routine surgery I had on my kidney. In short, something went very wrong during the procedure, and I was hospitalised for nearly three weeks with an additional six-month recovery. Rightly, this book dropped to the bottom of my list. And, unfortunately, it stayed there for a very long time. Feeling the stall, and with growing obligations elsewhere, Tom graciously pulled out of the project.

Yet, the project re-emerged. This was largely due to the efforts of Áron and the various editors at EUP who have been assigned responsibility for this book. Not wishing to give up, Áron remobilised, secured commitments from new authors, and then oversaw the editing of the replacement pieces he commissioned. Needless to say, this book would not have been completed without Áron. Fittingly, he deserves the biggest acknowledgement.

There are other people who need to be recognised and thanked. First, we would like to recognise and thank Tom Bailey for the editorial work he did on an earlier version of the book, as well as what he did to help turn Gary's draft chapter into a completed one. Although Tom and I could not write as Gary, we tried our best to revise his work in the spirit of his original draft and to work tightly within his original logic. Second, we are grateful to the extremely patient contributors who have been with us from the start in 2011. As outlined above, this has been a difficult journey and you have shown exceptional endurance. We very much appreciate your dedication and efforts. Third, we would like to thank those authors that have more recently joined the volume and their willingness to work to tight deadlines. Fourth, we would like to thank those at EUP who have continued to believe in this project and have helped us see it through. Fifth, we would like to recognise Viorela Ducu (Áron's fiancée at the time, now Viorela Telegdi-Csetri) for her continued

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A NOTE ON REFERENCING THE WORKS OF IMMANUEL KANT

As anyone interested in Immanuel Kant will know, citations of his work within English publications can take various shapes and forms. In some instances, citations will be made only to a translated text that has been used (e.g. Kant 1991: 42), referencing only the page number from that particular English source. In other cases, it is common to cite exclusively the *Akademie Ausgabe von Kant's gesammelte Schriften* (e.g. Kant, 6: 230) or to use other published versions of Kant's work in German. What is more common is to cite Kant both from the translated English version that has been used and from its location in the Akademie (e.g. Kant 1981 [4:421]: 30). Lastly, it is also common to see various abbreviations used in association with different works written by Kant. These abbreviations can be found in both German and English, which can at times be confusing. For example, some authors prefer to cite an exact work of Kant with an abbreviation, say *Perpetual Peace* (*PP* or *TPP*), followed by the Akademie location. Others prefer to cite the Akademie (*AK* or *AA*) directly and forego referencing the exact title of the work. Unfortunately, there is not always consistency in how works are abbreviated.

In light of this, it is important to note that there is no uniform referencing style related to Kant's works as they are used in this volume. Alternatively, as a matter of *Willkür*, we have asked each author to choose the referencing style of their choice as long as the referencing style can be said to be both

universally consistent within their chapter and easy to decipher. That said, we have also felt it necessary to provide some additional groundwork for our readers. The list below offers a generalised, but not exhaustive, list of the main works referenced and the various abbreviations used throughout the chapters in this volume.

AA	<i>Akademie Ausgabe von Kants gesammelte Schriften</i>
A-CPR	First edition of the <i>Critique of Pure Reason</i>
Ak	<i>Akademie Ausgabe von Kants gesammelte Schriften</i>
Anth	<i>Anthropologie in pragmatischer Hinsicht</i>
B-CPR	Second edition of the <i>Critique of Pure Reason</i>
CB	‘Conjectures on the Beginning of Human History’
CF	<i>The Conflict of the Faculties</i>
CJ	<i>Critique of Judgement</i>
CPR	<i>Critique of Pure Reason</i>
CPrR	<i>Critique of Practical Reason</i>
DR	‘Doctrine of Right’
DV	‘Doctrine of Virtue’
GMM	<i>Groundwork for the Metaphysics of Morals</i>
GMS	<i>Grundlegung zur Metaphysik der Sitten</i>
IUH	‘Idea for a Universal History with a Cosmopolitan Purpose’
KpV	<i>Kritik der praktischen Vernunft</i>
Logic	‘Lectures on Logic’
MM	<i>The Metaphysics of Morals</i>
MS	<i>Die Metaphysik der Sitten</i>
PG	‘Physical Geography’
PP	<i>Perpetual Peace</i>
TP	‘Theory and Practice’
TPP	<i>Toward Perpetual Peace</i>
WE	‘An Answer to the Question: What Is Enlightenment?’
ZeF	<i>Zum ewigen Frieden</i>

BACKGROUND ISSUES AND CHALLENGES IN KANT'S COSMOPOLITANISM

Garrett Wallace Brown and Áron Telegdi-Csetri

Immanuel Kant (1724–1804) has had a tremendous influence on cosmopolitan thought and it would be difficult to find a contemporary treatment of cosmopolitanism that did not in some form engage with his political philosophy. Whether one is in agreement with Kant's cosmopolitan vision or not, his writings have undeniably had a lasting and deeply penetrating influence on cosmopolitan and anti-cosmopolitans alike. Furthermore, Kant's cosmopolitan ideas have continued to have influence far beyond the confines of political philosophy, inspiring scholars in disciplines as diverse as anthropology, development, economics, geography, international relations, law, political science and sociology.

Part of this interest in Kant's cosmopolitanism has been sparked by a reinvigorated interest in cosmopolitan thought more generally. This has included the establishment of new research centres and teaching programmes related to global justice and cosmopolitan global governance. In addition, since it is no longer possible to speak solely in terms of domestic policy in an age of globalisation, many mainstream academic circles have started to pay closer attention to cosmopolitanism and its normative principles for reforming global politics. Nevertheless, these processes of globalisation have also faced new resistance from a rise in nationalism, xenophobia, populism and parochialism, which posit arguments against a presumed 'destructive globalism' associated with the

cosmopolitan idea of a ‘citizen of the world’ (*kosmopolites*). As UK Prime Minister Theresa May disparagingly argued in relation to Brexit, we should reject this cosmopolitical form of globalism, since ‘a citizen of the world is a citizen of nowhere’. Paradoxically, this argument is a grim repetition of late Stalinism and its anti-Anglo-American 1945 campaign (with anti-Semitic undertones), where ‘rootless cosmopolitanism’ was understood as the antithesis of a well-localised, ‘patriotic’ socialist internationalism (Gorelik 2005: 115).

It is in response to this growing interest from cosmopolitans, as well as its detractors, that this book seeks to provide a new and important set of examinations into Kant’s cosmopolitanism and Kantian-inspired cosmopolitical debates. In doing so, this volume adds specification to a number of key issues in the field of Kantian cosmopolitanism, in addition to exploring its consanguinity to a number of current debates in political theory, philosophy and the study of international relations.

That said, the present volume is not a systematic discussion of any single issue related to Kant’s cosmopolitanism. Instead, it represents a general intervention across an overarching theme in Kant’s later writings and political philosophy: namely, his cosmopolitics and his underdeveloped (and often contentious) notion of cosmopolitan publicity. As part of this endeavour, the approaches and positions presented in this volume are firmly rooted in, and draw inspiration from, Kant’s work, and include a series of Kant-based investigations on issues related to the interplay between the state and global governance (see Banham, Mikalsen and Roff), peace and human rights enforcement (see Baiasu, Koukouzelis and Mikalsen), migrant crisis management (see Huseyinzadegan), European federalisation (see Brown), global educational reforms (see Cavallar), and Kantian-based ideas for fostering what some might call a cosmopolitan culture (see Maftai). Consequently, the contributions in this book sit at a crossroads between exegetical Kantian studies and broader debates in contemporary cosmopolitanism, with the aim of expanding and advancing our thinking about Kant’s cosmopolitan concerns for global co-habitability and his ideas for publicising a universal condition of public right.

COSMOPOLITANISM AND PUBLICITY

In its most basic form, Kant’s cosmopolitanism is concerned with delineating the moral, legal and political conditions required to establish a condition of *cosmopolitan right* (a condition of justice – mutually consistent external freedom) between all global inhabitants. As Kant argues in the *Critique of Pure Reason*, what is required to ground this condition of *public right* is ‘a constitution allowing the greatest possible human freedom in accordance with laws which ensure that the freedom of each can coexist with the freedom of all the others’ (Kant 1900 [3:247]: Appendix). Establishing this condition, according to Kant, ‘is at all events a necessary idea which must be made the basis of not

only the first outline of a political constitution but all laws as well' (Kant 1900 [3:247]: Appendix).

It is within the *Critique of Pure Reason* that Kant provides his most basic cosmopolitan outline, as well as delineating a clear link between cosmopolitan law and the advancement of a cosmopolitical condition: namely, as resummarised in his later political works, the need to establish the sum of laws required so that one's *external freedom* 'can coexist with the freedom of every other' (Kant 1981 [4:421]: 30). According to Kant, it is only under such a condition of publicised right that the 'choice of one can be united with the choice of another in accordance with the universal law of freedom' (Kant 1996 [6:230]: 24). This condition, he suggests in relation to his cosmopolitan vision, would help to inaugurate 'a matrix within which all the original capacities of the human race may develop' (Kant 1970a [8:28]: 51).

The moral foundations underpinning Kant's concern with publicising a condition of *external freedom* and *public right* are dense and complicated, and remain the subject of the majority of contributions within this volume. Yet, in basic form, it is often argued that Kant's principle of publicity derives from two of his most notable contributions to moral philosophy. The first of these contributions begins with the deployment of Kant's *transcendental deduction* and the assumption that humans have the ability for *freewill*. According to Kant, it is impossible to prove empirically whether or not freewill exists. For Kant, what is more important is whether freewill can be understood to exist transcendently. Through a method of deduction, Kant suggests that humans often make judgements claiming that someone *ought to* have acted in a certain way or that someone *should* have behaved differently. By making such demands in our everyday practice, humans already make a series of assumptions about people having the ability to have done something otherwise: thus, that they have a level of freewill available to them to make or not to make a moral decision. As Kant further states, if humans are not free to determine the imperative force behind moral values (as a world without freewill would intimate), then morality no longer represents a self-imposed moral duty of freewill, but a *coerced determinant* that no longer requires any appeal to morality. This is troubling for Kant, since the capacity to self-legislate is *a priori* the power to be a moral being and, as a result, must be understood to represent the ultimate source of human dignity. As Kant argues, by acting in accordance with moral principles prescribed by one's own reason, humans assert their independence from an empirically determined world and, by doing so, establish what is distinctively human and unique about our nature.

However, Kant also understands that if moral choice is what makes us distinctively human, then those moral choices will also stand in relation to the free choices of other humans. If this is so, argues Kant, then to uphold freewill as the ultimate source of human dignity will also require that one's freedom is

also universally valid in relation to the external freedom of all others. This is true both internally in regard to a condition of domestic public right, but also in regard to relations between states (international public right) and all peoples (cosmopolitan public right). In understanding that humans should not submit to a morality outside themselves, and that cosmopolitanism is the matrix from which this capacity will develop, Kant demands that humans must always be understood as co-legislating members of a universal *kingdom of ends*. To state this differently, since everyone has the capacity to be moral lawgivers, it is therefore morally and practically consistent to treat others with basic moral respect, to understand their capacity for freewill, and to behave with a corresponding awareness of our universal human dignity. What is required to ground this condition, argues Kant, is the publicisation of cosmopolitan public right and the corresponding milieu of expanding cosmopolitics from which to promote the ‘original capacities’ of all humans as lawgiving members of a universal kingdom of ends.

It is from this underwriting notion of universal validity and the need for publicity that Kant posits his Categorical Imperative, which insists that we should ‘act only according to the maxim whereby you can at the same time will that it should become a universal law’ (Kant 1981 [4:421]: 30). Out of respect for the dignity of moral choice, Kant further derives from this maxim that we should ‘act in such a way that you treat humanity, whether in your own person or in the person of another, always at the same time as an end, and never only as a means’ (Kant 1981 [4:429]: 36). Kant stresses the importance of this imperative as the foundation of cosmopolitan law and a thoroughgoing cosmopolitics when he argues that it represents ‘an original right belonging to every man by virtue of his humanity’ (Kant 1981 [4:421]: 30).

Although Kant provides the moral groundings for why a condition of cosmopolitan right is ‘necessary’ for the development of our universal human capacities, he also suggests that establishing this cosmopolitan condition does not need to rely on these ‘motives of morality’ alone, since there are also persistent rational and practical incentives embedded within existing global relations (Kant 1970b [8:368]: 114). For Kant, the motivational basis for the publicisation of a condition of *cosmopolitan right* is also premised on many of the similar empirical justifications commonly highlighted by contemporary cosmopolitans as they pertain to globalisation. Like many contemporary cosmopolitans, Kant argued that the world has become increasingly interconnected where human interaction is no longer avoidable and where a ‘violation of right in one part of the world is felt everywhere’ (Kant 1970b [8:360]: 107). Kant further suggested that due to the profound empirical and moral implications of global interconnectedness and interdependency, and its potential to harm mutually consistent *public right*, the ‘greatest problem for the human species [. . .] is that of attaining a civil society, which can administer justice

universally' (Kant 1970a [8:28]: 51). What is required in the immediate sense, according to Kant, is the publicisation of mutually consistent international and cosmopolitan principles 'which may eventually be regulated by public laws, thus bringing the human race nearer and nearer to a cosmopolitan constitution' (Kant 1970b [8:360–1]: 108). In other words, what is, in the first instance paramount, are the legal and cosmopolitical foundations from which a broader publicisation of cosmopolitanism can be attained.

PUBLICISING COSMOPOLITANISM

Although Kant is relatively clear about the philosophical groundings for why cosmopolitan public right is both morally and practically attuned, he is far less clear about his process of publicisation and how cosmopolitan theory best evolves so as to capture a more comprehensive cosmopolitical practice effectively. As has been argued in detail elsewhere (Brown 2009), what Kant most obviously provides is a basic blueprint outlining the minimal principles necessary to foster peaceful and hospitable interrelations between states and peoples, which, if consistently applied, might eventually 'spread further and further' toward a more thoroughgoing cosmopolitical and legal condition (Kant 1970b [8:356]: 104).

As part of this transitional cosmopolitical blueprint, Kant posits a tripartite system of interlocking and mutually reinforcing laws. In the first instance, this system was to be fostered and expanded through a voluntary pacific federation (*foedus pacificum*) of like-minded republican states and peoples who are dedicated to the establishment of a more rightful condition under cosmopolitan law. This tripartite matrix of cosmopolitan law would codify *public right* into domestic law / *domestic right* (laws between citizens), international law / *international right* (laws between states and other political units) and eventually into cosmopolitan law / *cosmopolitan right* (laws between states and individuals, especially non-citizens, including laws between private individuals). What is important to note here (topics explored in this volume) is that Kant places considerable moral and effectual weight on the role of republicanism within his cosmopolitics (see Mikalsen and Koukouzelis), as well as positing fairly simplistic (some say naïve) assumptions about how the various levels of his tripartite jurisprudence logically interlock, mutually reinforce and co-constitute one another (see Baiasu, Banham, Mikalsen and Roff). This not only raises questions of political feasibility (a common investigation between all the contributors in this volume), but also asks whether or not Kant's blueprint is robust enough to deliver the demands of his moral philosophy (see Baiasu, Brown, Huseyinzadegan and Roff).

As a means to explain the feasibility of this cosmopolitical expansion, Kant suggests that the cosmopolitan legal matrix might originally develop from 'one powerful and enlightened nation [. . .] a republic' [of public right] and that this

could ‘provide a focal point for federal association among other states’ (Kant 1970b [8:356]: 104). Kant goes on to suggest that other states could ‘join up with the first one, thus securing the freedom of each state in accordance with the idea of *international right*, and the whole will gradually spread further and further by a series of alliances of this kind’ (Kant 1970b [8:356]: 104). Moreover, the empirical dynamics of globalisation, which are rooted within the political and economic structures of the international system, furnish opportunities for normative reflectivity that provides the impetus for states, even against their immediate self-interest, toward producing this potential ‘concord among men’ (Kant 1970b [8:360–1]: 108; Brown 2009; see Baiasu and Brown in this volume). As Kant suggests, this reflective logic can rely solely on practical realities of mutual interest in trade and security, which, if not addressed, can ‘provide the occasion for troubles in one place on the globe to be felt all over’ (Kant 1996 [6:352]: 121).

It is in relation to minimising the costs of these potential harms that Kant believes that the first articles of cosmopolitical publicity will be those associated with trade and security, and it is from this impetus that a nascent cosmopolitan legal condition is not only motivationally possible, but also empirically and normatively necessary. In other words, what Kant is suggesting is that any state constitution and civil order, no matter how internally coherent and stable, cannot be fully secure unless its external relationships with other states are also mutually secure and that this can be done only through meaningful cosmopolitics and the publicisation of a genuine system of *public right* between states and peoples.

In other words, for Kant, international stability and the health of a state’s own civil order are inextricably interconnected. Because of this, Kant argues that ‘wherever in the world there is a threat [. . . states] will be motivated to prevent it by mediation’ (Kant 1970b [8:368]: 114). It is through this mediation, and the continued promotion of a tripartite system of *public right*, that Kant suggests like-minded states will increasingly reduce wars of insecurity, moving ever slowly, incrementally, cosmopolitically, toward what some have suggested is his highest good, a condition of *perpetual peace* (see Baiasu in this volume; Doyle 2006).

Having understood the practical limitations of moving his universal moral theory to universal practice, Kant consciously pursued a more humble and modest course. As will be played out within the chapters of this volume, the ambiguities associated with taking this minimal course have given rise to alternative readings of Kant’s cosmopolitan vision, which underwrite the divergent (and often viable) conclusions offered by these multifarious readings. Part of the problem with determining more exact accounts of Kant’s vision rests in the fact that Kant may not have actually wanted to give a more definitive cosmopolitical outline. As Kant states, a cosmopolitan condition will be the result

of international norm building and a continued enthusiasm so that these narrowest of ethical conditions will 'gradually spread further and further' (Kant 1970b [8:356]: 104). What authors like Brown (2009) and Cavallar (1999) have taken from this is a notion that Kant may have wished to avoid making predictions about the cosmopolitical complexion of a final cosmopolitan condition. This may have been because Kant was fully aware that this political process would bring about a cosmopolitan condition legitimately only if it was also the genuine product of self-legislation and an act of being a law unto oneself (*Willür*). This also seemingly supports the fact that Kant limits his first cosmopolitical move to basic *laws of hospitality* (see Roff for a provisional account and Huseyinzedegan for a reflective account), which, in their modest form, act as rudimentary cultivating mechanisms toward broadening a sense of shared community, where everyone is considered *as if they could be* mutual citizens of the world. In the end, the laws of hospitality act more like transitional principles than a robust condition of public right, which Kant submits is required for meaningful cosmopolitics and perpetual peace (see Brown 2009 for a transitional account).

Despite the fact that Kant was aware that current hindrances often restrict cosmopolitical relations between peoples, he also insisted that these hindrances 'cannot annul the right of citizens of the world to try and establish community with all' (Kant 1996 [6:353]: 121). As Kant forcefully proclaimed, hospitable treatment is not merely a philanthropic principle, but a 'principle having to do with public right' (Kant 1996 [6:352]: 121). And this is, according to Kant, 'a necessary complement to the unwritten code of political and international right, transforming it into a universal right of humanity' (Kant 1970b [8:360]: 108). In this regard, whatever the final complexion of a cosmopolitical legal order, and the transitional principles of publicity necessary to bring it about, publicisation is, unquestionably for Kant, a matter of universal public right from which the 'original capacities of the human race may develop' (Kant 1970a [8:28]: 51).

Lastly, it is important to note that the *principle of publicity* receives a direct treatment in relation to Kant's cosmopolitan vision in the Appendix to *Perpetual Peace*. Here, Kant discusses a negative and a positive corresponding political duty that work in tandem to underwrite the principle of publicity. The negative political duty relates directly to identifying the maxims that morally violate the principle of public right and are thus inappropriate for domestic law, international law and cosmopolitan law (see chapter by Roff). The positive duty of any social order is to identify maxims that are both consistent with and complementary to the interest of public right. In this regard, the principle of publicity asserts that maxims that do not fail the test of application and, in fact, promote public right, are required to be made public and are therefore 'reconciled with both right and politics' (Kant 1970b [8:386]: 130). Accordingly, Kant maintains

that maxims that can satisfy this rule also ‘conform to the universal aim of the public’ (Kant 1970b [8:386]: 130). Although Kant mentions this principle only briefly in passing in *Perpetual Peace*, it seemingly has direct implications for how to understand the practice of his cosmopolitan vision, as well as his larger perpetual peace project, since he makes it clear that it is ‘the particular task of politics’ (Kant 1970b [8:386]: 130) to facilitate the principle of publicity and, by extension, it must have a role in Kant’s understanding of cosmopolitical practice. Nevertheless, like many things involved with Kant’s ideas, the devil is in the detail, and it is to the task of exploring these details further that this volume now turns.

THE STRUCTURE OF ENGAGEMENT

In many ways, the treatment of Kant above raises more questions than answers. This is because at each step in Kant’s cosmopolitan matrix – from the groundings of human worth, to human dignity as self-lawgiving, to the role of enlightened republican states, to the role of teleology, to delivery of a matrix of humanity, to the reaching of the ‘highest good’ and perpetual peace – the links between these ideas often remain underdeveloped, ambiguous and, in some cases, inconsistent. Kant himself realised the underdevelopment in his own thinking, suggesting at the end of *Perpetual Peace* that more on his principle of publicity and its relationship to his cosmopolitan right needed to be said, but that he would ‘postpone the further elaboration and discussion of this principle until another occasion’ (Kant 1970b [8:386]: 130).

It is because many aspects in Kant’s cosmopolitanism continue to remain underdeveloped that this volume did not dedicate itself solely to one particular issue. It is also due to the sheer complexity involved in exploring these issues that the book also did not attempt to provide a synoptic reading of Kant’s cosmopolitanism (if that were even possible). Instead, what this volume offers is a series of explorations of key aspects and complexities involved with Kant’s wider discussion of cosmopolitan right, as well as some of his proposals for moving cosmopolitan theory to cosmopolitical practice. As part of this effort, the volume is divided into four parts.

In Part 1, the interplay between state sovereignty and the role of cosmopolitical institutions within Kant’s broader understanding of cosmopolitan public right are explored and debated. In Chapter 1, Gary Banham addresses the common critique that Kant’s conception of cosmopolitan right is too weak and thus fails to resolve the problem of interstate coordination. In addressing this tension, Banham attempts to untangle the relationship between cosmopolitan right and international right, and sets them within Kant’s overall concern to construct institutions that could supersede an existing international state of nature. In his analysis, Banham tackles three key sub-questions and ambiguities in Kant: namely, how do institutions alter between different Kantian

texts, how should we understand the meaning of 'institution' at each level in Kant's tripartite, and how publicity operates both in interstate relations and in relations between citizens of distinct states? In articulating a coherent relationship between these three questions, Banham offers an account that resists the Habermasian tendency to conflate cosmopolitan right with international right, as well as rejecting Roff's suggestion (as argued in this volume) that a notion of provisional right is sufficient to address the three questions under consideration.

Providing an alternative approach for understanding the role of the state in Kant's cosmopolitical order, Kjartan Koch Mikalsen defends the idea that the equal sovereignty of states is essential to understanding and publicising a condition of global justice. The point of departure for Mikalsen is Philip Pettit's neo-republican intergovernmental ideal of 'globalised sovereignty', which he contrasts with cosmopolitan reform proposals that pull the international system in a supranational direction. In comparing the two approaches, Mikalsen finds both Pettit's defence of sovereign equality and the cosmopolitan counter-arguments severely wanting. Since the ideal of a cosmopolitan law of peoples has weaknesses, Mikalsen presents a more robust case for the equal sovereignty of states based on a republican reading of Kant's philosophy of right. In doing so, Mikalsen argues that instead of conceiving of human rights and state sovereignty as core ideas of competing normative conceptions, it is better to see them as mutual aspects of the same conception. In this regard, Mikalsen argues, states should be viewed as freedom-enabling institutional arrangements. Thus, respecting the sovereign rights of states should be part and parcel of respecting the rights of individuals. As a result, Mikalsen argues that it would be inconsistent to promote justice globally without also recognising the equal sovereignty of states.

Part 2 moves beyond the Kantian state to explore two ways in which the principle of publicity operates within Kant's cosmopolitics and law. For Heather Roff, an understanding of any 'claim of right' in Kant's system must also encompass Kant's discussion of the 'capacity for publicity', in which any maxim of action must be subjected to a publicity test. According to Roff, this test applies to domestic states (*ius civitas*) when rulers contemplate the rightfulness of a proposed law; within the international system (*ius genitum*) when states contemplate actions towards other states; and within the cosmopolitan condition (*ius cosmopoliticum*) when all nations attempt to regulate their behaviour towards each other for the purpose of establishing a community of all. Roff goes on to argue that although the principle appears at first to be unconditional, Kant's principle of publicity is actually best understood as being provisional, and that it is only when a system of public right exists that the provisionality of the principle of publicity becomes resolute. Roff argues that viewing the principle of publicity as provisional can help to resolve the

apparent contradiction between Kant's use of it in *Towards Perpetual Peace* and its notable absence in the 'Doctrine of Right'. Unlike Mary Gregory, B. Sharon Byrd, Joachim Hruschka, Elisabeth Ellis and Gary Banham (the latter in this volume), Roff sees no tension between the texts, suggesting that one text assumes a civil condition, whereas in the other it does not. Roff concludes by arguing that unless we understand the principle of publicity as provisional, it becomes difficult to formulate the required tripartite system of public right (*ius civitas*, *ius genitum* and *ius cosmopoliticum*), thus rendering an incomplete form of cosmopolitan justice.

For Kostas Koukouzelis, it is not necessary to locate strict exegetical consistency within Kant. What is crucial, argues Koukouzelis, is the reconstruction of Kant's connection between his version of republicanism and cosmopolitan law, especially if one takes republicanism to mean collective self-determination within a state and cosmopolitanism to mean the abolition of all state boundaries. Koukouzelis begins by recontextualising Kant, suggesting that a globalised world is not at the same time a cosmopolitan one, and that a cosmopolitan world does not *ipso facto* entail the abolition of all state boundaries. If we take this as the empirical baseline, the argument shifts to whether cosmopolitanism can provide the conditions of possibility for forming a democratic – in Kant's own terms, a 'republican' – state. In doing so, under modern conditions, this process cannot be based on the narrow state logic of exercising self-determination (since Westphalia is obsolete), but on the need for a higher political structure being in place: that is, a cosmopolitan civil society, which indirectly and non-coercively *could* influence internal state constitutions absent of direct representation. It is under such a reconstruction that human beings can make public use of one's reason and enjoy the status of republican citizenship, which is, for Kant, a mainstay of his overall cosmopolitan vision.

Moving from theory to practice, Part 3 examines a series of problematic applications of Kant's cosmopolitan vision as they are often found in contemporary political theory and international relations. Sorin Baiasu unpacks, re-examines and then separates the common conceptual conflation made between the realisability of Kant's perpetual peace project and his understanding of the 'highest political good'. In doing so, Baiasu suggests that Kant's idea of perpetual peace or highest political good is often misread due to exaggerated assumptions concerning both the similarities with, and the differences from, Kant's highest ethical good. By unpacking this thorny issue, Baiasu believes it is possible to understand that the condition of realisability, which is appropriate for the highest political good, should not also be applied to the notion of the highest ethical good. Furthermore, by understanding Kant in this way, Baiasu suggests that it then becomes possible to resolve several further philosophical and interpretative issues in our understanding of Kant's larger cosmopolitical vision.

In more applied fashion, the chapter by Garrett Wallace Brown seeks to challenge the theoretical, historical and practical links often made between Kant's idea for a cosmopolitan federation and the formulation of the European Union (EU). According to Brown, the relationship between Kant and 'Kant's Europe' remains a rather underdeveloped assumption for which there is compelling exegetical and practical evidence to suggest that it is not as robust as is generally assumed. In his re-examination, Brown argues that a link between Kant and the EU can reasonably be claimed to exist only at the level of Kant's first two Definitive Articles, and that the EU remains severely impoverished in regard to Kant's most basic tenets of cosmopolitan right. As a result, Brown argues that any enthusiastic treatment of the EU as a nascent form of a cosmopolitan federation is suspect and that there are a number of Kantian critiques available for rethinking the EU.

As a departure from Brown's treatment of the laws of hospitality, Dilek Huseyinzadegan suggests a different reading of Kantian hospitality with the view to harnessing its descriptive power to address the present Syrian refugee crisis better. According to Huseyinzadegan, the dominant interpretations of Kantian hospitality present it as either a cosmopolitan moral ideal or real proof of Kant's condemnation of colonialism (see Brown in this volume). However, in both cases, Huseyinzadegan finds them insufficiently nuanced. As a means to address this insufficiency, Huseyinzadegan argues that any moral appeal to 'hospitality' as a 'noble ideal' must also take account of the concrete historical, cultural and geographical circumstances that provide the empirical conditions for the possibility of hospitality to attain. To do so, Huseyinzadegan argues that we must attend to the non-ideal theory underlying possibilities for Kantian hospitality and that this should result in a radical reorientation of our politics toward redressing the history of colonial injustices and the political economy of the current refugee crisis.

Part Four branches out from an applied political focus in order to explore two radically different Kantian approaches for understanding the development of cosmopolitan identities and culture. In providing one vision for cultivating cosmopolitan identities, Georg Cavallar contends that we should start by understanding that Kant's moral educational theory is largely cosmopolitan in character, particularly since, as moral beings, humans have an obligation to develop 'cosmopolitical maxims' that help to establish, maintain and develop the conditions of cosmopolitanism. When they are examined in this way, Cavallar suggests that moral self-legislation and self-motivation can coincide with a cosmopolitan disposition (*Denkungsart, Gesinnung*). The chapter highlights the differences between political / legal and moral education as they pertain to Kant's understanding of the formation of cosmopolitan dispositions. By making the distinction, Cavallar concludes that there is only one possible method to achieve the goal of forming cosmopolitan

dispositions (according to Kant): namely, through the role of publicity and enlightenment advanced via progresses in educational science.

Moving into the realm of Kantian aesthetics, Ștefan-Sebastian Maftei explores the role assigned within the *Critique of Judgement* to Kant's idea of taste as the disciplining of unfettered genius. Maftei suggests a link between Kant's political philosophy and his aesthetics, explaining that Kant's cosmopolitanism and Kant's notion of taste involve two sides of the same problem: that is, external freedom. In pressing the link, Maftei argues that Kant's vision of a 'tasteful genius' is actually an example of the ability of external freedom under law, in which 'taste' as a regulatory principle of universal publicity, and 'genius' as a form of self-determined internal freedom, can remain mutually consistent. In other words, as Maftei presents, genius, when corrected by taste, manifests itself as an image of external freedom, which becomes 'refined' in contact with the public nature of taste. According to Maftei, publicity plays a key role here, since genius corrected by taste is also a form of freedom corrected by a transcendental principle of publicity. If this is consistent, argues Maftei, then the presence of a cosmopolitan condition becomes an additional cosmopolitan cultural prerequisite in fostering a cultural milieu in which the original capacities of genius and human evolution may develop in a way in which (via taste) all human capacities may also develop, unified under a universal kingdom of ends.

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PART I

SOVEREIGNTY AND KANT'S COSMOPOLITICS

COSMOPOLITAN RIGHT AND UNIVERSAL CITIZENSHIP

Gary Banham

The status and role of cosmopolitan right in Immanuel Kant's philosophy of right are a matter of deep contention. Four aspects are of crucial importance, in my view. First, what is essential in understanding cosmopolitan right is the distinction between it and international right. Indeed, it is only when we view cosmopolitan right as distinct from international right that we can come to see it, second, as Kant's means of addressing the difficulty of a state of nature problem that is rarely attended to: namely, the problem of how to overcome the state of nature that exists between states, a state of nature that puts citizens of any given state in a precarious position whenever they are beyond the bounds of that state. Third, the possibility of commercial transactions between citizens of distinct states is complicated by the problem of how to guard against cultural domination, as Kant makes clear in demarcating cosmopolitan right in such a way as to rule out colonialism. When we set cosmopolitan right in this three-fold perspective – as being distinct from international right, concerned with a state of nature problem and part of a critical response to colonialism – we are able to see cosmopolitan right as a basis for a view of universal citizenship and relate it not merely to the notion of 'provisional' right employed in Kant's more familiar account of the state of nature, but also – and this is the fourth aspect – to his model of enlightened reason.

In this chapter, I attempt to bring out these four distinctive elements of Kant's sense of cosmopolitan right.

COSMOPOLITAN RIGHT AND INTERNATIONAL RIGHT

The first difficulty in understanding cosmopolitan right, then, is distinguishing it clearly from the notion of international right. This is made difficult by the way in which contemporary political philosophers have tended to conflate the two, particularly in the wake of John Rawls's *The Law of Peoples*. The basic reason for this conflation is the notion that cosmopolitan thought is concerned with global justice, conceived of as part of a quest for redistribution of resources in the form of a moral egalitarianism (Rawls 1999: Ch. 11.1; Ch. 16.3).¹ This moral egalitarianism focuses on the welfare of individuals, setting this against the concern with states and effectively arguing for a reshaping of the political by means of greater trans-individual concern with well-being.

Kant's model of cosmopolitan right is quite different from the type of thinking that is at work in such contemporary political theory. To begin with, cosmopolitan right is not conceived of by Kant in terms of 'global justice', if by this we mean a theory of global politics that is principally concerned with the egalitarian distribution of resources. This is because cosmopolitan right is part of Kant's philosophy of right, not his philosophy of virtue, with the result that cosmopolitan right should be seen as indicative of a binding legal commitment, not as an ethical duty, whether perfect or imperfect.²

To capture Kant's specific sense of cosmopolitan right, then, it is necessary to view right as normatively grounded and yet distinct from the demands of ethics.³ This specific character of right is indicated in the universal principle of right that governs all of Kant's philosophy of right, and which he states as follows: 'Any action is *right* if it can coexist with everyone's freedom in accordance with a universal law, or if on its maxim the freedom of choice of each can coexist with everyone's freedom in accordance with a universal law' (Ak. 6: 230). Noticeably, the formula defines two ways in which something can be right, referring first to how actions can be so and then to how maxims of actions can be so. However, both ways converge on a reference to outward conduct and this is what is essential to whether something is *right*. That which is right is that which is governed by a universal law that regulates the free relations we have with each other. So the universal principle of right is a principle that realises external freedom by means of restricting it, or performs a kind of practical schematisation of such external freedom.

Kant subsequently explains the division within the formulation of the supreme principle of right when he argues that the adoption of the universal principle of right *as a maxim* is required of me by ethics but not by right itself (Ak. 6: 231), since right itself merely requires that my action be governed by

this principle, not that I need take it as a consciously explicit goal to be so governed. The principle of right can, then, be given an ethical justification without requiring that action in accordance to refer explicitly to such a justification.⁴ Just as Kant also restricted and realised freedom in the basic statement of the universal principle of right, so this is also furthered when he connects right to the authorisation of coercion. Coercion is justified, somewhat indirectly, as a response to a previous act that would disrupt the reciprocity that is involved in what is right. Since right involves a reciprocal use of external freedom, what is wrong is that which would hinder such reciprocity and this hindrance is thus itself, in hindering such reciprocity, a source of resistance of freedom to freedom. Therefore, it is part of the consistent self-regulation of freedom that it should include reference to the need for coercion, as the means of hindering the hindrance to freedom, a hindering that is itself a restoration of freedom's self-consistency.

If the philosophy of right can thus be seen as a philosophy of authorised coercion in terms of the self-regulation and self-consistency of freedom, then the state of nature problem that exists at the primary level and authorises the formation of a state of right is merely an extension of the authorisation of coercion in the general sense. To the general argument concerning such authorisation, Kant adds the further point that the limited spherical surface of the earth has provided a necessity that communities be formed, something that affects the original justified right that each of us has to possession of land (Ak. 6: 262).⁵ When Kant formulates the nature of public right in general, he consequently distinguishes three parts to it in the following way.

Under the general concept of public right, we are led to think not only of the right of a state but also of a *right of nations* (*ius gentium*). Since the earth's surface is not unlimited but closed, the concepts of the right of a state and of a right of nations lead inevitably to the idea of a *right for a state of nations* (*ius gentium*) or cosmopolitan right (*ius cosmopolitanicum*). If, then, the principle of outer freedom limited by law is lacking in any one of these three possible forms of rightful condition, the framework of all the others is unavoidably undermined and must finally collapse (Ak. 6: 311).

It is important to note here that the three forms of right distinguished are all parts of the general concept of right. Within the general concept of right, we separate out questions that are specific to the right to a state, the rights of states in relation to each other (which Kant here terms the right of nations but elsewhere views as international right) and cosmopolitan right (here also termed a 'right' for a state of nations).

When we move on to looking at the distinct way in which Kant characterises international right by contrast to cosmopolitan right, what emerges is a second form of state of nature, distinct from that which is invoked as the basis

of the right to form a state. International right concerns the relations between states, and states considered as distinct entities are in a state of nature with regard to each other. International right, then, consists of rights that regulate war and peace.⁶ This is why Kant formulates international right as concerned with rights to go to war, rights in war and rights after war. By contrast, cosmopolitan right concerns the right to peaceful community that emerges from the constant likelihood, given the sphericity of the earth, of interaction and concerns the right to offer to engage in commerce with each other. As Kant puts it, ‘each has a right to make this attempt without the other being authorised to behave toward it as an enemy because it has made this attempt’ (Ak. 6: 352). On Kant’s view, then, there is a *right*, not an ethical duty, to attempt community with others, a right that carries with it a corresponding obligation on others to treat one with hospitality. Since this is a matter of right, it must also be clearly explicated in terms of the ways it can be regulated and it must emerge in some way from the general concept of right – that is, it must be shown as something that there is a need for, just as the state of right itself was shown to be needed by reference to the state of nature that would otherwise befall us. Cosmopolitan right is thus related to international right in one key sense: if international right governs the state of nature that exists between states in terms of regulating their conduct and policing their actions, so cosmopolitan right ensures a realm of rights for citizens of different states in interaction with each other, a pattern of interactions that is not part of international right precisely because it is presumptively peaceful. This presumption of peacefulness will, in fact, be part of what forms a guard-rail around the application of cosmopolitan right.

COSMOPOLITAN RIGHT AND PROVISIONAL RIGHT

If the relationship between states is one in which there is a state of nature and thus a continuous possibility of war, it is with regard to international right that there is a state of nature problem. The problem that Kant runs into here is well stated by Katrin Flikschuh, who refers to what she calls a ‘sovereignty dilemma’. This consists in the difficulty that, on the one hand, between states there is a demand for the coercion that intrinsically accompanies right in order to ensure the reciprocal use of freedom, and yet, on the other hand, each state is also a juridical individual with the manifest right to determine its own affairs, and consequently there can be no right to coerce its action (Flikschuh 2010: 482).⁷ This ‘dilemma’, cast at the level of international right, is part of the reason for Kant’s shifting arguments in different texts about the question of how to ensure that relations between states are given lawful form. However, the basic response to this question is distinct from that regarding the state of nature in which individuals are placed, precisely because states are, each considered

separately, rightful entities. This is why there is no ground in Kant's theory of international right for a view that will enable decisive supersession of the state of nature between states.

However, even within the state of nature there is a form of right, which Kant terms 'provisional right'. It is referred to, for example, when, at the conclusion of the first chapter of the 'Doctrine of Right', he discusses possession in a state of nature and declares that it can be provisionally right. There Kant declares that

the way to have something external as one's own *in a state of nature* is physical possession which has in its favour the rightful *presumption* that it will be made into rightful possession through being united with the will of all in a public lawgiving, and in anticipation of this holds *comparatively* as rightful possession. (Ak. 6: 257)

Here the status of provisional right is one that applies to something held only empirically and not intelligibly, and is only a comparative form of right that, furthermore, has this presumption of right in virtue of a relation it possesses to something anticipated. However, in the relationship between states, there is little ground for imagining that the basis of a provisional right would be held only by means of such restraints, for the supersession of states themselves would be the suppression of something whose existence is rightful, and would therefore be wrong. If, then, there is a state of nature that does not permit an evident solution of the kind that is available for individuals, then the law that must regulate relations there would have to be a provisional one, yet without clear means of superseding the wrongful condition in which a state of nature always consists.

In the light of this peculiarity of the level of international right, Elizabeth Ellis has proposed that a principle that Kant himself explicitly uses only regarding right during war be considered the general basis of provisional right in the case of international right. This is the principle: 'Always leave open the possibility [. . .] of entering a rightful condition' (Ak. 6: 347; Ellis 2005: 112, 133). However, to employ this principle as the overall means of regulating international right has a number of drawbacks. First, such a principle, formulated by Kant for a very different purpose to Ellis's, is not descriptively accurate in relation to the situation of international right. Since there are rightful conditions operative within each state, the possibility that has to be left open is not that of a 'rightful condition', but that of expanding the sphere of rightfulness. Second, Ellis's principle is only negative and so does not help to clarify what kinds of relations between states would improve the chances of conduct conformable to right. Third, and most importantly for my purposes, Ellis's principle is not specific enough to clarify the status of the

relationship between citizens of different states and their means of communicating and trading with each other.

Rather than adopt Ellis's proposal, I suggest we take instead the universal principle of right itself as providing the relevant form of provisional right, such that conduct that does not conform to it incurs the application of coercion as part of the self-regulating economy of outer freedom. This suggestion, I think, enables us to make more sense of the role of cosmopolitan right. If cosmopolitan right is a means by which relations between citizens of different states can come into rightful contact, then what follows is that such contact should conform with universal conditions of freedom, be peaceful in intent and, in encouraging relations between different publics, also encourage mutual interaction between states. When seen in this setting, cosmopolitan right, whilst not sufficient to overcome the 'dilemma' Flikschuh (2010) points to, is none the less part of what enables there to be law-governed peaceful conduct that points ideally beyond the state of nature between states without requiring suppression of rightful entities.

COSMOPOLITAN RIGHT, PEACE AND COMMERCE

However, if we see cosmopolitan right in the way I am suggesting, then it is centrally important to work through an understanding of it that shows both the means by which it can promote peacefulness and the ways of regulating it to guarantee such peacefulness. In the 'Doctrine of Right', Kant presents the thoroughgoing community of all nations on the earth as a rational idea of peaceful relations, which need not be exactly friendly. According to the central conception of it presented there, it is a right to offer to engage in commerce with others that should not be responded to with the automatic suspicion that would be correctly aimed at an enemy. Indeed, Kant summarises it by stating that '[t]his right, since it has to do with the possible union of all nations with a view to certain universal laws for their possible commerce, can be called *cosmopolitan right*' (Ak. 6: 352). Similarly, in *Perpetual Peace*, the Third Definitive Article defines cosmopolitan right as consisting in conditions of universal hospitality based on a right to visit other lands, a right that, both there and in the 'Doctrine of Right', is explicitly related to the right of possession in common of the earth's surface.

The right that is guaranteed in cosmopolitan right restricts the conduct both of the visitor and of those who are visited. Consider, first, the conduct of the hosts. There is nothing that prevents the host from refusing to engage with the visitor, should they choose. Still, this is balanced by the visitor's right to have respected the conditions of being able to live at all – this is why Kant indicates in *Perpetual Peace* that the visitor cannot be turned away if the consequence of this would be their destruction. But if this is a constraint on the host's ability to practise non-engagement, there is also a clear distinction

between the visitor's right to visit and a right to settle. The former is guaranteed as part of cosmopolitan right, but the latter is not. What is given to a member of an alien community, as a part of right, is the ability to present themselves as worthy for engagement: the right, as Kant puts it, 'to present oneself for society' (Ak. 8: 358). It is this that is traced back to the original possession in common of the earth's surface, on the grounds that, originally, no one had any more right than another to a particular place on it. The right to the earth's surface, then, is a right held in common, and with this right comes the always open possibility of offering trade with inhabitants of a given place.

Importantly, this indicates that the right that is given in cosmopolitan right is, as Kant states in *Perpetual Peace*, a 'natural' right, since it does not arise from contractarian agreements, but is simply a given condition of the original common right of possession. Indeed, this is another way of showing that cosmopolitan right is governed by the notion of provisional right, for elsewhere Kant is clear that the only 'innate right' is the right to freedom, and it surely follows that the law governing cosmopolitan right must be the basic law of external freedom: namely, the universal principle of right.

If cosmopolitan right is thus guaranteed in its minimal form of a right of visitation, and this constrains the behaviour of those who are visited, so that hostility to the visitor is outlawed, then this prevents those visited from being able to exercise force upon the visitor, provided the visitor is peacefully engaging in an offer of trade. This is thus the basis of Kant ruling out responses to the visitor that involve piratical behaviour on the part of the hosts or behaviour that could lead to the destruction or enslavement of the visitor.

However, while the inhabitants of the area visited are thus constrained in terms of the way they can meet with the visitor, the visitor is likewise constrained in terms of the behaviour they can exercise towards those visited. More specifically, while the visitor has a right to seek commerce, they do not have a right to have this offer accepted. This curtailment prevents visitors from arriving in the area they go to as simple conquerors who could count the inhabitants of the place visited as if they lacked worth. This is the basis of what I would term the 'Japanese exemption', as Kant refers in *Perpetual Peace* to the way the Japanese closed their borders to foreign visitors, preventing their engagement with the general population, without denying all access to trade. This exemption from engagement is rightful since there is nothing that requires the people visited to accept the offer of trade or even to engage with the visitors. Further, the Japanese in this case did not treat the visitors with 'hostility' since they did not endanger their lives and, what is more, they did allow them access to trade. Indeed, Kant indicates that, given the colonial temperament of visitors to the lands of the Orient, the restrictions the Japanese imposed on visitors were not merely in accordance with right, but also entirely understandable.

Similarly, in the ‘Doctrine of Right’, Kant states that visiting other countries is liable to provide the occasion for ‘troubles and acts of violence’, particularly when the point of such visits is to create establishments that will relate back to the country from which the visitors have come. The abuses that might always arise from such visitation do not suffice to justify preventing it, since the right of citizens of the world to try to establish community with others cannot be overridden. However, this right is limited. Kant explicitly denies that there is a right to ‘*make a settlement* on the land of another nation’, since such a right would require a specific contract, and thus be regulated by the law of the state visited, exceeding the provisions of cosmopolitan right alone.

If these are the mutual conditions under which cosmopolitan right is constrained, then it is also worth considering how Kant conceives of cosmopolitan right as contributing to the possibility of peaceful relations between peoples, for Kant does not consider cosmopolitan right as guaranteed only through conditions that specify peaceful relations, which would indicate merely that it conforms to the general requirements of right. Rather, he also suggests that the practice of cosmopolitan right *expands* the prospects for peace in general. In *Perpetual Peace*, he describes cosmopolitan right as ‘a supplement to the unwritten code of the right of a state and the right of nations necessary for the sake of any public rights of human beings and so for perpetual peace’ (Ak. 8: 360).

The reason why cosmopolitan right must be ‘supplemented’ for the sake of any public rights at all is not difficult to find. Cosmopolitan right guarantees that if a citizen of one state is within the borders of another, they cannot be rightfully deprived of life or the means of life. Along with the rules of international right that govern conduct in relation to war, this is a guarantee of the recognition of such rights that is independent of their relationship to the laws of their own land. Such recognition of their status is a basis for visiting other countries and for both communicating and trading with citizens there, and, since such engagement is permitted insofar as it is peaceful, we can see that it conforms to a wish for peace. It is less clear, however, how it *promotes* the ideal of perpetual peace.⁸

At this point, however, Kant’s argument takes an unusual turn, by drawing upon his hopes for a kind of ‘ruse of nature’ by which we are driven toward moral conduct even by means that themselves have nothing necessarily or distinctively moral about them. Referring to the ‘spirit of commerce’ at the conclusion of the first supplement of *Perpetual Peace*, he writes,

Since the *power of money* may well be the most reliable of all the powers (means) subordinate to that of a state, states find themselves compelled (admittedly not through incentives of morality) to promote

honourable peace and, whenever war threatens to break out anywhere in the world, to prevent it by mediation, just as if they were in a permanent league for this purpose [. . .]. In this way nature guarantees perpetual peace through the mechanism of human inclinations itself [. . .]. (Ak. 8: 368)

This larger argument, whilst not part of the strict case for cosmopolitan right, is none the less an indication of the importance of the conduct guaranteed by it. The argument is not merely that trade is something that is legitimate in conditions of peaceful exchange, but that it is a practice that facilitates peace between nations – so much so, in fact, that it is a means by which the goal of international right of establishing a law-governed realm between states is given a certain automaticity of application. Each state finds it in its interest to prevent war in order that the trade guaranteed as a matter of cosmopolitan right can be continued, since that trade is to the advantage of each state. The practice of guaranteed peaceful trade, then, within the boundaries of cosmopolitan right, has a tendency to promote peace in the more general sense, and thus to help bring about a relation between states that moves them, at least in practice, beyond the condition of a state of nature to which their separate existence theoretically condemns them.

COSMOPOLITAN RIGHT AND ENLIGHTENED REASON

The suggestion that emerges from consideration of Kant's view of cosmopolitan right is that it provides, if not a resolution of what Flikschuh views as the 'sovereignty dilemma', at least a different perspective on the problem of how to supersede the state of nature that operates internationally. Looked at from the perspective of cosmopolitan right, the activities that have the most potential for promoting peace are ones that are carried out, not by states, but rather by citizens of distinct states coming into communication with each other on a common ground of guaranteed right. In this concluding section, I would like to suggest another reason for thinking that it is in these terms that the best Kantian picture of peace can be given. This concerns the relationship between cosmopolitan right and the universal practice of enlightened reason.

In his essay, 'What is Enlightenment?', Kant posits a distinction between public and private uses of reason that initially has a paradoxical air about it. He describes citizens engaged in occupations for others as engaged in 'private' uses of reason, and contrasts this with a 'public' use, carried out by the writings of one who addresses the world at large. Kant calls such a writer a member of 'the society of citizens of the world' (Ak. 8: 37) because such a writer has left behind all specific occupations and is thinking from the standpoint of universality, which enables him to 'think for himself'. The universal communicative

possibility that emerges from writing links it to the ‘secret’ article of *Perpetual Peace*, where Kant suggests that public speech about ‘universal maxims of waging war and establishing peace’ should be consulted by rulers (Ak. 8: 369). For the universal maxims are themselves, as public, available and stated in the same public form as the writings referred to in the essay on enlightenment.⁹

The universal communicative possibilities of reason are ones that enable transcendence of the specific private statements of officials and employees. By going beyond these statements of private reason, they presage a universal relation between persons as citizens of the world. Although this is a different level of cosmopolitan thinking, it is surely related to the conception of cosmopolitan right in a number of ways. First, the ‘secret’ article of *Perpetual Peace* presents the public statements of philosophers as statements to be permitted by states and available for consultation by them. This public availability of the maxims of universal reason is formally akin to the universal hospitality of cosmopolitan right: just as persons cannot be turned away if the result would be loss of life, so the counsels of reason concerning the rightful means of waging war have to be consulted. Openness to the visitor and openness to the counsels of reason are formally akin in their universality. Second, the nature of the statements of universal reason incorporates the statement of universal hospitality itself, as it is such reason that states the right of universal hospitality. In other words, the statement of universal hospitality arises from the unrestricted thought of enlightened reason. Third, and most conclusively, the universal right of philosophical reason to examine and state its precepts and have rulers consider them is akin to the right to have one’s offer of trade taken seriously as one presents oneself for society. Just as visitors may offer trade and yet have no guarantee that their offer will be accepted, so too are the statements of reason presented to society for its consideration and yet can be granted no guarantee of acceptance. Or, just as the ‘Japanese exemption’ shows how visitors’ right can be restricted without doing them wrong, so rulers can, following their own laws, take only partial cognisance of reason as long as they continue to follow the general rules of right.

If it is the case that there is a general relationship between cosmopolitan right and enlightened reason, it also follows that enlightened reason is not a reason that accepts or authorises colonialism. Indeed, it is precisely the opposition to colonialism and the acceptance of careful guard-rails around the right of hospitality that allow us to view the opening to peaceful relations between peoples as grounded on a law that is a form of right whilst deliberately not being a forced resolution of the so-called ‘sovereignty dilemma’. Rather than seeing relations between states as the core problem of global reasoning, the lesson of Kant’s conception of cosmopolitan right is that it is rather the relations between citizens and the openness of them to communication and trade with each other that ground progress toward perpetual peace.

NOTES

1. It is worth noting that Rawls himself distinguishes his ‘law of peoples’ from such ‘cosmopolitanism’ and, in this respect at least, his view is closer to Kant’s. The former citation also makes clear his understanding of moral cosmopolitans’ position, citing as it does the work of Thomas Pogge in particular. For a clearer view of Pogge’s positive statements, see Pogge (1992: 48–75).
2. Seyla Benhabib (2004: 36), for example, errs in her understanding of cosmopolitan right as imposing an ‘imperfect moral duty’, an error all the more surprising, given that she has recognised that Kant does not view it as a part of a theory of philanthropy but as something that is owed by right.
3. In attempting to articulate a notion of law that is both normatively grounded and yet distinguishable from the ethical, Jürgen Habermas (1996) is following the Kantian model of understanding right – although he often writes as if his account has left behind its Kantian background due to his overarching commitment to ‘discourse ethics’. For critical reflections on this work, see R. Von Schomberg and K. Baynes (2002).
4. When viewed in this way, it becomes clear that there is no specific problem with incorporating the ‘Doctrine of Right’ within Kant’s ethical system. There is, however, a lot more to be said than can be said here about the full philosophical rationale for distinguishing right from virtue, a rationale that would make clearer the substantive distance between Kant’s philosophy of right and utopian positions that attempt to incorporate into right conditions that properly belong only to virtue.
5. The spherical form of the earth’s surface is not itself a justificatory premise of a normative sort in Kant’s argument, but is rather akin to what Rawls terms a ‘circumstance of justice’ since it is a constraint on action of a sort that is not chosen and which shapes what it is to be able to choose. Notably, even if it assures us of the fact of communities, the spherical form of the earth would itself alone give no guarantee of the rightful nature of any such communities, and so is rather only another way of indicating the ‘unsociable’ need for sociality that is a general premise of Kant’s pragmatic anthropology.
6. Once this is noted, we can see that the previously cited work by Höffe states in its title something false. Kant does *not* articulate a ‘cosmopolitan theory’ of law and peace, but rather an ‘international’ theory of law and peace – to explicate the theory of law and peace is not part of his account of cosmopolitan right.
7. Flikschuh contrives to resolve the ‘dilemma’ in question through a systematic analysis of Kant’s texts, which, however, retains a bias in favour of the juridical supremacy of individual states. Despite initially also attending to the difference between international right and cosmopolitan right, she therefore says little about the prospects for tackling the dilemma by means of an appeal to cosmopolitan right.
8. This is regardless of the question of the status of this ideal, which appears to change from *Perpetual Peace* to the ‘Doctrine of Right’.
9. In accord with my suggestion of a relationship between enlightened reason and cosmopolitan right, Peter Niesen (2007: 90–108) describes cosmopolitan right as incarnating a communicative right.

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KANTIAN REPUBLICANISM IN THE INTERNATIONAL SPHERE: EQUAL SOVEREIGNTY AS A CONDITION OF GLOBAL JUSTICE

Kjartan Koch Mikalsen

Is there a place for state sovereignty in a just global order? Yes, answers Philip Pettit in a series of works that broaden his neo-republican theory of the state to the international sphere in terms of an ideal of ‘globalized sovereignty’ (Pettit 2014: 154). Like Rawls in *The Law of Peoples*, Pettit makes a variation on Rousseau, and takes states as they are while asking about the international order as it might be (Pettit 2010: 70; Rawls 1999: 7). Assuming that the organisation of the political world on a state-bound pattern is unlikely to cease, he argues that the best way to promote the republican ideal of freedom as non-domination is to work toward a multilateral order of sovereign states, each representing a free (undominated) people and each protected in their sovereign liberties (Pettit 2016).

Although sovereignty is central to the republican law of peoples, Pettit’s defence of sovereignty is relatively weak. His normative individualism, his consequentialism and his corresponding instrumentalism about institutions make the ideal of globalised sovereignty susceptible to weighty counterarguments from radical cosmopolitans who advocate reforms that pull the international

system in a supranational direction and give priority to protection of human rights not only domestically, but also internationally.¹ Yet, the ideal of a cosmopolitan law of peoples has weaknesses and blind spots of its own. In addition to the worry about power politics in humanitarian garb, there is also the risk of hollowing out the prohibition against aggressive war, which became part of international law during the twentieth century. For this reason, I will present in this chapter a stronger case for the equal sovereignty of states based on a republican reading of Kant's philosophy of right. Instead of defending a multilateral order on the ground that recognition of states as equal sovereigns is the most feasible way of securing individuals against domination, I argue that equal sovereignty is an essential aspect of the recognition of individuals as free and equal, and that recognising states as equal sovereigns is a condition of global justice.

Taking political freedom to imply a certain form of independence vis-à-vis others and recognising a close connection between such independence and citizenship, Kant shares the core commitments of an otherwise heterogeneous republican tradition summed up by Quentin Skinner in the following slogans: '[i]t is possible to act freely [. . .] if and only if you are a freeman' and 'it is possible to live and act as a freeman if and only if you live in a free state' (Skinner 2010: 98–9). At the same time, Kant's republicanism differs in important respects from the Italian–Atlantic form of republicanism favoured by Pettit.² Where Pettit conceives of republican freedom as a consequentialist good, the basic principle of Kant's philosophy of right, the universal principle of right, is a deontic restraint that permits exercise of free choice compatible with the equal freedom of all (Kant 1996b [1797]: 387). This idea of equal freedom as a reciprocal deontic restraint is linked to a distinctly non-instrumentalist justification of public laws and institutions. Only through impartial procedures established by coercive public institutions is it possible to harmonise one person's exercise of free choice with everyone else's exercise of free choice. Legal standing in an institutionalised system of public laws is not only empirically indispensable for realising freedom, understood as a moral good fully specifiable without reference to public authority, but a defining feature of a condition where individuals interact on terms of equal freedom. States are freedom-enabling institutional arrangements, which should be respected as sovereigns that enjoy legal protection against foreign interventions.

By seeing states as freedom-enabling institutional arrangements, human rights and sovereignty are treated as equally important normative ideas and as essential aspects of one and the same conception of global political justice. This is a conception that avoids problems often associated with the view that sovereignty is normatively basic. Defending sovereignty on Kantian grounds does not imply the metaphysically suspect assumption that states have properties similar to persons. Nor does it imply unlimited sovereignty. Sovereignty

can be both fundamental and limited. The present defence of equal sovereignty is also compatible with regional supranational arrangements, such as a federal union of European states. Internal to a federal structure, member states would no longer be sovereigns, but the federation as a whole still has territorial borders that are of fundamental normative importance. Finally, it is important to note that respect for sovereignty is not all there is to global justice. Recognising equal sovereignty as a condition of global justice is compatible with recognising moral obligations beyond borders.

The argument of this chapter is organised in the following way. In the first section, I present Pettit's neo-republican sovereignty ideal. Here, I also point out some internal tensions in Pettit's proposal and explain why this is a relatively weak defence of equal sovereignty. In the second section, I present the basic ideas underlying cosmopolitan reform proposals in favour of an individualised supranational order that relativises sovereignty. In the third section, I introduce Kant's idea of innate freedom as an idea akin to, but still distinct from, Pettit's neo-republican idea of freedom as non-domination. Subsequently, in the fourth section, I argue in favour of the ideas that interaction on terms of equal freedom is possible only within a public legal regime and that subjection to public authority is a condition for respecting others as free and equal. In the fifth section, I argue that conceiving states as freedom-enabling institutional frameworks implies that state sovereignty is no less morally fundamental than human rights and that justifying equal sovereignty in this way meets many of the concerns that animate cosmopolitan reform proposals. In the sixth section, I briefly discuss the implications of equal sovereignty for interaction across borders and regional supranational integration in response to processes of globalisation. In the final section, I indicate ways in which global justice requires more of us than recognition of the territorial integrity of states, even if any measure taken toward realising a just world must be compatible with the principle of equal sovereignty.

THE NEO-REPUBLICAN SOVEREIGNTY IDEAL

While less utopian than the radical cosmopolitan ideal of a human rights-based world order where the same principles of justice apply domestically as well as internationally, Pettit's neo-republican ideal of globalised sovereignty is more demanding than the Westphalian ideal of non-interference (Pettit 2010: 72–3). Anchored in the political ideal of non-domination, the republican law of peoples aims at a world where individuals are 'protected against the domination of others by the undominating and undominated state' (Pettit 2010: 77).

The defining feature of domination, as Pettit sees it, is that someone has an unconstrained power to take away or attach negative sanctions to choices that would otherwise be open to others. The dominator is someone who can intentionally diminish the range of options open to others or the potential benefits

connected to these options without having to consider the interests or opinions of those affected (Pettit 1997: 52–8). Accordingly, enjoying non-domination is a matter of being reliably protected against harmful interferences. If there are in place effective control mechanisms that require all actors to respect the relevant interests of those affected by their actions, then no actor has dominating power over others. This means that interference is neither sufficient nor necessary for domination to take place. Interferences that reliably track the interests of those interfered with are not instances of domination (for example, restrictions imposed by a just legal system, such as theft laws) and domination is possible without interference (for example, master–slave relations).

According to Pettit, non-domination is a ‘primary good’ that every rational person should want, no matter what other wants they might have (Pettit 1997: 90–2).³ Involving protection against insecurity, strategic deference and subordination to others, non-domination is an overarching value that we should promote as far as possible. Further, since domination refers to a capacity on the side of the dominator, freedom from domination requires a publicly sanctioned legal regime. Relying on the goodwill of others is not an option. This would leave us at the mercy of the powerful, which is to say that we would remain dominated. We need an institutionalised system of public laws in order to restrain potential dominators. This the point of linking freedom to the status of a freeman living in a free state (Skinner 2010: 98–9). The enjoyment of freedom from domination is conditioned on one’s status as citizen of a free republic.

The freedom of a republic depends on both its internal features and its external standing. Internally, a free republic is an *undominating* state. The purpose of a state’s institutions and agencies is to serve as control mechanisms that counter the power of private agents (*dominium*). Yet, because of the danger that governmental bodies can be abused and become tools for arbitrary rule (*imperium*), it is also important to arrange the core institutions of a state so as to make them responsive to public interests. The main elements of such an arrangement are checks and balances, non-majoritarian institutions and institutionalised processes of contestation (Pettit 1997: Ch. 6). Externally, a free republic is an *undominated* state. No state exists in a vacuum. There are other states, multinationals and international public bodies with which a state interacts, and because of huge disparities in military and economic power, such agents are potential dominators in relation to one’s own state. Accordingly, to be citizen of a free republic is to be citizen of a state that not only has a certain kind of internal constitution, but also enjoys secure sovereign liberties in the international sphere.

Sovereign liberties refer to the common set of choices open to peoples organised as states. Such liberties concern behaviour towards other states, exploitation of national and common resources, terms of trade and so on. Their precise

limits must be negotiated in international forums where all states have equal standing, but two basic restraints limit the acceptable range of choices that should be open to states. First, sovereign liberties should not undermine domestic non-domination. Second, sovereign liberties should be co-enjoyable by all states – they should only allow choices that are consistent with all states enjoying similar choices (Pettit 2014: 163).

The first of these restraints by its own sets the ideal of globalised sovereignty apart from the international system established by the Peace of Westphalia. The peace treaties ending the European wars of religion in 1648 resulted in an international order where sovereignty signified an exclusive right to exercise political authority on a specific territory, including the right to determine the religion to be practised within one's own territorial borders. Since justice as non-domination restricts sovereign liberties to such that do not undermine citizens' enjoyment of non-domination, dictating the religion of citizens is not within the range of choices open to a state. In addition, this conception goes beyond the Westphalian system by requiring that states should be *secure* in their sovereign liberties. Actual non-intervention is not enough. Like individuals, states can be dominated without being interfered with. Powerful international agents can effectively limit the options open to a state without direct intervention: for instance, by threatening to impose military, economic or diplomatic sanctions if the state chooses to act in certain ways. Accordingly, protecting a state's sovereign liberties should guard not only against dominating interventions, but also against forms of domination that does not involve actual intervention (Pettit 2014: 160–1). Without a system of equalised power where states can 'force one another to display respect', some states will be dominated, since they can exercise their liberties only at the goodwill of others (Pettit 2010: 86).

Although a state-based ideal for the international sphere, the ideal of globalised sovereignty does not prioritise the needs of states at the expense of the needs of individuals. It is a conception that assumes that territorial states will remain a persisting feature of the political world (Pettit 2010: 70; see also Pettit 2016), but the justification of sovereign liberties ultimately goes back to a concern with the freedom of the individuals who constitute a people. The normative ground of Pettit's republican law of peoples is the ideal of freedom as non-domination, as this ideal applies to individuals. Since enjoying non-domination is tied to one's status as citizen, domination of a state by external agents also involves domination of the state's individual citizens, which is what we should seek to avoid as far as possible:

Let a people as a whole be dominated [. . .] and the individual members of that people will be dominated [. . .] [I]t is this impact on individuals that argues for the importance of international sovereignty among the peoples of the world. (Pettit 2014: 154)

Connected to normative individualism is also a third feature that sets this ideal apart from the Westphalian system. Where the latter places domestic issues beyond the bounds of international affairs, the ideal of globalised sovereignty recognises obligations towards those who suffer from poverty or oppression outside one's own state. States owe special obligations to their own citizens and should generally respect the integrity of other states, but they also have grounds for rectifying the problems of the global poor and those living under repressive regimes. This could take the form of multilateral humanitarian assistance, peacekeeping missions, sanctions or, in exceptional cases, military interventions (Pettit 2010: 89; Pettit 2014: 177–81).

The case for such measures is not grounded in a universal demand for equal treatment of all human beings, but Pettit sees both self-serving and moral reasons for supporting the poor and oppressed beyond the borders of one's own state. Doing so would assist foreign regimes in becoming representative states acting and speaking in the name of their own peoples both domestically and internationally. Such an extension of the sovereignty ideal would also be to the benefit of the citizens of donor states due to increased opportunities for commerce and reduced dangers related to phenomena like transnational terrorist networks or spread of serious diseases. In addition, the alleviation of severe suffering in foreign places reflects a widespread moral sensitivity concerned with the basic conditions of human freedom and welfare (Pettit 2014: 176).⁴

By asking 'about the international order – the world – as it might be' while taking 'states as they are' (Pettit 2010: 70), Pettit flags that his ideal for an international order is guided by a concern with feasibility. Yet, one can question to what extent this conception takes challenges related to globalisation sufficiently into account. Pettit does not ignore the challenges, but intergovernmental cooperation arguably is no longer enough in order to cope with collective action problems related to areas such as migration, security, environmental protection or international trade (Eriksen 2016: 12). Moreover, given the ideal of equalised power, it is less than clear that Pettit points to satisfactory solutions. Acknowledging the enormous disparities of power between states, yet sceptical about the prospect of creating effective checks on power in the international realm, his focus is on strengthening international public bodies as deliberative forums and on organising coalitions of weaker states (Pettit 2010: 82–5). International deliberative forums are supposed to spawn a common understanding of the limits of sovereignty and of how states cooperatively can handle common challenges with global reach. Coalitions of the weak are, for their part, supposed to reduce the risk that powerful international agents simply dictate solutions and terms of interaction. While such endeavours certainly can be of some value, it is at best an open question whether they are sufficient for establishing an international order that is non-dominating in the relevant

sense. If non-domination calls for a relatively equal distribution of power, then it is difficult to see how the proposed remedies could ever be enough.

Leaving the question of feasibility to one side, one should also note that Pettit presents a relatively weak normative defence of state sovereignty. Although absence of domination is intimately connected to citizenship in a free republic, the laws and institutions of a republican state are essentially conceived as *means* for realising a specific political value. As a consequentialist good, non-domination signifies an ideal that is fully specifiable without reference to public laws or institutions. The latter serve our freedom from domination analogous to the way antibodies make us immune to diseases, but we ‘can understand what such freedom requires without knowing which institutions are required to support it [. . .] as we can understand immunity without knowing anything about antibodies’ (Pettit 2012: 124). Even if certain institutional arrangements – for example, rule of law and separation of powers – are vital for establishing non-dominating relations, they stand in an essentially instrumental relation to the highest political good (non-domination). They are means that serve to promote and entrench our status as free and equal as far as possible. In combination with the underlying normative individualism of Pettit’s theory, this instrumentalist view leaves the door open for more radical, human rights-based reforms of the international order. If sovereign liberties ultimately derive from the basic interests of individual human beings, then sovereignty is not a fundamental norm. And if the importance of sovereignty is not normatively fundamental, but important only because it serves more fundamental human interests, then we seem to lack a strong defence against the arguments underpinning cosmopolitan conceptions of global justice.

RADICAL COSMOPOLITANISM: THE PRIMACY OF HUMAN RIGHTS

Radical cosmopolitans advocate international reforms toward an international order with stronger supranational institutions and where the standing of states depends on their human rights record. Their basic concern is the upholding of the rights and dignity of individuals. Political and legal institutions at all levels should be judged by how well they promote and protect basic human rights. This is a view that builds on the core idea of moral cosmopolitanism, which is the idea that all individuals are fundamental units of equal concern generating obligations on every other person.⁵ The idea is compatible with an international legal order of equal sovereigns, but is often combined with advocacy for reforms that would pull the international system in a decisively individualistic direction, making ‘protection of human rights [. . .] a primary goal’ (Buchanan 2004: 81). Global justice requires recognition of all individuals as equals in rights and liberties within a cosmopolitan legal order where the legitimacy of all legal and political arrangements rests on respect for basic human rights.

The view that global justice calls for a transition from an order based on sovereign equality towards a human rights-based order may seem to be a natural consequence of recognising individuals as fundamental units of concern. Since individuals and their rights matter fundamentally, it appears quite natural to conclude that sovereignty can have nothing more than a derivative moral status. The view that sovereignty matters morally only if it protects or promotes basic human rights also seems to find support in the fact that states and their territorial borders have come about in arbitrary and unjust ways (Tesón 2003: 103). Given the tainted history of states, it is tempting to conclude that there can be nothing morally basic about sovereignty. Since all individual lives matter equally, historically contingent borders seemingly cannot play any fundamental role when considering how to take into account the interests of other people.

The case in favour of a cosmopolitan order where individuals rather than states are recognised as the ultimate subjects of international law can be further strengthened by considering some difficulties that arise if one claims that sovereignty is of fundamental moral importance. For one thing, if sovereignty is fundamental, then it seems that considerations about individual rights cannot limit the legitimate exercise of political power. Hence, to defend the idea that sovereignty is fundamental appears to put the individual in a precarious situation vis-à-vis the state (Moellendorf 2002: 159). Conversely, if considerations about individual rights do impose limits on the legitimate exercise of political power, then it seems that sovereignty cannot be fundamental, because whatever imposes limits on power is fundamental (Zylberman 2016: 292). Apparently, sovereignty must be either a derivative norm or normatively unlimited, and the latter alternative is highly unattractive.

Moreover, the idea that sovereignty is fundamental might seem metaphysically suspect. The view that states are moral agents of fundamental importance is often thought to rely on the dubious assumption that states have morally relevant properties similar to persons. Yet, since states are not human beings writ large, there does not appear to be any compelling reason why we should ascribe any fundamental importance to the sovereign rights of states. As Charles Beitz puts it,

it is difficult to know what to make of the idea of the state as a moral being analogous to the person. After all, states qua states do not think or will or act in pursuit of ends; only people (or perhaps sentient beings) [. . .] do these things. (Beitz 1999: 76)⁶

Given their basis in the liberal idea that all individuals are equal units of moral concern, cosmopolitan reform proposals have some intuitive appeal. At the same time, there seems to be something deeply problematic about the view that

individuals are the primary subjects of international law and that the standing of states depends on how well they promote and protect basic human rights. There are not only problems related to democratic legitimation and ‘fake universalism’ (Eriksen 2016: 17), but also the risk of undermining one of the most important innovations of twentieth-century international law: the prohibition against aggressive war. The latter problem has nothing to do with the suspicion that ‘the concept of humanity is an especially useful ideological instrument of imperialist expansion’ (Schmitt 1996: 54). Even when promoted by well-meaning cosmopolitans, human rights radicalism of the kind described above is a potent witch brew with dangerous political consequences.⁷ With Jean Cohen, I find it important to avoid ‘the conceptual trap that construes sovereignty and human rights as components of two antithetical, mutual exclusive legal regimes’ (Cohen 2006: 497). We should endorse the idea that all individuals are equal units of moral concern, but without drawing radical cosmopolitan conclusions regarding the moral standing of states. In the following sections, I show how a robust defence of state sovereignty can be developed on the basis of Kant’s ‘principle of innate freedom’ (Kant 1996b [1797]: 392). This principle is related to Pettit’s neo-republican ideal of freedom as non-domination, but where the latter is a consequentialist good, Kant’s principle is a reciprocal deontic restraint.

EQUAL INDEPENDENCE: A PRINCIPLE OF RECIPROCAL DEONTIC RESTRAINT

The principle of innate freedom is a universal right to be one’s own master. Kant describes it as an innate right to ‘independence from being constrained by another’s choice [. . .] insofar as it can coexist with the freedom of every other in accordance with a universal law’ (Kant 1996b [1797]: 392). This right reflects a principle of reciprocity that prohibits subordination and requires that we interact on terms compatible with our equal standing as free agents. As such, it involves a prohibition against using others as means for one’s own purposes without their consent and a right against others that they respect your freedom to choose what purposes to pursue. Thus understood, the right to be one’s own master does not refer to a valuable end to be pursued, but to the condition of pursuing ends of one’s own choice without violating the freedom of others.

To be committed to this idea is to be less concerned with the range and quality of secure options that a person has than with his or her right to independence as a free agent among other equally free agents. To be a free and rational agent is to be the one who decides what ends to pursue, whereas subordination implies that someone else deprives you of your power to decide how to act. As Rousseau puts it, freedom ‘consists less in doing one’s will than in not being subject to someone else’s’ (Rousseau 2001: 260). That someone has the power

to close off certain options or create hindrances arbitrarily for you does not by itself violate your right to independence. A violation takes place only if that power also involves taking control of your means, such as your bodily powers or your property.

The latter point can be illustrated by considering two different ways in which a person can be prevented from achieving an end, such as acquiring a lamb rib. One way is to buy the last available lamb rib. Another is to steal the money that the other person needs in order to buy it. In both cases, we arbitrarily close off an option otherwise open to the other person, but only in the latter case do we violate his or her right to independence. Since independence concerns control of one's own means – and thus the capacity to adopt projects of one's own – the fact that our purpose is frustrated in the former case does not, as such, touch on our right to independence vis-à-vis particular others. To be one's own master is to be subject only to constraints that are necessary for ensuring equal freedom for all, in this specific sense. Interferences that do not ensure the equal freedom of all are always forms of domination, even if they are for our own good. They compromise our right to independence because even benign interferences arrogate the power to set ends for oneself.

The universal right to be one's own master is a well-chosen starting point for a theory of justice. As a principle that denies anyone a natural right to rule over others, it should sit well with both political liberals and republicans of different shades. It is also well suited as a normative baseline of the legal systems of modern, pluralistic societies. Understood as a restraint on the conduct of others, the right to independence does not require any special relation between a 'higher' and a 'lower' self (Berlin 2002: 178–81) or commitment to a 'comprehensive moral doctrine' (Rawls 1985: 245–6). Far from implying commitment to a particular view about what is good and valuable in life, its point is to protect interacting persons' independence from each other's arbitrariness. It leaves all persons free to pursue their own conceptions of the good as long as they do not undermine the freedom of others. As such, it is a reasonable political principle compatible with the coexistence of diverse and incompatible conceptions of the good (Hodgson 2010: 791–802).

Interestingly, it is also possible to build a strong case for the equal sovereignty of states on the basis of this principle. Unlike Pettit's defence of the sovereignty ideal, this case does not rest on the assumption that 'an order of states of the kind with which we are all familiar is more or less bound to continue in existence' (Pettit 2016: 48). Nor does it imply that states are or should be insulated entities, disconnected from the rest of the world. The present case in favour of equal sovereignty instead turns on the idea that public laws and institutions not only play an instrumental, but also a constitutive role in establishing relations of equal independence. On this idea, the public institutional framework of states makes equal independence possible by giving

interacting individuals access to public and impartial procedures for resolving conflicts over rights. Absent such a freedom-enabling institutional framework, we would necessarily be dependent on the arbitrariness of others. For this reason, we have to recognise the equal sovereignty of states in order to respect each person's equal right to independence.

PUBLIC AUTHORITY AS A CONDITION OF EQUAL INDEPENDENCE

Legal standing in a system of public laws and institutions is not only empirically indispensable, but also a defining feature of a condition where interacting persons enjoy an equal right to independence. In addition to promoting and entrenching non-dominating relations between interacting people, public authorities that make, apply and enforce laws are crucial for determining and concretising our status as free and equal in a rightful way.

The connection between public authority and the principle of innate freedom arises from the problem of reconciling a scheme of private law with equal independence. As free and equal, we are entitled to acquire rights to things external to ourselves (for example, property or the services of others). Although such rights, unlike the right to our own person, are not innate, we must nevertheless be allowed to obtain them, because a general prohibition against the use of things separate from us would be an arbitrary, and thus illegitimate, restriction of freedom (Ludwig 2002: 175). However, unless complemented by a public law arrangement, no scheme of private law could possibly conform with each person's right to independence (see Ripstein 2009: 145–73). Absent a public legislative authority, no one could authorise the acquisition of an exclusive right to external things consistently with the right to independence. Absent a public judicial authority, no one could apply generally binding norms to particular cases consistently with the right to independence. Absent a public executive authority, no one could enforce acquired rights consistently with the right to independence.

The problem is, in each case, the lack of an impartial authority to carry out the relevant function (legislation, adjudication or enforcement). Where there is no public authority, all coordination is based on the private judgements of interacting parties, which in turn means that those who interact unavoidably subject each other to arbitrary choice. Any authorisation, adjudication or enforcement would be the act of a particular person, but imposing someone's particular will on others is incoherent with their equality. Unless a system of public law is in place, interacting people would therefore lack recourse to procedures for establishing conclusive rights – that is, determinate rights that can be enforced in conformity with the universal right to be one's own master. Without recourse to public and impartial authorities, everyone would be systematically dependent on, instead of mutually independent of, each other. Accordingly, public laws and institutions are not simply means that help us

establish non-dominating terms of interaction, conceived as a moral end fully specifiable without reference to laws and institutions. Rather than mechanisms for realising or approximating what ultimately matters, they are constitutive of a condition where our moral status as free and equal can be rightfully positivised and worked out in more concrete terms.

This non-instrumentalist view on public laws and institutions is linked to a non-voluntarist account of political obligations (Varden 2008b). Since each person's right to independence cannot be harmonised with the equal right of all others outside of a public legal regime, we are obliged to comply with political authorities organising legislative, executive and adjudicative bodies wherever they exist (Stilz 2011: 581–2). Consensual subjection to such bodies is not necessary because anyone who refuses to accept their authority would fail to recognise the universal right to be one's own master. Unwillingness to unite with others under 'public lawful external coercion' is incompatible with respect for each person's right to independence, and thus 'wrong in the highest degree' (Kant 1996b [1797]: 452; 456). For this reason, the unwilling suffer no wrong when forced to accept the authority of the public legal institutions governing their interactions with others. Since public legal institutions are necessary 'moral background conditions' for interaction on terms of equal freedom, lack of voluntary assent makes no moral difference with respect to their legitimacy (Stilz 2009: 54). This, I take it, is also the basic idea behind Rousseau's claim that being forced to obey the general will is the same as being 'forced to be free' (Rousseau 2011 [1762]: 167). Enforcement of positivised legal norms is what gives effect to the legal system that enables individuals to enjoy independence vis-à-vis others. Law enforcement for this reason protects the freedom even of the unruly subject who wants to break the law.

SOVEREIGNTY AS THE FLIP-SIDE OF LEGITIMATE DOMESTIC AUTHORITY

It follows from the above argument that sovereignty is no less morally fundamental than human rights. The argument shows that recognising all individuals as equal units of concern, generating obligations on everyone else, does not necessarily lead to radical cosmopolitan conclusions regarding the moral standing of states. To the contrary, if public authority is partly constitutive of the universal right to be one's own master, then sovereignty cannot be a derived value that only matters instrumentally.

This way of justifying equal sovereignty in no way presupposes that states are human beings writ large. The argument does not rest on the problematic assumption that states have properties similar to persons, but on the assumption that states are indispensable arenas for realising equal freedom. *Qua* such arenas, they deserve recognition as sovereigns with an exclusive right to exercise jurisdiction on their respective territories. Consequently, in their external relations, states should respect each other as equals analogous to the way citizens

should respect each other as equals within the state, even if they are artificial and historically contingent entities. External sovereignty protects states conceived as freedom-enabling institutional frameworks. Unless a state is protected by the principle of non-intervention and the prohibition against aggressive war, foreign powers would have the right to contest and intervene against a state's decisions whenever they find these decisions sufficiently problematic. This would in turn deprive individuals of a final authority that could determine the boundaries of their rights. Accordingly, we might say with Michael Walzer that 'the recognition of sovereignty is the only way we have of establishing an arena within which freedom can be fought for and (sometimes) won' (1977: 89).

It should also be noted that sovereignty, as it is understood here, is not a Westphalian concept. The concept involves no Eurocentrism, no right to pursue rights unilaterally by means of war, and no immunity against prosecution for political officials guilty of crimes against international law (genocide, war crimes, the crime of aggression and so on). As a basic principle of just international relations, equal sovereignty protects and limits the rights of all states in relation to other states. Recognising states as equal sovereigns implies prohibiting wars and interventions for other than defensive purposes. Aggressive wars are unjustifiable, and there can be no punitive wars against presumed unjust states (Kant 1996b [1797]: 485). Sovereignty is a legal status that protects a state's territorial integrity against the arbitrary choice of other states. At the same time, the legitimate exercise of political authority is bound to a state's own territory.

Grounding sovereignty in Kant's principle of innate freedom also opens up the way for seeing sovereignty as normatively limited, even if fundamental. If sovereignty were unlimited, then states could not solve the problem they are supposed to solve. Unlimited sovereignty would simply replace relations of horizontal domination with a relation of vertical domination. Hence, a 'necessary condition of a state's legitimacy is that its actions be compatible with its members' reciprocal independence. And so, illegitimacy is a sufficient condition for a given state to lose its authority' (Zylberman 2016: 302). It is crucial that the latter claim is not taken as a requirement of perfect justice. Justifying the rights of states with reference to their freedom-enabling function does not make the recognition as sovereign state dependent on having a just inner constitution. As Julius Ebbinghaus puts it, 'the authority of the sovereign, if it is limited, cannot be limited by the principle of justice, since without the power of the state no justice is possible' (1953: 18).

Ideally, a state is a self-legislating legal community where citizens collectively author the laws that bind them and where binding laws are limited to such that serve the purpose of harmonising the freedom of each person with the freedom of all others. In order to bring themselves into conformity with their own normative basis, all states must continually approximate this ideal (Weinrib: 2016: 59–60). Yet, the principle of non-intervention not only protects just states, but also

undemocratic states that issue unjust laws. Although non-democratic law-making procedures and unnecessarily restrictive laws are objectionable, they do not provide other states with just cause for intervention. Nor do they justify treating states as second-rate members of the international society. Unjust governments owe their own citizens political reforms towards a condition that conforms with each person's right to independence, but the present internal injustices of a state do not affect its international standing. Since they are partly constitutive of individuals' mutual independence, states are legitimate authorities on their own territories, even if they are unjust.

The circumstances are different if state authorities either cause or fail to prevent systematic murder on grounds of nationality, ethnicity, race or religion. We are not obliged to stand by and watch as atrocities are taking place. In cases of massive violations of human rights, such as genocide or ethnic cleansing, the above rationale for the principle of non-intervention does not hold. In such cases, we are not dealing with unjust public authorities, but with illegitimate employment of organised force by one group against another. Rather than an instance of unjust government, a regime that turns its coercive apparatus against parts of the population living on its territory is an inhumane organisation that annihilates the freedom of specific groups (Ebbinghaus 1953: 21–2). Recognising non-intervention as a basic principle of international law is compatible with permitting interventions against such regimes, because they fail to constitute freedom-enabling institutional frameworks. Interventions against regimes committing atrocities do not undermine a state-sanctioned legal order that enables citizens to resolve conflicts through impartial procedures, but serve to stop and prevent mass murder and arbitrary expulsion of people from a territory.

This is not to suggest that it is always easy to draw an unambiguous line between legitimate and illegitimate regimes. Given the justification of public authority in terms of its freedom-enabling function, it is reasonable to regard the rule of law as a condition of legitimacy. The rule of law is compatible with undemocratic forms of legislation and overly restrictive laws, but unless public officials act in accordance with general and publicly known laws, they would simply exercise arbitrary power rather than public authority (Weinrib 2016: 52–4). Yet, even if the rule of law might serve as a general criterion of legitimacy, the distinction between inhumane regimes and legitimate regimes that are authoritarian and illiberal (that is, unjust) is not necessarily clear-cut when it comes to particular cases. While some cases are clear instances of inhumanity, other cases leave room for reasonable disagreement. Because of such indeterminacy, no state should have a unilateral right to intervene for alleged moral purposes. If a particular state were to decide whether an intervention is justified or not, then the permission to intervene against inhumane regimes can be turned too easily into an exceptional status for powerful states. Accordingly, authorisation by an international public body is a condition under which justified interventions can

take place (Cohen 2006; Habermas 2006: 103–4, 184–5). Only through such authorisation can international use of force for purposes other than self-defence be reconciled with the equal sovereignty of states.

Finally, one should not conceive of interventions as enforcement of individual human rights. Military interventions are emergency measures that aim at ending exceptional situations and at establishing normal conditions where individual rights can be ascribed and enforced. I would also like to emphasise that such interventions are permissible but never mandatory. No state does wrong by declining to engage in conflicts foreign to its own territory (Varden 2008a: 21). To the contrary, unless permitted to avoid engagement in violent conflicts beyond their own borders, states would be dependent on the arbitrary choices of whoever does not succeed in solving disputes peacefully. A duty to intervene is, for this reason, incompatible with the right to independence not only of states, but also of individuals, who cannot be obliged to risk their lives as long as their own state is not threatened.

CROSS-BORDER INTERACTION AND GLOBALISATION

The present defence of equal sovereignty is also compatible with acknowledging the increased interconnectedness and emerging global challenges that call for closer cooperation beyond state borders. Understood as ‘the radius of the validity of the [. . .] constitution’, borders are ‘predisposed [. . .] to make border-crossing possible’ and ‘permeable to anyone who recognizes [the] legal and constitutional order’ established on a territory (Maus 2006: 467). This is not to say that justice requires open borders or a universal right to free movement across borders. There could only be a right to free movement with global scope if free movement across borders were an indispensable part of our rightful independence vis-à-vis others. Only if denying someone the right to cross borders at will were somehow in conflict with recognising them as free and equal could there be a basic right to travel freely around the world. The universal right to be one’s own master consists in the right to pursue – not to achieve – the ends we set for ourselves, but such a right seems fully compatible with the rejection of a universal right to border crossing. The denial of passage might frustrate the purposes of visitors, yet it deprives them of nothing.⁸

Accordingly, Kant seems right to limit the basic norm regulating border crossing to the principle of ‘universal *hospitality*’, which consists in the right of foreigners to visit the land of other peoples without being treated with hostility, and the right on the part of those being visited to turn non-citizens away as long as it does not lead to their destruction (Kant 1996a [1795]: 328–9). There is no right to be citizen of whichever state one favours, so states are entitled to adopt either restrictive or permissive immigration policies as they see fit. They are also permitted to protect their own economies by putting restrictions and conditions on imports. Visitors are, for their part, entitled to make proposals

with respect to trade, cooperation, settlement and so on, which permanent residents are free to reject on the condition that refusing interaction with the visitor is compatible with his or her continued existence. Understood in this way, universal hospitality enables communication and trade across borders and, at the same time, protects the weaker party in asymmetrical relations.⁹

None of this conflicts with the view that processes of globalisation place the traditional nation state under pressure. I do not want to deny that coping with global challenges related to climate change, migration, security issues or regulation of trade and finance may require closer cooperation across borders. Nor do I want to deny that increased cross-border interaction may reduce the capacity of states to regulate and intervene in the society delimited by their own territories, and thus represent a challenge for their internal democratic order. If empirical analysis can show that there is a problematic mismatch between the formal authority of states and their actual capacity to regulate interaction on their respective territories legally, then there is a justice-based case for political integration beyond the nation state. Lack of correspondence between formal jurisdiction and real power to uphold an autonomous and effective legal order necessarily frustrates reforms towards just government. Accordingly, to the extent that the power of unaccountable and uncontrollable agents effectively undermines the capacity of national legal systems to reform themselves in accordance with the demands of justice, national governments are obliged to establish democracy-enabling forms of political cooperation beyond their own borders.

This is not the place to consider what specific form such cooperation should take, but, following a proposal by Jürgen Habermas (2006: 135–9), one might imagine the formation of regional political bodies at a mid-level between the traditional nation states and the United Nations (UN).¹⁰ *Contra* Habermas, I find it hard to see how such regional bodies could aim at anything less than a federal governmental structure without compromising the principle of popular sovereignty.¹¹ Within such a structure, member states would no longer be independent sovereigns, but relatively autonomous unit parts whose authority is limited by the federal constitution. However, admitting that much does not make talk about sovereign equality superfluous. A federation is still a particular polity with external borders that have fundamental normative importance. Just like first-order unitary states, a federation has both a rightful claim to territorial integrity against the arbitrariness of foreign powers and a duty to limit its exercise of political authority to the spatial range of its own territorial borders.

EQUAL SOVEREIGNTY AND GLOBAL OBLIGATIONS

According to the view defended in this chapter, no polity can promote global justice without respecting the rights of legitimate states. At the same time, the present defence of sovereignty does not restrict global obligations to showing respect for the territorial integrity of other states. Even if respect for states as

equal sovereigns is a condition of global justice, it does not follow that there is justice in the international sphere as long as the territorial integrity of states is respected. All polities are obliged to exercise their right to territorially bound jurisdiction consistent with the rights of both foreign individuals and other polities. This requirement might have normative implications that point beyond respect for the equal sovereignty of states.

For one thing, there seems to follow from each person's right to independence that states must grant residence to refugees. The equal right to independence involves a right to exist somewhere, so even if a state need not allow entrance to everyone showing up at its borders, no state can justifiably turn away those fleeing persecution or the hazards of war, at least as long as the latter have nowhere else to go. Contrary to Seyla Benhabib (2004: 36), I believe this aspect of universal hospitality is not simply an imperfect moral obligation, but a requirement of political justice that limits state authorities' rightful use of coercion against non-citizens.

Moreover, there can be humanitarian grounds for assisting people living outside the borders of one's own state. The immediate aim of such assistance is to rectify the poor living condition of those in grave need, but helping out can also contribute to the establishment of legitimate and just institutions in the longer run. As argued above, there are special cases where assisting people outside one's own state might take the form of a military intervention. Under extreme circumstances, intervening or contributing to peace-keeping missions on foreign territory can be permissible, and perhaps even meritorious. Yet, a state never does wrong if it abstains from engaging in an ongoing conflict outside its own borders. If obliged to risk the lives of its own citizens or its own existence by getting involved in violent conflicts beyond its own borders, then a state and its citizens would be dependent on the arbitrariness of others, but this conflicts with the universal right to be one's own master.

Additional obligations seem to follow if one takes into consideration contingent, yet well-founded empirical assumptions. Today, anthropogenic climate change not only threatens the welfare of millions of people, but also endangers the existence of some states, which would deprive the citizens of these states of their common political membership. The prospect of such a scenario in combination with the view that domestic public authority is constitutive of interaction on terms of equal freedom, means that continuing emissions of greenhouse gases at current levels is likely to undermine the institutional conditions for equal freedom among people in some parts of the world. This in turn gives us sufficient conceptual resources for arguing that promoting a just global order requires drastic reductions of greenhouse gas emissions. Although we cannot be held responsible for maintaining the freedom-enabling institutions of others, promoting global political justice is incompatible with impairing the material conditions for sustaining such institutions. There are, of course, many

hard questions about responsibility and distribution of burdens that have to be sorted out. Who are the relevant agents and according to what principles should they be held responsible? Does the burden fall on those who caused the problem, on those who are able to bear the costs or on some combination of the two? I cannot discuss such questions at this point, but it seems fair to say that commitment to global justice implies that the biggest polluters are willing to take on considerable emission cuts and that everyone is willing to accept a maximum cap on emissions. Sovereign polities and other responsible agents that do not develop policies for reduced emissions of greenhouse gases obstruct progress towards a more just world.

Increased economic activity across borders might also be consequential for our global obligations. In the first instance, requirements of distributive justice apply to the domestic context, where they concern the possibility of setting up a genuine public authority. Without public redistribution in the form of taxation of the wealthy and support of the poor, exercise of governmental power is inconsistent with the universal right to be one's own master because it enforces a legal system that opens up for systemic dependency relations between citizens (Weinrib 2003). Since the enforcement of private property rights is limited to a state's own territory, this unconditional public duty to support the poor cannot be global in scope. At the same time, justice requires that interaction across borders is structured in such a way that citizens of one state, either individually or collectively, do not dominate the citizens of other states. Accordingly, an international trade regime that involves systematic cross-border dependency relations is unjust and must be reformed. As long as a state is incapable of or does not want to back out of trade relations with others, questions concerning distributive justice arise beyond territorial borders, because 'the principles of justice imposed inside the state must be compatible with the equal freedom-as-independence of persons outside it as well' (Stilz 2009: 104).

Global political justice cannot screen out distributive concerns, even if distributive standards are not identical in the domestic and the international contexts. There is a special relationship between a state and its citizens that does not exist beyond territorial borders, but global political justice calls for more than charity and humanitarian aid in response to emergencies and the general poor living conditions in many parts of the world. A legal framework that establishes fair terms of international trade is indispensable in order to respect the right to independence of persons living outside one's own state. The long-term ideal of such a framework might be a set of rules and institutions that accord with a principle of non-discrimination. Yet, given the vast differences in economic development across countries, it is hard to imagine a fair system of international trade without permitting differentiated treatment and one-sided trade protection measures in the short and medium term. Although such differentiation is not part of global justice as an ideal, it is a justifiable response

to non-ideal conditions that tend to generate unfair outcomes, even under formally just rules and procedures (Eriksen 2016: 19). When some groups are systematically disadvantaged, differentiation may be a permissible remedy. As a remedy, differentiation is not an element of a just global order, but a response to an unjust state of affairs. In addition to easing some of the burdens of the disadvantaged here and now, it can be favourable to economic development, and thus bring about conditions where today's developing countries can compete on equal terms with others.

The above-mentioned demands related to climate justice and global distributive justice can be understood as forward-directed duties of solidarity (Eriksen 2017: 15–17). Duties of solidarity cannot be enforced, even if they concern the struggle for political justice. They are not enforceable because no authority could possibly enforce them in a rightful way. Yet, they still belong to a political morality inasmuch as they refer to the satisfaction of the right to reciprocal independence belonging to all persons. Satisfying this right most likely will require more of us than respect for sovereignty, but any measure taken toward its realisation must be compatible with the equal sovereignty of states. Global justice is a more demanding ideal than what is entailed in respect for the integrity of states, but unless we accept the restraints of sovereignty when striving for justice there is no chance that we will ever get things right.

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NOTES

1. Pettit's ideal of globalised sovereignty and the ideal of a supranational cosmopolitan order can be seen as reasonable, yet competing, conceptions of global political justice. See E. O. Eriksen (2016). Eriksen distinguishes between three conceptions: justice as non-domination, justice as impartiality, and justice as mutual recognition. Justice as non-domination fits with the ideal of globalised sovereignty. Justice as impartiality fits with the cosmopolitan ideal.
2. In a recent article, Pettit (2013) identifies Kant and Rousseau as representatives of a distinct Franco-German tradition of republican thinking.
3. On the term 'primary good', see Rawls (1971: 62).

4. With respect to the latter point, Pettit's position seems similar to the one defended by Nagel (2005).
5. See, for instance, Pogge (2002: 169).
6. For similar considerations, see Caney (2005: 236).
7. The 2011 intervention in Libya is a case in point. Not only did the intervening powers overstate the threat to civilians, but they also caused the collapse of a relatively well-functioning (if authoritarian) state. See The Report to the House of Commons Foreign Affairs Committee: *Libya: Examination of Intervention and Collapse and the UK's Future Policy Options*.
8. The situation is somewhat different with respect to border crossing from the inside. While a state can deny foreigners entrance without violating their right to independence, a general prohibition against exit is an unjustifiable restriction of freedom. States have the right to issue coercive laws and to pursue purposes necessary in order to secure the mutual independence of citizens. However, leaving aside exceptional circumstances (such as murder investigations or war), there seems to be no freedom-based rationale for denying someone the opportunity to leave state territory. Hence, to prohibit emigration or temporary stays abroad on a general basis is to wrong one's own citizens.
9. For example, a shipwrecked sailor washed ashore on foreign lands, a refugee from a war zone, a non-state person interacting with powerful European nations in the age of discovery, or a contemporary developing country trading with developed 'first-world' countries. See Eberl (2008: 228–49).
10. As Habermas suggests, such regional 'regimes' might serve a variety of functions. First and foremost, they might help states regain and preserve some of their action capacities, and thus enable democratic control with those who have decisive decision-making power. Second, they might facilitate fairer terms of negotiation on transnational issues by reducing the number and equalising the power of negotiation parties. Third, if most of the challenges related to increased transnational interdependency might be worked out politically at this mid-level, the UN can specialise and deal more effectively with international peace and human rights issues.
11. For the notion of a multinational European federal state, see Eriksen and Fossum (2007: 16–17).

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PART 2

PUBLICITY IN COSMOPOLITICS

PROVISIONAL PUBLICITY

Heather M. Roff

With renewed interest in Kant's political writings, we face a new challenge: figuring out what his system of justice requires from individuals, rulers, governments and peoples to reach a universal and lasting peace. Happily, we have begun to move beyond the debates over Kant's absolutism and have started to take seriously his concept of provisionality, which positions his work as much more flexible and dynamic than previously thought (Laursen 1986; Ellis 2005; Banham 2007; Roff 2013). To be sure, the concept of provisionality may be crucial to the workings of his overall juridical system and thus is a key mechanism in establishing a much sought-after peace. It is, then, from this vantage point – one that is more reliant on empirical conditions – that we should look to examine one of his fundamental principles for politics: namely, the principle of publicity.

Politics is that realm solely concerned with actions that affect the *rights* of others, for it is the domain of justice (*Recht*). Kant's politics, and thus his juridical system, take place at three levels: within a domestic state (*ius civitas*); justice between states in the international system (*ius genitum*); and cosmopolitan justice between peoples (*ius cosmopolitanum*). The principle of publicity operates in, and potentially between, all three levels. For example, it operates within a domestic state when rulers contemplate the rightfulness of a proposed law,¹ within the international system when states contemplate actions towards other states, and within the cosmopolitan condition when all nations attempt to regulate their behaviour towards each other for the purpose of establishing a community of all.

Like a series of Russian dolls, Kant's juridical system relies on each level of justice nesting within the other. In other words, to reach cosmopolitan justice, we must first establish the conditions of justice within the domestic state and between states (Kant 2003: 6).² Ontologically and metaphysically, private right precedes public right. While this systematic treatment might help in some cases, like distinguishing the differing levels of justice, it presents us with problems and paradoxes when one does not look to the entirety of Kant's provisos and permissions. In particular, it leads to confusion as to what exactly the principle of publicity requires in conditions of private (or provisional) right. This chapter argues that, if we are to make Kant's claims regarding publicity and politics coherent, we must take note of his account of provisional right to do so. Provisional right is the key to reconciling some of his contradictory claims, and also to see why both the positive and negative formulations of the publicity principle must be taken together and cannot be separated. The argument proceeds in two sections. The first makes the case for considering the principle of publicity as a provisional duty. I argue that, if we are to gain a clearer and more coherent picture of the principle of publicity, we must pay close attention to Kant's many meanings of 'public' and 'publicity'. In particular, we must unpack the background assumptions about who has a duty to publicise their maxims, to whom the duty is owed and what the content of it might look like. I also contend that Kant's negative and positive formulations are two sides of the same coin and cannot be separated, as Banham (2007) argues. The second section lays out the apparent contradiction between the 'Doctrine of Right' and *Towards Perpetual Peace* in relation to a duty of publicity for lesser or weaker powers in the international system. I argue that we can make sense of Kant's prohibition on preventive war in one case and his permission in another when we take into account his proviso that a condition of public right must exist. Furthermore, we can gain insight into a provisional and relational duty of publicity in the international system by revisiting his discussion of the 'unjust enemy'.

A PROVISIONAL DUTY OF PUBLICITY

The principle of publicity (hereafter 'publicity principle') consists of a set of two propositions: the negative formulation and the positive formulation. The negative formulation states 'all actions that affect the rights of other men are wrong if their maxim is not consistent with publicity' (Kant 1985b [1795]: 135).³ Further, Kant notes that this proposition is merely negative in that it does not provide an agent with content; it merely tells them what is not right. The positive formulation enters the discussion after Kant identifies an antinomy between politics and morality. In some instances, he claims the two are opposed to each other in such a way that one might reach the conclusion that they are in fact incommensurable. His solution to this proposition is not his classic division between the noumenal and phenomenal, but the 'affirmative' or positive principle of public right. This

is the positive formulation of the publicity principle: ‘all maxims that *require* publicity (in order not to fail of their end) agree with both politics and morality’ (*TPP*, 8:386). Together, these two principles ground, and give content to, a duty to publicise one’s maxims.

On the face of it, the principle of publicity presents us with no challenges. However, if we begin to question how one might publicise one’s maxims when, for instance, one finds oneself in formal and material conditions that appear to issue contradictory imperatives (for example, publicise one’s maxim to wage preventive war or do not publicise one’s maxim to wage preventive war), we are left with little guidance. As I will argue throughout the rest of this chapter, this ambiguity, bordering on inconsistency, is due to Kant’s reliance on the concept of provisionality in his political theory. Nevertheless, the key to clarifying the role of the publicity principle in politics is also his notion of provisionality.

Therefore, to begin cutting this apparent Gordian knot, we should start by asking three fundamental questions: Who is the intended audience, or ‘public’? Who bears a duty to make their maxims public? And what is the content or scope of the obligation? In other words, we must begin by identifying what the principle of publicity imposes on us as moral agents, and whether that duty applies only to certain agents or to all.⁴

Audience

Because Kant’s musings on the publicity principle span several works, and ultimately address several topics, we are left with a miscellany of insights, none of which is systematic or well defined. The popular essays were not written in ‘high’ academic fashion, and in only one of Kant’s more academic works does he explicitly address the notion of publicity in politics (*The Conflict of the Faculties*) (Kant 1992: 155–6, 161–3).⁵ For our present purposes, I am here concerned with the intersection of the principle with rightful actions, and not the more distant goal of eventual human enlightenment. While it is certainly true that human enlightenment, or ‘moral progress’, is related to politics and the question of right, how they are intertwined and to what extent one is necessary for the other are beyond the scope of this chapter. For our purposes, I will try to restrict myself to where Kant explicitly discusses the principle and its application to the question of right.

Discussing the publicity principle requires that we make explicit two assumptions: what ‘publicity’ means and who the ‘public’ is. In the first instance, the notion carries with it the idea of it being openly divulged, opposed to secrecy or for all to see (*TPP*, 8:381; *CF*, 33, 153–5, 163). In the second, the audience, or ‘public’, is not as easily recognised. While Davis is correct to identify the six different ‘publics’ in Kant’s work (the reading public, university scholars, philosophers, the people as a whole, virtuous individuals and ideal rational

agents), only two are related to the question of justice (Davis 1992: 4). Those two are the philosophers, who seek truth and the *a priori* conditions for justice, and ideal rational agents, who act as the standard bearers for rightful action. Davis's categorisations are certainly helpful, as they go beyond Kant's tripartite division of differing communities: the civil community, the learned community and the ideal community (CF, 57). However, moving away from Kant's original categories loses some of the distinctions concerning the civil community. As Kant explains in *The Conflict of the Faculties*, the civil community is that group of people united under civil laws; they are the 'people' (CF, 49). That is, they have exited the state of nature and are looking for the state to take care of their welfare. It is this 'people' that desires 'to be *led*, that is (as demagogues say, they want to be *duped*)' because they 'naturally adhere most to doctrines which demand the least self-exertion and the least use of their own reason' (CF, 52). This lot, according to Kant, must obey the commands of the state and not undertake to judge it or revolt against it, for they lack the authority and competence to do so.⁶

The learned community, which Davis divides between the scholars and the philosophers, directs its attentions to 'a different kind of public', one 'devoted to the sciences' that the civil community is 'resigned to understanding nothing about' (CF, 57). The learned community debates publicly, insofar as it publishes opinions and holds scholarly debate through a free press (CF, 47). Such debates, however, have the potential of moving from the scholarly realm to the civil one, where the two 'publics' might clash. Kant believes that moving debates from the learned community to the civil is not permissible, as the civil community lacks the capacity to judge scholarly matters. Scholars who take their disputes to the civil community 'publicly – from the pulpits, for example' – ultimately force the state to become involved and pass censure because such scholars 'attempt to steer the judgment of the people in whatever direction they please, by working on their [the people's] habits, feelings, and inclinations, and so win them away from the influence of a legitimate government' (CF, 57–8 note). Such actions are ultimately dangerous to the state and dangerous to the scholar, for they limit the scholar's ability to exercise academic freedom.

The only public capable of meeting Kant's requirements for political justice is the community of hypothetical 'ideal rational agents who demand nothing more than action which respects the right of humanity' and 'demand that others act in accord with the principle of right' (Davis 1992: 180). This community, Davis argues, is the only one capable of rendering a political act rightful because it is the only public that would 'uniformly oppose unjust action' (Davis 1992: 181). Moreover, it is ideal in the sense that no empirical community 'can have the power to prevent actions which it deems to be unjust' because humans are not perfectly moral beings (like angels); at best, they understand and foresee the need for justice (Davis 1992: 180). The ideal community of rational agents,

therefore, exists for each level of Kant's tripartite juridical system and need not be an actual community in any time or place.

Thus, any agent attempting to judge the rightfulness of their act must first test their maxim against the likely response of this ideal community. If the likely effect is that one's acts will be thwarted, then this is *prima facie* evidence that the act is wrong (*Unrecht*). This thought experiment, as embodied in the negative principle of publicity, is akin both to the first formulation of the Categorical Imperative and to the Universal Principle of Right, for both also require a test of formal universalizability (Kant 1993: 30; *Akademie Ausgabe*, 4:421; *DR*, 6:230).

Agent

Our second set of questions involves identifying who has a duty to act in accordance with the publicity principle. However, identifying the duty bearers is not particularly straightforward. This is due to the nature of Kant's juridical system, as he relies on certain thresholds of justice obtaining between different actors. To see this, let us turn to Kant's organisation of the *DR*.

The work is divided into two parts: private right and public right. A condition of private right lacks the requisite juridical institutions of civil society: for example, the executive, the legislative and the judicial. Such a condition is one where one's rights to external objects of choice (that is, things, promises and the status of persons) are not 'secured' (*DR*, 6:256–7). In fact, it is only through the morally arbitrary fact of one's strength that one comes to possess any of these objects physically.⁷ Furthermore, any judgement that takes place about the violation of a supposed right is performed by the private person and not by a public institution, like a judiciary (*DR*, 6:297). Kant thus claims that all 'rights' in this condition are merely provisional (*DR*, 6:264–6). They have a rightful *presumption* in their favour, but they do not become 'conclusive' until one establishes a state or condition of public right. The condition (*Zustand*) of private right is therefore one of provisional right.

Public right, on the contrary, is the civil condition. The civil condition is marked by the presence of a constitution (*DR*, 6:306) that formally establishes the three requirements for public justice: protective justice, commutative justice and distributive justice (*DR*, 6:306). To these three forms of justice correspond the necessary institutions of justice: the legislative, the executive and the judicial, respectively. Protective justice concerns the public promulgation of laws, and for Kant public law contains 'the *a priori* principles of reason about what law should be, but it also gives them effect in the world of experience because it is enacted and enforced' (Byrd and Hruschka 2010: 36). The commutative form of justice, however, governs the transactions between individuals in the marketplace. While this might not seem to be the province of the executive, it is. The executive must establish the requisite institutions for law, since law is primarily concerned with

regulating actions between individuals. Thus, the executive must create the marketplace, as it is the public sphere.⁸ Finally, distributive justice corresponds to the legislative authority because the legislative function is to settle rights disputes. A neutral judge determines to ‘award to each what is his in accordance with the law’ (*DR*, 6:313). The judiciary renders final and public justice in accordance with the laws laid down by the legislative authority.

Duties of justice in conditions of provisional right (or what we might call ‘states of nature,’ or civil breakdown, or even instances of uncertainty, like those Kant discusses in his section on ‘ambiguous right’) face a myriad of problems. Foremost amongst them is that the scope of a duty is not immediately clear, and the capacity for a duty bearer to be coerced to fulfil their duty is at best disputable and at worst impossible.⁹ Kant classifies duties as either perfect or imperfect, and duties of justice, he thinks, are all strictly perfect (*DR*, 6:219–21, 6:232, 6:239–40). However, as I have argued elsewhere, this not in fact the case (Roff 2013; Roff 2010). When the juridical features of public right are lacking, then the most we can say about our duties of justice is that they are ‘provisional’. Provisional duties correspond to a condition of provisional right, and they apply only to agents that have the capacity to fulfil them; all other agents are *temporarily* exempted from them.

Provisional duties must be included in Kant’s system because, without them, agents would be required to perform actions that would result in greater violations of morality and would admit conflicts of duties into Kant’s rationalist system. For our purposes here, let us take the publicity principle and one’s duty to uphold it. If one is always required, without reference to the formal juridical condition, to act in accordance with the publicity principle, then weaker agents either will meet their demise or will be run over roughshod. This in turn gives the appearance that the stronger have the moral high ground because they have the capacity to act openly. However, this is certainly not the case, as Kant notes that ‘it cannot be conversely concluded that whatever maxims are compatible with publicity are also for that reason right, for he who has decisively supreme power, has no need to keep his maxims secret’ (*TPP*, 8:385). Thus, the negative formulation of the principle only informs us as to what is not right, but does not give us content as to what *is* right.

Thus, if we are not to fall into the trap of stating that only powerful agents have a duty to act in accordance with publicity, and thus make a mockery of justice, or that politics and morality are incommensurable,¹⁰ we ought instead to examine the complexities. First, capacity is not merely about strength. Determining whether an agent is capable requires looking to both formal and empirical conditions. If agents are within a domestic civil society, then the formal condition that they extricate themselves from the lawless state of nature and create a condition of public justice is satisfied. For they are under the protection of public laws, arbitrated by a neutral judge and backed by a coercive

force. They find themselves within a condition of public right, and they must in turn uphold the publicity principle.

One might object here and claim that if one is in a domestic civil condition, but society is so repressive that individuals would rather revolt against this oppression, on my account, any attempt to do so could not be made public and thus would be wrong. Revolution requires secrecy to succeed, and secret maxims fail the tests of the publicity principle. Many excellent thinkers have engaged with this feature of Kant's thought and it is unfortunately a topic for another day (Beck 1971; Korsgaard 2008; Maliks 2013). However, what we might briefly respond is that if the state has fractured to a point where the protections of public right are insufficient, then rebels (and all others) find themselves in a state of nature. If this is so, then, semantically, we could claim that they are not revolting against a constitution, which is unlawful, but rather that they are fighting to establish one. As Kant notes, when a ruler considers his citizens as 'trifles', by 'burdening him as an animal, regarding him as a mere tool of their designs, or exposing him in their conflicts with one another in order to have him massacred – that is no trifle, but a subversion of the ultimate purpose of creation itself' (CF, 61).

This leads to the second point: we ought to observe whether an agent possesses the necessary material capacities to act in accordance with their duty. Returning to the types of 'public', for instance, the learned community – as an agent – has a particular capacity for judgement and reflection that the 'people' lack. Thus, in this case, it is the capacity and purpose of scholars that ground a duty to seek truth. Laymen, or the 'people', do not have this capacity and so are not required to do so. Thus, the first question that needs answering is whether we are looking to an individual, a people (*Volk*), a state (*Staat*) or a head of state (*Oberhaupt*) as the duty bearer, for each different type of agent possesses a different set of capacities. Individuals cannot wage war as individuals, and heads of state cannot punish other heads of state. Thus, answering the second of material capacities requires that we look both to the formal condition (private or public right) and to the material condition (for example, material / empirical capacities).

When it comes to individuals within a domestic civil condition, they are protected sufficiently, and so acting in accordance with the publicity principle is required. However, once we move past the level of domestic justice, things get more difficult.¹¹ Moving to the second tier of Kant's system (that of international right), the agents are no longer private individuals but states (or rulers of governments of states). Moreover, given Kant's more Hobbesian view of the right of nations, the only agents with the capacity to act in this condition are states. Do states (or rulers of states) have an obligation to uphold the publicity principle? Looking to the two conditions above, it becomes clear that all states do not, and that the duty to publicise their maxims is actually relational.

As it was in the late eighteenth century and as it is today, the international system is formally a condition of private right. There is no public executive or legislative authority, and the weak judicial institutions of the International Court of Justice and the International Criminal Court do not satisfy Kant's requirements for distributive justice.¹² Aside from the questionable jurisdictional practices and rules pertaining to each court, the ability to coerce either states or individuals to uphold the judgements of the court is tenuous at best. The international system is still a system of private right, and as a condition of private right, rights to external objects and duties to recognise others' rights are merely provisional.

In addition, all agents (for example, states) do not possess the same capacities for action. This, of course, does not entail that those with more power always act rightly, as we have seen. Rather, we must look to any potentially formal and material conditions that affect state capacity. In other words, we must determine if states are exempted from certain juridical precepts or duties because of their position in the international system. Such exemptions are not foreign to Kant's theory, as he provides explicit permissions for states to delay the exit from the international state of nature because precipitous actions would risk war and thus civil breakdown (*TP*, 8:373, and note section 373). This exemption is to prevent a 'greater violation' of losing the little order present in the international system. Moreover, he permits monarchs to govern as absolute powers if they govern in a republican manner, and thus reform or 'evolve' to republican constitutions slowly (*CF*, 157–9). Therefore, in an analogous move, we might also claim that some states, similarly situated, might also be exempted from a duty to publicise their maxims of international action, especially if doing so would result in still greater violations, such as the demise of states or their peoples.

If duties of justice in a condition of private right are provisional, and the international system a condition of private right, then a duty to publicise one's maxim is provisional. Those agents, however, who retain a duty of publicity are those agents capable of fulfilling it. Determining who is exempted and who is not requires that we answer questions pertaining to the formal and material conditions. While it is certainly beyond the scope of this chapter to provide all of the possible combinations or thresholds, we might look to Kant's discussion in both *TPP* and the *DR* concerning the free federation of states to guide some of our thoughts about provisional duties of publicity. I will take this up in greater detail in the second section. For now, however, let us turn our attention to what the content of an obligation of publicity might look like.

Obligation

A first glance might push some to believe that the content of a duty of publicity is easily determined. One should not keep secrets, make reservations or use underhand means. However, this is not as easy as it first appears, for we are

uncertain as to the extent of our obligations of publicity, and in some cases, what ultimately gives rise to them. One solution to this problem is Elisabeth Ellis's interpretation of the obligation to 'act in such a way that the highest good remains possible' (2005: 143). This 'highest good' is to achieve a state of universal and lasting peace, where human rights are respected via republican rule both within and between states and peoples. The role for publicity, she thinks, is relegated to the public use of one's reason to 'force rulers to improve their practices' (Ellis 2005: 146). For Ellis, the publicity principle is a corollary to provisional right, for 'they mutually imply each other'.¹³ The principle of publicity, then, 'bridges the gap between freedom and nature, but does so via the slow education of humankind to enlightened governance, conducted in the public sphere' (Ellis 2005: 151).

Yet we should not be too quick to adopt Ellis's conclusion. First, the principle is so vague that it cannot yield any firm guidance to the content of an obligation of publicity.¹⁴ It does not provide us with details on who the 'public' really is, and as we saw with Davis's division of differing publics, freedom of the pen may not matter to some. Second, it appears to place more weight on 'What is Enlightenment?' and *The Conflict of the Faculties* than Kant's more political works of *Perpetual Peace* and the 'Doctrine of Right'. This might not seem important, but if the principle of publicity is *the* transcendental formula of public right, then it seems we ought to look to firmer ground than the eventual progress of humankind, especially given that all of the agents that possess the capacity for political change and progress are rulers or states. Kant's system is, after all, one of top-down reform, despite the importance of a free press.

Gary Banham, on the other hand, makes a more nuanced argument. He claims that we should instead follow the 'supreme principle of right' (SPR) or, as previously termed 'universal principle of right' to guide us in our understanding of what publicity requires (*DR*, 6:230; Banham 2007: 75). His interpretation is that when one acts with and amongst others, one's action is necessarily 'external' and hence 'public', and so the character of any rightful relation is necessarily a public one (Banham 2007: 75).¹⁵ As he explains it, 'one cannot, as it were, claim a right purely secretly, as a claim of a right is a claim to that which we hold to be a just treatment and such treatment requires to be seen to be done' (Banham 2007: 77).¹⁶ Thus, any claims to *public* right must correlate with the publicity principle. This, to me, seems quite correct. However, where Banham deviates is in his formulation of how the publicity principle operates in conditions of provisional right.

Banham argues that 'publicity conditions apply even in the case of provisional right', for if they did not, 'it is doubtful that we could describe provisional right as being in any sense "right" at all' (Banham 2007: 84). Banham is correct; however, such a blanket claim is too strict. If we follow Banham's logic, then, it is a duty to act in accordance with the publicity principle,

regardless of the formal condition one finds oneself in or what one's material capacities are. However, this seems odd, for it ignores the very reason for distinguishing between provisional and public right, and it gives us duties to act when we are clearly incapable of doing so. Leaning too heavily on the 'supreme' or 'universal' principle of right to ground the publicity principle gives rise to questions about Kant's more permissive structure of provisional right that Banham cannot address.

Indeed, it leads Banham to split the negative and positive formulations. He claims that the negative publicity principle applies only to the Preliminary Articles in *TPP*, while the positive principle applies to the definitive ones (Banham 2007: 84). The result, therefore, is that all states – regardless of formal conditions or material capacities – ought to publicise their maxims of action. If they cannot, as it would invite pre-emptive action, then they should refrain from acting. Such a reading, however, fails to address not merely pre-emptive action but also Kant's apparently contradictory account of preventive war in *TPP* and the *DR*. Indeed, dividing the negative and the positive formulations in this way cannot account for any of Kant's remarks about the unjust enemy or, indeed, his explicit proviso that strong states do not need to mask their maxims, and it is only within a condition of right that a principle of publicity is required.

Splitting the two publicity principles leads to spurious conclusions about the content of an obligation of publicity. Following Banham's interpretation would require all states at all times to uphold the negative version, while reserving the positive version for a cosmopolitan condition, for, ultimately, the summation of the Definitive Articles extends beyond a federation of republican states to the idea of cosmopolitan right itself. The federation of states (Definitive Articles 1 and 2) is merely one step towards the creation of a 'great body politic [*Staatskörper*] of the future',¹⁷ which holds that a 'transgression of rights in one place in the world is felt everywhere' (*TPP*, 8:360). Moreover, Kant hopes that this *Staatskörper* will formalise through public juridical institutions a cosmopolitan state (*I*, 8:28).

This conclusion is too strong, however. If Kant's cosmopolitan project is to get off the ground, then it requires agents to act – when they can do so without thwarting the ends of morality and justice themselves – in accordance with both formulations of the publicity principle. Such capacities are possible in the here and now, though they are inherently dictated by empirical conditions.

TO WAR OR NOT TO WAR

Throughout this chapter I have argued that the duty of publicity is provisional. Indeed, it is only through situating both the positive and the negative formulations within Kant's discussion of private and public right that we can gain

clarity on the question of who bears an obligation of publicity and what that obligation entails. It is on this reading, then, that we can resolve one of the most glaring contradictions concerning the publicity principle and international right: preventive war.

In *TPP*, Kant states:

If a neighbouring power grows so formidably great (*potentia tremenda*) as to cause anxiety, can one assume that it will want to oppress others because it can; and does this [assumption] give the lesser powers a right to (unified) attack on it, even without previous injury? A nation that let it be known that it affirmed this maxim would suffer evil even more certainly and quickly. For the greater power would beat the lesser ones to the punch, and, as far as concerns the union of the latter, that would only be a feeble reed against one who knew how to employ the maxim *divide et impera*. (*TPP*, 8:384)

In the *DR*, he writes:

In the state of nature among states, the right to go to war (to engage in hostilities) is the way in which a state is permitted to prosecute its right against another state [. . .]. In addition to active violations (first aggression, which is not the same as first hostility) it may be threatened. This includes another state's being the first to undertake preparations, upon which is based the right of prevention (*ius praeventionis*), or even just the menacing increase in another state's power (by its acquisition of territory) (*potentia tremenda*). This is a wrong to the lesser power merely by the condition of the superior power, before any deed on its part, and in the state of nature an attack by the lesser power is indeed legitimate. (*DR*, 6:346)

Kant's position on the permissibility of preventive war appears, then, to be quite contradictory. Indeed, even Mary Gregory notes, in her translation of the *DR*, that 'Kant reaches the opposite conclusion [of the argument in *TPP*] by using his "principle of publicity"' (*DR*, 6:346 note 34).

However, this conclusion is merely a paradox: it appears self-contradictory but is in reality coherent. The answer lies in understanding the provisional nature of (private) international right, as well as paying close attention to Kant's provisos regarding public right in *TPP*. Recall that private right is a condition whereby individuals, states or societies may act compatibly with the dictates of justice, but the condition itself is not rightful; it lacks public mechanisms of justice (*DR*, 6:306).

International right (or *ius genitum*) is a condition of private right. Indeed, Kant calls this condition ‘non-rightful’ and a condition of ‘war’ (*DR*, 6:344). Indeed, because of this non-rightful relation, requiring states – particularly weak states – to make their maxims known to all is to demand that they commit suicide. They are, then, faced with an acute dilemma if they abide by the publicity principle: they may fall victim to powerful states by foregoing the advantage of a secret preventive attack, or they publicise their maxim and ensure their destruction. Such a conclusion, for Kant, is untenable and presents us with a qualitatively different ‘wrong’ in the making. It is not that the weak states’ maxim of secretly attacking a powerful state is wrong, rather that the *higher wrong* is to *require* either that a weak state sit idly by while a strong state threatens its existence or that it publicise its maxim of preventive war and assure its own destruction.¹⁸ Thus in a condition of private or provisional right, the weak state has no duty to publicise its maxim; it is temporarily exempted from it.

One might object here and claim that I am stretching a point. *TPP* explicitly states that any maxim that is not capable of publicity is wrong:

[I]f I cannot publicly acknowledge it [my maxim] without thereby inevitably arousing everyone’s opposition to my plan, then this necessary and universal, and thus *a priori* foreseeable, opposition of all to me could not have come from anything other than the injustice with which it threatens everyone. (*TPP*, 8:381)

However, while this is certainly the case, we must remember that a state of nature is, of itself, a condition of *injustice*. Kant claims ‘the condition itself is in itself wrong in the highest degree’ (*DR*, 6:344, italics added). It is wrong in the highest degree because it is ‘devoid of justice’, and so to make any claims against the rights of others borders on incomprehensible (*DR*, 6:312).

Thus, we must imbed Kant’s claims concerning publicity within his larger discussion of public right – in both *TPP* and the *DR*. Right, he claims, contains within it a necessary element of publicity (*TPP*, 8:381). This is, of course, true in that ‘public right’ is that which is laid down publicly (*öffentlich*) through the three authorities of legislative, executive and judicial, and backed by a public (for example, not private) coercive force. The formal structure must regulate all openly and equally. However, when we bring this discussion back to the case at hand – whether one can wage preventive war – we must remember that the international system is not a condition of public right. Indeed, as Kant says, ‘there can be talk of international right *only on the assumption that a state of law-governedness exists* (for example, that external condition under which a right can actually be accorded to man)’ (*TPP*, 8:383, italics

added). Given that this is not, in fact, the case, one cannot make judgements concerning right.

One might still object here and claim that the international system is not a pure state of nature like that between individuals, and so because it has a modicum of right, we can make demands on all states to publicise their maxims.¹⁹ However, this position is too strong. While it is certainly true that conditions of private right are still compatible with right, and thus one's duties and rights are still *possible*, they are merely provisionally rightful. In other words, they have in their favour a rightful presumption, but unless others provide 'assurance' that they will 'behave in accordance with the same principle with regard to what is mine', I am under no obligation to refrain from using or attempting to use others' 'external objects' (*DR*, 6:255–6).

Providing such a guarantee between states may be the ultimate task of a cosmopolitan constitution. However debatable this position is, we need not rely on it, for in the interim, we can rather point to another mechanism to provide assurance: Kant's belief that states can create a rightful simulacrum in the international system through a federation of republican states. This federation provides the basis for future and further rightful relations between states and their peoples. Moreover, it provides the baseline confidence for all other states inside the federation to abide by the principle of publicity in relation to one another. As Kant explicitly claims, it is possible to 'make politics commensurable with morality only in a federative union' (*TPP*, 8:385), and therefore it is the consent – the promise – of the other states to act according to the principle of publicity between its members. Such a promise is an 'active [though provisional] obligation on the freedom and means of the other' (*DR*, 6:274).²⁰

If a state is outside of the federation, then, *no* state has an obligation to publicise its maxims towards it. To see why this is so we can turn to Kant's discussion of the unjust enemy. The unjust enemy is

an enemy whose publicly expressed will (whether by word or deed) reveals a maxim by which, if it were made a universal rule, any condition of peace among nations would be impossible and, instead, a state of nature would be perpetuated. (*DR*, 6:349)

While we might debate whether any state outside the federation is, *ipso facto*, an unjust enemy, we can agree, I think, that states do not have obligations of publicity toward it, for while the non-member state may be neutral, pacific or even aggressive, I have no assurance from it that it will not renounce war towards me. Thus, it may, at any time, move to arms. Moreover, it only makes sense to claim that states have a duty of publicity towards those states who will

act reciprocally. Those states who have agreed ‘to the maintenance and security of each nation’s own freedom, as well as that of the other nations leagued with it’ provide me with *something*. There may not be a nation of nations, regulated by a cosmopolitan constitution, but something is better than nothing, and as Kant claims, ‘such a federation is *necessarily* tied rationally to the concept of a right of nations’ (*TPP*, 8:356).

The unjust enemy, then, provides us with a clue to the obligation of publicity and the right of preventive war. If states within the federative union break their word towards each other (or ‘violate public contracts’), then they have tipped their hand to their true nature and have not renounced peace. All other members may act against them. Likewise, those states that employ ‘dishonourable stratagems’, such as the use of poisoners, the instigation of treason, or any other action that would break the fragile nexus of trust between belligerent parties, are also considered ‘unjust enemies’ (*TPP*, 8:346).

While Kant is quick to note that the discussion of justice in a state of nature is tenuous, bordering on a ‘pleonasm’, such an interpretation makes sense only when there is a basis for justice, and that basis is the mutual agreement of states not to use underhand means or anything that would ‘make it unfit’ to be a moral agent (or, in the domestic sense, a ‘citizen’). By creating this federation of states, there is an obvious and immediate tension between those inside the federation and those without, with differing standards of behaviour and duties towards each. This is perhaps an uncomfortable conclusion. However, it is the only conclusion that can make sense of Kant’s disparate remarks about preventive war, conditions of public international right and the unjust enemy. Indeed, Susan Meld Shell reaches this conclusion as well, writing,

in short, the transcendental formula of public right [the publicity principle] applies only among members of an ‘enduring free federation of republics’ where alone ‘international right can be spoken of’. The conflict between ‘politics’ and ‘morals’ (as a doctrine of right) can be resolved, but only within such a federation. (Shell 2005)²¹

I would like to extend Shell’s argument and claim that the duty to uphold the publicity principle applies in this way only because of its provisional and relational nature.

CONCLUSION

Kant’s notion of provisionality is of fundamental importance to our understanding of the publicity principle. Indeed, this is why contributions like Ellis’s and Banham’s are so important. While Ellis might not see that it does not apply universally to all moral agents at all times, her contribution to the elucidation

of provisionality began a sea change for Kant scholarship. Furthermore, while Banham's account might face some problems at its foundations, he is correct to focus on how provisional right plays a crucial role for the universal instantiation of justice. Publicity and right are intertwined, and he is correct to draw attention to the fact that

the emergence of effective institutions in the republican civil condition is the organization of a second layer of publicity as such institutions have to explicitly commit themselves to rules that regulate the conduct of those governed by them in ways that reflect the basic public principle of right itself. (Banham 2007: 85)

However, as I argue, we must be careful to answer fundamental questions about who the audience or public is for this principle, who the duty bearers are, and what the scope of the obligation entails. When we answer these questions, which can be answered only once we take into account Kant's complete theory of justice, we can begin to see how international and cosmopolitan justice might be possible.

Kant's arguments for justice are predicated on the fact that individuals form themselves into civil societies, and that these societies reform themselves into republics, whereby they then unite into a permanent congress of states where grievances can be arbitrated by law and not violence (*DR*, 6:350–1). It is only after such a federation (or congress) is formed that we can begin to envision the landscape of cosmopolitan justice. The federation acts as a rightful surrogate and, as such, provides the assurance for all members to abide by their obligations of publicity towards one another. States are no longer at liberty to prosecute their rights in secret; nor are they allowed to use secretive or 'dishonourable' means in war. To do so would be to show oneself as an 'unjust enemy' and invite collective defence from all. Thus, in contemporary parlance, we can claim that the federation provides states with the ability to engage in confidence-building measures. By renouncing war towards one another and by acting in accordance with the publicity principle, states move past the intractable position of insecurity in a state of nature. To be sure, they are still in a condition of private right, but that condition is itself a continuum. Their duties of publicity are provisional and relational. They are exempted from publicising their maxims to those who provide no assurance.

Once this federation grows, in quality and in degree, we are at liberty to move beyond questions of the rights of nations to that of the rights of world citizenship, for it is at this point that the rights of 'men and nations stand in mutually influential relations as *citizens* of a universal nation of men' (*TPP*, 8:350 note, italics added). Until this point, however, the obligation to uphold the publicity principle is merely provisional (*TPP*, 8:350 note).

NOTES

1. The principle could also be arguably applied to individual's relations with one another, as Kant does spend a considerable amount of time discussing the 'public' and individuals in *The Conflict of the Faculties* and 'What is Enlightenment?'. However, as I will note later, a rightful constitution precludes many of the difficulties associated with a provisional duty of publicity between individuals. This is because individuals who find themselves within a civil condition are protected through its laws sufficiently not to rely on their own strength to enforce their rights. Thus, discussions of public enlightenment or publicity and freedom of the pen for public enlightenment presuppose a civil condition already.
2. Hereafter I will use the *Akademie Ausgabe* pagination when available: for example, 6:209. I will also hereafter refer to the 'Doctrine of Right' as the 'DR'. Kant states 'toward the end of the book I have worked less thoroughly over certain sections than might be expected in comparison with the earlier ones, partly because it seems to me that they can be easily inferred from the earlier ones and partly, too, because the later sections (dealing with public right) are currently subject to so much discussion'.
3. Hereafter 'TPP'; *TPP*, 8:381.
4. Some authors, such as Kevin R. Davis (1992) and Elisabeth Ellis (2005), address the question of the differing 'publics' in Kant's works, and provide insight into our first question, while others, like Habermas (1991), Rawls (2005) or O'Neill (1989), attempt to formulate what the obligation of publicity requires. These latter constructivist accounts, however, move away from exegesis and so are not as central to our purposes of providing a comprehensive account of Kant's publicity principle.
5. Hereafter 'CF'. *CF*, however, is not seen as a systematic and clear whole. It was conceived in three separate parts, written in different periods. Moreover, the coherence of the text is sometimes questionable because of the 'conflict' that resulted over the permissions for publication. See 'Translator's Introduction' (*CF*, xxviii–xxix).
6. There are two issues here. First, there is the distinction between justice and the jurist. Judging a state as unjust is not achieved from the perspective of the 'jurist'. Rather it is a judgement about the transcendental meaning of justice, not necessarily what the state's laws say are 'just'. Second, there is the purpose and idea of a sovereign and a rightful constitution. The constitution cannot admit of any clause that would take the power of settling rights disputes from the requisite authorities and place it elsewhere; otherwise, those authorities would not be *the* authorities. The people would ultimately still be reserving a right to judge and not exit the state of nature. The civil condition is necessary for the establishment of right – anything before this only has in its favour a rightful presumption (*DR*, 6:257). Thus, any attempt at usurping the power of the authorities is, by its very nature, unlawful and is a threat to 'abolishing the entire legal constitution' (*DR*, 6:320).
7. The provisional nature of acquisition is untenable for the universal realisation of justice in the real world because it relies on the morally arbitrary fact of physical strength. If I am strong enough to 'possess' my object of choice, then I can thwart anyone's attempts at taking it from me. However, if I am not strong enough, then my objects of choice are not secured. The establishment of public juridical institutions that protect everyone equally, and also secure everyone's external objects equally,

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- allows agents to perform their duties of justice towards one another without making them into victims.
8. For an excellent discussion of the executive function corresponding to commutative justice, see Byrd and Hruschka (2010: Ch. 7 section 3).
 9. We might say that it is impossible because, for duties of justice to be legitimately coerced, the state must act as the coercer. Absent this ability, then one of the hallmark features of duties of justice is impossible.
 10. Kant notes that when it comes to international right and publicity, one ‘has a good indication of the incommensurability of politics and morality (as a doctrine of right)’ because of the very contradiction of ‘just’ behaviour in an unjust condition (*TPP*, 8:385).
 11. While Kant appears to think that a ‘people’ can exist in a state of nature and thereby give itself a constitution, this is only a thought experiment. At *TPP*, 8:382 he claims that a people cannot reserve the right of rebellion when forming a social contract. This is because one cannot hand over the right to judge to an external authority and then reserve a right to judge, for that would mean that the people still judge and not the public external authority. Moreover, in the *DR* (6:318), he claims that a ‘people should not inquire [. . .] into the origin of the supreme authority’, for it must be ‘regarded as already united under a general legislative will’. To inquire into the actual consent and formation of a ‘people’ is ‘pointless’ and ‘threaten[s] a state with danger.
 12. I argue at length why the international system and, in particular, the two international courts do not satisfy the requirements of public justice in Roff (2013). This is contrary to Pauline Kleingeld’s (2012: 88) position that individuals are also the subject of rights and responsibilities in the international system due to the creation of the International Criminal Court and the Geneva Convention and Additional Protocols. While some individuals may receive some protections, the brute facts remain that states are the signatories to these institutions, the institutions do not have universal jurisdiction or enforcement capacities, and power remains the order of the day. While it is certainly an improvement on Kant’s time, it is, nevertheless, insufficient to create a formal condition of public right.
 13. She claims: ‘On the face of it, the theory of provisional right makes no sense without a concomitant theory of publicity’ (Ellis 2005: 146). Furthermore, ‘Kant’s theory of provisional right and his account of publicity mutually imply each other; neither is complete without the other’ (Ellis 2005: 150).
 14. Indeed, Banham criticises her for ‘a lack of specificity’ (2007: 74).
 15. Banham’s reading of ‘external’ as ‘an act one performs in full view of others’ is rather controversial. What Kant usually means by ‘external’ are those things outside oneself, meaning ‘external objects of choice’, which can be things, like the chair I am sitting on, or promises, or even the status of persons. They are not ‘internal’ to oneself.
 16. Again, this interpretation is debatable, for if, as Banham suggests, a form of right inheres in every level of Kant’s system, then it does not matter if one is in public right or private right to make a rights claim. For the meaning of ‘public’ right is not opposed to ‘secret’ right, but ‘private’ right: that is, right enforced through private coercion.
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17. Kant (1985a: 37). Hereafter 'T' at 8:28.
18. I have argued elsewhere that most states in the international system can abide by negative duties – such as forbearing from action – as all have the capacity not to do something. However, while we might say that forbearing from preventive war is a negative duty, this obscures the fact that the duty to publicise one's maxim is positive. Can I publicise my maxim without rousing opposition? That is the question. Thus, the duty under consideration here is not a negative one of forbearance, but a positive one of publicity (Roff 2011).
19. Banham argues that 'publicity conditions apply even in the case of provisional right and without reference to such conditions it is doubtful that we could describe provisional right as being in any sense "right" at all' (Banham 2007: 84).
20. While the obligation to act publicly towards all other members in the federation is provisional, it is presumptively rightful and will become 'conclusive' in a condition of cosmopolitan right. Cf. Roff (2013).
21. Cavallar (2006) disagrees with Meld's interpretation of the free federation of republics. However, this debate is not particularly germane here. Whether all states must be republican or not is moot, for Kant clearly believes that the federation will act as a security community, and the requirement to refrain from dishonourable stratagems amongst the members, regardless of the character of their constitutions, remains the same.

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REPUBLICANISM AND COSMOPOLITANISM: A KANTIAN RECONCILIATION

Kostas Koukouzelis

INTRODUCTION

The aim of the present chapter is to reconstruct a principled connection between republicanism and cosmopolitanism, based on the work of Immanuel Kant, who holds a strong view on both. Nevertheless, if the argument presented here does not count as Kant's own argument, the Kantian inspiration should be duly acknowledged as part of recent efforts to reconcile them in contemporary political theory. Traditionally, republicanism and cosmopolitanism are taken to be separate, mostly conflicting notions if interpreted in a certain way. Republicanism, mainly in its Rousseauian terms, refers to state sovereignty-bounded societies, and freedom as self-determination, whereas cosmopolitanism, at least in its Stoic meaning, denies every particularistic tie and duty, and even extends itself to the abolishment of state boundaries, at least if taken in its negative connotation, as expressed by Diogenes the Cynic.¹

Contrary to traditional conceptions, the argument presented here will be that republicanism and cosmopolitanism come together, and are linked, albeit somehow modified from how they have been understood, in important and revealing ways in Kant's philosophy. In the present chapter, I will defend only one way. The reconciliation defended is achieved through a double connection: republicanism

in the domestic field can be fully achieved only within a cosmopolitan political framework, whereas cosmopolitanism can be conceived only in republican terms. This is because both stem from a single conception of freedom, considered in a distinct republican way, which, in order to be realised fully, should have a cosmopolitan scope. Part of this reconciliation consists in the fact that cosmopolitanism provides us with a vantage point upon the problem of how to supersede the state of nature that operates internationally, and part of the argument sees cosmopolitanism as a vehicle of the slow but steady transformation of states into full republics. In the latter sense, cosmopolitanism is indeed the crowning face of Kant's cosmopolitan conception of philosophy through the actualisation of the public use of reason.²

For a number of theorists, Kant's cosmopolitanism is considered to be only a restatement of his moral universalism, adding nothing further to his moral vision of universal human moral equality, and the existence of republics is considered to be a necessary vehicle of approaching perpetual peace, under the empirical assumption that they do not go to war with each other.³ Moreover, the argument that a league of republican states is the only feasible way out of the state of nature at the international level makes the Third Definitive Article in *Perpetual Peace* just a way of solving the problem of the relations between individuals and foreign states, which is otherwise unregulated. Yet, there is a deeper connection between republicanism, the right of nations and cosmopolitan right. Kant is clear about their interconnectedness when he argues that, because of the earth's spherical shape, if external freedom is lacking in one of these three forms of rightful condition, everything collapses (*MM*, 455, VI:311; *PP*, 322, VIII:349 note⁴).

Given that Kant draws such a strong connection, I want, in the first part of this chapter, to start by presenting the somewhat neglected argument that Kant's concept of philosophy is essentially *itself* cosmopolitan, because it rests on a conception of reason that, in principle, demands a political framework that is cosmopolitan in scope in order to be realised, and realises in turn the final end of the 'Doctrine of Right' within the limits of mere reason, which is perpetual peace (*MM*, 491, VI:355). This is because reason demands the presence of external freedom to guarantee its cultivation. The latter is famously the product of the public use of reason and Kant realised that what obstructs people from using their own understanding is the *form* of the relations of dependence that exist.

Therefore, the argument of the chapter follows a recent reinterpretation of Kant's conception of innate right, which is conceived not in classical liberal terms – that is, as absence of interference (negative liberty) – but as independence from the choices of others, which resembles what has, in modern republicanism, been called freedom conceived as non-domination.⁵ As I will argue, this is an interpretation of Kant's republicanism that focuses not only

on the separation of powers, or representation, but also on something more fundamental: republican liberty. Republican liberty refers to the ‘right to have rights’, accompanied by the duty of establishing a civil condition: that is, a legal–institutional framework where one’s freedom is secured, and a conception of active citizenship that is realised through the public use of reason. The former constitutes what has been named, following Philip Pettit’s work, the authorial dimension and the latter the editorial dimension. Nevertheless, *both* prove inadequate as, on the one hand, the international state of nature still threatens freedom and, on the other hand, invoking the state’s authority (*raison d’état*) in all matters constitutes a private use of reason.

Given that, Kant’s cosmopolitanism comes, first, to support the cosmopolitan conception of philosophy by transforming it into a political project. Making a public use of reason is based on a republican civil condition, yet transcends states. This is a clue to how states can be (self-) transformed into full republics. Nevertheless, republican freedom is also what, on the one hand, prohibits the use of coercion against states and, on the other, unveils that there are *already* obligations of justice beyond states that involve individuals due to the image of the spherical shape of the earth that proves we are *already* interdependent through a dynamic community of *commercium*. Yet, innate right as the ground of cosmopolitan right essentially involves communicative freedom and the public use of reason, which forms the condition of possibility of republican states, making it clear that any such transformation cannot be accomplished without a cosmopolitan framework that engages our humanity not *in abstracto*, but as an embodiment of reason.⁶

In the last section, I am going to contend that the reconciliation argued for here can be traced in contemporary revivals of republicanism, especially in relation to James Bohman’s work, which defends exactly a Kantian-inspired ‘republican cosmopolitanism’ based on republican freedom exemplified as communicative freedom. I will nevertheless argue that Kant’s republican cosmopolitanism is neither a result of empirical interdependence (globalisation) nor a justification of global trade, and that communicative freedom points out that the political status of cosmopolitan citizenship fits better in the editorial dimension of republican citizenship.

KANT’S COSMOPOLITAN CONCEPT OF PHILOSOPHY⁷

Immanuel Kant’s philosophy famously rests on a conception of reason that, in principle, demands a framework that is cosmopolitan in scope in order to be realised. This is not just Kant’s idiosyncratic view of reason, but reflects his distinct idea of a cosmopolitan concept of philosophy itself, something rarely mentioned in the literature.⁸ In his ‘Lectures on Logic’, Kant draws the distinction between the scholastic and the worldly or cosmic concepts of philosophy (*in sensu cosmico*). Philosophy, according to the scholastic concept, can turn

out to be an intellectual game, for it is merely ‘a doctrine of skill’, whereas, according to the worldly concept, it is a ‘doctrine of wisdom’ or a ‘science of the highest maxim for the use of our reason’ (*Logic*, 537, XI:24–5). This is further clarified in the *Critique of Pure Reason*, where he turns from this scholastic concept (*Schulbegriff*) in its sense of ‘a system of cognition [. . .] as a science’ to the cosmopolitan concept (*Weltbegriff*) of philosophy as ‘the science of the relation of all cognition to the essential ends of human reason’ (*CPR*, B866), something that reflects Jean-Jacques Rousseau’s influence on the primacy of the practical. Reason, for Kant, is a matter of setting and pursuing ends of one’s own, which is also one of the definitions of humanity (*Humanität*) (*MM*, 522, VI:392; *G*, 78–80, IV:428–9; Korsgaard 1996).

The reference to the ‘essential ends of human reason’ might invite fierce criticism from anti-metaphysical thinkers, yet one should stress here that what is important is not some kind of metaphysically objective end, but freedom. On the one hand, ends are not given in things in themselves but, in agreement with the Copernican revolution, issue from subjectivity itself (Höffe 2006: 224). Given that, there remains the relation to freedom. There can be no science of (natural) human ends but, instead, the widest possible scope of freedom to use reason.

Freedom [carries] with it the right to submit openly for discussion the thoughts and doubts with which we find ourselves unable to deal, and to do so without being decried as troublesome and dangerous citizens. This is one of the original rights of human reason, which recognize no other judge than that universal human reason *in which everyone has his say*. And since all improvement of which our state is capable must be obtained from this source, such a right is sacred and must not be curtailed. (*CPR*, A752 / B780, italics added)

However, I have argued elsewhere (Koukouzelis 2008) that this right is partly, albeit essentially, grounded in reason’s feeling of its own need (*Bedürfnis*), reason’s insight into its own lack of objective grounds for guiding judgement when it leaves experience, something that applies to moral law as well through the feeling of respect. Ultimately, reason is not given to itself as an object, but needs to present itself to itself. Kant says, ‘how much and how correctly would we *think* if we did not think as it were in community with others to whom we *communicate* our thoughts, and who communicate theirs with us?’ (*OT*, 16, VIII:144). In that sense, Kant disconnects subjectivity from a fixed, historical conception of identity, which comes along with a certain motivational baggage. Communication, then, is equivalent to also giving form to subjectivity by making a public use of our reason, instead of taking such a need as a rational insight into the essence of things, something that can cause enthusiasm or make

one ‘superstitious’ through reliance on prescribed formulas such as ‘traditions which were chosen originally but with time become *intrusive* documents’ (OT, 17, VIII:145).

What, then, is required for people to learn to think for themselves is the freedom to make public use of reason (WE, 17, VIII:36). But what does public use mean? In his famous essay ‘An Answer to the Question: “What Is Enlightenment?”’, one of Kant’s own examples refers to tax officials who command, ‘Don’t argue, but pay!’ Such an example, though, implies that tax officials make a private instead of a public use of reason, not because they communicate their message in private – in fact, their command is public – but because they are ‘employed to expound in a *prescribed manner* and in the name of another’: that is, the state’s own authority. In comparison, making a public use of reason means the opposite: using one’s own reason freely means trying to express one’s own conviction about the truth of a matter. Moreover, if one believes one has found the truth (Kant calls it ‘inner religion’ in the clergyman example), one would have to resign from office (WE, 19, VIII:38; Ellis 2005: 18–22)! Now, there is a sense that making a private use of reason here has to do with the *form* of the relationship between guardian and ward rather than the content of one’s views. The authority exercised by the guardians encourages the habitual abandonment of critical thinking. Therefore, a private use of reason is fostered by power relations of dependence and domination, rather than independence, something we shall see in the next section. It is, after all, a certain *political* status that has to be in place for the public use of reason. Therefore, even reasoning publicly within the bounded society of a single state might constitute a private use of reason. Kant argues, then, that reason’s need applies to *all* finite rational beings and should therefore be opened up to the ‘world at large’. The scope of the public use of reason cannot be a closed or bounded society – for example, a state – but ‘a complete commonwealth or even a cosmopolitan society’ (WE, 18, VIII:37).

Therefore, Kant’s cosmopolitan concept of philosophy referring to wisdom is linked to the public use of reason. It is through publicity that freedom is basically structured; it does not obey objective meta-rules and is not based on what is called common sense. The latter choice of common sense belongs to John Rawls’s supposedly Kantian conception of public reason. Rawls’s conception of public reason is based on the concept of ‘reasonableness’, defined as ‘a willingness to listen to what others have to say and being ready to accept reasonable accommodations or alterations in one’s own view’ (Rawls 1996: 253), but which already presupposes a democratic culture, a common sense as part of the content of public reason, that serves to apply substantive principles properly and identify laws and policies that match them (Rawls 1996: 223–7). It is therefore no accident that Rawls’s conception is explicitly anti-cosmopolitan and confines his theory within a bounded, democratic society when he talks

about the use of public reason, whereas Kant is preoccupied with the *public use* of reason (Koukouvelis 2009). Even his account of ‘global public reason’ is simply an extension of his theory of the liberal state, because it once again presupposes a minimal catalogue of human rights.

Now, a significant part of Kant’s focus on the public use of reason, rather than public reason as a special category of reason, is that reason’s need carries with itself a right (*Recht des Bedürfnisses*): that is, the right of reason’s need as a subjective ground for presupposing and assuming something that reason cannot know through objective grounds. Nevertheless, it has to be communicated, for we need a *criterium veritatis externum*. Now this claim is a juridical and not a teleological or prudential one. Kant argues that ‘[t]he claim of reason is never anything more than the agreement of free citizens, each of whom must be able to express his reservations, indeed, even *his veto*, without holding back’ (CPR, B766). In other words, Kant recognises a right to dissent, to contest as an essential, although negative, way of testing maxims. Such a juridical transformation of reason’s own need marks a fundamental aspect of the public use of reason. For such a conception of public reason to be realised, we have to take seriously Kant’s reference to the political status that has to be in place. This is an essential feature of Kant’s republicanism, or so I will argue.

KANT’S REPUBLICANISM

Usually, Kant’s republicanism is focused on the doctrines of the separation of powers and representation. Important as they may be, I will instead try to focus on the notion of freedom enjoyed in a republican sovereign state, into which – contrary to Hobbes, after entering, we perfect our human nature. This is achieved by making the public use of reason an essential feature of active citizenship.

When Kant refers to the notion of external freedom in *The Metaphysics of Morals*, he is focused on the one innate right, as

(f)reedom (independence from being constrained by another’s choice), insofar as it can coexist with the freedom of every other in accordance with a universal law, is the only original right belonging to every man by virtue of his humanity.

Such a right also carries

innate *equality*, that is, independence from being bound by others to more than one can in turn bind them; hence a human being’s quality of being *his own master* (*sui iuris*) [. . .] and finally, his being authorized to do to others anything that does not in itself diminish what is theirs [. . .] such things as merely communicating his thoughts to them. (MM, 393–4, VI:237–8)

It is important for us to stress here that, as an innate right, it is held by human beings by nature and independently of any act that would establish a right (*MM*, 393–4, VI:237–8), what Kant calls, in contrast, acquired right. Agents have this natural right to freedom based simply on their *status* as agents, which means that they have this right in virtue of their humanity, understood as the capacity to set ends for themselves according to reason, as mentioned above. Now, a direct consequence of Kant's famous argument from the Formula of Humanity in its practical philosophy is that a person's humanity is normatively authoritative, which means that rational agency is not just one value among others (*G*, 78–80, IV:427–9), and therefore cannot be restricted by other values such as the greatest happiness, security and so on.

Now, I would like to argue that this kind of innate freedom that Kant defends is a specific kind of political freedom, which is of a *republican* nature. Kant states that freedom consists in 'independence from being constrained by another's choice' (*MM*, 393, VI:237). This particular definition has close affiliations to one prominent recent effort to define freedom as 'non-domination', an effort that characterises what has been called modern republican freedom, advocated mainly, but not exclusively, by Philip Pettit (1997).⁹ To be clear, such a conception of freedom should be interpreted neither as mere absence of interference (negative freedom), nor as self-determination within a bounded society: that is, self-mastery (positive freedom). Non-interference is simply not enough to guarantee freedom when others could interfere at will; actually, there is no need for actual interference because possible interference is enough as a threat to freedom. This is why, in my view, Kant makes clear, first, that a person threatens me even with his nearby presence (*PP*, 322–3, VIII:349–50) and, second, that everyone is presumed to be evil until he provides security for the opposite (*MM*, 452, VI:307; Byrd and Hruschka 2010: 193). Kant bases the constitution of state sovereignty on the institutionalisation of such a political freedom, which makes all rights conclusive rather than provisional. More importantly, collective self-determination within a state could also be not enough for freedom. This is for two reasons: first, rational agents have a right to freedom in the sense that the only ground on which their freedom can justifiably be restricted is the need to protect the exercise of rational agency itself. This means that coercing a rational agent can be justified *only* insofar as it constitutes a 'hindering of a hindrance to freedom' (*MM*, 318, VI:231). Otherwise, an agent should have a right to veto with respect to the grounds that can be invoked to justify the use of coercion (cf. *MM*, 457, VI:314).¹⁰ Second, collective self-determination within a state might already prescribe a certain mode of reflection through, for example, fostering a certain identity through a perfectionist policy, and therefore restricting the public use of reason. This is absolutely crucial because civil condition, as argued

in the previous section, establishes a framework of reflexivity through the public use of reason.¹¹

Kant's distinctive conception of the right to freedom refers to a certain political status, which should be interpreted as 'having the right to have rights' (Hodgson 2010: 817), a status one has in virtue of one's humanity. This is a legal and political status, which guarantees that one cannot be ruled by another in the sense of using one's own powers for another person's purposes. Such a status is valuable not instrumentally, but constitutively, because it is necessary for the exercise of all acquired rights; it makes possible their exercise. It also has particular implications for the kind of citizenship Kant puts forward within a civil constitution. Usually, republican citizenship is thought to be conceived by Kant as an active citizenship, basically defined through the right to vote (*MM*, 458, VI:314). Republican freedom means that no one chooses for me, which in turn means that acting as co-legislator within a state realises my status as being *sui iuris*. According to modern republicanism, this is identified as the *authorial* dimension of citizenship in a democracy, an active citizen being the co-author of the law through voting (Pettit 1997: 294). Nevertheless, voting or the authorial dimension is not the whole story as, for Kant and modern republicans, this presupposes independence (*TPP*, 295, VIII:295; *MM*, 457–8, VI:314).¹² I will then focus on this, taking up the last part of the above-quoted passage regarding innate right, which includes the authorisation to communicate one's thoughts to others, something that specifically involves Kant's conception of reason.

Kant is explicit regarding citizenship. A law prohibiting people from speaking their minds would make a condition of *passivity* enforceable against them (*MM*, 459, VI:314–15; Weinrib 2008). This is extremely important, as it makes clear that being the author of the law might be seriously compromised, because a person might still act as the mouthpiece of others, who exercise domination over her by coercion, intimidation or tutelage. Let us remind ourselves that this is connected with enlightenment and Kant's famous dictum *Sapere aude!*, which means to have courage to use your own understanding or to think for yourself at all times: something that can be exercised only when communicating your thoughts to others. This is because enlightenment is a social process, rather than a monological activity of reason (Deligiorgi 2002). Kant's public use of reason is a demand, which marks a political relation towards others. In other words, it points to the form of the stance we ought to take to one another as citizens in a polity. In that sense, it involves our external freedom. To have courage means not to be afraid to express who one is in public, fearing that one might be accused of being dangerous or unreasonable. Having courage is inextricably linked with the status of having the right to have rights, and enjoying equal freedom through respective independence from the choices of other

people.¹³ In this way, the public use of reason is part of what it means to be an active citizen, enjoying the status of being a full member of the republic.¹⁴

Two aspects should be made more explicit. The first again regards scope. What Kant understands as public should not be equated with statist, which was usual in Kant's era and later on. Kant breaks with tradition, reconnecting the term public (*Publikum, öffentlich*) with people and equating publicity with openness. Remember that openness means that the audience addressed is not even a certain people or the academic community, as both are considered 'private audiences', but the world at large (Laurson 1986: 585–7). Second, a crucial aspect of making a public use of reason involves more than the ability to follow the purposes one has set. One also needs to be able to *reject* or *dissent* to the following of purposes unless one has set them freely. Therefore, part of someone being free to set purposes, by virtue of her humanity, is also having a power of *veto* against the purposes she will finally pursue (Ripstein 2009: 44, 49). In modern republicanism's terms, this corresponds to the so-called *editorial* dimension of citizenship and democracy, which describes exactly the capacity to contest (Pettit 2000).¹⁵ This is absolutely crucial for Kant and constitutive of active citizenship. He condemns a state in which 'subjects [. . .] are constrained to behave only passively' as 'the greatest despotism thinkable' (*TP*, 291, VIII:290–1). Therefore, public use of reason is essential because it conditions voting. Participation in all public discussions and criticism of laws and policies are to be encouraged, because they foster improvement in the quality of the civil constitution of a just state (Kleingeld 2012: 20–1).¹⁶ Nevertheless, there is a sense that republican freedom, although it grounds the constitution of a state, also goes *beyond* a statist logic through publicity.

Kant famously argued in *Perpetual Peace* that states should be republican (*PP*, 322, VIII:349). Two reasons for this are that republican states do not fight with each other, and people decide for themselves whether they should go to war or not. Yet, such a view is true on the condition that people's authorial role is not compromised by their passivity as citizens or, in other words, by being dominated by other people's choices. I argued above that this kind of passivity, which does not allow citizens to make a public use of reason – that is, to think for themselves, is due to relations of dependence within a state or prescribed mode of reflection that has to be overcome. Public use of reason needs the world at large, yet there are relations of dependence or domination not only within, but outside the state, which compromise republican citizenship. The state of nature between states consists exactly in such domination. Rousseau describes this eloquently when he argues that when there is still a state of nature between states, individuals paradoxically remain in a 'mixed state', which is the worst state of all (Rousseau 1991: 44; Rousseau 1959–95, vol. 3: 610; also *PP*, VIII:354–5).

Kant's view on the interconnectedness of the first part of public right and the second one echoes Rousseau's above-mentioned worries. However, the common view remains that it is with regard to international right that there is a state of nature problem between states, something which is partly true. Nevertheless, Rousseau's reference to a 'mixed state' reveals the fact that the individual's own external freedom is not fully guaranteed until its relation to other states is also regulated in some way. Rousseau's solution to the problem of the 'mixed state' was somehow ambiguous and incomplete. He critically presented the Abbé de St Pierre's project for perpetual peace and judged that the state of nature between states cannot be transcended unless states are transformed internally into republics (Rousseau 1991; Brown 2005: 500–1). Nevertheless, Rousseau never went beyond the state's self-determination and self-sufficiency; there is no doubt, then, that his solution is anti-cosmopolitan.

Famously, Kant opted for a voluntary league of republican states as a solution to the state of nature between states. This is the content of the Second Definitive Article in *Perpetual Peace* and covers the second part of public right: that is, international right. Arguably, this is Kant's considered solution in the face of his rejection of a state of nations. The latter was his proposed thesis in his early writings but was transformed later in *Perpetual Peace* and *The Metaphysics of Morals*, despite the fact that, as he argues, it is true *in thesi* but not *in hypothesis*, as states do not want it (*PP*, 328, VIII:357). Contrary to interpretations that see the solution of the voluntary league of republican states as a pragmatic one (Höffe 2006: 189–203), this remains, in my view, a *principled* argument that is still based on Kant's view of republicanism, not a retreat due to empirical obstacles posed to a recalcitrant human nature or a conception of state sovereignty that is absolute. The republican solution of the league of states stems from the problem Katrin Flikschuh has eloquently dubbed Kant's 'sovereignty dilemma' (Flikschuh 2010) and justifies Kant's solution, although it provides no obvious way out, if taken as it stands. The problem consists in the difficulty that, between states, there is a demand for coercion that accompanies right in order to ensure reciprocal use of freedom; nevertheless, each state is already a juridical individual with established sovereignty – that is, a right to determine its own affairs. Therefore, there can be no right to coerce its actions (Flikschuh 2010: 471; 482). If states are already rightful entities, even if they are not *yet* full republics, there can be no solution analogous to the solution available for individuals, who can coerce each other in order to abandon the state of nature. Republicanism itself does not allow *in principle* the coercion of already rightful entities, despite the fact that, in his historical writings, Kant says that states are the contingent outcomes of the fact that we live close to one another.¹⁷ Flikschuh's way of putting the dilemma is ingenious, yet what it leaves out is exactly the contribution to the solution of this dilemma of the

third part of public right: that is, cosmopolitan right in virtue of this same republican freedom.

KANT'S COSMOPOLITANISM: *COMMERCIIUM* AND REPUBLICAN FREEDOM

Kant offers his considered view of cosmopolitan right in §62 of the *MM*. Let us quote Kant at length:

Nature has enclosed them all (for example nations) together within determinate limits (by the spherical shape of the place they live in, a *globus terraqueus*). And since possession of the land, on which an inhabitant of the earth can live, can be thought only as possession of a part of a determinate whole, and so as possession of that to which each of them originally has a right, it follows that all nations stand *originally* in a community of land, though not of *rightful* community of possession (*communio*) and so of use of it, or of property in it; instead they stand in a community of possible physical *interaction* (*commercium*), that is, in a thoroughgoing relation of each to all the others of *offering to engage in commerce* with any other, and each has a right to make this attempt without the other being authorized to behave toward it as an enemy because it has made this attempt. – This right, since it has to do with the possible union of all nations with a view to certain universal laws for their possible commerce, can be called cosmopolitan right (*ius cosmopoliticum*). (*MM*, 489, VI:352)

Given the republican-principled restriction on coercing states, which are already rightful entities, there must be something else that provides both a vantage point to supersede the state of nature among states without the use of coercion, and a framework within which we can cultivate reason and criticise, affirm or contest the terms of our interaction with one another, with the aim of coming to terms with the full potential of our freedom. This is where cosmopolitan right becomes relevant, and expresses a crucial aspect of innate right: that is, an aspect of republican freedom.

How significant is Kant's use of the spherical shape of the earth? The metaphor of the spherical shape of the earth's surface indeed plays a significant role in Kant's definition of cosmopolitan right because it provides a constraint on action, which is not chosen, but given, and proves what Kant says about *possible physical interaction* or *commercium* in the passage quoted here.¹⁸ Kant has used the image of the spherical shape of the earth in *The Metaphysics of Morals* right from his argument on the justification of property, giving to it a cosmopolitan dimension (*MM*, 414–15, VI:262). It is because of this spherical shape that people cannot disperse infinitely and, under conditions of unavoidable empirical constraints, any exercise of choice by one person compromises

the freedom of everyone else: for example, in the case of land acquisition, by making external objects of possible possession unavailable to others. Kant says that the spherical surface of the earth unites all the places on its surface. Otherwise, if the surface was an unbounded plane, men could be so dispersed that they would not come into any community whatsoever. From this, Kant derives the idea of original possession in common, which is a practical rational concept that contains *a priori* the distributive principle (*MM*, 415, VI:262). What interests us here is that, among other things, this idea portrays the relations of systematic *interdependence* that obtain between individuals by virtue of the unavoidable unity of the earth's surface (Flikschuh 2000: 167).

Kant does not mean here that the interdependence mentioned is even remotely empirical. He is not describing globalisation in any of its current meanings. What he argues is that it is because of the image of the sphericity of the earth that the action space of each and everyone might affect (delimit or constrain) the equal action space of all the others. Given the unity of all the places on earth, the violation of right by one person in one place is felt everywhere (*PP*, 330, VIII:360). In other words, he explicates the universal principle of right, which demands that the exercise of each person's freedom must be compatible with the equal right of everyone else. But, as Kant says, the image of the spherical shape means that we *already* stand in a community of possible physical interaction. The passage quoted above is revealing. For Kant, the earth's inhabitants *originally* stand in this community, which is called not *communio*, but *commercium*.

There is an ambiguity here regarding the exact meaning of these words, but I am going to follow their broad meaning, not the narrow one. *Commercium* refers here to a domain of general intercourse or interrelation (*Verkehr*) and communication, as well as all forms of exchange, not just mere trade: that is, economic exchange (Milstein 2013: 125 and note 4). In the passage quoted above, Kant argues that there is a community *already presupposed* by every other constitution of community, such as a nation or a state called *communio*, which retains a revealing connection to Kant's explication of community back in the *Critique of Pure Reason*.¹⁹ *Commercium* is a dynamic community of interaction by virtue of our simultaneous coexistence on the spherical surface of the earth.

Accordingly, interdependence here is not something required as a duty, nor an empirical fact based on interaction, but the acknowledgement of the fact that our very entrance into a world that is spherical in shape already makes us interdependent on the choices of others. If *commercium* is indeed such a dynamical community, then innate right is applicable *par excellence*, because it refers to our having a status just because of our entrance into the world and our involuntary occupation of a physical space on the earth's surface interacting with others. Let us not forget that the nature of republican freedom is indeed a

status focused on independence of one's choices from the potential domination by others, which fosters relations of dependence. This particular human condition already establishes *obligations of right*, which exist before and beyond the obligations we have as citizens of a particular state. They are *a priori* established and non-voluntary. Yet, individuals *are* already citizens of existing states and we saw above the reasons why there can be no coercion of already rightful entities to enter into a world state. Nevertheless, republican freedom is still relevant here, albeit under the form of *cosmopolitan right*.

Innate right in the form of cosmopolitan right retains the republican nature of freedom as independence from other persons' choices, yet, because it cannot be secured within a world civil condition through the coercion of states – in fact, it *precedes* it – has to be confined within certain limits. In *PP*, Kant talks about the 'right to hospitality', which is a right to visit but not to settle in a certain territory. Trying to explicate this, Kant refers to this right as a right 'to present oneself in society' (*PP*, 329, VIII:358). The right to present oneself as invoked in *PP* is, of course, justified in the same way that cosmopolitan right is defined a little later in the *MM*. It belongs, according to Kant, to all human beings by virtue of the right of possession in common of the earth's surface, on which, as a sphere, they cannot disperse infinitely (*PP*, 329, VIII:358). In a similar way, people have the right to *offer to engage in commerce* with any other, and each has a right to make this attempt without the other being authorised to behave toward the other person as an enemy because he has made this attempt. This is a formulation that reminds us of Kant's reference in *CPR* (A752 / B780) to the original right that people enjoy to submit their thoughts openly for discussion without being afraid that they will be considered dangerous or troublesome. This is, in my view, what cosmopolitan right is about, although now what is invoked is external freedom, because what sustains and protects such freedom is a certain legal and political status of independence or non-domination. The same legal and political status is invoked in the passage on cosmopolitan right. What is being protected is exactly one's attempt to engage in commerce with others. If commerce is broadly interpreted, as it should be, and basically involves communication, the contents of Kant's ideas are quite close to each other. The connection is much tighter if one pays attention to the importance Kant attaches to the freedom involved. In the case of the passage in *CPR*, the reference is to the statement that all improvement of our condition is to be expected from this source. The same applies to what is being expected from cosmopolitan right.

In order to come full circle, cosmopolitan right is indeed an expression of the 'innate right' and refers to a certain status. This is the status of having the *right to have rights*, as it is not connected to one's particular membership in a polity, but one enjoys it by virtue of one's humanity, something that becomes particularly relevant in the present context.²⁰ The right to present oneself is

fundamental, in the sense of being the condition of possibility of constituting a rightful entity: that is, what Kant, in the passage quoted, calls a community in the sense of *communio*. This is crucial because it provides a solution to how states can be transformed into republics without the use of coercion.²¹ Kant says, ‘The attempt to realize this idea (for example that “the best constitution is that in which power belongs not to human beings but to the laws”) should not be made by revolution, by a leap, that is, by violent overthrow of an already existing defective constitution,’ but by ‘gradual reform’ (*MM*, 491–2, VI:355).²²

This gradual reform should be carried out – in fact, it has always been carried out – by a thoroughgoing interaction of each person with all others, which should be regulated by cosmopolitan right conceived as communicative freedom (Niesen 2007: 102; Banham 2011: 15; Kleingeld 2012: 74–81). This kind of freedom is, again, a republican freedom conceived as independence from others’ arbitrary choices, although it comes under the form of the right to hospitality and the right to present oneself to others, as explained above. In the natural law tradition, such communicative freedom, in the form of a right, stems from the nature of humans as social animals, and manifests innate sociability (Baker 2011: 1428–34). By contrast, Kant bases communication on our autonomy and perfectibility of reason, opting rather for human nature’s unsocial sociability. Accordingly, communicative freedom is of a republican nature, as it involves the same status of independence regarding the use of reason. On the one hand, *openness* to the visitor, as universal hospitality entails, is driven by the demand for a similar *openness* to reason’s counsels (Banham 2011: 15). On the other hand, Kant recognises a right to refuse entry on the part of the host, thus a restriction of the rights of visitors, when there is an imminent threat to their independence, and there exists no danger to the visitor’s life if not allowed access (*PP*, 329–30, VIII:359).

Cosmopolitan right is, then, a form of republican freedom enjoyed by individuals as participants in *commercium*, having the authorisation to communicate their thoughts to each other, as this does not violate their external freedom. Kant returns powers of agency from states to individual participants and reverses what is usually a common view: that is, global interaction is happening among sovereign states, which are bounded first and interactive second (Milstein 2013: 135). The reference to a cosmopolitan public sphere, which both transcends states and is a condition of their possibility as republics, seems clear. Kant’s cosmic conception of philosophy is also a political project.

‘REPUBLICAN COSMOPOLITANISM’: RECONCILIATION THROUGH THE PUBLIC USE OF REASON

How can we consequently conceive the reconciliation between republicanism and cosmopolitanism? My suggestion is that one way to conceive it should be through republican freedom exercised as communicative freedom and public

use of reason. The cosmopolitan conception of philosophy, to go back at the beginning of this chapter, demands the exercise of freedom in its full strength and scope. And its full strength and scope are attached to its public use, one's use of reason addressing 'the society of citizens of the world' (*WE*, 18, VIII:37). Kant sees the cultivation of all human capabilities as possible only within a cosmopolitan matrix (*IUH*, 51, VIII:28). Yet, making public use of reason requires a certain political status; therefore external freedom is involved. That is why Kant incorporates into his reference to 'innate right' the authorisation to communicate one's thoughts to others without being considered dangerous or an enemy. Entrance into the civil condition domestically, although a significant step forward for securing freedom as independence or non-domination, is still not enough, as domination might come from other places, and does not guarantee that citizens are active in being self-reflective within a state. Moreover, invoking the state's authority in public discourses constitutes a private use of reason and does not lead to enlightenment. The public use of reason can be secured within a civil condition but also transcends it. The solution to this and the solution to the problem of perpetual peace prove to be the same, and are *not* a violation of republican principle, but a deepening and expansion of its conception.

This point takes us to the further pertinent fact that cosmopolitanism is not identical to moral universalism, although it is certainly grounded on it. Otherwise, cosmopolitanism would not add anything to universalism as such. It is, rather, a schema, which mediates between the universality of our human commonality and the particularity of our historical identities. As argued above, the schema of community as *commercium* compels us, when locating ourselves in the world, to identify ourselves relationally to others.²³ From the point of view of external freedom involved in the *form* of such relation, Kant does not equate cosmopolitanism with universal fraternity following the French triad of *liberté, égalité, fraternité*, but talks instead about '(f)reedom, equality and cosmopolitan unity (fraternity / *Verbruederung*) – where independence is internally presupposed without contract'.²⁴ Although there is a reason that is republican *in principle* as to why we should not coerce rightful sovereignties – that is, states – to submit themselves to a higher authority, the presence of an always already presupposed dynamic community of *commercium* unveils the fact that states are artificial and historically contingent constructions (Muthu 2003: 167; Waldron 2006: 91–2), yet necessary for the realisation of freedom.

What connects domestic republicanism and cosmopolitanism seems to be the fact that the independence of the republican citizen in making a public use of reason takes on a cosmopolitan dimension. This means that a state's sovereignty *does not and should not* extend itself to claiming reason's authority (*raison d'état*). It also means that when our cosmopolitan citizenship is exercised, it boomerangs back and benefits the internal constitution by creating more active

citizens. If communicative freedom constitutes part of the content of cosmopolitan right through the public use of reason, then it signifies a *process of transition* from despotic, or inadequately republican, to more fully republican forms of civil constitutions, approximating what Kant called the *respublica noumenon* (CF, 306, VII:91). As argued in the previous section, cosmopolitan right forms the condition of possibility for the existence of a state defined as *communio*. This is also necessary for the establishment of perpetual peace. Kant's alleged 'sovereignty dilemma' finds a possible way out. Gradual reform could come through publicity exercised by world citizens, so that the notorious expression that states do not want what is right *in thesi* (for example, the *civitas gentium*) is superseded without coercion. Cosmopolitanism has a *transitional*, political, republican character without compromising internal sovereignty.²⁵

The reconciliation sketched here between republicanism and cosmopolitanism achieves one important task. It manages to make sense of the political duty and *responsibility* of individuals not only to establish a civil condition through the form of states, but to establish relations of right with all individuals and states wherever they happen to be situated on the earth's spherical surface. This can be justified only in republican terms, which demand such a systematic interdependence of the three layers of public right. To be sure, there is no such responsibility normatively justified in accounts such as liberal internationalism, which recognises only humanitarian duties beyond states.²⁶ This responsibility is manifested in the very definition of cosmopolitan right: 'this right, since it has to do with the possible union of all nations with a view to certain universal laws for their possible commerce can be called *cosmopolitan right (ius cosmopoliticum)*' (MM, 489, VI:352). Yet, this is achieved not through the coercive abolition of states, but by the provision of the conditions of possibility for the internal transformation of states into full republics. It mobilises forces *within* states for their gradual reform.

The Kantian reconciliation between republicanism and cosmopolitanism through the public use of reason has been consistently brought forth in modern republican theory, especially in the work of James Bohman over almost the last two decades, which defends a 'republican cosmopolitanism' (Bohman 2004: 2008). According to Bohman, Kant's cosmopolitanism creates the conditions of a global sphere, which shapes and reorganises existing institutions: that is, states (Bohman 1997: 181).²⁷ Such a reconciliation is defended through a republican conception of freedom as non-domination, which, in the cosmopolitan framework, is also presented as communicative freedom. Indeed, Bohman's 'republican cosmopolitanism' has strong Kantian roots and inspiration, although it does not follow Kant's metaphysics all the way down. Not being dominated is conceived in a global context, and means not being ruled by another, who is able to prescribe the terms of cooperation (Bohman 2007: 9), something that is also present in Kant's conception of cosmopolitan right. This is significantly

republican because it refers to a status protected by Kant's 'innate right', conceived as independence from other people's choices. Bohman again characterises this kind of fundamental political status, which is the status of citizenship itself, as the 'right to have rights' and links it to humanity (Bohman 2007: 107).

The status of republican citizenship, applied at the cosmopolitan level, refers to the fundamental capacity to make claims of justice and to 'initiate deliberation'; lack of it deprives one of one's humanity. Yet, what expresses Kant's cosmopolitan citizenship better is the sense that world citizens engage in social interaction, already taking up their *editorial* rather than their authorial role. Indeed, if *commercium* represents a dynamical community of thorough-going interaction that precedes and conditions the establishment of every *communio*, then there is a sense that what should be fostered is exactly the political status of world citizens to challenge, contest and revise the conditions of their interaction. Nowadays, global circumstances of interaction create conditions both of exclusion and of involuntary inclusion, especially when the terms of cooperation are prescribed (Bohman 2007) and new forms of domination are created through the intensification of global trade or global problems like sustainability and climate change. Such global problems create a situation where we cannot even choose whom to cooperate with, and citizens should be able to refuse involuntary inclusion, something that is crucial for Kant's cosmopolitan right, especially in the cases of China and Japan from *PP* (329–30, VIII:359). More importantly, the editorial role of world citizens can be exercised nowadays through them organising into transnational advocacy networks, which link activists all over the world and can prove mutually beneficial, as they can put pressure on unresponsive elites or corrupt governments, and trigger *internal* transformation (Ellis 2005: 155ff.).²⁸

Republican cosmopolitanism's conception of communicative freedom is indeed akin to Kant's own conception and is not just instrumental to, but constitutive of, human subjectivity. *Commercium* implies that the interaction involves not humanity *in abstracto*, but individuals as already embedded relationally in interaction with others. This particular argument supports Bohman's thesis that humanity should not be seen here as a mere aggregate of all individuals, who share either the empirical property of being a member of a natural kind or the normative property of rational nature, but rather as members of the community of humanity (Bohman 2007: 103–4). Being dominated is exactly the refusal of the 'right to have rights' – that is, a refusal to take part in *commercium* on an equal basis as a citizen of the world – and denial of this status is denial of recognising one's humanity, which should not be based on the goodwill of others.²⁹

Furthermore, this line of argument does not take pluralism as a given, but unveils the fact that pluralism of human standpoints is the result of reason in its wide public use (Muthu 2003; Milstein 2013); it engages our modes of

reflection because it does not just involve information acquisition and dissemination (*OT*, 18, VIII:146). Individuals as visitors, when peaceful, enrich, in communication with each other, republicanism's self-correcting function. This is significant because it sharply distinguishes Kantian republican cosmopolitanism from globalisation of interaction. Kant's cosmopolitanism, because of its republican nature, does not refer to any kind of economic globalisation and market economy, and does not provide a justification for global trade. *Commercium* is not left to 'invisible hand' regulation, but is restricted and realised by and through cosmopolitan right as an expression of republican freedom as independence. Through the latter, Kant famously criticised the savage practices of colonialism, yet wanted to reveal how important *open institutions* are for the cultivation and perfection of reason itself.³⁰

Republican cosmopolitanism as a shortcut to the proposed reconciliation is, in my view, the closest to Kant's political philosophy, which should be liberal-republican rather than simply liberal, even in its Rawlsian version; this conceives of public reason only within bounded societies and is significantly anti-cosmopolitan (O'Neill 2000: 48–51). Republican cosmopolitanism is indeed the political matrix, where world citizens can come to understand each other, assess their differences and realise that what they have in common is stronger than what creates war and conflict. The reconciliation between republicanism and cosmopolitanism proves, in the end, to be neither individualistic nor collectivistic, because the very distinction between private and public use of reason is not a distinction between individual and community, but a distinction between one's prescribed identity and one's openness to change. The ends of reason can be discovered only through contesting assumed authorities, given identities and fixed boundaries. The alleged opposition between republicanism and cosmopolitanism is resolved not by opposing the former to the latter but by rendering the cosmopolitan union a condition of possibility and an internal political end of republican states.

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NOTES

1. Lea Ypi refers to the history of negative and positive cosmopolitanism, the latter meaning universal moral principles; see Ypi (2012: 12–15.)
2. The approach defended here, although much indebted, expands the focus adopted by Pauline Kleingeld's excellent recent monograph on Kant's cosmopolitanism (Kleingeld 2012). There, her main interest, in relation to the connection between republicanism and cosmopolitanism, is, among other things, to show that the

former grounds certain patriotic duties towards a *particular* state, something that is not inconsistent with both cosmopolitan principles and duties alike. My focus here is to stress, first, that Kant's conception of philosophy is *itself* cosmopolitan, because reason needs a cosmopolitan political framework, and second, that the reconciliation of republicanism and cosmopolitanism is achieved through a republican conception of freedom realised only within a cosmopolitan framework. Seyla Benhabib has also tried to reconcile republicanism and cosmopolitanism, albeit understanding the latter in terms of a human rights discourse and thus missing the republican nature of it; see Benhabib (2006).

3. John Rawls is an example of this, due to his one-sided focus on Kant's moral philosophy and his relative indifference to the latter's mature legal and political philosophy in the *MM*. For the classical statement of the peaceful attitude of republics, see Doyle (1983); for a more balanced approach, see Cavallar (1999: 75–80).
4. References are to the English translations of the works of Kant, followed by volume and page numbers from *Kants Gesammelte Schriften*, edited by the Royal Prussian (then German) Academy of Sciences (Berlin: Georg Reimer, later Walter de Gruyter, 1900–).
5. I have argued for such an interpretation in Koukouzelis (2006). See also, more recently, the excellent contributions of Ripstein (2009: 42–50), Hodgson (2010) and Forst (2013).
6. And in contrast to liberal internationalism that treats global justice as an extension of domestic justice (Flikschuh 2000: 115).
7. Part of this chapter has appeared in an earlier version in Koukouzelis (2012).
8. With the exception of Höffe (2006: Ch. 12).
9. For arguments defending the connection of independence to republican freedom as non-domination, see Koukouzelis (2006), Ripstein (2009: 42–52), Hodgson (2010: 805–8) and Forst (2013). Kant, I think, carries non-domination further to relations among citizens rather than only between state and citizens, as will be manifested in the next section.
10. There are significant differences between Kant's and Pettit's conceptions of political freedom, one of them being that Pettit wants to keep a non-normative definition of arbitrary interference. Kant is of the opposite view but an exploration of this would be beyond the scope of this chapter. For a good discussion, see, for example, Hodgson (2010: 808ff.).
11. This is something that Isaiah Berlin completely ignores when confusing Kant's conception of freedom with the state's effort to make people master their own lower, phenomenal selves by prescribing the mode of reflection of community, which represents our noumenal self; see Berlin (2002: 183–91).
12. Kant refers to independence (*Selbständigkeit*) as the third *a priori* principle of establishing a civil condition regarding people *as* citizens (*TP*, 291, VIII:290; *PP*, 322–3, VIII:349–50), stressing the fact that an active citizen also needs to have some kind of economic self-sufficiency. Kant notoriously excludes women and children, yet his view remains that everyone can become an active citizen. I discuss this point in Koukouzelis (2006), whereas here I focus on the use of reason.

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13. Arthur Ripstein, when talking about the authorisation to tell others what you think without being held to account for saying so, thinks it involves freedom of expression, not the public use of reason (Ripstein 2009: 50–2). This is, in my view, reductive. One can enjoy freedom of expression – that is, being allowed to speak in public – yet still make private use of one’s reason.
 14. It should be clear that Kant does not have a populist view of democratic authority. The *authorial* (legislative) function should not be exercised by the existing people, but by a people with mature reason (see *CF*, 306, VII:91), whereas the kind of consent required for legislation is also notional, not actual or tacit. Notional consent entails the permanent possibility of contesting the law by making a public use of reason.
 15. Pettit does not think that the power of veto should be absolute because it makes public decisions very difficult to reach; see Pettit (2000: 118–19).
 16. Kleingeld argues for the view that this is also a patriotic duty consistent with cosmopolitan principles, and follows from the normative requirement to establish a just state (Kleingeld 2012: 26–34).
 17. The *principled* rejection of the world state is grounded in the fact that it otherwise contradicts the reasons for the individual state’s establishment: namely, the realisation of republican freedom; see Flikschuh (2000: 185), where she supports Kant’s position on such grounds. In Flikschuh (2010), she insists that this is a conceptual difficulty. However, I am persuaded by Kleingeld’s view that the full realisation of perpetual peace requires a federal *civitas gentium*, and that this goal should be pursued not via coercive means, but gradually; see Kleingeld (2004) and also Cavallar (1999: 113–31). My aim here is to explain how cosmopolitanism contributes to this gradual reform.
 18. Flikschuh (2000: 182) has forcefully argued that the image is part of Kant’s critical metaphysics of cosmopolitanism and describes the human condition. The late Gary Banham argues that the metaphor of the spherical shape is akin to what Rawls has termed a ‘circumstance of justice’, thus introducing a problematic empirical constraint to Kant’s argument; see Banham (2011: 4 note 5).
 19. Note here that *commercium* is a concept of theoretical reason employed in the service of practical reason. Indeed, in *CPR* (A213 / B260), Kant distinguishes two types of community. *Communio* refers to certain criteria of commonality that demarcate it. For the latter to be possible – that is, to experience appearances as unified – Kant says there must be a kind of ‘dynamic community’ defined by interaction and reciprocal influence presupposed as an ‘objective ground’. *Communio* itself depends on our ability to experience all parts as coming to us *already interconnected* interactively (*commercium*). In this sense, the latter is the condition of possibility of the former. For a more detailed presentation, see Milstein (2013: 120–4).
 20. It has been argued that the ‘right to have rights’ corresponds to a *privilege* a sovereign confers on an individual, granting him the status of citizenship, with the direct consequence that being stripped of one’s citizenship, for whatever reason, makes a person stateless, and therefore devoid of the ‘right to have rights’ and occupying a no man’s land; see Arendt (1966). Kant’s argument here is that the ‘right to have rights’, by virtue of one’s humanity, should be connected with what he calls *world citizenship* because we are *already* within a framework where non-voluntary
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- obligations of justice already exist: most of all, the responsibility to unite with all individuals and peoples on earth. This is, in my view, compatible with the approach that the ‘right to have rights’ is not humanity *in abstracto*, but is mediated by membership in particular states, which, because it is established by unilateral acts of appropriation, provides us with rights and duties of hospitality.
21. This is not to deny that one of Kant’s tasks in cosmopolitan right is not to leave the relations between states and non-state peoples unregulated, targeting colonialism, yet I think his approach is more systemic.
 22. Kant’s views on the prohibition of revolution are vindicated in this sense (*MM*, VI: §49). A revolution might indeed combat despotism, yet it does not bring real reform through a revolution in the mode of thinking (*Denkungsart*), which can be achieved only gradually (*WE*, 18, VIII:36).
 23. For Kant, a schema is a ‘third thing’, which mediates between a concept and an intuition (*CPR*, A138 / B177; see Caygill 1995: 360–2). This is, in my view, a definite indication that there is more to Kant’s political philosophy than simply an application of his moral theory.
 24. In Kant’s ‘Preparatory Work’ to the *TP* (XXIII:141), quoted in Williams (2003: 142).
 25. The transitional character of cosmopolitan right has recently been defended by Corradetti (2016) in its institutional form. I have deliberately omitted all discussion of the institutional aspects of my argument in the present chapter, as that would involve a separate treatment.
 26. For the best representative of liberal internationalism, see Nagel (2005).
 27. Pettit, instead, seems to be content with a republican law of peoples refusing to extend non-domination to cosmopolitan right; see Pettit (2010).
 28. Ellis’s focus on the public use of reason and its connection to Kantian citizenship is, in my view, on the right track, yet she does not specify the political status of the relationship among citizens, which should be one of non-domination. For a good discussion of the cosmopolitan scope of the editorial dimension nowadays, see Chung (2004).
 29. Depending on the goodwill of others regarding cosmopolitan right was Samuel von Pufendorf’s argument. He claimed it to be just a humanitarian duty, as opposed to Kant, who situated it in the realm of strict right (*MM*, 489, VI:352).
 30. Recent research has shown how important *open* or *inclusive* political institutions are for economic interaction, enhancing each other, and for progress and peace; see, for example, Acemoglu and Robinson (2012), whose political economy could be seen as broadly Kantian in its insistence on the primacy of the political over the economic.

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PART 3

THE REALISABILITY OF COSMOPOLITAN IDEALS

THE REALISABILITY OF KANT'S COSMOPOLITAN VALUES

Sorin Baiasu

INTRODUCTION

As noted by Martha Nussbaum, ‘Kant’s “Toward Perpetual Peace” is a profound defense of cosmopolitan values’ (1997: 28). Kant states, in fact, that ‘essential to the purpose of perpetual peace’ is doing what we ‘*ought* to do in accordance with laws of freedom [. . .] in terms of all three relations of public right: the *right of a state*, the *right of nations* and *cosmopolitan right*’ (*ZeF*, 8:365).¹ Hence, perpetual peace represents an indication that all three legal conditions are in place – cosmopolitan right, but also national and international right. It must be acknowledged, however, that cosmopolitan and international right raise particular difficulties with regard to the *realisation* of perpetual peace. This is because, as Kant notes, coercive laws are excluded as means for the enforcement of these types of right, and he suggests instead ‘a condition of *continuing free* association’, similar to a federalism with a right to exit (*ZeF*, 8:383). It is therefore not surprising that, from this perspective too, Kant might need to provide a profound defence of cosmopolitan values. By contrast, at national level, the right of the state can be enforced by the executive power through various coercive laws; the attempt to create such an executive power at international and cosmopolitan levels runs the risk of giving power to an authority that cannot be kept in check.²

In *The Metaphysics of Morals*, Kant regards the realisation of ‘a universal and lasting peace’ as ‘the entire final end of the doctrine of right within the limits of mere reason’; Kant thinks that this ‘condition of peace’ must be ‘attempted and carried out by gradual reform in accordance with firm principles’, leading gradually to ‘the highest political good, perpetual peace’ (MS, 6:355). One important question, therefore, is how perpetual peace – the highest political good – is realisable, given that two of the three conditions that must be met raise problems of realisation: namely, how to have in place a system of international right and a system of cosmopolitan right.

The question is particularly difficult, since Kant’s notion of the highest political good is still misunderstood in the literature. I have already argued that some confusion concerning Kant’s notion of perpetual peace is due to an insufficient separation between Kant’s ideas of the highest ethical and the highest political good.³ In this chapter, I would like to continue with some critical comments concerning the notion of the highest political good. These comments aim to clarify the notion further by pointing again to confusion with the notion of the highest ethical good: this time, however, with a particular emphasis on the realisability of the highest good. In addition, I will also point to a misunderstanding of ‘perpetual peace’: this time, however, due to insufficient consideration of the similarities between the highest ethical and the highest political good.

In what follows, in the second to fourth sections, I will summarise the main results of my research so far concerning the highest political good. The fifth to eighth sections will evaluate certain claims that Marcus Willaschek has recently put forward about the realisability of our ends, claims that also discuss Kant’s idea of perpetual peace, the highest political good (Willaschek 2016). In conclusion, I also discuss some claims that Georg Cavallar makes about the highest political good (Cavallar 2015). I argue that these claims rely on an insufficient consideration of the similarities between the highest ethical and the highest political good. I will then summarise the main results of the arguments in this chapter.

TAYLOR ON THE HIGHEST POLITICAL GOOD AND THE DISAPPEARANCE OF GOD

Consider Kant’s distinction between theoretical and practical philosophy: ‘I shall here settle for explicating theoretical cognition as one whereby I cognize *what is*, and practical cognition as one whereby I conceive *what ought to be*’ (A633 / B661). Consider, for instance, an action; theoretical philosophy will attempt to know or cognise this action as it has been performed, whereas practical or moral philosophy will try to cognise how this action ought to have been performed. According to Kant, however, the following link holds between

theoretical and practical cognition: in order for me to be justified in believing that I *ought to* perform a particular action, I should be justified in believing that the action *can* be performed.

One particular version of this link between theoretical and practical philosophy is formulated as follows by Robert Taylor:

if we have a duty to set something (for example, the highest good) as an end, we are authorized by the source of that duty – our own pure practical reason – to believe that end possible so long as this belief is not ruled out by theoretical (speculative) reason. (2010: 6)

Hence, in order to have a duty to pursue a certain end (for instance, to perform an action or to pursue the highest ethical good), a person has to have a belief that the end is possible. There are various ways in which we can show that we are justified in believing that an end is possible. For instance, we can show that we are justified in believing that the causal conditions that bring about the end are likely to occur – we can form a theoretical cognition of the likelihood of the occurrence of the causal conditions. Alternatively, by showing that we are justified in believing that the end is not impossible, we leave it open as a possibility that the end can occur. Taylor's formulation refers to the second alternative.

The problem, Taylor notes, is that persons who seem rational nevertheless sometimes set themselves ends that they believe (and they are justified to believe) to be impossible. Consider, for instance,⁴ a novice at chess who happens to play with the world champion and still plays with the goal of winning, or⁵ the moderately talented amateur runner who sets himself the goal of running a four-minute mile. To account for such situations, Taylor proposes a distinction between an end and a 'standard' or 'criterion'. The latter offers direction for effort, it allows movement towards it, it is attractive and, other things being equal, being closer to it is desirable. Hence, a standard or criterion, unlike an end, can be set by a person, even when she believes it to be impossible. This distinction, Taylor claims, accounts not only for situations that seem plausible (like those in the two examples above), but also for some of Kant's claims. In particular, in the 'Doctrine of Right', Kant claims that perpetual peace, the final end of the doctrine of right is 'unachievable' (MS, 6:355; Taylor 2010: 8).

Now, one way in which Kant's link between theoretical and practical reason, as applied to ends, can be seen to be employed by Kant is in the 'Antinomy of Pure Practical Reason', in the second *Critique*. Here, however, the direction is changed: instead of trying to show that we are justified in being committed to a particular end because it is rational for us to believe the end is possible, Kant

starts from our justified commitment to an end, in order to acquire justification for that which is necessary for the possibility of the end. Thus, Kant suggests that we can take the highest ethical good as an end only if we are justified in believing that the highest ethical good is a possible end. Since the highest ethical good represents happiness distributed proportionally to virtue, in order for us to be justified in believing that it is possible to pursue the end of happiness distributed in proportion to virtue, we need to be justified in believing that we can be virtuous and that we can then receive happiness accordingly. But we can get to be virtuous, Kant claims, only if we are justified in believing that our soul is immortal, and we can rationally pursue the end of the highest ethical good only if we are justified in believing in the existence of God. Kant introduces in this way the postulates of practical reason (the immortality of the soul and the existence of God) by assuming that the highest ethical good is an end we ought to pursue and by showing that the postulates of practical reason are necessary conditions for the possibility of the highest ethical good.

Now, let us assume with Taylor that the link between theoretical and practical cognition no longer holds for what he calls ‘criteria’ or ‘standards’: it is no longer the case that, in order to pursue a standard rationally, we need to be justified in believing that the standard is possible. This is what seems effectively to happen in the examples of the novice chess player and the moderately amateur runner. The standards in these cases are impossible, although it is rational for us to pursue them. Applied to the highest ethical good, the implication is that it is rational for us to pursue the standard of the highest ethical good, even if we are not justified in believing that the standard is possible. The further implication, however, is that the argument for the postulates no longer works, since it is premised on the link formulated above between theoretical and practical reason.

According to Taylor, given that perpetual peace, the highest political good, is presented in *The Metaphysics of Morals* as an unachievable aim, we can make sense of it as a standard. But, if so, we no longer need an appeal to the postulates of practical reason to account for our commitment to its realisation. Not surprisingly, therefore, Taylor notes, God plays almost no role in Kant’s ‘Doctrine of Right’ (2010: 9). Without a need for practical postulates, Kant’s moral religion virtually disappears. To save moral religion, Kant would need to revert to the claim he makes in the second *Critique* that the possibility of the highest good must be assumed.

For Taylor, this is precisely what Kant does in *Perpetual Peace*: he returns to a requirement that the highest political good (perpetual peace) be achievable and argues that God offers a guarantee of perpetual peace (Taylor 2010: 9–10). In other words, once we assume that it is rational to pursue the idea of the highest political good only if we are justified in believing that it is an

achievable end, we can show how perpetual peace is achievable by reference to God. The argument here is similar to that in the second *Critique*, where Kant must introduce the postulates of practical reason (including that of the existence of God) in order to account for the possibility of the highest good.

We can identify, in Taylor's narrative about the disappearance of God in the 'Doctrine of Virtue', an assumption that the similarity between the highest ethical good in the second *Critique* and the highest political good in *The Metaphysics of Morals* and *Perpetual Peace* requires the existence of God, as long as we assume that the highest goods are ends that must be possible in order to be rational for us to pursue them, rather than being, to use Taylor's terms, standards or criteria.⁶

Nevertheless, I think that one crucial distinction that Kant draws in the second *Critique*, as part of his argument for the possibility of the highest good, needs to be considered more seriously. Taylor mentions it only at the beginning of his article and then it no longer plays any role, although it is I think crucial in that context. As a result, I think Taylor unnecessarily questions the differences between Kant's argument about the highest ethical good, in the second *Critique*, and his argument about the highest political good, in the 'Doctrine of Right'. In the next section, I focus on this important Kantian distinction.

THE HIGHEST GOOD AS SUPREME AND COMPLETE

At the beginning of the second chapter of the *Dialectic of Pure Practical Reason*, Kant says:

The concept of the highest already contains an ambiguity that, if not attended to, can occasion needless disputes. The highest can mean either the supreme (*supremum*) or the complete (*consummatum*). The first is that condition which is itself unconditioned, that is, not subordinate to any other (*originarium*); the second is that whole which is not part of a still greater whole of the same kind (*perfectissimum*). (*KpV*, 5:110)

Kant talks here about an ambiguity that can lead to needless disputes and this ambiguity is over the adjective 'highest'. The term can be taken to refer either to what is normatively primordial or to what is most complete. The supreme good is highest in the sense that there is nothing normatively more important. The complete good is highest in the sense that there is no other good that is not included in it.

Now consider Kant's idea of the highest ethical good, as happiness distributed in proportion to virtue. On the basis of the distinction between the

supreme and complete good, we can say that virtue or morality represents the highest good in the first sense: namely, as the supreme good that is not subordinated to any other good, but that subordinates the good of happiness. We can also say that virtue together with proportionally distributed happiness are the highest good, as the complete or whole good, in the sense that, together, they are more comprehensive than either virtue or happiness taken individually. The supreme good is not complete, since it lacks happiness; the complete good is not supreme, since virtue has normative primacy over happiness, and the addition of happiness as part of the complete good does not affect the normative requirement that virtue be pursued as the ethically most important end. A combination of virtue and happiness that does not give pride of place to virtue (in the way that the particular view of the complete good does in Kant) is normatively weaker than virtue.

One reason why this distinction is crucial is, I argue, that the highest ethical good is a highest good in the sense of a complete good, whereas the highest political good is a highest good in the sense of a supreme good. One strong reason in support of this reading is given by Kant's distinction between ethics and legal philosophy: in particular, the distinction between ethical and legal or political legislation. Kant identifies two aspects of norm-giving: first, norm-giving contains a norm, which 'represents an action that is to be done as objectively necessary'; second, norm-giving has an incentive, 'which connects a ground for determining choice to this action subjectively with the representation of the law' or norm (*MS*, 6:218).⁷ Hence, in giving a norm or in norm-giving, we not only provide a norm that represents a duty, but also connect this duty to a ground that determines us to act in such a way that the duty is fulfilled by the performance of the action represented by the norm.

Now, the distinction between ethical and juridical or political norm-giving is drawn in Kant's account by reference to this incentive. Ethical norm-giving has duty as an incentive, whereas juridical norm-giving also admits incentives other than the idea of duty. What this implies is that we can have juridical norm-giving that has duty as an incentive, but we cannot have ethical norm-giving that does not have duty as an incentive. It must also be noted that, in order for a duty to allow enforcement, it must be of a specific kind. One feature determining enforceability is externality: juridical duties represent outer actions.⁸ But there are other features.⁹

A related distinction that Kant introduces here is that between legality and morality. Legality refers to the character of actions performed merely in conformity with a norm, whereas morality refers to the character of the action that is performed in conformity with the norm and out of duty. This means that an action that has morality also has legality, since it is performed in accordance with the norm. In addition, however, an action with morality has a specific incentive: namely, that the action be performed from duty (*MS*, 6:219).

Furthermore, in both ethical and juridical norm-giving, legality is implicit but, in addition, depending on the kind of incentive presupposed by norm-giving, the performed action might also have morality.¹⁰

Given the distinction between ethical and political norm-giving, it becomes clear that there can be no complete political good. The complete good, as happiness distributed in accordance with virtue, which has normative priority and has to be pursued, includes virtue as essential. As we have seen, virtue requires morality and not simply legality. By contrast, political norm-giving need not include morality, but requires only legality. Hence, the highest political good refers to a situation in which certain norms are in place. This is why Kant talks about a condition of peace (*Friedenzustand*), rather than about a peaceful world. The norms in place in a condition of peace are those of the 'Doctrine of Right' (*MS*, 6:355). These norms can be observed even when they are observed from prudence, in the attempt to avoid the potential punishment associated with breaking a law. As a result, the highest political good cannot include happiness distributed in accordance with virtue either, since there is no requirement for virtue as part of the highest political good.

By now, we should have a clearer picture of perpetual peace as the highest political good: it is an idea of reason with objective reality from a practical viewpoint, which has supreme political normative force, but it does not require virtuous action and cannot include a second element of happiness distributed in proportion to virtue, in the way in which the highest ethical good does. In the next section, I will present some of the implications of this distinction for Taylor's argument.

WHY THE HIGHEST POLITICAL GOOD NEEDS NO POSTULATES

If we understand Kant's highest political good, perpetual peace, to refer to a complete good,¹¹ then we can indeed raise the question of the asymmetry between the highest political good in *The Metaphysics of Morals*, and the highest ethical good in the first or second *Critique*, as well as in *Perpetual Peace*, in particular the asymmetry of these notions in their relations to the practical postulates: no appeal to the existence of God in *The Metaphysics of Morals*, but reference to this postulate in *Perpetual Peace*. If the highest political good is understood as supreme, then there is at least one reason why the practical postulates are not needed: unlike the complete good, the supreme good does not have the two elements for the necessary connection of which we need to account. As I have mentioned, in the second *Critique*, Kant explains how persons can be rewarded with happiness in proportion to their virtue by introducing the postulate of the existence of God. But if the highest political good does not include proportional happiness, there is no need for such a postulate.

One problem may be that Taylor seems to be aware of perpetual peace as a supreme good. Why, then, does he think that practical postulates would be needed in *The Metaphysics of Morals*? I think the answer is in his view of the practical postulates. He thinks that what accounts for the need for the practical postulates in the case of the highest ethical good is the opacity of our motivations and, hence, of our ethical worth and virtue, as opposed to the observability of our external actions, the only actions Kant is concerned with in the ‘Doctrine of Right’ of *The Metaphysics of Morals*. Taylor devotes about one-quarter of his article to an account of how opacity makes it necessary for Kant to argue for the practical postulates (2010: 13–18).

Now, if practical postulates are needed to explain the possibility of virtue or morality, then, given that the highest political goods, like virtue or morality, are highest goods in the sense of supreme goods, there seems to be nothing to prevent the need for postulates in relation to the highest political good too. And this seems to be behind Taylor’s suggestion that, in *Perpetual Peace*, Kant introduces the guarantee of peace that God can provide, in order to play a similar role to that of the postulates of practical reason. These, on his account, are meant to overcome the obstacle of the opacity of motivations, which makes it impossible for us to ascertain with certainty our ethical worth or, as Kant calls it, our virtue.

But Taylor has an additional difficulty here. The difference between perpetual peace and the highest ethical good is not simply that one is supreme, whereas the other one is complete; given that perpetual peace represents, for Kant, the highest *political* good, perpetual peace should be understood as the supreme good given by the universal principle of right, rather than simply by the Categorical Imperative. As we have seen in the previous section, Kant’s highest political good requires that we perform actions in accordance with political principles. The highest ethical good, by contrast, requires that we perform actions in accordance with ethical principles and for the sake of these principles. It follows that the highest political good does not raise the puzzle of opacity and does not need practical postulates to solve it. If so, the fact that God plays no role in relation to perpetual peace in *The Metaphysics of Morals* is not an issue.

But the additional difficulty Taylor seems to face also raises a puzzle for us: Why does Kant introduce an appeal to God in *Perpetual Peace*, while the highest political good in *The Metaphysics of Morals* is presented independently from any such reference? It cannot be because this would make the highest political good possible, since this represents a set of political norms, the possibility of which (in terms of feasibility and enforceability) is presupposed by the very concept of a juridical norm. In other words, one objection to the view that Kant’s perpetual peace as the highest political good corresponds more adequately to the supreme ethical good, rather than to the complete good, can

start from Kant's discussion of the First Supplement to the Preliminary and Definitive Articles for perpetual peace. This first supplement is a guarantee of perpetual peace. If we conceive of perpetual peace as a kind of complete good, which requires two distinctive elements, then the guarantee can be explained as grounding the connection between these two elements. If we conceive of perpetual peace as a simple juridical condition, then it is not clear why we would need an additional guarantee.

I think the problem here is a more difficult one, having to do with the status of the guarantee of perpetual peace. As I have mentioned, Taylor is not the only commentator who draws an analogy between the practical postulates and the guarantee. But for the purposes of this chapter, I need not clarify the status of the guarantee, which I argue elsewhere has to do with the problem of enforceability for international and cosmopolitan right, and in particular for the problem of maintaining peace (see especially Baiasu 2018).

For my present purposes, the important issue has to do with Taylor's discussion of the principle linking theoretical and practical cognition (if we have a duty to set the highest good as an end, we are authorised by the source of that duty – our own pure practical reason – to believe that end possible so long as this belief is not ruled out by theoretical reason). As we have seen, he thinks that the highest ethical and the highest political goods are sufficiently similar in order for them to need the same appeal to the existence of God as a postulate that explains the realisability of these ends.

In the next sections, I will examine some further problems that arise from an imprecise distinction between the highest ethical and the highest political goods. One problem is generated by a hasty extrapolation of a weaker version of the principle that links practical and theoretical cognition in Kant, a principle that Kant formulates for perpetual peace, but which is then applied to the highest ethical good. Another problem is generated by taking for granted a particular interpretation of Kant's highest political good, according to which this end can be formulated independently of Kant's religion and, more exactly, independently of an appeal to God as a guarantee for perpetual peace. As we will see, some additional related issues will arise, such as the (mis)interpretation of virtue and happiness from the perspective of Kant's view of the ideas of reason and their regulative function or the general (mis)reading of the highest ethical good as including the combination of virtue and happiness, but overlooking the specific relation between them.

WILLASCHEK'S REALISABILITY PRINCIPLE

In his account of the realisability of the highest good, Willaschek does not focus specifically on the highest *political* good, but on the highest good more generally; in fact, the title of his text refers even more broadly to the realisability of our *ends*. He starts by formulating the 'realisability principle' (RP)

(which is related to Taylor's link between theoretical and practical cognition), as follows:

It seems to be a condition of rational agency that one believes, and is rationally justified in believing, that the end one pursues can be realised and, more specifically, that it can be realised by one's own actions. (Willaschek 2016: 142)

This principle is taken to be important, because it is related to Kant's thesis of the primacy of practical reason, according to which we are rationally warranted to hold beliefs that are morally necessary, even if they are theoretically undecidable.

These beliefs, which are theoretically undecidable but practically necessary, are precisely Kant's postulates of pure practical reason (*KpV*, 5:122). The condition of theoretical undecidability states that the belief constituting the postulate cannot be cognised as true or false, even under epistemically ideal conditions. According to Kant, we can have theoretical cognition only of the empirical realm, so any belief concerning non-empirical objects will be theoretically undecidable. The condition of practical necessity for a postulate is given, as we have seen, by the relation of necessity between the belief that constitutes the postulate and a demand of practical reason, which, in its turn, has moral necessity. For example, Kant thinks that, for limited rational beings like us, the ethical good (which we *ought* to pursue and, hence, is morally necessary) is possible if we assume the existence of God and immortality of the soul. God and immortality are ideas of pure reason, and the respective beliefs in their existence represent the postulates of pure practical reason. Given that they make possible the ethical good, they are practically necessary for the ethical good, which, in its turn, is morally necessary too.¹²

According to Willaschek, whether there are any beliefs that are practically necessary is one important question that can be raised in relation to the thesis of primacy. This is because he finds Kant's arguments for specific postulates of God and immortality not convincing 'or even promising' (2016: 124). Nevertheless, he takes the argument for the primacy of practical reason to be significant, since it can apply to other beliefs, distinct from the postulates, that meet the conditions of practical necessity and theoretical undecidability. There are many theoretically undecidable beliefs. Kant shows that some such beliefs are practically necessary by means of certain principles, such as the principle of realisability formulated above.

For instance, being the kind of beings we are, we are morally required to make the highest good our end; yet, we can make the highest good our end only

by assenting to its realisability. It follows that this assent to the realisability of the highest good is practically necessary, as a condition for the possibility of the highest good. Since the highest good is morally necessary for us, the belief in the necessary conditions of its realisability is also necessary. Willaschek thinks that Kant's argument for the postulates hinges on some version of the realisability principle too, and his focus is on this principle.

First, Willaschek offers a reconstruction of Kant's argument for the postulates of pure practical reason, which attempts to show that the existence of God and the immortality of the soul are necessary conditions for the possibility of the highest ethical good, which we ought to realise. Willaschek's reconstruction also tries to make clear the role of the realisability principle. The reconstruction consists of eight propositions, the eighth being the claim to the postulates. The third proposition is a formulation of the realisability thesis:

We can be rational in making the highest good our end only if we rationally believe that the highest good is practically possible (for example that we can realise the highest good through our own actions). (Willaschek 2016: 143–4)¹³

This version (RP) is then refined by Willaschek to take into consideration some complications. One complication concerns the possibility that the agent (A) committed to an end (E) cannot realise E on her own, although she can contribute through her action (D) to the realisation of E together with other agents. A further complication is to give an account of what it means for A to contribute to the realisation of E by doing D. Once answers to these questions are also provided, the principle or thesis of realisability becomes:

RP2 An agent is *rational* in pursuing an end *E* by doing *D* only if *A* (rationally) believes that (i) *A*'s doing *D* causally contributes to realising *E* and (ii) the obtaining of a set of causal conditions that are jointly sufficient to realise *E* (of which *A*'s doing is a part) is not unlikely. (Willaschek 2016: 146)

RP2 effectively states the conditions for believing that an end is possible: namely, the ability for the agent *A* to contribute causally through her action *D* to the realisation of the end *E*, and the fact that it is not unlikely for a set of causal conditions, including the agent's *D*, to be jointly sufficient to realise *E*. Still briefer: RP2 requires that the agent be a cause of the end and that the causal conditions for the realisation of the end be not unlikely.

Second, Willaschek's strategy is to draw a parallel between the highest good and the notion of an idea of reason. He notes that Kant calls the concept

of the highest good an ‘idea’, a ‘practical idea’ or an ‘idea of practical reason’ (Willaschek 2016: 146); texts in which these expressions occur include the first *Critique*, the second *Critique*, the *Jäsche Logic* and *Theory and Practice*. An idea is ‘a concept framed from notions and surpassing the possibility of experience’, where a notion is ‘a pure concept, insofar as it has its origin solely in the understanding (not in the pure image of sensibility)’ (A320 / B377). Willaschek also mentions the following definition, which Kant provides in the first *Critique*: ‘a necessary concept of reason for which no congruent object can be given in the senses’ (A327 / B383). The reason why an idea surpasses the possibility of experience and, therefore, has no congruent object given by the senses is that ideas refer to the synthesis of an absolute totality, which is unconditioned, whereas experience presents us only with conditioned objects.

Willaschek’s discussion of the realisability of perpetual peace, the highest political good, occurs in the context of the formulation of three objections to the realisability principle. He discusses perpetual peace in relation to the second objection, but this is related to the first, so I will start, in the next section, with a presentation of this first objection.

THE FIRST OBJECTION TO THE REALISABILITY PRINCIPLE

On Willaschek’s account, the highest good is a clear case of an idea, since it refers to a synthesis of such absolute totalities. Thus, for him, the highest good refers first to a world, as the totality of all moral agents; virtue refers to the totality of a person’s actions performed from the motive of duty; and happiness, to the totality of a person’s desires and volitions, all of which are satisfied. Kant calls both virtue and happiness ‘ideas’, presumably to emphasise the element of completeness. It follows that the highest good cannot be an empirical object.¹⁴ If the highest good cannot be an empirical object, then it seems the highest good cannot be realised, since the empirical world seems to be the only world in which we can act in order to realise the highest good. The implication is that the highest good is not practically possible for us.

Following the realisability principle, the implication is that we cannot make the highest good our end. Nevertheless, and this is Willaschek’s first objection to the realisability principle, we can still make the highest good our end. Willaschek’s argument here is developed by comparison with Kant’s account of the regulative use of the ideas of theoretical or speculative reason:

According to what Kant says in the ‘Appendix to the transcendental Dialectic’, even though the transcendental ideas of pure (speculative) reason cannot be of ‘constitutive use’ (that is, they cannot be used to *cognise* objects), they can be of regulative use, namely ‘to direct the understanding toward a certain goal’. (2016: 146)

With the help of the ideas of reason in their regulative use, we can be guided in our empirical investigation towards the goal of systematic unity of knowledge. This goal is also an idea of reason, which cannot be fully realised. It is in this sense that we cannot use the idea of the systematic unity of knowledge or any other idea of speculative reason in a constitutive way. Nevertheless, in being guided by it, we are approaching it asymptotically and, hence, we are approximating it.

Similarly, the idea of a necessary connection between virtue and happiness is not used to cognise empirical objects (that is, a particular situation in which virtue has been followed by proportionate happiness), but to direct us to the highest good. The fact that certain ideas (such as virtue, happiness, the systematic unity of knowledge) can never be fully realised does not mean that we cannot make them our ends; thus, Willaschek notes, it 'only means that we must be aware that all empirical steps toward this end will at best be an asymptotic approximation that will never reach its endpoint' (2016: 147). This suggests that something is wrong with the realisability principle.

One answer to this objection is to insist that, when the end we pursue can only be approximated asymptotically but never fully realised, what we pursue is not the unrealisable end, but its approximation. This can also be said about the idea of a systematic unity of empirical knowledge: the final end of our scientific enquiries is not this unity itself, but its best approximation.

And, yet, on this interpretation of the realisability principle for the highest good, Willaschek notes, we end up with a problem for the argument concerning the postulates of pure practical reason, which has the realisability principle as its third step. The problem here seems to be that the postulates (the rationality of the beliefs in the existence of God and of the immortality of the soul) are not necessary conditions for the realisation of the best possible approximation of the highest good, but necessary conditions for their full realisation. Willaschek views this problem as a commitment to the following two claims: 'that we must be able to realize the highest good *fully*' and 'that the concept of the highest good is an idea that cannot be fully realized *empirically*' (2016: 147).

On his view, the solution is, first, to avoid a two-world interpretation of transcendental idealism (according to which the phenomenal and noumenal realms are two distinct worlds), then to adopt a two-aspect interpretation (according to which the phenomenal and the noumenal are aspects under which we can consider some particular thing or other), in order finally to conclude that the highest good combines empirical and intelligible elements:

the fact that Kant repeatedly calls the highest good an idea does not require him to deny its full realisability, or to claim that it can be realized only in an afterlife. It only means that its full realization isn't an

empirical object (because it includes our moral disposition, which belongs to the non-empirical aspects of our experience as both sensible and rational beings). Therefore, claiming that we have to make this idea our end does not bring Kant into conflict with the realisability principle. (2016: 148)

The argument so far, then, has been that we can be committed to an end that can never be fully realised, if we see ourselves as committed to the best approximation of that end. This, of course, will answer the objection to the realisability principle because, once we maintain that our end is in fact the best approximation of the unrealisable end, rather than an unrealisable end, we become committed to an end that is realisable (the approximation of the unrealisable end). However, in the context of the argument for the postulates, Kant needs a commitment to the highest good (rather than to its best approximation), since our rational beliefs in the existence of God and of the immortality of the soul are necessary conditions for the full realisation of the highest good. Yet, the argument goes, perhaps we were too hasty in thinking the highest good is not fully realisable; maybe the condition under which the highest good is not fully realisable (namely, it is not fully realisable as an object of empirical cognition) is false. This condition is indeed false: as the idea of happiness distributed in accordance with virtue, the highest good includes virtue, which is the idea of performing actions on the basis of morally valid maxims out of the motivation of duty, and such actions are non-empirical, intelligible:

That the concept of the highest good, like any idea, cannot be fully realised empirically does not mean that it can be fully realised only in an intelligible world (for example, an ‘afterlife’), but rather that its realization engages both the empirical and the intelligible sides of our existence. None of this implies that the highest good cannot, in principle, be fully realised. (Willaschek 2016: 148)

The answer seems to consist of the claims that (i) the highest good has both empirical and intelligible aspects, and that (ii) for the full realisation of the highest good we engage both these aspects; moreover, there is also the claim that (iii) propositions (i) and (ii) do not imply that the highest good cannot, in principle, be fully realised. Yet, I think Willaschek’s answer to this first objection is puzzling and in the next section I focus on some of its problems.

PROBLEMS WITH THE ANSWER TO THE FIRST OBJECTION

It is worth noting at the beginning that there are some similarities between Willaschek’s and Taylor’s discussions, in particular between Taylor’s notion of a standard and Willaschek’s notion of the approximation of an end.

Willaschek's discussion has developed independently (he does not refer to Taylor's text) and his and Taylor's arguments have their own distinct purposes that take them to different conclusions, but the similarities between Taylor's standard / criterion and Willaschek's approximation of an end are probably the result of a source both of them refer to: namely, Allen Wood's seminal *Kant's Moral Religion* (1970), which also raises this objection to the realisability principle.

Now recall claims (i), (ii) and (iii) above: the highest good has both empirical and intelligible aspects; for the full realisation of the highest good we engage both these aspects; the previous two claims do not imply that the highest good cannot be fully realised. While I think they are all correct, I do not think they amount to Willaschek's further claim that the highest good is fully realisable or at least to the weaker claim that it is possible for the highest good to be fully realisable, which is the claim needed by Willaschek. In light of the discussion of the highest ethical and political goods in the first section of this chapter, it is worth pointing out that Willaschek clearly has in view here Kant's notion of the highest ethical good. The underlying problem, I think, consists in an interpretation of the highest ethical good by comparison with the ideas of theoretical or speculative reason. These ideas (the ideas of the God, freedom and the immortality of the soul) cannot have a corresponding empirical object. If the highest ethical good, which includes virtue and happiness, does not have a corresponding empirical object, then it cannot be fully realised empirically.

Willaschek is right that the fact that the highest good cannot be realised empirically does not mean it can be realised only in an intelligible world; moreover, he is also right that the full realisation of the highest ethical good engages both empirical and intelligible aspects; but it remains unclear how the empirical and intelligible aspects of the highest good can be fully realised, if, as understood by Willaschek, the empirical aspect cannot be fully realised. In other words, the fact that the full realisation of the highest good is not an empirical object, but an object that has both empirical and intelligible aspects, does not mean that it might nevertheless be fully realisable, as he claims, since, on Willaschek's understanding of the highest good, the empirical aspect cannot be fully realised.

To answer the first objection, a different understanding of the highest good is needed: in particular, one that does not assume that the highest good is an idea of theoretical reason. As I have already mentioned,¹⁵ Kant distinguishes the types of idea represented by, on the one hand, virtue and happiness, and, on the other, God, freedom and the immortality of the soul (the three ideas of theoretical / speculative reason). As a *moral* idea, Kant says, virtue is distinct from the ideas of theoretical reason (*KpV*, 5:127 note). Moreover, happiness also seems to be different from the ideas of theoretical reason and to belong to imagination (*GMS*, 4:419).

Kant regards virtue as ‘a disposition conformed with law *from respect for law*’ (*KpV*, 5:128). In other words, a virtuous person would be disposed to follow the moral law for the sake of duty; however, as limited rational beings, we are aware ‘of a continuing propensity to transgression or at least impurity, that is, an admixture of many spurious (not moral) motives to observe the law’ (*KpV*, 5:128). Thus, given our propensity to observe the law out of non-moral motives, the disposition to observe the law from moral motives can only be the result of an ‘endless progress’ (*KpV*, 5:128). In other words, every person who is committed to becoming moral or virtuous would need to strive to acquire a disposition to act in accordance with and for the sake of the moral law. Yet, given that we have a propensity to act as directed by external factors, which give rise to needs, wishes and inclinations, such a virtuous disposition can be developed only gradually, as we progressively learn to control such sensible drives and to be led by the moral law.

Now Kant contrasts the transcendence of the ideas of theoretical reason with moral ideas. He invokes the definition of the ideas of theoretical reasons as ‘a perfection to which nothing adequate can be given in experience’ (*KpV*, 5:127 note). He then clarifies this lack of an empirical object as being the result of the fact that ideas of theoretical reason correspond to ‘something of which we cannot even determine the concept sufficiently or of which it is uncertain whether there is any object corresponding to it at all’ (*KpV*, 5:127 note). He contrasts moral ideas with ideas of theoretical reason by claiming that, unlike the latter, the former ‘as archetypes of practical perfection, serve as the indispensable rule of moral conduct and also as the *standard of comparison*’ (*KpV*, 5:127 note). One preliminary question is why Kant thinks that, by being rules of moral conduct and standards of comparison, moral ideas are not transcendent in the way in which the ideas of theoretical reason are.

An answer to this preliminary question should also solve the problem that Willaschek has in explaining how the realisability principle can hold for the highest good, if the highest good, like the ideas of theoretical reason, cannot be fully realised empirically. To see the answer, consider the difference between three types of action: the unlawful (a), the lawful but unworthy (b), and the lawful and worthy actions (c). In order to clarify this distinction, it is easiest to refer to an example, and I will consider Kant’s famous example in the *Groundwork*:

For example, it certainly conforms with duty that a shopkeeper not overcharge an inexperienced customer, and where there is a good deal of trade a prudent merchant does not overcharge but keeps a fixed general price for everyone, so that a child can buy from him as well as everyone else. People are thus served *honestly*; but this is not nearly enough for us to believe that the merchant acted in this way from duty

and basic principles of honesty; his advantage required it; it cannot be assumed here that he had, besides, an immediate inclination toward his customers, so as from love, as it were, to give no one preference over another in the matter of price. Thus the action was done neither from duty nor from immediate inclination but merely for purposes of self-interest. (*GMS*, 4:397)

In this example, Kant talks about a shopkeeper who does not overcharge his customers, even inexperienced ones.¹⁶ One implicit distinction here is between actions that conform with duty or what I have called lawful actions (actions of type b or c: for example, giving the right change, whether or not from an ethical motive) and actions that do not conform with duty or unlawful actions (actions of type a: for example, overcharging the customers). The explicit distinction in Kant's quotation is between merely lawful actions (actions of type b: for example, giving the right change out of immediate inclination or out of self-interest) and lawful actions that are also ethically worthy (actions of type c: for example, giving the right change because this is the right thing to do and this is what duty requires).

If we now focus on the two types of lawful action, we can see that the difference between them is provided by the motivation with which the shopkeeper performed them. Externally, the actions are the same – the shopkeeper may perform exactly the same movements in order to give the right change, but in one case the action is performed from duty, whereas in the other case it is from self-interest. What this shows is that the virtuous agent will perform the very same actions, as far as their external character is concerned, as the agent who acts from self-interest. Hence, virtue does have an empirical object, which consists of all the lawful actions the virtuous agent performs. Hence, the moral idea of virtue does have an empirical object that can be fully realised. This marks quite clearly the distinction between virtue and the ideas of theoretical reason.

The problematic aspect of virtue has to do with the motivation that is necessary for virtuous actions. The problem is due to our propensity to be moved to action by sensible drives – needs, inclinations and sensible desires. The difficulty is to control such sensible drives, so that the lawful actions we perform have as their determining ground the motive of duty, rather than any of the sensible drives or a combination of them. This does not mean that, in principle, it is not possible for a finite agent to act only from duty – since moral agents are free, they can act independently of the various sensible drives and be determined only by moral law. Even for the agent who is able from the very beginning (that is, as soon as she has become a moral agent) to perform only virtuous actions, some time would still be needed to develop a *disposition* to act in this way. Moreover, a difficulty in developing such a disposition is the famous

opacity thesis, already mentioned in the discussion of Taylor's argument: Kant's view that the motivation of an agent is not visible not only for other agents, but even for the agent herself.

The more problematic aspect of the highest good is happiness. Happiness is defined by Kant as 'a maximum of well-being in my present condition and in every future condition' (*GMS*, 4:418), where this maximum of well-being is the result of the satisfaction of sensible desires and inclinations. Here, Kant stresses that all elements are empirical, and so, unlike the case of virtue, the difficulty is not that we have to go against a propensity we have as limited rational beings; the problem in this case, Kant says, is the limited insight of finite beings like us – satisfying one desire may bring about consequences that reduce well-being ('[i]f he wills riches, how much anxiety, envy and intrigue might he not bring upon himself in this way!' – *GMS*, 4:418). There is no principle that can guide us in the determination of what would make us really happy: 'for this omniscience would be required' (*GMS*, 4:418).

But the main problem for the discussion so far is that Kant regards happiness as an ideal of 'imagination, resting merely upon empirical grounds, which it is futile to expect should determine an action by which the totality of a series of results in fact infinite would be attained' (*GMS*, 4:418–19). This shows that happiness has an empirical object that cannot be determined and, as such, cannot be fully realised. This is so despite the fact that Kant does not regard happiness as an idea of theoretical reason, but as one of imagination.

And yet, while this may raise a problem for the realisability principle through the idea of happiness,¹⁷ it does not raise a problem for the idea of the highest good. Thus, according to Kant's solution to the antinomy of pure practical reason, there is a necessary connection between virtue and happiness, with happiness following necessarily from virtue. If correct, this means that, granting to Kant the solution to the Antinomy, we can conclude that a commitment to the highest good presupposes only a commitment to virtue, and this, as we have seen, does not challenge the realisability principle. It is now time to move on to the second objection formulated by Willaschek.

THE SECOND OBJECTION TO THE REALISABILITY PRINCIPLE

So far, the discussion of the first objection has made manifest two problematic moves in Willaschek's argument: first, a discussion of virtue and happiness by comparison with Kant's ideas of speculative reason and, second, an examination of the realisability of the highest ethical good without specific reference to the kind of good this is supposed to be: in particular, to the specific relation the highest ethical good includes between virtue and happiness. Let us now go ahead and examine Willaschek's discussion of the highest political good in the formulation of the second objection to the realisability principle.

To formulate the second objection, Willaschek makes reference to what he rightly calls ‘an intriguing but neglected passage’ from the ‘Doctrine of Right’ of the *MS*: namely, the ‘Conclusion’ to the section ‘Cosmopolitan Right’ and to ‘Public Right’ (Willaschek 2016: 148; *MS*, 6:354–5). As we have seen in the discussion of Taylor, there, Kant talks about the idea of perpetual peace, which he calls the highest political good. Kant suggests that, in order to pursue the idea of perpetual peace, we do not have to determine whether it is possible, as long as we cannot demonstrate that it is impossible. We need to act *as if* it were possible, although it might not be likely that it could be realised. Here, the challenge to the realisability principle is quite clear. Recall the realisability principle:

RP2 An agent is *rational* in pursuing an end *E* by doing *D* only if *A* (rationally) believes that (i) *A*'s doing *D* causally contributes to realising *E* and (ii) the obtaining of a set of causal conditions that are jointly sufficient to realise *E* (of which *A*'s doing is a part) is not unlikely. (Willaschek 2016: 146)

According to RP2, I am rational in pursuing perpetual peace by my actions only if I am justified in believing that my actions causally contribute to the realisation of perpetual peace and that it is not unlikely that the set of causal conditions sufficient for realising perpetual peace, including my actions, obtains. According to what Kant says in the *MS*, I am rational in pursuing perpetual peace if it cannot be demonstrated that perpetual peace is impossible. This suggests that, on Kant's view in the *MS*, I might be rationally pursuing perpetual peace, even if I were not justified in believing in the likelihood of the set of causal conditions sufficient for the realisation of perpetual peace (since all I would need would be for my end not to be shown to be impossible).

In answer to this objection, Willaschek first clarifies Kant's claim that we should act as if the highest political good could be realised. Kant specified that we need to work towards establishing perpetual peace ‘by gradual reform’ and with the aim of a ‘continual approximation to the highest political good’ (*MS*, 6:355). Willaschek understands this as similar to the answer to the previous objection: even though ideas ‘cannot be fully realised (at least not empirically), it is possible to approximate their realisation’ (2016: 149). Hence, we can take the approximation of perpetual peace to be my end, rather than aiming at its full realisation.

I find this puzzling, since here we seem to deal with three different realisability principles of different strengths: first, RP2; second, a principle that requires that I cannot demonstrate that perpetual peace is impossible (RP*); and finally, a principle that requires that I pursue the approximation of perpetual peace (RP**). Yet, we have seen the challenge in the second objection is generated

by RP*, and RP** does not follow from RP*: I may be unable to demonstrate that perpetual peace is impossible and still not be justified in believing that my actions have any effect on the realisation of perpetual peace and, hence, that they can be said to approximate this end.

But consider also Willaschek's discussion of the effect of the second objection on Kant's argument for the postulates of practical reason. He notes that RP** can answer the second objection, since I can assume that my end is that of approximating perpetual peace as much as possible, rather than realising it. The assumption here is that I am justified in believing that my actions approximate perpetual peace. Yet, Willaschek continues, the argument for the postulates of pure practical reason is not an argument from the realisation of the approximation of the highest good, but an argument from its full realisation.

Nevertheless, Willaschek concludes that Kant's argument for the postulates is not undermined. This is because the argument in the Antinomy¹⁸ suggests the highest good is impossible. This shows that the postulates have a role to play: namely, they show that the highest good is, after all, possible. Hence, Willaschek concludes,

the possibility of pursuing an end that cannot be fully realised in an 'as if' mode [. . .] does not undermine Kant's argument for the postulates in the second *Critique* [. . .], since adopting an 'as if' attitude toward pursuing the highest good presupposes the absence of a proof of its impossibility, which condition, because of the antinomy, is not satisfied independently of the postulates. (2016: 150)

In other words, Kant's suggestion that a certain idea can be rationally pursued as long as we are justified in believing that it is not impossible to realise it does not threaten the postulates. This is because, according to Willaschek, the postulates have the important role of showing that it cannot be demonstrated that the highest good is impossible. Without the postulates, the antinomy of practical reason, which points to the impossibility of the highest good, would make it irrational to pursue the highest good.

But I think there is here an ambiguity over 'the impossibility of the highest good', an expression that can refer to the impossibility of the idea of the highest good or the impossibility of realising the conceptually consistent idea of the highest good. On what I take to be Kant's account, his solution to the antinomy is supposed to show why the idea of the highest good is consistent, whereas his argument for the postulates is supposed to use the condition of the realisability of the conceptually consistent idea of the highest good. Hence, the antinomy is satisfied independently from the postulates. For the solution to the antinomy, Kant uses only the notion that virtuous actions necessarily

determine happiness, together with the distinction between the empirical and intelligible aspects of our actions and world. By contrast, the postulates are responses to concrete obstacles to the attempt to realise the ideas of virtue and proportional happiness.

The second objection, by contrast, claims that the postulates are supposed to solve the antinomy by indicating how the notion of the highest good is consistent. This reading is also problematic for another reason, apart from confusing the distinct roles of the solution to the practical antinomy and the argument for the postulates; Willaschek's answer to the second objection tries to apply the realisability principle that Kant formulates for the highest political good to the highest ethical good. The argument here seems to be that, since Kant formulates this principle for one type of highest good, it will also apply for any other type of highest good. Yet, given the differences between the highest ethical and political goods, this assumption is problematic.

The highest ethical good is a complex notion that involves two elements (virtue and happiness) and the relation between them (causality in the intelligible realm), but also one of the elements is itself more complex than the idea of the highest political good. As we have seen, the idea of the highest political good is the idea of a rightful condition, which consists of several political norms. We have an obligation to observe these norms but, unlike the case of virtue, without a requirement concerning the motivation or determining ground of our actions. It is therefore not surprising that the realisability principle for the highest political good will be distinct from that for the highest ethical good, and the simple application of the latter to the former needs further support.¹⁹

CONCLUSION

I have started with the question of the realisability of Kant's cosmopolitan values, values that Kant defends in the essay *Towards Perpetual Peace*, but also elsewhere. We have seen that cosmopolitan right is part of what is needed for the realisation of a peaceful condition, which Kant regards as the highest political good. This is a notion that is still misunderstood, especially due to confusion with Kant's idea of the highest ethical good. I have therefore started, in the second to fourth sections, with a preliminary clarification of the differences between the highest ethical and the highest political good. Emphasis was primarily placed on the complexity of the notion of the highest ethical good, compared with the relatively simple notion of the highest political good. As we have seen, the idea of the highest ethical good combined two important ideas in Kant's moral philosophy: virtue and happiness. Moreover, we have seen that the idea of virtue, which Kant calls the supreme ethical good, also combines two elements: morality and legality. By contrast, the highest political good is a supreme political good, which consists of a set of juridical norms; moreover, these norms have only a requirement of legality.

In the fifth to eighth sections, I focused on the realisability of the highest political good, again by reference to a recent text where aspects of the ideas of the highest ethical and political goods are not sufficiently clear. Apart from answering some objections, which I argued could be answered better, we could also see why some of the objections raised for the realisability of the highest ethical good do not apply to the highest political good (again, by virtue of the relative simplicity of the notion, but also by virtue of some problematic assumptions: for instance, those concerning the degree of similarity between the ideas of speculative reason and the ideas of practical reason).

For example, one objection concerning Kant's argument for the postulates of pure practical reason (the second objection considered above and discussed in the eighth section) was that it seemed unable to take into consideration what looked like an implicit claim in Kant that the highest ethical good must be pursued with the acknowledgement that it was never fully realisable, but could only be approximated. The claim was that, in order for the argument for the postulates to work, we needed to assume that the highest ethical good could be fully realised. The weaker requirement of realisability that Kant sets for the highest political good (that we should not be able to show theoretically that the highest political good was impossible) was then applied to the highest ethical good with the claim that the postulates had the role of showing that the impossibility of the highest ethical good formulated by Kant in the antinomy of practical reason could be solved.

I have argued, in fact, first, that the postulates have a different role to play; second, that the weaker requirement of realisability is appropriately applied by Kant to the highest political good but, given the differences between the highest ethical and the highest political goods, should not be applied to the highest ethical good; and third, that, given that the highest ethical good is conceptually coherent and fully realisable with the help of the postulates, the initial objection raised does not stand. In fact, a further interesting conclusion seems to follow, which would take us, before concluding, to a brief discussion of another recent text where Kant's idea of the highest political good is discussed: namely, Cavallar's *Kant's Embedded Cosmopolitanism* (2015).

Let us assume that the weaker requirement of realisability (namely, that it is not possible to show that the notion of the highest good is theoretically impossible) that Kant formulates for the highest political good can legitimately be applied to the highest ethical good. Let us also assume that Kant does indeed show, through the resolution to the antinomy of practical reason, that the highest ethical good is possible, in the sense of being a coherent notion (which Kant argues for by regarding virtue as a cause of happiness in the intelligible realm). Given that we cannot show that the highest ethical good is impossible theoretically (since the notion is coherent and we cannot theoretically show anything about the intelligible realm), it would follow that

the notion of the highest ethical good were realisable independently from the postulates.

This seems to place the text considered (namely, Willaschek 2016) in one of the three interpretative categories identified by Cavallar for Kant's notion of the 'highest good':

Some offer a religious – or transcendent – and personal interpretation: the highest good proper is attainable for individuals only in the afterlife and guaranteed by God. The system thinkers defend the co-existence of the philosophies of history and religion within Kant's system. Others understand the highest good as a worldly or immanent concept, as the ultimate end (*letzter Zweck*) of nature and history and attainable as a collective achievement of humanity. These interpreters – the secularists – usually drop the theological dimension, or Kant's moral religion. Kant's kingdom of ends coincides with a global political – or semi-political / moral – order. (Cavallar 2015: 30–1)

As I have mentioned, Willaschek considers the arguments for the postulates of practical reason, including that for the existence of God, unconvincing. Given that his argument seems to have as an implication the fact that the postulates no longer have a role to play in Kant's discussion of the realisability of the highest ethical good, it follows that it would be best placed in the secularist category. According to Cavallar, those in the secularist category interpret the highest good as a worldly concept attainable by the human species in the form of a global political order.

According to Cavallar, secularists, system thinkers and religious interpreters all share the same understanding of the highest good as 'a normative goal, an ideal which cannot be fully realised but approximated by the human species as a whole [*sic*]' (2015: 31). On Cavallar's view, the secularist and transcendent interpretations are not convincing. Kant would keep philosophy of history and philosophy of religion as distinct parts of his system. For my purposes here, there is no need to adjudicate on this debate. What I am interested in is one aspect that seems to be suggested about perpetual peace, the highest political good, by some of Cavallar's claims. In particular, I am interested in claims such as 'The concept of the highest good devoid of any transcendent dimension, often coinciding with the highest political good, keeps the dialectic of practical reason unsolved' (Cavallar 2015: 32–3).

This claim suggests that the idea of perpetual peace, the highest political good, is devoid of any transcendent dimension.²⁰ While it is true that the realm of experience or phenomena does not relate to the intelligible world of the highest ethical good,²¹ the further suggestion that the highest political good is devoid of any transcendent dimension overlooks Kant's important claims in

ZeF concerning the guarantee of perpetual peace. In this case, it seems, we have a misreading of Kant's idea of the highest political good: this is due not to an exaggerated assumption concerning the similarities between the highest ethical and the highest political good, but rather to an overemphasis on the differences between these Kantian ideas.

In short, this chapter has focused on the realisability of Kant's cosmopolitan values with a particular focus on the realisability of perpetual peace or the highest political good. We have seen that the question of the realisability of the highest political good needs further discussion due both to problematic assumptions concerning the idea of the highest political good and to difficulties in understanding the notion of realisability. I have argued that Kant's idea of perpetual peace is sometimes misread because of exaggerated assumptions concerning both the similarities with, and differences from, the highest ethical good. I have also shown that the weaker condition of realisability, which is appropriate for the highest political good (appropriate because this simple notion does not need for its realisation either a coordination of happiness and virtue or the demanding condition of morality), should not be applied to the notion of the highest ethical good, since it leads to further claims, which are problematic both philosophically and interpretatively.

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NOTES

1. In citing Kant's works, I will use the following abbreviations: *AA* – *Kants gesammelte Schriften*; *Anth* – *Anthropologie in pragmatischer Hinsicht* (AA 07); *GMS* – *Grundlegung zur Metaphysik der Sitten* (AA 04); *KpV* – *Kritik der praktischen Vernunft* (AA 05); *MS* – *Die Metaphysik der Sitten* (AA 06); *ZeF* – *Zum ewigen Frieden* (AA 08). Pagination references in the text and footnotes are to the volume and page number in the German edition of Kant's works, *Kants gesammelte Schriften* (1900–). References to the *Critique of Pure Reason* (*KrV*) follow the A (first edition), B (second edition) convention. The translations I have used are listed in the References.

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2. There is debate as to what Kant's considered position on this issue is – see, for instance, Brown (2009), Kleingeld (2004) and Lettevall (2009).
 3. In Baiasu (2013; 2018), I discuss Taylor (2010), Ypi (2010) and Flikschuh (2006).
 4. This is Allen Wood's example, in Wood (1970: 21).
 5. This is Taylor's example (2010: 7).
 6. Taylor can be seen as justified in accepting this assumption about the similarity between the two types of the highest good if we look at some of Kant's claims on the highest good in the first *Critique*. I discuss these – in particular, Kant's comments on the idea and ideal of the highest good – in Baiasu (2013: Section 2).
 7. To be precise, Kant talks about 'lawgiving'; I use 'norm', rather than 'law' or 'imperative', because it is sometimes argued that, although some authors do use these expressions (Höffe 1990), 'juridical imperative' and 'imperative of right' are misnomers (Willaschek 2002: 71 note 11). Given the distinction between law and imperative (for instance, *GMS*, 4:414 or *MS*, 6:222), I avoid the use of 'law'. Instead of 'law' (which seems to me inappropriate) or 'imperative' (which may be regarded as a misnomer), I use 'norm'.
 8. Note, however, that some duties that represent outer actions are ethical duties: for instance, generosity. Even duties that are enforceable may be ethical: for instance, some of the duties to oneself.
 9. For example, other features are implicit in Kant's discussion of ambiguous right. In general, juridical duties must refer to other people, must not immediately require a ground for the determination of the will, and must not presuppose the adoption of an end.
 10. Kant introduces a set of additional distinctions, but for the purposes of this chapter, I need not discuss them. I offer more detail in Baiasu (2013: Section 4).
 11. There may be various reasons for this, including Kant's use, in the *Anthropology*, of the expression 'the highest moral–physical good' (*Anth*, 7:277), which seems to suggest a combination of virtue and happiness, or the way Kant defines the highest good in the first *Critique* (Baiasu 2013: Section 2), or, finally, Kant's discussion of the highest good in the second *Critique*.
 12. For the purposes of this chapter, I am using 'moral' and 'practical' as interchangeable; there is no subtle distinction presupposed here between these terms.
 13. As Willaschek notes, Kant makes a slightly different claim: 'If [. . .] the highest good is impossible according to practical rules, then the moral law which commands that I be furthered must be fantastic, directed to empty imaginary ends, and consequently inherently false' (*KpV*, 5:114). The realisability thesis states that we must *believe* the highest good to be practically possible in order to make it our end; by contrast, Kant's claim above is that we cannot be morally required to make the highest good our end, if this end is not practically possible. The alternative realisability thesis would then be: 'If we are morally obligated to make the highest good our end, it must be possible for us to realise the highest good' (Willaschek 2016: 144). This alternative thesis, however, does not lead us to the postulates. The postulates are only 'subjective conditions of reason' (*KpV*, 5:145), which suggests a conclusion to our *belief* in the existence of God and the immortality of the soul, rather than to their *existence tout court*. Hence, we need
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a principle that links the moral necessity of making the highest good our end with the belief that the highest good is practically possible. This suggests that the version of the principle that we need is the original one, RP: we can be rational in making the highest good our end only if we rationally believe that the highest good is practically possible (for example, that we can realise the highest good through our own actions). I add that I am not entirely convinced by this argument. It is unclear why we could not see the RP in terms of actual realisability, rather than belief in realisability, deduce that the existence of God and of immortality (rather than a belief in their existence) be required as an implication, but then just feel entitled to draw a conclusion to a belief, given that the objects of the claim are beyond our theoretical cognition anyway. However, I do not think much hangs on this for the purposes of this chapter.

14. It is worth mentioning that, according to Kant, there are important differences between the ideas of virtue and happiness, on the one hand, and the ideas of reason, on the other. These differences are not noted by Willaschek but, as we will see, they have significant implications for his argument. First, in the context of comparing the Stoic and Christian notions of virtue, Kant says that ‘the moral ideas are not [. . .] something transcendent, that is, something of which we cannot even determine the concept sufficiently or of which it is uncertain whether there is any object corresponding to it at all, as is the case with the ideas of speculative reason; instead, the moral ideas, as archetypes of practical perfection, serve as the indispensable rule of moral conduct and also as the *standard of comparison*’ (*KpV*, 5:127 note). About happiness, Kant says that it ‘is not an ideal of reason but of imagination, resting merely upon empirical grounds’ (*GMS*, 4:419), where an ideal is ‘an idea not merely *in concreto* but *in individuo*, for example, as an individual thing determinable or even determined by the idea alone’ (A568 / B596). I also think that Kant does not take happiness to be ‘the totality of a person’s desires and volitions, all of which are satisfied’, if this means that a happy person’s desires and volitions are all satisfied; Kant sets a condition of maximal satisfaction over the whole life too (for instance, in the *KpV* at 5:25 he explicitly mentions the significance of the quantitative requirement; see also the discussion of happiness in Section 7 of this chapter).
15. See note 14 above.
16. I offer a detailed discussion of how this example can be understood in Baiasu (2010). The problem here is that, in principle, Kant cannot know that the shopkeeper does not act in conformity with duty from duty.
17. In fact, it does not, since we are not expected to be committed to happiness; happiness is a necessary purpose that we follow naturally, but our primary commitment is to the moral law.
18. This is step five in Willaschek’s eight-step argument for the postulates: ‘(5) Compelling arguments seem to show that virtue does not necessarily cause proportionate happiness and that happiness (and its pursuit) does not necessarily cause proportionate virtue’ (Willaschek 2016: 142).
19. A note on the third objection: I do not discuss it here in detail, since it takes us further away from the highest good. Willaschek draws a distinction between realising an end and trying to realise it, and claims that the weaker version of the

- realisability principle Kant introduces for the highest political good can be used to revise the realisability principle for the case of trying. After some iterations, we end up with: ‘RP5 An agent is *rational* in trying to realise some end *E* by doing *D* only if *A* (rationally) does *not* believe it to be *impossible* that (i) *A*'s doing *D* should causally contribute to realising *E* and that (ii) a set of causal conditions that are jointly sufficient to realise *E* (of which *A*'s doing *D* is a part) obtains’ (2016: 151).
20. For instance, see also: ‘In the philosophy of history, the issue is *not* the highest good proper, but the highest political good; the realm of experience or phenomena, and thus also of history, can never relate to the intelligible world of the highest good proper’ (Cavallar 2015: 33).
21. I think that Cavallar’s claim that the realm of experience ‘can never’ relate to the intelligible world is unnecessarily strong. It is also unclear what ‘relate’ is meant to refer to here.

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RETHINKING 'KANT'S EUROPE' AND COSMOPOLITAN RIGHT

Garrett Wallace Brown

When surveying the literature involved in cosmopolitan thought it is common to see reference to the idea that the European Union (EU) symbolises a prelude toward more regional and global forms of cosmopolitical order. As many cosmopolitans argue, the EU, and the legal and political institutions that have evolved from its founding in 1951, constitute something like a post-national order and the EU example acts as a normative and practical source for future cosmopolitan innovations.¹ Furthermore, it is also common to see reference to the political works of Immanuel Kant within these discussions and for many to make allusions to theoretical, historical and practical links between Kant's idea for a federation of independent states and the formulation of the EU. In particular, many cosmopolitan thinkers allude to a Kantian rationalisation underlying the normative structure of the EU and often suggest that many of Kant's theoretical and political prescriptions take applied form within the context of the EU.² This reading of 'Kant's Europe' is also widely made by academics critical of cosmopolitanism, with scholars such as David Harvey arguing that cosmopolitans ultimately 'look upon the European Union as some kind of Kantian cosmopolitan construction' (Harvey 2009: 83; Holton 2012: 25; Robertson and Krossa 2012). Lastly, more recent discussions regarding the awarding of a Nobel Peace Prize for the EU, as well as anti-Brexit commentaries, are ripe with Kantian references, with periodicals such as *The Independent* and *The Conversation* proclaiming that 'the

rationale came right out of Immanuel Kant's 1795 essay *Perpetual Peace*' (Pinker 2012; Magnuson 2017).

However, this relationship between Kant and the EU remains a rather under-developed assumption that is problematic. This is because there has been little examination of Kant's prescription for a cosmopolitan federation of states and its applied consanguinity with the current structure of the EU. In this regard, although many cosmopolitans and anti-cosmopolitans suggest a link between a Kantian federation and the EU, it has not been teased out fully in terms of Kant's cosmopolitanism and there is compelling evidence to suggest that this relationship is not as robust as it is generally assumed. It is in response to this deficit that this chapter will critically explore the link between Kant's vision and the EU as a nascent condition of cosmopolitan right. By doing so, it will be argued that a link between Kant's theory and EU practice can be reasonably claimed to exist only at the level of Kant's discussion of *domestic* and *international right*, and that the EU remains rather impoverished in regard to Kant's more radical concept of *cosmopolitan right*. Although the main purpose of this exercise is to challenge current assumptions about 'Kant's Europe', it will nevertheless also serve a heuristic purpose. This is because, by highlighting the contrariety between Kant's theory and EU practice as a condition of cosmopolitan right, it is possible to locate key discrepancies that would need to be resolved before a more Kantian-inspired cosmopolitan federation could be realised.

KANT'S COSMOPOLITAN FEDERATION AND THE ANALOGOUS DEVELOPMENT OF THE EUROPEAN UNION

In *Perpetual Peace*, Kant suggests that a cosmopolitan matrix might develop from 'one powerful and enlightened nation [. . .] a republic (which are by its nature inclined to seek perpetual peace)' and that this could 'provide a focal point for federal association among other states' (Kant 1970d: 104). Kant goes on to suggest that other states 'will join up with the first one, thus securing the freedom of each state in accordance with the idea of international right, and the whole will gradually spread further and further by a series of alliances of this kind' (Kant 1970d: 104). According to Kant, the motivation for joining this federal union is determined by the empirical realities embedded within global relations. These empirical conditions, which are rooted within the political and economic structures of the international system, furnish a reflectivity that provides the impetus for states, even against their will, toward producing this federated 'concord among men' (Kant 1970d: 108). As Kant suggests, this reflective logic has two interrelated parts and does not rely exclusively on the 'motivations of morality' (Kant 1970d: 114).

The first motivational element involved in what I am calling Kant's reflective logic³ stems from his *lex mercatoria* and the idea that 'trade between nations [. . . creates] peaceful relations with one another, and thus achieves mutual

understanding, community of interests and peaceful relations' (Kant 1970d: 111). However, as Kant highlights, the expansion of commerce is also dialectical in the sense that it can have inadvertent consequences. As Kant proclaims, the creation of mutual interest in trade and economic security can also 'provide the occasion for troubles in one place on the globe to be felt all over' (Kant 1996: 121). It is in relation to minimising the costs of these empirical consequences that Kant believes that 'the first articles' of alliance will be those associated with trade and economic security, and it is from this motivation that a pacific union is not only empirically possible, but also a normative necessity.

The second motivational element involved in Kant's reflective logic is interwoven with his *lex mercatoria*, but is also a normative response to the Westphalian system and to issues involved in securing a condition of *international right* between states. As far as trade is concerned, Kant suggests that 'the spirit of commerce sooner or later takes hold of every people, and it cannot exist side by side with war' (Kant 1970d: 114). In this regard, Kant mirrors the arguments of contemporary interdependency theory, as well as the ideas of Adam Smith, by suggesting that war and economic success are antithetical to one another and that the costs of war will inevitably reduce the willingness of states to engage in conflict. As Kant argues, international economic stability and the health of a state's civil order are inextricably interconnected, and the international order 'can no longer be so easily infringed [by war] without disadvantage to all trades and industries, and especially to commerce, in the event of which the state's power in its external relations will also decline' (Kant 1970a: 50). As Kant explains further, due to economic interdependency states will 'find themselves compelled to promote the noble cause of peace [. . .] and wherever in the world there is a threat of war breaking out, they will try and to prevent it by mediation' (Kant 1970d: 114).

Nevertheless, as alluded to above, Kant was not responding only to the effects of war on commerce. This is because Kant was more intimately concerned with problems involved with securing *international right* in a world where states are constantly under threat of force by other states. It is because of Kant's concern for practical mechanisms to bring peace between nations that he famously organised his essay *Perpetual Peace* in the form of a treaty between federated members, for Kant believed, 'the greatest problem for the human species, the solution to which nature compels him to seek, is that of attaining a civil society, which can administer justice universally' (Kant 1970a: 45). However, as Kant also states, in relation to securing *international right*, 'the problem of establishing a perfect civil constitution is subordinate to the problem of a law governed external relationship with other states, and cannot be solved unless the latter is also solved' (Kant 1970b: 47). In other words, Kant is suggesting that any state constitution and civil order, no matter how internally coherent and just, cannot be secure unless its external relationships with other states are also mutually secure, and that this can be done only through a strong legal

alliance between states. It is here, in the need for a legal pact between states, in order to secure domestic security from war, to protect commerce, and to establish a condition of international public right between states, that Kant outlines the conditions for a federated union in his essay *Perpetual Peace*. As Kant argues, ‘peace can neither be inaugurated nor secured without a general agreement between the nations; thus a particular kind of league, which we might call a pacific federation (*foedus pacificum*), is required’ (Kant 1970d: 104).

As is often noted, Kant did not believe this order could be established through the existing mechanisms of *jus gentium*, which were fastened into international law by the Treaty of Westphalia (1648). This is because Kant was convinced that the Westphalia model only sought to justify and regulate warfare through a balance of power between states, and that it did not address the important issue of establishing a condition of international public right and its corresponding requirement for mutual security and peace. As Kant proclaimed, a ‘permanent peace by means of a so-called European balance of power is a pure illusion’ and the Treaty of Westphalia amounted to nothing more than a continuation of a state of war (Kant 1970c: 92). Alternatively, what was needed is a more robust legal order of states, a pacific federation, which ‘would seek to end all wars’ between its members, and eventually, through consistent practice with other non-members, generate cosmopolitan scope and appeal. For Kant, this is an idea based on empirical conditions and real political interest, and the belief that the ‘idea of federalism, extending gradually to encompass all states and thus leading to perpetual peace, is practicable and has objective reality’ (Kant 1970d: 114).

It is easy to see why many cosmopolitans have made homologies between Kant’s idea of a federation and the historical development of the EU. This is because there are some obvious similarities between Kant’s argument for a pacific federation and the actual processes behind the formation of the EU. Dora Ion, for example, has commented that the EU ‘model of integration seems to fulfill Kant’s predictions about perpetual peace [. . .] taking also into account Europe’s historical background’ (Ion 2012: 150). In addition, these parallels have been specifically powerful enough to lead scholars such as Jürgen Habermas to regard the constitutionalisation process associated with EU integration as being part and parcel of a broader ‘Kantian Project’ from which future cosmopolitan initiatives can find inspiration (Habermas 2006: 113; Habermas 2012: 2). As Habermas states, the European experience of

being mobilized against each other militarily and intellectually inspired them to develop new supranational forms of cooperation . . .] [and this] historical success [. . .] has confirmed Europeans in the conviction that [. . . it] calls for a reciprocal restriction of the scope of sovereignty [. . .] inspiring the Kantian hope for a future global politics. (Habermas 2006: 48; Habermas 2012: 110)

These historical homologies are seen to be particularly relevant in relation to the two motivational forces that Kant believed acted as an impetus for states to establish a pacific federation. As mentioned above, these motivational forces are derived from economic interdependency and from a practical concern for states to secure themselves in relation to other states. And it is from these concerns that many have seen elements of Kant's logic in the formation of the EU.

First, in terms of what Kant called the 'spirit of commerce', there seems to be a clear analogy between the formation of the EU and Kant's assertion that 'the first articles' of alliance would be those associated with trade and economic security (Pagden 1995: 187; Habermas 2012: 2–8). As highlighted above, Kant maintained that 'trade between nations [. . . can create] peaceful relations with one another, and thus achieves mutual understanding, community of interests and peaceful relations' (Kant 1970d: 111). Without rehearsing the entire economic history of the EU in detail, *prima facie*, there are links stemming from the customs union of the European Coal and Steel Community (ECSC) in 1951 and Kant's proclamation that a union of this kind could 'provide a focal point for federal association among other states' (Kant 1970d: 104), for this associational proposition seems to have been played out in practice, since there has been a consistent trend in EU economic integration from its beginning, especially in terms of mutual trade and monetary policy (Cameron 1997). Whereas the original ECSC agreement had only six members, made up of Belgium, France, Germany, Italy, Luxembourg and the Netherlands, the EU now has grown to incorporate over twenty-six countries. These reach from the borders of Russia in the east to the shores of Ireland in the west. Furthermore, this union of economic cooperation includes small economies like Malta in the south, as well as more powerful economic states like Germany in the north. Additionally, whereas the EU was originally premised on a rather limited customs union involving coal and steel, it has now ratified countless economic policies and has established trade and monetary procedures that rival the complexities of powerful state actors like the USA and Japan. In this sense, although generalised here only in a cursory fashion, it is easy to suggest that the formation of the EU was incited into a permanent league for economic purposes and, *à la* Kant, it would seem that this has had profound stabilising effects as well as acting as the 'first articles' of membership. As a result, this has led some scholars of Kant to make the claim that 'the extension of new members and even the inclusion of non-European Union states such as Norway and Iceland, match Kant's predictions regarding the material incentives of pacific federation (Habermas 2012: 3–7). Furthermore, some scholars have expanded these claims, by suggesting that increased European membership has helped to solidify 'the cultivation of a Kantian cosmopolitan mentality' in Europe (Ion 2012: 149; Falk and Strauss 2003: 229; Habermas 2012: 71–100).

Second, and in terms of a Kantian motivation for states to promote peace, we can see further analogies between the formation of the EU and what

I am calling Kant's reflective logic (Dagi 2007). As is commonly argued, the formation of the EU was largely in response to two devastating world wars (Hill and Smith 2005: Part I). In an attempt to prevent the catastrophes of the past, many states, as well as key political figures like Jean Monnet, Paul-Henri Spaak and Konrad Adenauer, explicitly sought to further European integration as a means to create lasting peace in Europe. As was evidenced during World War I and World War II, and particularly demonstrated during the interwar years, the military alliances of Europe were not sufficiently able to generate lasting security between states. In fact, historically speaking, these military alliances and 'balances of power' seemingly increased to bring the risk of large-scale war and mass destruction (Mitrany 1966). By witnessing the horrors of World War II, it has often been argued that this allowed for new normative reflections to take root in Europe and that this new ontology became a driving force behind continued integration and union (Moravcsik 1993; Harrison 1974; Pentland 1981; Taylor 1990). In terms of creating a 'cosmopolitan Europe', Habermas has argued that 'the bloody conflicts of Europe' have allowed European states 'the opportunity to achieve a reflective distance toward themselves' and to see violence as being disruptive to the processes of modernisation (Habermas 2006: 48). If one agrees that these generalisations acceptably capture the basic motivations behind EU integration, as even realists like John Mearsheimer have acknowledged (Mearsheimer 2009), then it is by way of this process that Kant's reflective logic delivers its most meaningful semblance, for, as Kant prescribes,

Wars, tense and unremitting military preparations, and the resultant distress which every state must eventually feel within itself, even in the midst of peace – these are the means by which nature drives nations to make initially imperfect attempts, but finally, after many devastations, upheavals and even complete inner exhaustion to their powers, to take the step which reason could have suggested to them even without so many sad experiences – that of abandoning a lawless state of savagery and entering a federation of peoples in which every state, even the smallest, could expect to derive its security and rights. (Kant 1970a: 47)

In this regard, there seems to be a reasonable analogy between the key motivations behind the development of the EU and Kant's reasoning for establishing a pacific federation. This is why it is easy to see why many cosmopolitans would want to make reference to these links (Eriksen 2006: 258; Ion 2012: 148; Habermas 2006: 39–48; Habermas 2009: 140; Habermas 2012: 110; Archibugi 2008: 222). The prescriptions of Kant, then, come remarkably close to the actual motivations behind EU integration, and his two elements of security and commerce seem to capture key conditions behind the alliance.

KANT'S INSTITUTIONAL REQUIREMENTS FOR FEDERATION AND
ANALOGIES WITH THE EUROPEAN UNION

Before outlining Kant's vision for a cosmopolitan federation and providing links to the various corresponding structural elements of the EU, it is important to outline briefly what Kant meant by public right, and in particular, to understand the meaning of Kant's distinction between *domestic right*, *international right* and *cosmopolitan right*. It is also important to understand that these three conditions of public right correspond directly to his tripartite of law. Respectively, they relate to how a condition of public right at all levels is to be maintained and fostered through a mutually reinforcing system of *domestic law*, *international law* and *cosmopolitan law*. Nevertheless, it is important to reiterate a point mentioned in the last section: namely, that Kant held that none of these levels of law could be maintained independently of the other with any prolonged success and that they are mutually inclusive and co-constituting. This is because Kant firmly postulated that 'the problem of establishing a perfect civil constitution [domestic law] is subordinate to the problem of a law governed external relationship with other states [international law], and cannot be solved unless the latter is also solved' (Kant 1970a: 47). Furthermore, as will be discussed in the next section, Kant expands this to include an additional and more radical level of law that operates at the global level [cosmopolitan law] between states and people, especially non-citizens. The basic point is, Kant did not believe that any level of public right could be fostered or secured without concomitance to this tripartite of law and to a global legal order that created 'the systematic union of different rational beings through common laws [. . .] in a universal kingdom of ends' (Kant 1981: 39–45).

Nevertheless, for the immediate purpose of understanding public right, Kant defines the concept as 'the sum of conditions under which the choice of one can be united with the choice of the other in accordance with a universal law of freedom' (Kant 1996: 24). As Mary Gregor helps to explain, the jurisprudence behind public right can be understood as 'the sum of laws that need to be publicized in order to produce a rightful condition, one in which individuals, nations and states can enjoy their rights' (Gregor 1988: 71). Kant himself relates this in institutional terms when he writes:

The sum of laws which need to be promulgated generally in order to bring about a rightful condition is *public right* – Public right is therefore a system of laws for a people, that is, a multitude of human beings, or for a multitude of peoples, which, because they affect one another, need a rightful condition under a will uniting them, a constitution (*constitutio*), so that they may enjoy what is laid down as right. (Kant 1996: 89)

The element of publicity demands that these laws should be based on maxims that are universally valid and that generate a condition of public right in a mutually consistent fashion. As it has been explored elsewhere in more detail, Kant abandons his original argument for a world state as the best method for securing a universal condition of public right between individuals, states and peoples. Instead, Kant opts for a more pragmatic alternative, grounded in a gradually expanding cosmopolitan federation of like-minded states, who dedicate themselves to creating a more rightful condition under his tripartite system of interlocking laws (Cavallar 1999; Brown 2005). From this gradually building federation, Kant's cosmopolitan goal is to establish the foundations for an ethical order of legal norms that would, with time and commitment by federated members, incorporate more states and people, in order to approach a condition of public right under a cosmopolitan legal order.

However, it is with Kant's extrapolation of international right, as it relates to the second tier of his legal tripartite, that the institutional requirements of his federation are outlined. These requirements are specifically contained and expressed through the Preliminary and Definitive Articles, which outline prohibitive laws of federation and the requirements for federal membership, as well as the institutional parameters of the federation itself. As mentioned in the first section, Kant specifically wrote *Perpetual Peace* in the form of a treaty between federated members and he considered its contents to have practical relevance in the establishment of a pacific federation. That said, and for our purpose here, it is more fruitful to examine the Definitive Articles when making structural comparisons to the EU. This is because the definitive properties of federation have considerable resonance with the EU as it is currently constituted and these links are often referred to in contemporary cosmopolitan debates (Bohman and Lutz-Bachmann 1997). Although the Preliminary Articles do provide content in relation to creating legal measures of good faith, self-determination and non-interference between federated states (basically redefining the legal sanctions for war granted by *jus gentium* under the Treaty of Westphalia), it is more productive to focus on the federation's definitive constitutional properties.

In regard to a comparison with the EU, we can understand that the Definitive Articles enumerate the terms of federated membership, as well as expressing the normative dimensions upon which the federation must stand. These articles make three related demands: namely, first, that the federation is restricted to republican states only; second, the federation is not to be understood as a world state with exclusive authoritative power; and third, all federated members will comply with the laws of hospitality and the universal demands of cosmopolitan law. I will return to the Third Definitive Article in the next section, for it is with this article that the EU is most susceptible to the claim that it fails to be cosmopolitan. Nevertheless, for now, it is useful to pay closer attention to

the first two articles of federated membership and how they are analogous to the current institutional structure of the EU.

As Kant outlines it in *Perpetual Peace*, the First Definitive Article relates specifically to what types of state can join the federation and what domestic legal conditions those states must reflect before federal membership can be possible. In this vein, the First Definitive Article demands that 'The Civil Constitution of Every State shall be Republican' (Kant 1970d: 98). As a consequence, federal membership is reserved exclusively for republican states and any joining member must satisfy the requirements of republicanism and *domestic right* as a condition of membership. For Kant, a thoroughgoing condition of republican domestic law requires that there is a separation between the executive, judicial and legislative branches of government (Kant 1996: 90–1). Furthermore, a well-constituted republic is one that can maintain domestic public right, meaning that it can guarantee 'freedom for all members of society', can create a 'common legislation' and maintain the 'legal equality of citizens' (Kant 1970d: 99). Kant attaches considerable weight to these requirements as the foundational pillars of continued federation because he believes republicanism is the only form of government that can establish a thoroughgoing condition of public right both domestically and internationally. This is because, for Kant, republics are less prone to go to war (Hoffe 2006: 182). As Kant suggests, under a form of republican domestic right, 'the consent of the citizen is required to decide whether or not war is declared, [and] it is very natural that they will have great hesitation embarking on so dangerous an enterprise' (Kant 1970d: 100). In addition, Kant alludes to a Rousseauian proposition, in that 'like-minded' republican states do not fight each other (Rousseau 1756). This is because Kant makes allusions to the fact that republics generally share a similar ontology about public right, that they all satisfy similar conditions of domestic justice, and that they are more likely to accept the legitimate authority of other republican governments because of these commonalities (Franceschet 2002: 59–62). As argued in the first section, for Kant, a cosmopolitan condition begins with an association of internally just states that bind themselves to a federated compact. It is from this federated constitution and its consistency in practice that it could 'provide a focal point for federal association among other states' (Kant 1970d: 104).

If we understand the First Definitive Article as establishing the terms for federated membership, then we can understand the Second Definitive Article as restricting the institutional complexion of the federation itself. This is done by Kant's rejection of an overarching world government and with his demand that 'The Right of Nations shall be Based on a Federation of Free States' (Kant 1970d: 102). Although there is considerable debate between Kant scholars regarding whether Kant actually favoured a world state (or should have) or a federation of independent states, the exegetical evidence does support readings

that suggest that, in the end, Kant was sceptical of a coercive world state and that he ultimately rejected a world-state model in favour of a more intermediate federation of independent states. As Charles Covell and many others have argued, Kant rejected the idea of a coercive world government for practical reasons and opted for ‘a voluntary, progressively expanding association of free and independent states, whose defining purpose was merely to bring a permanent end to war’ from which to provide further opportunities for a more robust system of supranational governance (Covell 1998: 124; Kleingeld 1998: 73; Cavallar 1999; Brown 2005; Hoffe 2006: 189–203; Kleingeld 2012: 50–8). As Kant himself argues,

such a [world] state is in turn even more dangerous to freedom, for it may lead to fearful despotism [. . .] distrust must force men to form an order which is not a cosmopolitan commonwealth under a single ruler, but a lawful federation under a commonly accepted international right. (Kant 1970c: 90; Kant 1970d: 104)

As Kant details, ‘such an association of several states to preserve peace can be called a *permanent congress of states*, which each neighboring state is at liberty to join’ (Kant 1996: 119). In this regard, the federation is a voluntary union of states that dedicate themselves to the conditions of federation and international right. Furthermore, as Kant demands, the federation does not establish a central authority to coerce compliance. Although this does not immediately exclude the idea of a congress of states, which can adjudicate disputes and coordinate cooperation on issues of trade, security and other public concerns, it does nevertheless demand that the federation is voluntary and representative of mutual consent. In this way, obligation to the federation should be furthered exclusively through contractual consent, through the mutual benefits of membership, compliance rewards, communal pressure and legitimating norms of membership, and, ultimately, through possible membership exclusion. In addition, Kant does leave room for expanded multilateral and multisectoral cooperation (that could potentially move toward a world republic) as long as that expansion is consistent with the principle of public right and with the demands of mutual co-legislation in a hypothetical kingdom of ends (Donaldson 1992: 148; Kleingeld 2012: 58–63; Brown 2009: 106–10). This ability is explicitly granted on the last page of *Perpetual Peace* through Kant’s *principle of publicity*, where ‘all maxims which require publicity if they are not to fail in their purpose can be reconciled both with right and with politics’ and ‘must conform to the universal aim of the public’ (Kant 1970d: 130; Rosen 1993: 182–3).

Again, there are clear analogies that can be made between Kant’s federation and the basic legal structure of the EU. In particular, the EU demands similar membership criteria to those outlined in the First Definitive Article.

For example, Article 49 of the 1992 Maastricht Treaty specifically defines that 'any European state which respects the principles of liberty, democracy, human rights and the rule of law may apply to join the union'. The conditions of EU membership were reiterated and more closely organised under three categories the following year in Copenhagen. From this agreement, EU membership requires: first, 'Stable institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities'; second, 'A functioning market economy and the capacity to cope with competitive pressure and market forces within the union'; and third, 'The ability to take on the obligations of membership.'

The similarities between Kant and the EU's membership criteria are compelling. First, like the First Definitive Article, membership is restricted in that the EU will accept only democratic states. Although Kant spoke in terms of republics, when it is examined more closely, it is arguable that Kant was referring to governmental structures that are similar to those found within liberal democracies (Tesón 1992; Cederman 2001; Franceschet 2002: Ch. 4; Hoffe 2006: 178–84). As Otfried Hoffe argues, 'Kant devises a republic that is a democracy in today's sense' in that he defines a republic as consistent with

(1) the people as the origin of all force, (2) freedom rights, (3) the juridical state and (4) the participation of the people in lawgiving, (5) the division of powers, and (6) due to the emphasis on the cooperation of the people, participation in an emphatic sense. (Hoffe 2006: 181)

In terms of democratic conditions for EU membership, we can see emphasis put on Kantian principles of external freedom (liberty), democratic governance (separation of powers and political representation), individuals as ends under public right (freedom rights), and an equally applied common legislation (the rule of law). Furthermore, like Kant's First Definitive Article, Article 49 requires compliance with these principles, and a failure to meet these conditions will result in denied access to federal membership. Although this is an exclusionary policy *per se*, it has generated empirically positive results in terms of enhanced cooperation, growing integration, a lasting European peace and a shared ontology that is slowly fostering what has often been referred to as Europeanisation (Green Cowles et al. 2001; Chrysochoou 2009; McCormick 2002; Peterson and Shackleton 2002; Pinder 2000; Habermas 2009: 78–95; Habermas 2012: 101–39). Lastly, and in relation to Kant's economic 'first articles of alliance', we can see a similar theme captured in the EU's insistence on 'a functioning market economy' and the willingness of new members to promote common competitive strategies. In this regard, the EU furthers aspects of Kant's *lex mercatoria* as well as providing a normative political entity, where states can secure 'the freedom of each state in accordance with the idea of international right,

and the whole will gradually spread further and further by a series of alliances of this kind' (Kant 1970d: 104). As history has seemingly borne out, Kant captured strong elements in relation to our current empirical reality. This is because the EU not only has enjoyed a period of lasting peace, but it has also enjoyed a growth of beneficial economic cooperation, and this is despite the EU financial crisis and Brexit.

In fact, despite the crisis and Brexit, there is seemingly little sign of the EU becoming less economically integrated and, in actuality, most economic and political indicators point to a system of greater economic and political connectedness post crisis (*The Economist* 2012; Moravcsik 2012) with even greater integration being seen as an appropriate EU response to mitigate Brexit (*The Express* 2018). As the current regulatory moves of the EU have shown, despite the current problems, there is still considerable reluctance (and cost) in giving up on the European project and this has created historically unprecedented commitments by states to cooperate better for the health of all federated members (McNamara 2010; Chu 2012; *The Economist* 2012; Reynders 2012; Moravcsik 2012; *The Express* 2018).

In terms of institutional design, the EU also shares an analogous relationship with Kant's federation in terms of its restricted make-up. As discussed above, Kant opted for a voluntary federation of independent states in order to disperse power horizontally, to assure mutual co-legislation, as well as to protect the right of states to be participating members in a law-making community. This was done explicitly as a rejection of a centralised authority, which, Kant believed, had the potential to become despotic if left without checks and balances. Similarly, we can witness these restrictive institutional traits in relation to EU political integration. In particular, we can see this in the EU's reliance on self-policing, consensual contract and the voluntary 'ability to take on the obligations of membership'. Despite the fact that more control has been granted to institutional bodies like the European Court of Justice and others, the EU remains a voluntary entity with restricted coercive power. This condition has been tested and borne out with Brexit.

Nevertheless, as history has illustrated, and as Kant suggested, this has not resulted in a wholesale abandonment of legal compliance. In fact, what we have witnessed is a fairly consistent voluntary abdication of legal authority to various EU institutions in order to generate compliance pull, mutual benefit and enhanced public right. This was certainly the case as regards the Rome Treaty in 1963, which, in essence, created a 'constitutional instrument' to promote greater legal obligations between member states (Shaw 2000). Nevertheless, as with Kant, the element behind compliance is not hard positivism in the legal sense, but is seemingly reliant on soft positivism and the creation of spaces for mutual co-legislation. In other words, states exercise their capacity to be self-determined agents in relation to other members and, by doing so, they create

self-generated political and legal structures as vehicles for the development of future mutual co-legislation. This is ultimately an expression of state self-determinism and it does not render it passive (Franceschet 1998: 136). Alternatively, this process of co-legislated laws unto oneself actually provides additional legal and political avenues for protracted expressions of state autonomy at the federated level and in context to an ongoing constitutional process analogous to a condition of public right (Epstein and O'Halloran 2008; Hathaway 2008; Raustiala 2003).

In many ways, the EU shares analogies to Kant's discussion of domestic public right, international public right and to the first two tiers of domestic and international law, as delineated in Kant's First and Second Definitive Articles. As it has been shown, this relationship is particularly analogous in relation to a state's motivation to establish a federation and in regard to the conditional requirements of federated membership. However, as intimated earlier, Kant also advocated a third level of law and firmly believed that a Third Definitive Article was necessary to establish a cosmopolitan condition of universal public right. As will be argued in the next section, it is here, in Kant's Third Definitive Article of cosmopolitan right, that the EU fails to reflect his cosmopolitan federation. It is also here that some contemporary cosmopolitans have incorrectly assigned a strong relationship between the EU and Kant's cosmopolitanism. In other words, although the EU shares considerable elements with Kant's condition of domestic and international right, it does not always share strong analogies with Kant's cosmopolitan law, and it is for this reason that we as cosmopolitans can reasonably doubt the EU as sustaining a vision of 'Kant's Europe'.

KANT'S IDEA OF COSMOPOLITAN RIGHT AND VARIOUS ANALOGIES AND DISANALOGIES WITH THE EUROPEAN UNION

There is no simple way to summarise Kant's cosmopolitan vision or to describe easily all the idiosyncrasies involved with his idea of cosmopolitan right. This is because it would take a substantial piece of writing to do justice to the nuance and sophistication of Kant's argument (Hoffe 2006; Brown 2009; Kleingeld 2012). Despite this, and despite the various debates between Kantian scholars about the meaning and scope of cosmopolitan right, it is more or less accepted that Kant sought to create a level of cosmopolitan law that would obligate both states and individuals to the hospitable treatment of all individuals, regardless of their citizenship or place of birth. As Covell and many others have argued, cosmopolitan law

was the body of public international law [. . .] constituting the juridical framework for the intercourse of men and states, considered in their status as bearers of the attributes of citizenship in an ideal universal state that extended to embrace all mankind. (Covell 1998: 141)

In slightly different terms, cosmopolitan law was meant to expand the reach of public right beyond traditional state-centric models of international law in order to include all members of the earth *as if they were* universal citizens. In relation to Kant's tripartite of law, we are able to see how the three corresponding conditions of public right and public law interact in order to create such a universal condition. First, as we have seen, domestic law is specifically concerned with establishing a condition of public right between the citizens of a state as well as between a state and its citizens (as reflected in the First Definitive Article). Second, as outlined above, international law concerns itself with the creation of a condition of public right between states (as reflected in the Second Definitive Article). Finally, cosmopolitan law, as a complement to international right, is specifically concerned with the establishment of public right between all peoples of the globe as well as between states and individuals, especially non-citizens (as reflected in the Third Definitive Article). In this sense, the tripartite of law forms the ingredients that create the 'sum of laws that need to be publicized in order to produce [this] rightful condition, one in which individuals, nations and states can enjoy their rights' (Gregor 1988: 71). Thus,

cosmopolitan law imposes legal obligations both on individuals and on states, and in doing becomes an attempt to provide a legal foundation for the rights of the individual regardless of the state to which he or she belongs – hence for veritable rights of citizens of the world. (Archibugi 1995: 449)

With this framework in mind, Kant's Third Definitive Article proclaims that 'Cosmopolitan Right shall be limited to Conditions of Universal Hospitality' (Kant 1970d: 105). As Kant further explains, the right to '*hospitality* means the right of a stranger not to be treated with hostility when he first arrives on someone else's territory' (Kant 1970d: 105). Placing further conditions on this right, Kant claims that 'this is not a right to make a settlement on the land of another nation (*ius incolatus*); for this, a specific contract is required' (Kant 1996: 121). Lastly, Kant suggests that a person 'can indeed be turned away, if this can be done without causing his death, but he must not be treated with hostility, so long as he behaves in a peaceable manner in the place he happens to be in' (Kant 1970d: 106). In this regard, under Kant's concept of hospitality, all humans have a right to visitation (*Besuchsrecht*), but they do not have a right to reside (*Gastrecht*), for this demands an additional contract.

There are some scholars who argue that this limiting restriction between *Besuchsrecht* and *Gastrecht* renders Kant's hospitality 'inhospitable' (Derrida 2002), 'empty' (Benhabib 2004: 36) and 'inappropriate' (Cavallar 2002: 323) as a basis for any future model of cosmopolitanism. As Cavallar suggests, cosmopolitans are misguided to base their cosmopolitical models on Kant, since Kant

holds 'too narrow an understanding of hospitality rights' and thus 'reliance on Kant in this respect is not justified' (Cavallar 2002: 394). Although I do agree that Kant's model is minimal, especially when considered in relation to more demanding cosmopolitan projects, I also think that these critiques often fail to grasp four important considerations involved with Kant's 'conditions of universal hospitality' and their implications for a Kantian cosmopolitan federation.

First, unlike some claims that the laws of hospitality are merely narrow laws of trade (Hinsley 1963), Kant's emphasis on commerce forms only part of cosmopolitan right and its relationship to his *lex mercatoria*. This is because there is more to what a cosmopolitan condition requires and we can see that cosmopolitan right is also meant to act as an authentic legal right that includes all human beings, not just traders. As Kant suggests, 'a thoroughgoing community of all nations on the earth that can come into relations affecting one another is not a philanthropic principle but a principle having to do with right' (Kant 1996: 121). Kant expands the scope of this sentiment by suggesting that 'the idea of cosmopolitan right is therefore not fantastic and overstrained; it is a necessary complement to the unwritten code of political and international right, transforming it into a universal *right of humanity*' (Kant 1970d: 108). Furthermore, Kant's inclusion of Native Americans and other non-trading populations within the scope of hospitality illustrates that people other than traders were also to be factored into his cosmopolitan matrix and that the laws of hospitality applied to populations who found themselves besieged by large European trading corporations (Kant 1970d: 106).

Second, unlike the rather narrow reading of Kant offered by Jacques Derrida, who focuses solely on how it underpins the legal exclusion of asylum seekers in Europe, Kant's principle of hospitality was directed at visitors as much as it was (if not more) crafted as a restriction to European colonisation and imperialism. In this sense, Kant's hospitality was primarily meant to restrict the behaviour of European powers in the New World and it demands that a mutually 'friendly agreement' is required before a right to settlement (on any land) can be legitimately claimed (Kant 1970d: 106; Kant 1996: 121–2). In this regard, the restriction of *Gastrecht* establishes a demand for mutual benefit, fair contract, equal reciprocity and basic ethical behaviour toward non-citizens and is therefore, in context of global justice and market globalisation, a necessary condition of cosmopolitan public right. A clear protection of this sort is evident in Kant's explicit support of Japanese restrictions on foreign trading companies who did not engage with Japan on mutually consistent economic grounds (Hobson 2012: 62–4). As a result, it is inappropriate to refer to Kant's hospitality as mainly a form of legal xenophobia, as Derrida does, since there are available not only exegetical arguments to suggest that Kant's laws of hospitality can accommodate the protection of asylum seekers (since you are unable to turn away someone if it would result in harm to person or property),

but also potential arguments to suggest that the restriction of *Gastrecht* is an important protective principle of global justice and mutual relations, which, in an atmosphere of increased globalisation and potential economic exploitation, protect vulnerable peoples and societies (Brown 2010; Baker 2010).

Third, the laws of hospitality were not meant as the final condition of cosmopolitan law, as Derrida has insinuated in relation to an ultimate ‘inhospitality’ that is built into Kant’s cosmopolitanism (Derrida 2000: 75). As Kant clearly states, the laws of hospitality are meant only to establish the peaceful ethical ‘conditions which make it possible for [individuals] to attempt to enter into relations’ with those beyond their borders. As Kant suggests, this is so ‘continents distant from each other can enter into peaceful mutual relations which *may eventually be regulated by public laws*, thus bringing the human race nearer and nearer to a cosmopolitan constitution’ (Kant 1970d: 109). In other words, Kant’s cosmopolitan goal is to ground an ethical order of cosmopolitan norms that would, with time and commitment from like-minded states and individuals, establish practices that approximate a more robust cosmopolitan legal order. This leaves the final complexion of a cosmopolitan order open to deliberation and global public reason with a hope that a future cosmopolitan constitution will eventually be achieved through these extra-legal exchanges. As a result, this open-endedness seemingly mirrors aspects of Derrida’s own prescription for a ‘inventive hospitality’ that can ‘enjoin a negotiation’ between strangers ‘so as to find the “better” or the least bad alternative’ (Derrida 1999: 92; Brown 2010: 316). If we take Derrida’s claim seriously, then the aim of hospitality is not to finalise a condition of global justice, but to provide a minimal condition of public right between individuals so that they can ‘enjoin a negotiation’ so as to locate a ‘better’ and more mutually consistent condition of cosmopolitan right. Consequently, if this reading is plausible, which the exegetical evidence strongly supports, then Derrida’s reading of Kant remains far too superficial and in seeming tension with Derrida’s own normative prescription in relation to cosmopolitan hospitality.

Fourth, the laws of hospitality and the grounding for a corresponding condition of cosmopolitan public right are more expansive than generally assumed. This is because we can extrapolate at least seven laws of hospitality that are meant to establish a basic ethical and legal condition between peoples, states and individuals. Furthermore, this condition, and the laws of hospitality that make an expansion of this condition possible, are prerequisites for a cosmopolitan order to evolve and develop. A cosmopolitan federation must adopt these extrapolated requirements, not only in regard to its internal practice with other federated members, but also in relation to those beyond its federated borders. These laws of hospitality include: first, the freedom to exit; second, the freedom to enter; third, a freedom to travel to all places of the world; fourth, a freedom from hostility and negligence; fifth, the freedom of communication

and to engage in public reason; sixth, a freedom to engage in commerce; and seventh, a freedom from false, misrepresented, extorted or fraudulent contracts (Brown 2009: 59–63).

It is here, in relation to these foundational conditions for cosmopolitan law, that it is possible to locate several analogies and disanalogies between Kant's cosmopolitan federation and the current practice of the EU. In particular, it is clear in the Third Definitive Article that all federated members must commit themselves to the furtherance of cosmopolitan law and that they agree to maintain the basic laws of hospitality associated with cosmopolitan right. In addition, as the textual evidence makes clear throughout Kant's political writings, the laws of hospitality not only are to apply internally between federated members, but also should be applied beyond federated borders. In other words, federated states must treat all human beings with a respect for cosmopolitan right as a condition of membership. Furthermore, as Kant's critique of European economic and military policy in the *New World* articulates, federated members must harmonise all dealings with non-federated peoples toward peaceful and mutually beneficial relations, which could, eventually, create the possibility for a future civil association. Therefore, under the Third Definitive Article, members of the federation must obligate themselves to the minimal principles of cosmopolitan right, establishing a basic sense of mutual consistency between themselves and non-federated peoples. Kant clearly demands this much of his cosmopolitan federation, for he stresses that it is 'only under this condition [that] we can flatter ourselves that we are continually advancing toward a perpetual peace' (Kant 1970d: 108). With this in mind, there are several disanalogies that can be made between Kant and the EU as a cosmopolitan federation. As will be discussed further at the end of this chapter, these disanalogies highlight many cosmopolitan shortcomings of the EU and therefore have a direct implication regarding the way that many cosmopolitans use the EU as a post-national cosmopolitan blueprint.

For one, although the EU has incorporated many of the freedoms associated with cosmopolitan right and the laws of hospitality into its internal affairs and policies, the EU has not consistently applied these basic cosmopolitan requirements to those beyond their borders or to all those who enter the territory of the EU (Eriksen 2006: 262). As an example, internally, the EU, for the most part, guarantees cosmopolitan rights to travel freely, to engage in international commerce and work, and to engage in public debates across state borders, and has protected human and political rights across its internal borders *fairly* successfully and admirably. In contrast, the EU remains inconsistent in its treatment and protection of people who are not EU citizens or who are not considered as being 'European' by various member states (Geddes 2008; Van Houtum and Pijpers 2007; Kostakopoulou 1998). This is often evident in the EU's inconsistent and negligent policies on asylum seekers

(Hansen 2010; Harvey 2000; Bulley 2017; Doyle 2019) and in its blatantly poor record on protecting the Roma people from the discriminatory policies of certain member states (European Roma Rights Centre 2009). Furthermore, there is troubling evidence to suggest that, although there is a ‘cosmopolitan’ European identity beginning to form between EU citizens (Bruter 2005), a sense of exclusionary ‘EU nationalism’ and anti-immigration position has also developed (Brown 2016; see also Huseyinzađegan in this volume). As Thomas Risse (2010) has argued, this sense of EU identity contains some disturbing xenophobic features, which have started to mirror some of the more disconcerting characteristics associated with forms of domestic nationalism. Furthermore domestic anti-cosmopolitan nationalism itself is on a populist rise, as Brexit, the growth of Le Pen and the xenophobic comments associated with Prime Minister May in the UK have most recently demonstrated (Brown 2016; Doyle 2019).

Nevertheless, perhaps the greatest disanalogy between Kant’s cosmopolitan federation and the EU relates to its foreign policy, or more appropriately, it relates to the foreign and economic policy that is often pursued by its member states (Hyde-Price 2006). To be specific, and in contrast to Kant’s laws of hospitality, member states, as well as the European Commission, often pursue morally and normatively inconsistent positions on the protection of universal human rights outside its borders, despite the EU’s official position toward a foreign policy to promote human rights and democracy (Smith 2008: Ch. 5; Hilpold 2008). These irregularities manifest themselves in numerous ways, through EU members maintaining economic practices that are not always mutually beneficial to foreign peoples (Tsoukalis 2010), and through official support of EU corporate interests and market injustices, despite there being clear signs of misrepresented, extorted or fraudulent behaviour (Meunier and Nicolaodoss 2010).

Further disanalogies can be seen in how the EU as a political entity deals with corrupt governments and in the practices of certain member states who support illegitimate foreign governments for ‘strategic advantages’ economically and / or militarily (European Voice 2004; Holland and Chaban 2010). In many cases, EU policy, or at least the policy of some of its member states, is not in agreement with the basic and minimal tenets of Kant’s Third Definitive Article (or with his Preliminary Articles, for that matter). It is because of this, and until these issues are more clearly addressed within the EU debate, that a truly cosmopolitan EU will continue to remain an impoverished source of cosmopolitan inspiration.

However, many scholars who make strong connections between the EU and cosmopolitanism will insist that these indiscretions are the exception and not the rule. These scholars will point out that the EU maintains a formal policy regarding ‘human rights’, which are to be incorporated into all ‘association agreements’ (Eriksen 2006: 261). As scholars like Karen Smith (2008: 111) will

argue, 'the offer of trade and association agreements, technical and development assistance, political dialogue, diplomatic recognition, and other instruments is now usually made conditional on respect for human rights'. Furthermore, many scholars will argue that the EU acts as a counter-balance to US foreign policy, in that the EU represents a form of 'normative power' versus more classical forms of hard and soft power (Beck and Grande 2007; Habermas 2006: 2012). Nevertheless, despite these positive cosmopolitical elements, they are not, at least at the moment, seemingly cosmopolitan enough (Robertson 2012: 175). This is especially the case when current EU 'indiscretions' are framed against the minimal membership requirements set out in Kant's Third Definitive Article. To respond to Smith, her stance on the associative agreements of the EU is that it is 'usually' the case that a respect for human rights is a necessary component. The problem is that there is clear evidence to suggest that EU policy does allow considerable space for international strategic power politics as usual and that these policies are advanced despite official EU policy (Hyde-Price 2006: 226–7). This is particularly true in relation to the behaviour of certain member states, which have been accused of often undermining the EU's ability to 'lead by example' internationally (Honig 2006). In this regard, the argument is not that the EU completely fails to capture cosmopolitan elements (or that it never will), but that the EU, as it currently operates in relation to non-member states and peoples, does not live up to the minimal cosmopolitan standards set out by Kant and that this has implications for how cosmopolitans use the EU as a cosmopolitical blueprint.

CONCLUSION

This chapter has critically explored the link between Kant's vision for a cosmopolitan federation and its often suggested analogous relationship to the formation of the EU. From this exploration, I have argued that a link between Kant's theory and EU practice can be reasonably claimed to exist only at the level of Kant's *domestic* and *international right*, and that the EU exhibits significant shortcomings as regards Kant's more radical idea of *cosmopolitan right*. The implication of this for contemporary cosmopolitan thought is four-fold. First, common throw-away lines suggesting analogies about the EU as being representative of 'Kant's Europe' should be looked upon with considerable suspicion, since these claims have remained largely underexplored and underdeveloped. As a result, it is important to recognise that the perpetuation of this assumption inappropriately gives a cosmopolitan flavour to the EU, which, under closer examination, fails to be fully tenable. Second, and relatedly, it is therefore also important for cosmopolitans to make clearer distinctions between the EU as an internally consistent cosmopolitan federation and it being an externally consistent cosmopolitan organism. Third, many cosmopolitans have suggested that the EU acts as a cosmopolitan case study and that, through processes of legal constitutionalisation (Habermas

2006; Habermas 2012) and through various forms of ‘jurisgenerative politics’ (Benhabib 2006: 49), the EU is slowly, but surely, extending its own internal laws and normative judgements to include and protect non-citizens. Because of this, Habermas and others have argued that we can understand the EU as being part of a larger ‘Kantian Project’, in which cosmopolitan legal and political conditions are gaining applied reach and significance. In many ways, this captures something useful about how the EU might be evolving and about how its internal legal mechanisms might expand cosmopolitan commitments beyond its federated borders. However, it is also important to understand that this is not a simple trajectory and that the EU, and its member states, still actively pursue inconsistent practices with other non-federated states and peoples. In this regard, it is important to keep the distinction outlined in this chapter in sharp critical focus and to recognise that, although the EU has extended some of its own laws to non-members, the EU as an entity has not always consistently extended its own cosmopolitan positions externally. Fourth, it is important for contemporary cosmopolitans to understand what implications these disanalogies with Kant’s cosmopolitan right have for the EU as a normative ideal. This is because, as mentioned at the outset, many cosmopolitans have heralded the EU as providing something like a cosmopolitan normative blueprint, which can serve as a model for future cosmopolitan institutional designs. Although I believe these discussions have heuristic relevance, it is important to understand the EU’s shortcomings, for as long as the EU maintains an inconsistent position in regard to its internal and external practices of cosmopolitan right, the model will remain an impoverished source of inspiration for those outside its borders. This is because Europe has a long history of asking other people to ‘do as we say, but not as we do’ and this inconsistency has traditionally created hostility, diffidence and exploitation. It is because of this that the EU will act as a normative source of cosmopolitan enthusiasm only if it can behave coherently and consistently in relation to the minimal conditions of cosmopolitan right, and it is here that more attention, critique and dedication are needed. For, as Kant suggests, ‘all politics must bend a knee before right [. . . if we are to] arrive, however slowly, at a stage of lasting brilliance’ (Kant 1970d: 125).

NOTES

1. As a small sample of a very large body of literature that explores aspects of this dimension in cosmopolitan thought, see Archibugi (2008); Beck (2006); Benhabib (2006); Cabrera (2004; 2010); Delanty (2000); Habermas (2001; 2006; 2008; 2009); Hayden (2005); Held (2003); Marchetti (2008); Yunker (2007); Eleftheriadis (2001); Beck and Grande (2007); Delanty and Rumford (2005); Robertson and Krossa (2012).
2. All of the above scholars allude to connections between the EU and Kant, although they do not always tease out this relationship in great detail. That said, some more explicit attempts have been made by Franceschet (1998); Pagden and Pocock

(2002); Held (1995); Delanty (2005); Tully (2008); Habermas (2006; 2008; 2009; 2012); Ion (2012).

3. There is considerable debate between scholars regarding what I am calling Kant's 'reflective logic'. For a more detailed exploration of this interpretation, see Brown (2009: Ch. 1); Wood (2006); Apel (1997).

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REREADING KANTIAN HOSPITALITY FOR THE PRESENT

Dilek Huseyinzadegan

In trying to understand one of the largest crises of our times – namely, the Syrian refugee crisis – theorists, journalists and politicians alike have branded it ‘a crisis of hospitality’, framing the issue largely as a matter of extending our empathy to vulnerable others. Publications ranging from *The Huffington Post* to *The Guardian*, *The Economist*, *The New York Times* and the *Harvard International Law Journal* have all invoked Kant’s proposal for a universal right to hospitality as the noble moral ideal toward which we and international law should aspire: this, in spite of, if not in reaction to, the growing xenophobic tendencies of neoliberal nation states and neo-colonial global institutions (Roff 2012; Jackson 2015; Editorial 2013; Boehm 2015; Mallat et al. 2012). This invocation is more than fortuitous – it bespeaks the contemporary pertinence of Kant’s political writings, the legacy of which is still alive in both our present-day political imaginary and the international policies that have been forged in response to this crisis. In this chapter, I will provide a genealogy of the philosophical roots of Kantian hospitality with a view to highlighting its ties to a peculiar political economy. This rereading will show that what we are witnessing today must be framed not merely as a moral crisis of hospitality but, more importantly, as a protraction of colonial injustices that reduce hospitality to a mere condition for the possibility of commercial enterprise.

Kant proposes the universal right of hospitality as a cosmopolitan right: that is, as a right that belongs to each and every human being by virtue of living in a shared and limited space. Importantly, however, he restricts it to a temporary right to visit. In contemporary social and political philosophy, Kantian hospitality is taken up in one of two ways. On the one hand, we have ideal theorists of cosmopolitanism, such as Seyla Benhabib, who proposes in *The Rights of Others* that we extend what was originally a circumscribed right to visit for a limited amount of time and make it into a basic human right to permanent residency and citizenship for all disenfranchised others: namely, aliens, refugees and immigrants (Benhabib 2004). She admits that this goes beyond Kant's original intent; none the less, especially in *Another Cosmopolitanism*, she interprets the right of hospitality as a mark of the capaciousness of the norms of universal morality in an increasingly interdependent world (Benhabib 2006). Thus, Benhabib takes Kantian hospitality to be a *prescriptive* term belonging to an ideal and formal theory of politics. On the other hand, we have Peter Niesen, Lea Ypi and Jeremy Waldron, who read Kant's restriction of hospitality as his ultimate and definitive condemnation of colonialism. They argue that by making it a limited right to visit, Kant takes a *normatively* anti-imperialistic stance in a contemporary political debate about whether or not European commercial states can decide to settle on what they understand to be under-inhabited or under-used lands (Waldron 2004; Niesen 2007; Ypi 2014). Thus, rather than merely posing it as a cosmopolitan ideal, Niesen, Ypi and Waldron draw our attention to the specific non-ideal context in which the Kantian right to universal hospitality arises. From this context, they conclude that the most important intervention that this right of hospitality makes in political theory is its anti-colonialism.

While both positions make important contributions to political philosophy and discussions of hospitality, my contention is that neither is nuanced enough to demonstrate the full purchase and legacy of Kantian hospitality for the present. Here, instead of reading the right of hospitality in merely normative or prescriptive terms, I will attend to its *descriptive power*, for both Kant's time and ours. Against Benhabib, I will show that the universal right to hospitality is not an unconditional moral ideal of cosmopolitanism, but one that is necessarily tied to a specific historical and geopolitical context: European colonialism. We are reminded of this context by Waldron, Ypi and Niesen; however, they downplay the intersection between the right of hospitality and global trade.

As a result, a closer look at the way in which Kant himself frames this cosmopolitan right in *Perpetual Peace* and *The Metaphysics of Morals* around a specific description of his contemporary reality reveals that universal hospitality cannot be interpreted as an unconditional duty or a truly reciprocal global political ideal for two main reasons. First, Kantian hospitality originates in the

principle of Right, not the Categorical Imperative; as such, its formulation and justification require that we take into account the context and incentives of our social-political interactions. Second, the context in which Kant develops his notion of universal hospitality shows that such a right is inextricably tied to the economic interests of the Global North. When we emphasise the descriptive power of Kantian hospitality, therefore, we come to see that there is not and perhaps has never been an unconditional universal right: hospitality then and hospitality now have been and continue to be the minimal condition for the possibility of commercial enterprise for those who seek it.

My aim in rereading Kantian hospitality in this way is not just to provide a more accurate or close interpretation of Kant's text. Rather, I will argue that this reading allows me to attend to the original historical context of the term and helps to clarify our contemporary adaptations of hospitality, as exemplified by the current Syrian refugee crisis. We will see that because hospitality is not a virtue but a carefully calculated right, the issue facing us right now should be framed not merely as moral crisis but as a matter of political economy. Attending to the descriptive power of Kantian hospitality, then, will remind us of the peculiar economic entanglements at stake in this cosmopolitan right in our present moment.

In other words, this rereading will allow us to frame the current refugee crisis or so-called issues of hospitality rather differently. On this interpretation, we get a clearer picture of the privileging of the interests of the Global North and the neo-colonial order in which such a crisis is taking place. For instance, we will come to see that Angela Merkel, recently branded an 'Angel of Mercy' for her hospitality toward the Syrian refugees (Chu 2015), is a good representative of Kantian hospitality understood as a matter of promoting peaceful commercial transactions. That is, she is not an example of hospitality as in 'an unconditional moral or philanthropic commitment to vulnerable populations'. Rather, she is invested in hospitality only to the extent that it protects European or German commercial interests; prioritising economic benefit, therefore, she is a trader of hospitality in the Kantian way that I will develop.

It may at first seem strange to turn to Kant's colonial context to situate our own neo-colonial one better. However, as I provide a close textual reading of the right to hospitality, we will see that these two contexts, despite being more than 200 years apart, have at least one important thing in common: discussions of hospitality in both contexts are supplemented by an unfair political economy and uneven prioritisation of commercial relations over moral responsibilities. While I cannot discuss the details of all the positive implications of my rereading of Kantian hospitality, I will conclude by making some preliminary suggestions for how we can harness the descriptive power of this notion for our present. In brief, formulating an effective solution to the Syrian refugee crisis following Kant will require that we first and foremost

come to terms with the geopolitical causes of this crisis by situating it in the broader context of the history of colonialism and its contemporary politico-economic legacies.

HOSPITALITY AS A UNIVERSAL MORAL OBLIGATION: BENHABIB AND COSMOPOLITAN RIGHTS

Seyla Benhabib's formulation of universal hospitality aligns with and even constitutes the background of our widespread usage of the term today. While Benhabib's proposal to extend the meaning of hospitality to a moral ideal that ought to include all disenfranchised populations – specifically, aliens, immigrants and refugees – is a noble one, I will show that it in fact has nothing to do with the way in which Kant formulates this principle. Furthermore and more importantly, Benhabib's ideal theory argument, which relies on a moral interpretation of the 'Doctrine of Right', tends to obscure the entanglement of the real state of world affairs in global economic relations, as Bonnie Honig aptly points out (Honig 2006: 107f.).

In her earlier work, *The Rights of Others*, Benhabib takes Kant's construction of the cosmopolitan right of temporary sojourn as a reference point and proposes that we extend this right to all human beings (Benhabib 2004: 35f.) In *Another Cosmopolitanism*, she reiterates her Kantianism, as she 'follow[s] the Kantian tradition in thinking about cosmopolitanism as the emergence of norms that govern relations among individuals in a global civil society' (Benhabib 2006: 20). Here, Benhabib contends that the actual Kantian right of hospitality entails a claim only to temporary residence on the part of the stranger who comes on our land; however, she writes, 'hospitality is a right that belongs to all human beings insofar as we view them as potential participants in a world republic' (Benhabib 2006: 22). Furthermore, she argues, both in *The Rights of Others* and *Another Cosmopolitanism*, that '[Hospitality] occupies that space between human rights and civil rights, between the rights of humanity in our person and the rights that accrue to us insofar as we are citizens of specific republics' (Benhabib 2004: 27; Benhabib 2006: 22). By 'Kantian hospitality', Benhabib refers to 'all human rights claims which are cross-border in scope' (Benhabib 2006: 37). Despite Kant's own restrictions, therefore, she argues that the right to be a temporary resident must be understood 'as a human right which can be justified along the principles of a universalistic morality' (Benhabib 2004: 42).

Benhabib's extension of Kantian hospitality revolves around a moral reading of Kant's political philosophy. In this extension, despite the political and economic complications that may arise out of his celebration of commercial and maritime capitalism, she understands Kant to be ultimately committed to our individual moral obligations toward other free and rational human beings. She then frames her view of the right to hospitality as a universal moral duty

stemming from each and every person's innate freedom, which includes the freedom to travel. As she puts it,

Kant wanted to justify the expansion of commercial and maritime capitalism in his time, insofar as these developments brought the human race into closer contact, without condoning European imperialism. The cosmopolitan right of hospitality gives one the right of peaceful temporary sojourn, but it does not entitle one to plunder and exploit, conquer and overwhelm by superior force those among whom one is seeking sojourn. *Yet the cosmopolitan right is a right precisely because it is grounded upon the common humanity of each and every person and his or her freedom of the will which also includes the freedom to travel beyond the confines of one's cultural, religious, and ethnocentric walls.* (Benhabib 2004: 20)

Here, Benhabib suggests that the cosmopolitan right of universal hospitality takes the Categorical Imperative, in its formula of humanity, as its major normative principle. From there, she concludes that '[t]he universal right to hospitality which is due to every human being imposes upon us an *imperfect moral duty* to help and offer shelter to those whose life, limb, and well-being are endangered' (Benhabib 2004: 36). This is an imperfect duty, meaning that it permits us to make exceptions in case there are other concerns (such as self-defence) that would override it. Benhabib contends that asking questions about how narrowly or widely we must interpret this imperfect duty of hospitality might be anachronistic, since Kant's own motivations for proposing this cosmopolitan right are *not* his

concerns for the needs of the poor, the downtrodden, the persecuted, and the oppressed as they search for safe haven, but rather the Enlightenment preoccupation of Europeans to seek contact with other peoples and to appropriate the riches of other parts of the world. (Benhabib 2004: 38)

None the less, she immediately drops this contextual consideration and urges us to look at the underlying universal moral obligation. In this way, she adapts the right of hospitality as a human right, grounded in a universal notion of morality, arguing, inspired by but eventually *contra* Kant, that 'the right to membership of the temporary resident must be viewed as a human right which can be justified along the principles of a universalistic morality' (Benhabib 2004: 42).

As Benhabib mentions in passing without much elaboration, however, there is a peculiar political economy tied to the context of Kant's own formulation of the right of hospitality. This political economy prioritises commercial relations and interests over philanthropic concerns, and relatedly, the ideal of hospitality

has a somewhat paradoxical nature. In his playfully titled piece ‘Hostipitality’, Jacques Derrida warns us about the inherent aporias of hospitality, reminding us of the uneasy affiliation between hostility and hospitality, as well as of the always asymmetrical relationship between the host and the visitor proposed by our very understanding of the term (Derrida 2000). For Derrida, however, the problem is that hospitality, by definition, cannot be disentangled from hostility, and therefore it can never be truly unconditional. It is not an egalitarian exchange; the guest is always in the house of another, not their own.

Building on Derrida’s warning, Bonnie Honig criticises Benhabib for being too optimistic about the universal ideals of humanity easily being extendable to disenfranchised populations and for ignoring the long history of colonialism and xenophobia (Honig 2006: 108). Benhabib finds the idea of hospitality helpful since it seems to have anticipated and intimated the evolution of cosmopolitan norms of justice, whose development, she argues, we are witnessing in various areas of international politics. In her account, we see a remarkable evolution, especially of the norms of hospitality (going far beyond Kant’s understanding), in that they are recognised and increasingly protected by the European Convention for the Protection of Human Rights and Fundamental Freedoms (Benhabib 2006: 36). Honig argues that Benhabib’s ideal theory account is ‘marked by traces of earlier universalisms that promise moral guidance from above to a wayward human world below’ (Honig 2006: 102). To cast the recent developments in Europe as a welcoming of refugees with open arms on account of universal morality, as Benhabib does, is dangerous, since this account obscures the fact that there are now new borders within Europe, drawn by means of culture or ethnicity, constructing a new political order, which Balibar provocatively names ‘apartheid in Europe’ (Honig 2006: 109; Balibar 2004: 122).¹ Honig reminds us, building on Derrida’s account, that European hospitality has always already been conditional, clearly demarcating those worthy of being included and those who must remain at the threshold (Honig 2006: 113f.; Derrida 2000: 14).

Additionally, as I have shown, Benhabib’s extension of hospitality as a cosmopolitan right follows a *moral* account of political theory. I will argue, however, that Kant’s notion of rights is rooted in a different and richer conception of politics. A closer reading of the text will further demonstrate that, for Kant, political thought is not directly reducible to a universal ethics, consisting of idealised notions of agency or institutions, such as the ones Benhabib seems to have in mind. This means that political rights, for Kant, are not directly deducible from or reducible to pure moral ideals. Rather, the principle of *Recht*, the governing principle of Kant’s political thought, *requires* us to pay attention to the historical context and actual consequences of human interaction. It is thus incorrect to interpret hospitality as a moral duty, perfect or imperfect, as if it has no historical or contextual resonances; it will become clear that Kant did not propose it as such in the first place.

Recently, Mathew Altman pointed out that Kantian principles of international law, including the principle of hospitality, are too weak to be helpful in responding to the current Syrian refugee crisis (Altman 2017). He argues that the duty of universal hospitality yields multiple, even contradictory, courses of action (Altman 2017: 180). Going over a number of Kantian political theorists' wildly varying proposals, including that of Benhabib, Altman concludes that Kant's formal theory of morals seems to be too broad to be able to offer specific judgements or concrete policy suggestions for our present (Altman 2017: 189–91). According to Altman, then, the ideal of hospitality is not very useful for offering any help with the Syrian refugee crisis; as he writes, 'Kant can convincingly explain that we need to promote freedom and individual rights throughout the world without guiding us on how to do so' (Altman 2017: 201). In brief, his point is that Kantian precepts are not concrete enough to guide action here and now, in our non-cosmopolitan present.

If hospitality is taken merely as an ideal principle stemming out of morality, then indeed it is too broad to tell us how to act under less than ideal circumstances. There is, however, something quite concrete about Kant's proposal for hospitality, as I will show below. I will argue, following Derrida and Honig, that we do not know what hospitality really is, since we have always seen it in action only as a conditional process fraught with internal contradictions and problems (Derrida 2000: 6; Honig 2006: 113f.). My rereading here, however, will find another opening in Kant's own formulation of hospitality, and show that he in fact starts with 'the wayward human world below' – namely, the colonial injustices of his time – and then proposes hospitality as a legal-political solution to a majorly economic problem caused by colonialism. To illustrate this point about the concrete beginnings of hospitality in Kant's text and the importance of his distinction between morality and politics, or ethics and rights, in what follows I first offer a reconstruction of the domain of right in *Perpetual Peace* and the 'Doctrine of Right'. Kantian hospitality as a matter of right is not a universal moral principle stemming out of the Categorical Imperative, which tells us to abstract away from all empirical – that is, historical, contextual, pathological – contingencies. Rather, it is a right based on conditional and specific duties, which, while still formal, cannot be understood independently of the context, consequences or incentives of our interactions. Thus, Kant's distinction between morality and rights bears upon our understanding of the meaning of hospitality in his philosophy and its resonances today. Apart from the aporetic structure of the word or the act of hospitality, then, it will also benefit us to attend to the genealogy of this Kantian political right in concrete terms, not only because Kant himself understands it in very concrete terms, but also because this contextual reading will recast both Kantian hospitality and the current so-called 'crisis of hospitality' in a different – namely, economic – light.

ETHICS AND POLITICS IN KANT'S PRACTICAL PHILOSOPHY:
A BRIEF OVERVIEW

Despite contemporary Kantian liberal political philosophers' tendency to conflate ethics and politics in Kant's thought,² these two domains, as Kant understands them, have distinct principles. The domain of ethics has its supreme principle in the Categorical Imperative: it says, 'Act only in accordance with that maxim through which you can at the same time will that it become a universal law' (Kant *GMS*, AA 4: 421), whereas the domain of politics has the universal principle of *Recht*, which states, 'Any action is *right* [*Recht*] if it can coexist with everyone's freedom in accordance with a universal law, or if on its maxim the freedom of choice of each can coexist with everyone's freedom in accordance with a universal law' (Kant *MS*, AA 6: 230). They might sound similar at first, although the crux of the difference between the two principles is the domains over which they legislate: While the Categorical Imperative is a law of our inner freedom or the freedom of the will, the principle of right refers to our external freedom or our 'independence from being constrained by another's choice' (Kant *MS*, AA 6: 237). As Katrin Flikschuh also argues, then, external freedom is a novel conception of freedom, not to be conflated with the autonomous willing that Kant develops in the *Groundwork* or the *Critique of Practical Reason* (Flikschuh 2000: 85f.). Thus, there is a substantial difference between how Kant's ethical and political inquiries are oriented, and furthermore, politics, at least in the way Kant formulates it, requires us to pay attention to empirical and contingent variables.³

Furthermore, the guiding principle of law or politics – namely, that of *Recht* – is concerned with juridical law or rightful lawgiving, and as such, political duties do not require the sole incentive of dutifulness.⁴ In §IV of the Introduction to *The Metaphysics of Morals*, Kant distinguishes between duties of right and duties of virtue. According to this distinction, what underlies our duties of right or political duties is a *juridical* [*rechtlich*] *lawgiving*, which is defined as that 'which admits an incentive other than the idea of duty itself' (Kant *MS*, AA 6: 219). On the other hand, our moral duties or duties of virtue are prescribed by ethical [*ethisch*] *lawgiving* (Kant *MS*, AA 6: 219). This means that the juridical or political duties, as Kant understands them, are directed merely at external actions and their conformity to law, whereas ethical duties require that the laws themselves be the determining ground of actions (Kant *MS*, AA 6: 214). As he writes,

Duties in accordance with rightful or juridical [*rechtlich*] lawgiving can be only external duties, since this lawgiving does not require that the idea of this duty, which is internal, itself be the determining ground of the agent's choice; since it still needs an incentive suited to the law, it can connect only external incentives with it. (Kant *MS*, AA 6: 219)

This distinction between juridical and ethical lawgiving found in *The Metaphysics of Morals* shows that the domain of *Recht* is not fully reducible to the domain of ethics in the Kantian system, because politics needs to deal with pathological, natural and subjective incentives.

In Flikschuh's terms, the distinction between law and ethics here refers to their respective sphere of moral competence; as she puts it, for Kant, 'rightful action need not be ethical' (Flikschuh 2000: 89–90). According to his distinction between juridical and ethical lawgiving, a juridical law based on the principle of *Recht* does not require, as ethical lawgiving does, that we do the right thing for the right reasons or with no immediate or mediated incentives other than the idea of duty. To the contrary, a juridical law is often prescribed by taking into account various internal and external incentives (Kant *MS*, AA 6: 219).

Let us recall that, in Kant's moral philosophy, actions are moral only when they are done for the sake of duty and to obey the moral law – for example, the Categorical Imperative – without any reference to an incentive or a desired result (Kant *GMS*, AA 4: 397f.). Thus, inclinations, feelings, expectation of reward or avoidance of punishment cannot enter into moral lawgiving because such incentives do not originate from a goodwill; moral lawgiving is, rather, solely determined and necessitated by pure practical reason. By contrast, in *The Metaphysics of Morals*, Kant proposes that the domain of *Recht* admits of and even *requires* that we take into consideration the context, incentives and consequences of human interaction.⁵ If political prescriptions given by juridical lawgiving necessarily include *pathological*, *natural* and *subjective* incentives, then the principle of *Recht* in the Kantian system is not reducible to or exhaustible by the Categorical Imperative.

The ground of the obligation and the lawgiving in the juridical–political and the ethical domains in Kant are distinct. If a rightful action is not always necessarily an ethical action, then the problem of a just state, one of the main issues of the principle of right, is subordinated to ethics but not exhausted by it. The point is that one can act justly without at the same time acting virtuously, and this means that the domain of *Recht*, the proper domain of politics in Kant, while a part of Kant's moral [*moralische*] or practical philosophy broadly construed, is not simply an offshoot of the pure principles of Kant's ethics, as Höffe, Flikschuh, Ripstein and Ellis also contend.⁶

The 'Doctrine of Right' already incorporates an account of the human condition, a version of what Otfried Höffe names 'an anthropology of right'. Höffe argues that the 'Doctrine of Right' practises a specific kind of anthropology that asks the fundamental questions of 'why right is at all needed, given the *conditio humana*' (Höffe 2006: 102). According to Höffe, then, Kant makes two modest assumptions that still have a high degree of generality: that we are finite rational beings and that we must share limited living space with each other (Höffe 2006: 102–6). Therefore, we see that the 'Doctrine of Right', or

Rechtslehre, has a more concrete understanding of politics: that is, a doctrine of right is not a mere extension of Kant's moral philosophy, but provides a political thought that incorporates, minimally, an account of our pathological, natural and subjective incentives, including the external and empirical circumstances of our interactions.

I have offered a brief analysis of the distinction between Kant's moral and political thought, in order to emphasise that the cosmopolitan right to universal hospitality, properly speaking, belongs to the domain of right, not to that of ethics. Kant does not propose it as an unconditional moral obligation that belongs to all human beings by virtue of their humanity or freewill, or even as an imperfect duty, as Benhabib claims. Furthermore, and more importantly, what we miss when we read hospitality in exclusively ethical terms, as if it were a moral duty, is the awareness that Kant shows of the concrete geopolitical context in which our political ideals are developed. In his political theory, he frequently asks how external conditions may or may not facilitate the implementation of political duties. His reflections on the rather contingent elements and circumstances of politics, then, provide what he himself calls, in his lectures on anthropology and physical geography, a type of 'knowledge of the world [*Welterkenntnis*]'⁷ that should matter to any theory of politics. Thus, Kant has a more robust or concrete understanding of politics than we often give him credit for: it is not a mere extension of his moral philosophy but one that is attentive to the actual historical context of our political problems and the incentives of political actions. This attention to concrete circumstances of cosmopolitan right is what I want to highlight and rescue in a newly relevant interpretation of Kantian hospitality for the present.

Next, I turn to the circumstances and incentives that Kant takes to be relevant to his formulation of the cosmopolitan right of universal hospitality: the physico-geographical shape of the earth, the injustices of colonialism, and (some of) the world's inhabitants' growing spirit of commerce. As Waldron points out, 'the starting point of Kant's analysis of circumstances of cosmopolitan right is an entertaining mixture of the abstract, the bizarre, and the almost amateurishly concrete' (Waldron 2000: 236). I will focus on the concrete part of this mixture, and show that Kant uses his knowledge of the world to conceive of a legal-political response to an economic problem. That is, the ideal of hospitality becomes relevant and necessary as a pragmatic solution to a contemporary issue as he sees it. Kantian hospitality is not an ahistorical, abstract or free-floating ideal derived from the Categorical Imperative; it is a specific duty of right that is closely related to the geopolitical context in which Kant finds himself. Thus, Kantian hospitality responds and is tied to a specific geopolitical context: a context from which we are separated by hundreds of years, but one that still bears on how we view international relations, as I will show in more detail.

INCENTIVES FOR AND CONTEXT OF THE COSMOPOLITAN
RIGHT TO UNIVERSAL HOSPITALITY

In both *Perpetual Peace* and the ‘Doctrine of Right’, Kant identifies the empirical set of external incentives and conditions that are relevant to the application of his political ideals. In particular, he argues that the spherical shape of the earth, together with the growing spirit of commerce, necessitate the implementation of the right of hospitality as a cosmopolitan right. That is, his reflections on his present situation, specifically on the arrival of the European states on the shores of non-state people’s lands, lead him to conclude that it is beneficial to implement a cosmopolitan right to universal hospitality and to restrict it to a right to visit for possible commerce.

In *Perpetual Peace*, Kant argues that no human being has an original claim to the earth’s surface and that this, together with the problem of how we may peacefully interact with each other on a spherically shaped habitat, brings with it the very dictum of international *Recht*: that is, that we must grant everybody a cosmopolitan right to universal hospitality, the limited right to visit without being harmed by others (Kant *ZeF*, AA 8: 358). In other words, the first external fact or condition that Kant takes into account in the formulation of a cosmopolitan right is the actual limits of the shape of the earth. Similarly, in the ‘Doctrine of Right’, Kant reiterates his claim that human beings living on a globe have to come into contact with each other one way or another, and nature seems to have arranged for them a suitable means to do this: navigation and commerce (Kant *MS*, AA 6: 352). As such, a cosmopolitan right requires a genuine assessment and successful negotiation of our geographical conditions. Not by considerations of ethics or duties of virtue, but by using his geopolitical ‘knowledge of the world’, Kant concludes that a right of hospitality has to be implemented on a global scale. He writes,

This rational idea of a *peaceful*, even if not friendly, thoroughgoing community of all nations on the earth that can come into relations affecting one another is *not a philanthropic (ethical) principle but a principle having to do with rights*. Nature has enclosed [all nations of the earth] together within determinate limits (by the spherical shape of the place they live in, a *globus terraqueus [globe of earth and water]*). (Kant *MS*, AA 6: 352, italics in the original)

First of all, note here that the cosmopolitan right is *not* justified in terms of ethics or morality; it is not grounded in the duty of treating others as ends in themselves or even in a friendly manner. Kant poses the question at stake here as one of rights, arising out of a consideration of the concrete geographical fact that we live in a spherical, thus limited, space.⁸ Second, he claims that nature seems to have purposively arranged that seas, which at first sight seem to be obstacles

to interaction, are in fact the most suitable means for developing navigation and for advancing livelier and more peaceful (if not friendlier) interactions. Thus, his knowledge of the world presupposes a purposive arrangement and utilisation of the open seas, and in his account this pragmatic judgement about a geographical fact undergirds our cosmopolitan right to universal hospitality (Kant *MS*, AA 6: 352f.).

The fact that the earth belongs to all does not mean, however, that we can move about it freely, expecting to be welcomed by everyone at any time; Kant lays out specific provisions for our ability and right to do so. What he is proposing is not more porous borders or an unlimited freedom of travel – so what is in question here is not an unconditional right of hospitality for vulnerable populations, as we often imagine it to be. While the shape of the earth necessitates human interaction, it does not dictate the form that this interaction will take. In regard to this, Kant states that the right to the earth's surface 'does not extend beyond the conditions which make it possible to *seek commerce* [*Verkehr*] with the old inhabitants' (Kant *ZeF*, AA 8: 358). This is to say that, taking into account the empirical realities of his own socio-historical circumstances, he posits *commerce* as the preferred form of international relations and universal hospitality as the principle that should regulate these relations.

He then considers the inhospitable conduct of the civilised states of Europe during his time and sees that, under the auspices of commerce and trade, European states conquer, colonise and exploit other peoples. As he writes, concerning the actions of the British Empire:

In the East Indies (Hindustan), they brought in foreign soldiers under the pretext of merely proposing to set up trading posts, but with them oppression of the inhabitants, incitement of the various Indian states to widespread wars, famine, rebellions, treachery, and the whole litany of troubles that oppress the human race. (Kant *ZeF*, AA 8: 358f.)

In order to avoid such evils, Kant claims that we should aim at instituting the right of universal hospitality as a cosmopolitan right (see also Niesen 2007; Ypi 2014). This right, however, must be limited. It is not the right of a guest to plunder or to be entertained; it is rather that of a visitor seeking possible commerce. Thus, such a limited right of universal hospitality is necessary for all the peoples from the distant parts of the world, not so that they can become one global community without borders, but so that they can enter into peaceable commercial relations with one another (Kant *ZeF*, AA 8: 357).

What I would like to underscore here is that, insofar as hospitality is a principle regulating peaceful commerce, what is foregrounded in Kant's political reflections, as well as his formulation of hospitality as a political right, is commercial

enterprise. For this reason, Kant condemns cruelties of colonial trade not only from a purely moral perspective but additionally, and importantly, from a commercial and pragmatic one. On the violence perpetrated by commercial states in their colonies, he writes:

The worst of this (or, considered from the standpoint of a moral judge, the best) is that the commercial states do not even profit from this violence, that the Sugar Islands, that place of the cruelest and most calculated slavery, yield no true profit but serve only a mediate and indeed not very laudable purpose, namely, training sailors for warships and so, in turn, carrying on wars in Europe [. . .].’ (Kant *ZeF*, AA 8: 359)

A moral point of view condemns colonial violence, full stop; it does not need to take into account the actual or possible consequences of the violence of colonialism or posit an additional duty to mitigate its effects. A pragmatic point of view such as the one Kant provides here takes into consideration the results of this violence and concludes that this kind of hostile behaviour in the Sugar Islands is unacceptable because it results in perpetuation and incentivisation of wars, yielding no economic gain. In sum, the current commercial injustices of colonialism violate not (merely) the moral principles, but more concretely here, the principle of right.

Another place where we see his emphasis on commerce as a means for peaceful coexistence of the inhabitants of the world is his pragmatic hope that the spirit of commerce will eventually render wars unnecessary and unprofitable. In the ‘Supplement to the Perpetual Peace’, Kant writes that while ‘nature wisely separates the nations’, it also unites them by means of their mutual self-interest, because the spirit of commerce cannot exist alongside war but requires peaceful relationships. Here, he claims that, because of the growing spirit of commerce that sooner or later takes hold of every nation, we will be compelled to promote peace and be hospitable to foreigners, albeit not for moral reasons but in order not to interrupt global commerce and trade (Kant *ZeF*, AA 8: 365f. and 368).

In §62 of the ‘Doctrine of Right’, Kant reiterates most of the points that he makes in *Perpetual Peace* in more detail. Once again, we find that the cosmopolitan right to universal hospitality is *not* a call for open borders or an unlimited right to visit anywhere any time:

All nations [. . .] stand originally in a community of possible physical interaction (*commercium*), that is, in a thoroughgoing relation of each to all the others of *offering to engage in commerce* [*Verkehr*] with any other and each has a right to make this attempt without the other being authorized to behave toward it as an enemy because it has made this

attempt. – This right, since it has to do with the possible union of all nations with a view to certain universal laws for their possible commerce, can be called *cosmopolitan right*. (Kant *MS*, AA 6: 352)

Here, he again considers a series of empirical questions related to the commercial relations in his contemporary context of colonisation and conquest. He asks if the cruelties that go along with these undertakings of the so-called civilised states can in any way be justified in terms of the relations of right. Here, he finds nothing that would justify their inhospitable behaviour; there can be no justification of the cruel conduct and of the subjugation of these ‘less civilized nations’ to the worst cruelties. Even the so-called missions of ‘civilizing them’ or introducing them to Christianity will not make their suffering rightful: as he puts it, ‘But all these supposedly good intentions cannot wash away the stain of injustice in the means used for them’ (Kant *MS*, AA 6: 353). Kant concludes that we must implement the right to hospitable commerce as the basic right of all human beings having to interact with each other.

Making hospitable commerce a global right is the most pragmatic way for Kant to negotiate the geographical conditions in which we find ourselves, both in *Perpetual Peace* and the ‘Doctrine of Right’. This universal right of hospitality is not primarily a moral ideal: as I have argued, it is a consideration arising out of a balancing act between the necessity to put up with living near one another, our selfish inclinations, the growing spirit of commerce, and colonialism and its discontents. Based on his consideration of these material facts, Kant concludes that the spirit of commerce and injustices of colonialism provide an incentive to posit universal hospitality as the legitimate ground of our interactions with foreigners. Universally hospitable commercial relations, the specific cosmopolitan right, are proposed as the primary means of eventually securing perpetual peace on earth.⁹

HOSPITALITY, COLONIALISM AND COMMERCE

I have thus far not commented on the term ‘commerce’ and its multiple valences in German and English. In both languages, commerce may refer simply to ‘interaction between people and exchange of ideas and goods’, or it may refer more specifically to ‘trade relations’. In the texts that I mentioned above, Kant switches between two terms that may mean either ‘interaction or exchange’ in a general sense [*Wechselwirkung*] or ‘contractual and commercial exchange of property’ [*Verkehr*]. While he seems to be using these terms interchangeably, my view, however, is that he does so not only because of the double meaning of the term ‘commerce’, but also because the leading form of human interaction, as far as he sees it, takes the shape of actual commercial trade, as his subsequent remarks about trading posts and colonial settlement make clear. A central component of hospitality is that it is extended to those

who wish to ‘engage in commerce’ (Kant *ZeF*, AA 8: 358; *MS*, AA 6: 352); thus, just as we cannot think of hospitality outside of the context of colonialism, we cannot think of it outside of a particular kind of political economy.

At first sight, a universal right of hospitality seems to be a communicative right with a broad scope, but as Niesen points out, it is, in fact, quite limited on account of the specific context in which it is raised:

[The right of hospitality] provides people arriving at the borders of a foreign nation with the right to make communicative offers. Broadly speaking, those offers are of two different kinds: they may concern engaging in modes of exchange with the foreign nation’s citizens, or they may concern ‘offering oneself’ for community with them. (Niesen 2007: 92)

Additionally, it remains at best ambiguous if it is a global right, for the typical claimants of hospitality in Kant’s imagination are the merchants and colonists of European origin (Niesen 2007: 94). Niesen shows that, because the limiting condition of hospitality is Kant’s critique of European colonialism and imperialism, we cannot really take this right to refer to just any kind of ‘exchange,’ ‘transaction’ or ‘communication’ between two legal entities. Thus, according to Niesen, when we talk about hospitality we need to consider it not only as an extension of one’s innate right to freedom *à la* Benhabib, but more comprehensively in a way that takes into account various empirical facts, such as Kant’s critique of colonial injustices (Niesen 2007: 100). Similarly, Lea Ypi notes that Kant is providing a common critique of colonialism such as the ones we find in Adam Smith, but that Kant’s account is distinguished by the fact that he places it in a theory of justice (Ypi 2014: 119). Thus, both Ypi and Niesen remind us of the importance of the empirical context in which Kant proposes and justifies the right of hospitality.

Along similar lines, in unpacking hospitality Jeremy Waldron urges us to pay more attention to the specific context in which these hospitable interactions or exchanges take place. Waldron notes that, although Benhabib’s interpretation of Kant’s principle of the right to universal hospitality might be a bit of a stretch, ‘there would be no point in reading these antiquated Prussian tracts if we did not stretch and distort them a bit to throw some light on our current concerns’ (Waldron 2004: 89). He raises the worry, however, that this reading fails to capture the unique contribution that the principle of hospitality is supposed to make to Kant’s political philosophy: namely, the fact that it is a principle regulating the relations between people and peoples, not the relations between all human beings as potential participants in a world republic (Waldron 2004: 89f.).¹⁰ Focusing on the context in which Kant’s proposal of a cosmopolitan right to hospitality is located, Waldron joins Niesen and Ypi in reading this moment as a critique of colonial violence, injustice and exploitation, in the

actions not only of states as national conquerors but also of traders, merchants and settlers (Waldron 2004: 90).

In sum, these authors demonstrate that Kant's notion of hospitality is limited and cannot be considered independently of the non-ideal context in which he finds himself: for example, the geopolitical context that gives rise to his staunch critique of colonialism and imperialism in the first place (Niesen 2007; Ypi 2014; Waldron 2004).¹¹ Accordingly, hospitality is a right binding the behaviour of those states seeking commerce, trying to prevent them from abusing their power during their visits to previously under-inhabited lands and, conversely, it also protects individuals and peoples from organised foreign abuse. Kant is, in effect, telling the commercial states not to overstay their welcome, and not to claim any rights or privileges besides those pertaining to peaceful commercial transactions. He is also telling the non-commercial states to be hospitable to those visitors, as long as these visitors behave themselves and all they do is trade.¹² Instituting the right of universal hospitality as a cosmopolitan right therefore makes sense in this specific colonial context and as a way to regulate international trade for Kant.

While I am in general agreement with Waldron, Ypi and Niesen on the link between hospitality and the critique of colonialism, I would additionally urge us to account for the issues related to commercial enterprise, then and now. As I have shown, in both *Perpetual Peace* and the 'Doctrine of Right', the right of hospitality arises out of Kant's critique of colonialism *as well as* his emphasis on peaceful commerce. We have seen that this right is justified as a precaution against colonial conquest and, furthermore, as an incentive for commerce: lest the merchants overstay their welcome, the right of hospitality must be limited to peaceful commercial interaction. This is clearly the sense of 'commerce' that Kant had in mind, especially when we remember his condemnation of abuses of hospitality in the case of those pretending to set up trading posts or plunder under-inhabited lands, as I have shown earlier. Thus, I too want us to attend to the historical and empirical context in which Kant formulates this right. However, this context furthermore includes a peculiar political economy with regard to Kantian hospitality: namely, that this notion of hospitality is tied to the possibility of peaceful commercial exchange between the visiting nations and the non-state peoples. We must conclude that Kant in these texts does not seem to be talking about commerce merely as 'interaction', 'communication' or 'exchange,' but more directly he means commerce as the contractual exchange of goods or property via the erection of trading posts.¹³

This is not to say that hospitality is nothing more than the basic protection needed for expanding global commerce and trade, as Hinsley argues (Hinsley 1963). Rather, I insist on the political economy of hospitality or on a formulation of hospitality as *grounded* in *commercial relations* because, as I have established above, Kant's discussion of this cosmopolitan right comes up in

the midst of his criticism of European colonial exploitation and, in this sense, commerce is crucial for this right of hospitality. Kant's grounding of the right of hospitality at stake here is an *anthropological* or a *geopolitical* one, and it becomes visible only when we look at the non-ideal circumstances surrounding his formulation of hospitality. In other words, if we take Kantian hospitality to be about critiquing colonial violence, then we also have to highlight the role of commerce embedded in the uses and abuses of this right, in both Kant's time and ours.¹⁴ Recuperating the link between hospitality and commerce in this way gives the current use of hospitality a renewed relevance. Formulating an effective solution to the current refugee crisis following Kant's lead this way, for instance, will require that we first and foremost situate this crisis in the broader history of colonialism and its contemporary politico-economic legacies: that is to say, it will require us to get a more realistic picture of the historical, anthropological and geopolitical circumstances surrounding the crisis.

HOSTS AND GUESTS OF THE SYRIAN REFUGEE CRISIS: A ROLE REVERSAL

You might have noticed that something very strange is going on here: Kant's geopolitical context and our own do not seem to match up at all, not only because we are separated by a few hundred years, but also because the roles of the guests and the hosts in our case have been completely reversed. Like Benhabib, we, the twenty-first-century readers, often imagine the foreign visitors to be refugees or asylum seekers; as Ajei and Flikschuh remind us, however, in Kant's imaginary, the visitor is 'not some castaway who washes up on the shore pleading for food, shelter, and protection. Standardly, he arrives bearing goods he wishes to trade' (Ajei and Flikschuh 2014: 237). At least on the surface level, then, there is a radical shift in who the hosts and guests were in Kant's times and who they are in ours.

For this reason, it may seem misguided to bring Kant into current discussions of the refugee crisis, and indeed to a certain extent it is. It seems quite inaccurate or anachronistic, to say the least, to take what is mainly Kant's dictum for European colonisers and merchants, and then to defend it as a right belonging to non-European populations or as a claim that they have as world citizens. The current crisis is a result of the ongoing process of 'decolonisation'; the direction of the movement of people at the moment is not from Europe to the formerly under-inhabited lands, but from the formerly colonised nations to the metropolises of the Global North. The hosts of the colonial times are now the supposed decolonised guests toward whom Europe ought to extend its hospitality.¹⁵

And yet, even though the host-guest relations in the current crisis have been inverted in our case, my rereading of Kantian hospitality that highlights its roots in colonialism and commercial relations is still relevant and useful for

the present. This is the case because, despite the radical role reversal that I have mentioned, the idea of hospitality remains embedded in a set of commercial considerations and transactions privileging the interests of the Global North. What remains stable throughout both colonial and neo-colonial times is, then, the commodification of human interaction for the sake of economic gain and the promotion of *Recht* through such interaction. The legacy of Kantian hospitality for our times is that a peculiar political economy still undergirds the treatment of the guests. In the real world, hospitality has never been about the innate right to freedom to travel. What we are also witnessing today, then, is not purely a moral but, more importantly, an economic crisis resulting from and thus inextricably tied to the historic injustices of colonisation and decolonisation; despite some 200 years of distance, it remains the case that commerce is still foregrounded in discussions of hospitality today.

REREADING KANT FOR THE PRESENT: ANGELS AND DEMONS OF COMMERCIAL INTERESTS

My rereading of Kantian hospitality, which advocates for framing the current refugee crisis not merely as a moral issue but also a deeply economic one, shifts our focus to what is currently happening on the ground. Take the case of Germany or Angela Merkel. Thanks to the *Willkommenkultur* or the hospitality policies of Germany, we seem to be ready to crown Merkel ‘Mother Angela’ or the ‘Angel of Mercy’ (Chu 2015).¹⁶ What is less discussed, however, is the fact that Merkel’s explicitly moral stance toward refugees and asylum seekers is sponsored by the European Union (EU)’s backroom deals, which are dedicated to keeping millions of refugees in Turkey in exchange for billions of euros – an actual commercial exchange designed to prevent Syrian refugees from reaching European soil (Connolly et al. 2015; Paterson 2015). In other words, German hospitality has been outsourced to Turkey, which is currently playing the role of host by proxy for the EU. This is to say that the politicians brokering this deal have literally put a price tag on the lives of the most vulnerable, treating millions of displaced refugees like a commodity to be traded (or, to be more accurate, they are being kept at a distance as a part of the trade), all the while espousing the moral ideal of hospitality and human dignity. Thus, under the banner of moral duty and, more importantly, acting in compliance with the regulations established by the United Nations Refugee Convention and Protocol,¹⁷ the EU has deposited 2.5 million souls in a country practically run by a dictatorial regime, which provides them with few rights and protections, and which allocates to itself resources intended for its ‘guests’ (Letsch 2014; Cerre 2016; Johannisson 2016). Moreover, this arrangement has been set in place without any real plan to rehome the refugees.

If our only focus is the moral ideal of hospitality toward which international justice should aspire, we miss this actual and more sinister picture oriented

around economic gain. Reading Kantian hospitality in merely ideal or formal terms not only is disingenuous with regard to how Kant himself formulated it, then, but it also distorts something about our current reality and how we use hospitality today. Such a reading pretends that the hosts and the guests are on equal terrain, that they relate to each other in their own terms, thereby erasing the history of colonialism that lies at the root of the political instability in Syria in the first place. In attempting to ground Kantian hospitality in ethics, Benhabib's noble proposal divests us of the tools to think through the concrete circumstances of politics such as economic interest, a fact that Kant understood very well in his formulation of international theory of justice.

I have highlighted the very circumscribed way in which Kant formulates the universal right of hospitality from the perspective of European commercial states because this picture allows us to see how current appeals to hospitality still, either intentionally or inadvertently, privilege European economic interests, as exemplified by the double-dealing of Angela Merkel and, perhaps still more perversely, by the fact that Donald Trump's 'immigration ban' is extending hospitality to a select few Muslim countries (Egypt, Saudi Arabia and Turkey) to which he has substantial business ties (Melby et al. 2017). While the immediate sense of hospitality for most people is interpersonal, small-scale and moral, I have shown that the usual historical operation of hospitality, in Kant's texts and in actuality, is calculated, political and geometric. Hospitality, it seems, always comes with economic strings attached. There is no such thing as unconditional hospitality, as Derrida writes, to be sure, not (only) because hospitality is always fraught with its own internal contradictions, but (also) because, as we have seen, it was always already embedded in a negotiation of economic interests, specifically as a dictum that privileges the Global North. Thus, Kantian hospitality is neither a straightforward moral virtue, as Benhabib argues, nor merely a condemnation of European colonialism, as Ypi, Niesen and Waldron argue.

According to the rereading that I have developed of Kantian hospitality and its political economy, what we are witnessing is clearly continuous with the genealogy of hospitality that is intended to serve the interests of European nation states. This reading reminds us that, while current appeals to hospitality at first seem to operate under the banner of moral duty, it is, in fact, negotiated primarily in economic terms. Since hospitality is a political right with a limited scope and not a moral duty, there is no real contradiction between taking a moral stance and perpetuating the exploitation of vulnerable others via special deals such as the one forged between Germany and Turkey. This is to say that there is no crisis of hospitality and there has never been a crisis of hospitality; there is, rather, a continuation of the practice whereby the nations of the Global North meet the rest of the world on their own terms and not on their own terrain.

I am not suggesting that Kantian hospitality will always privilege European economic interests but that, as we see in the case of the current invocation of hospitality in Europe, its genealogy remains tied to commerce. More importantly, being reminded of this connection should lead us to study the historical injustices and the commercial transactions – in short, the geopolitical reality – in which this ideal remains relevant. That Kant himself paid attention to these non-ideal circumstances of history should turn our attention to providing a closer theoretical map of the very material conditions in which the notion of Kantian hospitality is applied.

CONCLUSION: READING KANT FOR THE PRESENT, REDUX

While I agree with Altman (2017) that Kant is, first and foremost, an ideal theorist and does not *tell* us exactly how we should implement his theories, I have argued that he does, in fact, *show* us how we can think through the implementation of these ideals in concrete terms. Thus, I believe that Kantian hospitality does have something important to say about the current crisis but not in the way that most interpreters take it: namely, merely as an ideal or a duty. In my reading, Kantian hospitality is a pragmatic solution arising out of a particular description of the geopolitical conditions of the world. If we want to provide pragmatic and egalitarian solutions for our own circumstances, then, we should do as Kant did: we should provide an honest assessment of the current world conditions in a way that includes our own complicity in creating them.¹⁸ If I am right to construct Kant's attention to what he calls 'the knowledge of the world' as the key to his formulation of hospitality, then a Kantian approach to the current problems of the world, such as the Syrian refugee crisis, requires us to orient our proposals within actual historical injustices created by European commercial interests.

It is to uncover such a response and a reorientation that I have taken a different tack and focused on the *descriptive* power of Kantian hospitality rather than its *prescriptive* purchase. Kantian hospitality was never meant to be divorced from knowledge of the actual conditions of our world. Therefore, it behoves us to remember that Kant himself did not propose hospitality as an unconditional right of all or a moral duty of political states; rather, by attending to the geopolitical realities of his own world, he cast the right of hospitality as an economically sound legal-political solution to some of the bigger problems of his day, colonialism in particular.¹⁹ Following Kant in this way, then, we may also respond to the current crisis by taking a closer look at the world and a longer view of history, in order to locate our complicity in the current problems we are facing as a result of hundreds of years of colonialism, conquest, exploitation and oppression.

When we realise that the fuller picture of Kantian hospitality includes a specific attention to economic motivations and historical injustices, then we

can, in fact, narrow down the possible courses of action by means of a series of questions, such as: Who, in fact, is benefitting from the agreements of hospitality? Who are the actual guests and hosts in question? Who is responsible, on a longer view of history, for the current instabilities in the Middle East and for the displacement and dispossession of millions of people? Thus, a perspective informed not only by Kant's ideal theory but also by what we may call his non-ideal theory – namely, his reflections on colonial injustice and the political economy of international relations – would yield more enhanced and better-informed judgements about the world in which we live.

What we need right now in order to respond to the Syrian refugee crisis is not more ideal theory, but a more nuanced, attentive, honest assessment of the non-ideal reality in which we live. Altman is right, then, to the extent that Kantian theory of cosmopolitan justice does not say a lot about the non-cosmopolitan present, but it is not an empty or formal principle. Read in the way I have developed here, hospitality and its link to commercial relations do give us a concrete place to start: this rereading tells us that hospitality, or any principle regulating global interactions, should start with the 'wayward human-world below' – that is, should attempt to offer a more comprehensive and detailed knowledge of the world.

I have gone through the dominant interpretations of Kantian hospitality and shown that they usually boil down to either a cosmopolitan moral ideal or a real proof of Kant's condemnation of colonialism. I find both of these interpretations valuable but insufficiently nuanced for our present. In sorting out the current appeals to hospitality, my aim in offering a rereading of Kantian hospitality has not only been to provide a more accurate textual interpretation of what Kant himself had in mind; more importantly, through this reading I would also like us to analyse, first and foremost, how the contemporary uses of this term may still bear traces of its history and entanglements in commercial relations. The complicated and nuanced legacy of Kantian hospitality that I have uncovered, especially when considered in relation to the present influx of Syrian refugees, migrating from the previously colonised nations to the formerly colonising European ones, would result in a radical reorientation of our politics toward the history of colonial injustices, implicit or explicit Eurocentrism of operative political ideals, and the political economy of the current global crisis. The descriptive rereading of Kantian hospitality that I have developed equips us with sharper diagnostic tools for accounting for the world in which we live today, and that is what it would mean to read Kant for the present. If we want to keep the term 'hospitality' or to appeal to it, then, we must understand it merely as a means to a higher end such as peace. In addition to noble moral ideals about how we must treat others as ends in themselves, we also need to confront the concrete historical, cultural and geographical circumstances that set the real-world conditions for the possibility of hospitality.

NOTES

1. Note that Benhabib, Honig and Balibar are writing more than a decade before the current refugee crisis reached its peak, and yet their points remain woefully relevant.
2. The main representatives of a Kantian philosophy based on his moral theory are John Rawls and Rawls-inspired political thinkers; see Rawls (1971); Korsgaard (1997); Brown (2009); Benhabib (2004; 2006); Murphy (1970); Riley (1983); Neiman (1994). For criticism of this conflation, especially in Rawls's work, see O'Neill (2000).
3. On the distinction between ethics and politics in Kant, see also Flikschuh (2000: 80f.) and Höffe (2006: 79f.).
4. This is why the problem of a just state, the main problem of the principle of right, is subordinated to ethics but not exhausted by it. In Appendix I to *Perpetual Peace*, where Kant considers a possible disagreement between morals and politics, he makes it clear that politics has to be subordinated to ethics: that is, the art of political governance is not just know-how but its principles furthermore need to adhere to the highest principle of ethics (Kant *ZeF*, AA 8: 380). To say that political problems cannot be resolved by immoral means or that 'morals cut the knot that politics cannot untie' (Kant *ZeF*, AA 8: 380) is not the same thing as saying, however, that political problems are reducible to moral ones, as the distinction between the domain of right and the domain of virtue demonstrates.
5. Thus, I agree with Alix Cohen that *The Metaphysics of Morals* can be called Kant's 'applied ethics', albeit still operating at a somewhat abstract level of generality regarding the human condition; see Cohen (2009: 165 note 34).
6. Here, I do not want to get too much into the relationship between the Categorical Imperative and the principle of *Recht*; I follow Ripstein (2009: 1–29, 355–88), Ellis (2005: 1–11), Cohen (2009: 84–108) and Höffe (2006: 81–93) in the reading that the 'Doctrine of Right' is *not* simply a direct application of the Categorical Imperative to specific circumstances of politics or right.
7. See Kant (*Anth*, AA 7: 119f.) and Kant (*PG*, AA 9: 157f.).
8. That this right is not a matter of philanthropy is a point that Kant also makes in *Perpetual Peace*; see Kant (*ZeF*, AA 8: 357).
9. I therefore disagree with Ypi's argument that the right to attempt to make commercial contact with distant others is merely an instance of universal cosmopolitan relations or 'simply another route [than war] through which we might explain the emergence of global interdependence and communication'. Ypi argues that Kant's later political philosophy – for example, *Perpetual Peace* and the 'Doctrine of Right' – no longer defends commerce from a normative perspective but only in descriptive terms; see Ypi (2014: 99, 113, 122). In my reading, however, commerce or commercial contact in these texts is the universal cosmopolitan relation *par excellence*.
10. I too worry about this, but in addition to Waldron's quibble about the actual context of Kantian hospitality, I believe that it is, at best, still up for debate whether or not Kant views all human beings as potential participants in a world republic. I cannot possibly rehash this debate about Kant's hierarchical notion of human beings; for the best discussions on this topic, see Mills (2005); Kleingeld (2007); Bernasconi (2011); Zöllner (2011); Marwah (2013).

11. See also Kleingeld (2011) on the importance of trade.
12. Although as Niesen notes, Kant commends China and Japan for restricting even commercial access; see Kant (*ZeF*, AA 8: 359); Niesen (2007: 96f.).
13. As Stilz notes, nature's purposiveness for necessary interaction between peoples does not justify colonial acquisition or plunder of the land of another for Kant, for such acquisition takes place not by nature but by a will; see Stilz (2014); Kant (*MS*, AA 6: 266). This does not mean, however, that people can just stay in isolation from one another; as we see here, the right to hospitable commerce is grounded on the fact that the spherical shape of the earth or nature outside us *necessitates* that we interact with each other one way or another. Kant understands the main form of this interaction to be commerce and the minimal condition of such interaction to be a 'universal hospitality'.
14. I am very sympathetic to Kleingeld's argument that Kant's entire theory of international *Recht* can be seen as an attempt to formulate the right way to engage in commerce with distant others; see Kleingeld (2011: 124–48).
15. See Balibar (1993) on the rise of xenophobia and racism that is connected to this reversed movement.
16. See the cover page of and main article, Editors' Introduction, in *Spiegel* 39 (2015), available at <<http://www.spiegel.de/spiegel/print/index-2015-39.html>> (last accessed 30 May 2016); in English, see <<http://www.spiegel.de/international/germany/refugee-policy-of-chancellor-merkel-divides-europe-a-1053603.html>> (last accessed 30 May 2016).
17. The 1951 Refugee Convention is the key legal document; ratified by 145 state parties, it defines the term 'refugee' and outlines the rights of the displaced, as well as the legal obligations of states to protect them. The key principle is non-refoulement, which asserts that a refugee should not be returned to a country where they face serious threats to their life or freedom. This is not considered a rule of customary international law. The United Nations High Commission for Refugees (UNHCR) serves as the 'guardian' of the 1951 Convention and its 1967 Protocol. According to the legislation, states are expected to cooperate with them in ensuring that the rights of refugees are respected and protected; see <<http://www.unhcr.org/en-us/1951-refugee-convention.html>> (last accessed 22 October 2018).
18. On what we may call Kant's political geography, see also Harvey (2009: 17f.); Zöller (2011: 134).
19. In *Perpetual Peace*, it will become a duty to promote hospitality; however, it is once again a duty of right, not a duty of virtue (a moral duty). I thank Áron Telegdi-Csetri for this clarification.

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PART 4

COSMOPOLITANISM AND CULTURE

TAKING A DETOUR: KANT'S THEORY OF MORAL COSMOPOLITAN EDUCATION

Georg Cavallar

INTRODUCTION

There has been a renewed interest in cosmopolitan educational theories in recent years (see, for instance, Hayden 2012; McCarty 2010; Saito 2010; Todd 2009; Waks 2009; Waks 2010; Zembylas 2010). Kant is usually regarded as a cosmopolitan philosopher (Anderson-Gold 2001; Brown 2009; Cheneval 2002; Kemp 2006; Huggler 2010; Höffe 2008; Kleingeld 2012) but publications on Kant's cosmopolitanism in relation to his educational theory have been rare. I have found only a few scholarly articles (Knippenberg 1989; Koch 2002; Koch 2013; Meyer 2005; see also Höffe 2008: 147–51), and there are just a few remarks in Kleingeld's excellent study (cf. Kleingeld 2012: 172–3). Most publications still focus on Kant's political cosmopolitanism, especially his so-called cosmopolitan right (see, for instance, Huggler 2010; Todd 2009: 31–5). At any rate, it has been claimed that Kant's moral educational theory is actually cosmopolitan in character. At the end of his article, 'The Education of the Categorical Imperative', James Scott Johnston asserts that a moral character in Kantian terms is also, by definition, 'cosmopolitical' and that, as moral beings, we have an obligation to develop "cosmopolitical maxims" as it were; maxims that are morally worthy precisely because they seek out and

maintain the conditions of cosmopolitanism' (Johnston 2006: 400–1). This interpretation is supported by Kant's texts; for instance, in one passage, moral education coincides with cosmopolitan education, since 'through *moral* formation (*Bildung*)' the human being 'receives value in view of the entire human race' (*LP*, 455).

In a previous article (Cavallar 2012), I have defined cosmopolitanism as the belief or the theory that all humans, regardless of race, gender, religion or political affiliation, belong to, or should belong to, one single community, and that this global community should be enhanced and promoted. I distinguished among various forms of cosmopolitanism: namely, epistemological, economic or commercial, moral, theological, political and cultural versions. There is a three-part division in Kant's philosophy concerning the concept of the highest good and the future of humankind: the foundation of a cosmopolitan condition of perpetual peace, a global legal society of peaceful states, and finally a world republic, which is the highest *political* good. The establishment of a global ethical community is – second – the highest *moral* good in this world. Finally, the highest good proper coincides with the transcendent kingdom of God, the intelligible world, the kingdom of Heaven or a moral realm. In Kant's account, God and humans together try to realise the ethical commonwealth, with humans promoting (*befördern*) and 'preparing' it while God is ultimately believed to offer fulfilment (attainment, realisation or *Verwirklichung*). Together with the process of enlightenment, the public use of reason, the development of a 'cosmopolitan perspective' – for instance, in historiography, together with religious as well as domestic political reforms and reforms at the international level, moral cosmopolitan education is part of this human attempt to promote the highest moral good in this world. Moral cosmopolitanism is stressed in moral education or formation (*Bildung*): for instance, in 'lectures on pedagogy', where Kant claims that the young student should be helped to cultivate 'philanthropy towards others and then also cosmopolitan dispositions', which entails 'an interest in the best for the world' (*LP*, 499), which I read as a shorthand of the concept of the highest political and moral good in this world (for a full analysis, see Cavallar 2015; 2017).

Thus, the following dimensions of cosmopolitanisms in Kant's philosophy have to be kept apart (for a brief overview, see Höffe 2008). *Epistemological* or *cognitive* cosmopolitanism refers to the world citizen who tries to transcend the 'egoism of reason', the unwillingness to test one's judgements with the help of the reason of others. The normative ideal is one of the three maxims of common understanding: the extended conduct of thought / way of thinking / cast of mind (*erweiterte Denkungsart*). 'The opposite of egoism can only be *pluralism*, that is, the way of thinking in which one is not concerned with oneself as the whole world, but rather regards and conducts oneself as a mere citizen of the world' (*A*, 130; see also *CJ*, 294–5 and below). Kant defends *moral*

cosmopolitanism in the 1790s with the claim that all rational beings, irrespective of their race, should be regarded as ends in themselves and as free and law-giving members of 'the universal kingdom of ends' (see below). Kant's *religious* cosmopolitanism revolves around the idea of a transcendent 'unconditioned totality' (*CPrR*, 108), with humans being obliged to promote this totality (which coincides with the highest good proper) by forming visible churches, combating the social consequences of radical evil, cultivating their moral predispositions (*Anlagen*) and thus approaching the idea of a cosmopolitan 'invisible church' (for an introduction, see Stroud 2005 and Rossi 2005). *Political* or *legal* cosmopolitanism, the belief that all individuals and states of this world should belong to one global juridical community, culminates in the idea of the highest political good: namely, perpetual peace. Kant's philosophy of history, developed since the 'Idea for a Universal History with a Cosmopolitan Purpose' (1784), looks at historical and political phenomena from a '*cosmopolitan* perspective', which means 'a view to the well-being of the *human race* as a whole and insofar as it is conceived as progressing toward its well-being in the series of generations of all future times' (*TP*, 277; cf. *I*, 307; *N*, 15: 517, 595, 610, 630; Geismann 2012: 221–31 for a succinct and recent introduction). Finally, one can detect an *anthropological* dimension to Kant's cosmopolitanism: he claims that there is 'a cosmopolitan predisposition (*Anlage*) in the human species', destined to be developed, overcoming nationalism and 'the selfish predispositions of people' (*A*, 412). Robert Louden has argued for a cosmopolitan conception of human nature in Kant's anthropology, a philosophical discipline based on empirical studies developed during Kant's lifetime (see Louden 2008; Louden 2013). Kant's cosmopolitan theory of education in particular relates to the moral, political and religious forms of cosmopolitanisms in Kant. I am going to restrict myself to the moral version in this chapter.

The key claim of this chapter is that Kant's moral educational theory is cosmopolitan in character. Moral self-legislation and self-motivation ultimately aim at a cosmopolitan conduct of thought (*Denkungsart*) and a cosmopolitan comportment of mind or disposition (*Gesinnung*). The latter is our supreme or highest-order maxim, the 'subjective ground' as a deed of our freedom (*R*, 21), the 'ultimate ground and justification of our actions' relating to our character, the overall orientation concerning our lives' conduct (Caswell 2006: 195; see Formosa 2007; Formosa 2012: 173). Kant takes a detour: in his moral theory, cosmopolitan values are not simply instilled in pupils. A cosmopolitan disposition is a long-term result of helping adolescents to form their own moral characters, defined as 'the aptitude (*Fertigkeit*) of acting according to maxims [. . .] of humanity (*Menschheit*)' (*LP*, 481), 'the steadfast commitment to virtue that is realized through a resolute conduct of thought (*Denkungsart*)' (Munzel 1999: 2; see *CPrR*, 152; *A*, 294–5). The second section offers a sketch of moral education according to Kant, outlining the unique features of this systematic

educational theory. The next part claims that moral education following Kant's principles coincides with cosmopolitan education. A shared moral disposition turns humans all over the world into equals. Their efforts to cultivate their respective moral potential turn them into fellow beings of a global moral community. The conclusion briefly hints at differences between Kant's approach and contemporary cosmopolitan educational theories. In short, you cannot train autonomy like a skill. The key difference is that Kant tries to achieve his cosmopolitan goals by taking a detour: unlike contemporary approaches, Kant does not simply posit 'cosmopolitan values' in an age of globalisation and interconnectedness, but stresses moral formation (*Bildung*), which revolves around maxims that can be universalised: the three maxims of understanding, especially the enlarged conduct of thought, a proper comportment of mind and a moral character. In its ideal form, this moral formation coincides with a cosmopolitan formation.

AN OUTLINE OF MORAL EDUCATION ACCORDING TO KANT

The 'Lectures on Pedagogy', published in 1803 by Kant's former student, Friedrich Theodor Rink, but in all likelihood based on a lecture held in the winter semester of 1776–7, have been a matter of debate for some time. The source and authenticity of these lectures have been questioned, especially by Weisskopf (see Weisskopf 1970: 239–350; see also Kauder and Fischer 1999). Still, it does make sense to consider them a reliable source (cf. Beck 1979; Loudon 2000: 33–61). A viable position has been developed by Lewis White Beck, who proposed the interpretative maxim that 'one should use other authentic works [by Kant] as a guide to and a commentary on the Rink compilation' (Beck 1979: 18; see also Munzel 1999: 255; Koch 2003: 11).

The key concepts of Kant's ethics are autonomy, freedom, practical reason, maxims, duty and the various types of imperatives (see, among others, Geismann 2009: 11–23; Gerlach 2010; Koch 2003: 37–105; Johnston 2007; Wood 2008). Autonomy is 'freedom in the *positive* sense' or self-legislation, '*lawgiving of its own* on the part of pure and, as such, practical reason' (*CPrR*, 33; cf. *G*, 440). One's self-legislative activity results in the Categorical Imperative: our maxims should not contradict themselves; they can be universalised; they imply that we do not use others or ourselves as mere means, but as ends in themselves; they could be the basis of a 'universal law of nature' (*G*, 420–36). Finally, and perhaps most importantly, as self-legislative members who are ends in themselves, humans as rational beings form a 'systematic union [. . .] through common objective laws', a union that Kant expresses with the practical ideal of a 'kingdom of ends' (*G*, 433; see also *CPR*, A808 / B836; A812 / B840). This formula of the kingdom of ends underlines the social character of practical reason: self-legislation is inextricably tied to maxims that are universal and could be agreed to by other members of this kingdom or commonwealth.

Kant's notion of autonomy is social or relational – that is, embedded in the context of the moral agent's relationship to other rational beings – rather than individualist in the sense of an unencumbered, isolated rational agent (cf. Rossi 2005: 30–2, 43–4).

Maxims are subjective principles of actions and subsume several practical rules (*CPrR*, 19; cf. *G*, 402–3). Rules are more context-bound, whereas maxims are abstract, so they require practical judgement to apply them in concrete situations. A typical maxim would be that of happiness or selfishness. Kant's point is that moral maxims are self-legislated and can be universalised at the same time. Previous philosophers, Kant claims, realised that

the human being is bound to laws by his duty, but it never occurred to them that he is subject *only to laws given by himself but still universal* and he is bound only to act in conformity with his own will, which [. . .] is a will giving universal law. (*G*, 432)

Our *Willkür* or freedom of choice is always at the crossroads; we can choose the law of practical reason or ignore it, following, for instance, our inclinations like our desire for happiness. Following our inclinations is not *per se* immoral, only if there is a conflict with 'grounds of reason' (*G*, 413). If we opt for the law of practical reason and our incentive (*Triebfeder*) of action is this very law, we do our duty: '*duty is the necessity of an action from respect for law*' (*G*, 400).

Hypothetical imperatives have the form 'If you want x, then you should do y'. The action is good 'merely as a means *to something else*' (*G*, 414). In modern commercial societies, Kant claims, people above all cultivate what Kant calls imperatives of skilfulness (*Geschicklichkeit*) and prudence (*Klugheit*), learning how to use other people for their own ends (*LP*, 455). The result is legality, not morality of disposition or comportment of mind. Disposition is the unconditional and unwavering commitment to the moral law, the 'highest-order maxim that defines the overall practical orientation' of one's character (Formosa 2012: 173). Kant's educational theory stresses the importance of moral education or formation based on the Categorical Imperative, 'by which the human being is to be formed so that he can live as a freely acting being' (*LP*, 455), the acquisition and cultivation of a moral conduct of thought, and the cultivation of virtue, a process that culminates in the idea of a moral character. The cultivation of skilfulness and prudence is part of a comprehensive education, but subordinated to the formation of character (*Collins*, 27: 265–6).

According to the standard interpretation, the Categorical Imperative is a testing device making sure that subjective maxims meet the requirements of universalising them, of autonomy and so on. James Scott Johnston, by contrast, claims that we apply the moral law this way only occasionally, that the context in which it is operative 'is always already the existing stock of norms,

rules, laws, and duties built up in interpersonal, social, and public discourse', and that the Categorical Imperative is not something given, but developed 'in the process of maxim formation and *not* before this' (Johnston 2007: 243). I agree with Johnston's clarification. First, Kant's thesis about 'common human reason' mentioned above implies that ordinary humans have an implicit, if only vague, moral knowledge, and philosophers like Socrates merely make them attentive to their own reason's principle (G, 404; cf. Munzel 1999: 66–7, 187–8). This is the basic assumption of the semi-Socratic method in Kant's ethical didactics (see below). Second, Kant refers in the second *Critique* to the fact of reason (*Faktum der Vernunft*; CPrR, 31–2): *Faktum* goes back to the Latin terms *facere* (to make) and *factum*, and should not be related to *Tatsache*, an empirical or transcendental fact but translated as 'deed' or 'act' (cf. CPrR, 43; MM, 227; Munzel 1999: 66–7, 70–1; Dall'Agnol 2012; Almeida 2012). Fact of reason thus indicates that moral agents create, form or make a universal principle in the process of rational deliberation and maxim formation. Therefore, the context of this possible generation of a universal maxim is social, since it is rooted in the agent's interaction with other human beings.

The key issue in Kantian moral education is motivation (see especially Koch 2003, to whom I am much indebted; Breun 2002; Cavallar 2005; Großmann 2003; Kauder and Fischer 1999; Nawrath 2010; Roth and Surprenant 2012; more secondary literature in Koch 2003: 11, 401–16). How can we educate pupils to become autonomous agents, to realise their self-legislating potential, to cultivate their maxims in such a way that they become compatible with the maxims of others? In Kant's words, moral education looks for the 'way in which one can provide laws of pure practical reason with *access* to the human mind and *influence* on its maxims, that is, the way in which one can make objectively practical reason *subjectively* practical as well' (CPrR, 151). The goal of moral education – the doctrine of the methods of ethics – is to prepare moral autonomy (cf. MM, 477). Preparation has to be distinguished from manipulation, indoctrination or determination (how this might work in the community of a 'visible church' is described by Stroud 2005; on preparing moral autonomy, see especially Koch 2003; Großmann 2003).

Kant has claimed that he was the first philosopher to have found the one and only proper method of moral education. He criticises teachers in the past who 'have not brought their concepts to purity, but, since they want to do too well by hinting everywhere for motives to moral goodness, in trying to make their medicine really strong they spoil it' (G, 412 note). Kant may have thought about his own education here, with teachers and priests warning and preaching that evil-doers will wind up in prison and later in hell, whereas good people will be rewarded by society and then in Heaven. The result can only be heteronomy of the will, not autonomy. Kant calls this mixing of morals with theology

and 'empirical inducements' (G, 410). Kant's own methodology is completely opposed to this approach. The moral law, he asserts, should be taught 'by way of reason alone' (G, 410). This is the 'autocracy of reason': reason is not only self-legislating, it can also serve as an incentive and become practical (MM, 383; *Mongrovius*, 29: 626). Kant adds the psychological hypothesis that this rational and pure method is much more efficient than the mixing of rational and empirical / pragmatic elements, as its 'influence on the human heart' is more powerful and 'elevates the soul' (G, 411; see Koch 2003: 11–12, 19–20, 192–211 with more passages).

I have just outlined Kant's theses on moral motivation. This is just one part of moral education, the other two being moral instruction and moral training (or 'ethical ascetics'). Moral instruction in turn is divided into *Katechetik*, *Kasuistik* and *Exemplarik*. Thus, we get the following distinctions (cf. Koch 2003: 110, 118, 189, 383–4):

Moral education

1.) moral instruction	2.) moral motivation	3.) moral training
1. <i>Katechetik</i>		
2. <i>Exemplarik</i>		
3. <i>Kasuistik</i>		
Knowledge	wanting	capacity / <i>Vermögen</i>

Katechetik, the moral catechism, describes the method of how to teach the metaphysics of morals, the canon of virtue (MM, 478–84; Koch 2003: 163–73, 384–6; Surprenant 2010). This is no pure catechism where the teacher lectures and the pupils memorise, but a semi-Socratic dialogue that involves the pupils' reason: they have to learn to think for themselves (MM, 478–9; see also LP, 477). The teacher is the 'midwife' who helps the pupils to become aware of their own implicit moral assumptions: 'The teacher, by his questions, guides his young pupil's course of thought merely by presenting him with cases in which his predisposition for certain concepts will develop (the teacher is the midwife of the pupil's thoughts)' (MM, 478). The dialogue is semi-Socratic because it combines catechism and maieutics. The teacher instructs the pupils about basic moral concepts and the system of virtue, but does so with the help of the 'common human reason' of her pupils. As was to be expected, this form of moral instruction has to remain pure: that is, it must not be mixed with theology, for instance. The teacher hints at the pupils' consciousness of their own moral freedom, with Kant hoping that the instruction eventually produces 'an exaltation' in the learner's soul about moral goodness and her own moral capacities (MM, 483), and increases her 'interest in morality' (MM, 484).

Kant subscribes to the thesis that ‘common human reason’ functions the way he describes it in his writings. For instance, he asserts that we all have an implicit knowledge of the difference between prudence or cunning and morality, and that we should universalise our maxims (G, 402; see also *CPrR*, 32, 105, 160–1): ‘The most common understanding can distinguish without instruction what form in a maxim makes it fit for a giving of universal law and what does not’ (*CPrR*, 27). According to Kant, then, ordinary people in their conversations would know basic moral distinctions, know how to assess or judge human conduct and so on (and novels, and nowadays films, would reflect these common-sense moral predispositions). Kant does not hesitate to draw this conclusion. He writes about his observation that, during conversations, non-philosophers usually abhor ‘subtle reasoning’, but like to argue ‘about the *moral worth* of this or that action by which the character of some person is to be made out’ (*CPrR*, 153). This reasoning often tells us a lot about the character of the person who makes that particular judgement. Many, Kant claims, are very strict in their attempts to find, or isolate, ‘genuine moral import in accordance with an uncompromising law’ (*CPrR*, 154).

In his *Lectures on Pedagogy*, Kant distinguished among three kinds of formation or *Bildung* (in Kant’s terminology, *Bildung* sometimes coincides with the formation of character; here, I use the term in a wider sense, as Kant often did, where it encompassed skilfulness and prudence as well; see Munzel 1999: 276 for a discussion). The education of skilfulness and of prudence cultivates acting on hypothetical imperatives, which have the form ‘If you want x, then you should do y’. The action is good ‘merely as a means to *something else*’ (G, 414). The child cultivates imperatives of skilfulness (*Geschicklichkeit*) to attain certain ends and prudence (*Klugheit*), learning how to use other people for her own ends and thus also learning how to fit into civil society (*LP*, 455; see Koch 2003: 17; Moran 2009: 475–9). The result is legality, not morality of disposition. The third form of practical education is moral formation based on the Categorical Imperative, ‘by which the human being is to be formed so that he can live as a freely acting being’. It coincides with cosmopolitan education, since, ‘through *moral* formation’, the human being ‘receives value in view of the entire human race’ (*LP*, 455).

EDUCATION FOLLOWING KANTIAN PRINCIPLES AS COSMOPOLITAN EDUCATION

Kant’s educational theory specifies a clear goal of education: to help to reach the *Bestimmung* (destiny, vocation, determination) of each individual as well as of the whole human species. Together with the doctrine of the highest good, this concept of vocation is the core of Kant’s critical practical philosophy (cf. Rossi 2005; Brandt 2009; Geismann 2009; Kater 1999: 166–70; Louden 2000: 37, 53–4, 101; Louden 2013). The *Bestimmung* of humans is to cultivate

their capacities or predispositions (*Anlagen*), especially – but not exclusively – freedom and self-legislation, as well as *Selbstbestimmung*, self-determination, and morality (cf. *CPR*, A 464; *G*, 396; *CJ*, 434–6; *A*, 325; Brandt 2009: 15–17, 19). Our ‘moral vocation’ is ‘the ultimate end (*letzter Zweck*) of our existence’ (*CJ*, 431, 435). Kant contributed a novel idea to the Enlightenment debates about human destiny: he expanded the traditional focus on individuals to a perspective that included the species as a whole and its history and future. However, Kant did not abandon the individualistic perspective, but kept both (see Brandt 2009: 25–7, 114–15; Louden 2000: 102–6). As Robert Louden has recently pointed out, *Bestimmung* incorporates three meanings (Louden 2013: 6–7): first, Kant sometimes compares humans with animals or even plants, pointing out that they are equipped with certain germs (*Keime*), and they are determined to develop in a certain way. In this context, *Bestimmung* can be rendered as ‘determination’, since it is ‘merely a matter of proper sowing and planting that these germs develop’ (*LP*, 445). Here humans are part of the natural world and subject to its laws. The second meaning relates *Bestimmung* to the concept of indetermination, as a human being, even from the perspective of empirical anthropology, is capable of reflection, deliberation and the freedom of choice: that is, ‘choosing for himself a way of living and not being bound to a single one’ (*CB*, 112). This corresponds with the level of the cultivation of skilfulness and prudence. Finally, as beings with moral predispositions, we are *bestimmt* to cultivate or develop them. ‘The human being shall make himself better, cultivate himself, and, if he is evil, bring forth morality in himself’ (*LP*, 446). This is the level of moral freedom and of cosmopolitanism, and our *Bestimmung* is a vocation or a calling: humans ‘feel destined [or called] by nature to [develop . . .] into a *cosmopolitan society* (*Cosmopolitismus*) that is constantly threatened by disunion but generally progresses toward a coalition’ (*A*, 331). The regulative principle of a cosmopolitan society comes in two versions: one is a political union of the whole human species based on coercive laws that are mutual and ‘come from themselves’ (*A*, 331); the other one is the moral commonwealth developed in the ‘Religion Within the Boundaries of Mere Reason’ (see *R*, 96–102).

One method or instrument of promoting these potentially cosmopolitan societies is education. Kant thus asserts: ‘[T]he design for a plan of education must be made in a cosmopolitan manner’ (*LP*, 448; also see Höffe 2008: 148–50). Kant aims at turning pedagogy into a science, which means that it should form a coherent system based on concepts *a priori* (those outlined above) and not on particular interests or whims, such as the caprice of rulers or the needs of the labour market. Kantian educational science is characterised by continuity, the intent to help promote the destiny of the human race, and is therefore oriented towards the future. This destiny can be reached by the species as a whole – an insight of our reflective power of judgement

(cf. *A*, 7: 324; *I*, 18; *TP*, 308–10; *LP*, 445), but each individual has a duty to make her or his contributions to help approach this goal. Those who are successful in this attempt are not only moral and virtuous human beings in a Kantian sense but also cosmopolitan citizens.

Kant's cosmopolitan design for a plan of education or formation can be characterised with the help of the following features (for systematic analyses, see especially Koch 2002; Koch 2003; Koch 2013; Johnston 2006; Munzel 1999: 254–333).

First, cosmopolitan education is education for moral freedom: educators cannot directly influence, manipulate or effect anything in their pupils, because the ultimate goal is that *they themselves* become moral beings and adopt a moral disposition (cf. *A*, 321). However, this does not imply that educators are helpless: they can provide a favourable environment, and they can help pupils to start thinking for themselves, cultivating their faculty of judgement and stimulating in them the feeling of respect (*Achtung*) for the moral law and teaching them to feel their own dignity (cf. *CPrR*, 152). In short, educators ideally *prepare* moral autonomy or self-legislation. As Alix Cohen puts it, 'education can be morally relevant *despite the fact that it cannot make the child moral*' (Cohen 2012: 152; see also Großmann 2003: 186–245; Koch 2003: 64, 68, 213–17, 238, 268–9; Munzel 1999: 259–61, 330–3; Formosa 2012: 173–4). Moral education helps the pupil to develop her predispositions in such a way that she can ultimately 'live as a freely acting human being' (*LP*, 455; cf. *A*, 285, 294–5). The adoption of a new disposition can be done only by the agent herself, but pedagogy can shape the conditions where this goal is achieved in a better and faster way.

Second, the goal of Kantian education is *not* imparting certain values, not even cosmopolitan ones. Kant does not posit 'cosmopolitan values', asserting that they should be instilled in children simply because our world has become globalised. This kind of reasoning would fall back on the type of pragmatic thinking that has its limited legitimacy, but should be kept out of moral formation proper. Instead, he stresses moral formation (*Bildung*), which is highly formal, revolving around maxims that can be universalised, the three maxims of understanding, especially the enlarged conduct of thought, a proper comportment of mind or disposition, and a moral character. Cosmopolitan values would stem from outside the children; as indicated above, Kant endorses a semi-Socratic method that finds moral truth inside the subject (see also Koch 2003: 81, 241, 376). This is Kant's unique methodology: he criticises previous forms of teaching particular values, supporting them with inducements based outside the student's own practical reason.

Third, Kantian moral education turns the student to the inner core of her own reason, and this move helps to include the 'generalized other' since the adopted maxims should be universalised and find the rational consent of those

who are also capable of practical knowledge (for a profound analysis, see Koch 2003: 59, 77, 93–4, 162–3, 265–9, 375–7). At the very beginning, the pupil has to find a proper relationship *toward herself*: this implies absolute honesty and the willingness to scrutinise oneself: ‘Moral cognition of oneself, which seeks to penetrate into the depths (the abyss) of one’s heart which are quite difficult to fathom, is the beginning of all human wisdom’ (MM, 441). *In interiore homine habitat veritas*. Inside herself the agent finds the idea of freedom, the dignity of humanity, the admiration for the moral law, and the moral feeling (see CJ, 274; CF, 58–9; Koch 2003: 200, 208–9). Self-examination and cognition of our own selves lead to cognition of our possible freedom and ideally to the ‘*respect for ourselves* in the consciousness of our freedom’ (CPrR, 161).

Finally, Kant’s ethics have often been criticised for their alleged individualism. A discussion of this issue is beyond the scope of this chapter, but several interpreters have convincingly argued that the charge is ill-founded (see Rossi 2005 and Moran 2012, among others). For instance, judgements – which play an essential role in politics and moral education – are exercised in interaction with others, and the enlarged conduct of thought even *requires* others and their divergent perspectives. The individual has imperfect duties to others: ‘While making oneself a fixed center of one’s principles, one ought to regard this circle drawn around one as also forming part of an all-inclusive circle of those who, in their disposition, are citizens of the world’ (MM, 473). In this quotation, Kant picks up the ancient Stoic notion of concentric circles, with the most encompassing of all circles being that of the human species (cf. LP, 499). Kant grounds the duty ‘to be a useful member of the world’ in the imperfect duties towards oneself and ‘the worth of humanity’ in one’s own person (MM, 446). Humanity (*die Menschheit*) refers to the intelligible capacity for the morally good in rational beings and should not be confused with the concept of the human race or the human species (*das Menschengeschlecht*), or a biological concept of the species (for a discussion, see Byrd and Hruschka 2010: 286–8; Cheneval 2002: 514; Wimmer 1990: 124–8). As moral agents, we should posit the same intelligible capacity for humanity in other human beings. Kant argues that we have a duty of benevolence towards all other human beings, and that it would be self-contradictory to exempt myself from this duty. Since the idea of law implies universality as well as reciprocity and equality, all humans should be included, even those one finds not worthy of love. The idea of humanity is another way to express this obligation or duty: ‘lawgiving reason, *which includes the whole species* (and so myself as well) in its idea of humanity as such, includes me as giving universal law along with all others in the duty of mutual benevolence’ (MM, 451, italics added). Turning to the inner core of one’s reason leads to the idea of universality and thus to the idea of a global moral community of all human beings (expressed in the *Religion* as the idea of an ethical commonwealth; cf. R, 96–102).

In the process of inner self-examination and exploration mentioned above, the educator is again not completely helpless, but functions as a tutor. She has several 'tools' at her disposal: first, a moral catechism based on a semi-Socratic dialogue, where the teacher functions as a 'midwife' who helps the pupils to become aware of their own implicit moral assumptions (see above). Second, the teacher can cultivate the pupils' power of judgement (Kant's casuistry). Third, there is Kant's *Exemplarik*, the use of examples. The cultivation of judgement, in particular adopting the extended, broad-minded or enlarged way of thinking, is of crucial importance for a cosmopolitan disposition.

Cultivating the students' faculty of judgement may promote an interest in morality, but above all it trains the capacity to apply a general rule (the moral law) in particular situations. In the process, students learn how to form, justify and reflect upon their maxims (*MM*, 484; see Koch 2003: 173–81; Schüssler 2012). Kant is surprised that teachers and educators do not make use of 'this propensity of reason to enter with pleasure upon even the most subtle examination of the practical questions put to them' (*CPrR*, 154). He suggests that they use biographies to present characters, situations and moral dilemmata, helping students to develop their faculty of judgement. Kant is probably thinking of Plutarch's *Lives*, among other books, just like Montaigne and Rousseau (cf. Koch 2003: 263–4). Moral casuistry as a training of our faculty of judgement implies that the pupil puts herself in the shoes of the persons involved in the case. This process of imagination or empathy with others is conducive to a cosmopolitan conduct of thought and – ultimately – to a cosmopolitan disposition.

The world citizen embodies logical or cognitive cosmopolitanism, by trying to transcend the 'egoism of reason', the unwillingness to test one's judgements with the help of the reason of others. The normative ideal is one of the three maxims of common understanding – the 'extended way of thinking' (*erweiterte Denkungsart*). 'The opposite of egoism can only be *pluralism*, that is, the way of thinking in which one is not concerned with oneself as the whole world, but rather regards and conducts oneself as a mere citizen of the world' (*A*, 130; cf. *CJ*, 293–6; *A*, 200, 228; *LP*, 499; *MM*, 472–3; see Häntsch 2008; Kemp 2006; Koch 2003: 324–31; Wood 2008: 17–20; and especially Munzel 1999: 57–9, 223–36). Someone who tries to overcome logical egoism will attempt to see things from a different perspective, consider and perhaps adopt 'the standpoint of others', and weigh her judgement against that of others. As in Adam Smith, the impartial spectator is a recurrent theme in Kantian philosophy. Ideally, the result is a cosmopolitan perspective based on a 'broad-minded way of thinking' where the prospective citizen of the world 'reflects on his own judgment from a *universal standpoint* (which he can only determine by putting himself into the standpoint of others)' (*CJ*, 295; *N*, 19: 184–5).

Another area where the faculty of judgement can be trained is the use of examples. Kant's position here is fairly complex (see Breun 2002; Guyer 2012; Koch 2003: 260–72; Louden 1992; Løvlie 1997: 415–18; Munzel 1999: 288–93). On the one hand, Kant rejects them as artificial aids, as go-carts (*Gängelwagen*) or leading-strings (*Leitbänder*) of the power of judgement (cf. *CPR*, B 173–4; *LP*, 475). They may stifle creativity and reflection on the basis of morality, and may block people's efforts to think and judge for themselves. On the other hand, examples can cultivate the 'predisposition to the good' (*R*, 48; cf. *MM*, 479); they can serve as proof that morality is not an illusion, but 'really possible' (*MM*, 480; cf. *CPrR*, 158). However, this requires that, first, the example has to pass the test of purity: it must be judged or 'appraised in accordance with principles of morality, as to whether it is also worthy to serve as an original example, that is, as a model; it can by no means authoritatively provide the concept of morality' (*G*, 408). Ideally, examples bridge the gap between life and the moral law we inherently know about and just have to become aware of.

In the following paragraphs, I will try to flesh out Kant's ideas, while keeping in mind what has been written about the use of examples. Kant advised searching through 'the biographies of ancient and modern times' to find persons like Henry Norris who might serve as examples of moral virtue (see *CPrR*, 156–7; Breun 2002; Guyer 2012: 136). Courtier Norris refused to calumniate the innocent Anne Boleyn, though Henry VIII tried to buy him and then threatened to punish him, ultimately with death. The problem with this example is that it describes an extreme situation; however, everyday life duties are more appropriate for most of us (cf. *CPrR*, 155; Guyer 2012: 135). My first example is fictional and taken from a book Kant himself was familiar with: *Robinson Crusoe* (1719), described by the author himself as an 'allegorical history' about 'moral and religious improvement', was also the only book Rousseau's *Émile* was allowed to keep in his library (cf. Munzel 1999: 262). Daniel Defoe's *Bildungsroman* is a description of the three stages and dimensions of Kant's education: namely, skilfulness, prudence and, finally, morality (see, for instance, *A*, 324 and above). The protagonist's moral development entered a crucial stage when he discovered the traces of cannibals on the island. His first reaction was very emotional: 'I could think of nothing but how I might destroy some of these monsters in their cruel bloody entertainment' (Defoe 1974 [1719]: 223). For weeks, Crusoe pondered the ways and methods at his disposal. Eventually, he reflected upon his own passions, and the moral principles behind his maxims: 'I began with cooler and calmer thoughts to consider what it was I was going to engage in' (Defoe 1974 [1719]: 226). In Kant's terminology, he started thinking for himself, overcoming or rather framing his passions, though not necessarily one's moral feeling (cf. *CPrR*, 159; *TP*, 283; *MM*: 399–400). His doubts revolved around four questions: first, did he have the authority 'to be judge and executioner upon

these men as criminals' (Defoe 1974 [1719]: 226)? Had they really offended or injured him to justify retaliation? Could they, in any way, understand that they were committing a crime? And finally, how would Crusoe know 'what God Himself judges in this particular case' (Defoe 1974 [1719]: 227)? Crusoe's reflection turned into an exercise in the enlarged way of thinking, by trying to see the problem from the perspective of the 'savages', by trying to overcome a Eurocentric perspective. Crusoe concluded that, though the natives' behaviour was 'brutish and inhuman', they had not injured him, and that only an injury – if they attacked him – or the attempt of one victim to escape would justify action on his part (Defoe 1974 [1719]: 227–8). Assessing the Spanish *conquista* was part of his reflection. If he, Crusoe, attacked the cannibals,

this would justify the conduct of the Spaniards in all their barbarities practised in America, where they destroyed millions of these people, who, however they were idolaters and barbarians, and had several bloody and barbarous rites in their customs, such as sacrificing human bodies to their idols, were yet, as to the Spaniards, very innocent people; and that the rooting them out of the country is spoken of with the utmost abhorrence and detestation by even the Spaniards themselves at this time, and by all other Christian nations of Europe, as a mere butchery, a bloody and unnatural piece of cruelty, unjustifiable either to God or man. (Defoe 1974 [1719]: 227–8)

In this dense passage, Defoe alluded to the 'cosmopolitan' criticism of Spanish writers such as Las Casas or Vitoria of their fellow countrymen's conduct in the New World (cf. Cavallar 2002: 75–119; Cavallar 2011: 20–4). The principles Crusoe – and, by implication, Defoe – referred to were those of the natural law tradition and also Kant's: the principle of injury (*laesio*), the true *dominion* of the natives, the injustice of fighting one injustice by committing another one (cf. Cavallar 1999: 99–101, 126–31). Whatever one may think about the overall success of Crusoe's train of thought, at least he tried to transcend the 'egoism of reason', and he attempted to orient himself following the normative ideal of the 'extended way of thinking'.

My second example relates to Kant's debate on race and culture with some of his contemporaries like Johann Gottfried Herder (1744–1803), Johann Daniel Metzger (1739–1805) and especially Georg Forster (1754–94; see Kleingeld 2012: 92–123 for a complete exposition). There can be no doubt that Kant was an outspoken racist at the beginning of the debate (see, for instance, *Observations*, 253; *Principles*, 174), and apparently was quite reluctant for a long time to concede any points to his opponents, in particular Forster, who became quite frustrated. One might defend Kant in that he tried to strike a proper balance between thinking for oneself (and not just submitting to the opinion of

others) and considering the opinions or perspectives of others: that is, between the first and second maxims of common understanding. Ultimately – namely, between 1792 and 1795 – Kant seemed to have had second thoughts on non-Europeans, racism, culture and the influence of geography. There can be no doubt that Kant's thought developed in new directions: in the second half of the 1790s, he criticised European conquests and colonialism (cf. *PP*, 358–9; *MM*, 353), defended the ways of life of hunters and pastoralists like the Hottentots (cf. *MM*, 266, 353) and restricted the concept of race to physiology (cf. Kleingeld 2007; Kleingeld 2009; Kleingeld 2012: 111–23). Whether all this amounts to an example of the enlarged way of thinking, with Kant ultimately arriving at a coherent conception of moral universalism and cosmopolitanism, will, in all likelihood, remain a topic of scholarly debate.

My third example is contemporary and has a clear cosmopolitan dimension: 'The colour-blind humanity of most of my teachers, strength in the face of tyranny, taught us lessons for the rest of our lives. Britain was our home,' Ed Husain wrote about his school experiences in London in his autobiography (Husain 2007: 2). The tyrants were the hoodlums of the National Front in the 1980s. At the age of sixteen, Husain (the pen name of Mohammed Mahbub Hussain) became an Islamic fundamentalist. However, the virtue, courage and apparent cosmopolitan disposition of some of his former teachers stayed in his mind. They 'helped me form a belief in Britain, an unspoken appreciation of its values of fairness and equality' (Husain 2007: 5). As a student, Husain could not help but admire the 'neutrality' or impartiality of his history teacher, Denis Judd, who did not conform to the stereotype that non-Muslims necessarily 'express enmity or animosity toward Muslims and Islam at any stage' (Husain 2007: 158). These experiences were one of the reasons why Husain managed to distance himself from fundamentalist doctrines later on. In Kantian terminology, these exemplary teachers Husain encountered also tried to practise the enlarged way of thinking, and perhaps had a cosmopolitan disposition.

A presentation of possible examples has to end with the caveat that they are necessary, but not sufficient (cf. Loudon 1992: 303, 306, 320–2): Any example must first be assessed 'as to whether it is also worthy to serve as an original example, that is, as a model; it can by no means authoritatively provide the concept of morality' (*G*, 408). It is therefore open to judgement, reflection and discussion. If they pass the test, examples can help one to become aware of one's own freedom of choice, of one's own 'cosmopolitan possibilities'.

When Sharon Todd, in her book on cosmopolitan education, is wary of the current academic enthusiasm about cosmopolitanism because it might turn into yet another 'ism' or ideology, and – following Hannah Arendt – argues for the cultivation of judgements in education, she does something very Kantian. 'Judgment is, quite simply, an engagement in a world rich with diversity; it is a cosmopolitan activity' (Todd 2009: 145; cf. 138–42 and 149–50). Kant has

emphasised the key role of judgement in the context of the love for all humans, which differs in degree. I am closer to some people than to others, but this does not necessarily violate the universality of the maxim (cf. *MM*, 451–2), and finding out whether it does or not requires deliberation and judging.

CONCLUSION

Kant's moral philosophy has had a 'difficult reception' in the English-speaking world – to put it mildly (Johnston 2007: 234; with illustrative examples, Johnston 2007: 235–7). Typical accusations have been that it is too formal, too rigorous, too idealistic, contradicting common human reason and therefore indefensible. Michael Hand concludes that Kant's theory is unsuitable for educational practice (Hand 2006). Even interpreters lenient with Kant, such as John Rawls or Lawrence Kohlberg, have apparently grossly distorted his educational theory, further contributing to confusion, misunderstanding and misinterpretation (see Johnston 2012: 177–92).

In this chapter, I have argued that Kant's moral educational theory is cosmopolitan in character, aiming at an enlarged, cosmopolitan way of thinking and disposition. This is a long-term process of helping children to form their own characters, and as a consequence, teachers and educators may feel they are almost powerless. No success is guaranteed, since this disposition is supposed to be the result of one's own moral freedom.

These didactics are at odds with contemporary educational culture in Western societies, which tends to emphasise success and usefulness in teaching and usually focuses on competences, skills and their evaluation. Lars Løvlie argues that educationists hostile to transcendental thinking sell short the ideas of moral freedom and self-determination:

That the Kantian approach is nearly absent in today's educational discourse can be explained by the inability of going beyond a taxonomy that translates the general aims of education into the particular pieces of knowledge or skills that can be taught and tested in the classroom. There is the professional inability to think abstractly and look beyond the restricted vocabulary of the social sciences. (Løvlie 2012: 119)

In a similar vein, Klas Roth points out that these limitations of educational scientists correspond with current policy texts in the European Union that encourage people to develop their skills and competences to become efficacious and useful members of consumer societies, thus turning these members into additional consumer or market commodities. Enlightened or mature citizens who are helped to dare to think for themselves, who are helped to cultivate their predispositions and acquire a moral character, are a subordinate end – if at all (cf. Roth 2012: 214–16). Criticism of this sort goes back to Kant: in the

Collins lecture, Kant attacked an understanding of education as a mere 'empirical system' based on 'custom', with norms simply 'borrowed from experience' (*Collins*, 27: 253). He argued for the primacy of moral cultivation over the perfection of natural capacities, identical with today's skills: 'moral goodness consists in the perfection of the will, not the capacities. Yet a good will needs the completeness and capacity of all powers to carry out everything willed by the will' (*Collins*, 27: 266). The second sentence makes it clear that capacities are subordinate, but not irrelevant. Skilfulness, prudence and judgement refined by experience are also important, but they are not ends in themselves. They are part and parcel of a proportionate development of one's personality or character, but they should not be taken for the whole thing.

No cosmopolitan 'values' in an everyday sense, disconnected from the ideas of self-legislation and moral freedom: this is Kant's unique methodology. He criticised previous forms of teaching with particular values devoid of any reference to the concept of moral freedom, and would also have criticised contemporary forms (for instance, today's so-called *Werterziehung* in German-speaking countries or the emphasis on 'social skills'). Kant's reminder for our times might be that taking the detour – preparing moral freedom – may be more arduous and complex, but it is the only rationally defensible method, and perhaps in the long run the only successful one.

DEDICATION

For our daughter, Valentina.

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IS THERE A COSMOPOLITAN IMPETUS BEHIND KANT'S DEFINITION OF TASTE AS THE DISCIPLINE OF GENIUS? AN APPRAISAL

Ștefan-Sebastian Maftai

This chapter seeks to explore the role assigned to Kant's idea of taste as the discipline of genius – articulated in the *Critique of Judgement* (1790) – with respect to a notion of freedom that would also prove important for the discussion regarding the moral and political development of mankind as a whole, an idea formulated by Kant in his writings on political philosophy and the philosophy of history. As we shall try to clarify in our chapter, the notions of 'public' and 'publicness'¹ are key elements both in Kant's cosmopolitan theory and in his theory of taste. More precisely, the issue is whether and in what way Kant's idea of genius corrected by taste elicits the possibility of a freedom seen in relation to what Kant called a 'cosmopolitan existence'. Thus, our text will inquire into the basic tenets of Kantian ethical and political cosmopolitanism in order to discover that universal freedom that is also elicited by Kantian aesthetics dealing with matters such as the creativity of genius or the freedom of the judgement of taste, a freedom that seems to appear both as a prerequisite for and as a consequence of the tasteful: for example, elegant genius. Throughout the inquiry, we will also make reference to modern authors previous to Kant, such as Jean-Baptiste Dubos or Alexander Gerard, who have canvassed the

issues of taste and genius and who, directly or not, have profoundly influenced Kant's thoughts on this subject.

THE PRINCIPLE OF PUBLICITY AND KANT'S COSMOPOLITANISM
AS THE ONLY WAY TO BE

At this point, we will set out to make a quick survey of Kant's main thoughts on cosmopolitanism with a view to emphasising his approach to cosmopolitanism as the ultimate *goal* of every political philosophy that would allow for the achievement of the greatest possible freedom of a rational subject. In other words, we will examine the 'cosmopolitan' way as ultimately the *only way to be* for a member of a civil community bound to ensure the achievement of the greatest possible freedom for all. As we will try to explain throughout this section of the chapter, the 'principle of publicity', which, although perhaps insufficiently discussed by Kant, is one of the leitmotifs of Kant's meditations on cosmopolitanism as a political and ethical idea, will show itself as an essential argument for Kant's endeavour to transform the apparently whimsical idea of a cosmopolitan way of living into a valid and coherent theory of cosmopolitan right. As for ourselves, without entering into any detailed discussion about Kant's cosmopolitan theory of right, we will survey only the general philosophical motivations that lie behind Kant's interest in 'publicity' and try to bring out only the particular lines of argument pertaining to our subject.

The German philosopher Immanuel Kant provides us with probably the best account of a modern theory of cosmopolitanism. Kant directly addresses or makes reference to the issue of cosmopolitanism in several of his writings: 'Idea for a Universal History with a Cosmopolitan Purpose' (1784), 'An Answer to the Question: "What is Enlightenment?"' (1784), 'On the Common Saying: "This May be True in Theory, but it does not Apply in Practice"' (1793), *Perpetual Peace: A Philosophical Sketch* (1795), *The Metaphysics of Morals* (1797) and 'The Contest of Faculties' (1798).²

In his 'Idea for a Universal History with a Cosmopolitan Purpose', Kant envisioned nature as endowing man with his greatest faculty, reason, defined as a faculty that contributes to the development of the human being far beyond its natural instinctive capacities (Kant 1991: 42). The purpose of nature in the case of man, Kant argues, reaches far beyond nature's own interests in the development of other species. In other words, man is not destined to be guided by instinct. Nature throws man into distress and conflict precisely because the purpose is to force him to secure his happiness or perfection 'without instinct and by its own reason' (Kant 1991: 43). At the same time, reason is not given to man innately – for example, 'instinctively' (Kant 1991: 42) – but as a faculty to be laboriously acquired by man himself: 'But reason does not work itself instinctively, for it requires trial, practice and instruction to enable it to progress gradually from one stage of insight to the next' (Kant 1991: 42) Thus, the

man endowed with something better than instinct needs to work painstakingly on the development of his own faculty of reason, as well as on all the other things that sustain his livelihood and beyond – through arts and sciences – attained with the aid of the afore-mentioned faculty. It is thus apparent, Kant argues, that nature ‘has willed’ (Kant 1991: 43) that man should not share the credit for creating his own destiny towards civilisation, for reaching beyond mere instinctual preservation and for ultimately seeking for the development of all his ‘innate capacities’ (Kant 1991: 44): ‘It seems that nature has worked more with a view to man’s rational *self-esteem* than to his mere well-being’ (Kant 1991: 43). There is thus a strong possibility (Kant talks about it in terms of *necessity*) that the end of mankind, the ‘development of all natural capacities [in man]’, is also ‘the highest purpose of nature [in relation to man]’ (Kant 1991: 45), and that the development of mankind – if we may *at all* suppose such a steady development of mankind not just from barbarism to civilisation, but, better yet, from a natural state towards a moral state³ – and the destiny of man in terms of a species are driven in history not through a ‘rational *purpose of [his] own*’ but instead through a ‘*purpose in nature* behind this senseless course of human events’, so that the history of man, ‘the everything as a whole’, is ultimately not ‘made up of folly and childish vanity’ (Kant 1991: 42), as it may appear at first glance.

On the other hand, desires are also part of man’s inheritance (desire for honour, power or property) and these desires make man initially unfit for society (Kant 1991: 44). This is where Kant’s idea of ‘unsocial sociability’ (Kant 1991: 44) comes forward. By unsocial sociability, Kant defines a paradoxical situation: for example, man’s ‘tendency to come together in society, coupled, however, with a continual resistance which constantly threatens to break this society up’ (Kant 1991: 44). What Kant describes here is a clash between two natural inclinations: the natural propensity to be part of a group (and to seek naturally for security within that group) and the natural tendency to break up from the others and to live independently (and to live in a state of dissatisfaction with the *status quo* and, finally, with oneself). On their own, these inclinations seem ultimately destructive to the social life of man as a civilisational being (or, at least, not constructive at all). What is important is the clash itself, which, apparently, creates equilibrium out of disequilibrium and, ultimately, progress. Thus, man’s individual desires showing independence may be considered as vices, since they display egotism and meanness towards others. Yet, in the great scheme of things, which is always worked out by the hand of Nature, man’s dissatisfaction with others and, finally, with himself, represents ‘the first true steps [. . .] from barbarism to culture’ (Kant 1991: 44).⁴ Therefore, precisely through the rejecting of society and of its *status quo*, man, dissatisfied with himself, will assert his own *social* value. He will become an important member of human society precisely by his ‘asocial qualities’ (Kant 1991: 45), which prevent him from indulging in

'laziness' (Kant 1991: 44) and in a security-seeking quiet life, resembling the instinctual life of the herd, its 'pastoral existence of perfect concord, self-sufficiency and mutual love' (Kant 1991: 45). His talents and qualities will never be awakened if man enjoys this tendency of living 'as good-natured as the sheep they tended', an obvious allusion to Rousseau.⁵ Without these nature-given desires that alienate him from the others, stirring up his ambitions and ultimately building up his self-esteem, his natural tendency to live securely and inactively amongst others will never allow him to reach the 'end for which [he] was created, [his] rational nature' (Kant 1991: 45). Because of these natural desires, opposing man's natural tendency to live pastorally and peacefully alongside others, in a 'pathologically enforced social union' (Kant 1991: 45), where everyone seems to live his own life without really deliberating about their actions and about their lives and the *purpose* thereof, man is capable of acquiring a 'capacity for moral discrimination' (Kant 1991: 44) with respect to his own life and to the life of others and really, *deliberately*, to live as a moral being in a civil society. As we shall see, the real step towards humanity stands in the solving of 'the greatest problem for the human species', which is the 'attaining of a civil society which can administer justice universally' (Kant 1991: 45).

Thus, the selfish desires for wealth, honour and power are exactly those that encourage him 'towards new exertions of his powers and thus towards further development of his natural capacities' (Kant 1991: 45). Precisely because of these desires, man will attain his development as a rational, therefore *social*,⁶ being. It is because

the highest purpose of nature [. . .] can be fulfilled for mankind only in society [. . .] in a society which has not only the greatest freedom [. . .] but also the more precise specification and preservation of the limits of this freedom in order that it can co-exist with the freedom of others. (Kant 1991: 45)

Here, Kant is quite specific about what kind of freedom he is referring to: it is the *freedom under law*.⁷ He explains it in the 'Sixth Proposition' from the 'Idea for a Universal History': as long as he is not living by himself, man 'needs a master', since, as he himself previously specified, his selfish passions are overwhelming and are always imposing on the freedom of others. Thus, because he wants to live as a 'rational creature', he will have to submit to a rational principle that will secure not only the freedom of others, but also his own freedom (even from himself). This rational principle is the law: 'he thus requires a master to break his self-will and force him to obey a universally valid will under which everyone can be free' (Kant 1991: 46). In this way, a law will secure rules for dos and don'ts that will allow the unhindered development of the freedom of individuals.

Ultimately, the task of living under a ‘civil union’ is not an accident; it is an imperative of reason, as it is set out by the purpose of nature, which manifests a specific tendency towards the complete development of ‘all natural capacities’ (Kant 1991: 50) in the case of the human species. This ‘highest task’, however, is also the ‘greatest problem’, as it consists in the attainment of a ‘civil society which can administer justice *universally*’ (italics added). It is particularly relevant, in my view, that Kant does not use, in his assertion, the adjective *universal* with regard to the noun but the adverb *universally* with reference to the verb. It is relevant, as this grammatical gesture of insisting on an adverb instead of an adjective may signify here something more than a slight difference in choice of words. Grammatically, the *process* of ‘administering justice’ is described here as being driven by a certain demand for universality, rather than ‘justice’ being in possession of the quality of universality. We will return to this right away.

At this point, I offer my interpretation. In his ‘Idea for a Universal History’, starting from the ‘Fifth Proposition’, Kant appears to seek out an answer to the following question: if the correct functioning of a civil society consists in ‘administering justice’ thoroughly, then how can one really *do* this? He answers this question in the ‘Sixth Proposition’: law is the necessary solution for administering justice in a society of citizens (Latin *cives*). *Law* is more equitable than man and, obviously, written law is more equitable and more reliable than unwritten, customary law. The more universal a law is – if we may say so – the more equitable it is. However, at this point, law’s secret, as it were, lies in the law not being universal without also being ‘universally’ – as Kant himself specifies: for example, in my view, without being addressable to everyone.⁸ The adverb ‘universally’ is not an accident; Kant uses it again in a phrase in the ‘Sixth Proposition’, although in connection with an adjective.⁹ Upon this argument, about law’s addressability,¹⁰ stands the idea that ‘civil society [. . .] can administer justice *universally*’.¹¹ In my opinion, this opens up the next level of discussion with reference to law: the political level. In my view, what Kant is anticipating here, in this text from 1784, is the *principle of publicity*,¹² which he will discuss briefly in his treaty on *Perpetual Peace* (1795) and to which he will allude in his 1793 ‘On the Common Saying: “This May be True in Theory, but it does not Apply in Practice”’ (see Kant 1991: 85).

This apparent anticipation of the principle of publicity with respect to law answers the initial question relating to how a law is able to secure justice universally. In my view, Kant distinguishes grammatically, but also rhetorically, between *universal* justice and justice *universally*, in order to determine more clearly the specificity of the universal character of law. This difference between *universal* justice and justice *universally* may be interpreted as a test for discovering the authenticity of law. Thus, one may address law’s universality in two steps: first, one asserts the law, also tacitly implying its universality. Yet, one’s mere assertion of a law and of its implied universal character does not make it

inevitably so. Therefore, one must also ascertain the universal addressability of the law, its 'publicisability'. This is because, according to Kant, the laws are *not* first and foremost theoretical postulations¹³; they are suppositions, statements one brings into the real, objective world – contentions that trigger real events – and, in consequence, they need an acknowledging of their universal character, for example, of their universalisability, according to the Kantian principle of the autonomy of reason. This is the transcendental condition for a law as law. Therefore, the universal validity of the law, which, at first, we may take for granted, is not really ascertained until its addressability, its publicisability is also guaranteed – Kant will use the term *Publizität*¹⁴ in later texts. Law, as a rule of reason, is always in need of a test of its own *Publizität*¹⁵ to ascertain its validity – there is thus no law without *being able to be* universally acknowledged or 'publicly acknowledged' (Kant 1991: 127).¹⁶ The law without public acknowledgeability is only a maxim, as Kant clearly contends in his example about the supposed 'right' to rebellion. It is also important to observe here that he does not use 'publicly known' when referring to a supposedly legally binding proposition that may (or may not) become law. He uses 'publicly knowable', in the sense of its being in a continuous process of acknowledgement, according to the same demand for universalisability of which every statement of reason is in need. Kant thus bases the grounding of a new justification for the rationality of law on the same fundamental notion of reason as 'a kind of norm that depends for its validity on the structured freedom and open scrutiny of communication' (Deligiorgi 2002: 154).

One may also ask why this publicity test is necessary to what we call 'law'. It is because, in matters of right and constitutional politics, where 'coercive laws' are in place, one must always have what Kant defines as a 'spirit of freedom', as 'in all matters concerning universal human duties, each individual requires to be *convinced by reason that the coercion which prevails is lawful* [italics added], otherwise he would be in contradiction with himself' (Kant 1991: 85).¹⁷ The idea of *freedom under law* is present again here, with respect to laws being perceived as rational for the subject that is obeying them wilfully. This is, once more, the whole rationale of being a subject under a 'just civil constitution', as he explained earlier in the 'Fifth Proposition' of his 'Idea for a Universal History'. It is obvious, therefore, that this principle of publicity is extremely helpful, especially with reference to matters that concern universal rights: for example, 'matters affecting mankind as a whole' (Kant 1991: 86). Publicity, as a standard against which any legal proposition should be measured, is thus a sound expression of the basic 'natural vocation of man to communicate with his fellows' (Kant 1991: 86). Otherwise, without this basic natural tendency being fulfilled rationally, every non-publicisable 'law' would just mean 'obedience without the spirit of freedom' (Kant 1991: 85), signifying something that is below the moral standards of a rational human being.

Yet, how does all this relate to cosmopolitanism? As a principle, cosmopolitanism is the regulating principle, the 'idea' of Kantian political philosophy. As an 'idea', it 'remains correct', even if the 'perfect state should never come about' (Kant 1991: 191).¹⁸ The task of bringing a constitution to 'its greatest possible perfection' may be an infinite one, since the rational 'progress' of mankind is unbounded – the limit of the human progress is freedom itself (Kant 1991: 191). Kant will assume that a 'cosmopolitan constitution' (Kant 1991: 90),¹⁹ a constitution based on 'cosmopolitan right' (Kant 1991: 98),²⁰ where human persons are 'citizens of a universal state of mankind' (Kant 1991: 99), is sometimes not a political reality, but a work in progress, an idea on the way to its execution, yet not 'fantastic or overstrained' (Kant 1991: 108). The 'idea of a cosmopolitan right' is thus not a fantasy; as a 'complement to the unwritten code of political and international right', it transforms international right into 'a universal right of humanity' (Kant 1991: 108). As a matter of policy, cosmopolitanism is set as a political 'goal' (Kant 1991: 53), in accordance with the idea of the greatest possible human freedom. Thus, cosmopolitanism embodies the cosmopolitan 'idea' in a cosmopolitan right guided by publicity. What cosmopolitanism envisions as a policy (in the making) is a 'universal cosmopolitan existence' (Kant 1991: 51),²¹ based on the 'necessary idea' embodying 'the greatest possible human freedom in accordance with laws which ensure that the freedom of each can co-exist with the freedom of all the others' (Kant 1991: 191)²² and is 'the highest purpose of nature' (Kant 1991: 51).²³ This cosmopolitan existence is basically the condition for the development of all the other capacities of the human race: 'a universal cosmopolitan existence will at last be realized as the matrix within which all the original capacities of the human race may develop' (Kant 1991: 51). Kant is also very specific about the necessity for a political reality elicited by a 'public right'. He mentions this in the last paragraph of the *Perpetual Peace*, when referring to his political dream of a perpetual peace between nations:

If it is a duty to bring about in reality a state of public right [. . .] and if there are also good grounds for hoping that we shall succeed, then it is not just an empty idea that perpetual peace will eventually replace what have hitherto been wrongly called peace treaties [. . .]. (Kant 1991: 130)

In light of the necessary consequences resulting from the project of a cosmopolitan right that should encapsulate in *public* law the universal principles of humanity or, as we might say, the politics of humanity, Kantian cosmopolitanism appears as the only way to be, or as the ultimate policy for mankind; in addition, it is necessary that this policy should also be a political reality, that it should act as a guarantee – in terms of universal rights, written in law – for preserving the humanity of every member of the human species.

A MASTER AND HIS MASTERSTROKE: DUBOS

So far, our discussion has reached only the subject of political and moral cosmopolitanism and its relationship to publicity. This section and the following one will get closer to the matter under discussion, which is genius and its relation to taste. However, our inquiry has not yet attended to the subject of genius, as described in Kant's 'Critique of Judgement' (1790). This is because the detour we are about to take throughout modern aesthetics is essential to the matter, as we shall see. In this section, we shall take into consideration the work of perhaps a lesser-known critic of the first half of the eighteenth century, the Frenchman Jean-Baptiste Dubos (1670–1742), otherwise known as Abbé Du Bos, a name bearing no apparent relation whatsoever to Kant and the German aesthetics of the second half of the eighteenth century. Dubos published his masterwork on art theory and aesthetics, *Réflexions critiques sur la poésie et sur la peinture*, in 1719 (in two volumes, often reprinted in three volumes thereafter).

Remarkably, Dubos is one of the earliest to have outlined the basic tenets of what we nowadays take for granted in aesthetics: notions such as *genius*, *fine arts*, *criticism*, *public*, *aesthetic judgement*, *aesthetic taste* and so on. Through the work²⁴ he published in 1719, he earned such wide acclaim that he was elected a member of the Académie française in 1720. In 1748, an English translation by Thomas Nugent, entitled *Critical Reflections on Poetry and Painting*, was published in London in three volumes (Dubos 1748). With his work, Dubos appears almost to have been the inventor of what we know today as critical art theory. His work inquires not into the lives of the artists, as many since the Renaissance have done, but into the causes of artistic creativity and inventiveness, into the formation of judgements of taste, into the role of the public in establishing a work's reputation, into the causes of progress in the arts, into the relationship between progress in the arts and the political and economic setting in which these arts develop, and so on. In the second volume of his *Critical Reflections*,²⁵ Dubos analyses both the causes of artistic genius and inventiveness, and the role of taste in the appreciation of a work of art. In this second volume, Dubos also provides a very important description of the role played by the *public* in the appreciation of the value of a work of art.

Dubos's introduction to the problem of genius in general and the artistic genius of poetry and painting in particular begins conventionally: a genius is marked by his capacity for invention (Dubos 1748: 4).²⁶ Genius is also endowed with what the ancients called *facilitas*, the ability to 'perform well and easy, that which others can do but indifferently, and with a great deal of pains' (Dubos 1748: 5). He associates genius with imagination and judgement, and also specifies that the activity of genius cannot be accounted for by any kind of 'art' (by 'art', he means any activity carried out according to rational

rules and therefore able to be transmitted to someone else). Without a relation to 'art', the activity of genius makes its possessor into a child of nature. A genius, therefore, cannot be accounted for and cannot account for himself by any kind of rational rule: 'of all impulses, that of nature, from whom he has received his inclinations, is much the strongest [. . .] he makes himself known to others for what he is, when he does not yet know it himself' (Dubos 1748: 18–19). Being a child of nature, the genius cannot be hindered by medium or education. He owes his capacity only to himself: 'there is no obstacle unsurmountable to the impulse of genius [. . .]. Education [. . .] is unable likewise to deprive them of this genius' (Dubos 1748: 24, 25). Genius thus appears as a self-creation, as a gift of nature forming out of itself (Dubos 1748: 32).²⁷ This idea of genius as purely spontaneous, natural, arising organically out of its own creative powers, is a precursor to the idea of Romantic genius, which will not fully flourish until the end of the eighteenth century. The idea of genius as purely natural and spontaneous, relating particularly to the arts (and especially to arts such as painting, poetry and music), contrary to every art that seems 'mechanical' (Dubos 1748: 29),²⁸ will have a lasting influence upon modern aesthetics, including Kant, as we will see.

A genius, therefore, cannot be educated: in other words, cannot be influenced by the world. Rather, it is his education that is the product of his genius, and not that his genius is a result of his education: 'tis not a man's acquired learning that renders him a poet; 'tis his poetic genius that is the cause of his learning' (Dubos 1748: 30). The genius not in contact with the world, and not being able to be influenced by the world: this is a pre-Romantic view of genius as a weird, absent-minded, reclusive, unworldly creature:

wherefore a young painter, whose mind is intirely taken up with ideas relating to his profession; who is not so expeditiously fitted, as other young fellows his equals, for the conversation and practice of the world; who appears whimsical in his vivacity; and whom an absence of mind proceeding from a continual attention to his ideas renders aukward in his manners and carriage [. . .] his very failings are a proof of the activity of his genius. (Dubos 1748: 42)

This is the exact opposite of the image of an educated, conversant, mannered genius. Dubos continues with his imagery in the description of the causes of progress in the arts from previous centuries: since the life of the arts is so much indebted to genius, progress in the arts is not influenced so much by social or economic conditions as by the sudden rise of geniuses at a certain moment in time. For example, Dubos argues, Rome, in the sixteenth and seventeenth centuries, was populated by 'men without predecessors to imitate, and elites of their own genius' (Dubos 1748: 132). *This* is the cause of the sudden rise of the

Italian arts, and not prosperity. Likewise, he adds, 'our [French] poetry rose up, as it were, in an instant' (Dubos 1748: 134).

From Chapter XXI onwards,²⁹ the second volume discusses the reputation of artists and the way in which this reputation is forged. Dubos identifies at least two kinds of 'critics' that would, by their judgements, influence the reputation of the artworks: the artists' peers, who also play the role of professional critics or connoisseurs, and second, the general public (Dubos 1748: 235).³⁰ In particular, this part analyses the way in which the aesthetic value of an artwork is established in society. This aspect is very important, since at this point Dubos introduces a special standard for judging the value of an artwork: the critic's *sentiment*, which reflects itself in *opposition* to *reason*. More specifically, Dubos identifies the 'effect' that an artwork has upon its spectators as the most important argument in the formulation of the critic's judgement of the artwork's value. To be sure, the attribute *aesthetic* never appears in Dubos, since the term *aesthetic*, as it is used nowadays, will be coined only several decades later. However, the fact that he is discussing what Kant will later call 'aesthetic judgment' is unquestionable.

When referring to the judgement made by the artwork's *public*, he unequivocally defends the judgement of the public as *superior* to that of the professional critic or the connoisseur. The main argument for this is that the general public's judgement is 'disinterested', whereas the critic is partial, and often wrong in his verdicts:

This first time [the time of criticism by men of the same profession] being elapsed, the public appraises a work to its full value, and gives it the rank due to its merit [. . .]. 'Tis never deceived in this decision, because it judges disinterestedly, and likewise by a sensible perception. (Dubos 1748: 236)

By contrast, a fellow painter and poet is partial, subjective and interested (Dubos 1748: 236). The main quality of a public is its freedom of judgement in its sentiments relating to the work in question:

They are ready to speak their opinion with as much freedom, as friends and fellow-boarders at the same house give their sentiment with regard to a cook, whom the master of the house has a mind to make a trial of. This is a judgment which cannot be said to be one of the least equitable in our country [. . .]. The public gives not only a disinterested judgment of a work, but judges likewise what opinion we are to entertain of it in general, by means of the sense [. . .]. Since the chief end of poetry and painting is to move us, the productions of these arts can be valuable only in proportion as they touch and engage us. (Dubos 1748: 237)

Thus, the public passes not only a disinterested judgement, but also a value judgement on the work, a judgement made according to the effect on our sentiment. Their sentiment is always better than the ‘reason’ of the ‘critics’:

Now our senses inform us whether a work touches or makes a proper impression upon us, much better than all the dissertations composed by critics, to explain its merit, and calculate its perfections and defects. The way of discussion and analysis, which those gentlemen employ, is indeed very proper, when the point is to find out the causes why a work pleases or not; but this method is inferior to that of the sense, when we are to decide the following question: Does the work please, or does it not? Is the piece good or bad in general? For these are both the same thing [. . .]. Reason therefore ought not to intervene in a judgment which we pass on a poem or picture in general [. . .]. Reason will not permit us (if I may say so) to reason on a question of this nature, unless it be designed to justify the judgment which the sense has passed. The decision of the question does not belong to the jurisdiction of reason: This ought to submit to the judgment pronounced by sense, which is the competent judge if the question. (Dubos 1748: 237)

What he is referring to here is what Kant will later call a ‘judgment of taste’ (without, however, being warranted in the manner it is warranted in Kant): the specificity of a judgement of taste is its disinterestedness and also the fact that it is a judgement pertaining not to reason, but to our feeling of pleasure and displeasure.³¹ Thus, Dubos argues, there are no ‘geometrical principles of taste’, and what the public offers is a ‘decision of our senses’, which is ‘previous to all deliberation’, in contrast to the discussion and analysis that are specific to critics (Dubos 1748: 238–9). In sum, the real value of an artwork (in poetry and painting) is to ‘please us’ (Dubos 1748: 242).

A few pages later, Dubos inquires about the nature of the ‘public’ and reaches the conclusion that a public is made up of literate, educated persons. However, since what is required in our judgements of the artworks are the decisions of our senses, ‘in some excellent works one meets with beauties that are capable of making an impression upon the vulgar’ (Dubos 1748: 245). This remark seems to open a further discussion, which I infer from Dubos’s observations: is this capacity of making a judgement of taste available to everyone? It may be, since, as Dubos observes,

as the chief aim of poetry and painting is to move and please us, every man who is not absolutely stupid, must feel the effect of good verses, and the fine pictures. All men *ought to be* [italics added] in possession of a right of giving their suffrage, when the question to be decided is, whether poems or pictures produce their proper effect. (Dubos 1748: 248)

What we can derive from this – at least as a source – is what Kant will later discuss as being the aesthetic judgement's claim to universality, a claim that, as Dubos appears to show, is made possible only by the judgement of the general public. In the same discussion, Dubos reasserts the fact that, in the assessment of the value of an artwork, we, as public, judge only the effect of the work, not the rules for the production of the work. Thus, we do not have to know how to read music to assess if a musical work has a pleasing effect or not. The key argument here is, it seems, that the right to pass judgement on the effect is indeed possessed by everyone who makes up the public; however, the right to judge the rules by which a work is made is limited to the connoisseur: 'What opinion should we have of a musician, were he to maintain, that such as do not understand music, are incapable of judging whether the minuet he has composed, be agreeable or not?' (Dubos 1748: 248).

The right to pass judgement on the effects of the artwork is for everyone, Dubos argues. In theory at least, all the members of the public may judge if a work is pleasing or not. This 'universal' right – without using this term in a Kantian sense, Dubos adds, is provided by sense and not by reason. All of the present discussion is of pivotal importance to Kant's later discussion of the claim of universality with respect to judgements of taste.

Dubos is claiming that we should '[pay] deference to the general sense of the public' (Dubos 1748: 248) and that 'the public is seldom mistaken' (Dubos 1748: 259).³² However, 'artists therefore judge ill in general' (Dubos 1748: 270), and since the impediments to their freedom of judgment are personal vanity and professionalisation, they are very often 'prejudice[d]' (Dubos 1748: 277). On the contrary, the public will ultimately develop a 'general taste of mankind' and form a correct opinion of the work in question (Boileau qtd in Dubos 1748: 273–4).³³ This public will always disclose a 'sentiment of judicious and disinterested persons' (Dubos 1748: 277).

Moreover, Dubos adds not only that the public judges correctly by its sentiment and that it judges better than the critics, but that the members of the public communicate their preferences and therefore their pleasure to one another, thus forming – we might say – a community of persons sharing their common pleasures or displeasures. On my reading, there is thus a feeling of equality arising here, a feeling of equality forming out of the ability of the members of the public to share their preferences, which come from their common sentiment. This element reminds us of what Kant will later define as the 'communicability of pleasure' (Kant 2008: 121–2), which, according to him, allows communication beyond the limits of reason, with respect to aesthetic pleasures, but also with respect to sensation. Nevertheless, in Kant, with respect to that pleasure arising from the 'agreeableness or disagreeableness derived from the sensation of one and the same object of the senses [. . .] it is absolutely out of the question to require that pleasure in such objects should

be acknowledged by everyone'. *Only* in the case of the 'pleasure in the beautiful' is a universal communicability possible:

This pleasure must of necessity depend for everyone upon the same conditions, seeing that they are the subjective conditions of the possibility of a cognition in general, and the proportion of these cognitive faculties, which is requisite for taste is requisite also for ordinary sound understanding, the presence of which we are entitled to presuppose in everyone. (Kant 2008: 122).

What Dubos provides us with here is not a philosophical justification of the possibility of the universality of the communication of pleasure, as Kant will do, but something no less important: a basic intuition about the public sharing a common feeling in the judging of an artwork. When speaking about the audience in a theatre, Dubos specifically points out that they communicate their sentiments to one another as a public: 'the public is assembled to pass judgment on the pieces of the theatre, and those who are there convened, soon communicate their sentiments to one another' (Dubos 1748: 287). Moreover, he speaks of 'embracing the sentiment' of a fellow member of the public as a way, not of being equal to him, but of recognising that he is superior to us due to his judgement, in the case when he is less experienced than us on the subject in question:

To embrace the sentiment of a person who has no more experience than ourselves, is acknowledging in some measure that he is a man of better sense and understanding. [. . .] But to believe the artist, and to pay a deference to the opinion of a man who is of a profession which we are not so well acquainted with, is only shewing a respect to the art and paying homage to experience. (Dubos 1748: 278)

We will conclude this section by discussing the matter of genius and taste in Dubos. First, it is evident that Dubos does not make the connection between genius and taste obvious, but rather prefers to give a 'Romantic' spin to the image of genius as an immoderate, unmannered, unsocial figure. Second, he does acknowledge, in the second part of the second volume, when discussing the 'sense' of the genius with respect to common spectators, that genius 'is always accompanied with a more exquisite sense' (Dubos 1748: 268) than others. However, he remains sceptical throughout that the genius may be educated by taste or that he may somehow himself be a part of the social and conversational life of the world of his contemporaries.

All these disparate elements, concerning taste, genius and public judgement, will find their own way into Kant's masterwork of modern aesthetics,

the *Critique of Judgement*. Thus, it is already evident that many basic elements from Dubos's theory of the judgements of taste with respect to the appreciation of the works of poets and painters have found their way into Kant's later development of these matters. The quality of disinterestedness with reference to the public's judgement, the difference between reason and sentiment in the appreciation of critics in contrast to the general public, the value given to the justness of the public's appreciation, the basic intuition about the commonality of feeling with respect to the members of an audience – all these are reflected and converted into a whole new theory justifying the possibility of the universal legitimacy of the judgement of taste.

GERARD AND KANT: THE TASTEFUL GENIUS

The relation between genius and taste is rather briefly explained in Kant's *Critique of Judgement* (1790) (Kant 2008: §48, §50). There, Kant stresses the necessity of a connection between genius and taste only with regard to fine art. The basic idea is that 'taste, like judgement in general, is the discipline (or corrective) of genius' (Kant 2008: 148). Actually, Kant's source in this matter is a British–Scottish author, Alexander Gerard (1728–95), a professor of moral philosophy and logic at Marischal College in Aberdeen (from 1752), then (from 1773) professor of divinity at King's College in the same city. His works on aesthetics – 'An Essay on Taste' (1759) and 'An Essay on Genius' (Gerard 1774: 391–416) – were praised by his contemporaries, such as Adam Smith and David Hume, and were known in Germany through translations. The 'Essay on Taste' was translated in 1766; the 'Essay on Genius' was translated by the German philosopher Christian Garve in 1776.³⁴

Gerard describes genius as many others before him; he sees in genius the 'faculty of invention' *par excellence*. Technically, invention is the power of creating the new, 'producing new beauties in works of art, and new truths in matters of science' (Gerard 1774: 27). He connects invention directly to the imagination, by ascribing genius to this specific faculty of mind: 'to the imagination, invention is accordingly referred, even by the generality of mankind' (Gerard 1774: 31).³⁵ He also describes genius as pertaining to both science and the arts. He assigns to genius the capacity of making, of producing. The main characteristic of genius is its originality. A man can acquire taste, yet without this capacity for invention, he will never earn the title of genius:

Genius is properly the faculty of invention; by means of which a man is qualified for making new discoveries in science, or for producing original works of art. We may ascribe taste, judgment, or knowledge, to a man who is incapable of invention; but we cannot reckon him a man of genius. (Gerard 1774: 8)

As well as being characterised by ‘copious and boundless invention’ (Gerard 1774: 12), genius is known for having the ‘privilege of transgressing established rules’ (Gerard 1774: 14).

As for the subject of taste and genius, Gerard’s comments will help us explain some of Kant’s laconic observations on genius. First, there is the difference between imagination and judgement, which is important. He distinguishes between a ‘man of mere judgment’ and a ‘man of genius’, by bestowing much more importance on the latter than on the former in the process of invention:

A bright and vigorous imagination joined with a very moderate judgment, will produce genius, incorrect, it may be, but fertile and extensive: but the nicest judgment unattended with a good imagination, cannot bestow a single spark of genius. It will form good sense, it will enable a man to perceive every defeat and error in the discoveries of others; but it cannot qualify him for supplying these defeats, or for being himself the author of any new invention. A man of mere judgement, is essentially different from a man of genius. The former can employ his reason only on subjects that are provided by others; but the latter can provide subjects for himself. This ability is owing solely to his possessing a comprehensive imagination, which the former wants. (Gerard 1774: 38)

Second, Gerard states that taste is ‘essential’ (Gerard 1774: 390) to artistic genius: ‘but another kind of judgment, that which pronounces concerning beauty, and is ordinarily called “taste”, is essential to such genius’ (Gerard 1774: 392). The basic effect of taste upon the unbridled freedom of the imaginative genius was

restraining, regulating, and directing fancy; surveying the conceptions which that faculty has suggested, approving them when they are suitable to it, perceiving what is faulty, rejecting what is redundant, marking what is incomplete, correcting and perfecting the whole. (Gerard 1774: 392)

In sum, Gerard sees two fundamental ways in which taste could relate to genius and his art. First, taste is inherent to the production of genius: without the taste that helps in forming a judgement, a genius would not be able to finish anything: ‘were the painter incapable of forming a judgment of his designs till he had actually put them upon canvas, he could scarce ever finish a single picture’ (Gerard 1774: 394). Second, taste is able to render a genius ‘in some sense universal’: ‘When a taste so perfect is united to a vigorous imagination, it produces genius in some sense universal, fit for rendering its work really, though not equally, excellent in all respects’ (Gerard 1774: 410–11). In the work of a

genius corrected by taste, art acquires its so-called 'universality', its propensity towards being a work of art so faultless that its message is able to reach the hearts and minds of *every* human being.

With respect to the theory of genius, Gerard's approach to genius and taste is directly reflected on to Kant's own theory of genius: Kant acknowledges genius's essential relation to imagination, but also to the understanding (Kant 2008: 145),³⁶ and ascribes to 'originality' the quality of being the 'primary property' of genius (Kant 2008: 137).³⁷ He also determines that genius is that part of nature that belongs to production and that is bestowed upon our faculties and, finally, whose way of producing and whose product cannot be explained by any rule (in consequence, genius cannot be educated *as* genius – an idea also found in Dubos). Nevertheless, the productions of genius are not absurd; they may therefore be taken as *exemplary* by others. A genius cannot explain – for example, 'scientifically indicate' – his way of arriving at the rule, but he can instead give the rule 'as nature'.

As for the relation between imagination and judgement, the explanation of this relation stands at the basis of Kant's attempt to place genius and taste together when exposing his theory of genius (Kant 2008: §50: 'The combination of taste and genius in products of fine art'). It is clear that judgement is key in forming a 'judgment of art as fine art'; therefore, 'it is only in respect of judgement that the name of *fine art* is deserved' (Kant 2008: 148). In the case of the beauty to be contemplated in works of fine art, the 'imagination in its freedom should be in accordance with the understanding's conformity to law'. For, as Kant states, 'in lawless freedom imagination, with all its wealth, produces nothing but nonsense; the power of judgement, on the other hand, is that faculty that makes it consonant with understanding' (Kant 2008: 148). Thus, with respect to genius and taste, representatives of imagination and judgement, the correcting of genius through taste 'introduces a clearness and order into the plenitude of thought and in so doing gives stability to the ideas, and qualifies them at once for permanent and universal approval, for being followed by others, and for a continually progressive culture' (Kant 2008: 148).

KANTIAN REPERCUSSIONS: THE COSMOPOLITAN EFFECT OF TASTE UPON GENIUS

We have already observed that all the major themes present in Dubos are reflected and converted in the *Critique of Judgement* into a whole new theory. This new theory of taste is founded on the basic assumption that the judgement of taste has a public character. However, this is not something new. What is new is Kant's attempt at justifying, not the existence of an empirical judgement of taste reflecting the appreciations of an empirical public, but the

very possibility of a universal legitimacy of the judgement of taste, a legitimacy guided by an ‘idea of a public sense’ [*gemeinschaftlicher Sinn*], envisioned as a faculty of judging that should reflectively be able to have *a priori* in view everyone else’s ‘representation’: in other words, to account for a universalisable ‘public sense’ in aesthetic terms. This section will unfold how concepts such as ‘public’ and ‘cosmopolitanism’ translate into Kant’s theory from the *Critique of Judgement*, how these concepts appear analogously to their counterparts in Kant’s theory of the communicability of reason, and how this complex theory of taste is ultimately connected to Kant’s notion of genius.

With respect to the notion of public, what is striking in the *Critique of Judgement* is that the term ‘public’ (*das Publikum*) appears only a few times. Moreover, when he refers to ‘public’, Kant makes reference to the ‘judgment of the public’ (*das Urtheil des Publikums*) (Kant 2008: 112) in a negative sense, when referring to a young poet who listens more to the ‘judgment of the public’ than to his own individual taste:

Besides, every judgement which is to show the taste of the individual, is required to be an independent judgement of the individual in question. There must be no need of groping about among other people’s judgements and getting previous instruction from their delight in or aversion to the same object. Consequently, his judgement should be given out *a priori*, and not as an imitation relying on the general pleasure a thing gives as a matter of fact. (Kant 2008: 112)

In other words, with respect to the ‘autonomy of taste’ (Kant 2008: 112),³⁸ the taste of others can be a hindrance to the liberty of individual taste. One explanation for this situation might be the fact that Kant simply wants to put aside all the ‘a posteriori sources of taste’ (Kant 2008: 112) as unreliable for the justification of a real autonomy of taste. The public’s judgement would be a hindrance in this case. This is an argument that raises a strong objection to Dubos’s theory of just taste as the prerogative of the general public. It would seem – Kant would argue – that Dubos’s notion of a *public* simply does not satisfy the justification of a claim for the universality of taste with respect to aesthetic judgements.

On the other hand, the English rendition of the *Critique of Judgement* keeps the term ‘public’ in translation – correctly, in my view – when referring to Kant’s explanation about ‘taste as a kind of “sensus communis”’, since Kant understands ‘sensus communis’ as a public sense: ‘by the name *sensus communis* is to be understood the idea of a public sense [*die Idee eines gemeinschaftlichen Sinnes*], for example a faculty of judging which in its reflective act takes account (*a priori*) of the mode of representation of everyone else’ (Kant 2008: 123). A few pages later, Kant again discusses the universal communicability of

pleasure, this time addressing taste 'with more justice [as a] *sensus communis*' and adding that the

aesthetic judgment [. . .] can bear the name of a public [*gemeinschaftlich*] sense, for example taking it that we are prepared to use the word 'sense' of an effect that mere reflection has upon the mind; for then by sense we mean the feeling of pleasure. (Kant 2008: 125)

It is thus a universally communicable feeling that bears the attribute of 'public'³⁹ in this case. In sum, what Kant envisions here is not a real audience, but an ideal public, resulting from a universally communicable pleasure that is, as the 'pleasure in the beautiful', neither a 'pleasure of enjoyment nor of an activity according to law, nor yet one of a contemplation involving subtle reasoning in accordance with ideas, but rather of mere reflection' (Kant 2008: 122).

Nevertheless, what is striking at this point is not that Kant rejects as unwarranted the empirical justifications for judgements of taste, or that common sense can never be justified based only on an empirical community of feelings, according to his theory. What is striking is the coherence of the theory of the autonomy of reason with the theory of the 'autonomy of taste' from the third *Critique*. According to Kant, reason is an 'active principle' as well as a 'capacity to judge autonomously'. The fundamental demands of this faculty of reason are 'universalisability, publicity, communication' (Deligiorgi 2002: 143–4). These demands, most remarkably, also appear with respect to Kant's theory of taste: the purpose of his theoretical endeavour in the *Critique of Judgement* is to assess the possibility of universalisability, publicity and communicability in relation to aesthetic judgement. What Kant seeks to defend is the universal communicability of the aesthetic feeling, its 'publicisability' and, ultimately, its universalisability. Moreover, our aesthetic capacities have to account for our critical powers of aesthetic appreciation; our aesthetic autonomy is an 'active principle' as important as reason itself. The 'use' of our aesthetic taste, analogous to the use of reason, is, we might speculate, characterised by 'inclusiveness' and 'publicity', just as reason is: inclusiveness means that 'anyone' can enjoy it; publicity means that the appreciations of our taste are addressed to the 'world at large' (Deligiorgi 2002: 145). Also, the universalisability, communicability and publicity, in this case, reveal a strong 'normative' impetus, just as in the other case. Kant keeps the connection between aesthetic autonomy and universalisability as well as in the case of the faculty of reason. To employ one's own feeling, it would seem, drawing on Kant's famous phrase, does not mean to use the mere power to assert one's own feeling, but rather to employ one's own aesthetic feeling as 'other-directed activity', in 'according others an equal right' to make use of their aesthetic feelings for themselves. This signifies that the 'practice' of tasting aesthetically is a 'practice of communication', which is

‘integral’ to aesthetic autonomy, as ‘it enables us to recognize the requirements of autonomous [aesthetic feeling] and also how they apply to us’ (Deligiorgi 2002: 147–8). Thus, the above-mentioned fragment from the *Critique of Judgment* concerning the error of succumbing to the ‘judgement of the public’ in matters of taste might be read as analogous to the maxims of guiding one’s own reason from the ‘Lectures on Logic’: ‘to think for oneself’; ‘to think for oneself in the position of someone else’; ‘always to think in agreement with oneself’ (Deligiorgi 2002: 148). Precisely, Kant’s remark about the autonomous use of one’s judgement of taste would correspond to the *Selbstdenken*, the maxim that forbids us to adopt a ‘preliminary judgement [. . .] without having undertaken the necessary examination and reflection’ (Deligiorgi 2002: 149). Kant’s normative statement from the *Critique of Judgment* is explicit and reflects precisely this necessity on the side of the subject to insist on her capacity for self-critical autonomous response and public communication: ‘every judgement which is to show the taste of the individual, is required to be an independent judgement of the individual in question’ (Kant 2008: 112).

With respect to cosmopolitanism, there is just one reference to this concept in the *Critique of Judgment*, although it is a very important one (‘Critique of Teleological Judgement’, §83: ‘The ultimate end of nature as a teleological system’). There, in the context of discussing the ends that nature sets for man, Kant shows that the ‘ultimate end’ set by nature is the ‘end that lies outside it’: for example, ‘the production in a rational being of an aptitude for any ends whatever of his own choosing, consequently of the aptitude of a being in his freedom’. This end is called ‘culture’ (Kant 2008: 260). For this end to be able to be constantly developed, a ‘formal condition’ is necessary ‘under which nature can alone attain [. . .] its real end’. This formal condition resides in the ‘existence of a constitution so regulating the mutual relations of men that the abuse of freedom by individuals striving one against another is opposed by a lawful authority centred in a whole’ (Kant 2008: 261). This is the ‘civil community’. Another prerequisite, in order to be able to fulfil the ‘ultimate end’, is a ‘cosmopolitan whole’ (Kant 2008: 261). This cosmopolitan condition is thus a formal prerequisite for the achievement of the ultimate human end, which is ‘culture’. Alongside this cosmopolitan whole, Kant contends, a ‘discipline of inclinations’ is necessary for the attainment of the final end of man – something that should ‘prevail over the rudeness and violence of inclinations that belong more to the animal part of our nature’, hindering our course towards a ‘higher vocation’. The ‘development of our humanity’, Kant asserts, can also be acted out through ‘fine art and sciences’, which, although they do not ‘make man morally better’, make him at least ‘civilized’, as in the case of the fine arts, by ‘conveying a pleasure that admits of universal communication and by introducing polish and refinement into society’ (Kant 2008: 262). These arts and sciences prepare man for the ‘sovereignty in which reason alone shall have

sway' (Kant 2008: 262). They prepare this sovereignty by addressing the ideal demands (in the form of transcendental principles) with respect to faculties besides reason, such as the faculty of judgement, which regulates our universal communication of pleasure.

According to commentators such as Christian Donath (2013), art serves a 'heuristic function' with regard to the Kantian conception of freedom. Specifically, Kant would suggest, according to this reading, that artistic experience should put people in contact with a freedom seen as self-legislation, in accordance with the claim that freedom means obeying one's universal moral law and not infringing the freedoms of others. Thus, the image of the genius – for example, of the unbridled freedom of the imagination being restrained by taste – serves a 'heuristic function' with regard to freedom, and suggests that freedom itself cannot be enjoyed as licence, but as 'bounded' freedom, as self-legislation. Taste, he adds, basically plays a role analogous to that of civil law: 'like civic law, taste erects standards to guard against excessive freedom' (Donath 2013: 22). More precisely, taste acting analogously to the faculty of reason, as we have already observed, marked by the autonomy of decision (combined with public communication) with respect to aesthetic appreciations, is perfect training for the teaching of 'right and wrong' (Deligiorgi 2002: 147) in relation to our decisions not only on aesthetic matters but also on moral matters. This principle of communicability to which our aesthetic taste submits might function only as a 'negative' principle, in signalling the presence of bad taste. However, even in this case, it may signal the 'infringements' that bad choices in taste may make on our own freedom as aesthetic critics, and also on the freedom of others. This mechanism, when put into practice, is enough to instruct us about the formal manner in which our (hypothetically) moral judgements should reveal our moral freedom or be guarded against those that infringe on it.⁴⁰

CONCLUSION

This chapter consisted of two major parts, one about Kant's political philosophy and another about Kant's aesthetics, with a digression that was necessary for us to be able to survey the historical relevance of concepts such as 'public' or 'genius' to Kant's aesthetic theory. The major thrust of the chapter was the concept of 'publicity', which, as we tried to show, really sets up the link between Kantian aesthetics and Kantian political philosophy.

What we have been able to observe throughout the chapter is the systemic coherence of Kantian philosophy with respect to its basic tenets, such as the idea of human liberty as autonomy. Kant's idealism fosters the demands for a transcendental principle of publicity, which seems to be present in Kant's justification of reason, as well as in his theory of the rationality of law, in his plea for the necessity for a cosmopolitan political philosophy, and in his explanation of the transcendental demands of the theory of aesthetic judgement.

The subject of genius as the discipline of taste has been looked upon as a perfect example of Kant's idea of freedom under law. Genius corrected by taste basically appears as the image of natural, spontaneous individual freedom rising above itself and becoming 'civilised' or 'refined' in contact with the public nature of taste. Taste in itself is an epitome of Kantian freedom, since it captures the moment of individual preference sanctioned by the generality of rule but driven by the demands of communicability, universalisability and publicity, analogously to the use of reason. A genius corrected by taste is freedom corrected by the transcendental principle of publicity (with respect to aesthetic feeling). Our chapter has tried to show that this notion of freedom, represented aesthetically, does not preclude the possibility of a political interpretation: on the contrary, it seems to welcome – indeed, demand – the presence of a 'cosmopolitan whole' as a 'prerequisite' for the fulfilment of the ultimate human end, which, according to the *Critique of Judgement*, appears as 'culture'. The role of the tasteful genius is essential in this case, since he, as the producer of all fine art, is the guarantee that the highest purposes of humankind are achievable through his productions.

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NOTES

1. The noun 'public' usually translates the German term *das Publikum*. As an adjective, 'public' may translate the German *öffentlich*, which literally means 'open'. 'Publicness' is the English rendition of two Kantian concepts: *Öffentlichkeit* and *Publizität*. *Öffentlichkeit* may also be rendered as 'public sphere'. Throughout the chapter, I will use 'publicness' only when referring to the German term *Publizität*. See Laursen (1986).
2. See Kant's major contributions to cosmopolitanism in Kant (1991). There are also references to cosmopolitanism in the *Anthropology from a Pragmatic Point of View* (1798), in the section on 'The Character of the Species' (not appearing in the afore-mentioned volume). An allusion to cosmopolitanism may also be found in the Appendix to the *Critique of Pure Reason* ['Transcendental Logic II, Dialectic I, 1: Of Ideas in General'] (this last fragment is also added to the anthology forming the *Political Writings* volume).
3. 'We are *cultivated* to a high degree by art and science. We are *civilized* to the point of excess in all kinds of social courtesies and proprieties. But we are still a long way from the point where we could consider ourselves *morally* mature. For while the idea of morality is indeed present in culture, an application of this idea which only extends to the semblances of morality, as in love of honour and outward propriety, amounts merely to civilisation' (Kant 1991: 49).

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4. See also 'Conjectures on the Beginning of Human History' (1786), in Kant (1991: 228): 'the very impulses which are blamed as the causes of vice are good in themselves, fulfilling their function as abilities implanted by nature. But since these abilities are adapted to the state of nature, they are undermined by the advance of culture and themselves undermine the latter in turn, until art, when it reaches perfection, once more becomes nature – and this is the ultimate goal of man's moral destiny.'
 5. See 'Conjectures on the Beginning of Human History' (1786), in Kant (1991: 227). There, Kant refers specifically to Rousseau, yet in a more amiable sense, on the issue of human race as representing either a '*physical species*' or a '*moral species*'. The allusion, however, seems to refer to Rousseau's descriptions of a primitive communitarian Arcadia from the *Second Discourse (Discourse on Inequality (1755))*, where 'idle men and women gathered together' and are portrayed as living harmoniously and adorning their primitive life with 'song and dance, true children of love and leisure'; see Rousseau (1997: 166).
 6. Kant's idea of man as essentially a social being, yet fully conscious of his social duties, probably comes from Cicero, *On Duties (De Officiis)* (I.vii.22): 'But since, as Plato admirably expressed it, we are not born for ourselves alone (*non nobis solum nati sumus*), but our country claims a share of our being, and our friends a share; and since, as the Stoics hold, everything that the earth produces is created for man's use; and as men, too, are born for the sake of men, that they may be able mutually to help one another; in this direction we ought to follow Nature as our guide, to contribute to the general good by an interchange of acts of kindness, by giving and receiving, and thus by our skill, our industry, and our talents to cement human society more closely together, man to man' (Cicero 1913: 23–4). It is also very likely that Kant's idea about Nature endowing man with reason so as to be able to live justly in society also comes from Cicero (*De Officiis* I.iii.11–14). Kant studied Cicero's *De officiis*, or at least knew the text from Christian Garve's famous 1783 translation of the treatise, 'Idea for a Universal History with a Cosmopolitan Purpose' appearing in the *Berlinische Monatschrift* on 11 November 1784; see the note on Garve and the reference to his 1783 translation in 'On the Common Saying: "This May be True in Theory, but it does not Apply in Practice"' (Kant 1991: 69–70).
 7. 'The highest task which nature has set for mankind must therefore be that of establishing a society in which *freedom under external laws* would be combined to the greatest possible extent with irresistible force, in other words of establishing a perfectly *just civil constitution*' (Kant 1991: 45–6).
 8. When using 'addressable to everyone' here, I specifically have in mind what Onora O'Neill and Katerina Deligiorgi describe as the attribute of 'publicisability': for example, the quality of any communication being 'in principle accessible to the world at large and [being] debated without invoking authority' (O'Neill, qtd in Deligiorgi 2002: 145). Deligiorgi insists that publicisability as an attribute refers not to 'actual publicity', but rather to 'accessibility in principle'. This publicisability is directly connected to Kant's basic principle of the autonomy of reason and to its most fundamental demands, universalisability and communicability, as Deligiorgi correctly argues in her interpretation (Deligiorgi 2002: 151ff.).
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9. 'a universally valid will under which everyone can be free' (Kant 1991: 46).
10. I use 'addressability' here as a synonym for publicisability.
11. It is important to specify that the term 'civil' (*bürgerlich*) does not appear in the text of the *Idea* until the 'Fifth Proposition'.
12. In English, *publicness* and *publicity* translate the same Kantian term: *Publizität*. See Brown (2009: 162): 'principle of publicity'. H. B. Nisbet's translation of the *Political Writings* reads 'principle of publicness' (Kant 1991: 126). When using *publicness* or *publicity* in my text, I will refer to the same Kantian term, *Publizität*.
13. At this point, it is clear that Kant seeks to accord the idea of the law with the principle of the autonomy of reason; any proposition of law will thus have to fulfil the demands of what Kant describes as the 'public use of reason'. This relation is secured by the link that Kant sees between universalisability and rational autonomy, as Deligiorgi argues. As she describes the concept, which is Kant's own particular contribution to the debate concerning the rationality of law, autonomy of reason is the 'self-imposed discipline of employing universalisable principles, whose claim to being universalisable is itself open to scrutiny' (Deligiorgi 2002: 153).
14. See *Perpetual Peace*, in Kant (1991: 125), where he will discuss the 'formal attribute of publicness': 'For every claim upon right potentially possesses this [formal] attribute, and without it, there can be no justice (which can only be conceived of as *publicly knowable*) and therefore no right [. . .].'
15. See law's publicness, as described by Brown (2009: 162).
16. 'The injustice of rebellion is thus apparent from the fact that if the maxim upon which it would act *were publicly acknowledged*, it would defeat its own purpose.'
17. 'On the Common Saying: "This May be True in Theory"'.
18. Appendix from the *Critique of Pure Reason*.
19. 'On the Common Saying: "This May be True in Theory"'.
20. *Perpetual Peace*.
21. 'Idea for a Universal History'.
22. Appendix from the *Critique of Pure Reason*.
23. 'Idea for a Universal History'.
24. He published *History of the League of Cambray* in 1709, a work also widely acclaimed in France.
25. In my analysis, I will make reference only to the second volume of Dubos's work.
26. 'Now a person must be born with a genius, to know how to invent; but to be able to invent well, requires a long and unwearied application.'
27. 'a plant which shoots up, as it were, of itself'.
28. '[Genius has an] aversion to those mechanic employments.'
29. See Dubos (1748: Ch. XXI): 'Of the manner in which the reputation of poets and painters is established'.
30. 'New performances are approved first by judges of a very different character, that is, by men of the same profession, and by the public. They would be soon rated as their just value, were the public as capable of defending and maintaining their sentiment, as they know how to espouse the right party.'
31. 'If we wish to discern whether anything is beautiful or not, we do not refer the representation of it to the object by means of the understanding with a view to

- cognition, but by means of the imagination (acting perhaps in conjunction with the understanding) we refer the representation to the subject and its feeling of pleasure or displeasure. The judgement of taste, therefore, is not a cognitive judgement, and so not logical, but is aesthetic – which means that it is one whose determining ground cannot be other than subjective’ (Kant 2008: 35).
32. See also page 287: ‘the public never changes its sentiment, because it espouses always the right side of the question’.
 33. ‘As the public will judge hereafter by their senses, in the same manner as those before them have judged they will consequently be of one opinion’ (‘Chapter XXIV: That the public judgment prevails at length over the decisions of artists’).
 34. The German edition was published as ‘*Versuch über das Genie*, D. und Prof. der Theologie in Aberdeen, aus dem Englischen übersetzt von Christian Garve’. The *Essay on Taste* was translated in 1766 and bore the title *Versuch über den Geschmack* (Gerard 2001).
 35. Also: ‘it is imagination that produces genius; the other intellectual faculties lend their assistance to rear the offspring of imagination to maturity’ (Gerard 1774: 37).
 36. ‘The mental powers whose union in a certain relation constitutes *genius* are imagination and understanding.’
 37. ‘[G]enius (1) is a *talent* for producing that for which no definite rule can be given: and not an aptitude in the way of cleverness for what can be learned according to some rule; and that consequently *originality* must be its primary property. (2) Since there may also be original nonsense, its products must at the same time be models, for example be *exemplary*; and, consequently, though not themselves derived from imitation, they must serve that purpose for others, for example as a standard or rule of judging. (3) It cannot indicate scientifically how it brings about its product, but rather gives the rule as *nature*.’
 38. See also: ‘Taste lays claim simply to autonomy. To make the judgements of others the determining ground of one’s own would be heteronomy.’
 39. German *gemeinschaftlich*: literally, ‘communitarian’.
 40. This is the idea suggested by Donath, when he shows that artistic connoisseurship combined with taste may reveal the idea of our personal (publicised) freedom with regard to our capacity of taste, an idea that constantly warns us against the ‘dangers of unbounded freedom’ (Donath 2013: 6).

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