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KANTIAN COSMOPOLITANISM TODAY: JOHN RAWLS AND JÜRGEN HABERMAS ON IMMANUEL KANT'S FOEDUS PACIFICUM

IN HIS epochal essay "Perpetual Peace" Immanuel Kant challenged the theory and practice of nationalism and defended an alternative ideal of enlightened cosmopolitanism.¹ Contemporary legal and political philosophy has witnessed the emergence of a new cosmopolitan paradigm characterised by its determination to defend the continued relevance of Kant's cosmopolitan vision.² The ideal of an international order regulated around law and the acknowledgment of universal human rights, rather than *realpolitik* and national self-interest, continues to occupy the thinkers of this new paradigm. Its protagonists are marked by a determination to re-state Kant's cosmopolitanism in order to make it a more *coherent* and *plausible* ideal for our times. There are many contemporary writers seeking in different ways to ameliorate the internal tensions they see in Kant's cosmopolitanism, revise those features that make it unrealistic in contemporary political conditions, and in some cases radicalise it where its break from the old order of nation states seems incomplete. In this paper we revisit Kant's original cosmopolitan vision before surveying two prominent interpretations and reconstructions of it: John Rawls' enlightened liberal internationalism and Jürgen Habermas' "postnational constellation".³

Our paper is divided into three sections. In the first, we briefly discuss Kant's project for achieving "perpetual peace" between states, focusing on some of the

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1. Immanuel Kant, "Perpetual Peace: A Philosophical Sketch" in Hans Reiss (ed.) *Kant: Political Writings*, (Cambridge: Cambridge University Press, 1970), pp. 93–130.
2. See the essays in James Bohman and Matthias Lutz-Bachman (eds.), *Perpetual Peace: Essays on Kant's Cosmopolitan Ideal* (London: The MIT Press, 1997) and Steven Vertovec and Robin Cohen (eds.), *Conceiving Cosmopolitanism: Theory, Context and Practice* (Oxford: Oxford University Press, 2002).
3. We select these writers as two of the most prominent and contrasting re-interpreters of the Kantian project. Considerations of space prevent us from addressing other writers who develop interesting and original cosmopolitan approaches influenced by Kant, such as Charles Beitz, *Political Theory and International Relations: With a New Afterword by the Author* (Princeton: Princeton University Press, 1999); Andrew Linklater, *The Transformation of Political Community: Ethical Foundations of the Post-Westphalian Era* (Cambridge: Polity, 1998); and David Held, *Democracy and the Global Order* (Cambridge: Polity, 1995).

problems he faced in reconciling his cosmopolitan vision with the principle of state sovereignty and turning it into a plausible political project. In the second section, we consider how Rawls reformulates for our own times Kant's theory of perpetual peace in terms of what he calls a "realistic utopia". In the third section, we consider Habermas's reconstruction of Kant's perpetual peace in terms of what he calls a "postnational constellation". We investigate how Rawls and Habermas try to move beyond Kant in their efforts to both present cosmopolitanism as a plausible political project and clarify the relationship between cosmopolitan right and state sovereignty. What is at issue is the successfulness of their attempts to think, as Karl-Otto Apel put it, "with Kant against Kant"; that is, to go beyond Kant in terms of internal coherence and adapt his way of thinking to the conditions of the modern world. Our paper offers a provisional assessment of the contemporary state of Kantian cosmopolitanism and briefly suggests a future trajectory for cosmopolitan thinking by picking up another thematic in Kantian thought, the nature and role of judgment.

I. IMMANUEL KANT: PERPETUAL PEACE AND THE FOEDUS PACIFICUM

In this section we briefly analyse Kant's original cosmopolitan project to highlight a tension between his recognition of the sovereignty of states and his belief in a cosmopolitan order built around the idea of supranational legal authority and the rights of world citizens. This tension in turn gives rise to problems in translating the idea of cosmopolitan right into a plausible political project.

In a series of articles written over a twelve-year period before and after the French Revolution, Kant developed a thoroughgoing critique of the "Westphalian" orthodoxy in the understanding of inter-state relations and advocated a radical cosmopolitan alternative. He condemned the "depravity" of the Westphalian system in that it entrenched the inalienable right of states to wage war, tolerated barbaric methods of modern warfare and permitted unrestrained violence in colonial adventures.⁴ According to Kant, experience of this international "order" illustrates the impossibility of achieving freedom and stability for citizens *within* states without achieving some degree of freedom and stability *between* states. The instability caused by war, incessant military preparations and the threat of external attack were, for Kant, the most serious barriers to the enjoyment of civil freedom.⁵

In place of this "lawless condition" of perpetual warfare, Kant advocated an international legal order designed to secure perpetual peace between states and a "universal civic society" across states. Kant advanced an ambitious programme of reform: "governments must in time abolish their standing armies, abstain from the extreme violence associated with colonial projects, accept the principle of non-interference in the affairs of other states, and desist from engaging in destabilising activities such as employing assassins, instigating treason or breaching prior agreements".⁶ The condition of this programme was that, at least in the long run, all states must adopt

4. Robert Fine, "Kant's Theory of Cosmopolitanism and Hegel's Critique" (2003) 29 *Philosophy and Social Criticism*, pp. 609-30.

5. Immanuel Kant, "Idea for a Universal History with a Cosmopolitan Purpose" in Hans Reiss (ed.), *Kant: Political Writings*, (Cambridge: Cambridge University Press, 1970), p. 47.

6. Kant "Perpetual Peace" pp. 93-97.

republican constitutions based on the freedom and equality of all citizens regulated through law. According to Kant, republican states could achieve world peace because their citizens should be more aware of the dangers and costs of wars and more capable of steering political leaders away from military engagements. Republican states would be able to co-operate with other republics to create a “federation of free states” or a “pacific federation” (*foedus pacificum*) based on a common disavowal of the right to use force for expansionist purposes.

Kant distinguished his idea of a pacific federation from treaties between states, in that the latter are geared towards ending *particular* wars whereas the former aims at the abolition of *all* wars.⁷ It would also differ from a world government since the federation would be a *voluntary* compact that acknowledges the continuing independence of member states and a *lawful* compact that acknowledges that *all* persons regardless of their nationality are bearers of right. Kant limited this idea of cosmopolitan right to what he called the “conditions of universal hospitality”, that is, “the right of a stranger not to be treated with hostility when he arrives on someone else’s territory”.⁸ But he treated this as a universal human right: “all men are entitled to present themselves in the society of others by virtue of their right to communal possession of the earth’s surface”.⁹ By contrast, a world government could only be a “soulless despotism” whose “laws progressively lose their impact as government increases its range”, whose immediate effect would be to “crush the germs of goodness” and whose final outcome would be to “lapse into anarchy”.¹⁰

Many contemporary observers recognise the radicalism of Kant’s cosmopolitan vision and the moral commitment with which he elaborated it. One problem often alluded to in the literature, however, concerns the tension between Kant’s affirmation of both state sovereignty and a law-governed cosmopolitan order.¹¹ It would appear that Kant wants to reconcile two irreconcilable principles: on the one hand, states are sovereign bodies responsible for their own internal and external affairs and accordingly not subject to the will of a higher authority; on the other hand, these states must renounce their “lawless” freedom and submit to a higher authority based on international law.¹² Sometimes Kant emphasises that securing stable and just

7. *Ibid.*, pp. 98–105.

8. *Ibid.*, p. 105.

9. *Ibid.*, p. 106.

10. *Ibid.*, p. 113.

11. This tension has been explored in Jürgen Habermas, “Kant’s Idea of Perpetual Peace: At Two Hundred Years’ Historical Remove” in J. Habermas, *The Inclusion of the Other: Studies in Political Theory* (Cambridge: The MIT Press, 1999); Matthias Lutz-Bachmann, “Kant’s Idea of Peace and the Philosophical Conception of a World Republic” and Kenneth Baynes, “Communitarian and Cosmopolitan Challenges to Kant’s Conception of World Peace” in J. Bohman and M. Lutz-Bachman (eds.), *Perpetual Peace: Essays on Kant’s Cosmopolitan Ideal* (London: The MIT Press, 1997); Thomas Mertens, “Cosmopolitanism and Citizenship: Kant Against Habermas” (1996) 4 *European Journal of Philosophy* pp. 328–47.

12. Kantians might respond that there is only an apparent contradiction here, as truly sovereign states would regulate their affairs according to universal laws that would harmonise domestic, international and cosmopolitan right, making any external coercion unnecessary. The problem with this is that it neglects the overriding necessity, defended forcefully by Kant elsewhere, of political and legal instruments that can realise right in a *lawful condition*: “however well disposed and law-abiding men might be, it still lies a priori in the rational idea of such a condition (one that is not rightful) that before a public lawful condition is established individual human beings, peoples and states can never be secure against violence from one another, since each has its own right to do what seems right and good to it” (our emphasis, Immanuel Kant, *The Metaphysics of Morals*, translated and edited by Mary Gregor, Cambridge: Cambridge University Press, 1996, pp. 89–90). Thanks to Alan Norrie for pressing this point.

relations between states requires establishing an international legal authority—a body authorised to impose international law on individual states and to back it up with coercion. In *Theory and Practice* (1793), for instance, Kant comments on the failure of the “European balance of power” that there is no possible way of counteracting this failure except through “a state of international right based upon *enforceable public laws to which each state must submit* (by analogy with a state of civil or political right among individual men).¹³ Such a statement suggests that a federation of states should have the power to enforce international law on nations and punish offenders. In *Perpetual Peace* (1795), on the other hand, Kant seems to back away from this conclusion. Here he emphasises that the *foedus pacificum* is a *voluntary coalition* of states rather than a union bound together through the medium of law:

“the federation does not aim to acquire any power like that of a state, but merely to preserve and secure the *freedom* of each state in itself . . . this does not mean that they need to submit to public laws and to a coercive power which enforces them (our italics).”¹⁴

In the first instance, then, Kant’s stress is on the guarantee of perpetual peace and cosmopolitan right through “enforceable public laws”; in the second, he argues that perpetual peace *does not* require that states “need to submit to public laws and to a coercive power which enforces them”.

This apparent vacillation indicated Kant’s reluctance to let go either of the idea that states are sovereign entities or of the idea that some kind of international authority is required if a state of nature marked by a war of all against all is to be overcome. One possible solution to this quandary is to say that for Kant nation-states are *morally* but not *legally* obliged to respect cosmopolitan right on the grounds that, if republics were subject to any higher legal authority, it would contradict the idea that such states were themselves autonomous and self-regulating entities with internal sovereignty. According to this interpretation Kant has to rely on a moral disposition on the part of republican states. It is difficult, though, to see how such a condition can ever secure a *permanent* peace, since any pacific federation would be subject to the whims and withdrawal of member states. In the absence of legal sanctions individual states would remain free to violate international law and cosmopolitan right.¹⁵ It is difficult to avoid the conclusion that Kant was balancing uneasily between the principle of state sovereignty and the restrictions on sovereignty required for a cosmopolitan order to be established.

It is partly as a result of this internal tension that Kant’s cosmopolitan project runs into difficulties of political impracticability. Kant himself was aware of this danger and keen to demonstrate that cosmopolitanism is not an exercise in idle philosophical daydreaming, but a practical possibility latent in actual political developments. He

13. Emphasis is ours but the text in brackets is Kant’s. Immanuel Kant, “On the Common Saying: ‘This might be True in Theory but it does not Apply in Practice’” in Hans Reiss (ed.), *Kant: Political Writings*, (Cambridge: Cambridge University Press, 1970), p. 92.

14. Kant, “Perpetual Peace”, p. 104.

15. Habermas “Kant’s Idea of Perpetual Peace” pp. 102, 169.

acknowledged that immediate circumstances were unfavourable to the idea of a cosmopolitan order but he looked beyond immediate to longer-term tendencies. He stressed that perpetual peace corresponds both with the *economic* requirements of a commercial age, in which peaceful exchange is more profitable than plunder, and with the *political* interests of rulers facing increasingly high risks and costs of war. He pointed to the spread of *republicanism* as a crucial precondition of a cosmopolitan order, since in republican constitutions leaders cannot declare war without consulting their citizenry and republican citizens should be more enlightened than subjects of monarchical rulers. And finally he prefigured the emergence of a “*universal community*”, a kind of global public sphere in which all citizens come to be regarded as legal and moral personalities across national boundaries.¹⁶ For reasons such as these Kant thought that there was a place for the actualisation of the idea of cosmopolitan order in political modernity.

Many commentators have converged around the belief that Kant’s optimism has, let us say, been insufficiently evidenced since the publication of “Perpetual Peace”.¹⁷ With the benefit of hindsight, it has been observed that Kant failed to foresee the destabilising consequences of competition to exploit global economic resources, or the significance of nationalism as the guiding political ethos of the modern age, or the role both would play in inciting wars and blocking the spread of cosmopolitan sentiments. Additionally, it is argued that Kant’s conceptual framework—based on a metaphysic of justice that presents cosmopolitanism as a rational necessity deduced from practical reason and on a philosophy of history that encodes cosmopolitanism into a law of progress—abstracts from any clear recognition of these disadvantageous social forces. It is in the light of these difficulties in Kant’s original proposals that contemporary theorists are attempting to reconstruct cosmopolitanism as a plausible political project. The project is to clear up the ambiguities between national sovereignty and cosmopolitan order that Kant fails to resolve, to come to terms with the history of nationalism, war and genocide that exposes the naivety of Kant’s optimism, and to substitute for Kant’s philosophy of history his faith in autonomous reason as the driving force of historical change.¹⁸

II. JOHN RAWLS: FROM A LAW OF NATIONS TO A LAW OF PEOPLES

With this in mind, we shall turn now to the recent attempt of John Rawls to recast Kant’s vision for perpetual peace in his monograph, *The Law of Peoples*.¹⁹ Rawls does not discuss Kant’s writings in any detail, but he often describes his own work as following in the footsteps of Kant. According to Rawls, we should work out the

16. Kant, “Perpetual Peace”, pp. 107–108.

17. Habermas, “Kant’s Idea of Perpetual Peace” pp. 171–78; Axel Honneth, “Is Universalism a Moral Trap? The presuppositions and limits of a politics of human rights” in J. Bohman and M. Lutz-Bachmann (eds.), *Perpetual Peace: Essays on Kant’s Cosmopolitan Ideal* (London: The MIT Press, 1997).

18. Karl-Otto Apel, “Kant’s ‘Toward Perpetual Peace’ as Historical Prognosis from the Point of View of Moral Duty” in J. Bohman and M. Lutz-Bachmann (eds.), *Perpetual Peace: Essays on Kant’s Cosmopolitan Ideal* (London: The MIT Press, 1997), p. 82.

19. John Rawls, *The Law of Peoples: With “The Idea of Public Reason Revisited”*, (London: Harvard University Press, 1999).

principles for a "society of peoples" by extending the method for elaborating domestic principles of justice to the international sphere. Rawls presents this project as one that accords with Kant's idea that "a constitutional regime must establish an effective Law of Peoples in order to realise fully the freedom of its citizens".²⁰ He proceeds by re-articulating the principles that should govern a domestic constitutional democracy and on this basis elaborates the principles that should govern its foreign policy and the activities of international organisations to which it belongs. He suggests that these principles can be derived from his reconstruction of Kant's practical reason: that is, by using the familiar device of a hypothetical "original position". We are asked to imagine representatives of liberal peoples deliberating behind a veil of ignorance to decide upon an adequate set of principles.²¹ Representatives do not know the territory, population or strength of the peoples they represent, but they do know that they are concerned to advance the fundamental interests of the peoples they represent. In pursuing their fundamental interests, liberal peoples "strive to protect their political independence and their free culture with its civil liberties, to guarantee their security, territory and the well-being of their citizens".²²

In this situation Rawls believes that the representatives of peoples will agree on the following eight principles: (1) peoples are free and independent, and should be acknowledged as such by other peoples; (2) peoples are to observe treaties and other undertakings; (3) peoples are equal and are parties to binding agreements; (4) peoples observe a duty of non-intervention in the internal affairs of other peoples; (5) peoples have a right of self-defence but no right to instigate war for reasons other than self-defence; (6) peoples are bound to honour human rights; (7) peoples observe moral and legal restrictions on the conduct of war; (8) peoples have a duty to assist "burdened" societies.²³ Rawls acknowledges that these principles are incomplete as a guide to fashioning international legal and political institutions and that it will be necessary both to add other principles and to engage in further "explanation and interpretation" of these eight principles. He recognises too, that a principle such as that of non-intervention "will obviously have to be qualified in the general case of outlaw states and grave violations of human rights".²⁴ Yet his main aim in elaborating these principles is to spell out "the basic charter" of a Law of Peoples and thus provide a framework for peoples to elaborate more detailed principles and standards for regulating their co-operative activities. He suggests, for example, that there will also be "principles for forming and regulating federations (associations) of peoples"²⁵ and that these principles can be used to model and reform all "co-operative organisations", including a *Confederation of Peoples* modelled roughly on Kant's *Federation of Nations*.²⁶

Rawls adds a further gloss on Kant's argument by arguing that liberal peoples could and should incorporate within the *Confederation of Peoples* certain *non-liberal* regimes

20. *Ibid.*, p. 10. This is not the only time that Rawls situates his theory within a Kantian context (see pp. 19, 36, 54, 86, 128).

21. *Ibid.*, pp. 32-35.

22. *Ibid.*, p. 34.

23. *Ibid.*, p. 37.

24. *Ibid.*, p. 37.

25. *Ibid.*, p. 38.

26. *Ibid.*, p. 42.

as long as the latter are sufficiently “reasonable”. He argues that by virtue of their commitment to toleration, liberals should view some non-liberal peoples as “equal participating members in good standing of the Society of Peoples” and therefore not view them as targets of military, economic or diplomatic sanctions, even when these are geared towards steering their development in a more liberal direction.²⁷ He describes a hypothetical “decent hierarchical people” as one that does not have aggressive international aims, is regulated around a common-good idea of justice, consults its peoples about the direction of law and policy, and respects certain fundamental human rights. Such a society is not liberal in that it does not respect a full range of equal rights and liberties, does not operate a strict division between state and religion, and does not follow democratic constitutional procedures. Nonetheless, Rawls thinks that a regime would satisfy a minimal threshold of reasonableness if it respects certain *fundamental human rights*, including the rights to life, liberty, property and formal equality,²⁸ and if its representatives accept the same Law of Peoples as liberal peoples.²⁹ For Rawls, this commonality provides a basis on which “liberal” and “decent” peoples can co-operate, since both types of societies acknowledge the same Law of Peoples and the same conditions for entering a Society of Peoples.

The incorporation of non-liberal regimes into the Law of Peoples suggests that Rawls dilutes the radicalism of Kantian cosmopolitanism, by apparently downgrading the importance of democratic rights in relation to fundamental basic rights. This impression is further encouraged by the fact that Rawls explicitly disavows the term “cosmopolitan” and maintains that his Law of Peoples is not a cosmopolitan project.³⁰ Yet this has to do mainly with Rawls’s definition of cosmopolitanism, which he associates with a commitment to promote the *well being* of all global citizens and to principles of global *distributive justice*. If cosmopolitanism were to be identified with these views, then neither he nor Kant would qualify as cosmopolitans. It also overlooks the fundamental “cosmopolitan” commitment that he and Kant *do* share—to the authority of a voluntary federation of nations and to a set of universal human rights.³¹ In fact, though criticised for excessively restricting the range of international basic rights, the rights that Rawls does endorse as “universal” and “human” are considerably more comprehensive than Kant’s limitation of cosmopolitan right to a “right to hospitality”.³²

A cosmopolitan sympathy is also indicated by Rawls’s preference for the ideal category of “peoples” over that of “states”. For Rawls, peoples and states are alike in that they are both bounded political societies whose members share “common

27. *Ibid.*, p. 59.

28. *Ibid.*, p. 65.

29. *Ibid.*, pp. 68–70.

30. *Ibid.*, pp. 119–120.

31. This point is anticipated by Chris Brown: “although Rawls’ international thought leans in a communitarian direction, it still has substantial cosmopolitan elements, in particular through his advocacy of a package of basic universal human rights”. Chris Brown, *Sovereignty, Rights and Justice: International Political Theory Today* (Cambridge: Polity, 2002) p. 178.

32. This is not to say that Rawls is necessarily *right* to reject democratic rights at the international level. For powerful criticisms of this view see Thomas McCarthy, “On the Idea of a Reasonable Law of Peoples” in J. Bohman and M. Lutz-Bachman (eds.), *Perpetual Peace*, pp. 201–17 and Andrew Kuper, “Rawlsian Global Justice: Beyond *The Law of Peoples* to a Cosmopolitan Law of Peoples” (2000) 28 *Political Theory*, pp. 640–74.

sympathies" and submit to their own law-making institutions.³³ But he prefers the term "peoples" to "states" in order to break from the assumptions he sees as misinforming pre-Kantian conceptions of the state, which allow unrestricted sovereignty in the pursuit of national-interest.³⁴ Peoples, unlike states, accept membership of a legal order in which sovereignty is mediated through law, non-intervention is never absolute, treaties have to be respected, international laws are enacted and enforced for the conduct of war, and some notion of cosmopolitan right is institutionalised. Rawls tries to escape Kant's vacillations over the relationship between national sovereignty and cosmopolitan right by specifying the ways in which universal human rights restrict internal and external sovereignty. He writes, for example, that "human rights are a class of rights that play a special role in a reasonable Law of Peoples: they restrict the justifying reasons for war and its conduct, and they specify limits to a regime's internal autonomy".³⁵ Rawls also declares that an external coercive authority can legitimately impose these requirements on peoples. Thus he speaks of "many different kinds of organisations [not only the United Nations] subject to the judgement of the Law of Peoples . . . charged with regulating cooperation among them and meeting certain recognised duties", and he maintains that some of these organisations "have the authority" to correct violations of the Law of Peoples through "economic sanctions or even by military intervention".³⁶ Significantly, he also declares that "out-law states" can become the subject of legitimate external intervention since they either do not acknowledge or actively violate the Law of Peoples.³⁷ To be sure, Rawls says little about the practical implications or institutional dynamics of this move; for example, how serious would a rights-violation have to be to justify intervention and precisely what body or bodies have the authority to legitimise such an intervention? This silence reflects a general characteristic of Rawls' approach: he sketches the broad outlines of a Law of Peoples but leaves much unsaid about its political and legal realisation. Nonetheless, at least Rawls replaces the tension in Kant's ideas between national sovereignty and cosmopolitan right by elaborating the principle on which state sovereignty should be limited.

Rawls describes his vision of a society of law-abiding peoples, each respecting human rights and living peaceably together, as a "realistic utopia".³⁸ Its realism is supposed to derive from following Rousseau's dictum of taking "men as they are and laws as they might be", by elaborating normative prescriptions in the light of what we know of human nature and the workings of society. Its utopianism is supposed to derive from extending "the limits of practical political possibility", by describing a world where international politics and morality are not uneasy bedfellows but go together hand in glove. Like Kant before him, Rawls wants to combine political realism with political vision. We believe, however, that despite these laudable intentions there remains

33. Rawls, *The Law of Peoples*, pp. 23–25. On the similarities between peoples and states see Allen Buchanan, "Rawls' Law of Peoples: Rules for a Vanished Westphalian World" (2000) 110 *Ethics*, pp. 697–721, especially at pp. 698–700.

34. Rawls, *The Law of Peoples*, pp. 25–30.

35. *Ibid.*, p. 79.

36. *Ibid.*, p. 36.

37. *Ibid.*, p. 81.

38. *Ibid.*, p. 11.

a pervasive tension running through the Law of Peoples between its *realistic* and *utopian* moments. This tension reveals itself in the split character of Rawls' ideal: on the one hand, it appears merely to describe the world as it is by endorsing fundamental tenets of current international relations; on the other hand, it appears to describe that world in a largely unrecognisable way, describing an idealised political and legal world abstracted from the complexities and ambivalences of the present-day order. Consequently the Law of Peoples appears at times conservative and uncritical, sacrificing utopian energy for political realism, and at other times idealistic and unworldly, offering political prescriptions with little regard for their instantiation in concrete social relations. In the words of Andrew Kuper, Rawls ends up describing an ideal that is "neither sufficiently utopian nor sufficiently realistic".³⁹

The *conservative* character of the Law of Peoples is reflected in the fact that the principles that emerge from the original position are abstract reformulations of well-established principles of international law. They emphasise the independence and self-determination of peoples, respect for treaties and agreements between peoples, non-intervention in the internal affairs of other peoples and norms regulating the conduct of war.⁴⁰ In line with more recent developments in international law they also advance more distinctively Kantian themes: that peoples are bound to honour human rights, that the principle of non-intervention may be suspended in the case of major human rights abuses, and that these principles should provide a framework for international organisations such as the United Nations (or for Rawls the Confederation of Peoples).⁴¹ Despite Rawls' endorsement of universal human rights, in the Law of Peoples as in the current international legal order, bounded political societies (peoples in Rawls' world, nation-states in our own) remain the primary subject of international law. It is striking that, insofar as Rawls offers any actual *arguments* in defence of international human rights, he tends to mirror contemporary practices by appealing to international security considerations, declaring that rights-violating states are "aggressive and dangerous" and that "all peoples are safer and more secure if such states change or are forced to change their ways".⁴² As Charles Beitz points out, this defence of rights remains hostage to the empirical criticism that rights-violating states may not necessarily pose a serious threat to international security and to the moral criticism that rights should be defended irrespective of their functional value in preserving global security.⁴³ Rawls here appears to replicate, rather than criticise, morally problematic features in contemporary international relations and unlike Kant does not explore the radical implications of cosmopolitan law.

The *unworldly* character of the Law of Peoples is reflected in the difficulties it faces in coming to terms with the power inequalities and social complexities of our current political constellation. Rawls' arguments about international distributive justice are illuminating here. He argues that a Law of Peoples should promote a duty of assistance to burdened societies in order to help them foster stable and just

39. Kuper, "Rawlsian Global Justice", p. 659.

40. Buchanan, "Rawls's Law of Peoples: Rules for a Vanished Westphalian World", p. 699.

41. Rawls, *The Law of Peoples*, p. 42.

42. *Ibid.*, p. 81.

43. Charles Beitz, "Rawls's Law of Peoples" (2000) 110 *Ethics*, pp. 669–96 at p. 685.

domestic political institutions. According to Rawls once peoples develop their own stable and just institutions, then there is no further obligation to correct any inequalities between peoples, no matter how large these may be.⁴⁴ As Thomas Pogge argues, Rawls here fails to pursue arguments that he elaborates with force when discussing domestic justice, where he claims that large economic inequalities between parties may generate excessive inequalities in political and social power.⁴⁵ As Pogge points out in discussing current patterns of domination in global economic relations, affluent societies are able to exert greater influence over the drawing up of treaties and negotiations with less materially affluent societies.⁴⁶ In this sense, even a world comprised of well-ordered societies might generate unacceptable inequalities in political power in the absence of principles and institutions to regulate excessive economic inequalities between peoples. Without explaining how the Law of Peoples would regulate such inequalities, it is difficult to accept Rawls' belief that any society can become affluent and self-supporting if it only develops the right institutions and a supportive political culture.⁴⁷ Either Rawls ends up sounding overly optimistic, relying on the hope that the moral motivations of peoples that he factors into ideal theory will somehow take hold in actual contexts and pave the way towards political reform; or his detachment from some of the key social, political and economic realities of international society gives his theory a somewhat otherworldly air.⁴⁸

Our criticisms of Rawls' theory should be tempered by acknowledging the difficulty of the challenges he sets out to address. He sets himself the task of reassessing and clarifying Kant's vision for perpetual peace in the context of a radically changed world order. Moreover, like Kant he elaborates his ideas in the light of a marked interest in the past and present direction of human history, discussing the philosophical implications of the Holocaust, the twentieth century experience of nuclear warfare and the continuing presence of Islam and religion in domestic and world politics. The great strength of his work is his justified desire to specify the ideal towards which those inspired by Kant's original vision are striving. The downsides of this approach are that the ideal may remain no less difficult to defend as a politically realisable vision

44. Rawls, *The Law of Peoples*, pp. 119–20.

45. See the discussion in John Rawls, *A Theory of Justice: Revised Edition* (Oxford: Oxford University Press, 1999) pp. 197–99.

46. Thomas Pogge, "Rawls on International Justice" (2001) 51 *The Philosophical Quarterly* pp. 246–53 at pp. 250–53. See also Buchanan, "Rawls's Law of Peoples: Rules for a Vanished Westphalian World", pp. 703–15.

47. Rawls might respond that the duty of assistance should only be applied in a world where burdened peoples can reasonably be seen as capable of becoming well-ordered. Indeed, when Rawls elaborates the principle, he does so in the context of *non-ideal theory*. Non-ideal theory is not theorising addressed to solving real world problems but a controlled thought experiment addressing specific "non-compliance" problems, in this case the persistence of burdened societies which require help from well-ordered societies. If the conditions elaborated in non-ideal theory do not obtain in the real world, perhaps because we judge that no actual societies are sufficiently well-ordered or because current patterns of global economic governance inhibit the development of burdened societies in a just direction, then it becomes a moot point whether or not the normative prescriptions defended in non-ideal should or can be applied. In this case, the problem is not so much that Rawls is naïve about the real world, but that his non-ideal theory fails to offer much *practical guidance* over responding to pressing political problems that emerge in the real world.

48. Similarly, some writers criticise Rawls for continuing to work with the regulative ideal of a "closed society" despite contemporary developments that suggest greater interconnectivity and more porous boundaries between states (see Seyla Benhabib, *The Claims of Culture: Equality and Diversity in the Global Era* (Oxford: Princeton University Press, 2002, p. 168).

than was Kant's original project and that the Law of Peoples actually dilutes some of the radicalism of that project. To engage with cosmopolitanism both as a form of law situated within a definite socio-political context and as a form of right that attempts to retain the radical spirit of Kant's original project, we have to move on to the body of work produced by Jürgen Habermas in his ongoing reconstruction of Kantian cosmopolitanism.

III. JÜRGEN HABERMAS: FROM A NATIONAL TO A POSTNATIONAL CONSTELLATION

Like Rawls, Jürgen Habermas wants to re-conceptualise Kantian cosmopolitanism as a coherent and plausible project of political reform. Whilst Rawls sets about this task by starting at the level of ideal theory and gradually applying himself to non-ideal problems, Habermas elaborates cosmopolitanism through an engagement with contemporary global conditions. In his essay "Kant's Idea of Perpetual Peace: At Two Hundred Years Historical Remove", Habermas declares that "Kant's idea of a cosmopolitan order must be reformulated if it is not to lose touch with a global situation that has changed fundamentally".⁴⁹ He defends core features of Kant's ideal, in particular, his restriction on the *jus ad bellum*, his commitment to moral norms guiding interstate relations and his articulation of cosmopolitan citizenship based on universal rights. For Habermas, problems within this vision emerge "because Kant does not transcend the horizon of his time".⁵⁰ He criticises Kant for his indecision on the relation between national sovereignty and cosmopolitan law, declaring that "cosmopolitan law must be institutionalised in such a way that it is binding on . . . individual governments"; and he suggests that Kant did not foresee the historical developments such as imperialism, totalitarianism and the cold war that would undermine for generations the emergence of cosmopolitanism as a political force.⁵¹

The idea that all persons of the globe are in principle rights-bearing citizens implies that a cosmopolitan order would not be regulated solely around the will of states: "the point of cosmopolitan law is . . . that it bypasses the collective subjects of international law and directly establishes the legal status of the individual subjects by granting them unmediated membership in the association of free and equal world citizens".⁵² In order that all persons may enjoy their status as rights-bearing citizens, Habermas argues that mechanisms must exist for their rights to be legally guaranteed. A key aim of reform thus becomes the entrenchment of the legal status of cosmopolitan citizens on a world stage. The implication for Habermas is clear: "since human rights would have to be implemented in many cases despite the opposition of national governments, international law's prohibition of intervention is in need of revision".⁵³ It is necessary for standards and procedures to emerge that recognise and protect cosmopolitan rights:

49. Habermas, "Kant's Idea of Perpetual Peace", p. 178.

50. *Ibid.*, p. 171.

51. *Ibid.*, p. 179.

52. *Ibid.*, p. 181.

53. *Ibid.*, p. 182.

“the establishment of a cosmopolitan order means that violations of human rights are no longer judged and combated immediately from the moral point of view, but rather are prosecuted, like criminal actions within the framework of a state-organised legal order, in accordance with institutionalised legal procedures.”⁵⁴

Habermas claims that elements of this cosmopolitan order can be detected in the imperfect emergence of a norm of humanitarian intervention in foreign affairs or in the increasing functions of the UN Human Rights Commission.⁵⁵

As well as addressing the task of legally institutionalising cosmopolitan rights, Habermas also suggests that contemporary political and economic developments require us to rethink the traditional locus of *political* decision-making. The twentieth century has given rise to a set of global problems—monetary crises, ecological dangers, transnational terrorism—that for Habermas cannot be addressed adequately by nation-states acting independently.⁵⁶ The reduction of the nation-state’s functional capabilities results in “a crippling sense that national politics have dwindled to more or less intelligent management of a process of forced adaptation to the pressure to shore up purely local positional advantages.”⁵⁷ Habermas advocates a flexible response to these developments. A crucial step is to dissociate the close connection between democratic politics and the nation-state. Without endorsing a world state or the abandonment of the nation-state as a site of democratic praxis, Habermas claims that democratic politics can be possible outside the confines of national boundaries. If nation-states coalesce into supranational groupings with centralised institutions and decision-making capabilities, a “postnational” solution to the erosion of national powers might be forthcoming. If these institutions and decision-making capabilities can be made sufficiently accountable and transparent through the growth of inclusive “public spheres”, it may be possible to imagine global governance as a postnational democratic praxis. Habermas points to the European Union as a potentially paradigmatic example of this new form of political organisation.⁵⁸

Both the legal and political moments of cosmopolitanism are, for Habermas, geared towards protecting the freedom of citizens in a world with increasingly unpredictable dangers and threats. Habermas does not commit himself to a particular institutional or legal blueprint for establishing a legal and political cosmopolitan order, and contrary to the views of some of his critics he does not endorse the creation of a world state or even the idea of “cosmopolitan democracy”.⁵⁹ Instead he adopts a more flexible approach,

54. *Ibid.*, p. 193.

55. *Ibid.*, p. 181.

56. Habermas aligns himself with other writers who claim that contemporary conditions are reducing the functioning capacities of individual nations states; for instance Susan Strange, “The West-failure System” (1999) 25 *Review of International Studies* pp. 345–54, David Held, “Democracy and the New International Order”, in D. Held and D. Archibugi (eds.), *Cosmopolitan Democracy* (Cambridge: Polity, 1995).

57. J. Habermas, *The Postnational Constellation, Political Essays* (Cambridge: Polity, 2002), p. 61.

58. J. Habermas, “The European Nation-State: On the Past and Future of Sovereignty and Citizenship” and J. Habermas, “Does Europe Need a Constitution? Response to Dieter Grimm” in J. Habermas, *The Inclusion of the Other*.

59. For Habermas’ arguments against a world state see J. Habermas, *The Postnational Constellation*, pp. 107–10. For Habermas, a world state would be unable to recreate the strong solidarity ties and democratic praxis necessary for stable and legitimate political communities. Thomas Mertens appears to conclude that because Habermas endorses a conception of cosmopolitan citizenship based on universal respect for human rights, he is therefore committed (contra Kant) to the establishment of a “world republic”

advocating supranational mechanisms for protecting cosmopolitan rights and the reform or creation of various “postnational” political associations. He wants to foster a climate where multiple strategies for realising cosmopolitan citizenship and a more democratic global governance will co-exist. Cosmopolitan right could be defended by developing avenues for citizens to raise complaints against their own states (perhaps through international or regional courts), by co-ordinated forms of pressure on rights-violating states, by emerging legal precedents in support of state intervention to prevent large-scale rights abuses, or by the publicity-generating functions of a global civil society. A more democratic global governance could be achieved through reform of the United Nations, the promotion of cosmopolitan agendas in national contexts and the political empowerment of the associations and networks of global civil society. This project need not involve fostering a “thick” sense of civic solidarity amongst a global citizenry but rather a “thin” sense of cosmopolitan solidarity based on respect for universal rights.⁶⁰

With this overview in mind, it is possible to compare Habermas’ reinterpretation of Kantian cosmopolitanism with that of Rawls. Both share Kant’s twofold aim: of achieving peaceful relations between states and of realising the idea that the status of all persons as rights-bearers necessarily entails restrictions on the sovereignty of nation-states. Consequently, both writers envisage mechanisms for the realisation of cosmopolitan norms that enjoy more coercive power than Kant’s *foedus pacificum*. It seems to us, however, that there are two crucial differences between their respective reformulations of Kant’s project. First, as we have seen Habermas broadens the cosmopolitan project from a proposal for international peace and universal rights to a wider ranging political project. The question he poses is not just how to reformulate Kant’s ideal for our times but also how that reformulation constitutes part of “a political response to the challenges of the postnational constellation”.⁶¹ His approach incorporates cosmopolitan law as a fundamental component of a reformed international order and emphasises the role of transnational and supranational political organisations with increased powers and responsibilities to fill the gap left by the politically emasculated nation-state. Such an approach contrasts with Rawls, inasmuch as he is content to work with the idea of a world of more or less self-contained peoples trying to establish peaceful and respectful relations with one another.⁶² Secondly, Habermas understands cosmopolitanism not just as an abstract ideal but also as

(T. Mertens, “Cosmopolitanism and Citizenship: Kant Against Habermas” p. 338). By contrast, Nadia Urbinati correctly recognises the difference between Habermas’ views and those who support a global republic or a cosmopolitan democracy. The latter endorse strong conceptions of cosmopolitan identity and community, with institutions to match, whereas Habermas’ notion of cosmopolitan law requires a weaker sense of solidarity based on respect for rights and legal mechanisms to protect rights (N. Urbinati, “Can Cosmopolitical Democracy be Democratic?” in Daniele Archibugi (ed.), *Debating Cosmopolitics* (London: Verso, 2003), pp. 71–74).

60. J. Habermas, *The Postnational Constellation*, p. 108. We provide a detailed discussion of Habermas’ democratic postnationalism in Robert Fine and William Smith, “Jürgen Habermas’ Theory of Cosmopolitanism” (2003) 10 *Constellations* pp. 469–87. We assess Habermas’ tendency to lower expectations that global governance could ever become wholly democratic and his own focus on the democratic potential of intermediary transnational communities, such as the European Union.

61. J. Habermas, *The Postnational Constellation*, p. 61.

62. In fact, Rawls tends to suggest that under a Law of Peoples, states would become more self-contained as the causes of war and immigration disappear. For more on this difference between Rawls and Habermas, see N. Urbinati, “Can Cosmopolitical Democracy be Democratic”, p. 71.

an emerging political reality.⁶³ Consequently, we find in his work a degree of social analysis that is absent from Rawls: of the global economy, of the dangers of nationalism, of the changing character of the United Nations, of the causes and nature of modern wars, of emerging global public spheres and forums, etc. Habermas is more sensitive to the manner in which political developments impact on cosmopolitanism. So, unlike Rawls, he does not provide a list of rights that should underpin a cosmopolitan order but instead recognises that a “normative agreement concerning human rights . . . is a matter of dispute between the West, on the one hand, and Asians and Africans, on the other” and must be the product of international dialogue rather than its premise.⁶⁴

Habermas hopes that by situating the cosmopolitan project within a currently evolving political context, he might avoid lapsing either into an empty normativity or into a dispiriting positivism. His hope is to go beyond Kant in presenting cosmopolitanism as an ongoing political process and a guide for reform of the international order. A marked feature of this approach is Habermas' focus on the European Union as a paradigmatic example of transnational political association. The attraction of the European Union for Habermas is intuitively clear: it constitutes a tangible political project that appears to offer a supplement to, if not a replacement for, the nation-state. Habermas maintains that political life can be reconstructed in the European Union through a simultaneous expansion outward of territorial boundaries so that it becomes more transnational, and a deepening inward of its sense of political community. In answer to the question of whether this dual inward and outward movement can cohere, he looks to the re-conceptualisation of the European Union through the lens of a new kind of democratic political formation—neither federal nor confederal but with a binding constitution, an elected parliament, an impartial executive, a rule of law, a bill of rights for all citizens, a vibrant civil society, a clear separation between members and non-members and a commitment to social justice and welfare.

Habermas looks to a transnational, pan-European form of political community as a bearer of cosmopolitan values. He presents “Europe” as a locus of solidarity permitting the redistributive policies of the welfare state to be recovered and extended, as a locus of human rights and of indignation over injuries to human rights committed by others, and as a close mesh of deliberative politics, civic value orientations and shared conceptions of justice. In this representation “Europe” provides the ground on which citizens can begin to see themselves as members of an international community. It appears as a transnational civil society—one that is neither west nor east, neither an exclusive container of private rights nor of political democracy but the meeting place of their co-originality. There is a sense in which Habermas presents Europe as the “universal nation” of our day, capable both of conserving the democratic achievements of the nation state and of extending them beyond the limits of the nation. Habermas certainly rejects the:

63. In an analysis of Rawls' political philosophy, Habermas commends him for reviving the enlightenment ideal of a political association based around freedom and reason, but charges him with sociological naivety. The nub of the claim is that Rawls focuses excessively on the justification of moral/political principles and insufficiently on the realisation of these principles in the form of law and the institutions of the modern state (J. Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, Cambridge: Polity, 1996, pp. 64–65). Habermas could arguably make a similar point about Rawls' approach to international justice.

64. Habermas, “Kant's Idea of Perpetual Peace”, pp. 184–85.

“Carolingian heritage of the founding fathers of Europe with its explicit appeal to a Christian West and indeed any concept of a European nation existing independently of the political process from which it springs. He looks rather to the existence of a life-world-to some idea of “shared European values,”

a “European form of life”, a “European model of society”, a “European political culture” or “civic tradition”—that Europe could and should stand for on the world stage.⁶⁵ Of course, Habermas acknowledges that the real history of Europe includes imperialism, totalitarianism and two world wars among its elements, but his reconstructive approach aims to draw normative principles from this deeply equivocal history without simply projecting onto the world an image of what he wishes it to be. His conviction is that, notwithstanding its own history of violence, there is something in the European *life-form* that might enable it to become a powerful bearer of cosmopolitan values in a non-ideal world and that this form of life can in principle be realised if public opinion is sufficiently mobilised.

Whereas Rawls stays at the level of ideal theory in his abstract rendition of a Law of Peoples, Habermas’s approach brings us down to earth. Its strength lies in Habermas’ desire to ground cosmopolitan politics in an ongoing political project, namely the development of the European Union as a postnational or at least transnational political form. If this approach is to be faulted, it is not for arguing that “Europe” *can and should* become the bearer of the cosmopolitan project but for attaching the name of the cosmopolitan project to “Europe”. It would not, of course, be preferable if the name of the cosmopolitan project were attached to some other polity, but the problem is that by taking Europe as a paradigm of cosmopolitan reform, one risks both overstating the cosmopolitan character of the European Union as it stands and attaching the success or failure of the cosmopolitan project to the fate of the European Union. The potential pitfalls of this approach may be seen in Habermas’ assessment of the political and legal arguments surrounding recent military interventions. Writing about the Kosovan intervention, he argues that:

“in Continental Europe proponents of intervention [in Kosovo] took pains to shore up rather weak arguments from international law by pointing out that the action was intended to promote what they saw as the transition from a soft international law toward a fully implemented human rights regime, whereas both US and British advocates remained in their tradition of liberal nationalism.”⁶⁶

65. In his essay on “Why Europe needs a constitution” Habermas writes that the project of a European political union “requires the legitimation of *shared values* . . . an interest in and affective attachment to a *particular ethos* . . . the attraction of a *particular way of life* . . . During the third quarter of the past century . . . the citizens of Western Europe were fortunate enough to develop a distinctive *form of life* . . . Today, against perceived threats from globalisation, they are prepared to defend the core of a welfare state that is the backbone of a *society still oriented towards social, political and cultural inclusion* . . . Europe is much more than a market. It stands for a *model of society* that has grown historically . . .” (Habermas, “A constitution for Europe?”, pp. 8-10; all emphases are ours). Habermas’ diagnosis of the European Union is manifestly not one that all member states would endorse.

66. Jürgen Habermas “Letter to America” *The Nation*, 16 December 2002. Notice that in order to maintain the idea that the European Union constitutes a cosmopolitan counter-point to the US he has to disassociate it from the political judgments and positions of more than one of its more prominent members.

The continental countries of Europe are depicted as cosmopolitans, whereas the US and the UK remain mired in the Westphalian logics of *realpolitik* and imperialist ambition.⁶⁷ Such an approach risks dichotomising the Western world into two distinct camps—one basically cosmopolitan, the other basically Westphalian—rather than face up to the ambiguities within both.⁶⁸ The answer is not to abandon hope that the European Union might become more cosmopolitan than it currently is, but to temper that optimism with a keen awareness of the equivocations of both Europe and of all previous attempts to conceptualise a “universal nation”.⁶⁹

CONCLUDING REMARKS: COSMOPOLITAN JUDGMENT

There is no conflict between Rawls' attempt to construct the principles for a Law of Peoples and Habermas' attempt to find a political power that will be the bearer of these principles. Yet they offer in some ways contrasting reinterpretations of Kant's cosmopolitanism. Rawls offers a precise restatement of the ideal towards which international Kantians are supposed to strive, describing an enlightened and liberal society of well-ordered peoples. Habermas offers an analysis of cosmopolitanism as an emerging form of right, manifested in a more effective international human rights law and the development of postnational forms of political community. Unsurprisingly, neither approach is without its problems. In his attempt to balance realism with utopianism, Rawls' Law of Peoples at times appears as an unhappy compromise that is neither especially realistic nor especially utopian. In his determination to embed cosmopolitanism within ongoing political developments, Habermas elaborates a one-sided view of Europe as a bearer of cosmopolitan values. Neither of these problems signals the end of Kantian cosmopolitanism. On the contrary, we would follow Rawls and Habermas in their endeavour to imagine and describe the contours of a more cosmopolitan world.

An interesting pointer for future analysis is provided by Rawls towards the end of *The Law of Peoples*. Commenting on the difficulty facing those who seek to interpret and apply the Law of Peoples in non-ideal contexts, Rawls foregrounds the overriding importance of the faculty of *political judgment*. Whether it is in a statesman's decision about how best to promote the long-term interests of the world or in a citizen's

67. Habermas returns to this theme in his assessment of the differences between EU and US policy towards Iraq (Jürgen Habermas, “Interpreting the Fall of a Monument” (2003) 10 *Constellations*, pp. 364–70).

68. Robert Kagan shares Habermas' diagnosis of the US as a willing military agent in the world and the EU as an enlightened advocate of dialogue and diplomacy, but attributes this not so much to differences within their respective political “life-forms”, but to differences in their respective power positions (Robert Kagan, *Paradise and Power: America and Europe in the New World Order*, London: Atlantic Books, 2003). Whatever the weaknesses of his analysis (for a critique see Howard Zin, “Of Paradise and Power”, *Znet*, 9 February 2004), Kagan is at least aware of the ambivalence in the European position and its relation to a hard-nosed appraisal of European interests.

69. Étienne Balibar provides a nuanced discussion of these equivocations in his critical commentary on liberal calls for Europe to become either a check on the hegemonic power of the US or a civilising influence on that power. Balibar focuses on the political possibilities of a “*European-Mediterranean Ensemble*” as a progressive force in international politics, rather than a European Union bound together by a strong (and for Balibar potentially exclusive) sense of distinctive identity. Étienne Balibar, *We, The People of Europe? Reflections on Transnational Citizenship*, translated by James Swenson (Princeton: Princeton University Press, 2004) pp. 203–35.

opinion about how governments should forge a common foreign policy, the Law of Peoples must be able above all to draw upon the resource of political actors capable of making complex and informed judgments throughout the course of their engagement in political activity.⁷⁰ The necessity of judgment emerges because the laws of peoples are incapable, by themselves, of determining action in non-ideal contexts. They cannot, for example, tell us when a human rights abuse becomes so serious that intervention in another people's affairs becomes warranted. Instead, cosmopolitan policies must be forged through individual and collective acts of interpretive *praxis* informed by the particular problems that confront judging actors. For his part, Habermas has given us an insight into this process of judgment in his own interventions in the ongoing and heated debates over the use of military force for supposedly cosmopolitan ends. His judgments may be skewed by an empirically questionable assessment of the role of Europe in the modern world, but his elaboration of a cosmopolitan perspective that endorses both effective rights protection *and* an international rule of law constitutes a paradigmatic case of thinking as a cosmopolitan citizen in an all too non-cosmopolitan world.⁷¹

This line of thought links contemporary cosmopolitan thinking to another Kantian thematic: not to the constitutional law of his political writings but to the role of judgment as "the faculty for thinking the particular."⁷² To help us think through this question of judgment, there is perhaps no better place to start than with the work of Hannah Arendt. She writes:

"One judges always as a member of a community, guided by one's community sense, one's *sensus communis*. But in the last analysis, one is a member of a world community by the sheer fact of being human; this is one's "cosmopolitan existence". When one judges and when one acts in political matters, one is supposed to take one's bearings from the idea, not the actuality, of being a world citizen."⁷³

Cosmopolitanism must find a home in the world through judging actors "taking one's bearings" from the idea of "being a world citizen". The thought we would like to end on is that the role of judgment in situating cosmopolitanism in the world opens up a potentially productive dialogue between theories of cosmopolitanism and philosophies of judgment. Such a dialogue raises many questions. What is involved in cosmopolitan judgment? Does it entail interpreting universal principles of justice in concrete situations, as Rawls and Habermas suggest, or instead rely on a kind of non-principle-based "reflective judgment" sensitive to the demands of particular situations,

70. Rawls, *The Law of Peoples*, pages 93, 97-98 and 102-103.

71. His discussion of the Kosovo intervention is particularly subtle, displaying awareness of both the absence of effective procedural means at the international level to protect the basic rights of peoples like the Kosovars and the dangers attendant in powerful groupings of states taking it upon themselves to do so. Jürgen Habermas, "Bestiality and Humanity: A War on the Border between Legality and Morality" (1999) *6 Constellations*, pp. 263-72.

72. Immanuel Kant, *Critique of Judgment*, translated by Werner S. Pluhar (Cambridge: Hackett Publishing Company, 1987), Introduction, section IV, p. 18.

73. Hannah Arendt, *Lectures on Kant's Political Philosophy*, edited with an interpretive essay by Ronald Beiner (Chicago: Chicago University Press, 1992), pp. 75-76.

as Alessandro Ferrara suggests.⁷⁴ What is the difference between judging as a *statesman* deciding on how to form and pursue a cosmopolitan policy, and judging as a *citizen* deliberating on how to appraise the nature and pursuit of such a policy? How might the faculty of cosmopolitan judgment be fostered both in political-institutional contexts and throughout society more generally?

Understanding cosmopolitan judgment involves understanding how political values are interpreted and applied in and through political activity. Such a perspective entails grappling with the ambivalences faced by subjects making judgments in non-ideal conditions and not retreating into the certainties of dichotomous thinking. It understands that the idea of cosmopolitan right is a necessary form of right in the modern world but it also reconciles itself to the fact that it remains *within* the conflict of passions, powers and interests that comprise modern political life. It is in this context that we see Kantian cosmopolitanism finding its future home.

74. Jürgen Habermas, *Justification and Application*, translated by Ciaran Cronin (Cambridge: Polity, 1993); Alessandro Ferrara, *Justice and Judgment: The rise and prospect of the judgment model in contemporary political philosophy* (London: Sage, 1999).