

Kant's Right of Nations and Cosmopolitan Right

Kant BPhil Seminar, MT 2024: week 8

Luke Davies (luke.davies@philosophy.ox.ac.uk)

In the conclusion of the Doctrine of Right, Kant says “the condition of peace is the only condition in which what is mine and what is yours are secured under *laws* for a multitude of human beings living in proximity to one another and therefore under a constitution” (6:355).

But peace requires both domestic and international institutions.

Without the right of nations and cosmopolitan right, it looks like individual rights are still provisional.

THE RIGHT OF NATIONS governs the ways in which states may resolve the disputes that arise between them.

COSMOPOLITAN RIGHT governs the relations between states and non-citizens and between citizens of different states.

1 A state of states?

Kant claims that the relation between states is analogous to the relation between individuals in a state of nature.

1. States are in a state of nature.
 - (a) They are threats to each other (8:354).
 - (b) State territory is subject to dispute and indeterminacy.
2. The state of nature is a condition of war — “The way in which states pursue their right can never be legal proceedings before an external court but can only be war” (8:355).
3. States do no wrong each other in this condition, but do wrong in the highest degree by remaining in it.

On this basis, a world state seems to be the required solution to the global state of nature. Kant seems to acknowledge this:

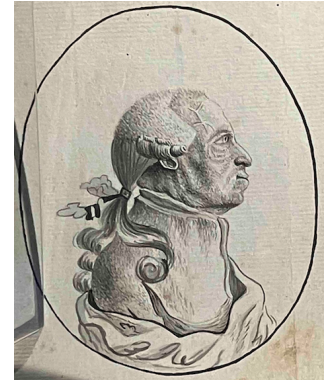
In accordance with reason there is only one way that states in relation with one another can leave the lawless condition, which involves nothing but war; it is that, like individual human beings, they give up their savage (lawless) freedom, accommodate themselves to public coercive laws, and so form an (always growing) *state of nations* that would finally encompass all the nations of the earth. (8:357)

Only in a universal *association of states* (analogous to that by which a people becomes a state) can rights come to hold *conclusively* and a true *condition of peace* come about. (6:350)

But then he wobbles:

This alliance must, however, involve no sovereign authority (as in a civil constitution), but only an association (federation); it must be an alliance that can be renounced at any time... (6:344)

By a congress is here understood only a voluntary coalition of different states which can be dissolved at any time, not a federation (like that of the American states) which is based on a constitution and can therefore not be dissolved... (6:351)



“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 the Right of nations lead inevitably to the idea of a Right for all nations (*ius gentium*) or cosmopolitan Right (*ius cosmopolitanicum*). So if 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” (6:311).

“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, namely by its own *force*, when it believes it has been wronged by the other states; for this cannot be done in the state of nature by a lawsuit” (6:346).

Question: If individuals and states are in an analogous condition, why isn't the solution the same? Why a league/congress and not a world state?

Kant seems to provide different justifications:

- “if such a state made up of nations were to extend too far over vast regions, governing it and so too protecting each of its members would finally have to become impossible” (6:350).
- States “do not at all want this” (8:357).
- A state of nations “would be a contradiction, inasmuch as every state involves the relation of a *superior* (legislating) to an *inferior* (obeying, namely the people); but a number of nations within one state would constitute only one nation, and this would contradict the presupposition” (8:354).
- “what holds in accordance with natural right for human beings in a lawless condition, “they ought to leave this condition,” cannot hold for states in accordance with the right of nations (since, as states, they already have a rightful constitution internally and hence have outgrown the constraint of others to bring them under a more extended law-governed constitutions in accordance with their concepts of right)” (8:355-56).

Possible solution 1: Deny the analogy.

Possible solution 2: Embrace the world state.

Possible solution 3: Accept the impossibility of peace.

2 Cosmopolitan Right

For Kant, cosmopolitanism is not an ethical ideal: “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 principles *having to do with rights*” (6:352).

It does not ground Peter Singer-style arguments for aid to the global poor.

Cosmopolitan right is the entitlement to *offer* to enter into commerce with people from other states.

This right has both permissive and restrictive elements.

It is permissive because it allows travel to other countries: hospitality “means the right of a foreigner not to be treated with hostility because he has arrived on the land of another” (8:357).

This likely just means that you are entitled to show up at the border. Kant gives the examples of China and Japan both of which “wisely” (8:259) placed restrictions on European trade (in China's case by refusing entry to all Europeans).

It is not an entitlement to occupy the land belonging to citizens of the places you visit, *pace* Huber: “I take it that the right of a traveller to move around freely effectively amounts to a right to infringe on foreign property or territory” (Huber 2022, 103).

It is restrictive because it does not allow any more than this. In particular, the right to hospitality does not entitle visitors to settle, and if they are treated with hostility they may not go to war and conquer those whom they encounter.

The cosmopolitan right has anti-colonial implications:

“If Right in general is inherently coercive then states, in honouring their juridical obligations, should submit under a supra-state juridical authority internationally. Yet if states are themselves supreme enforcers of Right, they cannot be juridically compelled—the application of Right against them cannot be coercive. This is Kant's sovereignty dilemma” (Flikschuh, 2010, 471).

“since possession of the land, on which an inhabitant of the earth can live, can be thought only as possession of 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, thought not of *rightful* community of possession 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 authorised to behave toward it as an enemy because it has made this attempt” (6:352).

“Conceptions of hospitality as a robust, enforceable global entitlement were often invoked to justify colonial practices abroad, notably the annexation of Indian territory in the Americas” (Stilz 2014: 201).

If one compares with this [cosmopolitan ideal] the inhospitable behaviour of civilised, especially commercial, states in our part of the world, the injustice they show in *visiting* foreign lands and peoples (which with them is tantamount to *conquering* them) goes to horrifying lengths. When America, the negro countries, the Spice Islands, the Cape and so forth were discovered, they were, to them, countries belonging to no one, since they counted the inhabitants as nothing. (8:358)

2.1 Refugees

Kant claims that we are permitted to turn away visitors “if this can be done without destroying” them (8:358).

What is the scope of this entitlement? How permissive is it?

This will depend on how we understand what it means to ‘destroy’ someone. Consider two alternatives:

1. It might include sending someone back to a state that will persecute them, or in some way undermine their agency.
2. It might merely include not sending someone to their immediate death.

We might also wonder whether there are constraints internal to the accepting state. For example, does it matter how many refugees arrive at the border?

2.2 Non-state peoples

The right to travel raises an interesting question with respect to encountering non-state peoples. Namely, why is it impermissible to coerce them to enter a state?

Kant claims that, “if you cannot help associating with others, enter into a society with them in which each can keep what is his” (6:237). So it seems that non-state peoples have a duty of state entrance. If duties of right are enforceable, why can’t others force them into a state?

The puzzle is generated by the need to reconcile i. perhaps the central claim of Kant’s political philosophy, with the fact that ii. he seems to get the normative judgement about European contact with non-state (non-European) peoples right.

Here is how Stilz puts the worry:

So, the logic of Kant’s property argument seems to point him towards the following conclusion: non-state peoples ought to construct a political authority. This is a coercible duty of justice that they are currently shirking. Since this exists in this wrongful condition, shouldn’t foreigners have the right to coerce them into a civil state, perhaps by annexing their territory or subjecting them to colonial rule? (203)

One possible solution: non-state peoples do not make property claims. Given that the duty of state entrance is conditional on such claims, they are simply not under a coercible duty.

Response: Kant does not think that *all* non-state peoples do not raise property claims. And even if they didn’t, this would be contingent. Don’t we want a more robust anti-colonial argument?

So, non-state peoples are under a duty to form a state.

“Whoever [visits other peoples] voluntarily can in any case be turned away, but not fought, by the inhabitants, whoever is involuntarily forced into it (a ship that seeks haven in a storm or the crew of a stranded ship) cannot be chased into driving danger from the coast [...] but he must be able to find shelter until a suitable opportunity for his departure arises” (23:173).

“If your own state will not take you back, because it has stripped you of your citizenship, or you cannot safely return because its rulers are making war on their own people in some other way, the right of any other state to exclude you runs up against its own internal limit [...]. Only if you have nowhere else to go does the state’s right to restrict your entry make you subject to the choice of another” (Ripstein, 2009, 298)

Stilz is relying on property doing the work in Kant’s argument for leaving the state of nature. Does anything change if we think that the innate right is also doing some work?

“Can two neighbouring peoples (or families) resist each other in adopting a certain use of land, for example, can a hunting people resist a pasturing people or a farming people, or the latter resist a people that wants to plant orchards, and so forth? Certainly, since as long as they keep within their own boundaries the way they want to live on their land is up to their own discretion” (6:266).

Stilz's suggestion: "Kant believes that our authorisation to coerce others to fulfil their political obligations depends on a prior assumption that our interaction with them is *unavoidable*" (206).

Europeans choose to travel, and so their interaction with the non-state peoples they meet is avoidable. They are thus non-entitled to force them into a state even though those peoples are acting in a way that is "wrong in the highest degree" by remaining in the state of nature.

Questions:

1. What about a case in which a non-state, nomadic group uses the land adjacent to a state?
2. Is it the choice to arrive or the choice to leave that is at issue? Imagine that travellers have the resources to get to a different continent but not the resources to return home? (Shipwreck + lack of suitable trees for ship building).
3. Is unavoidable contact really a matter of specific individual interactions?

There is a further question: what about displacing non-state peoples from their land?

Stilz says this further question is addressed by Kant's account of provisional right.

Recall the distinction between strongly conventionalist and strongly naturalist readings of property in the state of nature. Stilz is happy with neither, and opts for a middle ground.

For Stilz, provisional rights are a species of *empirical* possession.

"Provisional rights [...] are rights of *empirical* possession that are established through a process of physical appropriation that occurs in time and space. [...] Insofar as one's acquisition looks forward to the establishment of a rightful condition that can issue a rational title to confirm one's empirical title, one's empirical possession binds others to respect it now. It is legitimate, even if not perfectly just" (213).

Two questions: 1. Isn't part of the problem that the acquisition of non-state peoples does not "look forward to the establishment of a rightful condition"? 2. What about Kant's claims that we do not wrong others in the state of nature? The answer seems to mistake the nature of the wrong.

"it seems that Kant is not interested in the question of whether an actual encounter has been brought about deliberately or could also have been avoided. Rather, the way in which the earth is shaped makes it impossible for us to avoid interaction once and for all such that we must somehow put up and get to terms with being close to each other" (Huber 2022, 81).

"Possession in anticipation of and preparation for the civil condition, which can be based only on a law of common will, possession which therefore accords with the possibility of such a condition, is provisionally rightful possession, whereas possession found in an actual civil condition would be conclusive possession" (6:257).

3 References and suggestions for additional reading

- Flikschuh, K. 2010. Kant's Sovereignty Dilemma: A Contemporary Analysis. *The Journal of Political Philosophy* 18(4): 469–493.
- Huber, J. 2022. *Kant's Grounded Cosmopolitanism: Original Possession in Common and the Right to Visit*. Oxford University Press.
- Kleingeld, P. 2004. Approaching Perpetual Peace: Kant's Defence of a League of States and his Ideal of a World Federation. *European Journal of Philosophy* 12(3): 304–325.
- Messina, J. 2019. Kant's Provisionality Thesis. *Kantian Review* 24(3): 439–463.
- Miller, D. 2024. Kant, the Nation-State, and Immigration. *Kantian Review* /: 1–17.
- Ripstein, A. 2009. *Force and Freedom: Kant's Legal and Political Philosophy*. Cambridge: Harvard University Press.
- Stilz, A. 2014. Provisional rights and non-state peoples. In *Kant and Colonialism*, 197–220. Cambridge University Press.