

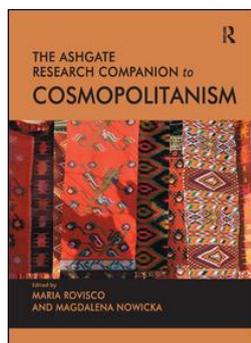
This article was downloaded by: *University College London*

On: 13 Jun 2018

Access details: *subscription number 11237*

Publisher: *Routledge*

Informa Ltd Registered in England and Wales Registered Number: 1072954 Registered office: 5 Howick Place, London SW1P 1WG, UK



The Ashgate Research Companion to Cosmopolitanism

Maria Rovisco, Magdalena Nowicka

Cosmopolitanism and Natural Law: Rethinking Kant

Publication details

<https://www.routledgehandbooks.com/doi/10.4324/9781315612850.ch8>

Robert Fine

Published online on: 28 Sep 2011

How to cite :- Robert Fine. 28 Sep 2011 ,*Cosmopolitanism and Natural Law: Rethinking Kant from: The Ashgate Research Companion to Cosmopolitanism* Routledge.

Accessed on: 13 Jun 2018

<https://www.routledgehandbooks.com/doi/10.4324/9781315612850.ch8>

PLEASE SCROLL DOWN FOR DOCUMENT

Full terms and conditions of use: <https://www.routledgehandbooks.com/legal-notices/terms>.

This Document PDF may be used for research, teaching and private study purposes. Any substantial or systematic reproductions, re-distribution, re-selling, loan or sub-licensing, systematic supply or distribution in any form to anyone is expressly forbidden.

The publisher does not give any warranty express or implied or make any representation that the contents will be complete or accurate or up to date. The publisher shall not be liable for an loss, actions, claims, proceedings, demand or costs or damages whatsoever or howsoever caused arising directly or indirectly in connection with or arising out of the use of this material.

PART II

Political Cosmopolitanism

This page has been left blank intentionally

Cosmopolitanism and Natural Law: Rethinking Kant

Robert Fine

Kant's Cosmopolitanism and Natural Law

For the contemporary student of cosmopolitanism, Kant's vision of a cosmopolitan condition-to-come provides a rich and ever re-readable resource. Kant's political writings have become 'classic' texts of contemporary cosmopolitanism.¹ The critically minded cosmopolitan understands we cannot simply repeat Kant's eighteenth-century vision – that it is necessary to iron out inconsistencies in his thinking, radicalize it where its break from the old order of nation states is incomplete, draw out latent connections between peace and social justice, and modernize in terms of differences in historical context and conceptual framework – but a core cosmopolitan intuition is that Kant's cosmopolitanism remains as relevant to our times as it was to his own (Bohman and Lutz-Bachman 1997). To my mind, the return to Kant is fully justified by the richness of what we find in the texts but I do wish question the narrative within which the return to Kant is typically framed. In this narrative we are reminded of the strong cosmopolitan currents running through eighteenth-century enlightenment thought; then we are warned that in the long nineteenth century these cosmopolitan currents succumbed to nationalism, imperialism, racism, anti-Semitism and technology; finally we are reassured we are now in a position to remember the dead and recover enlightenment's cosmopolitan insight (Schlereth 1997). This narrative offers a consoling story of birth, death and rebirth. The widely held view that eighteenth-century cosmopolitanism left little

1 The student of Kant's cosmopolitanism can find his ideas on this subject developed in his political writings published between 1784 and 1798, most systematically formulated in *The Metaphysics of Morals* (published 1797) and especially in the part entitled the 'Metaphysical Elements of the Theory of Justice' (or for short *Metaphysics of Justice*). Kant's political essays include '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); and 'The contest of faculties' (1798). They are collected in Kant (1991).

or no legacy for the long century that followed may be represented by Theodor Adorno's remark in *Negative Dialectics* that Hegel's alleged deification of the nation state was reactionary in comparison with Kant's cosmopolitan point of view (Adorno 1990) or by Jürgen Habermas' remark in *The Inclusion of the Other* that what Kant understood is that the idea of right is best suited to the identity of *world citizens*, not to that of citizens of a particular nation state, but that this insight was lost when the universalistic elements of right were swamped by the particularistic self-assertion of one nation against another (Habermas 1998). Sankar Muthu concludes his fine book on *Enlightenment against Empire* with a statement (outside the area of his expertise) that the cosmopolitanism characteristic of the enlightenment was unable to endure into the nineteenth century because of a sea change that occurred in philosophical assumptions, argument and temperaments (Muthu 2003: 259).²

To be sure, today cosmopolitans are reluctant to accept the conceptual framework in which Kant articulated his cosmopolitanism. Jürgen Habermas, for example, designates as 'metaphysical' the idea he finds in Kant that the cosmopolitan perspective can be accounted for primarily as an a priori demand of reason. He wishes to abandon this 'metaphysical' baggage on the 'post-metaphysical' ground that human beings are the authors of the laws to which they are subject. While Kant declared over the noise of battle that Providence, the Laws of Nature and the Cunning of Reason were inexorably taking human society forward to a universal cosmopolitan end, today Habermas looks for a space in which the political urgency of cosmopolitan solidarity may be given its due. He shies away from transcendental deductions in the conviction that cosmopolitanism represents the rational will of self-conscious and freely deliberating citizens and not the a priori deductions from the postulates of practical reason. He conceives cosmopolitanism as a shared project citizens can join and fashion in their own image, not as a rationally ordained blueprint projected onto reality (Habermas 1998). The dropping of natural law in the name of post-metaphysical principles has, however, not been a painless move. On the one hand, by turning his back on natural law, Habermas deprives himself of a powerful tool he might otherwise use to explain precisely why our response to new and difficult social conditions should take a cosmopolitan form. On the other

2 The social theorists and philosophers of the long nineteenth century – Hegel, Marx, Nietzsche, Weber, Durkheim – were disciples of Kant's cosmopolitanism to a greater extent than is usually recognized. The sphere of their investigations was the fate of humanity in the modern bourgeois world and their benchmark remained that of humanity as a whole (Chernilo 2007). However, we cannot simply by-pass their critiques of Kant. They understood that the idea of right is a social form of subjectivity rooted in modern ethical life; a contradictory social form that arises late in human history and can suffer all manner of reversals (not least the right to the product of one's own labour transmutes into the right of the capitalist to expropriate the product of one's labour); a transitory social form that can transmute into a terrifying administrative power over society. If we try simply to jump over nineteenth-century social theory, the risk is that we end up repeating the illusions of eighteenth-century natural law in a less critical mode.

hand, Habermas allows natural law to return through a back door by depicting cosmopolitanism as a rational necessity that simply '*must* be institutionalised' (Habermas 1998: 179). To the extent that the rational necessity of cosmopolitanism is not up for discussion but derived from the universal principles of right, it might appear that the common sense of even the most post-metaphysical cosmopolitans remains more indebted to Kant's metaphysical approach than they might acknowledge. We tend to see ourselves as surpassing those philosophies of history, such as Kant's, which represent cosmopolitanism as the *telos* of social evolution but this does not stop our own time-consciousness following a teleological logic (Fine and Smith 2003, Smith and Fine 2004).

My argument is that Kant's cosmopolitanism should be situated in the framework of modern natural law. The key objection to this claim is that Kant's cosmopolitanism represented a move away from the natural law concept of *ius gentium* – that natural law was precisely the tradition from which Kant departed. Indeed, Kant was famously critical of many of the most celebrated natural law theorists – Grotius, Pufendorf, Vattel and the rest – as 'sorry comforters' whose justifications of the supremacy of state sovereignty were unable to provide for a lawful and peaceful community of nations based on universal law (Brown 2005, Hoffe 2006). It is true that Kant was critical of the natural law tradition but I maintain that his critique of traditional natural law was executed in the service of modern natural law. Kant did not break from natural law, he modernized it.

Let us clarify our terms. Modern natural law theory put the idea of right at the centre of its world. It was in the name of right that it attacked the old order of servitude, inequality and superstition; diagnosed the 'corruptions', 'inconveniences' and 'pathologies' characteristic of the new bourgeois order; and analysed the legal, moral and political requirements of this ascendant society. Modern natural law provided the epistemological framework in which philosophers of right analysed new forms of social inequality, political misrule and cultural isolation that accompanied the growth of bourgeois society and prescribed remedies through projects of educational reform, social intervention and political transformation. Its premise was the right of private property which made possible not only the liberty and equality of property owners but also the wealth of nations. Its concern was over the new forms of injustice brought into being by the rise of modern civil society. Its solution was the development of new moral, legal and political forms in which the injustices of civil society could be remedied (Fine 2002). In the final stage of its journey modern natural law presented international law as the form of inter-state relations in which the principle of sovereignty could be upheld.

The natural law tradition long preceded the Enlightenment. In early modernity it provided a language for the legitimation of hierarchies of inequality. Stephen Toulmin recounts that the Greek composite, 'cosmopolis', was in fact central to the natural law tradition. It expressed the unity of the *cosmos* (the order of nature) and the *polis* (the order of human society) – an idea of harmony in which the structure of nature would reinforce a just social order. It meant that what God is to nature, so too the king is to the state, the husband to his wife and the father to his family (Toulmin 1992). Traditional natural law presupposed two different kinds of law,

natural and positive: natural laws emanating from nature, positive laws posited by human beings (Colletti 1972). Traditional natural law was not just a theory of natural law but a theory that privileged natural law over positive laws. It limited the field of human legislation so that even the highest power *on earth* was subject to its rule. Otto Gierke summarized this way of thinking thus: 'whatever statute or act of government contradicted the eternal and immutable principles of natural law was utterly void and would bind no one' (Gierke 1958).

By putting forward the idea of 'right' at the core of its thinking modern natural law showed its superiority to the natural law tradition. It broke from traditional natural law by basing itself on the idea of equal right but drew from the tradition the universalistic insight that natural law applies to all times, all places, all societies, all people (Chernilo 2010). It revealed so-called 'old rights' to be no more than entrenched privileges of the Church, state and nobility but it could only put the idea of right at the centre of its thinking by rationalizing its existence (Fine 2002). It overcame natural law in its traditional form only to reconstruct it in a modern form by naturalizing the institutions of capitalist society. It declared with Hobbes that 'obedience to the civil law is the law of nature' (Hobbes 1996). It dissolved the traditional myth of a morally infused state of nature but reconstituted its own form of abstraction in the idea of a multiplicity of atomized individuals in a chaotic state of nature. In empirical versions of modern natural law this abstraction was disguised as an empirical observation; in formal versions, especially that of Kant, this disguise was stripped away and the speculative character of this abstraction admitted. This did not stop Kant from turning relations of bourgeois society into the a priori condition of social organization – or more specifically into the a priori condition of the asocial form of sociality that results from a multitude of conflicting interests. As Gillian Rose put it, Kant could only conceive of uniting individuals 'externally' since he presupposed from the start the existence of a multitude of isolated and competing individuals (Rose 1981). Bourgeois society was the hidden premise of Kant's philosophy of right.

Kant's Cosmopolitanism and the System of Right

Near the start of the *Metaphysics of Justice* Kant writes that 'the student of natural right ... has to supply the immutable principles on which all positive legislation must rest' (Kant 1991: 132). For Kant, the immutable principles of 'right' cannot be based on what the law happens to say in any particular place or time; it can only be drawn from the realm of natural laws defined as laws to which 'an obligation can be recognised *a priori* by reason without external legislation' (Kant 1996: 26). This was crucial to the *critical* content of Kant's philosophy of right. For if universal laws were based simply on what the law is empirically, in the manner of positivist jurisprudence, they might offer no more than an endorsement of the status quo. There could be no clearer statement of Kant's self-positioning within the natural

law tradition. The return to Kant's cosmopolitanism is at once a return to natural law, indeed to what was arguably the high point of the natural law tradition.

The great strength of Kant's reconstruction of natural law theory lay in the systematic character of his methodology as he moved from the simplest and most abstract elements of the system of right to increasingly more complex and concrete forms (Cavallar 1999). Kant argued that the idea of natural right is realized in practice through a progression of laws and institutions beginning with private law, moving on to public law, thence to international law and finally to cosmopolitan law. He begins with the idea of right in general as 'the sum of those conditions within which the will of one person can be reconciled with the will of another in accordance with a universal law of freedom' (Intro §B). Kant maintains that freedom is only possible under law because individuals can only be free in relation to others. In his 'Theory and Practice' essay he elaborates this relational concept of right:

The whole of concept of external right is derived from the concept of freedom in the mutual external relationships of human beings ... Right is the restriction of each individual's freedom so that it harmonizes with the freedom of everyone else in so far as this is possible within the terms of a general law. And public law is the distinctive quality of the external laws which make this constant harmony possible. Since every restriction of freedom through the arbitrary will of another party is termed coercion, it follows that a civil constitution is a relationship among free men who are subject to coercive laws, while they retain their freedom within the general union with their fellows. (Kant 1991: 73)

As Richard Beardsworth observes, 'one form of freedom and coercion (the force-field of arbitrary wills) is replaced by another form of coercion and freedom: the force of public law' (Beardsworth 2011). Kant acknowledges that public law is necessarily coercive and can become despotic but he argues that the risk has to be taken because a universal system of public law is the only form yet discovered in which my right of subjective freedom can be reconciled with yours. Kant argues that the right to subjective freedom is the natural right of every human being but that it requires legal and political supports if it is to have preemptory and not merely provisional validity (Flikschuh 2000).

From this beginning Kant addresses the elements of private law: for example, the idea of a subject (*persona*) as a possessor of rights whose 'moral personality is nothing but the freedom of a rational being under moral laws'; the idea of a 'thing' (*res*) as 'an object of free will that itself lacks freedom'; the separation of property from mere physical possession; the idea that there is nothing in the world, not even one's honour, that cannot be turned into alienable property. Kant then takes the reader from the sphere of private law to that of public law where he deduces from the 'Idea of the state as it ought to be' the institutional forms of a republican constitution: a representative legislature to establish universal norms, an executive to subsume particular cases under these universal norms, a judiciary to determine

what is right in cases of conflict, and the constitutional separation of powers to keep these spheres of activity distinct in accordance with the ‘moments of its concept’ (Kant 1996: §45). Kant’s ideal state grounded in reason – or as he put it, a perfect *societas civilis* – was to be a republic resting on the rule of law, representative government and the separation of powers.

Gillian Rose has noted that the juridical categories Kant deduced as rational forms of an ideal political community are for the most part categories of Roman law (Rose 1981: 84). One of the limitations of this approach has been observed in a seminal essay by Manfred Riedel: it concerns Kant’s inability to distinguish between civil society and the state (Riedel 1984). Kant inherited the old European tradition that goes back to Aristotle’s *κοινωνια πολιτικη* (political community) whose classic formula was the fusion of state and civil society. It was not possible within this framework to understand civil society in its modern form; that is, as a de-traditionalized society separated on one side from the family and on the other from the state (Hegel 1991: §182). In this respect Kant fell short of the empirical wing of natural law, notably Adam Ferguson and Adam Smith, as well as Hegel, since Scottish political economy played a massive part in dissecting the anatomy of bourgeois civil society and Hegel’s *Philosophy of Right* played an equally massive part in conceptualizing civil society as a distinctive sphere of social life (Fine 2001, Fine and Vazquez 2006). Kant’s conceptual inability to distinguish civil society and the state was bound to have ramifications for his theory of cosmopolitanism.

The next stage of Kant’s journey from the spheres of private and public law took him to the spheres of international and then cosmopolitan law. Following the same ‘deductive’ method Kant sought to derive the forms and practices of an ideal international order from the juridical postulates of practical reason. His project was to extend the philosophy of right beyond its national limitations and address the idea of right in what we might call extra-societal relations. This involved him a two step strategy: the first to do with the chasm separating the theory of international law from its actual practical existence in the world; the second to do with the conceptualization of cosmopolitan law as well as its actualization. Kant distinguished between international law which roughly speaking refers to relations between one state and another, and cosmopolitan law which refers to relations between individuals of one state and individuals of another *and* between individuals of one state and another state as a whole. Whilst states alone are subjects of international law, individuals are *also* subjects of cosmopolitan law.

Kant attacked the ‘depravity’ of the existing international order because he saw it as lacking any effective legal relations and as perpetually prone to wars between states. He recognized that the *theory* of international law (*ius gentium*) was well established but insisted it was more semblance than substance because it lacked the abstract coercive force required of any genuine law. In the eyes of Kant, the natural law tradition merely painted a legal gloss on a system in which rulers granted themselves the licence to go to war as they pleased, used any means of warfare necessary, exploited newly discovered colonies as if they were lands without people, and treated foreigners within their own lands as aliens without rights (Kant 1991: 103–5). Kant was not the first to claim that existing international

relations functioned more like a Hobbesian war of all states against all than a properly functioning legal order but what was most innovative in his approach was his attempt to understand and remedy this situation. He argued that 'the greatest evils which oppress civilised nations are the result of war' not least because wars were becoming a graveyard of human rights for nations as a whole and not just for their armed forces. Kant's dictum was that politics could no longer justify wars in terms of sovereign prerogative or glory. Henceforth 'all politics', as he put it, 'must bend the knee before right' (Kant 1991: 174 and 231).

Kant emphasized the need to develop international legal norms to limit the damage caused by wars. The 'old right' of sovereigns to declare war without consulting their subjects must be annulled; citizens must have the right to give their consent to any declaration of war; wars must be conducted in accordance with principles which leave states with the possibility of entering a 'state of right' after the war; barbaric acts of warfare must be criminalized (Kant 1991: 166). More radically, Kant sought to unpack the institutional conditions that would make it possible for all wars to be superseded and standing armies abolished. Here the main problem was that, in the absence of any external legal authority, international laws were interpreted and applied by the warring states themselves. Kant argued that an international authority over that of states had to be established that would be in some ways akin to the national authority of the Leviathan over individuals, *except* – and this was a major proviso – that this domestic analogy must not be overstretched. Kant reiterated that the rational deduction from the idea of universal right could *not* be a world state but this has not stopped some commentators from attributing to Kant the belief that a society of world citizens would supersede political states (Bull 1977). Kant explained that he was opposed to the creation of a world state because there was nothing to stop it turning into a 'universal despotism', a despotism writ large. Kant looked rather to the establishment of a Federation or League of Nations based on mutual cooperation and voluntary consent among a plurality of independent states. He envisaged that such a Federation could start with an alliance of republics but would eventually encompass 'all the nations of the earth' (Kant 1991: 105–14). This conclusion was deeply rooted in the systematic character of Kant's metaphysics. The Federation of Nations would not supersede the independence of states but would challenge the turning of state independence into the absolute (Brown 2005). On the one hand, the rights of states would be relativized downward in relation to citizens (the task of republicanism); on the other, they would be relativized upward in relation to international law (the task of the Federation). What we find in Kant's cosmopolitanism is not a critique of the state as such but a critique of the deification of the state in doctrines of absolute state sovereignty. His point was that every sphere of right – private and public right in the domestic field and international and cosmopolitan right in the international field – was to have its due in the system of right as a whole.

The other markedly innovative aspect of Kant's political writings was to develop the concept of cosmopolitan right, that is, rights ordinary people should have in relation to foreigners and foreign states when they engage in international commerce, migration, travel or flight. Kant restricted cosmopolitan right to the

right to hospitality individuals should possess as citizens of the world – the right to visit all regions of the world, initiate communication with other peoples, try to engage in commerce with them and appeal to them for help. Kant is often criticized for restricting the extent of this right – ‘the other can turn him away if this can be done without destroying him’ (Kant 1991: 105–8) – but it is important to see the context in which he made such statements (Benhabib 2004). Kant was seeking to avoid abuses committed in the name of the ‘right of hospitality’, notably those unleashed on non-European people by European states and trading companies. Kant referred to the ‘Jesuitism’ of colonial interpretations of ‘universal hospitality’ designed to justify the subjugation of non-European peoples on the pretext that they mistreated European travellers – ‘travellers’ who were actually armed invaders. He attacked the ‘inhospitable conduct’ of so-called civilized states which spoke of ‘visiting’ foreign countries but actually were engaged in conquering them. He defended the right of non-European peoples to their own ways of life even if they did not share European commercial values. Towards the end of the section on ‘cosmopolitan right’ in the *Metaphysics of Justice* Kant repudiated justifications of European colonialism in terms of ‘bringing culture to uncivilised peoples’ and purging the home country of ‘depraved characters’. This improbable combination, Kant argued, simply glossed over the extermination, enslavement and abuse of colonized peoples (Kant 1996: §62).

Sankar Muthu has done us a great service in demonstrating how radically opposed Kant was to European imperial practices (Muthu 2000 and 2003). He pointed out that Kant was not a standard bearer of cosmopolitan morality as it is normally conceived. Kant believed everyone should be a ‘friend of human beings as such’ but noted:

The benevolence present in love for all human beings is indeed the greatest in its extent, but the smallest in its degree; and when I say that I take an interest in this human being’s well-being only out of my love for all human beings, the interest I take is as slight as an interest can be. (Cited in Muthu 2000: 23–4)

Kant argued that ‘love for a particular group’ and ‘general love for the entire human race’ are each fraught with dangers: the former because it breeds indifference to ‘the class of men with whom <one> stands in no connection’; the latter because ‘the friend of humanity ... cannot fail to dissipate his inclination through its excessive generality and quite loses any adherence to individual persons’ (*ibid.*). Faced with this difficulty, Kant (in a manner to be followed by Durkheim) looked to the formation of a patriotism in which the citizen could both express ‘fealty to his country’ and promote the ‘well-being of the entire world’. He envisioned a world of multiple interconnections – one that required that we come to terms with the global dynamics of modern society.

Natural Law and History

Kant recognized that the cosmopolitan ideals that once lit up the dawn of the French revolution quickly succumbed to wars of conquest both in Europe and in the non-European world which were marred by horrifying instances of injustice. His obstinacy, however, lay in attempting to reconcile the principle on which the world revolution was turning, the rise of national self-determination, with universal principles of right. The form of this reconciliation was not predetermined and in the non-European world he defended the right of national self-determination in the face of colonial conquest. From a moral point of view Kant maintained that the duty to act in accordance with the principles of right was incumbent both upon rulers however great the sacrifice they had to make, upon ordinary people whether or not public opinion recognized it, and upon European nations engaged in imperial expansion. From a historical point of view he argued that longer-term historical tendencies were conducive to cosmopolitan ideas and practices. He pointed to the economic utility of cosmopolitanism in a commercial age in which peaceful exchange is more profitable than war and plunder; the political utility of cosmopolitanism for states faced with the escalating costs and risks of modern warfare; the plausibility of cosmopolitanism in an age in which citizens have the opportunity both to reach a higher level of political maturity and to have a greater voice in political decision making; and above all the salience of cosmopolitanism to a world marked by the growing interconnectedness of peoples: 'the peoples of the earth have entered in varying degrees into a universal community, so that a violation of rights in one part of the world is felt everywhere' (Kant 1991: 107–8).

Kant acknowledged countervailing tendencies, for example, that republican citizens may be civilized 'only in respect of outward courtesies and proprieties'. He argued, however, that the germ of enlightenment necessarily evolves towards a universal end, 'the perfect civil union of humankind' and that this universal purpose was 'guaranteed by no less an authority than the great artist *Nature* herself' (Kant 1991: 50 and 114). In Kant's teleology 'the means nature employs to bring about the development of innate capacities is that of antagonism with society'. The 'unsocial sociability of men', as he famously put it, pushes humanity forward (Kant 1991: 44). Nature may offer us a salutary education but it is 'harsh and stern' in its pedagogy. It does so by way of great hardships even to the extent of nearly destroying the whole human race. In this teleology there is no rosy optimism, no resignation in the face of violence, and no justification of violence today in the name of perfection tomorrow. What we find is something altogether more interesting: a struggle in dark times to retain faith in the possibility of human progress and to translate this faith into practice.

Kant's cosmopolitanism may be read as part a collective effort to radicalize the distinctive accomplishment of eighteenth-century revolutions: the declarations of the rights of man and citizen. If the idea of the rights of man signified that every 'man' should be conceived as a bearer of rights, it contrasted with traditional societies in which personality was a privileged status distinct from the majority of the population. Roman law distinguished between the status of persons who had

the right to have rights and slaves who did not. By contrast, the declarations of the rights of man and citizen universalized the status of personality so that every man could in principle be deemed a bearer of rights. The more radical wing of eighteenth-century republicanism recognized the multiple exclusions present in practice in the declarations of the rights of man and citizen, but argued that they provided the framework in which struggles for the rights of women, slaves, colonial subjects, Jews, workers, criminals, lunatics and other excluded groups could be attached to the original republican conception (Hunt 2007). From the Black Jacobins of Saint Domingue to the petitions of Olympe de Gouges the excluded had most to gain from the universality of rights. The specific contribution of Kant was to address the contradiction between the universality of the idea of the rights of man and its particular national existence. It seemed that the rights of man stopped at the gates of the city: no citizen, no rights.

Kant's search for a solution led him down three connected paths: the expansion of republican forms of government, the enhancement of international law and the establishment of international legal authority. It was a prescient vision of reform but, as his successors could see more clearly, one that could also reproduce the very problems it set out to solve. The affinity between cosmopolitanism and republicanism could be contradicted by the inversion of the rights of man into a duty of unconditional obedience to the state which grants these rights and into a feeling of unthinking patriotism among citizens who identify with the state. The extension of republicanism could be contradicted by the means by which it was achieved: war, colonial conquest, human suffering. The formation of a voluntary League of Nations might well not provide the alchemy for turning perpetual war into perpetual peace and could be contradicted by its own principles of voluntarism and self-determination. Insofar as Kant shared the dream of modern natural law, a dream transformed into a political method by the French Revolution, that the rational way of dealing with problems is to 'sweep away the inherited clutter from traditions, clean the slate and start again from scratch' (Toulmin 1992: 175), he could not know how heavily the burden of history weighs upon the present.

Kant's relation to the natural law tradition was more like a dialogue than a rupture. The natural law jurists he lumped together as 'sorry comforters' were closer to him than he acknowledged: they were the first to give the world a regular system of natural jurisprudence, the first to conceive of the unity of the human race in spite of its division into nations, the first to argue that universal human unity was a natural law even if it went unacknowledged by those who held that the duties of humanity ought to be conferred on compatriots alone. *Ius gentium* stood for legal principles that were binding despite the absence of higher authority: treaties had to be respected, states had to recognize one another reciprocally as sovereign, the conduct of war had to preserve the possibility of a future peace (Hegel 1991: §333). States were not considered merely as private persons but as members of a society in which every state was entitled to be recognized as an independent power in the eyes of other states. As Hegel observed, when Napoleon declared that 'the French Republic is no more in need of recognition than the sun is' this illusion of self-sufficiency was his undoing. Grotius and Pufendorf defended the sovereignty of

states but also treated states as moral personalities with civil obligations to one another. Christian Wolff looked to Europe as a forerunner of a time when ‘the voice of nature will reach the civilised peoples of the world and they will realise that all men are brothers’. Vattel subordinated the interests of a particular society to ‘the ties of the universal society which nature has established among men’ and looked to commerce and communication as media through which this *civitas maxima* could be established. Kant overstated his own break from the tradition of natural law and in so doing also overstated the break represented by the rise of republicanism (Tuck 2001).

Hegel observed in *The Philosophy of Right* that republican states may require the consent of the people to go to war or at least to finance war, but responsibility for making war and peace and for the command of armed forces does not generally lie with the people but with the rulers. In any event the people may be more prone to martial enthusiasm than their rulers. The very rationality of republican institutions can be a source of popular identification with them and the trust people have in the state may encourage them to identify their interests with the interests of the state (Hegel 1991: §268). In times of war, when the independence of the state is at risk, popular identification with it is likely to be intensified and lead to a situation in which the rights of individuals become a matter of indifference compared with the survival of the state (§145A). Citizens may be required to sacrifice themselves to the interest of the state, however much their self-sacrifice is represented as an act of individual valour (Hegel 1991: §328R). Wars can be as useful for republican as for other states as a means of averting internal unrest and consolidating the power of the state within. They can appear ethical because they elevate the interest of the community as a whole over the private interest of the individual, patriotism over private enrichment. And there is plenty of scope for republican states to go to war if they feel they have suffered an injury from another state or the security of its people is at risk. A League of Nations, though designed to put an end to war, is quite capable of constructing its own enemies and starting new wars (Hegel 1991: §324A).

In the tradition of natural law thinking Kant imposed his own *Sollen* – his own prescriptions of what political community ought to be – on society. It was not always a particularly liberal prescription in the customary sense of the term. He wrote in the *Metaphysics of Justice* that the formation of a republican state is a rational necessity everyone must recognize and that people must be forced into state formation if they fail to do so of their own accord. In another passage he wrote that the unilateral will of property owners *must* give way to a ‘collective, universal and powerful Will’ and that people must obey the law once they have entered into a ‘civil condition’ (§8). In another passage he wrote that the duty of the citizen is to ‘endure even the most intolerable abuse of supreme authority’ and that the ‘well-being of the state’ must not be confused with ‘the welfare or happiness of the citizens of the state’ (§86). In another he insists that the state legislature can do ‘absolutely no injustice to anyone’ and that ‘the people’s duty <is> to endure even the most intolerable abuse of supreme authority’ (§86). Whilst Kant affirmed the right and duty of citizens to think for themselves, he restricted this right and duty

to 'the use which anyone may make of it as a man of learning addressing the entire reading public' (Kant 1991: 55); otherwise, as in the case of an officer receiving a command from his superiors or a clergyman receiving an order from the church, they must obey since the freedom of citizens does not lie in their capacity to choose for or against the law but only in their 'internal legislation of reason' (§28).

These normative prescriptions doubtless mirror something of the nature of modern political community but a certain state-consciousness still haunts the antechambers of Kant's discussion. He gives a roughly accurate empirical account of the organization of power in modern republican states (albeit without fully recognizing the social character of civil society) and then converts these empirical facts into juridical postulates of practical reason. To paraphrase Marx, he rediscovers the idea of 'right' in every sphere of law he depicts. Once we explore the dark side of the modern state – the social inequalities and class conflicts of civil society, the overweening power of the executive, the narrow limits of representation, the military machines it constructs, its interest in war and conquest, its tendency to present itself as an 'Earthly God' – the prospect of ratcheting cosmopolitanism onto these materials is bound to appear less promising.

Perhaps the least appealing aspect of Kant's cosmopolitanism has to do with his anthropological writings, which are sometimes indicted for their racist resonances (McCarthy 2009: 42–68). Kant has been accused of serving as a philosophical source of race-thinking *avant la lettre* and at face value his representation of Native Americans as too weak for hard work, Africans as adapted to the culture of slaves, Asians as civilized but static and Europeans as capable of progress towards perfection do seem to reinforce these charges. They appear either to reveal the susceptibility of even the most enlightened philosophers to the prejudices of their day or to reveal the imperialistic character of cosmopolitanism itself. My own inclination is to go down neither of these roads. The more difficult and interesting path, to my mind, would be to revisit the anthropology in the light of Kant's natural law theory. For all its manifold limitations, Kant's theorization of 'race' was opposed to polygenetic views of the origins of the human species, that is, to the view that the different races had no common origin and no possibility of a common end. If Kant's anthropology was an attempt to explain differences between the races in terms of geographical, climactic and economic conditions (between hunting, pastoral, agricultural and commercial modes of production), then we might read his monogenetic argument as an attempt to demonstrate that so-called racial differences do not challenge the biological unity of the human race and that even the unequal differentiation of human types finds its teleological purpose in nature's plan that all natural capacities are destined to be developed throughout the human species and that the universality of the human condition is becoming a legal, political and moral norm. I do not wish to nail my flag to this mast but a definite advantage of this reading is to rescue the unity of Kant's own philosophical, political and anthropological writings.

Conclusion: Cosmopolitanism Beyond Natural Law?

Hegel recognized that the greatness of Kant's cosmopolitan vision lay in the fact that he had 'some inkling of the nature of spirit ... to assume a higher shape than that in which its being originally consisted' and that in this respect he was superior to those for whom spirit remained an 'empty word' (Hegel 1991: §343R). Kant understood that it is a matter of 'infinite importance' that 'a human being counts as such because he is a human being, not because he is a Jew, Catholic, Protestant, German, Italian, etc.' (Hegel 1991: §209R). Hegel, however, adds his own notes of realism. For example, in his *Philosophy of History* he comments that among European states there naturally arises a common interest in preserving their own power and independence but also that the balance of power between them is continually being threatened and can lead to conditions of mutual mistrust. Thus when the Thirty Years' War resulted in the utter desolation of all parties, the Peace of Westphalia brought to a close this period of perpetual war by establishing a legal framework which ratified the coexistence of religious parties and established a system of rights based on human will rather than divine command. The Treaty of Westphalia (1648) was a major step forward in the liberation of political life from the control of the Church. It marked the replacement of blind obedience to divine law by the principle of obedience to the laws of one's own making. Executive powers previously the property of dynastic families were transferred into functions of the state. Privileges of the feudal nobility were curtailed and transformed into official state positions. The dependence of the people on noble masters was broken and dependence on the state came in its stead. Feudal retinues were replaced by standing armies. These developments in turn created new powers and new imbalances of power which disrupted the formation of a common interest among states. The story does not of course end in Hegel's own times.

Kant's philosophy of right was a critical philosophy. His natural law theory was critical in that it sought to change the world. It did not stop at what was empirically given whether this was supported by the authority of the state, the agreement of human beings or the inner moral feelings of individuals. It did not trust in any publicly recognized truth. When it encountered difficulties in distinguishing what is right among a variety of opinions, it based its judgement on genuine concern for the concept itself. His cosmopolitanism was at its most radical when it pushed at the boundaries of natural law theory and advanced it not as a blueprint for an ideal legal and political order-to-come but as a reminder of what human freedom makes possible. Kant puts this sense of possibility very well when he writes:

Humanity is by its very nature capable of constant progress and improvement without forfeiting its strength ... no one can or ought to decide what the highest degree may be at which mankind may have to stop progressing, and hence how wide a gap may still of necessity remain between the idea and its execution. For this will depend on freedom, which can transcend any limit we care to impose. (Kant 1991: 189–91)

Kant's critical idealism was based on the idea of 'cancelling' the empirical world in favour of the a priori and beneath its formal criteria definite social institutions were, as Hegel put it, 'smuggled in'. His insistence on the importance of the idea of right became inadequate when he took something conditioned by specific social relations and transformed it into the absolute. When we refuse to consider the subjective dispositions of individuals, there is always the temptation to impose a utopian blueprint on them.

Perhaps this is another way of saying that the seeds of transforming Kant's critical idealism into something more conventional were already present in the natural law approach. The deduction of the institutional forms of right from postulates of practical reason can have conservative as well as critical appropriations. At the time of Kant's writing, international law operated largely in terms of treaties and other agreements between sovereign states; the idea of republican statehood was restricted to Europe and America; the rest of the world was either under their imperial control or outside world society altogether; there was no United Nations and no concept of human rights as such. Today, writing in the wake of the century of catastrophe, it might appear that the elements of the cosmopolitan condition have finally come into place. The risk is that an unmediated appropriation of Kant's cosmopolitan thinking can turn his critical idealism into something more akin to an uncritical positivism. The other legacy we might draw from Kant is to try once again to separate the rational kernel of Kantian natural law theory from its mystical shell in our own efforts to come to terms with the dynamics of global society and confront the barbarism within.

Acknowledgements

I should like to thank Richard Beardsworth, Gurminder Bhambra, Glynis Cousin and Lydia Morris for their suggestions.

Bibliography

- Adorno, T. 1990. *Negative Dialectics*. London: Routledge.
- Arendt, H. 1992. *Lectures on Kant's Political Philosophy*. Edited with an interpretive essay by Ronald Beiner. Chicago: Chicago University Press.
- Beardsworth, Richard. 2011. *Cosmopolitanism and International Relations Theory*. Cambridge: Polity Press.
- Benhabib, S. 2004. *The Right of Others: Aliens, Residents, and Citizens*. Cambridge: Cambridge University Press.
- Bohman, J. and Lutz-Bachmann, M. (eds). 1997. *Perpetual Peace. Essays on Kant's Cosmopolitan Ideal*. Cambridge, MA: MIT Press.

- Brown, C. 2006. Kantian cosmopolitan law and the idea of a cosmopolitan constitution. *History of Political Thought*, 27(4), 661–84.
- Brown, G. 2005. State sovereignty, federation and Kantian cosmopolitanism. *European Journal of International Relations*, 11(4), 495–522.
- Bull, H. 1977. *The Anarchical Society: A Study of Order in World Politics*. London: Macmillan.
- Cavallar, G. 1999. *Kant and the Theory and Practice of International Right*. Cardiff: University of Wales Press.
- Chernilo, D. 2007. A quest for universalism: re-assessing the nature of classical social theory's cosmopolitanism. *European Journal of Social Theory*, 10(1), 17–35.
- Chernilo, D. 2010. On the relationship between social theory and natural law: lessons from Karl Löwith and Leo Strauss. *History of the Human Sciences*, 23(5), 91–112.
- Colletti, L. 1972. Rousseau as critic of civil society, in *From Rousseau to Lenin*, trans. John Merrington and Judith White. London: New Left Books.
- Fine, R. 2001. *Political Investigations*. London: Routledge.
- Fine, R. 2002. *Democracy and the Rule of Law: Marx's Critique of the Legal Form*. Caldwell: The Blackburn Press (new edition of Pluto Press 1984).
- Fine, R. 2003. Kant's theory of cosmopolitanism and Hegel's critique. *Philosophy and Social Criticism*, 29(6), 609–30.
- Fine, R. 2007. *Cosmopolitanism*. London: Routledge.
- Fine, R. and Smith, W. 2003. Jürgen Habermas' theory of cosmopolitanism. *Constellations*, 10(4), 469–87.
- Fine, R. and Vazquez, R. 2006. Freedom and right in modern society: reading Hegel's *Philosophy of Right*. *Law and Sociology, Current Legal Issues*, 8, 241–53.
- Flikschuh, K. 2000. *Kant and Modern Political Philosophy*. Cambridge: Cambridge University Press.
- Gierke, Otto Friedrich von. *Natural Law and the Theory of Society, 1500 to 1800*. Cambridge.
- Habermas, J. 1998. Kant's idea of perpetual peace: at two hundred years' historical remove, in *The Inclusion of the Other: Studies in Political Theory*. Cambridge, MA: The MIT Press.
- Hegel, G. 1991. *Philosophy of Right*. Edited by A.W. Wood and translated by H.B. Nisbet, Cambridge: Cambridge University Press.
- Hobbes, T. 1996. *Leviathan*. Cambridge: Cambridge University Press.
- Hoffe, O. 2006. *Kant's Cosmopolitan Theory of Law and Peace*. Cambridge: Cambridge University Press.
- Hunt, L. 2007. *Inventing Human Rights: A History*. New York: W.W. Norton.
- Kant, I. 1987. *Critique of Judgment*. Translated by Werner S. Pluhar. Cambridge: Hackett Publishing Company.
- Kant, I. 1991. *Kant: Political Writings*. Edited by H. Reiss. Cambridge: Cambridge University Press.
- Kant, I. 1996. *The Metaphysics of Morals*. Translated and edited by Mary Gregor, introduction by Roger Sullivan. Cambridge: Cambridge University Press.

- McCarthy, G.T. 2009. *Race, Empire, and the Idea of Human Development*. Cambridge: Cambridge University Press.
- Muthu, S. 2000. Justice and foreigners: Kant's cosmopolitan right. *Constellations*, 7(1), 23–44.
- Muthu, S. 2003. *Enlightenment against Empire*. Princeton: Princeton University Press.
- Riedel, M. 1984. *Between Tradition and Revolution: The Hegelian Transformation of Political Philosophy*. Cambridge: Cambridge University Press.
- Rose, G. 1981. *Hegel Contra Sociology*. London: Athlone.
- Schlereth, T. 1997. *The Cosmopolitan Ideal in Enlightenment Thought: Its Form and Function in the Ideas of Franklin, Hume and Voltaire*. Notre Dame: University of Notre Dame Press.
- Smith, W. and Fine, R. 2004. Kantian cosmopolitanism today: John Rawls and Jürgen Habermas on Immanuel Kant's *Foedus Pacificum*. *Kings College Law Journal*, 15(1), 5–22.
- Toulmin, S. 1992. *Cosmopolis: The Hidden Agenda of Modernity*. Chicago: University of Chicago Press.
- Tuck, R. 2001. *The Rights of War and Peace: Political Thought and the International Order from Grotius to Kant*. Oxford: Oxford University Press.