

OXFORD



KANT AND COLONIALISM

EDITED BY

KATRIN FLIKSCHUH & LEA YPI

Kant and Colonialism

Kant and Colonialism

*Historical and Critical
Perspectives*

EDITED BY

Katrin Flikschuh
and Lea Ypi

OXFORD
UNIVERSITY PRESS

OXFORD

UNIVERSITY PRESS

Great Clarendon Street, Oxford, OX2 6DP,
United Kingdom

Oxford University Press is a department of the University of Oxford.
It furthers the University's objective of excellence in research, scholarship,
and education by publishing worldwide. Oxford is a registered trade mark of
Oxford University Press in the UK and in certain other countries

© The several contributors 2014

The moral rights of the authors have been asserted

First Edition published in 2014

Impression: 1

All rights reserved. No part of this publication may be reproduced, stored in
a retrieval system, or transmitted, in any form or by any means, without the
prior permission in writing of Oxford University Press, or as expressly permitted
by law, by licence or under terms agreed with the appropriate reprographics
rights organization. Enquiries concerning reproduction outside the scope of the
above should be sent to the Rights Department, Oxford University Press, at the
address above

You must not circulate this work in any other form
and you must impose this same condition on any acquirer

Published in the United States of America by Oxford University Press
198 Madison Avenue, New York, NY 10016, United States of America

British Library Cataloguing in Publication Data

Data available

Library of Congress Control Number: 2014939137

ISBN 978-0-19-966962-2

Printed and bound by
CPI Group (UK) Ltd, Croydon, CRO 4YY

Links to third party websites are provided by Oxford in good faith and
for information only. Oxford disclaims any responsibility for the materials
contained in any third party website referenced in this work.

Contents

<i>Notes on Contributors</i>	vii
<i>List of Abbreviations of Kant's Works</i>	ix
Introduction: Kant on Colonialism—Apologist or Critic? <i>Katrin Flikschuh and Lea Ypi</i>	1
1. The Law of Continuity: Conquest and Settlement within the Limits of Kant's International Right <i>Anthony Pagden</i>	19
2. Kant's Second Thoughts on Colonialism <i>Pauline Kleingeld</i>	43
3. Productive Resistance in Kant's Political Thought: Domination, Counter-Domination, and Global Unsocial Sociability <i>Sankar Muthu</i>	68
4. Commerce and Colonialism in Kant's Philosophy of History <i>Lea Ypi</i>	99
5. Colonists, Traders, or Settlers? Kant on Fair International Trade and Legitimate Settlement <i>Liesbet Vanhaute</i>	127
6. Kant's Juridical Theory of Colonialism <i>Arthur Ripstein</i>	145
7. Restorative Justice in International and Cosmopolitan Law <i>Peter Niesen</i>	170
8. Provisional Right and Non-State Peoples <i>Anna Stilz</i>	197
9. Colonial Mentality: Kant's Hospitality Right Then and Now <i>Martin Ajei and Katrin Flikschuh</i>	221
<i>Index</i>	251

Notes on Contributors

MARTIN AJEI is Senior Lecturer in Philosophy at the University of Ghana. He specializes in African liberation ethics and in the philosophy of development. He is the author of *African Development: The Imperative of Indigenous Knowledge and Value* (Accra: Legon Academic Publishing, 2011) and numerous articles on modern African philosophy.

KATRIN FLIKSCHUH is Professor of Political Theory at the London School of Economics. She works on Kant and on contemporary liberalism and has a growing interest in modern African philosophy. Flikschuh is the author of *Kant and Modern Political Philosophy* (Cambridge University Press, 2000) and is currently working on a book provisionally entitled, *Kant contra Cosmopolitanism: Assessing the Global Justice Debate*.

PAULINE KLEINGELD is Professor of Philosophy at the University of Groningen, the Netherlands. She is the author of *Kant and Cosmopolitanism: The Philosophical Ideal of World Citizenship* (Cambridge University Press, 2012) and *Fortschritt und Vernunft: Zur Geschichtsphilosophie Kants* (Königshausen und Neumann, 1995), and the editor of Immanuel Kant, *'Toward Perpetual Peace' and Other Writings on Politics, Peace, and History* (Yale University Press, 2006).

SANKAR MUTHU is Associate Professor of Political Science at the University of Chicago. He is the author of *Enlightenment Against Empire* (Princeton University Press, 2003) and the editor of (and contributor to) *Empire and Modern Political Thought* (Cambridge University Press, 2012).

PETER NIESEN is Professor of Political Theory at Hamburg University and works on late enlightenment and contemporary political philosophy. He is the author of *Kant's Theorie der Redefreiheit* (Baden-Baden: Nomos 2nd edn., 2008) and the editor of a volume of Bentham's writings on the French Revolution, *Unsinn auf Stelzen* (Berlin: Akademie, 2014).

ANTHONY PAGDEN is Distinguished Professor, Department of Political Science, the University of California, Los Angeles. He has written numerous books on the intellectual history of Europe's relationship with

the rest of the world. His most recent publication is *The Enlightenment: And Why it Still Matters* (Oxford University Press, 2013).

ARTHUR RIPSTEIN is Professor of Law and Philosophy at the University of Toronto. He is the author of *Force and Freedom: Kant's Legal and Political Philosophy* (Harvard University Press, 2009).

ANNA STILZ is Associate Professor of Politics at Princeton University. Her first book, *Liberal Loyalty: Freedom, Obligation, and the State*, was published by Princeton University Press in 2009. Her articles have appeared (among others) in *Ethics*, *The Journal of Political Philosophy*, and *Philosophy & Public Affairs*. She is currently working on a new book on self-determination and rights to land and territory.

LIESBET VANHAUTE is a post-doctoral researcher for the Research Foundation Flanders. She is currently affiliated with the Centre for Ethics at the University of Antwerp, where she conducts research on the moral-psychological and normative dimensions of conscientious objections. She has published on Kant's anthropology and his philosophy of history.

LEA YPI is Associate Professor of Political Theory at the London School of Economics and Political Science and Adjunct Professor of Philosophy at the Australian National University. She is the author of *Global Justice and Avant-Garde Political Agency* (Oxford University Press, 2012) and of numerous articles on Kant, colonialism, migration, and global justice.

List of Abbreviations of Kant's Works

ApH	Anthropologie in pragmatischer Hinsicht, Ak 7 (1798) Anthropology from a Pragmatic Point of View
B	Briefwechsel (1747–1788), Ak 10 Correspondence
BBM	Bestimmung des Begriffs einer Menschenrasse, Ak 8 (1785) Determination of the Concept of a Human Race
Bew	Der einzig mögliche Beweisgrund zu einer Demonstration des Daseins Gottes, Ak 2 (1763) The Only Possible Argument in Support of a Demonstration of the Existence of God
EaD	Das Ende aller Dinge, Ak 8 (1794) The End of All Things
GTP	Über den Gemeinspruch: Das mag in der Theorie richtig sein, taugt aber nicht für die Praxis, Ak 8 (1793) On the common saying: This may be correct in theory, but it is of no use in practice
IaG	Idee zu einer allgemeinen Geschichte in weltbürgerlicher Absicht, Ak 8 (1784) Idea for a Universal History with a Cosmopolitan Aim
KdU	Kritik der Urteilskraft, Ak 5 (1790) Critique of the Power of Judgement
KrV	Kritik der reinen Vernunft (1781, 1787) Critique of Pure Reason
MAM	Mutmaßlicher Anfang der Menschengeschichte, Ak 8 (1786) Conjectural Beginning of Human History
MdS	Metaphysik der Sitten, Ak 6 (1797) Metaphysics of Morals
nevT	Von einem neuerdings erhobenen vornehmen Ton in der Philosophie, Ak 8 (1796) On a recently prominent tone of superiority in philosophy

X LIST OF ABBREVIATIONS OF KANT'S WORKS

Ped	Immanuel Kant über Pädagogik, Ak 9 (1803) Lectures on Pedagogy
R	Reflexionen aus dem Nachlaß, Ak 14–23 Notes and fragments, unpublished remains
Rel	Religion innerhalb der Grenzen der bloßen Vernunft, Ak 6 (1793) Religion within the Boundaries of Mere Reason
SdF	Der Streit der Facultäten, Ak 7 (1798) The Conflict of the Faculties
TPP	Über den Gebrauch teleologischer Prinzipien in der Philosophie, Ak 8 (1788) On the Use of Teleological Principles in Philosophy
VA	Vorlesungen über Anthropologie, Ak 25 Lectures on Anthropology
VRM	Von den verschiedenen Rassen der Menschen, Ak 2 (1775, 1777) Of the Different Races of Human Beings
WiA	Beantwortung der Frage: Was ist Aufklärung? Ak 8 (1784) An Answer to the Question: What is Enlightenment?
ZeF	Zum ewigen Frieden: Ein philosophischer Entwurf, Ak 8 (1795) Toward Perpetual Peace: A Philosophical Sketch

These references are to Kant's gesammelte Schriften. Ausgabe der Preussischen (later Deutschen) Akademie der Wissenschaften (Berlin: Georg Reimer, later Walter de Gruyter, 1902–).

The only exceptions are:

VA Ko	The Dohna-Wundlacken Lectures on Anthropology (179–192), published in Arnold Kowalewski (ed.), Die philosophischen Hauptvorlesungen Immanuel Kants. Nach den neu aufgefundenen Kollegheften des Grafen Heinrich zu Dohna-Wundlacken (München: Rösl, 1924).
-------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

- VPG Doenhoff The Doenhoff Lectures on Physical Geography (probably from 1782).
- VPG Dohna The Dohna Lectures on Physical Geography (1792).
 The Doenhoff and Dohna Lectures on Physical Geography are scheduled to be published in the Akademie Ausgabe. Werner Stark has already made his transcripts available at <<http://kant.bbaw.de>.> accessed February 19, 2014. Page numbers refer to the transcripts.
- Unless otherwise noted, all translations follow those in *The Cambridge Edition of the Works of Immanuel Kant*, eds. Paul Guyer and Allen W. Wood (New York: Cambridge University Press 1992–).

Introduction

Kant on Colonialism—Apologist or Critic?

Katrin Flikschuh and Lea Ypi

This is the first volume dedicated to a systematic exploration of Kant's position on colonialism. There are no similar volumes currently available. For good reason, one may think: after all, the issue of colonialism is marginal to Kant's philosophical thinking as well as to eighteenth-century Prussian politics. Kant's critics disagree. Though few Kant scholars have so far engaged systematically with the development of Kant's views on colonialism, plenty of his critics have recently done so. Indeed, when it comes to 'Kant and colonialism', the current scholarly status quo is not altogether unlike that of the much longer-running battle over 'Kant and race'. Philosophers of race have for some time now focused on Kant as the central philosophical force behind Enlightenment racism and its enduring legacies. In that debate, Kant is charged with having 'invented' the concept of race and with having thereby legitimized philosophical racism.¹ Some decry Kant as the philosophical forerunner of the Nazi doctrine of 'Untermenschen'.² Many claim that Kant's—undoubtedly racist—views

¹ Robert Bernasconi, 'Who Invented the Concept of Race? Kant's Role in the Enlightenment Construction of Race', in Bernasconi (ed.), *Race* (Oxford: Blackwell, 2001), pp. 11–36.

² Charles Mills, 'Kant's Untermenschen', in Andrew Valls (ed.), *Race and Racism in Modern Philosophy* (Ithaca: Cornell University Press, 2005), pp. 169–93.

hopelessly infest his moral and political thinking more generally.³ The literature on Kant and race is often insistent, moreover, about the inadmissibility of Kant's having changed his mind on the issue.⁴

One disquieting feature of this single-minded focus on one major Enlightenment thinker is the resulting occlusion of the systemic nature of philosophical racism: the racisms of Hume, Kant, Hegel, and Mill tend not to be appreciated as summing to a *tradition* of philosophical prejudice. Indeed, the single-minded scapegoating of an individual representative of one's philosophical *past* can encourage exoneration of the *present*: the more insistently we point the finger at historical wrongdoing, the less we may feel we need to examine our own philosophical proclivities on this score.

Critics' treatment of Kant and colonialism—or of Kant and imperialism—is taking a similar trajectory. Here, too, there is a notable tendency to focus moral disapprobation on Kant, who is made to stand in for the shortcomings of Enlightenment rationalism, universalism, imperialism—all frequently treated as more or less interchangeable terms of imperial discourse. In the second volume of his *Public Philosophy in a New Key*, James Tully sees in Kant's cosmopolitan writings 'a particularly clear and uncompromising expression of the central features of the classic [imperial] meta-narrative', with its tendency progressively to erode the differences between cosmopolitan and imperial aspirations. According to Tully, Kant's teleology of history contrives to portray European imperial expansionism as the spread of cosmopolitanism by other means:

Kant combined two very powerful imperial stories: a presumptively universal and Eurocentric narrative of historical development or modernization and a presumptively universal and juridical theory of global justice. The Kantian theory or meta-narrative is imperial in the classically modern sense. Firstly, while it does not justify the excessive violence and pillage of European colonial imperialism and of the on-going remaking of the world in the political, legal and economic image of European state formation, it is presented as the universally necessary and irresistible path of development and modernization. Secondly, it presents the

³ Emmanuel Chuckwudi Eze, 'The Color of Reason: The Idea of "Race" in Kant's Anthropology', in Eze (ed.), *Postcolonial African Philosophy* (Oxford: Blackwell, 1997), pp. 103–140.

⁴ Robert Bernasconi, 'Kant's Third Thoughts on Race', in Stuart Elden and Eduardo Mendieta (eds.), *Reading Kant's Geography* (Albany: SUNY Press, 2011), pp. 291–318. In contrast, see Pauline Kleingeld, 'Kant's Second Thoughts on Race', *The Philosophical Quarterly* 57 (2007), pp. 573–92. See also Kleingeld's response to Bernasconi in this volume.

post-colonial phase of development as a universal system of formally identical European state forms, abstracted from their continuing colonial relations of historical construction, deepening dependency and substantive inequality, and as a system of informal imperial rule through the league, in a completely non-imperial vocabulary.⁵

The passage merits quoting in full for the historical prescience it attributes to Kant. European imperialism peaked in the last third of the nineteenth century with the ‘Scramble for Africa’ at the Berlin conference of 1885–6—around 80 years after Kant’s death. While there is clear textual warrant for attributing to Kant the view that Europe would eventually ‘give laws to the rest of the world’ (LaG 8:29), it is doubtful that Kant had a very clear conception, even when he still held that view, of what specific form that law-giving would take. Even the claim that Kant’s arguments would serve the interests of ruling elites would be hard to make since Prussia had no colonies of its own. Yet the passage cited refers not only to the actual protracted period of colonization of non-Europeans by Europeans, it also mentions the export of the European model of territorial statehood, the attendant justificatory language of economic and moral development, and the phase of constitutionally engineered decolonization, together with related abiding legacies of political dependence and economic inequality. In short, Tully sketches the actual history of European imperialism and its problematic aftermath even as he gives an assessment of Kant’s intellectual contribution to the early beginnings of that history. Two things are being run together here: Kant’s cosmopolitan-cum-imperialist writings prior to the peak of European imperialism, and the history of the phenomenon as it in fact unfolded long after Kant’s death.

This conflation is not surprising. In many respects, the target is not Kant so much as current cosmopolitan writings, Kantian or otherwise. Nor is Tully alone in his endeavour to problematize current cosmopolitan theorizing by way of exposing its debts to imperialistic Enlightenment legacies. Several of the contributors of the recently published volume, *Reading Kant’s Geography*, trace current universalizing presumptions to Kant’s Eurocentricism in his enthusiastic yet notably unsystematic lectures on non-European peoples and parts of the world.⁶ David Harvey’s

⁵ James Tully, *Public Philosophy in a New Key, Volume II: Imperialism and Civic Freedom* (Cambridge: Cambridge University Press, 2008), p. 148.

⁶ cf. Walter Mignolo, ‘The Darker Side of the Enlightenment: A De-Colonial Reading of Kant’s Geography’; also Eduardo Mendieta, ‘Geography is to History as Woman is to Man:

penetrating *Cosmopolitanism and the Geographies of Freedom* takes Kant's 'Anthropology and Geography' as its point of departure in diagnosing the prejudicial and parochial nature of much *current* global theorizing; Thomas McCarthy's study of *Race, Empire, and the Idea of Human Development* does likewise.⁷ For these and other authors, it is the abiding influence of Kant's cosmopolitan writings that accounts for the often triumphantly Eurocentric presumptions in current cosmopolitan debates.

How plausible is this view? How relevant was Kant's voice to the colonial debates of his time, and how central is his philosophical work in relation to current cosmopolitan thinking? Turning to Kant's contemporary context first, Russell Berman's probing and unjustly neglected book, *Enlightenment or Empire: Colonial Discourse in German Culture*, makes no mention of Kant at all.⁸ This may seem a striking omission, but arguably is not, for in one sense it is true that the issue of colonialism *was* marginal to Kant's body of philosophical work—his longstanding lectures on geography notwithstanding. Kant was not a major contemporary voice in what Berman persuasively describes as a protracted, deeply ambivalent public discourse on non-European cultures and peoples. Much of that discourse appears to have taken place in coffee-houses and similar venues of learned social exchange: not unlike the Sunday newspaper supplements we leaf through today, with their smatterings of information on undiscovered South American tribes, marginalized African slum dwellers, oppressed Asian women, usually in the forms of captions to photos. Berman's is a fascinating study of the Enlightenment mixture of curiosity about and disdain for distant peoples and their mores, of the educated classes' thirst for cultural diversion of this sort, and of travel writers', missionaries', and government emissaries' indulgence of that thirst. Like critics such as Tully and others, Berman diagnoses the intimate connection between the Enlightenment spirit of intellectual discovery on the one hand and the increasingly moralizing tone that described encounters with 'less advanced' cultures on the other hand, yet Berman's study manages to

Kant on Sex, Race, and Geography', both in Stuart Elden and Eduardo Mendieta (eds.), *Kant's Geography* (op. cit.), pp. 319–44 and pp. 345–68.

⁷ David Harvey, *Cosmopolitanism and the Geographies of Freedom*, (New York: Columbia University Press, 2009), pp. 17–36; Thomas McCarthy, *Race, Empire, and the Idea of Human Development* (Cambridge: Cambridge University Press, 2009), pp. 42–68 and pp. 131–65.

⁸ Russell Berman, *Enlightenment or Empire: Colonial Discourse in German Culture* (Lincoln: University of Nebraska Press, 1998).

communicate the *ambivalences* of those encounters—ambivalences that appear to be lost on more stridently moralizing Enlightenment critics.

Although Berman makes no mention of Kant, he offers an in-depth discussion of Georg Forster, a leading German naturalist, ethnologist, and travel writer, who, at a young age, accompanied Captain James Cook on the latter's second Pacific voyage—this time to circumnavigate New Zealand—in 1772. Berman describes in detail a chance encounter between Cook and Forster, and a group of native New Zealanders, respectively recounted by them in their subsequent written accounts of the trip:

For Cook, Dusky Bay is a cartographic fact, a latitudinal item to be entered in the charts and, at best, a way station of solely logistical import for the continuation of an exploratory undertaking that moves along lines drawn from point to point on an empty sea. For Forster, it is an aesthetic experience as well as a natural fact—and more too, since at Dusky Bay an epochal human encounter transpires. The scientist Cook measures geometric space whereas Forster encounters a life world.⁹

Of special interest in the present context is Forster's account of the encounter. Indeed, Forster, like Herder, became a leading voice on behalf of non-European peoples' cultural and moral standing in the context of German Enlightenment. He was also a contemporary of Kant's; moreover, he had several run-ins with Kant on the issue of culture and race. As Pauline Kleingeld has recently emphasized, Kant's analysis of the question of whether natural racial differences could justify the different status of human beings in the social and political hierarchy developed in part as a response to Forster's extensive critical engagement with it.¹⁰ Significant textual evidence suggests that until the early 1790s, Kant defended the idea of the superiority of the white race, resisted racial mixing, was hostile to the abolition of slavery, and implicitly supported European colonialism. His 1785 essay, entitled, 'Determination of the concept of human race', was subjected to extensive critique in Forster's 1786 response, 'Something more on the human races'. The latter rejects wholesale Kant's theory of the heritability of human traits in favour of a model that emphasizes the importance of adaptation to the environment.

Indeed, the early Kant subscribed to a preformist account of human development which connected different races to a common ancestry but

⁹ Berman, *Enlightenment or Empire*, p. 26.

¹⁰ See Pauline Kleingeld, *Kant and Cosmopolitanism: The Philosophical Ideal of World Citizenship* (Cambridge: Cambridge University Press, 2012), pp. 92–123.

saw the development of distinct human races as part of a teleological process that ensured the responsiveness of basic human disposition to diverse environmental conditions.¹¹ Forster objected to Kant's use of empirical evidence to support his case; Forster also took issue with Kant's naturalistically conceived teleology of human development, which was at that point closely related to his remarks concerning the role of the European political and commercial modes of organization as a model for the rest of the world. Forster objected that Kant's conception failed to do justice to the mutability of human races. He argued that Kant's appeal to teleological principles presupposed the kind of development that it was supposed to explain, and he also accused Kant of ignoring the empirical evidence concerning the genealogy and conditions of development of different human races. His methodological points triggered a detailed response by Kant in his 1788 essay, 'On the use of teleological principles in philosophy'. There, Kant not only defended the relevance of the principle of conformity to ends in the empirical study of nature, but reconnected his theory of the development of physical traits in different races with a moral evaluation of their position in the social hierarchy. He emphasized the ways in which particular physical features, developed in contact with the environment, rendered members of specific groups ('Indians' or 'Negroes') unsuited to the performance of certain tasks. Indeed, he went so far as to endorse the words of a 'knowledgeable man' who criticized the abolition of slaves on the grounds that, once emancipated, they would become 'tramps' (GtP 8:174n).

Stung by Kant's scathing demolition of his methodological points against him, Forster withdrew from subsequent engagement with Kant. Through his travel writings and empirical descriptions of encounters with people from different races, he continued to attempt to dispel the racial stereotypes entertained by German intellectual elites. He joined abolitionist campaigns and became one of the most active German supporters of the French Revolution. As is well known, the mature Kant himself eventually joined these emancipatory voices, actively defending the French revolutionary government, and explicitly condemning instances of European colonialism and exploitative international trade. The essays produced after the publication of the *Critique of the Power of Judgement* mark a sharp departure from any attempt to link the empirical observations concerning

¹¹ See Lea Ypi's chapter in this volume for further discussion of this question.

different human races to a moral assessment of their position in society. They also take a more critical perspective on the issue of natural teleology; indeed, as Kant argues in the third *Critique*, it is only a human being's intelligence and will 'to give to nature and to himself a relation to an end that can be sufficient for itself and independently of nature' (KdU 5:431) that justifies the use of teleological principles.

If Kant's own voice within the contemporary debate on colonialism and cosmopolitanism was less central and more complex than his current critics tend to portray it as having been, what about his influence on current cosmopolitan debates? As mentioned, critics of (neo-) imperialism often perceive direct connections between Enlightenment rationalism and Kant's universalism, past imperialism, and current cosmopolitanism. Kant is decried as a rationalist (!), hence a universalist; the neo-imperialist traces in current cosmopolitan debates are said by critics to betray their universalizing Kantian legacies. But are current cosmopolitan debates predominantly Kantian in philosophical orientation? 'Kantianism' is an exceedingly amorphous term of categorization. Prior to the work of John Rawls, philosophical fault lines divided the field between deontological and teleological moral theories; 'Kantianism' was taken to exemplify a distinctive strand of deontological thinking. Post-Rawls, the deontological/teleological distinction is often said to have been superseded: Kant's emphasis on the concept of duty notwithstanding, he is now said to have been no stranger to the idea of moral value. In consequence, virtually anyone may now qualify as a 'Kantian' who subscribes to the values of freedom and equality as broadly conceived by Rawls.

A similar breadth of possible allegiance characterizes Kantianism in current global justice debates: proponents of the cosmopolitan dissolution of individual statehood may think themselves Kantian no less than their internationalist detractors, who favour a morality of states with clearly demarcated state borders. Methodologically, constructivists are Kantians—but so are some practice-based theorists as well as those favouring modest philosophical foundationalism in the form of the undefended assumption say, of persons' innate freedom rights.

In fact, it would probably be more accurate to say that the widespread Kantianism we witness today is a reflection of the extent of Rawls's influence on moral and political theorizing. The state-transcending aspirations of early liberal cosmopolitans were premised on the globalization of Rawls's

difference principle. Since Rawls's explicit disavowal of a globalized difference principle in *The Law of Peoples*, liberal global justice theorists have rediscovered the morality of states.¹² Many now favour an internationalist rather than a cosmopolitan liberal framework. The recent philosophical turn to human rights as the basis of a limited global consensus likewise reflects Rawls's influence more than Kant's. Indeed, utilitarians aside, the least 'Kantian' among current political philosophers and global theorists are often those working on Kant. The leading critic of current Kantianism is Kant scholar Onora O'Neill. In part, O'Neill's disagreements with current Kantianism are fuelled by the latter's reformulation of Kant's duty-based moral theory into rights-based accounts, reflecting a shift away from a first-personal agency perspective to third personal, recipient-based account. But O'Neill's deeper concerns are with Kantians' conflation of Kant's formal universalism with substantive value commitments of a distinctly liberal provenance. Up to a point, O'Neill's critique of current Kantianism therefore overlaps with Tully's and McCarthy's respective accounts of what they take to be Kant's position: the universalizing value *presumptions* which Tully and McCarthy detect in Kant are contested by O'Neill in relation to current Kantianism. O'Neill speaks of idealization in this context: of conceptions of the ideally rational Kantian chooser and the substantive principles such a chooser would adopt as universally binding. She suspects that 'the main source of idealizing readings of Kant lies in a certain strategy of interpretation that assimilates Kant to his rationalist predecessors, and so reads the entire Kantian corpus as doing covertly what the Rationalists had hoped to do flamboyantly. Yet Kant's philosophy centres on a formidable critique of rationalist conceptions of ontology, theology, self, and reason'.¹³

It is primarily this 'formidable critique' which Kant scholars associate with Kant. The association often leaves them puzzled in relation to caricature sketches of Kant as one naively beholden to that form of Enlightenment rationalism which he set out to discredit. And yet the sense of uncritically rational self-assurance which his critics detect in Kant is detected by Kant scholars in relation to much current Kantianism and *its* revival of an often altogether too easily assumed 'Enlightenment consensus' on reasonable moral norms and values. Both Kant's current critics and

¹² John Rawls, *The Law of Peoples* (Cambridge, Mass.: Harvard University Press, 2002).

¹³ Onora O'Neill, 'Kant's Justice and Kantian Justice', in her *Bounds of Justice* (Cambridge: Cambridge University Press, 2000), pp. 65–80, at p. 74.

the Kant critics of current Kantianism worry about the absence of more critical reflection on adequate starting points and the limits of possible agreement in current cosmopolitan thinking.

None of this is to say that this volume is to be seen as a response, from the other side, to Kant's current critics. As will become evident, none of the contributions in this collection engage in detail with the positions of Tully, McCarthy, or Harvey. Indeed, most contributors do not engage in depth with Kant's relation to current Kantianism either, including current Kantian cosmopolitanism. While the state of current cosmopolitan theorizing provides background inspiration to the present collection, the emphasis is on exploring the problem of colonialism as Kant came increasingly to perceive it from *within* the framework of his cosmopolitan thinking. Here it is difficult not to conclude that something like Pauline Kleingeld's 'second thoughts' thesis does indeed apply. As briefly sketched above, the trajectory of Kant's cosmopolitan writings does betray a shift in his position. 'Universal History's' complacent declaration that Europe will eventually give law to the rest of the world gives way in *Perpetual Peace* to shamefaced indignation over Europeans' comportment towards non-European peoples—including non-European states. The *Doctrine of Right* attempts to delimit the bounds of rightful European behaviour towards nomadic peoples, although that attempt is severely underdeveloped.¹⁴

One may object that this gradual shift in Kant's overall assessment of European dealings with non-European peoples was too little too late—that Kant should never have held his early objectionable views in the first place, that he reformed his position only in virtue of the influence of others, such as Georg Forster, on his thinking, and that he should have done more to stem the growing tide of colonial conquest once he finally was persuaded of its wrongfulness. It is true that Kant never abandoned his philosophical concerns in favour of campaigning more concertedly on behalf of the oppressed, as critics like Robert Bernasconi would have had him do. It is also true that Kant always remained resolutely 'Eurocentric': he never turned to explore the idea of cultural 'otherness', as so many of his contemporaries (including Herder and Forster) clearly did, and as Tully may prefer him to have done. Does this mean that Kant's shifting views on colonialism within the limits of fidelity to his overall philosophical project

¹⁴ But see Anthony Pagden's chapter in this volume for a different interpretation.

are too marginal to deserve sustained attention? This would hardly be the most productive response. Consider Berman again, who, in his closing chapter, speaks of the ‘myth’ of anti-colonialism:

Broad-brush attacks on colonialism or on the role of intellectuals, Eurocentrism, or Enlightenment in it are less than useful. There may or may not be sound philosophical grounds for an attack on logocentrism, taken as the legacy of the Enlightenment; to politicize such attacks opportunistically, makes for imprecise reading and even more obtuse politics.

Berman’s targets are not McCarthy, Tully, Harvey, or Bernasconi, none of whom are opportunistically political in their criticisms. His general point nonetheless stands: broad-brush attacks on predecessor cultures or intellectual traditions often reflect a presumption of one’s present circumstances and intellectual endeavours as beyond reproach. In adopting that sort of position in relation to our past, we end up learning little from it with regard to our current predicament.

The contributors to this volume work within the parameters of Kant’s Eurocentric cosmopolitanism: they explore how Kant’s demonstrable shifts in—or his demonstrable confusions about—assessing European treatment of non-Europeans impacts particular aspects of his cosmopolitan thought, be it his conception of commerce and trade, property rights and the state, war and peace, or his teleology of moral progress. The general impression emerges of Kant struggling, even if largely at the margins, to come to grips with Europe’s ambivalent, befuddled, and finally downright violent encounter with the rest of the world. Thus, Anthony Pagden explores Kant’s terminological confusions over ‘colonialism’ and his inconsistent deployment of the term. According to Pagden, Kant appears to have had in mind sometimes the Greek, sometimes the Roman model of what constitutes a colony—he appears in many respects to have been uncertain whether the state of being colonized constitutes a condition of moral deprivation or merely signifies a politically unfortunate circumstance which any number of subjects could find themselves in if their ruler had lost a war to a stronger party or had gifted parts of his estate to a neighbouring prince—say, as part of some matrimonial exchange. Pagden’s chapter shows that what Kant and his contemporaries meant by a ‘colony’ and by ‘colonialism’ differed in many respects from what we commonly associate with the term today. While we now typically associate the term with the violent imposition of systems of political overlordship over distant peoples for the purpose of

their economic exploitation, Kant's interchangeably Greek and Roman associations with the term show that he was to some extent still dealing with the legacies of imperial rule *within* Europe. Pagden notes, for example, that even in *The Metaphysics of Morals* (1797) Kant approved of the sovereign's right to banish his or her subjects to provinces outside the country. It is not clear whether Kant thought of these provinces as colonies in today's sense of the term. While he thought of their status as in some sense unjust, he nonetheless (consistently with his general no-right to revolution) denied inhabitants of such provinces the right to resist their avowedly unjust rulers. Perhaps more interesting is Kant's apparent acquiescence in the practice of 'banishment' itself: even the home populations of European fiefdoms and principalities continued in many ways to be treated as little more than colonial subjects whom rulers could dispose of as they saw fit.

The implicit historical continuities, within Europe, of Roman and Greek colonialisms are similarly thematized in Peter Niesen's and Arthur Ripstein's respective explorations of Kant's conception of the relationship between war and colonialism: here, too, the primary function of colonies as objects of war booty conveys a sense different from current associations of the term with overlordship and economic exploitation. Again, when Kant complains of Europeans' treatment of nomadic non-European peoples in *Perpetual Peace* and in the *Doctrine of Right*, he has in mind, not Europeans' formal assumption of governance over non-Europeans, but acts of unjust colonization of land achieved through the displacement of nomadic populations from it: colonialism as land seizure more than the assumption of overrule over local populations.

In contrast to Pagden, both Pauline Kleingeld and Sankar Muthu's chapters provide alternative reconstructions of Kant's position, emphasizing his increasing concern over European colonialism and the patterns of exploitation and domination that followed from it. For Kleingeld, the development of Kant's thoughts on colonialism should be examined in parallel to the development of his analysis of race—an interpretation endorsed also by Lea Ypi in her contribution. As the lectures and essays published prior to the 1790s indicate, Kant was initially much more sympathetic to the idea of a hierarchy of human races, and not only did not oppose, but positively endorsed the idea of European legislation being imposed on the rest of the world. However, this position changed in Kant's mature writings, coinciding with a new account of the concept of

the human race which is conceptually and systematically distinct from the assessment of the position of different non-European peoples from a moral perspective (a distinction which, Kleingeld notes, was collapsed in Kant's earlier writings). Kleingeld's chapter advances several hypotheses to explain the shift. Some are biographical, having to do with a late reaction to the above-mentioned criticisms of Georg Forster; others are historical and political, related to Kant's growing enthusiasm for the French Revolution and his related condemnation of colonial injustice; others still point to systematic developments in Kant's moral philosophy and his increased awareness of the incompatibility of his moral doctrine with his endorsement of colonial subjugation. Kleingeld maintains, moreover, (contrary to Pagden) that Kant's later critique of colonialism is compatible with his view of the general permissibility of forming colonies (in the sense of settlement by certain cultural groups), provided that territorial expansion is not grounded on conquest, usurpation, or contractual deception of different peoples.

Sankar Muthu's contribution to this volume, like the chapter by Lea Ypi, is on the relation between these criticisms and Kant's moral teleology. Starting with Kant's well-known notion of human beings' 'unsocial sociability', usually reserved for exploration in the domestic context of individual statehood, Muthu shows how Kant's intense interest in culturally specific mores and character traits in his *Anthropology*, though often decried as an illicitly stereotyping comparative ethnography, can be given a more sympathetic reading as yielding a conception of what Muthu calls 'productive resistance'—resistance, that is, to the tendencies towards uniformity encouraged in much of the surrounding contemporary disputations on the moral imperative of Europeans taking a leading role in the civilization of mankind. For Muthu, one of the central lessons to be taken from Kant is precisely his appreciation of cultural diversity as constitutive of a mature moral universalism that counteracts imperialistic impositions of uniformity. In this reading of Kant's moral teleology as opening up room for productive resistance, or what Muthu also calls resistance for equal worth, the concept of 'unsocial sociability' mirrors the Rousseauian idea of 'amour propre', and can give rise to both constructive and destructive forms of interactions among human beings. Kant's appreciation for nomadic and non-agrarian lifestyles, Muthu emphasizes, goes hand in hand with an attempt to reflect on the pre-conditions for a peaceful and non-domineering model of political organization, compatible with a

plurality of ways of organizing social and political life, and distant from any European civilizing missions.

The concept of ‘unsocial sociability’ and its role in Kant’s philosophy of history is also central to Lea Ypi’s analysis of Kant’s philosophical trajectory from a deterministic and hierarchical conception of race and civilizing trade to an increasingly critical view of commercial relations and colonial interactions. More sceptical than Muthu about the productive effects of unsocial sociability, Ypi remains sympathetic to Kleingeld’s thesis on Kant’s second thoughts on colonialism, as related to his philosophical analysis of race. She seeks to explain the shift in Kant’s work with reference to his analysis of the teleology of nature and freedom, focusing in particular on the relevance of the concept of judgement (as developed in the third *Critique*) for a proper appreciation of his late critique of race and colonialism. In her reading, the early defence of the concept of unsocial sociability and the initially positive emphasis on the spirit of trade with which Kant associates this disposition are connected to Kant’s reliance on the teleology of nature. Only when Kant abandons the idea of natural teleology in favour of a reflexive account of persons’ self-conception as ends, does Kant’s philosophy of biology (within which his remarks on race and the disposition to unsocial sociability are inscribed) become fully independent of his moral theory (as suggested by Kleingeld). Following such developments, Ypi argues, Kant’s analysis of commercial relations and his emerging critique of colonialism become part of a larger progressive philosophical project that finds evidence for the possibility of moral emancipation in the political and social institutions that humans collectively construct.

It is one thing to ask how Kant’s increasingly critical reception of European comportment overseas shaped his mature articulation of a possible cosmopolitan future; another to consider how Kant’s cosmopolitan writings might in turn have constrained what he could plausibly say on behalf of colonial rule. The contributors discussed so far adopt historical and hence broadly chronological perspectives that see Kant’s views as maturing from an incipiently colonial to an increasingly anti-colonial conception. Liesbet Vanhaute’s contribution follows the historical perspective to some extent, but goes on to diagnose a systematic tension in Kant concerning the conditions of contractualist agreement. Vanhaute’s immediate concern is with the idea of legitimate settlement, as opposed to the illegitimate colonization and displacement of peoples from their lands.

Legitimate colonies—involving limited grants of temporary sojourn on designated pieces of territory—were regarded by Kant as aiding the emergence of trade relations. These he thought conducive to the development of peaceful relations between states and peoples, at least up to a point. Such limited trading posts were not unusual, but had a tendency to expand and become more permanent in practice, if not in design. As Vanhaute shows in some detail, Kant's account of the conditions of their legitimacy is often confused. His official view was that contractual relations are possible only between contracting parties within states. Interstate relations, for example, were governed by treaty agreements. Yet Kant presumed without argument the possibility of contractual relations between non-state peoples and legitimate colonists. Kant's usual insistence on the need for public enforcement of contractual agreements is unaccountably suspended, undermining the generalizability of his official view. Here then, we have an instance of Kant's apparent inability systematically to integrate a distinctive form of permissible non-contractualist exchange between European trading colonies and indigenous peoples.

Arthur Ripstein and Peter Niesen assess the impact of Kant's conception of international law on his account of the permissibility of colonial rule. While the historical perspective invites the thought that Kant's growing reservations about European overseas behaviour led him to formulate a programme of international reform, it is no less plausible to ask whether it was not his independently developed conception of legal reform that led him to decry the illegitimacy of colonial rule. Both Ripstein and Niesen go on to show in considerable detail how Kant's position on rightful conduct in and after war rules out the permissibility of colonial acquisitions as war booty. Their respective accounts chime with Pagden's suggestion that what Kant regarded as a colony often differed, sometimes substantially so, from the system of overrule which we tend now to associate with that term. Ripstein's particular interest is in Kant's conception of colonialism as a juridically relevant concept. As he puts it, 'Kant does not treat colonialism as just another bad thing that human beings have done to each other. Instead, he regards it in juridical terms, focusing on the ways in which it is contrary to the requirements of right'. Ripstein applies Kant's conception of international law to the issue of colonialism, asking what colonial practices are ruled out by that conception. Neither the acquisition of territory nor the colonization of a people defeated in war are legitimate forms of 'war booty'. More controversially, Ripstein allows that 'standards of

adequacy' apply even to wrongful conditions. The initial wrong of colonial acquisition is *compounded* by the additional wrong of colonial misrule. Colonial misrule obtains where the colonial power fails to rule on behalf of the subject population, instead exploiting inhabitants for its own purposes. This is not to say that colonial rule on behalf of subject populations can make up for the wrongfulness of colonial rule itself. Ripstein's point is that, for Kant, colonial misrule is a wrong that is distinct from the wrong of colonial acquisition.

Like Ripstein, so Niesen focuses on international law. Yet while Ripstein's principal concern is with the *Doctrine of Right*, Niesen thinks 'Perpetual Peace' is the more developed of the two texts. Niesen treats the latter text as proposing a programme of international legal reform; by contrast, the *Doctrine of Right* is seen by Niesen to reflect the status quo in contemporary international law. In that sense, Niesen thinks the earlier text is more progressive than the later one. 'Perpetual Peace' is said to offer a conception of 'transitional international law', designed to assist the transition from the international status quo to international law proper. Here Niesen opens up conceptual space for a Kantian approach to restorative justice: 'although restoration may seem like a peripheral issue within international law, it affords a better handle on Kant's overall thoughts on a global legal condition than do current paradigms of "distributive justice"'. Colonialism is a paradigm case for restorative justice in international law. Indeed, according to Niesen, the wrong of colonization is among Kant's principal motivations for seeking international reform. Niesen acknowledges that 'Kant is on record for opposing the rectification of historical wrongs', including his opposition to resisting the wrong of having been successfully colonized. In response, Niesen develops a detailed reading of *Perpetual Peace* as offering a programme of *systemic* reform in which the rectification of past wrongs is achieved, not through unilateral revolutionary action, so much as through changes in the laws that govern the system of international relations.

Restorative justice is also a motivating element of Anna Stilz's contribution, 'Provisional Right and Non-State Peoples', though Stilz's interest lies at the level of Kant's conception of private right. Stilz asks how Kant's moral defence of the claims of non-state peoples—especially that of the nomadic American Indians—might enable us to conceive their current predicaments as affected by past injustices we need to rectify. If this is the underlying substantive concern, Stilz's immediate exegetical approach is

driven by a sense of puzzlement: how can Kant condemn European appropriation of non-state peoples' lands when his theory of property rights explicitly affirms the moral necessity of state entrance? Otherwise put, given Kant's view that conclusive possession presupposes state entrance, should he not view Europeans' seizure of nomadic peoples' tracts of land as rightful? Kant's censure of European activities on that score appears inconsistent with his official account of property rights. Stilz argues that we must revise our understanding of Kant's account of property rights in the light of his defence of nomadic peoples' land claims. In particular, we must understand Kant's acknowledgement of empirical possession—physical connectedness with a given object—as a form of provisionally rightful possession. So it is not intelligible possession exclusively that grounds a right in a given object or piece of land; to the contrary, physical acquisition establishes at least a *prima facie* claim to rightful possession. While Stilz acknowledges that such provisional possession remains a 'deficient form' of rightful possession, she argues that it nonetheless imposes normative constraints on newcomers. More specifically, the *prima facie* valid land claims—grounded in empirical possession—of indigenous populations must be taken into account by any subsequently established European state structure tasked with the adjudication of competing land claims between settler and indigenous nomadic populations. It is clear that Stilz is guided both by Kant's assessment of settler displacement of North American Indians from their territories and by her own sense that much of the legacy of this particular colonial history remains fundamentally unresolved.

A strong sense of colonial remainder also guides Martin Ajei's and Katrin Flikschuh's reflections on the contemporary implications of Kant's cosmopolitan hospitality right. Though increasingly glossed in as a 'communicative right' that urges some kind of moral mutuality between distant peoples, it is often left excessively vague what sort of communication may be at stake. Ajei and Flikschuh approach the communicative reading of Kant's hospitality right against the background of modern African thinkers' ongoing attempts to come to terms with their economically and culturally deeply traumatizing colonial experience. More specifically, African post-colonial societies still struggle with the generally unacknowledged effects of centuries of targeted cultural denigration and superimposed political tutelage. For many African writers, Africans' own continuing sense of cultural

inferiority evidences the depth of influence of ‘colonial mentality’—of thinking like a colonial subject. Ajei and Flikschuh ask whether the inverse form of colonial mentality—thinking like a colonial overlord—does not still characterize much of the West’s ongoing engagement with Africa. If colonial mentality is rife in post-colonial Africa, it is likely to be just as rife in post-colonial Europe and North America. Set against this backdrop, the communicative reading of Kant’s cosmopolitan hospitality right affords a powerful tool of analysis for a context that remains *intellectually* scarred, on both sides, by the colonial experience.

In sum, the contributions to ‘Kant and Colonialism’ here assembled offer diverse, many-faceted insights into Kant’s ambivalent relationship with our colonial history, including possible ways in which we might acknowledge, confront, and perhaps work on overcoming the continuing legacies of that past. There is, unsurprisingly, no unanimity among contributors, either regarding Kant’s own position, or our position vis-à-vis Kant. Nor, therefore, is there a single conclusion to how we should or should not assess Kant’s—and our—relation to the colonial past. Readers will no doubt note the overall sympathetic disposition of contributors towards Kant—or rather, towards his writings. Such a sympathetic attitude is not meant to exonerate: no doubt Kant’s moral failings are many, and his early racism and support of slavery and colonialism are certainly among them. But a sympathetic disposition towards his writings in general is necessary, in the end, for working through the ambivalences, complexities, and often immensely rewarding insights these texts can offer in coming to a better understanding of the relationship between colonialism, Kant, the Enlightenment, and ourselves.

Bibliography

- Berman, Russell, *Enlightenment or Empire: Colonial Discourse in German Culture* (Lincoln: University of Nebraska Press, 1998).
- Bernasconi, Robert, ‘Who Invented the Concept of Race? Kant’s Role in the Enlightenment Construction of Race’, in R. Bernasconi (ed.), *Race* (Oxford: Blackwell, 2001), pp. 11–36.
- , ‘Kant’s Third Thoughts on Race’, in Stuart Elden and Eduardo Mendieta (eds.), *Reading Kant’s Geography* (Albany: SUNY Press, 2011), pp. 291–318.
- Eze, Emanuel Chuckwide, ‘The Color of Reason: The Idea of “Race” in Kant’s Anthropology’, in Eze (ed.), *Postcolonial African Philosophy* (Oxford: Blackwell, 1997), pp. 103–40.

- Harvey, David, *Cosmopolitanism and the Geographies of Freedom* (New York: Columbia University Press, 2009).
- Kleingeld, Pauline, 'Kant's Second Thoughts on Race', *The Philosophical Quarterly* 57 (2007), pp. 573–92.
- , *Kant and Cosmopolitanism: The Philosophical Ideal of World Citizenship* (Cambridge: Cambridge University Press, 2012).
- McCarthy, Thomas, *Race, Empire, and the Idea of Human Development* (Cambridge: Cambridge University Press, 2009).
- Mendieta, Eduardo, 'Geography is to History as Woman is to Man: Kant on Sex, Race, and Geography', in Stuart Elden and Eduardo Mendieta (eds.), *Kant's Geography* (Albany: SUNY Press, 2011), pp. 345–68.
- Mignolo, Walter, 'The Darker Side of the Enlightenment: A De-Colonial Reading of Kant's Geography', in Stuart Elden and Eduardo Mendieta (eds.), *Kant's Geography* (Albany: SUNY Press, 2011), pp. 319–44.
- Mills, Charles, 'Kant's Untermenschen', in Andrew Valls (ed.), *Race and Racism in Modern Philosophy* (Ithaca: Cornell University Press, 2005), pp. 169–93.
- O'Neill, Onora, *Bounds of Justice* (Cambridge: Cambridge University Press, 2000).
- Rawls, John, *The Law of Peoples* (Cambridge, Mass.: Harvard University Press, 2002).
- Tully, James, *Public Philosophy in a New Key, Volume II: Imperialism and Civic Freedom* (Cambridge: Cambridge University Press, 2008).

1

The Law of Continuity: Conquest and Settlement within the Limits of Kant's International Right

Anthony Pagden

1.1 Defining Colonies

Kant wrote extensively about empires—or ‘universal monarchies’ (not always one and the same thing)—and about race, and about the rights, or otherwise, of the ‘civilized’ nations of the world to enlighten the savage and barbarous ones. But he had, in fact, relatively little to say about *colonies* as such, and if we take his historical and contemporary examples seriously, as he clearly intended us to do, what he does say is seemingly confused and contradictory. This derives in part from the various historical and legal definitions of the Roman ‘colony’ and the Greek *apoikia* (literally ‘from home’) available to him. But only in part. More interestingly, his sometimes puzzling account of the legitimacy of warfare and of conquest and settlement would seem to derive ultimately from his overriding concern with the need for legal continuity and the tension which this created between his understanding of the ‘right of nations,’ which is unwaveringly atemporal, and his teleology, which requires that all peoples work actively towards the fulfillment of the *jus cosmopolitanum*.

Kant provides four accounts of settlements overseas. The first two of these are closely linked, as are the third, and fourth. The first comes, albeit

indirectly, in the context of a discussion of the legal status of persons in their own and foreign countries. All peoples are divided by their languages and religious beliefs, things which for Kant, no less than for his former pupil, Johann Gottfried von Herder—although they disagreed on much else—was nature's way to 'prevent peoples from intermingling and to separate them' (Zef 8:367). Every people constitutes a 'country [*Land*] or *territorium*'. This is made up of fellow citizens who are subject to the same constitution simply by 'birth', rather than through any legal act. As such, every 'country' is inescapably what Kant, despite his dislike for patriarchal conceptions of government, calls a '*Vaterland*' (MdS 6:337).¹ The citizens of these 'fatherlands' are those 'who constitute a nation' (*Volk*); and they derive whatever legitimacy and social cohesion they possess by analogy with those born as 'descendants of the same ancestors (*congeniti*) even though they are not.' They belong, that is, to a single lineage, although this is 'intellectual' and 'from the perspective of rights', rather than natural, whose common *mother* is the republic, understood as a constitution, rather than a particular patch of ground. A nation, then, is a conceptual and legal, rather than a biological, *gens* or *natio* (MdS 6:343).² (Kant's concept of citizenship is based strictly on *ius sanguinis*, despite his recognition that the *sanguis* in question was wholly metaphorical.) A foreign country, by contrast, is described merely as one in which a person is not a citizen, and therefore not a member of the *gens* or *natio*. However, when this *foreign* country 'is a part of a larger realm' [*Landesherrschaft*] of the native land it is what Kant calls 'a province (in the sense in which the Romans used this word'. Because it is not an 'integral part of the realm [*Reich*] (*imperii*)' or 'a place of *residence* [*Sitz*] for the fellow-citizens', but is instead 'only a *possession* [*Besitzung*], a secondary house [*Unterhaus*]', it is compelled to 'respect the land of the state that rules it as a *mother country* (*regio domina*)' (MdS 6:337). Those who live in such provinces, while bound to obey the ruling state, do not enjoy the rights of citizenship, which they would have done had they been living in the motherland itself.

¹ As with so many of Kant's Roman legal tags, this one is misleading. The *Digest* defines a 'territorium' as simply 'all the land included within the limits of any city. Some authorities hold that it is so called, [from terror] because the magistrates have a right to inspire fear within its boundaries, that is to say, the right to remove the people', which on Kant's use of the term would seem to be the one right that they would *not* have (*Digest* 50.I.8).

² True patriotism, he insisted, derived its name 'from *patria* not from *pater*, for paternal government . . . is the worst.' *Reflexionen zur Rechtsphilosophie* no. 7979 (R 19:570).

This, at least, would seem to be the conclusion to be drawn from Kant's subsequent claim that a ruler may banish a recalcitrant subject either to a 'province outside the country' where he 'will not enjoy any of the rights of a citizen' or alternatively, he may 'exile him altogether (*ius exilii*) to send him out into the wide world' (MdS 6:338). On Kant's understanding then, a province is a subject state or community whose residents, although beholden to the *Reich*, are clearly not represented by it.

In all of this, Kant never uses the term 'colony.' Later, however, in the one single definition he does provide, a colony is spoken of as if it were identical with a province, and defined as 'a people that indeed has its own constitution, its own legislation and its own land' (MdS 6:348).³ This would make it, in most respects, indistinguishable from a *Land*, for which reason it is also described as a 'daughter state' or one which is *ruled*, by the 'mother-state,' which 'has supreme executive authority (*oberste ausübende Gewalt*) over the colony or province.' Unlike the first version of the province/colony, however, this one would appear to exercise a far higher degree of independent executive autonomy, for it is said to *govern* itself 'by its own parliament,' or 'possibly with a viceroy presiding over it (*civitas hybrida*).' Here, all outsiders are 'foreigners,' even if they are also citizens of the 'mother state.' The examples he gives for this are 'the relation Athens had with respect to various islands' and 'that Great Britain now has with regard to Ireland' (MdS 6:348).

We would appear, then, to have two distinct definitions of a province/colony. Neither it should be said really corresponds, as Kant's use of Latin—if not consistently Roman—legal tags would imply, to Roman practice, since a Roman *provincia* was originally only the territory over which a magistrate exercised his authority (*imperium*) and the term was used to describe territories both within and beyond Italy, although it later came to be confined largely to those acquired overseas. It might include citizens and non-citizens, free cities, and even colonies within its borders. Although every province certainly 'respected the state that rules it as a *mother country*' (MdS 6:337), it was clearly not a *possession*, either in the Roman sense of the term or in Kant's own. On the other hand, neither account looks much like a Roman *colonia* either. The best-known description of the status of the Roman, as distinct from the Greek, colonies

³ 'Eine *Colonia* oder Provinz ist ein Volk, das zwar seine eigene Vefassung, Gesetzgebung, Boden hat....'

(and the one probably familiar to Kant) is Livy's account of Emporiae in Spain, in which the Romans, unlike their Greek predecessors, who had erected a wall between themselves and the native Spanish, are described as living together with the indigenes and granting them citizenship, so as to Romanize them.⁴ Roman colonies, that is, were, and were clearly recognized as being, examples of the kind of attempts to incorporate non-citizens into a 'universal monarchy' on which Rome prided herself, and which Kant looked upon as merely a form of tyranny.⁵

The second account of the province/colony has some affinities with the ancient Greek understanding of the *apoikia* as a semi-independent community made up of persons displaced from, but still dependent upon, a *metropolis*, or 'mother-city.' However, and rather puzzlingly, Kant uses this second definition to characterize a people who are said to have 'been degraded to a colony and its subjects to bondage' (MdS 8:348) through defeat in war, and the examples he provides certainly fit this description. In English law, Ireland was held to be a 'land of conquest', and the Athenian *arche* was the result of an abuse of power by Athens over the cities of the Delian League. In neither case, however, could the relationship of power *also* be said to be analogous to that between a mother and a daughter. There is a further complication with Kant's twofold account of the province/colony and its relationship with the *motherland*. For whereas in the first case what is clearly being described is a creole state, whose relationship to its original *Vaterland* might therefore plausibly be cast in terms of familiar daughter-mother metaphors, the second is explicitly a land of conquest, and those who *govern* themselves 'by its own parliament', are—like the Irish or the Melians—indigenes with no connection in terms of lineage or ethnos to the 'mother state.' To describe them as the offspring of

⁴ Livy 26.1.7–10. I would like to thank Clifford Ando for this reference and for all his help in sorting Roman from Greek colonial practices. See 'The Roman city in the Roman period', in *Rome, a City and its Empire in Perspective: The Impact of the Roman World through Fergus Millar's Research. Rome, une cité impériale en jeu: l'impact du monde romain selon Fergus Millar*, ed. Stéphane Benoist (Leiden: Brill, 2012), 109–24.

⁵ See Sankar Muthu, *Enlightenment against Empire* (Princeton: Princeton University Press, 2003), 155–62. Muthu calls this 'state paternalism', although what Kant understood by 'paternalism' was 'a government established on the principle of benevolence towards the people, like that of a father towards his children—that is a paternalistic government... is the greatest despotism thinkable' (TP 8:290). Roman government, in particular under the Principate, could certainly be described as 'paternalistic' in this sense; but it made no distinction between Roman citizens on grounds of ethnicity or place of birth.

a mother who had, in fact, conquered them and brought about the ‘moral annihilation’ of their state (MdS 6:347) seems, therefore, decidedly odd.

In the course of the seventeenth and eighteenth centuries, the ‘mother–daughter’ analogy became something of a commonplace to characterize a largely benign and beneficial kind of colonial rule of supposedly Greek origin, to be distinguished from a rapacious and destructive version of supposedly Roman origin, and this may well be what Kant had in mind. Built into the ‘mother–daughter’ analogy, however, was also, of course, the troubling—at least for the colonial power—implication that one day the ‘daughter’ would grow up and acquire full independence. The same applies, as Arthur Ripstein points out here, to the implications of Kant’s recognition that parental right extends only until ‘the time of his [the child’s] emancipation (*emancipatio*) when they [the parents] renounce their parental right to direct him’ (MdS 6:281). There would seem to be no reason to suppose, therefore, that the citizens of such ‘daughter’ states should be any more deprived of their right to be represented by the ‘mother state’ than its actual inhabitants. They are, in effect, neither ‘colonies’—as the Romans understood them—nor ‘provinces’, as Kant seems to understand the term, so much as municipalities. As several disgruntled ‘British Americans’ pointed out in the 1760s, their status should be thought of not as a colonial one at all, but as analogous with that of the citizens of the kingdom of Hanover. ‘The people of England’, wrote one ‘Britannus Americanus’ in the *Boston Gazette* in the winter of 1765, ‘could have no more political connection with them or power and jurisdiction over them, than they now have with or over the people of Hanover who are also subjects of the same King’.⁶

The problem with this was that it relied upon the assumption that sovereignty would be divided between the mother and the daughter states: the daughter being entirely sovereign within her own borders, while the mother exercised exclusive authority over all the external affairs of state. This description was, for instance, applied both to the thirteen colonies of British North America as it was later to the Princely States of India (although these were never described as ‘colonies’), whose rulers, in the words of Henry Maine, Regius Professor of Civil Law at Cambridge and

⁶ Quoted in Jack P. Greene, *Peripheries and Center: Constitutional Development in the Extended Politics of the British Empire and the United States, 1607–1788* (Athens and London: University of Georgia Press, 1986), 94–5.

the Law Member of the Viceroy of India's Council, 'may administer civil and criminal justice, may make laws for all his subjects and for his territory, may exercise power over life and death, and may levy taxes and dues, but nevertheless he may be debarred from having foreign relations with any authority outside his territory.' In such states, there could, therefore, be no, what Maine called, 'undisputed legislator.' Sovereignty was inescapably divided between 'mother' and 'daughter' for, as Maine rightly insisted, Hobbesian indivisible sovereignty had no place in 'international law.'⁷

Although he was clearly aware of the need for some kind of division of sovereignty within his future 'league of states,' *Völkerbund*, Kant was also certain that, as Arthur Ripstein points out in this volume, the people of states which cannot be the 'undisputed legislators' of their own affairs must consider themselves to be 'passive in relation to their own independence.' Certainly, Quebecois and Basque nationalists believe so today, as do many Europeans (most either British or on the extreme right, or both) about their relationship with the European Union.

No matter how apparently contradictory Kant's description of the province/colony might be, one thing is abundantly clear: both the first and second type of province/colony can only have been acquired initially—and this was certainly an implicit part of 'the sense in which the Romans used this word' (MdS 6:337)—through conquest. Both types, therefore, although this is only explicit in the case of the second, must lack the essential qualifications of a legitimate state. Both can only be, in effect, war booty, and Kant's account of both only makes sense, therefore, in the light of his views on the legitimacy of war.

1.2 The Justice of War

Kant was no pacifist. True, in the condition in which he lived he looked upon war as the greatest of all human scourges—with the sole exception of 'universal monarchy' (ZeF 8:367). But it had sometimes served mankind well in the past, and might continue to serve it well, under certain very specific conditions, in the future. It had been war which had forced humans

⁷ *International Law. A series of lectures delivered before the University of Cambridge, 1887* (London: John Murray, 1888), 57–8. 'Undisputed legislator' is Maine's rendering of Justinian's description of the Roman Emperor as *legibus solutus*.

to occupy the entire globe. Without it they would, like all other animals, still be huddling together on the small patch of land where they had first emerged. How else could one explain the presence of human settlements around the Arctic Ocean, or in the Altay Mountains, or in Patagonia (ZeF 8:363)? It had been warfare 'as great an evil as it may be' which had motivated humankind 'to pass from the crude state of nature to the civil state' (*bürgerliche Gesellschaft*) (ApH 7:330 and ZeF 8:364–5). At a later stage it had been war, all wars, which are only 'so many attempts . . . not, to be sure, in the aims of human beings, but yet in the aim of nature', which had compelled the more socialized human populations to establish relationships between states and create new ones (IaG 8:24–5). Man is the only animal which 'works so hard for the destruction of his own species' (KdU 5:430), and because of this it is war, and the fear of future war, which demands 'even of the heads of states', to observe a certain '*respect for humanity*' (MAM 8:121).

War for Kant constitutes an extreme form of coercion, and coercion can be justified, only if it is '*hindering of a hindrance to freedom*', for only then will it be 'consistent with freedom in accordance with universal laws, that is, it is right' (MdS 6:231).⁸ As with all previous accounts of the justice of warfare since Cicero, and the entire natural law tradition, Kant therefore assumes that a just war can only ever be a defensive one when a state 'believes it has been wronged by the other state', since this 'cannot be done in the state of nature by a lawsuit' (MdS 6:346). But precisely because there cannot, on Kant's understanding of inter-state relations, exist any international courts, since 'states considered in external relation to one another, are (like lawless savages) by nature in a nonrightful condition' (MdS 6:344), and since *all* warfare must necessarily take place in a 'lawless condition', the very concept of a *law*—or right—of war would seem to be so inherently meaningless that 'it is difficult even to form a concept of this or to think of law in this lawless state without contradicting oneself' (MdS 6:347).⁹ This is the reason for Kant's apparent contempt for what he famously called the 'sorry comforters'—Hugo Grotius, Samuel Pufendorf,

⁸ 'The best state never undertakes war except to keep faith or in defense of its safety' (*De Republica* 3.34), and see Pierre Hassner, 'Les concepts de guerre et de paix chez Kant', *Revue française de science politique* XI (1961): 642.

⁹ The translation of '*ius gentium*' as 'law of nations', although conventional, is not unproblematic: *ius* can mean both 'right' and 'law' and *gens* can mean a 'nation' in something like the modern sense of the term, but also a 'people'.

Emer de Vattel 'and the like'—in effect, the entire tradition of thinking on the 'law of nations,' the *jus gentium*, which preceded him. For, in his view, 'although their code, couched philosophically or diplomatically,' is always 'duly cited in justification of an offensive war' it could never have any legal force in the state of nature in which all states currently exist because none of them are 'subject to a common external constraint' The continuing existence of this ineffectual law of nations is merely evidence that the human being possesses the 'moral predisposition' required to overcome the 'evil principle within him' (ZeF 8:355). But encouraging though this might be, it did nothing to set limits on the condition of war which existed between states as they were currently constituted.

This outright dismissal of the law of nations as nothing more than a sign of good intentions is, however, curious, since shortly after this outburst against his predecessors, Kant goes on to offer a threefold division of 'public right' into the 'right of a state,' the 'right of nations,' and *cosmopolitan right* (ZeF 8:365). Although in the *Doctrine of Right* he claims that in German the second of these is called 'not quite correctly, the *right of nations* [Völkerrecht] but should instead be called the 'right of states' [Staatenrecht] (*ius publicum civitatum*), it is, in either version, indistinguishable from the *jus gentium* (MdS 6:343), and is explicitly described as such in *Towards Perpetual Peace* (ZeF 8:349). Just to make matters more perplexing still, in the description in the *Doctrine of Right* of the inevitability of the progress of humanity towards the 'cosmopolitan right (*ius cosmopoliticum*)', this too is described as a 'right of nations (*ius gentium*)' (MdS 6:311). Furthermore, although the 'right of nations' can clearly only exist in the present condition of lawlessness (that is, before the creation of the 'league of states'), in *Towards Perpetual Peace* Kant asserts unequivocally that it makes sense to speak of such a right 'only under the presupposition of some kind of rightful condition' (ZeF 8:383). Presumably, since the possibility of any kind of international court is explicitly excluded, this could, at least in 1795, only take the form of the kind of diplomatic solution favored by Vattel. Treaties clearly do constitute what might count, on Kant's understanding, as a rightful condition, but they do so only as long as the parties to them find it in their individual interests to observe them. For it had been precisely Kant's point that in the absence of any superior authority capable of enforcing oaths, the hallowed formula *pacta sunt servanda* could be based only on calculated self-interest.

It is here that the tension between Kant's the 'right of nations' and 'cosmopolitan right' begins to show. For unless we take all these different, and seemingly contradictory, descriptions to be merely manifestations of what one scholar has called the 'terminological indecisiveness' of Kant's later writings, we must assume that what Kant understood by the 'right of nations' was what Bartolus, and most of the writers in the natural-law tradition, had called a natural law 'in a secondary sense'.¹⁰ It was, in effect, a positive law framed in accordance with what the Spanish Dominican Francisco de Vitoria had described as the *respublica totius orbis*—the 'republic of all the world'. It was what Kant, in referring to the idea of an 'original contract', called '*only an idea of reason*' (GTP 8:297), that is, a law which all mankind *could* have been brought to agree upon, if it were possible to discover what its collective opinion might be; and this, broadly speaking, is how all the 'sorry comforters', had envisioned it.¹¹ They, however, had been able to extend it to all relations between states only because it had, in effect, and particularly in the hands of Christian Wolff and Vattel, been given a strongly cosmopolitan and teleological component, a working-towards what Wolff called the *civitas maxima* and Vattel a 'universal republic'. Kant, however, wished to keep the *Völkerrecht* and the *jus cosmopoliticum* strictly separate, not only as two distinct kinds of right, but also as the manifestation of two distinct phases in human history. This is especially true of Kant's understanding of the right to 'conditions of universal *hospitality*' (ZeF 8:357–8). This closely resembled Francisco de Vitoria's 'right of natural partnership and communication'. But whereas for Vitoria hospitality belongs with the *jus gentium*, and, despite its reliance on the natural right 'to visit and travel through any land', is therefore a positive law, for Kant it depends upon the far from unproblematic claim that all human beings have a 'right of possession in common of the earth's surface' (ZeF 8:358)¹² and is the cornerstone of the *jus cosmopoliticum*—indeed, in *Towards Perpetual Peace* the *jus cosmopoliticum* is famously said to be 'limited to conditions of universal *hospitality*' (ZeF

¹⁰ Simone Goyard-Fabre, *Kant et le problème du droit* (Paris: Vrin, 1975), and Brian Tierney, *The Idea of Natural Rights, Natural Law, and Church Law, 1150–1625* (Atlanta, Georgia: Scholars Press, 1997), 74.

¹¹ For an exhaustive analysis of the various ways in which the *jus gentium* was understood, see the discussion in Annabel Brett, *Changes of State: Nature and the Limits of the City in Early Modern Natural Law* (Princeton: Princeton University Press, 2011), 75–89.

¹² cf. MM 6:267.

8:357–8). Stripped, in this way, of all the ‘cosmopolitan’ components, with which the ‘sorry comforters’ had provided the *jus gentium*, all that Kant’s ‘right of nations’ could possibly do, in effect, was to place limitations on the conditions and conduct of war. Only the *jus cosmopoliticum*, which would someday come to replace it, is directed towards *peace* or what the Academy of International Law at the Hague now defines as ‘general rules concerning the right of peace.’¹³

Kant’s ‘right of nations’ rests upon a series of rules and procedures, which follow, exactly as the ‘sorry comforters’ had done, the, by then, conventional division between the *jus ad bellum* (the right to make war), the *jus in bello* (the law governing conduct during war), and—most crucially for Kant’s views of colonization—the *jus post bellum*, that is, the laws which determine the behavior, and the rights, of states after the war is over. For Kant, however, unlike any of his predecessors, the sole purpose of *all* these laws is to ensure that after the conclusion of any war they ‘always leave open the possibility of leaving the state of nature among states (in external relation to one another) and entering a rightful condition’ (MdS 6:347). No state, that is, should be prevented by its involvement in any war from finally entering into the league of states which can alone bring about a condition of perpetual peace. In other words, although the *Völkerrecht* is strictly atemporal, it is also clearly understood to play a crucial, if only preventative, role in bringing about the future ‘universal *cosmopolitan condition*.’¹⁴

War, as we have seen, can only be justified for Kant if it can be described as defensive. However, unlike most of the previous theorists in the natural law tradition, from Vitoria to Grotius to Wolf and Vattel, Kant was fully prepared to accept what was called the argument from ‘just fear’, as grounds for a just war.¹⁵ For in Kant’s view, in a condition of lawlessness it is perfectly reasonable for a state to act pre-emptively against any

¹³ Quoted in Robert Kolb, *Réflexions de philosophie du droit international* (Brussels: Editions Bruylant, 2003), 24, and see Alexis Philonenko, ‘Kant et le problème de la paix’, in *Essais sur la philosophie de la guerre* (Paris: Vrin, 1976), 32–5. And see the comments on Kant’s conception of the ‘right of nations’ in Otfried Höffe, *Kant’s Cosmopolitan Theory of Law and Peace*, trans. Alexandra Newton (Cambridge: Cambridge University Press, 2006), 189–93.

¹⁴ See Pauline Kleingeld, *Kant and Cosmopolitanism: The Philosophical Ideal of World Citizenship* (Cambridge: Cambridge University Press, 2012), 76.

¹⁵ See Peter Haggenmacher, ‘Mutations du concept de guerre juste de Grotius à Kant’, *Cahiers de philosophie politique et juridique*, 10 (1986): 117.

other state which, although it has not caused any 'active injury', nevertheless poses a threat of war. Such threats include either being the first 'to undertake preparations, upon which is based the right of prevention (*ius praeventionis*), or even just the menacing increase in another state's power (by its acquisition of territory) (*potentia tremenda*). This is a wrong to the lesser power merely by the condition of the superior power [...] before any deed on its part, and in the state of nature an attack by the lesser power is indeed legitimate' (MdS 6:346).

Most previous accounts of the laws of warfare had also assumed that a just war was a contest in which the justice of the victor's cause was demonstrated by his victory. It was, that is, believed to be exactly the kind of primitive substitute for the domestic law court as a means of resolving a dispute on the merits of the case involved (see Arthur Ripstein in this volume) which Kant describes, and condemns, it as being. For this reason, it also constituted a species of revenge for wrongs inflicted on the victor—by definition the righteous party—in which the victor was entitled to seek compensation for the sufferings he had supposedly endured. 'Wars are just', St Augustine had written, in what was one of the most frequently cited passages in support of this view, 'which revenge the injuries caused when the nation or *civitas* with which war is envisaged has either neglected to make recompense for illegitimate acts committed by its members, or to return what has been injuriously taken.'¹⁶ Even the 'sorry comforters', although they placed clear restrictions on what could and could not be claimed under the *jus post bellum*, and were generally much more stringent than their predecessors about the justifications for war, were, nevertheless, broadly in agreement. Kant, however, argues that, not only cannot the merit of a case be decided by simple force, but that whatever the outcome of the war, both sides are likely to believe that their cause is just and that it is they who are the offended party. For this reason: 'Right cannot be decided by war and its favorable outcome, victory' (ZeF 8:355). Any claim that the victor should be reimbursed for the cost of the war, furthermore, would have the effect of transforming the war 'into a war of punishment and thereby would in turn offend his opponent'. It is also the case that 'No war of independent states against each other can be a punitive war (*bellum punitivum*). For punishment occurs only in the relation of a superior

¹⁶ *Quaestionum in Heptateuchem*, VI.X.

(*imperantis*) to those subject to him (*subditum*), and states do not stand in that relation to each other' (MdS 6: 347). Consequently, the *jus post bellum* must be determined not, as had previously been assumed, 'from any right he (the victor) pretends to have because of the wrong his opponent is supposed to have done him; instead, he lets this question drop and relies on his own force' (MdS 6:348). This is an outright rejection of the claim of the Roman jurists that the occupation of enemy territory in pursuit of a just war implied that the inhabitants of that territory, and their goods, both moveable and immovable, became the legitimate booty of the occupier. They, thereby, forfeited whatever political rights they had previously possessed and, their states became, not colonies, in the Roman (or in the Greek) understanding of the term, but precisely provinces.

Although Kant, like Pufendorf, Wolf, and Vattel, assumes that states are 'moral persons', he also, paradoxically makes a clear distinction between the state itself in the person of its sovereign, and the citizen body, and therefore between the agent responsible for initiating any war and the people who have to fight it. Unlike all previous theorists of the just war, who treated states as indivisible persons, he insists that the blame for fighting a war must fall exclusively on the state and its sovereign, and not on the citizens. As a consequence, the citizens of defeated states cannot be deprived of either their freedom or their personal goods since 'it was not the conquered people that waged the war; rather, the state under whose rule they lived waged the war *through the people*'. For the same reason, although the victor may 'exact supplies and contributions from a defeated enemy', he may not 'plunder the people', and is obliged to provide 'receipts...for everything requisitioned'. It also follows, of course, that the defeated state is not 'degraded to a colony' (MdS, 6:348). (This could not, of course, apply to states with republican constitutions since here there can be no separation between the state and its citizens, and as the latter must 'give their free assent, through their representatives, not only to waging war in general but also to each particular declaration of war', they would have to be held collectively responsible (MdS 6:345–6). But then Kant's general assumption is that such republics will be the ultimate bearers of the *jus cosmopoliticum* precisely because they will never fight unjust wars.)

Like most theorists of the 'just war', Kant avoided claims made on behalf of third parties, unless these were, specifically involved as 'allies'.¹⁷ Any interference in the internal affairs of other states, no matter how

¹⁷ See Jonathan Barnes, 'The Just War', in *Cambridge History of Later Medieval Philosophy*,

awful their rulers might be, constituted a 'violation of the right of a people dependent upon no other and only struggling with its internal illness' and was, therefore, *eo ipso* unjust (ZeF 8:346). There would, however, seem to be one category of enemy whose behavior posed a threat, not simply to another state, but threatened, in some way, the whole of human kind. This Kant calls the '*unjust enemy*' in terms of the concepts of the right of nations'. It is defined, in accordance with the terms of the Categorical Imperative, as 'an enemy whose publicly expressed will (whether by word or deed) reveals a maxim by which, if it were made a universal rule, any condition of peace among nations would be impossible and, instead, a state of nature would be perpetuated' (MdS 6:349). Should such an enemy arise, then 'all nations whose freedom is threatened by it [...] are called upon to unite against such misconduct in order to deprive the state of its power to do it'. War against an unjust enemy should be pursued until it has been defeated, no matter what the cost, short of resorting to precisely those means—the use of such things as assassins, snipers, poisoners, spies, etc.—(Kant had an abhorrence of all forms of warfare which were not transparent)—which would render the belligerents 'unfit to be citizens' once the war was over, render the state itself unfit to qualify, in accordance with the right of nations, as a person in the relation of states (MdS 6:347), and would consequently make 'mutual trust impossible during a future peace' (ZeF 8:346).

This, at least in its potential scope, comes remarkably close to the claim made by the sixteenth-century Italian jurist Alberico Gentili—among the earliest of the 'sorry comforters'—which was taken up by most of the writers in the natural-law tradition: 'It is the duty of man to protect men's interests and safety, this is due to any man from any other, for the very reason that they are all alike men; and because human nature, the common mother of the all, commends one to the other.'¹⁸ However, neither Gentili nor Kant were prepared to accept that even a war fought against an enemy such as this could confer upon the victor—in this case the international community itself, or any state acting on its behalf—the traditional rights of conquest, appropriation, and colonization. Kant's account of the *jus post bellum* is unequivocal. It leaves the victor in a just war no grounds

eds. Norman Kretzmann, Anthony Kenny, and Jan Pinborg (Cambridge: Cambridge University Press, 1982), 775–8.

¹⁸ *De iure belli* 1.15, 111–2.

for the occupation of conquered territories or any but the most minimal compensation for damages suffered during the course of war, or even for any punishment of the aggressors as a *people*. (He would, presumably, have approved of the Nuremberg Trials.) Consequently, the victors have no right to 'divide its territory among themselves and to make the state, as it were, disappear from the earth since that would deprive the people of that state of their original right to unite itself as commonwealth' (MdS 6:349). Any attempt, therefore, by one state to annex or colonize another which, 'like a trunk', has 'its own roots; and to annex it to another state as a graft is to do away with its existence as a moral person and to make a moral person into a thing', and whatever violation of natural right it might otherwise involve, it also violates the most basic 'idea of the original contract, apart from which no right over a people can be thought' (ZeF 8:344).

For Kant, not only would the state which had defeated an 'unjust enemy,' not be in a position to acquire any rights to compensation, it would instead be under an obligation to bring about a condition which would allow the conquered *people* 'to accept a new constitution that by its nature is unfavorable to the inclination to wage war' (MdS 6:349–50). This may look remarkably like a charter for colonization under another name, or some kind of 'veiled protectorate'—the term used by Lord Milner to describe the British occupation of Egypt between 1822 and 1922. In fact, however, Kant is adamant that victory does not allow the victor to impose his own rulers, or even native rulers of his own choosing, on the vanquished (a practice used widely by the British in Asia and Africa), since that too would be a violation of the right of all peoples to form themselves into a commonwealth. Kant assumes that all peoples, if given the opportunity, cannot but choose a '*republican* constitution', which is the 'sole constitution that can led towards perpetual peace' (ZeF 8:350).

For much the same reason, although somewhat less precisely and a great deal more problematically, Kant also seems to have been prepared to accept that some kind of coercion might be justified in pursuit of what he describes as the 'original right' which every state has to exit from the state of nature and to 'establish a condition more closely approaching a rightful condition' (MdS 6:344). So long as states remain, like isolated individuals, in the state of nature and consequently 'independent from external laws', they constitute a standing threat to each other by their very existence, and thus if any one of them wishes to bring an end to this condition, it 'can and ought to require the others to enter with it into a constitution, similar to a

civil constitution, in which each can be assured of its rights' (ZeF 8:354).¹⁹ What is unclear is whether this demand could legitimately be backed up by some kind of military action, since it might be argued, although Kant himself does not, that any state which refused would, in effect, fall into the category of the 'unjust enemy'. Yet even if it did, the same rules governing the *jus post bellum* would obviously have to apply. The defeated state would be encouraged, assisted, or even coerced into creating what it would, in any ideal situation, clearly have chosen for itself: a representative republican constitution. Whatever else it might become, it could certainly not be either a province or a 'daughter' of the victorious state.

For Kant, at least, there would seem to be no legitimate grounds for the colonization, under whatever pretext, or in whatever form, of any part of the territory of a defeated enemy, no matter what the justice of the war fought against him, nor on whose behalf that war had been waged. One could say that the difference between the settlements reached in Paris in 1919—in which the German and Ottoman empires were carved up into colonies, mandates, and protectorates, all reasonable simulacra of 'daughter-states'—and in February 1947 when the Allies sought successfully to impose upon the defeated states 'a new constitution', marked a Kantian transformation in the evolution of the understanding of the *jus post bellum*—not that an attentive reading of Kant can be said to have had very much, if anything, to do with it.

1.3 The Right of Occupation

No province or colony can, therefore, legitimately be created through war. There would, however, seem to exist at least two other kinds of settlement 'from home', which, as they do not depend upon acts of war, are legitimate.²⁰ The first is by the settlement of what Kant calls 'newly discovered

¹⁹ On Kant's really very extensive conception of the possible grounds for war in pursuit of a final juridical world order, see B. Sharon Byrd and Joachim Hruschka, 'From the state of nature to the juridical state of states', in *Law and Philosophy*, 27 (2008): 599.

²⁰ Kant also accepts the possibility of colonization by invitation. The ruler of a state, although he clearly does not possess property rights in it, and cannot, therefore, alienate, any part of it, can, nevertheless, 'promote the immigration and settlement of foreigners (colonists) even though his subject might not take a liking to this, as long as the latter are not deprived of any of their private property' (MM 6:338). It is not clear, however, if these *Colonisten* would in fact be true colonizers, or merely immigrants, who would eventually acquire citizenship and thus become full members of the *nation*.

lands (*accolatus*)' (MdS 6:353).²¹ Kant makes no direct allusion here to the supposedly Roman notion of 'lands of no-one' (*terrae nullius*).²² But it is clear from his insistence that any such occupation has to take place at a sufficient distance from 'where that people resides that there is no encroachment on anyone's use of his land.' True *terrae nullius* still belong in what he calls the 'primitive community (*communio primaeva*)' (MdS 6:258) in which no property relations exist at all, so their acquisition can involve no interruption of the status quo ante. All that the settler had to do was to settle. For, unlike most of the writers on the natural law and the law of nations since Grotius, Kant rejects the so-called 'agriculturalist argument'—the claim that 'occupation' necessarily implies development or exploitation. All it requires is 'taking control of it (*occupatio*)' (MdS 6:263). In reply to the question 'in order to acquire land is it necessary to develop it (build on it, cultivate it, drain it and so on)?', he gave an unqualified no. 'Shepherds or hunters' who take up a lot of space, have clear and inviolable rights over the 'great open regions' they require for their livelihood (MdS 6:353), even if this contributes to the 'lawless freedom,' which prevents them from fulfilling their human duty to exit from the state of nature. For even when 'our own will brings us into the neighborhood of a people that holds out no prospect of a civil union with it,' we may not, because of this, legitimately 'found colonies by force if needs be in order to establish civil union with them and bring these men (savages) into a rightful condition (as with the American Indians and the Hottentots and the inhabitants of New Holland)'. Even though it was the case that, had it not been for such actions in the past, 'great expanses of land in other parts of the world, now splendidly populated, would have otherwise remained uninhabited by civilized people,' the acquisition of territory by this means 'is... to be repudiated' (MdS 6:266). For Kant, unlike Locke, what the English colonists

²¹ *Accolatus* is, in fact, an obscure word of biblical, pre-Jerome origin which was glossed as synonymous with *incola* and applied to persons who had residence but neither origin nor citizenship in a place. (I would like to thank Clifford Ando for this information.) What Kant understood by it in this context, or in the context of the *ius incolatus* at 6:353, in connection with the 'right of a citizen of the earth to attempt to enter into community with all others,' however, is anyone's guess.

²² Kant does not use this term, as a claim to the right to occupy *land* as opposed to things (*res nullius*). *Terra nullius* was, in any case, a dubious sixteenth-century appropriation of a few brief passages in Roman law. See Randall Lesaffer, 'Argument from Roman law in current international law: Occupation and acquisitive prescription,' in *The European Journal of International Law*, 16 (2005): 25.

in North America called ‘improvement’ could not, in itself, constitute an act of possession, but ‘nothing more than an external sign of taking possession, for which many other signs that cost less effort can be substituted’ (MdS 6:265). ‘Taking first possession’ has therefore ‘a rightful basis (*titulus possessionis*), which is original possession in common’, is ‘a basic principle of natural right’ (MdS 6:251), and anyone who ‘expends his labor on land that was not already his has lost his pains and toil to he who was first’ (MdS 6:269). The same applies to moveable goods, since mankind’s ‘common possession of the land of the entire earth (*communio fundi originaria*)’ (MdS 6:258) includes both the earth itself and the things upon it. Even driftwood, without which the peoples of ‘the cold wastes around the Arctic Ocean’ (ZeF 8: 363) would hardly have been able survive, cannot be considered truly *res nullius* (MdS 6:270).²³

What this means is that in the state of nature all human beings enjoyed private possession of the earth and of its goods. It does not mean, however, that there existed what Kant calls an original ‘community (*communio*) of what is mine and yours’ (MdS 6:258). For this could only have been created by a common agreement which, in turn, could only have come into being through some kind of contract in which ‘everyone gave up private possessions, and by uniting his possessions with those of everyone else, transformed them into a collective possession’, and history has no record of any such contract, for ‘savages draw up no record of their submission to law’ (MdS 6:339).²⁴ Although it would seem that individual possessions would require the existence of legal institutions—a *lex iustitiae distributiva*—which can only exist in the civil condition, it is nevertheless our ‘duty to proceed in accordance with the principle of external acquisition’, even ‘before the establishment of the civil condition but with a view to it, that is, provisionally’, because we all have an obligation qua human beings to exit from the state of nature as rapidly as we can, and the acquisition of personal property is the first step in that direction (MdS 6:267–8).²⁵

²³ On Kant’s innate right to land see Leslie Arthur Mulholland, *Kant’s System of Rights* (New York: Columbia University Press, 1990), 218–20. Kant’s comments on the dependence of the Inuit on driftwood for their boats, weapons, and huts is at ZeF 8:363.

²⁴ Arthur Ripstein, *Force and Freedom Kant’s Legal and Political Philosophy* (Cambridge, Mass: Harvard University Press, 2009), 89–90 and 155–6.

²⁵ On Kant’s three categories of *lex*, see B. Sharon Byrd and Joachim Hruschka, ‘Lex iusti, lex iuridica and lex iustitiae in Kants *Rechtslehre*’, *Archiv für Rechts und Sozialphilosophie*, 91 (2005): 484.

It would seem to follow, therefore, that ‘herding or hunting peoples’, although they may have a due right to occupy the lands on which they live, and to live by whatever means they choose, ‘so long as they keep within their own boundaries’, cannot, as Anna Stilz points out in this volume, exercise true property rights over them. They might, therefore, be said to have only the use rights—or *possessio*—in the lands they occupy, but not true *dominium* over them. That, however, could never, in itself, be sufficient grounds for any more ‘developed’ people to expropriate them. ‘Newly-discovered’ lands, furthermore, would have to be truly ‘newly discovered’ in the sense of being entirely unknown to anyone prior to the arrival of the new settlers. It was presumably into lands such as these that those who, in the beginning of human history, having reached the stage of ‘sociability and civil security’, had extended themselves ‘everywhere from a single point, like a beehive sending out already-formed colonists’ (MAM 8:119–20). In Kant’s day, it was possible that such lands might still be found; but they clearly did not exist on any of the four continents already known to Europeans.

The second means by which land might legitimately be acquired for settlement is through contract. This, however, would seem to be possible only between persons living in states and non-state individuals, for although a person living in a legally constituted state has the right to immigrate, all he is allowed to carry away with him are his moveable goods. He cannot sell any land he might have owned ‘and take with him the money he got from it’, for although the ‘moral person’ of the state is independent of the land on which it stands, it cannot exist without it (MdS 6:338). Non-state persons, not being bound by any civil constitution, are apparently able to dispose of their lands as they choose, and to leave them with whatever they had received in exchange. Kant insists, however, that the laws of contract must still apply, even if one of the parties is, in effect, living in a condition of lawlessness. For any contract to be valid, therefore, it has to be drawn up without exploiting ‘the ignorance of those inhabitants with respect to ceding their lands’—something which Kant seems to have been aware had happened all too often in Africa and America (MdS 6:353) (see Anna Stilz in this volume).²⁶ It is not entirely clear, however, what the

²⁶ cf. MdS 6:266, where he speaks of founding ‘colonies by fraudulent purchase of their land, and so [becoming] owners of their land, [by] making use of our superiority without regard to their first possession’.

settler is, in fact, buying, for if 'savages' only have the mere possession of their lands, then all they would seem to be able to sell would be something like a right of exclusive use. At best, this comes down merely to the claim that, in accordance with 'the right of nations', all peoples, even 'savages', should be treated in accordance with due legal process.

Kant's defense of the rights and legal standing of nomadic or pastoral peoples should not, however, be taken to imply any particular respect or liking for them on his part, or indeed, any suggestion that theirs could for long remain a viable alternative to the agricultural-commercial state of civilization. Kant may, as Sankar Muthu argues in this volume, have had scant appreciation of the species of 'civilization' which the European states of his day were so eager to export to the 'barbarian' peoples of the world. He may sometimes have deplored the 'glittering misery' of modern cities (MAM 8:120). But he was in no doubt that sooner or later, 'savages' would have to be brought into the historical process, which only properly begins with the creation of a civil constitution. In *Towards Perpetual Peace*, hunting is described as the way of life 'undoubtedly most opposed to a civilized constitution', since 'families, having to separate, soon become strangers to one another and subsequently, being dispersed in extensive forests, also hostile since each needs a great deal of space for acquiring its food and clothing' (ZeF 8:364). No people, he wrote, are more senselessly cruel than those 'from the so-called state of nature', and he was horrified by all that he had read about 'the scenes of unprovoked cruelty in the ritual murders of Tofoa, New Zealand, and the Navigator Islands [Samoa] and the never-ending cruelty . . . in the wide wastes of northwestern America from which indeed no human being derives the least benefit' (Rel 6:33). Like most of his contemporaries, he also accepted that all humankind progressed, often despite itself, from the 'lawless freedom of hunting, fishing or pastoral life' to that of agriculture and the urban life associated with commerce (ZeF 8:364). All those, the peoples of Africa, Tonga, New Holland, and America, and most famously Tahiti, who had failed to do so had chosen to detach themselves altogether from the process of amelioration which is the natural condition of the species as a species. They are in a sense worthless as human beings, for such is man's 'propensity to perfect himself' that it could be said that 'the world would lose nothing if Tahiti were simply swallowed up' (R 15:785). Luckily for the Tahitians, however, as presumably for all the other primitive peoples of the world, they have now been visited by more 'cultured nations' (*gesittetern Nationen*) who might, much as

Kant despised their rapacious ways, have the unintended merit of returning them to their true purpose (RezH 8:65).

But this is simply the ineluctable progress of human history. It certainly did not confer a *right* of any kind on the more advanced peoples of the world to help the less to hurry on up the scale of civilization. None of the arguments for occupation or settlement of the kind which European colonizers had employed in varying degrees—the world's advantage, the fact that 'these crude people will become civilized', or the idea that 'one's own country will be cleaned of corrupt men, and they or their descendants will, it is hoped, become better in another part of the world'—although they might be grounded on 'supposedly good intentions', could ever, in Kant's view, 'wash away the stain of injustice in the means used for them' (MdS 6:353).

Just what political status any settlement created on either vacant land or in lands acquired through contract would have, however, is not at all clear. Since the settlers must have originally come from somewhere, and since their migration must have taken place in historical time, that somewhere can only have been a *Vaterland*. They are literally 'from home', yet if the states which are subsequently created by those settlers are to be legitimate ones—which, by implication at least, they must surely be, since 'a subject (regarded also as a citizen)' of any state has a 'right to emigrate, for the state could not hold him back as its property', they cannot belong to either type of province/colony (MdS 6:337). Such states must, therefore, be truly independent foundations created *ex nihilo*, by means of a new 'original contract'. In time, they will become true 'native lands' in their own right and their peoples a true *gens*. It would, therefore, be unreasonable to suppose that such former subjects would continue to be subject in any way to their 'mother country'. None of this could apply, however, if the original act of colonization had, in fact (as was generally the case), been carried out under the aegis of a 'mother country'. For Kant, neither a creole people nor a colonized one, once it has been colonized, can claim any kind of right to self-determination, any more than may the subjects of an un-colonized state groaning under an unjust sovereign. Sankar Muthu is quite right to insist in this volume that Kant urges resistance 'against political religious and commercial authorities' when they appear to threaten the individual's right to self-determination. But that resistance may only take the form of what he famously called the '*public use*' of reason. Subjects may grumble. They may even go so far as to exercise the 'freedom of the pen'—provided

that 'it is kept within the limits of a great esteem and love for the constitution' (GTP 8:304). But they may not offer any kind of *private* resistance. Even their public resistance may only be critical, not prescriptive, for they are prohibited from suggesting any alternative constitution, since every actual decision can only be taken by the sovereign himself.²⁷ 'All resistance against the supreme legislative authority, all incitement in order to express through action the dissatisfaction of subjects, all protest that leads to rebellion, is the 'highest and most punishable crime within a commonwealth because it destroys its foundation' (GTP 8:299). For any insurrection against 'a constitution that already-exists', no matter how that constitution had come into being, nor how good or bad it might be, 'overthrows all civil-rightful relations and therefore all right'. It constitutes, that is, a violation of that 'law of continuity (*lex continuo*)' which is precisely what separates civil society from the lawless condition of the state of nature. It is thus not a change of the civil constitution, 'but a dissolution of it' and '[T]he transition to a better constitution is not then a metamorphosis but a palingenesis, which requires a new social contract on which the previous one (now annulled) has no effect' (MdS 6:340). Despite a passing remark that everyone is bound to obey whoever is in authority 'in whatever does not conflict with inner morality' (MdS 6:371), Kant's citizens are not even, as Hobbes' subjects, provided with the natural right to self-protection.²⁸ As Pufendorf, whom Kant follows quite closely on this issue, put it, all subjects have an 'obligation to obey whoever is in possession of the Crown... [for] a state cannot survive without some kind of government and a good citizen who loves his country, should, on such occasions, give rise to no further troubles.'²⁹

Although he never invokes it, Kant's position on the creation of new states is analogous to the Roman law of prescription, which allowed for

²⁷ See Jeremy Waldron, 'Kant's theory of the state', in *Towards Perpetual Peace and Other Writings on Politics, Peace and History*, ed. Pauline Kleingeld (New Haven: Yale University Press, 2006), 194–7. Waldron suggests that for Kant certain organizations which might call themselves states are in fact not in that they do not 'amount to a legal system and administer what actually counts as law'. In such cases their 'citizens' would be under no obligation to obey their rulers. This, however, would require that the citizens pass an initial judgment on their rulers in precisely the way that Kant denies that they have the right to do.

²⁸ On Kant's agreements and disagreements with Hobbes, see Richard Tuck, *The Rights of War and Peace: Political Thought and the International order from Grotius to Kant* (Oxford: Oxford University Press, 1999), 207–25.

²⁹ *De iure naturae et gentium libri octo*, VII. 8, para. 10.

long-term de facto occupation (*prescriptio longi temporis*) to be recognized de iure as conferring retrospective rights of property and of jurisdiction. The English sometimes drew upon this in justification of their occupation of Virginia, and it has been used subsequently on a number of occasions, most notably in the case of the state of Israel since 1948, for the acquisition of Palestinian lands. It posed—and poses—some clear and obvious difficulties, the most obvious being the length of time required to establish title. There was also the broader and more telling point, which Grotius had made, that since prescription was a truly existential argument, it could only be a matter of civil law rather than part of the law of nations, in which case it clearly could not apply to contracts between ‘kings or between free peoples’. Kant’s understanding, however, would appear to be that once a state has been created under, or even in defiance of, the ‘right of nations’, once, that is, it has come into being de facto, it then passes under the jurisdiction of a ‘state right of a state’ which, unlike ‘the right of nations’, ‘has binding force’ and ‘hence objective (practical) reality’ (GTP 8:306).

Given his overwhelming concern with the continuity of human legal institutions, all of Kant’s injunctions on matters of the ‘right of nations’ can only take the form of warnings against future acts of usurpation. Colonies cannot be formed under ‘the right of nations’—provisional and illusory—but neither can they be dissolved under the very precise terms of the ‘right of a state’ once they exist. Although Kant does, as Peter Niesen argues in this volume, make claims in favor of some kind of restorative justice, he is unable to countenance any kind of right to self-determination, whether it be by creoles or by displaced native inhabitants, on the part of either form of his province/colony. Both *Unterhäuser* and ‘daughter-states’ are bound to obey their de facto rulers until such time as those rulers choose to leave of their own accord. Of course, all of this will be resolved when the wholly unsatisfactory ‘right of nations’ gives way to the ‘cosmopolitan right’ and with it, the ‘universal *cosmopolitan condition*’. For Kant, of course, that existence was not merely the solution to a problem, it was the final end of human existence, ‘the end . . . which nature has as its aim’, and the ‘womb in which all original predispositions of the human species will be developed’ (IaG 8:28).

Kant’s discussion of colonies would seem to leave anyone who might hope to employ what would appear to be the ultimately emancipatory force of *jus cosmopolitanum* as a ground for opposing any form

of colonial regime with severe problems of consistency. For although Kant is insistent that no kind of colonial regime, unless it has been established literally in *terra nullius*, can initially be a legitimate one, it is also clear that foundation is not all that matters, and that his insistence on the need to preserve the legal continuity of the state at all costs empathically rules out any kind of struggle for independence. All that the colonized can do, like the subjects of all unjust but legitimate rulers, is to protest in the hope that the public assertion of their individual autonomy will contribute to the final realization of the 'league of states' (*Friedensbund*) in which all forms of involuntary subjugation would be unthinkable. But that is still a long way in the future.

Acknowledgments

I would like to thank the editors and Benjamin Straumann for their comments on an earlier version of this essay, from which it has benefited immeasurably.

Bibliography

- Ando, Clifford, 'The Roman city in the Roman period', in *Rome, a City and its Empire in Perspective: The Impact of the Roman World through Fergus Millar's Research. Rome, une cité impériale en jeu: l'impact du monde romain selon Fergus Millar*, ed. Stéphane Benoist (Leiden: Brill, 2012), 109–24.
- Barnes, Jonathan, 'The just war', in *Cambridge History of Later Medieval Philosophy*, eds. Norman Kretzmann, Anthony Kenny, and Jan Pinborg (Cambridge: Cambridge University Press, 1982), 775–8.
- Brett, Annabel, *Changes of State: Nature and the Limits of the City in Early Modern Natural Law* (Princeton: Princeton University Press, 2011).
- Byrd, B. Sharon and Joachim Hruschka, 'Lex iusti, lex iuridica und lex iustitiae in Kants Rechtslehre', *Archiv für Rechts und Sozialphilosophie*, 91 (2005): 484.
- , 'From the state of nature to the juridical state of states', *Law and Philosophy*, 27 (2008): 599.
- Goyard-Fabre, Simone, *Kant et le problème du droit* (Paris: Vrin, 1975).
- Greene, Jack P., *Peripheries and Center: Constitutional Development in the Extended Politics of the British Empire and the United States, 1607–1788* (Athens and London: University of Georgia Press, 1986).
- Haggenmacher, Peter, 'Mutations du concept de guerre juste de Grotius à Kant', *Cahiers de philosophie politique et juridique*, 10 (1986): 117.

- Hassner, Pierre, 'Les concepts de guerre et de paix chez Kant', *Revue française de science politique* XI (1961): 642.
- Höffe, Otfried, *Kant's Cosmopolitan Theory of Law and Peace*, trans. Alexandra Newton (Cambridge: Cambridge University Press, 2006).
- Kleingeld, Pauline, *Kant and Cosmopolitanism: The Philosophical Ideal of World Citizenship* (Cambridge: Cambridge University Press, 2012).
- Kolb, Robert, *Réflexions de philosophie du droit international* (Brussels: Editions Bruylant, 2003).
- Lesaffer, Randall, 'Argument from Roman law in current international law: Occupation and acquisitive prescription', *The European Journal of International Law*, 16 (2005): 25.
- Maine, Henry Sumner, *International Law: A Series of Lectures Delivered before the University of Cambridge, 1887* (London: John Murray, 1888).
- Mulholland, Leslie Arthur, *Kant's System of Rights* (New York: Columbia University Press, 1990).
- Muthu, Sankar, *Enlightenment against Empire* (Princeton: Princeton University Press, 2003).
- Philonenko, Alexis, 'Kant et le problème de la paix', in *Essais sur la Philosophie de la Guerre* (Paris: Vrin, 1976), 32–5.
- Ripstein, Arthur, *Force and Freedom: Kant's Legal and Political Philosophy* (Cambridge, Mass.: Harvard University Press, 2009).
- Tierney, Brian, *The Idea of Natural Rights, Natural Law, and Church Law, 1150–1625* (Atlanta, Georgia: Scholars Press, 1997).
- Tuck, Richard, *The Rights of War and Peace: Political Thought and the International order from Grotius to Kant* (Oxford: Oxford University Press, 1999).
- Waldron, Jeremy, 'Kant's theory of the state', in *Towards Perpetual Peace and Other Writings on Politics, Peace and History*, ed. Pauline Kleingeld (New Haven: Yale University Press, 2006), 194–7.

2

Kant's Second Thoughts on Colonialism

Pauline Kleingeld

Introduction

Kant is widely regarded as a fierce critic of colonialism. In *Toward Perpetual Peace* and the *Metaphysics of Morals*, for example, he forcefully condemns European conduct in the colonies as a flagrant violation of the principles of right. His earlier views on colonialism have not yet received much detailed scrutiny, however. In this essay, I aim to show that Kant actually *endorsed and justified* European colonialism until the early 1790s, before becoming very critical of it in *Toward Perpetual Peace*. I argue that Kant's initial endorsement and his subsequent criticism of colonialism are closely related to his changing views on race because his endorsement of a racial hierarchy played a crucial role in his justification of European colonialism. During the process of developing his legal and political philosophy, in the mid-1790s, he gave up his defense of colonialism, in favor of a more egalitarian, republican, and cosmopolitan conception of the proper relationship among peoples.

2.1 Does Kant Defend Colonialism in the 'Idea for a Universal History'?

In his 1784 essay, 'Idea for a Universal History from a Cosmopolitan Perspective', Kant claims that 'our part of the world', namely, Europe, 'will probably someday give laws [*Gesetze geben*] to all the others [*viz.*, other

parts of the world]' (IaG 8:29). The claim is a parenthetical comment that is not further explained in the essay. In the light of Kant's unambiguous criticisms of colonialism in later texts, some commentators have resisted a literal interpretation as a prediction or endorsement of worldwide European colonialism. Several alternative readings are possible. Todd Hedrick has suggested, for example, that Kant's remark should not be read as referring to the probability of European world legislation. Rather, he proposes, Kant meant something analogous to the current post-colonial condition, where, as Hedrick puts it, ethnically white nations of the world *dominate* without directly *ruling or occupying* other parts of the world.¹ Béatrice Longuenesse has mentioned another possibility, namely, that Kant's claim might have to be taken as meaning that Europe will spread its *model* of legislation (in form or content) across the world, instead of European countries dictating laws elsewhere.² These possibilities cannot be excluded out of hand, especially in the light of Kant's well-known criticisms of colonialism.

Nevertheless, *prima facie* there is some reason to doubt these non-literal readings. There is no other text in which Kant uses '*Gesetze geben*' (or *gesetzgeben*, *Gesetzgebung*) for 'dominating without ruling' or 'spreading the model of legislation' (presumably by having the European model of legislation adopted by peoples elsewhere in the world). It generally simply means 'giving laws'. If we take it to mean law-giving, the passage under consideration means nothing less than that Europeans will probably give laws to the rest of the world at some point in the future, which would amount to a form of colonial rule.

If Kant here designates European legislation for the rest of the world as a probable end result of history, this is of course highly significant. In the 'Idea for a Universal History', he sketches an idea of *progress*, according to which history is moving towards a 'cosmopolitan condition' of an international federation with coercive powers. Given this teleological argumentative context, the remark cannot be downplayed as 'merely' a prediction of an unfortunate but empirically probable future state of the world. Kant is here sketching an idea of the 'final end' of history, and if

¹ Todd Hedrick, 'Race, Difference, and Anthropology in Kant's Cosmopolitanism', *Journal of the History of Philosophy* 46 (2008): 245–68; here 262.

² Béatrice Longuenesse, 'Kant's Imperfect Cosmopolitanism', in *The Cosmopolitan Ideal*, ed. Hilary Ballon (New York: NYU Press, forthcoming). She does not claim that this interpretation is the correct one but mentions it as a possibility.

the remark is to be taken literally, it means that this historical *telos* is supposed to ('probably') include European legislation for all other parts of the world. In other words, we need to consider the possibility that Kant's ideal 'cosmopolitan condition' should be interpreted as a condition of European colonial rule.

If the comment is read literally, the passage contradicts Kant's powerful critique of colonialism found in *Toward Perpetual Peace* and the *Metaphysics of Morals*. This, in turn, raises more questions. For we should then ask what to make of the discrepancy between Kant's remark in the 'Idea for a Universal History' and his colonialism critique. Is Kant contradicting himself—is this remark the result of a careless formulation or of confusion, perhaps? Or was Kant's position ambivalent? Thomas McCarthy has argued for this second view, claiming that Kant condemned colonialism and slavery on the grounds of morality and right, even while regarding them as necessary for the spread of civilization and right throughout the world.³ Or—and this is an important third possibility—did Kant perhaps change his views over time? Determining which of these three alternative interpretations is the right one requires us to place Kant's remark within a broader interpretive context. Whether Kant's seeming endorsement of colonialism is the result of a careless formulation, whether he simultaneously welcomed and criticized colonialism, or whether he initially endorsed it and later criticized it can be established only against the broader hermeneutical background of his views on colonialism and related issues.

I argue in favor of the third interpretation, namely, the view that Kant defended European colonialism during the 1780s and early 1790s, and that he started to criticize it only during the 1790s. Kant's texts of the 1780s and early 1790s contain many more passages in which he defends or at least clearly condones European colonialism overseas, while they do not—to my knowledge—contain any critique of it. Conversely, his texts dating from the mid and late 1790s contain many trenchant criticisms of European colonialism and no defenses. This solid pattern gives us reason to reject the first and second interpretations. The texts display a chronological pattern indicating that Kant radically changed his views on colonialism in the mid-1790s.⁴

³ Thomas McCarthy, *Race, Empire, and the Idea of Human Development* (Cambridge: Cambridge University Press, 2009), 62.

⁴ Although Kant's *Lectures on Physical Geography* were published in 1802, this edition cannot be regarded as reflecting Kant's views around that time. There are well-known problems with the Rink edition that make it difficult to date specific passages; many parts of the

2.2 Kant's Defense of Colonialism during the 1780s and Early 1790s

One of Kant's clearest defenses of colonialism is found in his Lectures on Physical Geography (Doenhoff), lectures which he most probably gave in 1782. According to the lecture notes, Kant explained that India would be happier under a stronger form of European colonial rule:

These peoples [viz., in India] deserve a better fate than their current one, because it is a very manageable and easily governed people! The current fate of India depends as little on the French as on the English, but this much is certain, that if they were to be ruled by a European sovereign, the nation would become happier. (VPG Doenhoff 178).

This comment clearly indicates Kant's endorsement, even his active recommendation of European colonial rule: India 'deserves' European colonial rule because it is so 'easily governed', and it would be 'happier' as a result.

In Kant's characterizations of the different 'races', we find many passages in which he posits a connection between racial differences and politically relevant mental and agential characteristics.⁵ Consider the following passages: 'Americans and Negroes cannot govern themselves. Thus, [they] serve only as slaves.' Blacks are said to 'adopt the culture of bondsmen but not of free men, and they are incapable of leading themselves. Children' (Sketches for the Lectures on Anthropology, from the 1780s, R 15:877–8). The 'Hindus' are said to be superior to the Negroes because they can be educated, but they can be educated only in the arts, not in the sciences and other endeavors that require the use of abstract concepts. They are hence incapable of being magistrates, and incapable of genuine freedom and virtue (877). The 'white' race is superior and the only non-deficient race: 'the race of whites contains all incentives and talents' (878). This racial hierarchy is repeated in many other texts. In anthropological lecture notes that probably stem from 1781 to 1782, for example, Kant

text even stem from the pre-Critical period. Because this chapter concerns the development of Kant's views during the Critical period, I build my case on published texts and lecture notes, of which the dates are less in dispute.

⁵ In the description of Kant's account of race and racial hierarchy, I draw in part on my article, 'Kant's Second Thoughts on Race', *Philosophical Quarterly* 57 (2007): 573–92, and my book, *Kant and Cosmopolitanism: The Philosophical Ideal of World Citizenship* (Cambridge: Cambridge University Press, 2012), chapter 4.

reportedly asserts that Native Americans are the lowest of the four races because they are completely inert, impassive, and incapable of being educated at all. He places the 'Negroes' above them because they are capable of being trained to be slaves (but incapable of other forms of education). Asians have many more talents, but still fewer than whites (VA 25:1187; see also VA Ko 362–5). Kant invokes this racial hierarchy—along with the thesis that non-whites are incapable of governing themselves, incapable of being magistrates, and incapable of genuine freedom, and that whites, by contrast, do have the requisite capabilities—to justify whites' subjecting and governing non-whites through colonial rule. Kant's account contains a mix of paternalism (as with India, which would be 'happier' as a European colony) and instrumentalization (as with Native Americans and blacks, whose alleged 'purpose' is to serve as slaves).

Consistent with the characterizations quoted, Kant discusses the activities of Europeans in the overseas colonies without criticism. In his 1777 paper, 'Of the different races of human beings', he discusses colonial slavery in a very matter-of-fact way: 'one makes use of the red slaves (Americans) in Surinam only for labors in the house because they are too weak for field labor, for which one uses Negroes' (VRM 2:438n.). Surinam was a Dutch colony, and the term 'one' (in 'one uses Negroes') adopts the perspective of the slave owners and their equals. There is no hint of criticism of either colonialism or slavery here. A similar perspective is adopted in the following passage from the 1782 Doenhoff Lectures on Physical Geography; note again the use of 'one' and, in this passage, the salient implicit contrast between 'slave' and 'human being':

The Mandinka are the very most desirable among all Negroes up to the Gambia river, because they are the most hardworking ones. These are the ones that one prefers to seek for slaves, because these can tolerate labour in the greatest heat that no human being [*Mensch*] can endure. Each year 20,000 of this Negro nation have to be bought to replace the decline of them in America, where they are used to work on the spice trees and in general on the entire *établissement*. One gets the Negroes by having them catch each other, and one has to seize them with force. (VPG Doenhoff: 189)

Conceptually speaking, it is possible to imagine a defense of colonialism without racism or a defense of racism without colonialism. In Kant's case, however, the two clearly go hand in hand. As is clear from the passages cited, he characterizes the different races in terms of their (in)

capacity to govern themselves politically and in terms of their use—use, that is, to white European colonial rulers.

Kant's characterizations of the races are no isolated phenomenon in his work, nor are they prejudices unthinkingly copied from his contemporaries. To the contrary, Kant devoted a good deal of explicit philosophical attention to the issue of race. As Robert Bernasconi has pointed out,⁶ Kant was one of the first theorists to attempt to determine the concept of race (as distinct from 'species' and 'variety'). He wrote several essays on the topic in the 1770s and 1780s, especially the essays 'Of the different races of human beings' (1775, 1777), 'Determination of the concept of a human race' (1785), and 'On the use of teleological principles in philosophy' (1788). His draft notes and the lecture notes taken by his students provide us with many additional materials. Kant's lectures on physical geography, and his annual anthropology lectures in particular, in their section on the characteristics of the races, form a rich source for his hierarchical conception of the races during the 1780s and the early 1790s.⁷ Evidently, Kant considered the issue to be of considerable interest and importance.

In the texts and lectures from the 1780s and early 1790s, Kant connects race with common ancestry and certain physical properties. He defines racial features as traits that are necessarily passed on to offspring, such that procreation with a human of a different race leads to a blending of characteristics (e.g., BBM 8:99–100). This definition of race is a physiological one because it is an account in terms of the development of different bodily traits, such as skin color, hair structure, and the like. It does not as such imply that racial differences are associated with differences in intellectual or agential capacities, and by far the largest portion of Kant's articles on race deal with physical aspects alone. In fact, Kant's 1785 essay, 'Determination of the concept of a human race', deals with physiology only and does not betray any endorsement of a racial hierarchy on Kant's part.

⁶ Robert Bernasconi, 'Who Invented the Concept of Race? Kant's Role in the Enlightenment Construction of Race', in *Race*, ed. Robert Bernasconi (Oxford: Blackwell, 2001), 11–36.

⁷ The last series of anthropology lectures of which we still have student notes are lecture notes dating from 1791 to 1792 (the Anthropology Dohna Wundlacken). Before the 1770s, too, Kant made derogatory comments about non-Europeans, but I restrict my discussion to the period after Kant had started writing about the concept of race as such.

Because of the physiological focus of Kant's articles on the concept of race, his hierarchical account of the races in terms of intellectual and agential characteristics surfaces only occasionally in these publications. As mentioned, however, this racial hierarchy is worked out in greater detail in the 1780s' anthropology lectures, in the section on the 'character' of the races. During this decade, this section contains Kant's portrayal of whites as the only non-deficient race and his account of the various deficits of the other so-called races. Kant's division of the subject matter was deliberate. In a letter to Johann Jacob Engel dated July 4, 1779, he explicitly distinguished the 'physical' account of race from the 'moral characterization' of the races, stating that the latter could be 'attached' to the former (B 10:256). In neither the articles on race nor the anthropology lectures, however, does he make any attempt to explain how the alleged intellectual and agential characteristics of the races are *related* to the physiological aspects of race.

Not only did Kant consider 'race' to be a topic of explicit philosophical concern to which he devoted several of his publications, he also defended his theory against the attacks of some of the leading intellectuals of his time. Kant's theory of race was strongly criticized, for example, by Georg Forster (1754–94), who had sailed around the world with Captain Cook.⁸ On the basis of his experiences with people elsewhere on earth, Forster had published an extensive critique in a leading journal, the *Teutsche Merkur*.⁹ Kant, in response, persists in endorsing European colonialism and non-white slavery. He published an extensive reply to Forster in his 1788 article 'On the use of teleological principles in philosophy.' Most of their discussion concerned the theory and methodology of biology. Forster had also explicitly criticized hierarchical accounts of race,¹⁰ however, and in his reply, Kant reasserted his endorsement of a racial hierarchy—incidentally, he wrote this text only months after having published the *Critique of Practical Reason*. Among other things, Kant claims that people from India and Africa are unable ever to become anything

⁸ Other notable early critics were Johann Gottfried Herder and Johann Daniel Metzger. For further discussion of their objections, see my *Kant and Cosmopolitanism*, chapter 4.

⁹ Georg Forster, 'Something more on the human races', in *Georg Forsters Werke*, ed. Academy of Sciences of the GDR, later Berlin-Brandenburg Academy of Sciences, vol. 8 (Berlin: Akademie Verlag, 1958–).

¹⁰ Forster, 'Something more on the human races', 154.

more than drifters. Native Americans, in turn, are even lower in the hierarchy: this race is

too weak for hard labour, too indifferent for industry and incapable of any culture—although there is enough of it as example and encouragement nearby [namely, the example of the European colonial settlers]—ranks still far below even the Negro, who stands on the lowest of all the other steps that we have named as differences of the races. (TPP 8:176)

With this last remark, Kant assumes that his readers were aware of his earlier work on race. Whites are not ‘characterized’ in this line-up, but again it is Kant’s clear assumption that they occupy the top rung of the racial hierarchy. In a footnote, moreover, Kant endorses an anti-abolitionist pamphlet, on the grounds that a proposal to use freed slaves as laborers in the colonies would not work because blacks lack a ‘drive to activity’ (TPP 8:174n.). In short, instead of changing his views on racial hierarchy in the face of articulate challenges from leading intellectuals of his time, Kant persists in endorsing European colonialism and non-white slavery.

Against the broader background of his explicit and repeated defenses of colonialism and the racial characterizations that support it, Kant’s remark in the ‘Idea of Universal History’ turns out to be just one passage among many that take European colonialism for granted. Not surprisingly, we find no explicit critique of colonialism and associated practices in Kant’s texts dating from this period.¹¹ His claim that Europe will probably eventually legislate for the other parts of the world can and should be read in the most literal sense.

We still encounter the connection between colonialism and race in Kant’s 1792 lectures on physical geography and in the anthropology

¹¹ In her book, *Hegel, Haiti, and Universal History*, Susan Buck-Morss rightly argues that current scholarship in history and philosophy should pay more attention to colonialism and slavery when it discusses historical figures. Buck-Morss does not devote sufficient attention, however, to the connection between early modern European philosophers’ endorsement of slavery or colonialism and their frequent endorsement of white supremacist *race* hierarchies. This may stem from her conviction that, historically, racism was the consequence of slavery instead of its cause, which might make racism look like the wrong problem to focus on. But her neglect of the role of racism leads her to ask repeatedly how the philosophers she discusses could live with themselves, given that their endorsement of slavery and colonialism so often flagrantly contradicted their philosophical ideals of freedom and equality. The answer in many cases, as in Kant’s, lies in the mediating and justifying role of racism. Susan Buck-Morss, *Hegel, Haiti, and Universal History* (Pittsburgh: Pittsburgh University Press, 2009).

lectures of the same period (VA Ko 362–5). In the Dohna Lectures on Physical Geography, Kant claims, for example, that the indigenous peoples of the Americas in general are an '*inferior* kind of human': they have no stamina for work, and they rarely have a civil condition. Kant is not certain that the European colonial powers will be successful here. He comments: 'most likely one will never be able to bring the Canadian savages into a lawful condition' (VPG Dohna 236, 238). Again, the perspective here is that of the European power attempting to subsume the savages under their colonial laws ('*one* will never be able to *bring them* ...'). Kant's description of practices in the colonies is still just as matter-of-fact in tone as his earlier comments on the kinds of slaves that 'one uses' for various tasks in Surinam. In the next section, I show that Kant radically changed his mind on the matter of colonialism in the mid-1790s. For purposes of comparison, then, let me end this section with a passage from the Dohna Lectures on Physical Geography—a passage that has a striking counterpart in *Toward Perpetual Peace*. Consider this description of the 'Sugar Islands,' from Kant's 1792 lectures on physical geography:

Much more important [than Cuba] is St. Domingo. On the French part of this island alone there are 350,000 Negroes,¹² on Jamaica 200,000, on Martinique, Guadeloupe, the Grenadines, the number of Negroes varies very much; it is the proper standard of wealth. The old Indian inhabitants (Caribs, now still living only on St. Vincent) can tolerate this kind of labour as little as the Europeans, only Negroes were created for it. Puerto Rico is not cultivated much—as the Spanish run things everywhere. As long the soil stays rich (*fett*) this will be all right, but as soon as it needs fertilizer, the yield will diminish greatly. For only the old fertile soil (black earth) produces the greatest profit from these islands. (VPG Dohna 241)

Kant here educates his students on the use of these territories for Europeans, and, as on earlier occasions, he depicts the indigenous peoples as physically weak.¹³ Blacks, on the other hand, are said to have been 'created for' the harsh labor conditions on the sugar plantations. (Similarly evoking teleological purposiveness, Kant claims that blacks 'seem to be made to serve others,' according to the 1791–2 anthropology lectures, VA Ko 363). Kant explains to his students the number of black slaves owned

¹² Current estimates are closer to 450,000, of whom roughly two-thirds were African-born. The death rate among the slaves was so high that the slaveholders continued to request new shipments of enslaved Africans.

¹³ Whites, too, are called weak, but Kant holds that they make up for this by their superior talents, whereas Native Americans lack such.

on the islands—and then proceeds to call this the ‘proper standard of wealth’. He informs his students about the kind of soil that yields the highest ‘profit’ from these islands—again, that is, profit for the European colonial powers. There is no trace of criticism; on the contrary, the alleged purpose of the very existence of blacks seems to serve as a justification for their use as slaves in the colonies.

2.3 Kant’s Second Thoughts on Colonialism

Not long after these Dohna lectures on physical geography were held, Kant had second thoughts. The tone and content of his description of the ‘Sugar Islands’, for example, in *Toward Perpetual Peace* (published in 1795), is radically different from that of the passage just quoted. His description now contains a sharp criticism of the violence perpetrated by the Europeans in general, and on the Sugar Islands in particular:

The worst of this (or, considered from the standpoint of a moral judge, the best) is that they [viz., the European commercial states] do not even profit from this violence; that all these trading companies are on the verge of collapse; that the Sugar Islands, this place of the cruellest and most calculated slavery, yield no true profit but serve only a mediate and indeed not very laudable purpose, namely, training sailors for warships, and so, in turn, carrying on wars in Europe (ZeF 8:359).

Instead of providing information regarding the kind of slaves needed and most useful for labor in these colonies, Kant now condemns the European conduct on the very same islands as reprehensible violence and cruelty. Instead of reporting on the kind of soil that yields the largest profit, he writes that morally speaking, it is a good thing that these colonies are not really profitable at all. Rather, the consequences of colonialism he mentions are all negative. Kant no longer identifies with the perspective of the colonial power (‘one uses Negroes’) but distances himself from it through the consistent use of ‘they’ (‘they do not even profit’).

In order to assess the extent and nature of Kant’s change of mind, let us look more closely at his stance on colonialism, as found in *Toward Perpetual Peace* and the *Metaphysics of Morals*.

In the Doctrine of Right, Kant defines a ‘colony’ in a way that makes the colonial relation necessarily unjust. He describes a colony as a people under the imperial rule of a so-called ‘mother’ state and condemns the resulting relationship as a violation of right. He gives the example of the relationship

between Great Britain and Ireland, and between ancient Athens and some of the Greek islands.¹⁴ The relevant passage is found in a discussion in which Kant argues that victorious states ought not to turn conquered states into colonies:

A defeated state or its subjects do not lose their civil freedom through the conquest of the country, so that the state would be degraded [*abgewürdigt*] to a colony and its subjects to bondage; for if they did the war would have been a *punitive war*, which is self-contradictory.—A *colony* or province is a people that indeed has its own constitution, its own legislation, and its own land, on which those who belong to another state are only foreigners even though this other state has supreme *executive* authority over the colony or province.—The state having that executive authority is called the *mother state*, and the daughter state, though ruled by it, still governs itself (by its own parliament, possibly with a viceroy presiding over it) (*civitas hybrida*). This was the relation Athens had with respect to various islands and that Great Britain now has with regard to Ireland. (MdS 6:348)

It is clear from this citation that Kant is very critical of this process: becoming a colony in this sense involves a reprehensible loss of dignity (an '*Abwürdigung*'). The point of the passage, after all, is precisely that no country is allowed to subject defeated countries or peoples in such a way that they become colonies.

In the light of the rest of the doctrine of right of the *Metaphysics of Morals*, it is easy to understand why Kant would regard colonial status as objectionable. Only a republican state—that is, a political system of collective self-legislation by the citizens through their representatives, with the executive being subject to this law—is fully in accord with the innate human right to freedom (MdS 6:340). Being subject to the rule of another state—the defining feature of colonial status—is incompatible with his ideal of political autonomy. As Kant put it in 'On the Common Saying', a paternalistic government is the 'greatest conceivable *despotism*' (GTP 8:290–1).

One might wonder, though, whether Kant really extends his rejection of colonialism to the case of non-Europeans. He illustrates his point by referring to the cases of Athens and Great Britain. But a skeptic could object that Kant may well have endorsed egalitarian, anti-colonialist political principles while still refusing, on the basis of racist presuppositions,

¹⁴ For more on the historical context of this passage, see the contribution by Anthony Pagden in this volume.

to apply these principles to non-Europeans. After all, this is exactly the pattern we find in the 1780s. According to Kant's 1785 *Groundwork for the Metaphysics of Morals*, it is a core moral principle that one ought not to use other human beings as mere means, but around the same time Kant failed to extend this core moral principle to the non-European slave population. By definition, all human races share the essential characteristics of the species, and this obviously includes its rational nature. Hence, Kant's 1780s' defense of slavery and colonialism flagrantly contradicts the moral principles he develops in the *Groundwork* and the *Critique of Practical Reason*.¹⁵ And if this self-contradiction did not bother Kant in his 1780s' lectures and publications, something analogous might be true in the case of his mid-1790s' prohibition of colonialism. We need strong textual evidence before we are justified in assuming that the texts condemn colonialism outside Europe.

This explicit evidence exists, however. There are many passages in which Kant explicitly extends the principles of right to humans on all continents, and in which he clearly draws the pertinent conclusions regarding European colonialism. For example, in the *Metaphysics of Morals*, he criticizes the European practice of fraudulently buying land overseas by deceiving the local population (MdS 6:266). In considering whether 'we' are authorized to establish colonies through violence or deceptive buying constructions, Kant asks

whether, when neither nature nor chance but just our own will brings us into the neighbourhood of a people that holds out no prospect of a civil union with it, we should not be authorized to found colonies [*Colonien*], by force if need be, in order to establish a civil union with them and bring these human beings (savages) into a rightful condition (as with the American Indians, the Hottentots and the inhabitants of New Holland); or (which is not much better), to found colonies by fraudulent purchase of their land, and so become owners of their land, making use of our superiority without regard for their first possession. (MdS 6:266)

Kant's answer is that this consequentialist justification is a thinly veiled case of using good ends to justify any means whatsoever, and his condemnation is unambiguous: 'Such a way of acquiring land is therefore to be repudiated.' (MdS 6:266). His mention of indigenous peoples on several other continents indicates that the principle at issue here also applies to

¹⁵ For the full argument that there is a contradiction between Kant's moral principles and his views on racial hierarchy, see my 'Kant's Second Thoughts on Race'.

non-Europeans. Clearly, Kant rejects what we understand by the more recent term 'colonialism', namely, the practice of forming colonies in a way that involves an unjust and unequal relationship between the colony and the mother state—whether it concerns the Irish or Native Americans.

Furthermore, the new category of public right that Kant introduces in *Toward Perpetual Peace*, namely, 'cosmopolitan right', is a direct manifestation of Kant's new position on race. He now explicitly assigns full juridical status to humans on all continents (ZeF 8:357–60; MdS 6:352–3), and his discussion of the normative requirements of cosmopolitan right forms the theoretical context for his condemnation of colonialism as well as for his positive support for the right of indigenous peoples to defend their ways of life against encroachments by others. Cosmopolitan right is premised on the interaction among humans on all continents and serves to regulate the interactions between states and foreign individuals. Among other things, it protects non-state peoples against involuntary incorporation into states, and it prohibits colonialism. Under the heading of 'cosmopolitan right', Kant now *criticizes* the colonial conquest of inhabited parts of the world by Europeans, and he is equally critical of the enslavement of the existing population and their subjection to European rule.¹⁶

The core of Kant's conception of cosmopolitan right, as discussed in *Toward Perpetual Peace* and the *Metaphysics of Morals*, is the view that states and individuals have the right to show up at the border to request interaction with other states and their inhabitants, or with non-state peoples, but not a right to enter foreign territory, let alone a right to settle. The addressees have the right to refuse such requests, but not with hostility, and not if it leads to the demise (*Untergang*) of the person who submits the request (ZeF 8:358). Kant's view is that states, non-state peoples, and individuals have an obligation to refrain from unwanted intrusions; that they ought to provide a safe haven for refugees (R 23:173); and that individuals do not have a right to enter foreign territory at will, unless they are granted permission.

In the light of this normative standard set by cosmopolitan right, the colonialist behavior of European states and trading companies is clearly

¹⁶ For a more extensive discussion of cosmopolitan right, see my *Kant and Cosmopolitanism*, chapter 3.

reprehensible. In his notes for *Toward Perpetual Peace*, after having discussed European behavior in Africa, America, and Asia, Kant concludes:

The principles underlying the supposed lawfulness of appropriating newly discovered and purportedly barbaric or irreligious lands, as goods belonging to no one, without the consent of the inhabitants and even subjugating them as well, are absolutely contrary to cosmopolitan right. (R 23:174)

And in a famous passage from *Toward Perpetual Peace*:

If one compares with this [viz., with the principle of cosmopolitan right] the *inhospitable* behaviour of civilized, especially commercial, states in our part of the world, the injustice they show in *visiting* foreign land and peoples (which with them is tantamount to *conquering* them) goes to horrifying lengths. When America, the negro countries, the Spice Islands, the Cape, and so forth were discovered, they were, to them, countries belonging to no one, since they counted the inhabitants as nothing. In the East Indies (Hindustan), they brought in foreign soldiers under the pretext of merely proposing to set up trading posts, but with them oppression of the inhabitants, incitement of the various Indian states to widespread wars, famine, rebellions, treachery, and the whole litany of troubles that oppress the human race. (ZeF 8:358–9).

Note that here that the Americas, Africa, India, ‘and so forth’ are explicitly mentioned. Cosmopolitan right is said to cover indigenous populations on other continents, and not just (‘white’) Europeans. It specifically condemns European colonialist practices.¹⁷

In the same context, Kant defends the right on the part of China and Japan to be very restrictive in their dealings with foreign trading companies, including Japan’s policy of granting access only to the Dutch and preventing even them from entering the country and having contact with the local population (ZeF 8:359). Kant motivates his endorsement of their policy in terms of the right of the Chinese and Japanese to avoid the ‘litany of troubles’ that would otherwise be caused by European trading companies. He mentions that the Chinese and Japanese knew what they were doing because they had tried contact with Europeans before (ZeF 8:359).

¹⁷ Kant’s comment about the ‘civilized’ states of Europe might be taken to betray that he ‘accepts the imperialist’s premise that the Europeans have a more advanced culture than the people they have conquered’. Cp. Allen W. Wood, *Kant’s Ethical Thought* (Cambridge: Cambridge University Press, 1999), 299. But it is not clear that this is indeed the case because the statement is not necessarily comparative. It need not mean that states on other continents are not or cannot be civilized.

Kant further argues that it is a violation of cosmopolitan right to conquer areas on other continents if they are inhabited, regardless of whether the people who live there have formed a state, and regardless of their way of life. As Sankar Muthu has shown,¹⁸ in the *Metaphysics of Morals* Kant allows for a diversity of ways of life (hunting, pastoral, agricultural) without ranking them on a hierarchical scale, and he explicitly states that the choice is entirely at the discretion of those involved (MdS 6:266). Moreover, they have the right to assert their chosen way of life against others, according to Kant:

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

Similarly, encroaching on the land used by others is forbidden, even if they use the land only relatively lightly:

If the settlement is made so far from where [a] people resides that there is no encroachment on anyone's use of his land, the right to settle is not open to doubt. But if these people are shepherds or hunters (like the Hottentots, the Tungusi, or most of the American Indian nations), who depend for their sustenance on great open regions, this settlement may not take place by force but only by contract, and indeed by a contract that does not take advantage of the ignorance of those inhabitants with respect to ceding their lands. (MdS 6:353)

The fact that Kant mentions the importance of contracts and the informed consent of Native Americans, Africans, and Asians indicates a fundamental change of view. It indicates that, by 1795, he regards their interests and claims as imposing a normative constraint on the behavior of Europeans. As long as he regarded slavery and colonial rule as fitting for non-Europeans, he did not see their consent as important at all, instead approaching non-whites with a mix of paternalism (as he did in the case of India) and instrumentalization (as he did in the case of slavery).

Kant started to voice unambiguous opposition to chattel slavery too. In his notes for *Toward Perpetual Peace* (1794–5), he criticizes the slavery

¹⁸ Sankar Muthu, *Enlightenment Against Empire* (Princeton: Princeton University Press, 2003), 187–8.

of non-Europeans and calls it a grave violation of cosmopolitan right (R 23:173–4). He explicitly censures the slave trade ('trade in Negroes') as a violation of the cosmopolitan right of blacks (R 23:174). Similarly, he criticizes the fact that the inhabitants of America were treated as objects belonging to no one and 'were displaced or enslaved' soon after Europeans reached the continent (R 23:173–4).

Consistent with his powerful criticisms of colonialism, Kant's work of the mid and late 1790s no longer mentions Europeans legislating for other parts of the world. Rather, Kant defends the normative ideal of the state as a republic, a self-legislative, self-determining union of citizens, and he no longer argues that other races are incapable of achieving this. Importantly, in the published version of the *Anthropology* lectures, Kant omits any characterization of the races (whereas he does still provide one for the sexes, for example) and denies that race has any 'pragmatic' relevance (APH 7:120).

Instead of his earlier claims that Africans and Native Americans cannot govern themselves and that Europe will probably eventually legislate for them, Kant now envisions a world in which peoples on different continents establish peaceful relations with each other. He sketches a vision of a world in which 'distant parts of the world can enter peaceably into relations with one another, which can ultimately become publicly lawful and so finally bring the human race ever closer to a cosmopolitan constitution' (ZeF 8:358). He expresses the hope that all states of the world will form a union, 'for a lawful settlement of their disputes (by analogy with a universal state)' (ZeF 8:379), and he writes that this 'state of peoples' (*Völkerstaat*) would 'finally encompass all of the peoples of the earth' (ZeF 8:357). (In the *Metaphysics of Morals*, he similarly writes that a true perpetual peace is possible only 'in a universal union of states (analogous to that by which a people becomes a state)', MdS 6:350). All peoples of the earth are to strive towards a single union of states, which will settle their conflicts at a federal level, instead of Europe being mentioned as the one continent in charge. In short, the texts indicate a pervasive change of Kant's view of the issue of colonialism.

2.4 Permissible Colonies

'Colonialism' refers to the political subjection of a territory and its population to a ruling 'mother state'. Using this terminology, we can say that

according to Kant's account in *Toward Perpetual Peace* and the *Metaphysics of Morals*, there can be no acceptable form of colonialism. Nevertheless, there can be acceptable ways of forming colonies, namely, in a somewhat different sense of 'colony'. If 'colony' is taken in the social sense of an ethnic settlement, then, given strict conditions, colonies are permissible. For the sake of completeness, and in order to avoid terminological misunderstandings, let me briefly comment on Kant's view on permissible forms of colonies.

In the unobjectionable sense, 'colony' refers to a group of people from one country who settle abroad. 'Colony', in this sense, does not necessarily refer to a political relationship. It refers to an ethnic group without political statehood, such as a group of immigrants maintaining cultural or personal ties with their country of origin but following the laws of the country they settled in. In this sense, Kant could speak of, say, a German colony in Russia.

In the *Metaphysics of Morals*, Kant writes that there is nothing inherently wrong with admitting colonists (*Colonisten*) into a country. It is permissible to admit foreigners who wish to settle on your territory, as long as this does not infringe on the private property of the inhabitants who already live there. Kant writes:

The *lord of the land* [*Landesherr*, i.e., the sovereign in the quality of ruler over a territory] has the right to encourage *immigration* and settling by foreigners (colonists) [*Colonisten*], even though his native subjects [*Landeskinder*] might look askance at this, provided that their private ownership of land is not curtailed by it. (MdS 6:338)

Kant's comment did not concern some merely abstract point of principle or a phenomenon overseas. Colonists and colonies in this sense were a live issue in Prussia at the time, as Prussia had a policy of very actively promoting immigration. It attracted foreigners from all over Europe, by the tens of thousands, in an effort to populate its uninhabited areas and newly drained marshes. Kant similarly regards colonial settlements in the other direction (that is, emigration) as permissible on the condition that the settlement is contractually and justly arranged (MdS 6:353).

There are even, on Kant's account, unobjectionable ways for colonists to form a body politic. A group of settlers may come across a genuinely uninhabited territory, finding land that is unused, unoccupied, not yet acquired by anyone. This would allow them to form a colony without

violating anyone's rights (MdS 6:353), but it would be a colony not in the political sense of an unequal political relationship to a mother country, but in the social sense of a settlement of people from the same country of origin.

From Kant's comments in *Toward Perpetual Peace* and the *Metaphysics of Morals*, it is clear that he does not take this to be the standard case when it comes to European conduct overseas. Rather, Europeans tended to appropriate territories abroad through violence and deception and to maintain colonial relations of a reprehensible kind. Nevertheless, for any discussion of Kant's views on colonies, it is important to acknowledge that there is a kind of 'colony' that Kant regards as permissible. The normative evaluation of the establishment and maintenance of colonies varies, depending on the sense of colony concerned and the circumstances of the case.

2.5 Some Worries Regarding the Clear Demarcation between Kant's Early and Late Views

The account I have defended in this essay might appear vulnerable to the objection that Kant's change of mind on colonialism was less radical than I have made it appear. First, against the claim that Kant's later rejection of colonialism was unambiguous, one might point to the passage in the *Metaphysics of Morals* in which Kant claims that the sovereign has the right to deport a criminal citizen 'to a province outside the country', where he does 'not enjoy any of the rights of a citizen' (MdS 6:338). Because Kant sometimes equates 'province' and 'colony', one might be tempted to read this passage as an implicit endorsement of colonialism.¹⁹ After all, how could Kant regard it as justified for a sovereign to deport criminal citizens to a province abroad if he does not endorse the sovereign's having colonies in the first place?

Assuming, but only for the sake of argument, that 'province' here indeed means 'colony', the answer lies in Kant's broader commitments in the Doctrine of Right, especially his rejection of the right to revolution. When Kant wrote the book, there were many countries with colonies.

¹⁹ See the contribution by Pagden in this volume.

Because Kant rejects the right to overthrow one's colonial government, he can consistently combine his criticism of colonialism with a statement regarding the behavior of sovereigns in cases where colonies still exist. His thesis that sovereigns have the right to deport criminals to colonies does not imply that he was convinced there should be colonies, any more than Kant's remark that knightly orders can acquire temporary use rights to land implies that he was convinced there should be knightly orders (MdS 6:324).

Two other objections concern my earlier defense of the thesis that Kant abandoned his commitment to a racial hierarchy in the mid-1790s. Given the close connection between Kant's endorsement of a racial hierarchy and his defense of colonialism, if he did not actually drop the racial hierarchy, then this would also cast some doubt on my thesis that he abandoned his endorsement of colonialism. Robert Bernasconi defends the thesis that Kant never shed his racism. Although Bernasconi now concedes that Kant's position on slavery became somewhat less emphatic during the mid-1790s,²⁰ he downplays the difference. The most salient difficulty for my thesis that the change was radical, Bernasconi believes, is the fact that Kant already voiced opposition to the slave trade in 1792, that is, before the moment when, on my account, he changed his view. Second, Bernasconi claims that Kant's decision to republish his texts on race in the late 1790s implies his continued endorsement of a racial hierarchy. If these objections cannot be answered, this blurs my distinction between Kant's views 'before' and 'after' the change.

With regard to the first point, Bernasconi argues that Kant's condemnation of the slave trade in the mid-1790s cannot count as evidence that Kant had second thoughts. This is because Kant already condemned the slave trade in 1792 as morally reprehensible, even though he was, on my interpretation, at that time still committed to a racial hierarchy. Bernasconi calls this 'the most striking problem' for my claim that Kant had second thoughts on race.²¹

If one reads the entire passage in the lecture to which Bernasconi refers, however, the difference between the view expressed here and Kant's later view is actually very clear. In the 1792 lecture, Kant reportedly states that

²⁰ Robert Bernasconi, 'Kant's Third Thoughts on Race,' in *Reading Kant's Geography*, eds. Stuart Elden and Eduardo Mendieta (Albany: SUNY Press, 2011), 291–318; here 302–3.

²¹ Bernasconi, 'Kant's Third Thoughts on Race,' 304.

the trade in blacks is morally wrong, ‘*but*’ that slavery is, all things considered, ‘*nevertheless tolerable*’ in the case of Negroes. Blacks are not any worse off as a result of European involvement, Kant claims, and furthermore, the alternative for the blacks affected by slavery would be execution:

The trade in Negroes is morally reprehensible [*moralisch verwerflich*], to be sure, but it would take place even if there were no Europeans. And moreover, the people whom they now condemn to slavery used to be executed. . . . From this one can see that the sale, the fate of Negroes, [is] nevertheless tolerable. (VPG Dohna 234)

For the purposes of answering Bernasconi’s objection, it is crucial that although Kant calls the slave trade morally reprehensible, he regards it as, *nevertheless*, on balance, *acceptable* in the case of blacks. In later texts, by contrast, Kant rejects the slave trade because it is a violation of the cosmopolitan right of blacks, without claiming that it is nevertheless a tolerable fate for blacks. It is no longer ‘wrong, *but defensible* all things considered’, but simply *wrong* (R 23:174).²² This is a decisive difference.

The passage does not explain *why* Kant calls the slave trade morally reprehensible, and we should not regard it as self-evident that he does so because he respects blacks as ends in themselves. In principle, it could even be for reasons having to do with whites (for example, by analogy with his infamous condemnation of cruelty to animals as a violation of a direct duty *to oneself*, on the grounds that it tends to weaken one’s natural sympathy, which is a feeling that plays a useful role in the service of one’s duties

²² Kant continues this comment at 23:174 by stating that the trade in Negroes is not only ‘in itself already a violation of the hospitality of the black people’, but that it ‘becomes even more [of a violation of the hospitality of the black people] for Europe because of its consequences [viz., of the trade in Negroes]’. Bernasconi reads this comment as downplaying the wrongness of the treatment of slaves (302), translating the text as stating that the slave trade ‘is even more of a violation for Europe because of its consequences’. But ‘violation of the hospitality of black people’ is the likely referent of ‘*es*’. (‘Der Negerhandel der schon an sich Verletzung der Hospitalität des Volks der Schwarzen ist wird es noch mehr für Europa durch seine Folgen.’) Rather than downplaying the wrongness of the treatment of slaves, Kant seems to say that slavery is already ‘in itself’ wrong, and that it also has further harmful consequences. The effects Kant mentions are, *inter alia*, that many [African] coastal regions are devastated, that many peoples die from hunger, and that Europeans wage many wars with the sailors trained in the slave trade. Kant then continues, in the next passage, to specify European abuses in America, including the enslavement of Native Americans. So his point is not that the slave trade is less bad than these other wrongs, or that it causes greater wrongs to Europe than to blacks, or that it is somehow less bad because it has other wrongs as its effects. The point is, rather, that the violations of the cosmopolitan right of blacks that are perpetrated by the slave trade, which Kant calls wrong in itself, lead to *even more* wrongs against blacks.

to other humans, MdS 6:443). On the other hand, if Kant's claim that the slave trade is morally reprehensible is indeed a reflection of his attribution of full moral status to blacks, then perhaps his comment expresses the fact that he had just taken one of the first steps onto the path towards his later view. I do not claim that Kant's reconsideration happened overnight, and this passage is indeed one of Kant's last defenses of slavery. Given that there are no similar statements in the 1780s that condemn the slave trade on moral grounds, it is entirely possible that this comment marks the beginning of Kant's process of reconsideration. Either way, the passage does not pose any difficulties for my thesis.

Bernasconi's second argument against my thesis that Kant had 'second thoughts' on the racial hierarchy is the fact that Kant republished his 1770s and 1780s texts on race in the late 1790s. This would be 'strange behaviour for someone who had supposedly renounced the central category promoted in these essays,' he argues.²³ In reply, I would like to point out, first, that the mere fact of republication does not show that Kant endorsed everything contained in these essays. He also reprinted the *Critique of Pure Reason*, for example, with its discussion of morality left intact, even after he had developed his theory of autonomy in the *Groundwork*. Secondly, and more importantly, Kant's defense of a racial hierarchy, and the associated racial characterizations, never constituted the 'central category' of his articles on race to begin with. The central category of those essays, in Kant's eyes, was his determination of the *concept* of race, and he never renounced that concept as such. As a physiological concept, Kant expected it to help solve pre-Mendelian biological questions regarding the heritability of bodily features. The hierarchical account of the different agential and intellectual predispositions that he had earlier associated with race was not part of the *concept* of race, and it never constituted a significant portion of Kant's discussion in these essays. In fact, as mentioned above, Kant regarded the 'moral characterization' of the races as an issue that was entirely distinct from a discussion of the concept of race as a 'physical' notion. Thirdly, in this context it is significant that Kant chose *not to publish* his earlier account of the racial hierarchy in the one place where it did constitute the central category of the discussion, namely in the section on the 'character of the races' in the *Anthropology*

²³ Bernasconi, 'Kant's Third Thoughts,' 300.

from a pragmatic point of view. This was the section heading under which Kant standardly expounded his account of racial hierarchy each year, and he still did so in the last lecture series of which we have student notes, dating from 1791 to 1792 (VA Ko 362–5). Tellingly, in the published version of the *Anthropology* (1798), Kant left it out entirely. In the Preface to the work, he now explains that knowledge regarding the human races is ‘only... theoretical knowledge of the world’, not ‘pragmatic’ knowledge (ApH 7:120). ‘Pragmatic’ knowledge is knowledge of ‘what man as a free-acting being makes of himself, or can and should make of himself’ (ApH 7:119). In other words, Kant here denies that race has any relevance in this context. He now seems to reject the very existence of racial characteristics bearing on agency, and he entirely omits the usual treatment of the subject. This confirms that Kant did not give up the *concept* of race as a biological notion, but that he dropped the idea that one could characterize the races in terms of capacities for intellect and agency (what races could—or could not—make of themselves as free-acting beings).

In short, rather than blurring the picture, the full text of Kant’s 1792 comment on the slave trade and the details of his publication behavior actually provide further confirmation that he changed his view on race and colonialism.

What *prompted* Kant to change his mind is a difficult question regarding his intellectual biography that requires further study. I know of no passage in which Kant openly declares that he had been wrong on the issue of colonialism or in which he describes the moment when he first recognized the force of the better argument. The change very likely had much to do with the fact that, in the early 1790s, Kant started seriously to work on legal and political philosophy. He had been much impressed by the French Revolution and the ideals of freedom and equality that lay behind it. Moreover, there was considerable debate at the time about the implications of the ‘rights of man’ for the status of non-Europeans, especially the enslaved Africans working on colonial plantations. In this connection, the 1791–4 self-liberation of the slaves on Saint-Domingue (later Haiti), and the subsequent ‘abolition’ of slavery by the French Jacobins, may have prompted him to rethink his earlier conception of the characteristics of the races.²⁴ Perhaps the slave revolt led

²⁴ Interestingly, in the 1794 draft notes for *Towards Perpetual Peace*, we still find a mention of race as a factor that nature allegedly uses to delay human interaction across the globe. But

him to question his claim—quoted above—that Africans seemed to be ‘made to serve others’ (VA Ko 363). Perhaps improved awareness of the gruelling conditions on the plantations and the violence perpetrated by the white slave owners convinced him that colonial slavery was not ‘tolerable for Negroes’ at all. Perhaps there was a delayed effect of the criticisms that others, such as Forster, had directed at his views on race. Or perhaps he finally came to recognize the contradiction between his own account of the principle of morality (most notably, the prohibition on using other human beings as mere means in the hands of others), and his endorsement of colonial slavery. It is not unlikely that it was a combination of factors.

Further research on Kant’s publications, lectures, letters, and drafts from the first half of the 1790s, in their broader historical context, may unearth the keys to a better understanding of the time and circumstances of Kant’s change of mind. This would be a matter of considerable historical, *biographical* interest. In the meantime, however, we should not exaggerate the *philosophical* importance of this open question. As a matter of philosophical argument, we know quite well that there were *good reasons* for Kant, given the principles of his 1780s moral theory and his emerging 1790s political theory, to change his views on colonialism.

Conclusion

Kant is usually regarded as a vociferous critic of colonialism. This reputation is fully warranted, but only when confined to the period starting in the mid-1790s. In fact, throughout the early 1790s, Kant did not criticize colonialism at all. He endorsed a racial hierarchy related to an alleged set of intellectual and agential deficits on the part of the non-white races that made them unable to govern themselves, and he presented this as a justification of European colonial rule. His sharp and philosophically articulate condemnation of colonialism in his later

in the final version, Kant *removed* any reference to race in his description of what nature does to facilitate human migration (cp. ZeF 8:367 and R 23:170). See Susan Shell, ‘Kant’s Concept of a Human Race’, in *The German Invention of Race*, eds. Sara Eigen and Mark Larrimore (Albany: SUNY Press, 2006), 55–72, here p. 72, n.29.

work, however, especially *Toward Perpetual Peace* and the *Metaphysics of Morals*, clearly shows that Kant had second thoughts on colonialism. In the process of developing his legal and political philosophy, during the mid-1790s, he gave up both his endorsement of a racial hierarchy and his defense of colonialism, in favor of a more egalitarian version of the cosmopolitan ideal.

Notes

VA Ko: The Dohna-Wundlacken Lectures on Anthropology (1791–2), which have been published in Arnold Kowalewski (ed.), *Die philosophischen Hauptvorlesungen Immanuel Kants. Nach den neu aufgefundenen Kollegheften des Grafen Heinrich zu Dohna-Wundlacken* (München: Rösl, 1924).

VPG Doenhoff: The Doenhoff Lectures on Physical Geography (probably from 1782).

VPG Dohna: The Dohna Lectures on Physical Geography (1792).

The Doenhoff and Dohna Lectures on Physical Geography are scheduled to be published in the Akademie Ausgabe. Werner Stark has already made his transcripts available at <<http://kant.bbaw.de>> accessed February 23, 2014. Page numbers refer to the transcripts. Translations of these lectures are mine.

Bibliography

Bernasconi, Robert, 'Who Invented the Concept of Race? Kant's Role in the Enlightenment Construction of Race', in *Race*, ed. Robert Bernasconi (Oxford: Blackwell, 2001), 11–36.

—, 'Kant's Third Thoughts on Race', in *Reading Kant's Geography*, eds. Stuart Elden and Eduardo Mendieta (Albany: SUNY Press, 2011), 291–318.

Buck-Morss, Susan, *Hegel, Haiti, and Universal History* (Pittsburgh: Pittsburgh University Press, 2009).

Georg, Forster, *Georg Forsters Werke*, ed. Academy of Sciences of the GDR, later Berlin-Brandenburg Academy of Sciences, vol. 8 (Berlin: Akademie Verlag, 1958–).

Hedrick, Todd, 'Race, Difference, and Anthropology in Kant's Cosmopolitanism', *Journal of the History of Philosophy* 46 (2008): 245–68.

Kleingeld, Pauline, 'Kant's Second Thoughts on Race', *Philosophical Quarterly* 57 (2007): 573–92.

—, *Kant and Cosmopolitanism: The Philosophical Ideal of World Citizenship* (Cambridge: Cambridge University Press, 2012).

Longuenesse, Béatrice, 'Kant's Imperfect Cosmopolitanism', in *The Cosmopolitan Ideal*, ed. Hilary Ballon (New York: NYU Press, forthcoming).

McCarthy, Thomas, *Race, Empire, and the Idea of Human Development* (Cambridge: Cambridge University Press, 2009).

Muthu, Sankar, *Enlightenment Against Empire* (Princeton: Princeton University Press, 2003).

Shell, Susan, 'Kant's Concept of a Human Race', in *The German Invention of Race*, eds. Sara Eigen and Mark Larrimore (Albany: SUNY Press, 2006), 55–72.

Wood, Allen W., *Kant's Ethical Thought* (Cambridge: Cambridge University Press, 1999).

3

Productive Resistance in Kant's Political Thought: Domination, Counter-Domination, and Global Unsocial Sociability

Sankar Muthu

Kant is not much noted as a theorist of resistance, no doubt in part due to his frequently interpreted arguments against violent revolutions. Yet, resistance plays a crucial role in Kant's social and political thought on both domestic and global matters. It informs his arguments against imperial aggression and conquest, his belief that not all peoples must become civilized (agrarian) and form states, his commitment to a pluralism of polities (rather than to a world state), and his profound Rousseauian contempt of civilization generally and of European civilization in particular. Encouraging 'productive resistance' [*heilsamer Widerstand*], in Kant's view, depends upon an understanding of the aims toward which individuals and peoples ought to struggle, the hard-won knowledge that must be gained from 'a great store of experience practised in many affairs of the world', and the development of progressive practices and institutions (including 'enlightenment', cosmopolitan hospitality, and an international voluntary congress of states). It also depends upon a hopeful and agency-inducing sensibility that one's ongoing resistance against injustice and oppression resonates with providence itself—that is, upon the necessarily

speculative assurance that the long arc of history bends toward justice (IaG 8:23, 26).

The purpose of this chapter is to examine Kant's reflections on the ideas of resistance that correspond to different aspects of social interaction, and their implications for conceptualizing political action both between states and between individuals. The chapter begins by contrasting two modes of resistance: a justifiable and productive one, resistance for equal worth, associated with our common humanity, and an unjustifiable and domineering one, resistance for greater worth, associated with the arrogant and rivalrous tendencies of human beings. Kant's criticisms of European colonialism and his defence of nomadic societies stem from his concerns about the latter and the circumstances of 'civilized' interaction in which it emerges and flourishes. An appreciation of resistance for equal worth illuminates the productive antagonism against domination that is central to Kant's understanding of cosmopolitan right, international right, and the dynamics of moral and political development.

3.1 Resistance for Equal Worth

For Kant, unsocial sociability is a constitutive feature of human nature, and thus can often lead to the seemingly perpetual cycle of domination and resistance in a wide range of societies—ancient or modern, domestic or global—though not, as we will see, within non-agrarian societies. Kant draws upon the logic of unsocial sociability in order to analyse the interactive behaviour both of individuals within societies and that of whole nations and voyaging individuals in international and cosmopolitan contexts. The idea of unsocial sociability is introduced in the *Idea for a Universal History from a Cosmopolitan Perspective* as a way of explaining the condition or temperament of antagonism (or, considered as the activity or behaviour that can follow from it, the resistance) that characterizes human interaction:

I understand by 'antagonism' the *unsocial sociability* of human beings, that is, their tendency to enter into society, a tendency connected, however, with a constant resistance that continually threatens to break up this society. This unsociable sociability is obviously part of human nature. Human beings have an inclination to associate with one another because in such a condition they feel themselves to be

more human... But they also have a strong tendency to isolate themselves, because they encounter in themselves the unsociable trait that predisposes them to want to direct everything only to their own ends and hence to expect to encounter resistance everywhere, just as they know that they themselves tend to resist others. (JaG 8:20–1)

Nearly a decade later in *Religion Within the Boundaries of Mere Reason*, Kant further specifies the complex social dynamics of unsocial sociability in the course of his argument that the concept of the human being consists of three fundamental elements: animality (self-preservation, the sexual drive, the social drive); humanity; and personality (roughly stated, our ability to cognize and to act upon moral principles). The resistance that typifies unsocial sociability stems from our ‘humanity’, and it consists in particular of a rational aspect of human beings that Rousseau had called *amour propre* (self-love, often translated as pride or vanity). There is a form of self-love (*amour de soi-même* in Rousseau’s terminology) that we share in common with other animals and that explains our elemental desire for self-preservation. Our humanity, Kant argues, is not such a purely physical or mechanical aspect of ourselves, but instead requires the use of practical reason in order to reflect upon ourselves in relation to others and then to set ends for ourselves. As Kant notes in the *Doctrine of Virtue*, the ‘capacity to set oneself an end—any end whatsoever—is what characterizes humanity (as distinguished from animality)’; in ‘procuring or promoting the capacity to realize all sorts of possible ends’, humans engage in ‘culture in general’ (MdS 6:392). It is for this reason, as we will see, that Kant characterizes some of the harms that humans inflict upon one another as they cultivate their talents in social contexts, and in ways that are domineering, as the consequences of the ‘vices of culture’.

There is a constellation of interlocking concepts, then, in Kant’s thought that fundamentally characterizes our humanity, including ‘unsocial sociability’, ‘culture’, ‘comparison’, and ‘resistance’, as well as ‘competitiveness’, none of which on its own or in conjunction with the others *necessarily* fosters domination and injustice. Kant is careful to note, for example, that the resistance that follows from humans’ unsocial sociability can take the productive form of establishing the equal worth of all humans within a society. In Kant’s view, this could take the form of generating egalitarian social worth and, therefore, it did not necessarily have to spark the striving for one’s own superiority and, consequently, the desire for others’ inferiority. As Kant argues,

[t]he predispositions to humanity can be brought under the general title of a self-love that ... involves comparison ... that is, only in comparison with others does one judge oneself happy or unhappy. Out of this self-love originates the inclination *to gain worth in the opinion of others*, originally, of course, merely *equal worth*: not allowing anyone superiority over oneself, bound up with the constant anxiety that others might be striving for ascendancy[.] (Rel 6:27)

Kant's analysis mirrors Rousseau's argument that while *amour propre* routinely generates and sustains inequality and oppression, particularly in agrarian societies, it does not necessarily have such effects. For example, in Rousseau's view, it could give rise to social tensions and even occasional violence within nomadic and other non-agrarian societies, but not to the extreme forms of psychological, social, economic, and political dependence and vulnerability—and hence domination, oppression, and systematic and institutionalized violence—that characterize agrarian societies.¹ Moreover, it is precisely the fact that *amour propre* need not be exploitative that allows for the possibility that in the future, if humans are ever to overcome the injustices of civil societies and to foster conditions of equal freedom, it could be cultivated in the morally appropriate way—that is, in a way not inflamed by the desire for superiority over others.²

¹ Jean-Jacques Rousseau, *Oeuvres complètes*, eds. Bernard Gagnebin and Marcel Raymond (Paris: Gallimard, 1964), vol. 3, pp. 164–71.

² See Frederick Neuhouser, *Rousseau's Theodicy of Self-Love: Evil, Rationality, and the Drive for Recognition* (Oxford: Oxford University Press, 2008), particularly chapters 5 and 7. John Rawls persuasively relates Kant and Rousseau along these lines in John Rawls, *Lectures on the History of Political Philosophy*, ed. Samuel Freeman (Cambridge: Harvard University Press, 2007), pp. 198–200. Both Rawls (with regard to Rousseau and Kant) and Neuhouser (on Rousseau) are correct, I believe, in thinking that *amour propre* or unsocial sociability can motivate either what is normatively justifiable or unjustifiable. For a contrasting view about Kant (as well as about Rousseau) that asserts that 'the human conduct displaying social antagonism is *morally blameworthy*, and something we have every reason to combat in ourselves' and that in striving for what is good humanity must ironically 'avail itself of the powers of evil', see Allen Wood, 'Kant's Fourth Proposition: The Unsociable Sociability of Human Nature', in *Kant's Idea for a Universal History with a Cosmopolitan Aim: A Critical Guide*, ed. Amélie Oksenberg Rorty and James Schmidt (Cambridge: Cambridge University Press, 2009), quotations from pp. 116, 128. Note the striking difference with Rawls's account of Rousseau (as well as of Kant) that I believe is better supported by the textual evidence (in both Kant and Rousseau): 'I stress that *amour-propre* has a natural form along with its proper object, as well as an unnatural form, which has its perverted, or unnatural object. In its natural, or proper, form (its form appropriate to human nature), *amour-propre* is a need which directs us to secure for ourselves equal standing along with others and a position among our associates in which we are accepted as having needs and aspirations which must be taken into account on the same basis as those of everyone else' (Rawls, *Lectures*, p. 198).

Hence, Rousseau argues that humans who live in agrarian societies, all of which are oppressive and domineering, have no choice but to use what can sometimes be a poison as a medicinal cure, and so (to transpose this into Kant's terms) our very unsocial sociability—neither pathological nor healthful in and of itself—must be reoriented toward just and equitable ends.³ The salutary cultivation of unsocial sociability often takes the form of active resistance for the sake of equal worth—that is, a productive resistance against domination that strives for conditions that increasingly respect the equal freedom and dignity of humans locally and globally.

Kant believes that resistance as a means of achieving 'equal worth', as a way of 'not allowing anyone superiority over oneself', is a normatively defensible and indeed an essential strategy in conditions in which humans unavoidably and routinely interact with one another. Unsocial sociability, in the form of productive resistance, is morally defensible because this can be used to help secure one's dignity and, more broadly, to strive toward conditions of equity among individuals within societies and among peoples globally. Moreover, resistance to the domination of others is not only central to the norms of Kant's political theory and a crucial component of his critical social analysis, but his ethical thought makes clear that it is morally obligatory as well, for humans should never accept an inferior status that has been thrust upon them. As Kant argues in the *Doctrine of Virtue*, given the ultimate equality of the dignity of humanity, humans should resist any temptation to adopt an attitude of servility. As he notes, each human being 'possesses a dignity (an absolute inner worth) *by which he exacts respect* for himself from all other rational beings in the world. He can measure himself with every other being of this kind and value himself on a footing of equality with them' (MdS 6:435, emphasis added). Hence, humans must cultivate a kind of 'moral self-esteem', which is a 'duty with reference to the dignity of humanity within us' (MdS 6:435–6). Examples of the kind of moral disposition that Kant has in mind include sentiments such as 'Be no man's lackey' and, perhaps most illuminatingly for the purposes

On the possible differences in the accounts of the *Idea* and the *Religion*, which I view above as broadly compatible, see Michael Ferguson, 'Unsocial Sociability: Perpetual Antagonism in Kant's Political Thought', in *Kant's Political Theory: Interpretations and Applications*, ed. Elisabeth Ellis (University Park, PA: Pennsylvania State University Press, 2012).

³ Rousseau, *Oeuvres complètes* (Paris: Gallimard, 1964), vol. 3, p. 974.

of coming to terms with resistance in Kant's political thought, 'Do not let others tread with impunity on your rights' (MdS 6:436).

This is a duty that speaks especially to the conditions that humans face within civilized (agrarian) societies, given their extremely hierarchical character. German societies, in particular, Kant believed, were the most thoroughly debased along these lines, with the possible exception, he notes, of the caste system in the societies of India. The social hierarchies in civilized societies induce a 'widespread propensity to servility in human beings' that they should resist (MdS 6:437). Kant's international and cosmopolitan political thought, his account of providential history, and his interpretation of the very idea of 'enlightenment' are informed deeply by his understanding of—and, indeed, they are all meant to encourage—resistance against political, religious, and commercial authorities who all too often have convinced those who are subject to their power that they are inferior, that they lack the qualities to make themselves free of the servile dependence upon such authorities' domineering power.

3.2 Resistance for Greater Worth

We move now from a kind of resistance that Kant believes is essential for humans' well-being to a resistance that is fundamentally domineering and rooted in a form of vanity and corrupt pride; at worst, this latter kind of resistance is fuelled by bitter rivalry and even hostility toward others. The resistance in which people engage in forms of social interaction in order primarily to promote their greater worth at the expense of others—that is, to indulge in a quest for superiority that necessarily requires others' inferiority—can occur within and also across societies. The self-love by which humans are inclined 'to gain worth in the opinion of others' is not itself evil and can be morally efficacious. Such self-love can aspire to a morally defensible end: a social condition in which humans attain equal worth in the eyes of others. Humans' inclination to gain worth in the opinion of others is part of our very humanity, for the 'comparison' and 'competitiveness' that this requires is part of the socially oriented rationality and agency that constitutes our 'humanity'. Kant is careful to note, along these lines, that neither our comparisons with others nor our competitive tendencies necessarily 'excludes [the possibility of] reciprocal love' (Rel 6:27). 'Originally'—for example, in the nomadic societies that all humans

were a part of before the development of agriculture—such comparison and concern with one's worth in the eyes of others enabled humans to resist any attempt that others might make to be superior to them. Such self-love, however, can instead become the basis for 'an unjust desire to acquire superiority for oneself over others' (Rel 6:27). Note the distinction here between a protective and ultimately egalitarian resistance that aims for equal worth ('not allowing anyone superiority over oneself'), which always involves 'comparison' and 'competition', and a domineering and necessarily hierarchical resistance, which Kant argues introduces 'jealousy' and 'rivalry'.

Kant specifies two motives that underlie humans' desire to acquire or to maintain superiority over others. The first motive is to engage in 'preventive' measures and thus 'in the face of the anxious endeavour of others to attain a hateful superiority over us, to procure it for ourselves over them for the sake of security' (Rel 6:27). Such resistance against others' attempts to acquire or to maintain superiority is defensive in nature, although 'jealousy' and 'rivalry' are essential components of it, and it also requires setting oneself up as a superior over others (or at least attempting to do so). This psychologically understandable but morally unjustifiable motive engenders a domineering resistance against others that can lead to a seemingly endless (and often vicious) cycle of recriminations and counter-recriminations.

The second motive, even more disturbing in Kant's view, is the desire by some to attain a 'hateful superiority' over others, not defensively as a matter of prevention, but offensively out of 'spiteful competitive vanity' (Rel 6:27, IaG 8:21)—that is, not simply from jealousy or rivalry but from an attempted domination of others fostered by 'the greatest vices of secret or open hostility to all whom we consider alien to us' (Rel 6:27). The similarity of Kant's analysis with Rousseau's writings along these lines is striking. It underlines the many reasons why Kant agreed with Rousseau about the injustice and exploitative inequality of the kinds of social conditions in which humans unavoidably interact with one another, such as civilized (i.e. agrarian) societies and the globalized circumstances of the modern world.

If antagonism denotes the general condition of unsocial sociability, resistance refers to the actions and behaviour that can stem from this condition: that is, antagonistic behaviour or activity. In the form of resistance examined in this section, humans prefer themselves to be worth more than

others; they attempt to become superior to others or, more haughtily, they aim to have others acknowledge their purported superiority. In its worst form, such antagonism consists of a severely domineering form of behaviour rooted in what Kant calls the 'diabolical vices'—'an extreme degree of malignancy' far more troubling than even the 'vices of culture', such as 'joy in others' misfortunes' (Rel 6:27). In Kant's view, this orientation toward others in a society represents a 'maximum of evil that surpasses humanity'. In this extreme form, antagonism effaces, or attempts to efface, others' humanity, and in so doing, such domineering antagonists denigrate their own humanity as well. Such conditions are inhuman, but humans themselves have 'grafted' this inhumane tendency onto the unsocial sociability that fundamentally characterizes humanity.

3.3 Non-Agrarian Peoples' Resistance Against Coerced Civilization

The particular social condition that must exist for a domineering antagonism to flourish is a setting in which regular and sustained interaction among humans is unavoidable: most notably, civilization (i.e. agrarian societies); international relations among states (at first, among states in the same geographical area, but eventually, with the rise of oceanic travel, among far-flung states and empires); and globalization, that is, a globalized world in which voyagers of many kinds (including explorers, scientists, privateers, and the merchants and soldiers of international trading companies) routinely cross borders and oceans, thereby creating intricate connections among residents of different communities and between states and foreigners throughout the globe. For each of these conditions, Kant's political philosophy sets forth norms of justice (*Recht*)—civil right, international right, and cosmopolitan right—with which we can judge extant social and political activities and institutions, and toward which we can aspire in the course of reforming such practices and institutions. In each of these three kinds of social settings, resistance to attain equal worth is crucial if humans are ever to progress and thus to strive toward the continual approximation of these norms over time.

Unlike the conditions noted above, Kant believes that there are some social milieux in which sustained human interaction is avoidable. Non-agrarian, nomadic peoples, given their collective lifestyles, do not live in

the kind of domestic social condition that leads routinely to the antagonistic resistance for greater worth. While all human societies give rise to comparative judgement and competition, sedentary societies foster the domineering and severely hierarchical versions of antagonism and resistance. The key difference, in comparison to the residents of agrarian societies, is that subgroups of nomadic individuals can choose to *escape* troublesome social relations by creating new societies. Kant's assumptions about the qualitatively different internal social dynamics of non-agrarian societies have important consequences for his view of imperial relations between European and some non-European societies—and also, more broadly, for relations among agrarian and non-agrarian societies.

Non-agrarian societies, like all societies, are characterized by authority figures, rules, and social norms, but in Kant's view, they do not require and do not have state authority structures that exercise power absolutely; relations of authority, in short, are not those of masters and subjects. The forms of authority, in this respect, are looser and less hierarchical than what one finds in agrarian societies, which are all characterized by significant degrees of social hierarchy, including the social dynamics of attempted superiority and coerced inferiority. Kant's analysis of Bedouin society, in the *Conjectural Beginning of Human History*, illustrates this view of the distinctive political and social character of non-agrarian, nomadic societies.

The Arab *Bedouins* still call themselves children of a former *sheikh*, the founder of their tribe (such as *Beni Haled* and others). The latter is in no way their *master* and cannot exercise power over them as he sees fit. For among a pastoral people any family can easily separate itself from the tribe and join another if it dislikes where it is, since no one has fixed property that it thereby leaves behind. (MAM 8:120)

Thus, the genuine opportunity of exit in non-agrarian societies is not nearly as burdensome as what would face residents of a settled society; indeed, to the degree that it is in practice virtually impossible for settled residents to avoid troublesome social interactions, there is often no opportunity for a low-cost exit.

Kant argues that it is a fundamental duty to set up a civil society and thus to create (or to sustain) a state that ensures the public administration of justice, but only in those social contexts in which the condition of unavoidable social interaction applies. Accordingly, as he notes in the *Metaphysics of Morals*:

From private right in the state of nature there proceeds the postulate of public right: *when you cannot avoid living side by side with others*, you ought to leave the state of nature and proceed with them into a rightful condition, that is, a condition of distributive justice. (MdS 6:307, emphasis added)

Humans are under an obligation to found a commonwealth, not simply when no state exists, but also, as Kant insists, when such a group of humans 'cannot help mutually affecting one another' (GTP 8:289). This additional condition underscores the fact that humans in general are not obligated to generate and to sustain the institutions and practices of civil life. For some humans, in Kant's view, one can indeed avoid living side by side with others, partly because the conditions of nomadism allow for greater spaces in which to practise one's life at least somewhat free from the regular interference from others, and also due to the fact that it is possible without enormous effort to separate from such a group and to form a new nomadic society in another nearby area (given that non-agrarian peoples, as Kant notes, engage in their social practices over 'great open regions', such as do the Bedouins in the Saharan and Arabian deserts) (MdS 6:353). Along these lines, Kant notes in the *Anthropology from a Pragmatic Point of View* that '[p]eoples who are purely hunters (like the Oleni-Tungusi) have really ennobled themselves by this feeling for freedom (which has separated them from other tribes related to them)' (ApH 7:269).

Civilized individuals without a state (in a 'state of nature') suffer greatly, in Kant's view, but nomadic peoples do not need a *Rechtstaat* because a civil state is a (partial) remedy to a particular set of problems that are endemic only to the civilized condition. Unsocial sociability, as a constitutive feature of humanity, may well pose distinctive challenges for nomadic individuals, but they are not the problems—for example, the perpetual threat of imminent violence over disputes about fixed property and the domineering social dynamics set off by *unavoidable interaction*—for which the state is the obligatory, if imperfect, solution. Indeed, like Rousseau, Kant believes that non-agrarian societies are largely free from the most pernicious forms of strife and antipathy that routinely afflict civilized societies.⁴ Accordingly, Kant

⁴ Among individuals in nomadic societies, while unsocial sociability might even take the form of a protective (though not domineering) hostility—within subgroups of hunting peoples, in particular, in Kant's view—the lack of constant unavoidable proximity makes such collective lifestyles antithetical to the conditions of a civil state: 'Of all ways of life, that of the hunter is undoubtedly most opposed to a civilized constitution; for families, having to separate, soon become strangers to one another and subsequently, being dispersed in extensive

notes that the initial development of agriculture marks the transition 'from the epoch of leisureliness and peace' to 'the epoch of toil and discord *as a prelude to unification in society*', that is, as a prelude to the political unification that a state makes possible (MAM 8:118).

Kant's arguments along these lines make clear the importance of the anthropological distinction between agrarian and nomadic peoples in his political thought and, in addition, they underline his belief that non-civilized peoples are under no obligation to practise agriculture and thus to become civilized and statist. Forcibly turning nomadic societies into sedentary ones is unjust in part because nomadic peoples have as much legitimate claim to the land that they use for their way of life as the claim that sedentary societies have over their own land.⁵ This in itself is a notable claim in the context of modern European political debates about empire in which the 'agriculturalist' imperial argument was often made: that is, nomadic peoples were sometimes thought to lack any legitimate claim over their land because they were irrationally failing to improve or to cultivate the land on which they roamed.⁶ Kant explicitly rejected the idea that a people must till its land and practise agriculture in order to mix their labour with the land and, hence, to own it (MdS 6:265, MdS 6:268–9). Moreover, Kant affirms, again significantly, given eighteenth-century

forests, also hostile since each needs a great deal of space for acquiring its food and clothing' (ZeF 8:364).

⁵ To note that these claims are, broadly speaking, legitimate is not to assert that they count as conclusive possession. As Anna Stilz notes in her chapter, in Kant's view, normatively defensible claims to property made by *both* nomadic and agrarian peoples are provisional, not conclusive. Even states cannot establish property claims conclusively within national boundaries unless they are *pure republics* (and such a condition is only ever approximated over time) (MdS 6:339–40). Moreover, internationally, the rights of nations, including those that pertain to goods and territory, are at best '*merely* provisional' until a 'universal association of states' is formed; and yet this is impossible to attain ('perpetual peace, the ultimate goal of the whole right of nations, is indeed an unachievable idea'), though we must attempt to approximate it over time (MdS 6:350). Thus, from a global standpoint, the property rights of individuals and peoples are in a permanent condition of provisionality. In modern natural law terms, then, Kant's intriguing view appears to be that no people has—or will ever have—true *dominium* over its lands; cf. Anthony Pagden's chapter. Nonetheless, there are standards of legitimacy that pertain to provisional rights, which imperialists (in Kant's view) routinely flout.

⁶ See James Tully, *An Approach to Political Philosophy: Locke in Contexts* (Cambridge: Cambridge University Press, 1993), pp. 260 ff; James Tully, 'Aboriginal Property and Western Theory: Recovering a Middle Ground', *Social Philosophy and Policy*, vol. 11 (1994), pp. 153–80; and Anthony Pagden, *Lords of All the World: Ideologies of Empire in Spain, Britain and France, c.1500–c.1800* (New Haven: Yale University Press, 1995), pp. 76–9.

debates, that nomadic societies have a juridical status and thus, if they choose to do so, they can create valid treaties and contracts with other nations that must be respected, though he makes clear along these lines, given what was already by that time the tragic history of exploitative and broken contracts, that it is a violation of justice for such societies to be manipulated contractually 'with respect to ceding their lands'⁷ (MdS 6:353).

While Kant notes that some of his contemporaries claim that seizing nomadic peoples' lands 'without regard for their first possession' is ultimately 'to the world's advantage... because these rough peoples will become civilized', he concludes that this argument is deeply problematic both due to the means *and* to the proposed end. Such a defence of conquest and empire is immoral because of the proposed violent and domineering means—'it is easy to see through this veil of injustice (Jesuitism), which would sanction any means to good ends. Such a way of acquiring land is therefore to be repudiated' (MdS 6:266). Moreover, the very goal of spreading civilization is 'specious' [*scheinbar*] and only a 'supposedly good' intention (MdS 6:353).

Why is it not to the 'world's advantage' that all peoples become civilized—that is, sedentary, agricultural, and statist? In the *Metaphysics of Morals*, Kant asks whether peoples can

⁷ Georg Cavallar suggests that Kant's ultimately respectful views about non-agrarian and nomadic societies, such as the Khoikhoi (the 'Hottentots', as Europeans referred to them in Kant's time), may have been partly influenced by his reading of Johann Heinrich Gottlob von Justi's writings about the impressive legal order of such communities. See Georg Cavallar, *Imperfect Cosmopolis: Studies in the History of International Legal Theory and Cosmopolitan Ideas* (Cardiff: University of Wales Press, 2011), pp. 64–70; cf. Daniel Carey and Sven Trakulhun, 'Universalism, Diversity, and the Postcolonial Enlightenment', in *Postcolonial Enlightenment: Eighteenth-Century Colonialism and Postcolonial Theory*, ed. Daniel Carey and Lynn Festa (Oxford: Oxford University Press, 2009), pp. 274–5. This may be among the sources of some of the transformations in Kant's political philosophy, including his turn away from hierarchical race theory, that become especially apparent by the mid-1790s. Compare, for example, Ped 9:442 with MdS 6:266 and MdS 6:343 as to whether conditions of lawless freedom are instinctive and unworthy of respect or whether they reflect a human agency that should be honoured. Cf. Anthony Pagden's chapter that assumes a unified conception of Kant's views about non-agrarian peoples, which in fact appear to have changed over time. On the 1790s transformations in Kant's thought, see Pauline Kleingeld, *Kant and Cosmopolitanism: The Philosophical Ideal of World Citizenship* (Cambridge: Cambridge University Press, 2011), chapter 4. For an explanation of the shift on race in particular as a result of changes in Kant's philosophy of teleological judgement, see Ian Storey, 'Empire and the Ends of Nature in Kant's Second Thoughts on Race', *History of Political Thought*, forthcoming.

resist each other [*einander widerstehen*] in adopting a certain use of land, for example, can a hunting people resist a pasturing people or a farming people, or the latter resist a people that wants to plant orchards, and so forth? Certainly, since as long as they keep within their boundaries the way they want to *live* on their land is up to their own discretion (*res merae facultatis*). (MdS 6:266)

The language of resistance here is striking, but it should come as no surprise, given Kant's understanding of the centrality of resistance in the unsociably social dynamics within and across societies. The resistance in this case is clearly protective as well as non-domineering, for Kant does not recommend that peoples who resist should do so in order to coercively assert superiority over others.⁸ Rather, this is a resistance that attempts to assert the ability of a people to sustain its own collective way of life vis-à-vis other peoples, and thus constitutes what Kant refers to as a resistance 'for equal worth': 'not allowing anyone superiority over oneself, bound up with the constant anxiety that others might be striving for ascendancy' (Rel 6:27).

Moreover, Kant's use of the term *res merae facultatis*, a moral and legal concept used both in the law of nations and more broadly in other Enlightenment-era philosophical and jurisprudential texts, is significant. In the definition of the influential eighteenth-century jurist Emer de Vattel, *res merae facultatis* refers to acts solely of the free will without any constraint, which one may or may not do at one's pleasure.⁹ This is precisely the term that Kant also uses in his political philosophy when he defends *individual* autonomy against the power of the state, such

⁸ While Kant notes elsewhere that both nomadic and agrarian peoples, in a prideful manner, sometimes view their respective lifestyles as superior (MdS 6:343), this does not sanction domineering behaviour.

⁹ The standard use of the term *res merae facultatis* is described by Vattel (in his *Droit des gens*); he writes the following about the 'rights' of *merae facultatis*: 'there are rights that consist in a simple power to do a thing; the Latin term is *iura merae facultatis*, rights unqualified as to their exercise. They are of such a nature that the possessor of them may use or not use them as he thinks fit, being absolutely free from any constraint in that respect, so that acts done in the exercise of these rights are acts of mere free will, which one may or may not do at one's pleasure' (Emer de Vattel, *The Law of Nations or the Principles of Natural Law Applied to the Conduct and to the Affairs of Nations and of Sovereigns*, trans. Charles G. Fenwick [Buffalo: William S. Hein, 1995; originally published in 1758], chapter 8, pp. 41–2). Cf. Kant: 'An action that is neither commanded nor prohibited is merely permitted, since there is no [universal] law limiting one's freedom (one's authorization) with regard to it and so too no [moral] duty. Such an action is called morally indifferent (*indifferens, adiaphoron, res merae facultatis*)' (MdS 6:223).

that individuals should be free to lead their own way of life, to practise their own religion, and to live in accordance with their own conception of happiness, as long as this does not violate others' dignity or others' innate right of freedom (MdS 6:223, 8:282). Thus, as long as this condition is met, our individual and collective choices about how to lead our lives are morally indifferent—'*indifferens, adiaphoron, res merae facultatis*' (MdS 6:223). The settled lives of civilized peoples, then, are neither morally superior nor morally inferior to the nomadic lives of non-agrarian peoples.

Governments that routinely abrogate the freedom of their citizens to make such morally indifferent, though nonetheless valuable and profoundly consequential, choices for themselves create a 'paternalistic' condition that Kant refers to as the 'greatest conceivable despotism' that a state can commit (GTP 8:291). Kant uses, then, the concept of *res merae facultatis* and the associated anti-paternalist arguments of his political thought with regard to *nations* and to their collective ways of life—most importantly to the crucial decision about how a people will gain its sustenance from the land: hunting and gathering, fishing, pastoralism, or settled agriculture.¹⁰ Thus, to interfere with that decision, which shapes the life of a whole people, to conquer and to settle colonies or trading outposts on that basis—that is, to build empires in order to spread agrarian civilization by means of imperial commerce and domination—is, by Kant's own logic, the greatest conceivable despotism committed by states on the global scale. Just as individuals or the state should not directly order others' life choices within a society, groups of colonialists, officials of imperial trading companies, or conquering states should not restructure the collective life choices of entire peoples. Such imperial domination should itself be resisted in order to promote and to safeguard the equal worth and dignity of all humans.

¹⁰ I thus find unpersuasive the conclusion that Kant's political philosophy generally—indeed, most notably by the time of its full articulation in the mid to late 1790s—should be understood as civilizationist or as imperially civilizationist. Cf. James Tully, 'The Kantian Idea of Europe: Critical and Cosmopolitan Perspectives', in *The Idea of Europe*, ed. Anthony Pagden (Cambridge: Cambridge University Press, 2002), pp. 331–58; Martin Hall and John M. Hobson, 'Liberal International Theory: Eurocentric but not always Imperialist?', *International Theory*, vol. 2 (2010), pp. 210–45; Brett Bowden, *The Empire of Civilization: The Evolution of an Imperial Idea* (Chicago: The University of Chicago Press, 2009).

Civilization and Domineering Antagonism

Kant's concern about imperial domination and despotism is informed both by the idea that 'civilized' life is not morally superior to other collective ways of life and by his Rousseauian abhorrence of the deep injustices of civilization generally, including European civilization in particular. Indeed, especially by the time of the comprehensive development of his political philosophy in the mid to late 1790s, it is striking to appreciate how far Kant's political thought is from the idea that Europe should be viewed as the vanguard of global progress. In Kant's low view of the matter, European civilization failed to generate a widespread orientation toward moral activity. Kant often contrasts civilization with 'moralization,' which consists 'not merely' in being 'skilled for all sorts of ends,' but also especially in cultivating 'the disposition to choose nothing but good ends' and hence becoming 'actually enlightened' (Ped 9:450). Kant concedes that civilized practices might foster some good because it is possible that such practices, at their best, can lead to a disposition of reciprocity and social decency, however superficially motivated this might be (MdS 6:473–4). Overall, however, Kant's assessment of the state of civilization is that it consists of 'manifold human misery' and oppressive, unjustifiable inequality (MAM 8:117).

Kant notes bluntly in the *Lectures on Pedagogy* that 'vices arise, for the most part, from the civilized state doing violence to [human] nature' (Ped 9:492). The logic of superiority and inferiority and the domineering resistance that civilized humans routinely engage in as they lord themselves over others are generated by, and institutionalized within, civilized societies. Thus, Kant believes that civilization fails to engender even the smallest movement toward what might reasonably count as moralization:

We live in a time of disciplinary training, culture, and civilization, but not by any means in a time of moralization. Under the present conditions of human beings one can say that the happiness of states grows simultaneously with the misery of human beings. (Ped 9:451)

In addition to undermining the normative basis of civilizing missions in his own time, Kant notes that what is truly necessary for human improvement and for the most robust and deep-seated social reforms—namely, broadly speaking, 'moral cultivation'—'requires a long *internal process* in every commonwealth' and he warns that '[a]ll that is good but that is not based on morally good convictions is nothing but pure outward

show and glittering misery' (IaG 8:26, emphasis added). Strikingly, Kant's grim assessment of European societies leads him to conclude that 'culture, according to true principles of the education as both human being and citizen, *perhaps has not even really begun*, much less been completed' (MAM 8:116, emphasis added).¹¹

For all of the smug arrogance and self-satisfaction of civilized peoples—those who 'make much ado of their piety and, while they drink wrongfulness like water, want to be known as the elect in orthodoxy' (MdS 8:359)—they are precisely the nations who engage in the worst forms of savagery. The morally pejorative sense of savagery, in Kant's usage, is a condition of violent lawlessness, and the most disturbing savages in the world are the 'European savages' (as Kant refers to them in *Toward Perpetual Peace*), that is, the powerful European commercial states whose global imperial activities dominate and oppress many non-European nations and fuel wars both within Europe and throughout the world.¹² Like Rousseau, Kant believes that such domination is rooted partly in a pernicious social psychology that civilized humans had unwittingly grafted onto their humanity as a result of the development of agrarian civilization. This corrupted self-love was over time institutionalized in the form of acquisitive state power, debt financing, and standing armies, and was given justification by legal, political, and religious ideologies, many of which Kant's theoretical and practical philosophy aimed to delegitimize. These institutions and practices arise out of, and help to strengthen and to sustain, antagonistic resistance for the purposes of securing greater worth over and above others, thereby fuelling the unjust desire to acquire superiority over others (and hence to oppress those identified, by means of secret or open hostility, as inferiors). Such antagonistic resistance must itself be antagonistically resisted, in Kant's view, but if any true progress is

¹¹ While Kant asserts that, in his time, some humans were perhaps just beginning to think independently and to elevate their moral thinking in order to apply higher standards of justice to the world around them, there were, as a result, simply 'fewer hindrances' to actual moral cultivation, though still ultimately little of it in practice (WiA 8:40, GTP 8:310). It was for this reason that Kant considered his fellows to be living 'in an age of enlightenment' and yet very much *not* in 'an enlightened age' (WiA 8:40).

¹² Another example of violent lawless savagery in Kant's political thought consists of agrarian humans in a state of nature who are thus in a social condition in which sustained contact and interaction is unavoidable. Such humans have a duty to form a commonwealth. Strikingly, both of these pejorative examples of savagery in Kant's political thought are of civilized humans.

to be made, then only by means of a resistance for establishing equal worth among peoples and individuals.

Cosmopolitan Right: Balancing Global Connections with Resistance Against Imperial Incursions

The need for a theory of cosmopolitan justice arises from what we would now call the emergence of a condition of globalization.¹³ Kant argues in *Toward Perpetual Peace* that one of the consequences of wars in the earliest phases of human history is forced exodus; over time, in his view, such migrations populated much of the earth. The geographical foundation of Kant's cosmopolitanism makes clear that migration must eventually lead to the necessity of cosmopolitan justice. Since humans live on a 'sphere, they cannot disperse infinitely but must finally put up with being near one another' (ZeF 8:358). Peoples cannot perpetually flee the calamities of war and the injustices of persecution, always settling in unoccupied territories and thus without ever having to confront cosmopolitan dilemmas. Since humans live on a spherical planet and not on some kind of infinite plane, Kant believes that our globe forces upon us the difficult ethical and political questions that are raised by interactions across communities, across borders, and increasingly, across oceans. Indeed, by the time of the eighteenth century, Kant contends that the 'community of nations of the earth has now gone so far that a violation of right on one place of the earth is felt in all', and thus 'the idea of a cosmopolitan right' is not a 'fantastic and exaggerated way of representing justice' (ZeF 8:360). For Kant, in the modern world, the particular activities that have fostered the reality of an interactive community of nations on the earth and accordingly, the complex issues of justice at the cosmopolitan level, often stem from European colonialism. Travelling to foreign lands 'and still more settling there to connect them with the mother country, provides the occasion for troubles and acts of violence in one place on our globe to be felt all over it' (MdS 6:353). The chains of empire, then, dominate not only imperial subjects,

¹³ In this section, I have occasionally drawn upon my essay, 'Conquest, Commerce, and Cosmopolitanism in Enlightenment Political Thought', in *Empire and Modern Political Thought*, ed. Sankar Muthu (Cambridge: Cambridge University Press, 2012), pp. 199–231.

but forge connections that ultimately harm all nations. Hence, the need for properly theorizing cosmopolitan justice in the already deeply globalized world of the eighteenth century was especially pressing.

We saw earlier that Kant understands humans' sociability to be a constitutive part of the concept of a human being. Our strong inclination to be with others and to interact with them, to engage in commerce (*commercium*) in the broad Enlightenment sense of the term—that is, to communicate, to exchange ideas, and often also to exchange goods—reflects our humanity. The importance of communication as such is emphasized in a number of Kant's writings. He asserts, in *Theory and Practice*, that 'it is a natural calling of humanity to communicate with one another, especially in what concerns people generally' (GTP 8:305). In *Toward Perpetual Peace*, Kant asserts that the various articles of trade, such as salt, which all humans need, first linked peoples together in communicative relations: 'the first articles, everywhere in demand, of a trade among various peoples... first brought [them] into a peaceable relation to each other *and so into* understanding [and] community... with one another, even with the most distant' (Zef 8:364, emphasis added). The bonds of sociability are enhanced by further interaction and are not limited by particular communities or geographies: these are the universal bonds of humanity as a whole.

With regard to the rights of world citizens (*Weltbürgerrecht*, *jus cosmopoliticum*), then, Kant's views about sociability help ground his firm support of 'the right to visit' other lands and peoples. In this sense, Kant's arguments are in clear contrast to some fellow Enlightenment thinkers who denied any fundamental value to global commerce and who accordingly endorsed forms of national isolationism and autarky.¹⁴ Their proposals, he thought, were not only unworkable in practice, but also in some fundamental sense dehumanizing. In globalized circumstances, the strategy of outright isolation or avoidance as a way of resisting any possible hostility or injustice that one could suffer is not simply often impossible to achieve: even in those cases in which one could temporarily isolate oneself, there still exists a basic human impulsion toward associating with others

¹⁴ See, for one example, Johann Gottlieb Fichte, *The Closed Commercial State*, trans. Anthony Curtis Adler (Albany: State University of New York Press, 2012); and Isaac Nakhimovsky, *The Closed Commercial State: Perpetual Peace and Commercial Society from Rousseau to Fichte* (Princeton: Princeton University Press, 2011).

that is a constitutive feature of human beings. For Kant, and in this respect unlike Rousseau, humans are naturally sociable creatures like many other animals. A 'social drive' that impels humans toward 'community with other human beings' (Rel 6:26) is part of the 'animality' that is a fundamental element of the very concept of the human being. While humans may want to isolate themselves, either to avoid being dominated by others or to ensure that they themselves do not engage in domineering behaviour, their need to associate with others often pulls them back, however tenuously, into social life with those 'whom they can neither endure nor do without' (LaG 8:21). Non-agrarian peoples are, in this sense, precisely in such a condition of unavoidable proximity with regard to international voyagers and potential or actual colonialists in the modern global context, even though their internal social arrangements allow for looser social connections, such that troublesome social interaction is genuinely avoidable. All peoples, then, are subject to the conditions of cosmopolitan right.

Nevertheless, if cosmopolitan right aims to authorize and to justify a kind of global sociability, it must also come to terms with the cruel and extensive domination that global connections have made possible. Kant's political thought is ambivalent, then, toward the rise of global commerce in an imperial age: the growing interconnections among peoples might provide in the future the incentives for trying to overcome war, yet they also provide the occasions for the most extraordinary forms of injustice and violence. Indeed, the primary violators of cosmopolitan right are 'the civilized, *especially [the] commercial*, states in our part of the world' (ZeF 8:358, emphasis added). It is the commercial character of many European countries that provides them the opportunity to engage in the most gruesome forms of injustice:

the injustice they show in visiting foreign lands and peoples (which with them is tantamount to conquering them) goes to horrifying lengths. When America, the negro countries, the Spice Islands, the Cape, and so forth were discovered, they were, to them [to European commercial states], countries belonging to no one, since they counted the inhabitants as nothing. In the East Indies (Hindustan), they brought in foreign soldiers under the pretext of merely proposing to set up trading posts, but with them [came] oppression of the inhabitants, incitement of the various Indian states to widespread wars, famine, rebellions, treachery, and the whole litany of troubles that oppress the human race. (ZeF 8:358–9)

Overall, then, Kant offers a defence of the norms of hospitality and just commerce, which he uses, negatively, to condemn colonialism and

exploitative commercial practices and also, positively, to describe an equilibrium between the separateness and distinct identity of nations and attempted (and sometimes actual) communicative and commercial connections among them. It is important to appreciate that Kant's view of global justice consists precisely of that balance between global sociability and national or popular sovereignty, rather than an open and always unimpeded free exchange among peoples.

By establishing that the 'right to visit' is not a 'right to conquer' and that the 'authorization of a foreign newcomer' must be balanced by the judgements of the peoples, who determine whether and in what manner to receive such visitors, Kant legitimates resistance by communities against potential or actual domination by global voyagers (and possible imperialists).¹⁵ Thus, it follows that Kant would praise the restrictions imposed upon Europeans by China and Japan, a feature of Kant's discussion of cosmopolitanism that sometimes gives pause to his contemporary readers (ZeF 8:359). Kant's praise of these harsh restrictions that at first might appear to be in tension with the cosmopolitan norms of hospitality is, in fact, consonant with his account of resistance for equal worth against the potential or actual antagonism for greater worth that the Chinese and Japanese clearly suspect motivates European visitors, given their imperialist activities elsewhere. Hence, Kant makes a defence only of possible, attempted commerce with other peoples, and his description of a global society makes clear that the bonds of amity among all peoples is not the goal of a properly construed conception of global justice: such a global society will be a '*peaceful, even if not friendly*, thoroughgoing community of all nations on the earth that can come into relations affecting one another'¹⁶ (MdS 6:352). We see here, then, that an understanding of productively antagonistic and competitive communities (and, as a result, a defence of their resistance for equal worth) are essential components of Kant's ideal conception of cosmopolitan justice. Given humans' unsocial sociability and the inclinations of civilized and commercial voyagers in

¹⁵ See Peter Niesen, 'Colonialism and Hospitality', *Politics and Ethics Review*, vol. 3 (2007), pp. 90–108; Howard Williams, 'Kantian Cosmopolitan Right', *Journal of International Political Theory*, vol. 7 (2007), pp. 57–72; and Timothy Waligore, 'Cosmopolitan Right, Indigenous Peoples, and the Risks of Cultural Interaction', *Public Reason*, vol. 1 (2009), pp. 27–56.

¹⁶ I have added the emphasis on 'even if not friendly'.

particular to dominate others, hospitality must be balanced with productive resistance.

International Right and the Plurality of States in a Global Federation

In terms of his theory of interstate justice, some aspects of Kant's anti-imperialism seem to follow from a key element of an argument that he makes specifically with regard to the early modern practice of acquiring states by exchange, purchase, or donation (which occurs, he believes, in his time primarily within Europe), but whose central normative claim applies equally well to the imperial domination of global conquest and occupation. In *Toward Perpetual Peace*, Kant argues that

a state is not (like the land on which it resides) a belonging (*patrimonium*). It is a society of human beings that no one other than itself can command or dispose of. Like a trunk, it has its own roots; and to annex it to another state as a graft is to do away with its existence as a moral person and to make a moral person into a thing, and so to contradict the idea of the original contract, apart from which no right over a people can be thought. (ZeF 8:344)

In part, this also underscores the importance for Kant of distinct national sovereignties and of discrete communities, each of which is characterized by at least some semblance of juridical authority or of the rule of law. To be sure, all such states ought to work toward a lawlike federation of all nations, which would thus involve some voluntary restrictions upon sovereign state power. Kant's understanding of the positive aspects of a morally defensible form of resistance and antagonism helps to illuminate some of his arguments against a world state. As with cosmopolitan right, Kant maintains a dual commitment to foster equitable connections among nations and yet simultaneously to encourage a productive resistance among them.

In the 1790s, Kant begins to argue that a sovereign world state is deeply problematic, in part because states would not voluntarily give up sovereign power, and thus a world state could only be created by conquest and empire, which itself would be unjust. The unlikelihood of creating such a global state and the unjust means that would therefore be necessary to attempt to create it are only part of the problem with such a concept. In common with many eighteenth-century thinkers who were outright

republicans or who integrated elements of republicanism into their theories (such as Montesquieu), Kant assumed that the governance of very large territories (let alone the whole earth) would over time necessitate despotic rule. Moreover, given the impossibility of effectively governing such large territories, a world state could even lead to the dissolution of any form of rule at the global level, in which case—given that local forms of sovereignty would have been destroyed in order to have produced a world state—throughout the world, in every society, human relations would ultimately consist of nothing but brute force, of the rule of the strong over the weak.¹⁷

One of the primary challenges that humans face, Kant argues, is that political elites crave world domination (or ‘universal monarchy’ to use the Enlightenment term)—peace only on their own terms and achieved by means of war—and are willing to use whatever forms of deception and force are necessary toward that end. Such is the logic that follows from ‘the barbaric freedom of already established states’ (IaG 8:26). Humans have a duty to engage in practices and to work toward institutions that will ‘put an end to the heinous waging of war, to which as their chief aim all states without exception have hitherto directed their internal arrangements’ (MdS 6:354). As we have seen, Kant believed that the formation of a universal monarchy or world state would amount to a despotic condition, and possibly eventually an anarchic condition without any protection from even an imperfect system of laws. Yet, Kant writes that such a future is unlikely, not only because states would not relinquish their sovereignty, but also because of differences in language and in religion that create a kind of friction among peoples. As he argues in *Toward Perpetual Peace*, there is less intermingling among peoples than there would have been as a result and thus a certain sense of separation and mutual suspicion among peoples has been established. Such a view is consonant with Kant’s cosmopolitan sensibilities, for we should recall here the desire for isolation that is part of the unsociable antagonism that Kant values. To be sure, this is in itself potentially problematic since a ‘propensity to mutual hatred’ could thereby be fostered, and such animosity could serve as ‘pretexts for war’ (ZeF 8:367). This would result in forms of antagonism and resistance that fuel the desire for superiority over others, and thus would

¹⁷ In Kant’s terms, a ‘soulless despotism . . . finally deteriorates into anarchy’ (ZeF 8:367, cf. MdS 6:350).

constitute a domineering resistance for greater worth. Thus, Kant cautions in the *Metaphysics of Morals* that the idea of a right of nations ‘involves *only* the concept of an antagonism *in accordance with principles of outer freedom* by which each can *preserve* what belongs to it, but *not a way of acquiring*, by which one state’s increase of power could threaten others’ (MdS 6:347, emphases added). This is ideally a resistance for equal worth, then, that is rooted in a commitment to self-preservation, rather than to conquest, domination, and attempted superiority, and it thus helps to ensure the separateness of peoples and the plurality of distinctive communities that global justice requires. Kant argues that the resistance and friction between peoples ought to be balanced against attempted commercial and communicative connections among them, which he defends as part of his theory of cosmopolitan right, and which are likely to ensue at first solely for a variety of self-interested reasons; over time, such communication may also yield some modicum of mutual understanding.

Kant contends that traditional balance of power theories offer only the marginal benefits of occasional cessations of hostilities, rather than an ongoing approximation toward perpetual peace. The kind of productive resistance that Kant so often recommends must be supplemented (not supplanted) by political practices and institutions that help to make a balance of forces among nations more enduring and lawlike in character. At the global level, our goal should be ‘to discover a law of equilibrium with regard to the *in itself productive resistance* [*zu dem an sich heilsamen Widerstande*] between many states [...]’ As he goes on to note, a ‘cosmopolitan condition of public security is thus introduced, which is not completely free of *danger*... but also not without a principle of the equality of their mutual *actions and reactions*, so that they do not destroy one another’ (IaG 8:26). This balancing act between our communicative and commercial bonds, on the one hand, and the danger and productive resistance between peoples, on the other—this equality of actions and reactions (what Kant at one point describes as ideally ‘a peace that is produced and secured... by means of... [the] equilibrium [of peoples] in liveliest competition’ (ZeF 8:367))—is best achieved, in Kant’s ultimate view of this matter, in a world of many political communities. The constant ‘anxiety’, as Kant referred to it in the *Religion*, that others will strive to gain ascendancy over us is an essential component of the productive resistance that humans must cultivate to achieve and to sustain equity with others.

Such a law of equilibrium is secured, and is less likely to suffer the fate of all mere balances of power (which are always simply fragile 'suspension[s] of hostilities'), by the peaceful mediation of disputes, and thus by something approximating 'an assurance of peace' that a voluntary congress of states would make possible (ZeF 8:349). The plurality of states, however, even in this future condition, helps to guarantee that anxiety (or 'danger') and competition are enduring features of our global political life, for antagonistic resistance is essential for continually approximating perpetual peace—as long as it is of the kind that strives for equal worth and hence ensures that no nation will allow another superiority over itself. The law-like international federation of states is meant to encourage and to secure such productive resistance and to make less likely the antagonistic resistance that is driven by the unjust desire to acquire superiority over others.¹⁸ The goal of a global politics, then, mirrors that of the ideal toward which individuals within each society should strive: 'one in which its members continually struggle with each other and yet in which the limits of this freedom are specified and secured in the most exact manner, so that such freedom of each is consistent with that of others' (IaG 8:22).

Progress and Hope: Enhancing Agency and Resistance

How, in Kant's view, can humans begin to cultivate the right kind of resistance, one that over many millennia might actually allow humans to approximate conditions of living freely and in peace with one another both within and across societies?¹⁹ A resistance rooted only in comparison and competition (fundamental features of humanity, in Kant's view) is perfectly compatible with reciprocal love among individuals (and mutual

¹⁸ With regard to the universal association of states, Kant's writings do not specify whether non-agrarian peoples count as 'states' for the purposes of such an international body (given their imputed juridical status) *or* whether the sole purpose of such an association is to ensure that agrarian states establish lawlike and irenic relations with one another. Since Kant's prediction that a voluntary congress will eventually encompass all of the 'nations' of the earth can be interpreted from either standpoint, it does not settle this interpretive issue.

¹⁹ I focus in this section upon Kant's philosophy of history, omitting Kant's position on the question of enlightenment in general, including his views on education and religious reform. His theories concerning local experiments in education, religious reform, and non-violent forms of enlightened public contestation of social, religious, and political authorities are essential elements of a fuller response to this question.

respect among nations). In contrast, while countering a domineering resistance by yet another round of domineering resistance is always an option, in Kant's analysis it is a disastrous one, for—although it might be motivated in the spirit of a preventive measure—such responses over time lead to a vicious cycle of jealousy, rivalry, and ultimately, hostility (among peoples, as among individuals within a civilized society). For humans to choose productive forms of resistance rather than destructive ones, a new way of thinking and of orienting oneself is needed, not only in the world as it exists (*enlightenment*, in Kant's sense of the term), but also toward the past and the future (that is, a properly cultivated sense of *providence*). As many commentators have noted, though it bears repeating, given the frequent misconstrual of this aspect of his thought, the forces of history, whatever they may be and whether or not we can know them, cannot in and of themselves produce 'the highest political good, perpetual peace' (MdS 6:355) without our deliberate effort over millennia, activities that, as I have argued throughout this chapter, require (among other things) productive resistance. Historically, Kant contends—in the mode of a kind of theodicy of humanity in which humanity is reconciled not with God, but with itself—that good can come from bad, including from morally unjustifiable forms of antagonistic resistance and their accompanying logic of superiority and inferiority. The practical point of embracing such ironic contingencies of humans' social development is not to become passive or to long for—let alone to actively support—oppression, war, and empire, but rather to encourage humans to work toward conditions of freedom, equality, and perpetual peace, even when they seem beyond reach.

Kant's account of progress and history is resolutely anti-conquest, anti-empire, and anti-war: in his political thought, such institutions and practices are authority-driven and enabled by citizens' complacency, passivity, and misanthropy. His concern is that citizens' greater knowledge of the world around them is debilitating, and in this sense enlightened knowledge alone is not power:

[t]hinking people are subject to a malaise which may even turn into moral corruption . . . They feel this sentiment when they contemplate the evils which so greatly oppress the human race with no hope (as it seems) of any improvement. (MAM 8:120–1)

In his 1794 essay, 'The End of All Things', Kant contends that many evils in the world—'increasing injustice, oppression of the poor by the arrogant

indulgence of the rich, and general loss of fidelity and faith; or... bloody wars igniting all over the earth' (EaD 8:331)—understandably preoccupy his fellows, but, problematically in his view, they also increasingly inspire apocalyptic fears and the tendency to place all of one's hopes in a future heavenly world rather than to work to improve the earthly world. The hope engendered by a historical narrative of progress that Kant theorizes, in which wars can at times produce social benefits and help lead to peace, is meant, therefore, to fuel the agency of citizens of the world who have been numbed by their growing knowledge of the pervasiveness of injustice and oppression and the repeated failures of efforts to combat them, but who will now be emboldened by hope ('in part so that one can still take heart in the face of such labours') to resist their authorities' insistent attempts to prepare for, and engage in, war, conquest, occupation, colonization, and empire-building. Given the 'dissatisfaction with providence' that humans predictably feel in the light of 'the ills that so afflict the human race' (MAM 8:121), they can be awakened to action by the teleological judgement—possibly true, but in any case (in Kant's view) not demonstrably false—that history or nature is on their side, a sentiment expressed in the twentieth century perhaps most vividly by Martin Luther King, Jr., who was fond of declaiming that '[w]e shall overcome because the arc of a moral universe is long, but it bends toward justice.'²⁰ Strikingly, Kant notes explicitly that such a view of history and providence is meant to offer a peculiar kind of 'assurance' that progress will occur, for it is 'admittedly not adequate for predicting its future (theoretically) but... is still *enough for practical purposes and makes it a duty to work toward this (not merely chimerical) end*' (ZeF 8:368, emphases added).

The ironies and contingencies of history reveal *retrospectively* (and paradoxically) the social benefits and the cultivation of capacities that some humans have achieved as a result of domination and oppression, but our *prospective* political task as humans, in Kant's view, is to draw hope from such ironies in order to resist domineering forms of antagonism. The resistance for equal worth that stems from our very humanity is a key source of our ability to strive for conditions of equity, to generate respect for the one innate right of humanity (our equal freedom, and thus ideally our lack of oppressive dependence vis-à-vis all others), and to struggle

²⁰ Martin Luther King, Jr., *A Testament of Hope: The Essential Writings and Speeches of Martin Luther King, Jr.* (New York: Harper Collins, 1986), p. 277.

against all those who would claim superiority over us. But resistance for equal worth is not a temporary capacity to cultivate in order to achieve a perfect political global order, at which time unsocial sociability will come to an end.²¹ This fundamental aspect of our human nature is of enduring importance to Kant because we are *always* in the condition of approximating conditions of justice.²²

Conclusion: ‘The Quivering Shadow of Action’

By maximizing conditions of mutual freedom, humans can minimize domineering unsocial sociability, but to approximate this requires the persistent vigilance of all citizens of the world in order to resist domination in its various guises. This fundamental aspect of our humanity, our unsocial sociability and, concomitantly, at its best, productive resistance to gain equal worth alongside others, is closely related to—but distinguishable from—the domineering resistance that is enabled by, and that strengthens and further corrupts, civilized institutions and practices, including war, conquest, colonization, and empire-building. In the *Conjectural Beginning of Human History*, Kant notes that the violence we have done to ourselves historically and in present times results from aspects of ourselves that are not in themselves culpable. The ‘stimuli that precede vice’ are ‘good in themselves’, but they are corrupted and inflamed, not automatically (that is, by our very nature), but by *artful* (and ultimately civilized) conditions; set loose in the global context, the cultivated capacities and practices of human ingenuity and artifice foster extraordinary levels of violence and domination and seemingly unceasing drives for imperial domination (MAM 8:117). Thus, our unsocial sociability, which itself is compatible with reciprocal love, is corrupted into a kind of domineering antagonism and resistance in order to attain superiority over others.

The tragedy for Kant, as with Rousseau, is that since humans are *artful* creatures (or, in Kant’s broadest sense of the term, *cultural* beings) by nature, the cultivation of their very humanity leads to conditions that

²¹ cf. Elisabeth Ellis, *Kant’s Politics: Provisional Theory for an Uncertain World* (New Haven: Yale University Press, 2005), chapter 4.

²² For Kant’s account of enduring approximation in his political philosophy, cf. KrV A316–7/B373–4; IaG 8:23; MdS 6:340–1; MdS 6:354–5.

denigrate human dignity. In Rousseau's terms, the cultivation of our 'perfectibility', a distinctively human faculty that wholly distinguishes us from other animals, leads us to oppress others and ourselves. Thus, the cultivation of part of what makes us human leads to practices and institutions, such as conquest and domination, that are characterized by inhumanity toward our fellow humans—and indeed toward ourselves. In Kant's view, along these lines and no doubt partly under Rousseau's influence, with sustained effort and over a long period of time, we must use our cultural capacities—our artfulness—to *properly* cultivate ourselves for the purposes of establishing equal worth, and to regenerate (now in a transformed fashion) what was once the non-domineering humanity of our natural unsocial sociability. Having to some extent dehumanized ourselves and others, we must artfully use the powers and capacities of the core elements of humanity to rehumanize ourselves, as it were. Ideally, Kant notes that the goal toward which we must work, and strive constantly to approximate, is one in which 'complete art again becomes nature' (MAM 8:118). In the struggle to achieve this, Kant believes that the artfulness of *productive resistance*—the roots of which lie in our very humanity—in the use of our practical reason, in our self-love of a kind that is compatible with reciprocal love, in our comparative judgements—is essential for combating the forms of antagonistic resistance that foster and strengthen domestic and imperial oppression. For Kant, with enough effort over millennia, the struggle to approximate conditions of perpetual peace constitutes an effort to get ever closer to making 'complete art' or 'perfect art' our (second) nature.

Kant's political philosophy is cosmopolitan in a wider sense than simply his concept of 'cosmopolitan right', which, as we have seen, is focused upon a particular domain of interaction among humans. Most broadly, Kant believes that humans' attempts at reducing domination and oppression within their societies and in a global context require progressive action and reforms over time that cannot be achieved within a single generation and that must necessarily involve all of humanity. The kind of cosmopolitan ethos that Kant recommends to combat injustice involves, to be sure, social connections, conversation, communication, and reciprocity, but we must always balance attempted and actual commercial and communicative connections, on the one hand, with a productive antagonism and resistance, on the other. Thus, Kant's account of how best to counter domination within and across borders is particularly difficult

to classify: it is based upon the bonds of respect and amity, and yet also anxiety, the feeling of danger, and outright resistance; it is informed by sociability and understanding, and yet also unsociability and antagonism; it is both cosmopolitan and national; it aims for transnational networks and international institutions, and yet it is hostile to the idea of global sovereign power. Overall, it might be characterized as a 'cosmopolitanism of interactive and countervailing powers,' within which productive resistance is clearly a crucial element, but however we might categorize it, this is a philosophically nuanced Enlightenment vision of how best to resist and to reduce over time oppression within societies and domination across borders. Indeed, a theory that aims to reduce global domination, but that is neither vanguardist nor naively irenic in its internationalism, evokes contemporary sensibilities about the promise and the perils of globalization and of the emerging forms of global society in our own time. Ultimately, the complex social, ethical, and political disposition that Kant believes is necessary in order for individuals and peoples to achieve, to defend, and to secure their rights of world citizenship resonates strikingly with the anti-imperialist temperament that Nehru once ascribed to Mohandas Gandhi: 'Behind the language of peace and friendship there was power and the quivering shadow of action and a determination not to submit to a wrong.'²³

Acknowledgements

Many thanks to Katrin Flikschuh and Lea Ypi for their very helpful comments and suggestions, and to the participants of the 'Kant and Colonialism' conference at the University of Oxford and the 'Domination Across Borders' conference at the Institute for Advanced Studies at Goethe-Universität Frankfurt.

Bibliography

Bowden, Brett, *The Empire of Civilization: The Evolution of an Imperial Idea* (Chicago: The University of Chicago Press, 2009).

²³ Jawaharlal Nehru on Gandhi, as quoted in Joseph Lelyveld, *Great Soul: Mahatma Gandhi and his Struggle with India* (New York: Alfred A. Knopf, 2011), p. 153.

- Carey, Daniel and Sven Trakulhun, 'Universalism, Diversity, and the Postcolonial Enlightenment', in *Postcolonial Enlightenment: Eighteenth-Century Colonialism and Postcolonial Theory*, ed. Daniel Carey and Lynn Festa (Oxford: Oxford University Press, 2009), pp. 240–80.
- Cavallar, Georg, *Imperfect Cosmopolis: Studies in the History of International Legal Theory and Cosmopolitan Ideas* (Cardiff: University of Wales Press, 2011).
- Ellis, Elisabeth, *Kant's Politics: Provisional Theory for an Uncertain World* (New Haven: Yale University Press, 2005).
- Ferguson, Michael, 'Unsocial Sociability: Perpetual Antagonism in Kant's Political Thought', in *Kant's Political Theory: Interpretations and Applications*, ed. Elisabeth Ellis (University Park, PA: Pennsylvania State University Press, 2012), pp. 150–69.
- Fichte, Johann Gottlieb, *The Closed Commercial State*, trans. Anthony Curtis Adler (Albany: State University of New York Press, 2012).
- Hall, Martin and John M. Hobson, 'Liberal International Theory: Eurocentric but not always Imperialist?', *International Theory*, vol. 2 (2010), pp. 210–45.
- King, Jr., Martin Luther, *A Testament of Hope: The Essential Writings and Speeches of Martin Luther King, Jr.* (New York: Harper Collins, 1986).
- Kleingeld, Pauline, *Kant and Cosmopolitanism: The Philosophical Ideal of World Citizenship* (Cambridge: Cambridge University Press, 2011).
- Lelyveld, Joseph, *Great Soul: Mahatma Gandhi and his Struggle with India* (New York: Alfred A. Knopf, 2011).
- Muthu, Sankar, 'Conquest, Commerce, and Cosmopolitanism in Enlightenment Political Thought', in *Empire and Modern Political Thought*, ed. Sankar Muthu (Cambridge: Cambridge University Press, 2012), pp. 199–231.
- Nakhimovsky, Isaac, *The Closed Commercial State: Perpetual Peace and Commercial Society from Rousseau to Fichte* (Princeton: Princeton University Press, 2011).
- Neuhouser, Frederick, *Rousseau's Theodicy of Self-Love: Evil, Rationality, and the Drive for Recognition* (Oxford: Oxford University Press, 2008).
- Niesen, Peter, 'Colonialism and Hospitality', *Politics and Ethics Review*, vol. 3 (2007), pp. 90–108.
- Pagden, Anthony, *Lords of All the World: Ideologies of Empire in Spain, Britain and France, c.1500–c.1800* (New Haven: Yale University Press, 1995).
- Rawls, John, *Lectures on the History of Political Philosophy*, ed. Samuel Freeman (Cambridge: Harvard University Press, 2007).
- Rousseau, Jean-Jacques, *Oeuvres complètes*, eds. Bernard Gagnebin and Marcel Raymond (Paris: Gallimard, 1964), vol. 3.
- Storey, Ian, 'Empire and the Ends of Nature in Kant's Second Thoughts on Race', *History of Political Thought*, forthcoming.

- Tully, James, *An Approach to Political Philosophy: Locke in Contexts* (Cambridge: Cambridge University Press, 1993).
- , 'Aboriginal Property and Western Theory: Recovering a Middle Ground,' *Social Philosophy and Policy*, vol. 11 (1994), pp. 153–80.
- , 'The Kantian Idea of Europe: Critical and Cosmopolitan Perspectives,' in *The Idea of Europe*, ed. Anthony Pagden (Cambridge: Cambridge University Press, 2002), pp. 331–58.
- Vattel, Emer de, *The Law of Nations or the Principles of Natural Law Applied to the Conduct and to the Affairs of Nations and of Sovereigns*, trans. Charles G. Fenwick (Buffalo: William S. Hein, 1995).
- Waligore, Timothy, 'Cosmopolitan Right, Indigenous Peoples, and the Risks of Cultural Interaction,' *Public Reason*, vol. 1 (2009), pp. 27–56.
- Williams, Howard, 'Kantian Cosmopolitan Right,' *Journal of International Political Theory*, vol. 7 (2007), pp. 57–72.
- Wood, Allen, 'Kant's Fourth Proposition: The Unsociable Sociability of Human Nature,' in *Kant's Idea for a Universal History with a Cosmopolitan Aim: A Critical Guide*, ed. Amélie Oksenberg Rorty and James Schmidt (Cambridge: Cambridge University Press, 2009), pp. 112–28.

4

Commerce and Colonialism in Kant's Philosophy of History

Lea Ypi

4.1 The Controversy about Kant and Commerce

Celebrated as a pioneer of liberal freedom and damned as an apologist of imperialism, Kant's reflections on the role of race and commercial relations contain many ambiguities. On the one hand, Kant shares with his Enlightenment predecessors the appreciation of the virtues of the *doux commerce* and an emphasis on its role in promoting domestic stability and peace amongst nations (IaG 8:27). On the other hand, he applauds restrictions on trade and praises the protectionism of states like China and Japan in placing barriers on the import of foreign products (ZeF 8:359 and GTP 8:299n). Kant defends the 'right' to attempt to make commercial contact with distant others as an instance of universal cosmopolitan relations (ZeF 8:358), but he also insists that such right can never be imposed, despite the coercive nature that relations of right typically display (MdS 6:353). In some of Kant's writings the commercial spirit is praised for cultivating moral predispositions that will progressively bring about the enlightenment of political institutions (IaG 8:27–8). In others, that very same spirit is scorned for fostering selfishness, cowardice, and a general debasement of human beings (KdU 5:263).

Given such disparate evaluations, it is not surprising to see that those few critics who have explicitly engaged with Kant's thoughts on race and commercial relations are as sharply divided on the matter as Kant himself appears to be. For some authors, Kant's views of trade render him an all too typical representative of the Enlightenment expansionist model of civilization,¹ insensitive to the diversity of non-European forms of life,² and complicit in racial discrimination and colonial exploitation.³ For others, to the contrary, Kant champions an anti-imperial discourse that places him side by side with progressive critics of European colonial projects, such that his theory of cosmopolitan right should be seen as a vehicle of empowerment and resistance to colonialism and domination.⁴ In one prominent reading, Kant is as much an apologist of unrestricted trade and free markets as his 'beloved' Adam Smith.⁵ In another one, Kant regarded 'just trade' as more important than 'free trade', and his entire theory of international justice can be seen as an attempt to formulate the right way to engage in commerce with distant others.⁶

The purpose of this chapter is to revisit these debates by placing Kant's reflections on race and commercial relations in the context of a systematic discussion of Kant's philosophy of history, its teleological principles, and the related development of Kant's theory of right and politics. It is well known that Kant's views on teleology developed significantly during the 1790s, culminating in a new assessment of the role of the principle of

¹ See, for example, Anthony Pagden, 'Stoicism, cosmopolitanism and the legacy of European imperialism', *Constellations* 7, no. 1 (2000), pp. 3–22.

² See Thomas McCarthy, *Race, empire, and the idea of human development* (Cambridge; New York: Cambridge University Press, 2009).

³ See Robert Bernasconi, 'Who invented the concept of race? Kant's role in the Enlightenment construction of race', in *Race* ed. Robert Bernasconi (Oxford: Blackwell, 2001), pp. 11–36; C. W. Mills, 'Kant's Untermenschen', in *Race and racism in modern philosophy*, ed. A. Valls (Cornell: Cornell University Press, 2005), pp. 169–93.

⁴ See, for example, Sankar Muthu, *Enlightenment against empire* (Princeton: Princeton University Press, 2003); Sankar Muthu, 'Conquest, commerce, and cosmopolitanism in Enlightenment political thought', in *Empire and modern political thought*, ed. Sankar Muthu (Cambridge: Cambridge University Press, 2011), pp. 199–231; and Peter Niesen, 'Hospitality and colonialism', *Politics and Ethics Review*, vol. 3, issue 1 (2007), pp. 90–108.

⁵ S. Fleischacker, 'Values behind the market: Kant's response to the "Wealth of Nations"', *History of Political Thought* 17, no. 3 (1996), pp. 379–407. The idea that Kant had referred to Smith as his 'loving' philosopher, comes from a letter of Marcus Herz, written in 1771 (Brief 10: 126).

⁶ Pauline Kleingeld, *Kant and cosmopolitanism: The philosophical ideal of world citizenship* (Cambridge: Cambridge University Press, 2012), pp. 124–48.

conformity to ends in the *Critique of the Power of Judgement*.⁷ It is also well known that this development had important implications for a number of areas of Kant's philosophy, including his political philosophy.⁸ Until now, however, few attempts have been made to explain what exactly motivated these revisions from a systematic perspective and where they lead the overall assessment of Kant's account of colonialism and commercial relations.⁹

The present chapter examines such a neglected link by focusing on the development of the concept of 'predispositions' (*Anlage*) and its place in Kant's philosophy of history. The concept is interesting as an entry-point to Kant's earlier account of the relation between nature and freedom; it also plays a central role in motivating Kant's defence of commercial relations as the sort of social relation that naturally grows with the development of the 'predisposition' to 'unsocial sociability' (*ungesellige Geselligkeit*). The following pages analyse that predisposition by placing it in the context of a wider eighteenth-century philosophical debate about the role of natural predispositions (*Anlagen*), and the related concept of 'germs' (*Keime*), in explaining the persistence or transformation of particular traits of the human species. As we shall see in what follows, Kant's remarks matured in the context of a preformist view of organic development that conceded the plausibility of natural teleology to illustrate the development of humans as a species, and linked this to a qualified endorsement of the physical theological proof for the existence of God. His earlier defence of commercial relations therefore cannot be understood without examining how this account of the predisposition to unsocial sociability is related to a teleology of nature, with important implications for Kant's hierarchical account of human races and their development in different societies. Conversely, Kant's later sceptical stance on both colonialism

⁷ I have discussed this issue in Lea Ypi, 'Natura daedala rerum? On the justification of historical progress in Kant's guarantee of perpetual peace', *Kantian Review* 14, no. 2 (2010), pp. 118–48.

⁸ This last claim has been made persuasively by Pauline Kleingeld, who argues that Kant's views on race, for example, significantly changed after 1792: see Pauline Kleingeld, 'Kant's second thoughts on race', *Philosophical Quarterly* 57, no. 229 (2007), pp. 573–92. Although she suggests that the change might be related both to the influence of the French Revolution and to developments in Kant's philosophy of biology, she does not pursue the thought further.

⁹ One exception is Ian Storey, 'Nature's law and empire in Kant's "second thoughts" on race', *History of Political Thoughts* (forthcoming). For a discussion of the role of nature for Kant's critique of colonialisms, see Muthu, *Enlightenment against empire*, pp. 135–8.

and commercial relations makes sense in the light of his mature reflective approach to the question of natural teleology, the abandonment of physical theology in the third *Critique*, and the related separation of the moral from the natural realm when it comes to the standing of different human beings and their societal development.

4.2 Unsocial Sociability, Teleology, and Nature

As many interpreters have emphasized, Kant's earlier thoughts on the role of trade interdependence in relation to the promotion of peace are continuous with a tradition that links the expansion of commercial sociability to the promotion of public order and the development of cosmopolitan political relations.¹⁰ Like Vitoria, Pufendorf, Wolff, and Vattel before him, Kant saw the predisposition to communication as an effective antidote to a radically pessimistic view of human nature and to the prospects for a peaceful political order following from it. In Vitoria and others, the natural inclination to communicate and the right to enter in commercial relations served to justify imperial expansion and the right to subjugate non-European peoples on the grounds that they violated the natural duty to behave hospitably to foreign travellers.¹¹ Although the link between the right to make commercial offers, colonialism, and cosmopolitanism is examined in much greater detail in Kant's later writings, it is worth emphasizing that in the earlier stages of his work he was not too distant from his predecessors' remarks.

One potential source of evidence is his 1784 essay, *Idea for universal history from a cosmopolitan perspective*. Kant's analysis of the role of unsocial sociability of human beings and the sympathetic remarks on the commercial spirit that accompany it is particularly clear in two distinct passages. The first is when Kant discusses the transition from the state of nature amongst human beings to a condition of freedom under external laws guaranteed by state institutions. The second is when he examines the dynamic of antagonistic relations between states and the conditions under which a lasting peace can be achieved.

¹⁰ See, for one example, Pagden's contribution to this volume.

¹¹ See for an excellent discussion of this point, Pagden, 'Stoicism, cosmopolitanism and the legacy of European imperialism'.

With regard to the first, Kant's defence of commercial relations arises in the context of his attempt to identify a pattern of collective development showing that human beings' moral predispositions can be realized in the historical world. This can occur through the achievement of an instituted political society able to administer justice universally (IaG 8:22). This problem, however, is also difficult to solve: the human being 'is an animal [...] which needs a master', yet 'this master is exactly as much an animal who has need of a master' (IaG 8:23). The fact that the highest authority needed to realize humanity's moral predispositions ought to be 'just in itself and yet a human being' is a problem that appears in fact impossible to solve: 'out of such crooked wood as humanity is made, nothing entirely straight can be fabricated' (IaG 8:16). If human agents are thus challenged in the ability fully to realize their own moral potential, only an approximation to the ideal can be expected.

Kant is sceptical here that political expedients are sufficient to bring about even an approximation to the ideal of universal justice. He lays his hopes instead on the benign intervention of 'nature', which has willed that 'human beings produce everything that goes beyond their mechanical existence out of their own labour and hands.' Reflecting on the potential for moral progress in the course of human development, he defends the relevance of a teleological perspective for understanding an otherwise meaningless aggregate of human actions as a system where the development of the parts promotes the organic unity of the whole.¹² Nature, Kant argues, 'is not superfluous and is not wasteful in the use of means to its ends' (IaG 8:19). It has willed that 'human beings produce everything that goes beyond their mechanical existence out of their own labour and hands.' In providing tools for their own development, everything has been tightly calculated so that the human being can only credit himself one day for reaching 'the height of the greatest skillfulness, the inner perfection of his mode of thought and (as far as it is possible on earth) thereby happiness' (IaG 8:19).

¹² On the relevance of teleological principles for distinguishing between aggregate and system and the role of the latter in Kant's philosophy, see Lea Ypi, 'The problem of systematic unity in Kant's two definitions of philosophy', in *Kant und die Philosophie in weltbürgerlicher Absicht. Akten des XI. Kant-Kongresses 2010*, ed. Stefano Bacin, et al. (Berlin: De Gruyter, 2013), vol. 1, pp. 773–86.

Kant appeals to the important concept of 'predisposition' (*Anlage*) to *unsociable sociability* (*ungesellige Geselligkeit*) to explain how nature intervenes to promote humanity's moral principles (IaG 8:23). Indeed, he goes as far as praising the commercial spirit for facilitating the unfolding of that predisposition. 'Thanks be to nature [...] for the incompatibility, for the spiteful competitive vanity, for the insatiable desire to possess or even to dominate!' he emphatically asserts (IaG 8:21). The selfish instincts that accompany commercial sociability, the desire for competition, acquisition of property, the investment of labour and resources, are revealed in this context to form part of a productive cycle that turns human unsociability into a motor of social progress. Although human beings wish to lead a quiet and comfortable life, 'nature wills that out of sloth and inactive contentment he should throw himself into labor and toils, so as, on the contrary, prudently to find out the means to pull himself again out of the latter'. This Kant, argues, betrays 'the ordering of a wise creator; and not the hand of an evil spirit who might have bungled his splendid undertaking or ruined it in an envious manner' (IaG 8:21).

Promoting a social order in which commercial relations are instrumentally valuable to the development of political institutions guaranteeing security and the undisturbed enjoyment of private property is not the only instance in which the predisposition to unsocial sociability appears as an integral part of nature's beneficial intervention in history. Kant's remarks on the role of trade for the development of such predisposition become even more incisive when we turn to the second dimension of antagonism examined in *Idea*: conflict amongst states and the general condition of enlightenment that such conflict brings with it. Indeed, trade is explicitly mentioned in the eighth proposition of the 1784 essay stating that the history of the human species could be viewed as the completion of a 'hidden plan of nature' to promote an internal and external perfect state constitution. Asking whether experience reveals anything that might allow us to make conjectures about the development of human beings in this direction, Kant identifies promising signs in the commercial interdependence of all states and the degree of enlightenment amongst both politicians and citizens that such civilized relations bring about. Culture, understood as a process of sophistication of both material and social habits in response to ever more complex human needs, plays a crucial role here too. States, Kant argues, 'are already in such an artificial relation to each other that none of them can neglect its internal cultural development without losing power

and influence among the others'. Moreover, 'civil freedom cannot be very well infringed without feeling the disadvantage of it in all trades, especially in commerce, and thereby also the diminution of the powers of the state in its external relationships' (IaG 8:27).

Kant then links the possibility of the human species making moral progress to the predisposition to unsocial sociability and the commercial spirit that drives social cooperation beyond internal conflicts within the state. Provided one respects mutual constraints on freedom, if 'one hinders the citizen who is seeking his welfare in any way he pleases, as long as it can subsist along with the freedom [...] then one restrains the vitality of all enterprise and with it, in turn, the powers of the whole' (IaG 8:29). This reference to the value of individual welfare and the appeal to the *laissez-faire* attitude required to let individuals pursue their own ends as they see fit is very important. In later writings, Kant makes a structurally similar argument, emphasizing the interdependence of human actions and their importance for political institutions, yet the value cited as foundational to explain how agents are connected to each other beyond national boundaries is justice rather than individual welfare. I shall return to this point in the following pages; for now, it is important to notice that the predisposition to unsocial sociability plays a crucial role in Kant's teleological narrative of how the selfish pursuit of private gains might promote the right kind of political institutions. Once that teleological narrative is revisited and systematic emphasis is placed on the role of agents' reflecting about their own position in human history, the assessment of commercial relations and the evaluation of the role of the state will also end up being reshaped.

But before analysing that point, and to return to the earlier essay on history, it is important to pay attention to how Kant describes the political processes triggered by the development of commercial sociability. The argument is of an elitist kind. Kant draws attention to the role of monarchs in removing barriers on their citizens' personal initiatives for the promotion of commercial interaction. He argues that the enlightenment of civil society will one day reach them too:

Hence the personal restrictions on the citizen's doing and refraining are removed more and more, and the general freedom of religion is ceded; and thus gradually arises, accompanied by delusions and whims, enlightenment, as a great good that must raise humankind even out of the selfish aims of aggrandizement on the part of its rulers, if only the latter understand their own advantage. This enlightenment,

however, and with it also a certain participation in the good by the heart of the enlightened human being who understands the good perfectly, must ascend bit by bit up to the thrones and have its influence even on their principles of government. (IaG 8:29)

Kant does not say exactly what sort of principles and governments are required to promote a process of 'enlightenment', which is described here in rather general terms. He defends a more specific definition of the term in his famous article, 'What is Enlightenment?', in which he also stresses the importance of removing obstacles to freedom in order to guarantee the public use of reason (WiA 8:37). Interestingly, he there defends the freedom to pursue commercial initiatives through an important distinction between the private and the public use of reason applied to the potential injustice of taxation. Although a citizen cannot in his private capacity refuse to pay the taxes imposed on him, Kant argues, 'the same citizen does not act against the duty of citizen, when, as a scholar, he publicly expresses his thoughts about the inappropriateness or even injustice of such decrees' (WiA 8:37). The critique of taxation in the Enlightenment essay therefore complements the defence of commercial relations presented in *Idea for a universal history* and indicates a sympathetic stance towards unrestricted commercial relations.

Moreover, like many of his predecessors, Kant's analysis of the Enlightenment is, at this point, not hostile to the idea of European civilization spreading to the rest of the globe. He argues that if one approaches the study of history in a systematic fashion, 'one will discover a regular course of improvement in our part of the world'; and that this part of the world 'will probably someday give laws to all others' (IaG 8:29). He identifies the means for such development in the expansion of the commercial spirit and the benefits of international trade on the relations between states. The selfish instincts that accompany commercial sociability, the desire for competition, acquisition of property, and the investment of labour and resources, are revealed (and justified) in this context as part of a productive cycle that turns the predisposition to human unsocial sociability into a motor of social progress.

4.3 The Teleology of Racial Hierarchy and Commercial Relations

In examining these passages, it is important to emphasize that the position concerning the effects of commercial society and the expansion of the

European model is not one that Kant takes without passing judgement.¹³ Rather, the account of race endorsed throughout the 1770s and early 1780s suggests that Kant approved of European attempts to dominate the rest of the world and genuinely believed that other populations were unable to rule themselves.¹⁴ As the notes from his lectures on anthropology from 1780 to 1781 illustrate, he thought that 'Americans and Negroes cannot govern themselves'; 'they serve only as slaves,' and are similar to 'children' (VA 25:877–8). In his 1788 essay on the use of teleological principles in philosophy, he cites approvingly a 'knowledgeable man' who criticized the proposal to emancipate slaves on the grounds that when they are set free, 'they soon abandon an easy craft which previously as slaves they had been forced to carry out, and instead become hawkers, wretched innkeepers, lackeys, and people who go fishing and hunting, in a word tramps' (TTP 8:174n).

Kant's hierarchical view of human races and the analysis of unsocial sociability on which his defence of commercial relations is based are clearly connected. But in what way? To illuminate that connection, we need to consider the systematic role that the concepts of 'predisposition' (*Anlage*) and germs (*Keime*) play in Kant's philosophy of nature and his account of the generation of organisms. The first of these, the concept of predisposition, is one that, as we saw, Kant also introduces to explain how unsocial sociability is at the heart of processes that trigger the appropriate kinds of social relations, thus preparing the way for the development of morality. The second, the concept of germs, plays a particularly important role in Kant's analysis of the human race.

Both germs and predispositions are systematically introduced in the context of a familiar eighteenth-century debate about the unity of the species and the modality of transmission of character traits from one generation of organisms to the next. To better understand their relevance to Kant's teleology of nature, we need to turn to the trilogy of essays in which the natural history of human beings is explicitly discussed: *Of the different*

¹³ I disagree here with the position Sankar Muthu takes in Muthu, *Enlightenment against empire*, p. 186. The idea that Kant's views should be understood as a simple matter of fact statement and contain no evaluative features has also been defended by Todd Hedrick, 'Race, difference, and anthropology in Kant's cosmopolitanism', *Journal of the History of Philosophy*, vol. 46 (2008), pp. 245–68, at p. 262.

¹⁴ For an excellent discussion of this point, see Pauline Kleingeld's contribution to this volume.

racés of human beings (1775), *Determination of the concept of a human race* (1785) and *On the use of teleological principles in philosophy* (1788). Enquiring upon the reasons for the origin of different races, Kant offers the following explanation:

The grounds of a determinate unfolding which are lying in the nature of an organic body (plant or animal) are called *germs*, if this unfolding concerns particular parts; if however it concerns only the size or the relation of parts to one another, then I call them *natural predispositions*. [...] This care of Nature to equip her creature through hidden inner provisions for all kinds of future circumstances, so that it may preserve itself and be suited to the difference of the climate or the soil, is admirable. [...] Chance or the universal mechanical laws could not produce such agreements. Therefore we must consider such occasional unfoldings as *performed*. (VRM 2:435)

Kant's remarks on germs and predispositions are here situated in the context of a longstanding eighteenth-century scientific debate among defenders of epigenetic theories of natural development versus preformist accounts. The former, revived in the eighteenth century in the defence of 'mechanistic' epigenesis, offered by G. L. L. Buffon's *Histoire naturelle générale et particulière* that appeared in 1749, explained organic development by referring to the action of a *moule intérieure*, a kind of vital force understood in analogy with the Newtonian microforces, which organized the interaction of the various *molécules organiques* of which living matter was composed.¹⁵ Therefore, the generation of new organisms was here illustrated with reference to a capacity inherent in matter to transform itself and generate new organic forms. Preformist accounts, on the other hand, developed in a climate of scepticism about epigenetic theories. They gained particular prominence in Germany through the work of Albrecht von Haller, later also reinforced by the analysis and microscopic observations of the Swiss naturalist Charles Bonnet. Both Haller and Bonnet refined existing accounts of preformation by referring to the existence of preformed germs, which were thought to be present in all natural beings that contained the seeds for their future development. Germs therefore pre-existed the fully formed organism, not in the sense that all the properties of a fully formed organism could be interpreted as already developed

¹⁵ See Phillip Sloan, 'Preforming the categories: Eighteenth-century generation theory and the biological roots of Kant's a-priori', *Journal of the History of Philosophy*, vol. 40, issue 2 (Apr. 2002), pp. 229–53.

in the germs, but as seeds which required an ordering cause to facilitate their growth. Preformist theorists like Haller and Bonnet could thus respond to both biological and theological disputes about the relation of God to living matter, reconciling the natural development of organic parts with the defence of a purposeful intervention in the way natural forces with innate teleological direction could organize and develop.¹⁶

Although, as many interpreters have pointed out, Kant's general position towards epigenesis is complex (in the first *Critique* he went as far as calling the entire system 'an epigenesis of pure reason' (KrV 3:B167), his commitment to a version of preformation is consistently clear in his early writings, and particularly in his essays on race.¹⁷ Already his 1763 work on the *Only Possible Proof of the Existence of God* had illustrated Kant's familiarity with these different theories of generation, and indeed displayed an attempt to go beyond both epigenetic and preformist theories to elaborate a more sophisticated defence of physico-theological proof for the existence of God. It is in the context of his search for such proof that the concept of predispositions (*Anlage*) is mentioned for the first time:

One presumes not only in inorganic, but also in organized Nature a greater necessary unity than directly meets the eye. Because even in the structure of an animal it is to be supposed that a single predisposition [*Anlage*] will have a fertile adaptability for many advantageous results, for which we might initially find necessary a plurality of special arrangements. Attention to this is as appropriate to philosophy as to the physico-theological inference. (Bew 2:126)

The use of the term '*Anlage*' is here not very different from the one we find in Kant's later essays on race and in his account of commercial relations. But it is interesting to observe Kant's insistence that a deeper understanding of the teleological potential of predispositions will make clearer the link between the teleology of natural forms and the attempt to infer from that link an intelligent designer of the universe (physico-theology). In the later essays on race, the definition and technical use of the concepts of germs and predispositions are unchanged. Here, too, Kant notes that germs and predispositions should be understood as purposive conditions

¹⁶ For an excellent review of the thought of different authors involved in such controversies, see John H. Zammito, 'Kant's persistent ambivalence towards epigenesis, 1764–1790', in *Understanding purpose: Kant and the philosophy of biology*, ed. Philippe Huneman (Rochester: University of Rochester Press, 2007), pp. 51–74 and Sloan, 'Performing the categories'.

¹⁷ For further analysis of this issue, see Sloan, 'Performing the categories'.

for the development of natural beings that specify their capacity to adapt and survive in particular environmental and atmospheric conditions. They represent innate structures, independent of mechanical causes, which precede the empirical development of organisms yet contain the seeds for their future growth and allow them to adapt in different environments (VRM 2:435). As Kant puts it, 'the human being was destined for all climates and for every soil' and 'consequently various germs and natural predispositions had to lie ready in him to be on occasion either unfolded or restrained, so that he would become suited to his place in the world and over the course of the generations would appear to be as it were native to and made for that place' (VRM 2:435).

These reflections are particularly useful in understanding how Kant ends up solving the core theoretical problem faced by his essays on race: explaining the diversity of human races whilst also tracing them all back to the same human species. Faced with the usual difficulties of invoking mechanical laws to analyse the unity of a species and explain how the characteristics of a particular organism could be preserved and transmitted to the next generation, a version of 'preformist' theories is endorsed to account for the evolution of human traits that are already contained in it as germs and predispositions. Yet, while predispositions refer to certain conditions of development with regard to the size and relation of parts (organs) in a living being, germs are conditions for the development of new features.¹⁸ This then allows Kant to explain the unity and the diversity of the human species as well as its capacity to adapt to external different circumstances. Different races develop as a result of different germs coming into contact with different environments. Predispositions, on the other hand, provide the structural conditions under which the development of certain germs could be occasioned. They are therefore the same for the whole human species.

The implications of this theory are crucial for understanding Kant's analysis of the historical development of the human species, the sort of relations humans develop in the course of adapting to different

¹⁸ See for clarification of this distinction, Zammito, 'Kant's persistent ambivalence towards epigenesis, 1764–1790', and Gunther Zoeller, 'Kant on the generation of metaphysical knowledge', in *Kant: Analysen, Probleme, Kritik*, ed. Hariolf Oberer and Gerhard Seel (Würzburg: Koenigshausen & Neumann, 1988), pp. 71–90, at p. 75. For a discussion of Kant's preformism in relation to his philosophy of biology, see also Philippe Huneman, *Metaphysique et biologie: Kant et la constitution du concept d'organisme* (Paris: Kime, 2008).

environments, and the reason for his racially differentiated theory of commercial development. Kant explains how germs account for the different characteristics inherited by every race within the same human species, but also emphasizes how the influence of a particular environment, the character of the soil, or certain atmospheric conditions establish differences in human traits. Therefore, germs serve to explain biological, physical, cognitive, and also moral differences inherited by representatives of various races, whereas predispositions are shared by all human beings but can develop more slowly or more quickly, depending on the empirical circumstances in which they evolve.

One such predisposition, central to the topic we are examining here, is that of 'unsocial sociability', which, as we saw earlier, should also be understood as the means deployed by nature to facilitate progress toward a civilized condition. Kant's theory of racial hierarchy and his stadial narrative of human history are related: if the theory of germs (*Keime*) explains the different abilities of human races, the Anlage to 'unsocial sociability' will develop to a greater or lesser extent, depending on how different agents operate in different geographical and cultural environments. Kant implicitly refers to this issue when he discusses the capacity to work on the side of people with different skin colour. 'Especially interwoven with certain natural predispositions', he argues, are 'in addition to the faculty to work... an immediate drive to activity (especially to the sustained activity that one calls industry), which is independent of all enticement' (TTP 8:174n). Yet, non-whites have not only different individual skills, but are also unable to produce 'culture'.¹⁹ And this lack of ability, Kant explains elsewhere, is due to the different development of innate germs and predispositions: 'Who[ever] has seen a savage Indian or Greenlander, should he indeed believe that there is a germ innate to this same [being] to become as a man in accordance with Parisian fashion [would become]? He has, however, the same germs as a civilized human being, only they are not yet developed' (VA 25:651).

The teleological constitution of human beings is therefore intrinsically related to the teleological constitution of nature and has important implications for humanity's prospects of historical development. Human history is seen as the process of realization of predispositions and germs that

¹⁹ For an excellent discussion of the development of Kant's views on race in relation to his account of teleology, see Storey, 'Nature's law and empire in Kant's "second thoughts" on race.'

are innately implanted in natural organisms, and can only be explained in the light of this assumption of natural conformity to ends. This principle reveals, in the writings of the early Kant, how the predisposition to 'unsocial sociability', which obtains its maximal development in commercial societies, is instrumental to nature's positive role in the course of human history. Once we understand human history as a process of development of such predispositions, we can explain Kant's commitment to applauding certain activities that promote the refinement of certain talents and skills, and his unproblematic endorsement of Europe's mission to expose other peoples to the same beneficial effects. History is presented here as a meaningful succession of human actions rather than a meaningless series of destructive events; nature and freedom are interpreted in a harmonic relation that allows the former to be a condition for the further development of the latter.

But how can purposiveness in nature determine the course of human history without somehow undermining the capacity of human beings to freely pose their autonomous ends? Kant's theory of germs and predispositions seeks to solve the difficult problem of the relationship between natural and moral teleology by introducing the idea of natural conditions for development able to account for both immutability and change in the course of human history. Yet, as we saw, they are also linked to long-standing debates on the possibility to infer, from such teleological constitution of nature, the existence of an intelligent designer of the universe, as required by the physico-theological proof to which Kant explicitly refers. But the status of the assumption of intelligent intervention in the course of human history is empirically dubious and normatively problematic: if natural teleology is to be understood as the condition of possibility for the development of preformed predispositions, freedom, and with it the space for moral agency, ends up being significantly restricted.

Needless to say, the consequences of this question for Kant's moral philosophy are enormous. The problem that I have only sketched here torments Kant for a number of years and leads to the lengthy analysis on the status of reflective judgement in the third *Critique*. There, Kant returns to talk about predispositions in order to distinguish organic beings from mechanical ones. However, and very strikingly, there are no longer any references to the concept of *Keime*, which, as we saw, played an important role in Kant's qualified endorsement of preformationism and in his explanation of differentiated human development. Although Kant

maintains some references to the concept of natural predispositions, they are now seen as 'inner purposive predispositions' [inneren zweckmässigen Anlagen] and integrated with an epigenetic account of generation.²⁰ And what is even more important for purposes of this chapter, Kant now makes it clear that this analysis of biological organisms has no moral implications: it is only possible to refer to ends of nature, not because nature is as such teleologically oriented, but in analogy with the kind of action conforming to ends that human beings exhibit in the practical realm.

The systematic implications of this development are subject to a vast interpretive literature and I have discussed them in greater detail elsewhere.²¹ Without repeating them here, let us consider the reassessment of the place of commercial relations in Kant's later writings, once the assumption that the predisposition to unsocial sociability is best developed by nature in commercial societies is revealed to be untenable.

4.4 Commercial Relations in Kant's Later Political Philosophy

The systematic developments of the third *Critique* in Kant's analysis of teleology have immediate implications for a number of important issues in his political writings. Conformity to ends is understood in the third *Critique* not as a feature of nature, but as a reflective quality ascribed by human beings to the development of some of nature's products in analogy with the causality of freedom displayed in the practical realm. Nature, for Kant, is no longer in itself teleologically oriented. Rather, human beings can interpret it as such once they examine their own position in it and observe the analogy with the way they make use of its products to promote their practical ends.

It is therefore unsurprising to see that the assumption that unsocial sociability represents a predisposition that nature's benign intervention can further develop appears less persuasive to him at this stage. As Kant emphasizes in the third *Critique*, '[i]t is so far from being the case that nature has made the human being its special favorite and favored him

²⁰ Under the influence of Johann Blumenbach, Kant distances himself from preformism and seems to endorse a version of epigenesis. For further analysis of this argument, see Sloan, 'Preforming the categories'.

²¹ Ypi, 'Natura daedala rerum?'.

with beneficence above all other animals, that it has rather spared him just as little as any other animal from its destructive effects, whether of pestilence, hunger, danger of flood, cold, attacks by other animals great and small' (KdU 5:430). This means that once the moral implications of the theory of predispositions disappear, it is implausible to maintain that the conditions for development of human nature are determined by the beneficial intervention of a providential force. With this assumption, the physico-theological proof of the existence of God also disappears from Kant's mature body of work.²²

This development implies a re-evaluation of a number of key conceptual elements that played an important role in Kant's earlier narrative of moral progress and the consequent defence of commercial relations within a stadial theory of human history. The first of these elements is the idea of a harmonious relation between the predisposition to unsocial sociability of human beings and nature's intervention to promote this predisposition in a way that is conducive to the development of morality. In the essay on universal history, the predisposition to unsocial sociability develops in externally favourable circumstances in the context of an optimistic, if hierarchical, narrative of the transformation of the human species. The concept of happiness, the pursuit of which characterizes the commercial spirit, plays an essential role in explaining how nature has given human beings the means to promote their own skills and abilities so that whatever level of moral development they have achieved in the course of their lives could only be credited to themselves (IaG 8:19–20). To this end, competitive instincts, the desire to possess, and the will to dominate others are seen as vehicles through which predispositions are further developed and reveal the ordering of a 'wise creator'.

In the third *Critique*, however, Kant is critical of the logic underpinning these links. Not only do these natural predispositions not stand in natural harmony with nature, but the conflict between them is so profound that 'even if the most beneficent nature outside of us had made the happiness of our species its end, that end would not be attained in a system of nature upon the earth, because the nature inside us is not receptive to that' (KdU 5:430). All the instincts Kant cites favourably in the earlier essay on history to show how

²² See on this issue Lea Ypi, 'Teleology and system in Kant's architectonic of pure reason', in *Politics and Metaphysics in Kant*, ed. by H. Williams, S. Baiausu, and S. Philstrom (Cardiff: University of Wales Press, 2011), pp. 134–51.

nature can turn the predisposition to unsocial sociability into a feature that is beneficial to moral progress ('the oppression of domination,' 'the barbarism of war') are now mentioned to illustrate the resistance that human nature poses to such teleological intervention, even assuming its plausibility.

It is unsurprising therefore to see that at this point Kant's assessment of the role of the commercial spirit has also changed. Commercial sociability, which was once praised for contributing to a state of affairs in which conflict between states would gradually lead to peaceful solutions, is now contrasted with the spirit of war, but Kant expresses surprising admiration for the sublimity of the latter. As he puts it, war, 'if it is conducted with order and reverence for the rights of civilians, has something sublime about it, and at the same time makes the mentality of the people who conduct it in this way all the more sublime, the more dangers it has been exposed to and before which it has been able to assert its courage.' On the contrary, he continues, 'a long peace causes the spirit of mere commerce to predominate, along with base selfishness, cowardice and weakness, and usually debases the mentality of the populace' (KU 5:263).

These are not isolated remarks. The observations on the sublimity of war and the accompanying derision of the spirit of commerce that we find in the *Critique of Judgement* resonate with Kant's other writings of the 1790s. In *The conflict of the faculties*, Kant refers to the revolutionary wars fought by France against defenders of the Ancien Régime to contrast the enthusiasm of those who fight to promote justice with the incentives obtained by monetary rewards. The latter, Kant says,

will not elevate the adversaries of the revolution to the zeal and grandeur of soul which the pure concept of right produced in them; and even the concept of honor among the old martial nobility (an analogue to enthusiasm) vanished before the weapons of those who kept in view the right of the nation to which they belonged and of which they considered themselves the guardians. (SdF 7:86)²³

These remarks fit neatly with Kant's modified account of the process through which moral predispositions are historically developed. War, provided it is compatible with the pursuit of the principle of right, brings with it enthusiasm, a motive which characterizes the sublime state of mind and elevates the human spirit to acknowledge the force of the moral law.

²³ See also in relation to this and to the assessment of war the following passage in *Perpetual Peace*: 'War itself, however, needs no special motive but seems to be engrafted onto

The revolutionary struggle of the French against a backward and corrupt enemy triggers enthusiasm on the side of those who observe their deeds and could be interpreted as a 'sign' that human beings can make progress towards the better.²⁴ In *The Conflict of the Faculties*, Kant examines the issue of progress, not by relying on evidence of the contribution of nature to the development of human predispositions, but by examining what human beings themselves do to create a social order in which justice is promoted. This is compatible with his remarks on the foundation of teleological principles in the third *Critique*: culture is no longer understood here as the process through which nature assists the human being in the progressive development of his skills and abilities but as the 'aptitude for setting himself ends at all and (independent from nature in his determination of ends) using nature as a means appropriate to the maxims of his free ends in general' (KdU 5:431).

In the third *Critique*, Kant analyses the process of cultural development of human beings in a way that appears structurally similar to the earlier essay on history but differs at several critical points. Here too Kant considers inequality amongst human beings an incentive for the advancement of industry and the arts, the development of talents, and the spread of luxury among the population of commercial states. Whilst he preserves his praise for the beautiful arts and sciences and their contribution to the refinement of taste and the reduction of 'the tyranny of sensible tendencies', he appears more critical of the effects of trade relations and the inequality they trigger. Indeed, far from being praised as a 'source of much greater evil but also of all good', inequality is here considered as an immediate cause of political conflict and social disruption. Luxury, defined as 'the tendency of what is dispensable to destroy what is indispensable', is blamed for producing calamities affecting both those who provide 'the majority of the necessities of life [...] for the comfort and ease of others' and those who

human nature and even to hold as something noble, to which the human being is impelled by the drive to honor without self-seeking incentives, so that military courage is judged (by the American savages as well as by the European savages in the age of chivalry) to be of immediately great worth, not only if there is war (as would be reasonable) but also in order that there may be war, and war is often begun merely in order to display courage; hence an inner dignity is put in war itself, and even philosophers have eulogized it as a certain ennoblement of humanity, unmindful of the saying of a certain Greek, 'War is bad in that it makes more evil people than it takes away' (Zef 8:365).

²⁴ I have discussed the relevance of enthusiasm for Kant's philosophy of history in Lea Ypi, 'On revolution in Kant and Marx', *Political Theory*, vol. 42, issue 3 (2014), pp. 262–87.

'cultivate the less necessary elements of culture, science and art' and maintain the former 'in a state of oppression, bitter work and little enjoyment' (KdU 5:432).

In Kant's earlier essays, the development and promotion of commercial relations was perceived as beneficial to the trajectory of moral development of human beings. Conflict amongst states was seen as determined mostly by their ambition for power, the issue of internal social unrest and dissatisfaction amongst different social classes hardly received a mention, and the promotion of trade and commercial relations was constituted an antidote to war and led to the promotion of peaceful interdependence among nations. In the *Critique of Judgement*, Kant's analysis takes a different form: the development of commercial sociability is itself seen as part of conflicts, both within the state (due to the dissatisfaction of oppression between classes) and between states (due to their ambition, greed, and commercial rivalries). The type of political relation able to put an end to this conflict is not necessarily one in which each individual is left alone to pursue his own good in the hope that his isolated activities will have a positive impact on the welfare of the whole. The problem becomes one of designing political institutions able to administer justice impartially for all concerned. Enlightenment is thus no longer expected from the progressive moderation of political elites, as we saw earlier, but from the learning process enacted by revolutionary events realizing specific principles of right and justice.

All these passages are consistent with the development of Kant's reflections on the role of the state, its relevance in promoting principles of justice, and the importance of human agency in transforming political institutions so that moral predispositions are promoted. They also make sense in the light of developments in Kant's analysis of teleology, placing more emphasis on the artificial intervention of human beings than on the benign assistance provided by nature to cultivate its innate predispositions. While Kant's earlier essays on history did reflect on the necessity of coercive laws, and also of a cosmopolitan political body, for placing collective constraints on freedom, the nature of the principles according to which such transformations ought to take place was never considered in any detail. Kant's later account of human nature, his clarification of the form and role of teleological principles in human reflection about progress, and the new emphasis placed on the necessity for moral imperatives in reforming political institutions required a much more sophisticated

analysis of the nature of the state, its relation to rights, and the kind of representation required to ensure that institutions expressed the collective will of those subjected to them.

4.5 The Critique of Colonialism and Commercial Relations

The developments in Kant's philosophy of history during the 1790s brought with them also a new evaluation of the relationship between colonialism and commercial relations. As we saw above, the essay on universal history was silent on the negative effects of unregulated commercial expansion and unambiguously celebrated the role of Western states in progressively establishing a universal legal order subjecting to European rule all other societies. Rooted in a hierarchical account of human races and supported by a stadial theory of human history, such an account culminated in the allegedly superior age of commercial relations.

Kant's later political writings are more nuanced on this point. Both the *Doctrine of Right* and his essay on perpetual peace revisit the traditional right of hospitality, central to the justification of commercial expansion since the writings of Vitoria, but take it in a different, anti-imperial, direction. The right to hospitality, also labelled as 'cosmopolitan' right, is limited to the conditions under which one can 'seek' commercial interaction with others without expecting to be treated with hostility for having made such an attempt. Although such a right protects human's natural interest in sociability and can be abused by those resisting commercial expansion, if one contrasts the alleged unsociable behaviour displayed by 'barbarian' peoples with that of states pursuing commercial profit, the latter, Kant emphasizes, is much more striking in its brutality. '[T]he *inhospitable* behaviour of civilized, especially commercial, states in our part of the world, the injustice they show in *visiting* foreign lands and peoples (which with them is tantamount to *conquering* them) goes to horrifying lengths,' he declares. 'When America, the negro countries, the Spice Islands, the Cape, and so forth were discovered' they were considered 'countries belonging to no one, since they counted the inhabitants as nothing'. The foreign soldiers called up under the pretext of setting up trading posts only brought with them 'oppression of inhabitants, incitement of the various Indian states to widespread wars, famine, rebellions,

treachery, and the whole litany of troubles that oppress the human race' (ZeF 8:358).

The critique of chartered commercial companies and their complicity in the oppressive actions of European states in the New World were far from original in the late eighteenth century. To take one relevant example, Adam Smith, often simplistically interpreted as a mere apologist of free markets and commercial expansion, denounced the pathologies of joint-stock trading companies for their corruption, mismanagement, and detrimental effects on the proper development of commercial sociability. In doing so, he focused on the same examples as Kant: the East Indies, the Spice Islands, and the activity of English and Dutch trading companies.²⁵ He highlighted the contradictions embedded in the activities of agencies who could not be trusted to be able to both pursue private profits and commit to acting as government representatives serving the interests of a whole country. Although Smith remained much more sceptical than Kant on the prospects of developing appropriate juridical and political relations to contain such contradictions and tensions,²⁶ the critique of colonialism developed from a critical account of chartered commercial companies was clearly common.

Kant's views are distinctive in placing the critique of colonialism in the context of a theory of justice which, on the one hand, develops themes already present in his earlier essays on history and, on the other hand, departs from them in significant directions. The *Doctrine of Right*, published in 1797, is particularly clear on the limits of unilateral appropriation of distant territories, and the conditions under which one can make rightful use of a particular piece of land and its resources. In contrast to *Conjectural beginnings of human history*, where agriculture and the farmer's attempt to protect the 'fruits of his labour' triggers the need to establish a common political authority guaranteeing one's property entitlements (MAM 8:119), the *Doctrine of Right* mentions the role of labour and agricultural activity, only to dismiss it as a criteria of appropriation: 'whoever

²⁵ For an excellent discussion of this critique, see Sankar Muthu, 'Adam Smith's critique of international trading companies—Theorizing "globalization" in the age of enlightenment', *Political Theory*, vol. 36, issue 2 (2008), pp. 185–212.

²⁶ For an analysis of Smith's scepticism on institutional solutions to international conflict, see Fonna Forman-Barzilai, 'Adam Smith as globalization theorist', *Critical Review* 14, no. 4 (2000), pp. 391–419.

expends his labor on land that was not already his has lost his pains and toil to who was first' (MdS 6:269).

Moreover, in the *Doctrine of Right*, Kant seems to have abandoned the stadial theory of history that characterized *Conjectural beginnings of human history*. In the latter, commercial society was seen as the last, superior, stage of a development that begins with 'the savage life of hunters', continues into a 'comfortable' and 'secure' pastoral existence, and follows the triumph of the agricultural way of life over the shepherding one. The *Doctrine of Right* displays a more tolerant attitude towards a variety of ways of life. Kant argues, for example, that nomadic peoples may be entitled to common possession of the land, citing Mongolia as an example (MdS 6:265), and he also insists that groups with different lifestyles can legitimately resist the imposition of a different method of interacting with the land, provided they do not interfere with each other. To mention one example: a hunting people, Kant says, can resist a pasturing or farming people since 'as long as they keep within their boundaries the way they want to *live* on their land is up to their own discretion' (MdS 6:266).

The implications of these reflections for the critique of colonialism are unambiguous. Since nomadic people are entitled to remain on the land that they occupy, they also have a right to exclude others whose attempts to enter into relations with them violate principles of justice. Settlement is legitimate, provided it does not encroach with the claim of native peoples to use the land in accordance with their habitual practices. Kant says that 'if these people are shepherds or hunters (like the Hottentots, the Tungusi, or most of the American Indian nations) who depend for their sustenance on great open regions, this settlement may not take place by force but only by contract'. Moreover, the kind of contract required is one that 'does not take advantage of the ignorance of those inhabitants with respect to ceding their lands' (MdS 6:353).

It is clear here that trade has to be placed in the context of rightful relations and can no longer be relied upon to pave the way to a peaceful political order. Whilst in Kant's earlier writings, commercial sociability was the tool through which nature guaranteed the emergence of political institutions protecting individual claims to property, here such institutions take precedence and are themselves a condition for the assertion of property rights and the development of commercial relations. Global interdependence implies that the absence of justice in one part of the earth

is immediately felt in another and efforts to resist such injustice are intertwined.²⁷ This argument differs significantly in both content and structure from the one we analysed in *Idea for a universal history*, which emphasized that it is hindering the individual pursuit of welfare that will threaten the stability of the whole international system, thereby dictating an end to war. The passage in *Perpetual Peace* where Kant articulates this thought is well known:

Since the (narrower or wider) community of the nations of the earth has now gone so far that a violation of right on *one* place of the earth is felt in *all*, the idea of a cosmopolitan right is no fantastic and exaggerated way of representing right; it is, instead, a supplement to the unwritten code of the right of a state and the right of nations necessary for the sake of any public rights of human beings and so for perpetual peace. (ZeF 8:360)

It is important therefore to insist that although political institutions are central to Kant's theory of human progress throughout his philosophical trajectory, both in the essay on history and in his later political writings, the analysis of the conditions under which they can emerge appears more sophisticated. At first, their justification is embedded in a narrative of gradual moral development out of the refinement of particular psychological predispositions, guaranteed by the benign intervention of nature. Although, Kant never completely abandons such references to nature, they cease to play a systematically important role, once the justification of the principles that allow us to think about nature as a teleologically organized system is modified.²⁸

To see this point, we can focus on the interpretation of passages in *Perpetual Peace* where Kant still refers to commercial relations, but in a slightly different perspective. Discussing the possible mechanism by which nations will join each other in the creation of a cosmopolitan condition, Kant argues that 'it is the spirit of commerce (*Handelsgeist*), which cannot coexist with war and which sooner or later takes hold of every nation' that will bring together nations. But the argument is qualified: it applies to those nations that 'the concept of cosmopolitan right will not have secured against violence and war' (ZeF 8:368). Since 'the power of money may well be the most reliable of all the powers

²⁷ See Muthu's chapter in this volume.

²⁸ I have tried to account for the persistence of such references to nature in Ypi, 'Natura daedala rerum?.'

(means) subordinate to that of a state, states find themselves compelled (admittedly not through incentives of morality) to promote honorable peace and, whenever war threatens to break out anywhere in the world, to prevent it by mediation, just as if they were in a permanent league for this purpose' (ZeF 8:368). And yet, the kind of assurance that nature provides here is not one that can allow us to conclude that a change in the desired direction will certainly occur; it is certainly not, Kant emphasizes, 'adequate for *predicting* its future'. What he is interested in is a reflective endorsement of a pattern that allows us, for practical purposes, to think about the world *as if* it were teleologically ordered, thus making it 'a duty to work toward this (not merely chimerical) end' (ZeF 8:368).

It turns out then that commercial relations are not important because they guarantee an end to war or prepare the entrance to a peaceful international order. Indeed, as the passage above reveals, Kant thinks that the commercial spirit plays a role precisely in those cases where war (for whatever reason) ceases to deliver the predicted outcome of motivating nations to entering into reciprocally rightful relations. Commerce is, for Kant, simply another route through which we might explain the emergence of global interdependence and communication; it no longer demarcates a privileged set of social relations or indicates an intermediate stage between a condition of conflict and one of perpetual peace. If commercial relations simply illustrate the empirical conditions under which cosmopolitan right can be established, there is no need for a moralized defence of them. The descriptive narrative Kant provides here is consistent with his explicit endorsement of protectionist measures, including the protectionism of nations like China or Japan when refusing to enter into commercial relations with European merchants. Kant no longer defends commercial relations from a normative perspective, he simply invokes them to explain under what circumstances people from different countries can come into contact with each other and create the empirical conditions that might in the future favour the emergence of principles of right. What really matters for his position is the duty to create just political institutions able to remedy the conflicts present in such conditions of interdependence, and only the actions of humans themselves are ultimately able to account for the possibility of this duty being realized.

4.6 Conclusion

We may wonder at this point what happened to the caution with which Kant approached the issue of humans legislating for themselves, and to the pessimistic remarks on the human beings' need for a master with which we began our analysis. It seems that Kant's views on this matter have come full circle: although in the later political writings the idea that out of the crooked wood of humankind nothing entirely straight can be produced is still present, Kant also believes in the force of moral imperatives to redirect the course of politics without need for further support from nature. The following passage from *Perpetual Peace* directly connects to some of the issues concerning the ability of humans to govern themselves raised by the essay on universal history:

It is then said that he who once has power in his hands will not let the people prescribe laws for him. A state that is once in possession [of the power] not to be subject to any external laws will not make itself dependent upon the tribunal of other states with respect to the way it is to pursue its right against them; and even a continent, if it feels itself superior to another that does not otherwise stand in its way, will not leave unused the means of strengthening its power by plundering or even conquering it and so all the plans of theory for the right of a state, the right of nations, and cosmopolitan right dissolve into ineffectual, impracticable ideals.

But the way in which this challenge is addressed illustrates the straightforward answers Kant's later writings provide to the question of what guarantees that human beings will make progress in the direction of building common political institutions:

Admittedly, if there were no freedom and no moral law based upon it and everything that happens or can happen is instead the mere mechanism of nature, then politics (as the art of making use of this mechanism for governing human beings) would be the whole of practical wisdom, and the concept of right would be an empty thought. But if one finds it indispensably necessary to join the concept of right with politics, and even to raise it to the limiting condition of politics, it must be granted that the two can be united.

The only plausible guarantee of moral development, then, is political progress conforming to the duty to promote principles of right. As Kant's later reflections indicate: to ask whether human beings will ever take that imperative seriously requires examining whether there is any evidence that they might have done so in the past and invoking that evidence as a possible, weak, assurance that they might continue to act in the same way

in the future.²⁹ The French Revolution provides an example or *sign* of that tendency and it is instructive precisely because it is directed by human agents. Out of the state, and out of the attempt to build state institutions that reflect the collective will of all citizens, there are no guarantees that moral progress will be possible, but 'it can be required of the one in power that he at least take to heart the maxim that such an alteration is necessary, in order to keep constantly approaching the end' (ZeF 8:372).

Commercial sociability therefore no longer indicates a privileged instance of human communication, facilitated by nature's will to promote the development of human moral predispositions, nor does it provide a route of transition from conflicts in the international sphere to improved political institutions. The development in the analysis of teleology that Kant completed during the 1790s implied that he could no longer rely on a spontaneous mechanism of coordination supported by an inherently beneficial teleological narrative clarifying how human beings can govern themselves collectively, despite the potential for corruption inherent in their nature. This development, combined with the increasingly sophisticated analysis of the state that Kant elaborated during the 1790s, provoked a return to a more artificial account of the development of political institutions, in line more with the contribution of Hobbes and Rousseau than with that of his Scottish philosophical heroes. As we have seen, a similar development also paved the way to a novel critique of European politics and trade, a clear condemnation of colonial exploitation, and a renewed emphasis on the legitimate intervention of sovereign states to contain the damaging expansion of commercial relations. It is easy to see, in the light of these reflections, why Fichte's advocacy of the closed commercial state was perceived by his supporters to follow naturally from Kant's *Perpetual Peace*.³⁰ But with that development, a new chapter in the history of ideas begins to unfold.

²⁹ See on this issue Ypi, 'On revolution in Kant and Marx.'

³⁰ See on this issue Isaac Nakhimovsky, *The closed commercial state: Perpetual peace and commercial society from Rousseau to Fichte* (Princeton, N.J.; Woodstock: Princeton University Press, 2011).

Acknowledgements

I am grateful to Katrin Flikschuh, Rainer Forst, the late Istvan Hont, Michael Sonenscher, and to audiences at the universities of Cambridge, Darmstadt, and McGill for comments on earlier versions of this paper.

Bibliography

- Bernasconi, Robert, 'Who invented the concept of race? Kant's role in the Enlightenment construction of race', in *Race* ed. Robert Bernasconi (Oxford: Blackwell, 2001), pp. 11–36.
- Fleischacker, Samuel, 'Values behind the market: Kant's response to the "Wealth of Nations"', *History of Political Thought* 17, no. 3 (1996), pp. 379–407.
- Forman-Barzilai, Fonna, 'Adam Smith as globalization theorist', *Critical Review* 14, no. 4 (2000): 391–419.
- Hedrick, Todd, 'Race, difference, and anthropology in Kant's cosmopolitanism', *Journal of the History of Philosophy*, vol. 46 (2008), pp. 245–68.
- Huneman, Philippe, *Metaphysique et biologie: Kant et la constitution du concept d'organisme* (Paris: Kime, 2008).
- Kleingeld, Pauline, *Kant and cosmopolitanism: The philosophical ideal of world citizenship* (Cambridge: Cambridge University Press, 2011).
- McCarthy, Thomas, *Race, empire, and the idea of human development* (Cambridge: Cambridge University Press, 2009).
- Mills, C. W., 'Kant's Untermenschen', in *Race and racism in modern philosophy*, ed. A. Valls (Cornell: Cornell University Press, 2005), pp. 169–93.
- Muthu, Sankar, *Enlightenment against empire* (Princeton: Princeton University Press, 2003).
- , 'Adam Smith's critique of international trading companies: Theorizing "globalization" in the age of enlightenment', *Political Theory*, vol. 36, issue 2 (2008), pp. 185–212.
- , 'Conquest, commerce, and cosmopolitanism in Enlightenment political thought', in *Empire and modern political thought*, ed. Sankar Muthu (Cambridge: Cambridge University Press, 2011), pp. 199–231.
- Nakhimovsky, Isaac, *The closed commercial state: Perpetual peace and commercial society from Rousseau to Fichte* (Princeton, N.J.; Woodstock: Princeton University Press, 2011).
- Niesen, Peter, 'Hospitality and colonialism', *Politics and Ethics Review*, vol. 3, issue 1 (2007), pp. 90–108.
- Pagden, Anthony, 'Stoicism, cosmopolitanism and the legacy of European imperialism', *Constellations* 7, no. 1 (2000), pp. 3–22.

- Sloan, Phillip, 'Preforming the categories: Eighteenth-century generation theory and the biological roots of Kant's a-priori', *Journal of the History of Philosophy*, vol. 40, issue 2 (2002), pp. 229–53.
- Storey, Ian, 'Nature's law and empire in Kant's "second thoughts" on race' (working paper).
- Ypi, Lea, 'Natura daedala rerum? On the justification of historical progress in Kant's guarantee of perpetual peace', *Kantian Review* 14, no. 2 (2010), pp. 118–48.
- , 'Teleology and system in Kant's Architectonic of Pure Reason', in *Politics and Metaphysics in Kant*, ed. by H. Williams, S. Baiasu, and S. Philstrom, (Cardiff: University of Wales Press, 2011), pp. 134–51.
- , 'The problem of systematic unity in Kant's two definitions of philosophy', in *Kant und die Philosophie in weltbürgerlicher Absicht. Akten des XI. Kant-Kongresses 2010*, ed. Stefano Bacin, et al. (Berlin: De Gruyter, 2013), vol. 1, pp. 773–86.
- , 'On revolution in Kant and Marx', *Political Theory*, vol. 42, issue 3 (2014), pp. 262–87.
- Zammito, John H., 'Kant's persistent ambivalence towards epigenesis, 1764–1790', in *Understanding purpose: Kant and the philosophy of biology*, ed. Philippe Huneman (Rochester: University of Rochester Press, 2007), pp. 51–74.
- Zoeller, Gunther, 'Kant on the generation of metaphysical knowledge', in *Kant: Analysen, Probleme, Kritik*, ed. Hariolf Oberer and Gerhard Seel (Würzburg: Koenigshausen & Neumann, 1988), pp. 71–90.

5

Colonists, Traders, or Settlers? Kant on Fair International Trade and Legitimate Settlement

Liesbet Vanhaute

Towards Perpetual Peace shows that Kant had high expectations of international trade. Praising the beneficial effects of the ‘spirit of commerce’, he conjectures that it may contribute to peaceful international relations. A country’s political leaders, he argues, will be less inclined to go to war if their citizens have business interests abroad. Under the beneficial effect of the ‘power of money’, nations will perceive each other as prospective trade partners rather than as potential military opponents.¹

In spite of this positive prognosis, more detailed remarks on international commerce are scarce in the remainder of the ‘Guarantee of perpetual peace’. Because of this, it is unclear how to interpret Kant’s positive evaluation of international trade. Does he believe that the market economy will inevitably bring about an increase of prosperity and peace? Or does he acknowledge that there may be unfair or exploitative forms of commerce? If so, how does he distinguish between the two?

¹ ‘nature wisely [...] unites nations [...] by means of their mutual self-interest. It is the *spirit of commerce* which cannot coexist with war and which sooner or later takes hold of every nation. In other words, since the *power of money* may well be the most reliable of all the powers (means) subordinate to that of a state, states find themselves compelled [...] to promote honorable peace’ (ZeF 8:368).

Earlier on in *Towards Perpetual Peace*, Kant implicitly hints at answers to (some of) these questions. In the essay's 'Third definitive article', he presents a critique of the colonialist and imperialist practices that trading companies engage in. As such, Kant clearly affirms that there are objectionable forms of international commerce. His critical remarks in *Towards Perpetual Peace* thus presuppose a normative theory of international migration and commerce. It is the aim of this chapter to make this theory explicit.

I will proceed as follows. The first section will focus on the colonialist practices Kant condemns. I will show that, even though Kant is critical of many colonialist settlement and trade practices, he by no means discards migration or commerce altogether. In the second section, it will become clear that the legitimate forms of settlement and commerce are enabled by contracts. I will consider Kant's theory of contract right in order to make the details of his view explicit. Finally, in the third section, I will question the internal consistency of Kant's general view on international commerce.

5.1 Problematic Colonialist Practices

In this section, I will present Kant's remarks on three distinct practices that traders may engage in.² I will start by discussing Kant's general critique of colonists' aggressive imperialist behaviour. After that, I will focus on the issue of colonizing open spaces that are used by nomads, and on political interference by colonists.

One of Kant's most straightforward anti-colonialist statements can be found in *Towards Perpetual Peace*'s 'Third definitive article'. There, he describes the injustice³ committed by traders as follows:

If one compares this with the *inhospitable* behavior of civilized, especially commercial, states in our part of the world, the injustice they show in *visiting* foreign lands and peoples (which with them is tantamount to *conquering* them) goes to horrifying lengths. When America, the negro countries, the Spice Islands, the Cape, and so forth were discovered, they were, to them, countries belonging to no one, since they counted the inhabitants as nothing. In the East Indies (Hindustan), they brought in foreign soldiers under the pretext of merely proposing to set up

² Kant discusses these practices at different places in his writings on right and politics, but he is concerned with criticizing problematic forms of colonialism in all of them.

³ An 'injustice that [...] takes on terrifying proportions' (Zef 8:358).

trading posts, but with them oppression of the inhabitants, incitement of the various Indian states to widespread wars, famine, rebellions, treachery, and the whole litany of troubles that oppress the human race. (ZeF 8:358)

In this quotation, Kant accuses colonists of many different wrongdoings, ranging from lying and stealing to causing general mayhem in the form of famine, uprisings, and even war. What all these problems have in common, Kant states, is that they are the result of *inhospitable behaviour* displayed by colonists. The colonists' damaging impact on the societies they arrive in shows that they have failed to behave as the *guests* they properly are. They go far beyond their natural right to *visit* foreign shores.

The natural right to visit arises from the fact that originally, the earth's surface was possession in common. Hence, 'no one had more of a right to be at a given place on earth than anyone else' (ZeF 8:358). Even once the land is appropriated, something of this original right lingers: when a person lands on foreign territory,⁴ she has the right 'not to be treated with hostility' and to 'seek commerce with the old inhabitants' (ZeF 8:358). When colonists would do nothing more than *visit* in this sense, they would commit no injustice. But colonizing is more than visiting: rather than merely *offering* commerce, colonists are traders who *conquer* the lands on which they arrive, generating a destructive dynamic of violence, subjugation, and exploitation.

Kant's conception of a 'right to visit' already shows that he believes there is nothing principally wrong with either international commerce or immigration. The above-discussed right to visit gives any traveller landing in a foreign country a right to make a commercial proposal to the inhabitants of a country.⁵ Of course, this offer may be refused; but if it is accepted, international trade relations can result. Confirming this, in the *Doctrine of Right* Kant insists that a political leader ('the lord of the

⁴ Because the earth's surface is a *sphere*, 'they cannot disperse infinitely but must finally put up with being near one another' (ZeF 8:358).

⁵ See also Peter Niesen, 'Colonialism and Hospitality', *Politics and Ethics Review* 3, no.1 (2007): 90–108. Niesen takes Kant's permissive attitude towards the protectionist policies of China and Japan as an indication that Kant does not plead for freedom of economic speech. As a result, there would be no unrestricted right to make commercial offers. The right to 'attempt [...] interactions with [...] inhabitants' would thus *not* include a right to attempt commercial relations. This seems to me implausible: Kant presents this 'hospitality principle' as a way in which the 'right to the *surface*' (i.e. common possession of the earth surface) can be used 'to establish commerce with one another'. It may be possible to accommodate for Kant's views on China and Japan in another way (cf. section 5.2).

land') can promote immigration, 'provided that [the native inhabitants'] private ownership of land is not curtailed by it' (MdS 6:338). So, in spite of the risks involved, commerce and immigration are principally warranted. Neither of them *necessarily* leads to the destructive dynamic described in *Towards Perpetual Peace*.

In the *Doctrine of Right*'s section on cosmopolitan right, Kant virtually repeats the argument of the above-discussed 'Third article' of *Towards Perpetual Peace*. Only one paragraph differs: rather than criticizing the colonists' imperialist tendencies in general, Kant focuses on the colonization of lands used by nomads:

The question arises, however: in newly discovered lands, may a nation undertake to *settle* and take possession in the neighbourhood of a people that has already settled in the region, even without its consent?

If the settlement is made so far from where that people resides that there is no encroachment on anyone's use of his land, the right to settle is not open to doubt. But if these peoples are shepherds or hunters [...] who depend for their sustenance on great open regions, this settlement may not take place by force but only by contract. (MdS 6:338)

Clearly, Kant severely limits colonists' rights to appropriate lands in the proximity of nomad tribes. None of the 'great open regions' used by wandering shepherds or hunters are to be appropriated unrestrictedly. Now interestingly, this is not immediately backed up by his general theory of right. The *Doctrine of Right* gives reason to believe that the nomads can only claim restricted areas—the 'great open regions' would be open for settlement and even for acquisition by immigrants.

Allow me to discuss this further. First, it should be noted that the nomads' claim to possession over *some* areas of land is unproblematic. Emphasizing that, for example, in Mongolia, 'all the land belongs to the people' (MdS 6:265), Kant insists that a nomad people can collectively own parcels of land.⁶ By inhabiting lands and keeping their belongings on it, nomads give a sign that they take possession.⁷ As a consequence,

⁶ The nomads' possession is rightful, but only provisionally so: in so far as the nomads have unilaterally claimed possession of lands in the state of nature, this grants them a right that can only be secured in a civil condition. The civil condition alone can give rights a peremptory status, cf. MdS 6:267; for a discussion of the provisional/peremptory distinction, see Katrin Flikschuh, *Kant and Modern Political Philosophy* (Cambridge: Cambridge University Press, 2000)

⁷ Kant insists that this sign can take many different forms: 'in order to acquire land is it necessary to develop it (build on it, cultivate it, drain it, and so on)? No. For since these

they have a natural property right to the inhabited parcel, which is no longer possession in common of all human beings (as it originally was).⁸ The land nomads live on rightfully belongs to them, and colonists should refrain from settling on it.

But in the quotation above, Kant seemed to be wary of every act of settlement *in the proximity of* land used by nomads. This extends to a very large area: as Kant remarks, nomads use 'great open regions' (MdS 6:353). As a relatively small group, they occupy vast areas of lands that may also be useful to other people. Interestingly, Kant's *Doctrine of Right* suggests that this may not be legitimate. Individuals or groups who want to acquire land can only appropriate as much as they can control. Kant specifies that

the capacity for controlling [land] extends [...] as far as whoever wants to appropriate it can defend it—as if the land were to say, if you cannot protect me you cannot command me. (MdS 6:265)

This would imply that nomads only legitimately possess the areas of land that they can defend. If there are parts of the land that they cannot defend, these areas do not belong to them. As such, Kant's theory of right suggests that there may be fringes of nomad land that are not justifiably acquired by the nomads. Consequently, on the basis of natural right alone, foreign settlers should be allowed to take these lands.

So if Kant refuses colonists the right to settle in the proximity of nomads, he extends the nomad people's rights: even areas over which they have no natural property right must remain under their control.⁹ Kant insists that if outsiders want to settle¹⁰ in the vicinity of nomads, the nomads must explicitly *consent* to this. Settlement on the outskirts of land inhabited by nomads 'may not take place by force but only by contract'.

forms (of specification) are only accidents, they make no object of direct possession and can belong to what the subject possesses only insofar as the substance is already recognized as his. When first acquisition is in question, developing land is nothing more than an external sign of taking possession, for which many other signs that cost less effort can be substituted' (MdS 6:265).

⁸ 'All human beings are originally [...] in a possession of land that is in conformity with right [...] This kind of possession [...] is a possession *in common* because the spherical surface of the earth unites all the places on its surface' (MdS 6:262).

⁹ That Kant is quite sympathetic to nomad people is also clear from his description of them as having 'ennobled themselves by [the] feeling of freedom' which is, however, not 'the concept of freedom under moral laws,' but 'the mere sensible representation of outer freedom' (ApH 7:269).

¹⁰ Settlement is possible without acquisition, cf. section 5.2.

That is, strangers who want to inhabit the outer limits of nomad territory must come to a contractual agreement with the nomads. This gives the nomads a degree of control over the non-defendable parts of their land.¹¹

Why, precisely, does Kant grant the nomads these extended rights? In order to answer this question, note that he explicitly states that any native people has the right to determine for itself the way in which the lands are used to provide for its needs:

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

In line with this, it seems plausible to assume that Kant extends the rights of nomads as far as is necessary to protect their way of life. Nomads are to retain a degree of control over the lands surrounding them because intrusive settling in these regions could pose a hazard to their nomadic lifestyle. Conversely, this is a reason to restrict the rights of all traders landing in or near lands used by nomads: if they set up trading posts, build houses, roads, etc., they dispense of the 'great open regions' which are the necessary precondition of the nomadic lifestyle. Kant thinks this is objectionable: like all indigenous societies, nomadic communities have a right to maintain their original ways. It is up to them to determine how they want to gain from their commonly possessed lands. This means that they should be able to demand that settlers refrain from interfering with their socio-economic development.

A third practice that colonists tend to engage in, and that Kant finds problematic, is that of unwarranted political intrusion. In the *Doctrine of Right*, he writes:

we [are] not [...] authorized to found colonies, by force if need be, in order to establish a civil union with them and bring these human beings [...] into a rightful condition. (MdS 6:266)

Foreigners are denied the right to bring a non-state people into a civil condition. But this seems to imply that they cannot acquire land either, as the entitlement to found a state and the right to own land mutually imply

¹¹ cf. the discussion of contract right in section 5.2 of this chapter.

each other. That is, for Kant, one cannot rightfully own a piece of land without having the right to secure this possession from misappropriation by others. But security of possession is only possible in a state. As such, a person who provisionally possesses a piece of land in the state of nature may demand of his neighbours that they join him in a state, where rightful possession is enforced by a coercive authority. Hence, possessing a piece of property in a certain region gives a person the right to trigger the process of founding a state in this region. In the words of Peter Niesen:

a rightful *prima facie* claim to ownership entitles one to coerce all neighbours—that is, all persons with whom there could arise quarrels about property—into a civil condition. (MdS 6:266)

Now, as became clear earlier on, it is exactly this right that Kant denies foreigners. He writes: ‘we [are] not [...] authorized to found colonies [...] in order to establish a civil union with them and bring these human beings into a rightful condition’ (MdS 6:266). Hence, newcomers to a region where people live in a state of nature cannot provisionally acquire lands. If they could, they would be entitled to demand of the natives that they found a state with the would-be settlers, and Kant denies the latter this right. As Peter Niesen suggests, Kant wants to protect a people’s political development towards a state from alien intrusions. A people must come to establish state institutions for itself—political change cannot be set in motion by outsiders.

Kant claims that, if from within a non-state people there does not arise the dynamic of introduction of a private law order, then it must not be induced from abroad.¹²

Rounding up this section, I conclude that Kant’s critical remarks on three distinct colonialist practices show him to be wary of two main dangers. First, he suspects that whenever traders arrive on foreign soils, they will be tempted to use violence and oppression in order to extend their possessions and exploit the native inhabitants. When they do so, they commit an act of injustice: they disregard the principle of hospitality. Where this happens, international trade degrades into deplorable situations of colonialism and imperialism.

But even without violence and oppression, foreign traders can do wrong. Whenever their practices fail to respect the native people’s stage of

¹² Niesen, ‘Colonialism and hospitality’.

development, their behaviour deserves to be criticized. Kant insists that both a people's *socio-economic* development and the rhythm of its *political* growth must be respected. If a native people use their land for hunting and grazing their animals rather than for agriculture or commerce, outsiders have no right to interfere. Also, if natives are not yet inclined to take the step towards founding a state, foreigners have no right to force them to do so.

It should be clear that nothing in the above critiques implied that Kant discards international trade altogether. Thus, this section's conclusions can also be formulated positively: despite malpractices, international commerce is warranted. There are ways in which international traders may proceed rightfully. Which are these? How can foreign traders legitimately stay on the lands which their trading partners inhabit? And what form should their transactions take in order to be fair? The next section will provide an answer to these questions.

5.2 Contracts

Of the three critiques that were discussed in the preceding section, the ban on foreign political interference in the state of nature has the strongest implications. It seems that foreign merchants must refrain from appropriating lands in the regions where they land. But arguably, if traders are to maintain durable trade relations on foreign soil, they will need a place to stay and keep their goods. They should be able to reside in the regions they frequent for the purpose of trade with their inhabitants. Even if they are not allowed to acquire land, they must have a right to *settle*.

Kant can grant foreigners this right due to his very restrictive definition of settlement. Settlement is defined as the activity of staying on land without acquiring or making a claim to it. It is thus a very impermanent and non-engaging way of residing, depending entirely on the subject's physical presence on the land:

Residing [Sitz] on land (*sedes*) is to be distinguished from being in possession (*possessio*) of it, and settling or making a settlement (*incolatus*), which is a lasting private possession of a place dependent upon the presence of the subject on it, is to be distinguished from taking possession of land with the intention of some day acquiring it. (MdS 6:251)

A settler's claim on the land on which he finds himself is very weak. A settlement is more like a camp than a permanent residence: it grants the

settler no long-term rights. In so far as it depends on physical occupancy, it lacks the intelligible aspects of true possession:

I shall not be able to say that the land on which I have lain down is mine because I am on it, but only if I can assert that it still remains in my possession even though I have left the place. (MdS 6:247–8)

Because a settler's claim over the land on which he finds himself is much weaker than that of a landowner, Kant insists on a contract between settlers and their indigenous neighbours:

citizens of the world [have a right to] try to establish community with all and, to this end, to *visit* all regions of the earth. This is not, however, a right to *make a settlement* [...]; for this, a specific contract is required.¹³

A contract can give foreign merchants a more permanent right to stay where they have landed. As I suggested previously, settlers as such have no right to demand that others keep away from their lands when they are physically absent: a settler's ownership is merely empirical. Full, intelligible possession over the land would provide settlers with more security, but as they are foreigners, they cannot rightfully claim such possession as long as the locals themselves live in a state of nature with one another (cf. section 5.1). Hence, foreign merchants need to take a different strategy. They must come to an agreement with the locals living around them, making a number of arrangements with them. This is the 'specific contract' Kant speaks of. Clearly, this contract is necessary because of the empirical, temporary, and uncertain character of settlement. It gives settlers a right to make stronger claims upon their neighbours. Contracts are a way in which settlers can acquire rights they did not have before.¹⁴

Once merchants have settled in the manner described above, the principle of hospitality right allows them to offer commerce to the locals and, if these accept, exchange goods. But how is this to take place? That is, how

¹³ The omitted specification 'on the land of *another nation*' could perhaps be taken to mean that the right to make a settlement under conditions laid down in a contract is limited to settlement in regions where a state has already been founded. However, given the fact that Kant allows settlement nearby nomadic people, it seems implausible that we should interpret this specification so strictly.

¹⁴ This corresponds to the characterization of contracts as 'the legal means through which persons are entitled to make arrangements for themselves and so to change their respective rights and duties'. In Arthur Ripstein, *Force and Freedom: Kant's Legal and Political Philosophy* (Cambridge, Mass. & London: Harvard University Press, 2009).

can trade relations between foreign merchants and indigenous peoples be fair and mutually advantageous rather than harmful and exploitative?

According to Kant's theory of private right, a just exchange of goods is one that takes the form of a contract. A contract does not only enable rightful residence, but also fair transactions. Contracts are thus in two ways indispensable for international fair trade: they regulate its two essential features of relocation and transaction.¹⁵

Kant generally defines contracts as the means to acquire someone else's deed.¹⁶ One party (A) acquires the other party's (B's) action. In the case of commercial contracts, this action involves B putting an object into A's possession. In this way, *rights* are acquired: A acquires the right to a thing, B acquires the right to whatever A promised in return.

Kant further explicates the notion of a contract by separately discussing two moments that constitute contractual agreement. Whenever two parties contractually agree to something, he argues, one party makes an offer to which the other assents, and subsequently, one party makes a promise, which the other party accepts.

By specifically discerning the first moment of *offering and assenting*, Kant emphasizes that contracts start with two parties having the voluntary, positive intention to exchange goods.¹⁷ A commercial contract is an agreement in which no party has coerced the other to engage in the transaction.¹⁸ That is, if you and I contractually agree to trade a chicken for a bike, this agreement is rightful only if there has been a moment when I offered you a chicken and showed interest in your bike, and you, vice versa, expressed a

¹⁵ Kant characterizes commercial contracts as onerous contracts, cf. *Metaphysics of Morals* 6:285. Byrd and Hruschka point out that the 'table of contracts' contains the different aspects a possible empirical contract can have: it is not the case that any empirical contract neatly fits one of the categories of contracts. Sharon Byrd and Joachim Hruschka, *Kant's Doctrine of Right: A Commentary* (Cambridge: Cambridge University Press, 2010).

¹⁶ 'By a contract I acquire something external. But what is it that I acquire? Since it is only the causality of another's choice with respect to a performance he has promised me, what I acquire directly by a contract is not an external thing but rather his deed, by which that thing is brought under my control so that I make it mine.—By a contract I therefore acquire another's promise (not what he promised), and yet something is added to my external belongings: I have become *enriched* by acquiring an active obligation on the freedom and the means of the other' (MdS 6:273–4).

¹⁷ Kant emphasizes that engaging in a contract cannot in any way be imposed on a person: it cannot, for example, be the result of a person's crime, forcing him to compensate the other person (MdS 6:271); it is also not the result of a person's negative actions towards an object, such as abandoning it.

¹⁸ MdS 6:271.

desire to have my chicken and a willingness to give up your bike. This insistence on the voluntary character of commercial exchange is also present in Kant's formulation of hospitality right. The principle of hospitality only makes it possible to 'seek commerce with the old inhabitants'.¹⁹ Whether there will actually be commercial exchange is dependent upon whether the offer is attractive to the locals. Fair international trade, like any form of rightful, contract-regulated commerce, starts with nothing but an offer.²⁰

Once the primary declarations of offering and assenting are made, contractual agreement comes down to one party *promising* something (for example, putting a good in the possession of the other party) and the other *accepting* the promise. Given that I like your bike and you like my chicken, I promise you to give you my chicken if you give me your bike. In order to see how these successive declarations can give rise to a right, Kant argues that we must understand them as declarations made by two wills that are *united* in agreement.²¹ Promises and acceptances are empirical

¹⁹ ZeF 8:358.

²⁰ It may be this voluntary aspect of trade that leads Kant to insist that if the people of certain countries (he gives the example of China and Japan) do not wish to engage in trade because they fear negative consequences, it is their right to refrain from it. However, Kant's view on China and Japan may not be entirely consistent with his general theory. Kant suggests that the Japanese state even prevents citizens from listening to the proposals (even the Dutch, the only people who can enter the country, are 'exclude[d] [...] from community with the natives' (ZeF 8:365)). This would be incompatible with hospitality right, which stipulates that it should always be possible to propose commerce, even if one party has the right to reject the commercial proposals raised by the other. Peter Niesen believes that Kant's view on China and Japan and hospitality right can be made compatible (Niesen, 'Colonialism and Hospitality'). He argues that China and Japan have a right to prevent others from even offering trade because freedom of economic speech is not necessary. Political speech, on the other hand, must be free. The reason for this is that it can help to bring about a reform of unequal divisions of property (which may result from contingent original acts of appropriation). I do not see, however, why this is a reason to allow political speech and ban economic proposals. Some cases of inequality resulting from original appropriation might easily be repaired by trade relations, provided of course that they are fair. Take, for example, an unfair division of lands on which vitamin-C containing fruits and vegetables can be grown. This inequality (which is not so innocent, as it may be harmful to the health of the inhabitants) may also be remedied by commerce with a country that has ample supplies of fruits and vegetables. Political reform may not even be necessary in this case. But if inequality in the original division might be resolved by commerce, it does not entail the right to ban commercial speech.

²¹ 'But what belongs to the promisor does not pass to the promisee (as acceptant) by the *separate* will of either but only by the *united* will of both, and consequently only insofar as both wills are declared *simultaneously*. But this cannot take place by empirical acts of declaration, which must necessarily *follow* each other in time and are never simultaneous' (MdS 6:272).

acts that are carried out by two separate parties who may nevertheless be thought of as having a 'single, common will' (MdS 6:273). This will cannot be reduced to the successive empirical declarations. From the perspective of this common will, the declarations made by the two parties are expressions of a *simultaneous* agreement.

In referring to such a common will, the moment of promising and accepting establishes a right. Kant emphasizes that contractual agreement establishes primarily a right to another's *action*, which is not directly equivalent to acquiring a thing:

By contract I acquire something external. But what is it that I acquire? Since it is only the causality of another's choice... what I acquire directly by a contract is not an external thing but rather his deed, by which that thing is brought under my control so that I make it mine.... This *right* of mine is, however, only a right *against a person*...; it is not a *right to a thing*. (MdS 6:273)

In order to acquire the *thing*, the action to which I have a right must be carried out. That is, the person with whom I have contractually agreed to transfer a good must *deliver* me this good. Now, delivery of objects is the necessary empirical consequence of contractual agreement, but it is external to the agreement itself. It does not occur simultaneously with the agreement of the two parties, but only as its *consequence*. And though, from the perspective of right, this result is necessary, it is not automatically guaranteed. Even if we agreed to trade a chicken for a bike, it still remains possible that when you give me your bike, I immediately ride away on it, taking with me the chicken that I promised you in return. Thus, for the rights that are acquired in commercial contracts to be secured, a third party must be introduced. Kant writes:

every contract consists in itself, that is, considered *objectively*, of two acts that establish a right, a promise and its acceptance. Acquisition through acceptance is not a *part* of a contract [...] but the rightfully necessary result of it. But considered *subjectively*—that is, as to whether this rationally necessary result [...] will actually *result* [...] accepting the promise still gives me no guarantee that it will actually result. Since this guarantee belongs externally to the modality of a contract, namely *certainty* of acquisition by means of a contract, it is an additional factor serving to complete the means for achieving the acquisition that is the purpose of a contract.—For this, three persons are involved: a *promisor*, an *acceptor* and a *guarantor*. The acceptor [...] gains [by means of the guarantor] the means of coercion for obtaining what is his. (MdS 6:284)

Apparently, the binding force of trade contracts depends on the presence of a third party that has the power to coerce the other parties. This

party guarantees that what was offered and has been promised will actually happen. Without it, agreements may lack consequences. Promises *may* be kept, and if they are kept, fair transactions are possible, but it is not necessary that this *will* be the case. To ensure this, an authority with the power to coerce is needed. This is also true for settlement contracts: party A may agree with party B that B may reside on grounds controlled by A for some period of time, but it is not guaranteed that A and B live up to their promises throughout this entire period. To be sure that what was agreed upon will actually happen, a third party with the capacity to coerce is necessary. The regulation of settlement and transaction by means of contract right seems to demand an institution that can enforce rights.

5.3 Trade and Peace

In this final section of the chapter, I will critically evaluate Kant's view as I have presented it. I will focus on its consistency with the positive prognosis on international trade that Kant advances in *Towards Perpetual Peace*. As I remarked in the introduction, Kant expects international commerce to lead to a peaceful situation of international justice. But this may become problematic in the light of his normative theory of commerce.

In the above, it became clear that commercial transactions must involve contractual agreement in order to be fair. This means that they must include a moment of making promises, and that their rightful consequence is the fulfilment of this promise. But though contractual agreement should lead to the realization of what was agreed upon, this result is not *guaranteed*. In order to guarantee that the contract is carried out, there needs to be a third party that can enforce rights. It seems that a coercive authority is needed to back up contractual agreement.²²

But with respect to international trade, which authority is to provide the necessary guarantee? First, consider the case of trade relations in regions where people live in a state of nature. As these people have not yet founded a rightful state, it is unclear how justice will be administered. Even if there are some arbitral instances that can keep order and decide on disputes, it is far from sure that justice will prevail.²³ As there are no public laws that outweigh

²² In this, contract right is like right in general: it is 'connected with an authorization to use coercion' (MdS 6:231).

²³ 'For a *state of nature* is not opposed to a social but to a civil condition, since there can certainly be society in a state of nature, but no *civil* society (which secures what is mine or yours by public laws). This is why right in a state of nature is called private right' (MdS 6:242).

private interests, arbitrators will lack generally accepted principles to guide their decisions.²⁴ In such a situation, there may exist transactions that are fair and mutually beneficial; but this seems a matter of good luck rather than of justice.²⁵

Interestingly, the situation is not very different in the case of international trade relations with people who *have* founded a state. As long as there is no international law order, hence, as long as states find themselves in the international state of nature, there will be no supra-national system of right. Thus, contracts cannot be binding. This does not mean that agreements cannot be made, and that they cannot be respected. However, there is no *necessity* that the contract will be effectuated. Because they are so insecure, trade relations are at best *contingently* right.

A full guarantee that trade will be fair can only be reached when political institutions make it possible to enforce contracts both nationally and internationally.²⁶ As is well known, Kant proposes a 'federalism of free states' to do so;²⁷ but one could argue that for the sole purpose of regulating trade, something like a world trade organization could be sufficient. But whatever the precise solution may be, it is clear that in order to make international trade relations properly right, the 'international state of nature' is to be abandoned. It is international justice, and nothing less, that guarantees fair trade.

In the light of this, Kant's hopeful prognosis on international trade becomes questionable. It seems that before there are international

²⁴ 'It is true that the state of nature need not, just because it is natural, be a state of *injustice* (*iniustus*), of dealing with one another only in terms of the degree of force each has. But it would still be a state *devoid of justice* (*status iustitia vacuus*), in which when rights are *in dispute* (*ius controversum*), there would be no judge competent to render a verdict having rightful force' (MdS 6:312, my italics).

²⁵ Byrd and Hruschka argue that Kant's distinction between the three 'leges' should be interpreted as follows. Rights can be considered either as principles that are valid a priori (*lex iusti*), as applying relevantly to concrete human actions and circumstances in reality (*lex iuridica*), or as necessary (*lex iustitia*). In the state of nature, rights may be possible and real, but they are never necessary—it is only in the state of right that necessity applies to them. Conversely, rights in the state of nature may be thought of as contingently possible. See Sharon Byrd and Joachim Hruschka, 'Lex iusti, lex iuridica und lex iustitiae in Kants Rechtslehre', *Archiv für Rechts—und Sozialphilosophie* 91, no. 4 (2005): 484–500.

²⁶ This confirms Byrd and Hruschka's claim in *Kant's Doctrine of Right: A Commentary* that 'Kant calls for legal regulation of international commercial trade.'

²⁷ Though Habermas, among others, argues that to universally administer principles of justice, a stronger solution than Kant's 'league of nations' is necessary. See Jürgen Habermas, 'Kant's Idea of Perpetual Peace, with the Benefit of Two Hundred Years' Hindsight', in James Bohman and Matthias Lutz-Bachmann (eds.), *Perpetual Peace: Essays on Kant's Cosmopolitan Ideal* (Cambridge, Mass.: MIT Press, 1997).

institutions for administering justice, trade relations are not necessarily beneficial. Some transactions may be rightful and mutually advantageous, but it is equally likely that they become unfair, abusive, or exploitative. As such, trade is as probable to stimulate conflict, repression, and war, as peace and justice. International trade in the state of nature may not be able to live up to Kant's high expectations.

Now, there is an obvious Kantian answer to this problem. The positive prognosis should be understood in the specific context of the 'Guarantee of perpetual peace' (1795), where Kant makes use of an explanatory strategy that is critically legitimated in the *Critique of Judgement* (1790). This strategy involves introducing the concept of a teleological reflective judgement. In such a judgement, the concept of an 'end' is applied to organisms in nature, as well as to nature as a whole (including human society).²⁸ Teleological judgement makes it possible to present some phenomena in society as ends and others as means to this end.

The manifest similarities between Kant's sketch of humanity's progress in *Critique of Judgement* (which he explicitly presents as an example of teleological judgement) and the 'Guarantee of perpetual peace' suggest that in the latter text, too, Kant is knowingly introducing teleological judgements.²⁹ So, when Kant is emphasizing the peace-promoting potential of international commerce, his statements have a specific status. As teleological, they indicate relations of usefulness and purposiveness. In a teleological judgement, phenomena are interpreted as means to an end, rather than being explained in terms of their constitutive causes.³⁰ In line with this, Kant's strategy in

²⁸ 'only matter insofar as it is organized [...] necessarily carries with it the concept of itself as a natural end [...]. However, this concept necessarily leads to the idea of the whole of nature as a system in accordance with the rule of ends' (KdU 5:379–80).

²⁹ For a detailed analysis of *Towards Perpetual Peace* in the light of the *Critique of Judgement*, see Lea Ypi, 'Natura daedala rerum? On the justification of historical progress in Kant's guarantee of perpetual peace', *Kantian Review*, vol. 2 (2010): 118–48.

³⁰ Teleological judgement is not constitutive, but regulative: it does not apply the objectively valid principle of a 'cause', but the subjectively necessary principle of an 'end'. As such, it is an insightful addition to natural science without it being natural science itself. 'It is self-evident that this is not a principle for the determining but only for the reflecting power of judgment, that it is regulative and not constitutive, and that by its means we acquire only a guideline for considering things in nature, in relation to a determining ground that is already given, in accordance with a new, lawful order, and for extending natural science in accordance with another principle, namely that of final causes, yet without harm to the mechanism of nature' (KdU 5:379). For a more extensive discussion of reflecting judgement and teleological judgement, see Paul Guyer, 'Kant's Principles of Reflecting Judgment', in *Kant's Critique of the Power of Judgment* (Lanham, Rowman & Littlefield, 2003); for my own

the 'Guarantee of perpetual peace' is to start with the idea of an *end*—international peace—and subsequently, to look for phenomena in society that can be understood as contributing to the realization of this end.

This suggests that Kant's positive prognosis on international trade must not be read as the conclusive assertion that without trade, there will never be peace; or that if there is commerce, peace will certainly follow. It is rather the result of a reflection on historical development guided by the idea of international peace. Throughout this reflection, certain aspects of human interaction are highlighted as meaningful indications of the possibility of peace, and international trade is one of these aspects.

So how can international trade be interpreted as an indication of the possibility of peace? There are two distinct ways in which Kant connects trade with peace. First, despite the absence of a coercive authority in the state of nature, it is likely that many commercial transactions will proceed correctly.³¹ Even without a third party acting as a guarantor, it is *possible* that two parties will voluntarily engage in a transaction and keep the promises they made. Such transactions are not necessarily just, but from a teleological perspective they can be interpreted as *provisionally right*: they foreshadow the civil condition in which right is publically administrated. In so far as in any successful transaction in the state of nature, individuals restrain themselves and respect the rights of others, they do precisely what they would be coerced to do in the civil condition: limit their freedom so that it can coexist with the freedom of others. Hence, in any mutually advantageous transaction in the state of nature, individuals implicitly consider themselves and others as subjects whose freedom may need to be restrained in order to protect the right of others.³² In this sense, the existence of successful

interpretation of Kant's use of teleological concepts to interpret human society, see Liesbet Vanhaute, 'How biological is human history? Kant's use of biological concepts and its implications for history as moral anthropology', in *Logical Analysis and History of Philosophy* 14 (2011): 154–68.

³¹ There are good Kantian reasons to believe that human beings are likely to make fair transactions, even without an authority coercing them to do so. As Kant's example of the shopkeeper in the *Groundwork for the Metaphysics of Morals* shows, it is in a tradesman's advantage to behave honestly (G 4:397). A tradesman who repeatedly acts dishonestly will make his trade partners suspicious, so they will no longer want to do business with him. And without trading partners or customers, a tradesman can make no further profit. Hence, in the long run, it is in his advantage to trade fairly. A prudent, rational merchant will be honest, as honesty is essential for long-term success in commerce.

³² So, with respect to rightful transaction, Katrin Flikschuh's remark on rightful unilateral acquisition in *Kant and Modern Political Philosophy* is pertinent. Subscribing to a point made

transactions in the international state of nature foreshadows the setting up of institutions for internationally administering right.

Trade relations also indicate the possibility of peace in a second, more straightforward way. In the 'Guarantee of perpetual peace', Kant writes:

[w]hen salt and iron were discovered, perhaps the first articles, everywhere in demand, of a trade among various peoples, [...] they were first brought into a *peaceable relation* to each other and so into understanding [and] community. (ZeF 8:364)

Trade relations, it seems, lead to international peace simply because they are peaceful ways of interacting with others. As a practice in which different people engage in regular contact and have common interests, commerce affects the way people think about each other, thus bringing about 'understanding and community'.

So, it seems Kant *is* optimistic about trade. But it should be noted that his optimism is not an uncritical belief in the advantageous effects of a market economy: as I showed in sections 5.1 and 5.2, Kant thinks that international commerce does not automatically have beneficial results. As there are harmful as well as legitimate ways of engaging into trade, regulation is necessary to prevent malpractice. A supra-national authority with the power to act as a 'guarantor' of commercial contracts could provide such regulation. Such an international institution could make sure that international trade proceeds equitably. But even without this assurance, mutually advantageous transactions can occur. The existence of such mutually beneficial trade contacts, even in the state of nature, can be interpreted as a sign that peace is possible.

Bibliography

Byrd, Sharon and Hruchka, Joachim, 'Lex iusti, lex iuridica und lex iustitiae in Kants *Rechtslehre*'. *Archiv für Rechts—und Sozialphilosophie* 91, no. 4 (2005): 484.

by Herb and Ludwig, she writes: 'In so far as subjects' unilateral acts of acquisition in the natural condition *anticipate* the civil condition, the strict dichotomy between "natural condition" and "civil condition" disappears and is replaced by the distinction between provisional Right and peremptory Right. Instead of a strict demarcation between provisional Right and peremptory Right, Kant envisages the gradual but steady transformation of provisional into peremptory right as a process of reform which will eventually encompass the spherical surface of the earth as a whole. The coming together of peoples in the idea of disjunctive possession in common envisages a gradual dismantling of boundaries that hinder the development of relations of Right between subjects.'

- , *Kant's Doctrine of Right: A Commentary* (Cambridge: Cambridge University Press, 2010).
- Flikschuh, Katrin, *Kant and Modern Political Philosophy* (Cambridge: Cambridge University Press, 2000).
- Guyer, Paul, 'Kant's Principles of Reflecting Judgment', in *Kant's Critique of the Power of Judgment* (Lanham: Rowman & Littlefield, 2003), 1–61.
- Habermas, Jürgen, 'Kant's Idea of Perpetual Peace, with the Benefit of Two Hundred Years' Hindsight', in *Perpetual Peace: Essays on Kant's Cosmopolitan Ideal*, eds. James Bohman and Matthias Lutz-Bachmann (Cambridge, Mass.: MIT Press, 1997), 113–54.
- Kersting, Wolfgang, *Wohlgeordnete Freiheit: Immanuel Kants Rechts—und Staatsphilosophie* (Paderborn: Mentis, 2007).
- Kleingeld, Pauline, 'Kant's Cosmopolitan Law: World Citizenship for a Global Order', *Kantian Review*, vol. 2 (1998): 72.
- Niesen, Peter, 'Colonialism and Hospitality', *Politics and Ethics Review* 3, no. 1 (2007): 90.
- Ripstein, Arthur, *Force and Freedom: Kant's Legal and Political Philosophy* (Cambridge, Mass. & London: Harvard University Press, 2009).
- Vanhaute, Liesbet, 'How Biological is Human History? Kant's Use of Biological Concepts and its Implications for History as Moral Anthropology', in *Logical Analysis and History of Philosophy* 14 (2011): 154–68.
- Ypi, Lea, 'Natura daedala rerum? On the justification of historical progress in Kant's guarantee of perpetual peace', *Kantian Review*, vol. 2 (2010): 118.

6

Kant's Juridical Theory of Colonialism

Arthur Ripstein

Kant's opposition to European colonialism in Africa, Asia, and the Americas is widely recognized.¹ Far from an employee or apologist for empire in the way that other liberal thinkers such as Locke and Mill were, Kant is openly disdainful of European powers conquering other parts of the world. In the *Doctrine of Right*, he rejects as sophistry the claim that hunter-gatherer peoples do not own their land, and seems ready to insist that even those who he would characterize as 'savages' must be regarded, by those coming into contact with them for the first time, as already in a rightful condition, which those outsiders cannot disturb. Although he insists that everyone is entitled to use force to bring others into a rightful condition together with them, he explicitly repudiates the idea that one group may force another group to share a rightful condition with them. In *Toward Perpetual Peace*, he criticizes Vattel, Grotius, and Pufendorf as 'sorry comforters' (ZeF 8:355) because their theories of war suppose that a state can resort to war whenever it believes itself to have a grievance against another state. Grotius, for example, argues that war is acceptable whenever the aggrieved party believes that it would prevail in legal proceedings if a tribunal were available, or that the tribunal could not be

¹ With some notable exceptions; James Tully attributes to Kant the view that non-European peoples can only be recognized as equals once they submit to trade with Europeans and embrace European political institutions. James Tully, *Strange Multiplicity* (Cambridge: Cambridge University Press, 1995), p. 81.

relied upon.² Such theories end up being used only to justify aggression. So, too, in his discussion of why cosmopolitan right must be limited to the mere right of hospitality, he is critical of the expansive scholastic conception of cosmopolitan right as including the right to engage in missionary activities, to construct settlements, and to defend, both when under attack and even prospectively, those activities. Part of his disdain is just part of his more general disdain for hypocrisy and bad argument. But it also has deeper philosophical roots.

My aim in this chapter is to articulate Kant's systematic philosophical grounds for opposing colonialism. Kant does not treat colonialism as just another bad thing that human beings have done to each other. Instead, he regards it in juridical terms, focusing on the ways in which it is contrary to requirements of right. In each case, Kant examines colonialism through distinctively juridical concepts. Central among these is the concept of war, which Kant understands juridically. Colonial conquest is an illicit ground for going to war, and colonization is an illicit mode of conduct after a war, even if the war itself was fought on other grounds.

Rather than asking a single question of whether colonialism is justified, he asks (and answers) four separate ones:

First, is acquiring territory or secure markets a legitimate ground for going to war? (Answer: No.) Kant rejects colonial conquest as an illicit mode of acquisition. In Private Right, he argues that it is not an acceptable means of acquiring property and the prospect of acquiring property, in such a way cannot be used to generate a licence to force others into a rightful condition, and in Public Right that war is not an acceptable means for a nation to acquire territory, even if the war is itself justified. These arguments work in tandem to confront the classic rationale according to which conquest is justified to protect the property of settlers. Wars of conquest face a further difficulty because a war must be carried out in a way that is consistent with the continued existence of the belligerents. Although Kant characterizes war as barbaric, wars of conquest have an additional moral defect.

Second, can war, even if unjust, give rise to territorial claims? (Answer: Yes.) The wrongfulness of offensive war is prospective only; Kant concedes that illicit means of acquisition have in the past given rise to good title. However, the permissive law that permits past acquisition through illicit means applies to cases in which a nation incorporates the territory as a part of it. Colonization is different

² Hugo Grotius (1625) *De iure belli ac pacis libri tres*, trans. William Whewell as *The Law of War and Peace* (Cambridge: Cambridge University Press, 1853), p. 62. ("There are evidently as many sources of war as there are of Actions at law; for when the judgments of tribunals cease to be of force, war begins.")

in morally objectionable ways; although conquest is wrongful, colonization is a defective form of conquest.

Third, is one nation holding another as a colony a rightful result of war? (Answer: No.) Although war is illicit as a mode of acquisition, what happens after war is subject to a further mode of moral evaluation. This argument seeks to show that colonizing a people and its territory is morally worse than simply incorporating the territory into the conquering nation. To be a mere colony, even if granted a significant measure of self-rule, reduces the inhabitants of the colony to a position of dependence.

Fourth, if one nation does rule over another, what are the constraints on its conduct? (Answer: it must rule on behalf of the inhabitants, not for its own private purposes.) Colonial rule is not itself rightful, but nonetheless has its own internal standard of adequacy. An external power ruling over the inhabitants of the territory it has not incorporated must rule on behalf of the inhabitants of the territory, rather than for its own external purpose. Colonial powers famously did not rule on behalf of the inhabitants of the territories they captured; indeed, the entire point of colonization was precisely to acquire territory, natural resources, workers, and markets in ways that worked to the advantage of the conquering country. Not only does this *animus possidendi* enter into the characterization of colonial conquest as wars of aggression: where successful, it makes the period of colonization itself wrongful along an additional dimension. Where the second objection raises the problem that is inherent in any possible form of colonial rule, the third is a problem of colonialism as a historic practice, although not a necessary aspect of it.

Kant's engagement with the first two questions turns on general features of war, and contemplates war as taking place between equals. The next two questions are specific to colonialism, because colonization is, by its nature, a relation between superior and inferior, not between equals. That relation is wrongful as such, even if the colonizing power was engaged in a defensive war against a genuine aggressor. Having created a superior/inferior relation, however, a colonizing power does further wrong by exploiting the colony. Taken together, the four questions provide a sequenced account of the wrongs of colonialism: acquiring territory through war is wrongful; doing so and then holding the territory in question as a colony compounds that wrong. That already compounded wrong is compounded further by ruling a colony, but not on behalf of the inhabitants.

I will examine the four questions in order.

6.1 War and Conquest

Colonialism troubles us for many different reasons, but among these is a specifically Kantian one. Colonialism cannot be thought of as anything

other than the continuation of war, as it is a way of acquiring territory through the use of force.³ Worse, it is not just any form of war, but, to Kant's mind, a particularly troubling one, both because of the way in which barbarism presents itself as the advance of civilization and because it violates even the most minimal constraints on the conduct of war. In Kant's day, colonial powers rationalized their activities by claiming that they were protecting their citizens, who had decided to travel or settle abroad, or bringing people into properly rightful relations.⁴ Kant's disdain for the dishonesty of such rationalizations is striking; in the *Doctrine of Right*, he notes that the ordinary rationale for uniting with others in a rightful condition does not apply in situations where 'neither nature nor chance' has placed us in proximity to them (MdS 6:266); in *Towards Perpetual Peace*, he adopts the colonialist vocabulary of 'savages', only to note that the colonial powers behave badly in all of the ways in which they complain of the savagery of others (ZeF 8:355). Kant's objection, most fundamentally, is not that these aims are not genuine (though he doubts that they are), but rather that the use of force cannot be rendered legitimate either by worthy aims or by beneficial outcomes: the ends sought could not justify the 'stain of injustice in the means used for them' (MdS 6:353). To be in a rightful condition is to be in a condition where claims of right can be resolved on their merits, rather than through the use of force. To acquire territory through the use of force is to give up on the merits; the claim that a nation is using force to acquire territory in order to bring the merits fully into view is, for Kant, to compound the wrong.

Kant's position thus marks a significant departure from earlier positions taken in international law. The Spanish scholastics of Salamanca, especially Vitoria and Suarez, had sought to justify the Spanish conquest of the Americas by arguing that a state could send its citizens to colonize unoccupied or under-occupied areas, and that it could use military force to protect what they had acquired. They argued further that a state that had reason to suppose that colonists (or missionaries) would be resisted

³ Kant acknowledges that a state may invite foreigners to settle on its territory (MdS 6:338), but this is not a power to invite another nation to rule over it.

⁴ See Francisco de Vitoria (1532) *De Indis Et De Jure Belli Relectiones*, trans. Ernest Nys (Buffalo: Hein, 1917); Francisco Suárez, 1612, 'On Law and God the Lawgiver (De legibus, ac Deo legislatore)' in Francisco Suárez, *Selections from Three Works*, vol. 2, trans. G Williams (Oxford: Oxford University Press, 1944).

could act pre-emptively, subduing those from whom such resistance was feared. Kant's reference to acquisition, where 'neither nature nor chance' has brought people into proximity, underwrites his objection to the leveraging of illicitly acquired property into a basis for forcing others to enter a rightful condition on the conqueror's own terms.

The Kantian limitation on extra-territorial jurisdiction and the resistance to the right to settle are expressions of a single underlying idea of the moral distinctiveness of states. Land can only be acquired conclusively in a rightful condition, and one state cannot export its jurisdiction onto the territory of another. Thus, it can neither make the acquisition of land rightful nor enforce acquisition on another people's territory. These interlocking ideas apply to European colonialism against the background assumption that, from the outside, any multitude of human beings must be assumed to be in a rightful condition. Thus, any uninvited colonial settlement is a wrong against the people on whose territory it takes place. Kant does not disguise his contempt for those who seek to rationalize the use of force or fraud in establishing colonies by claiming that they will see to it that the land is better used, the ends of creation are better satisfied, or that 'savages' are brought into a rightful condition (MdS 6:266). Even if such claims to savagery are accepted at face value, they could not license treating people as in anything other than a rightful condition. Kant rejects all of these claims on the grounds that they offer the wrong form of argument for any moral question, and would 'sanction any means to good ends'. He also disputes the ends themselves, insisting that people who are 'shepherds or hunters' must be assumed to be in a rightful condition, capable of making arrangements via contract (MdS 6:353).

These arguments are presented against the background assumption that every people is entitled to be in a rightful condition, and that outsiders may not take it upon themselves to deprive others of the rightful condition that they are in (MdS 6:350; ZcF 8:344). They also need to be understood in relation to Kant's subsequent claim that there cannot be a punitive war. The purpose of war is not to vindicate a right because a right can never be secured or vindicated unilaterally. Thus, Kant rejects the view, found in both the Spanish Scholastics and Grotius, according to which war is a legitimate means of enforcing rights. Kant's arguments in the Public Right section of the *Doctrine of Right* establish two claims that are directly relevant to the law of war. First, the upholding of a disputed right always requires an omnilateral public authority. Second,

punishment is a relation between superior and subordinate, in the context of the criminal law, between the sovereign and the subject. War is a barbaric means of resolving disputes precisely because all uses of force in war are merely unilateral—in *Anthropology from a Pragmatic Point of View*, Kant defines barbarism as ‘force with neither freedom nor law’ (ApH 7:331). That is the precise sense in which might makes right in war: it is a means through which states resolve disputes on the basis of force rather than the merits. As I will explain in more detail below, this conception of war imposes constraints on its conduct, the most significant of which is that it must be carried out in a way that is consistent with a future peace between the belligerents, and so consistent with their continued existence. Colonial wars of conquest exacerbate the barbarism of war in general because colonial powers use force in a way that is inconsistent with the continued existence of both belligerents. This inherent inequality in the grounds for going to war and the conduct of war makes wars of conquest worse than other wars. That is why Kant characterizes European powers as savage in all of the ways that they allege subject peoples to be. Not only do they go to war, which is already ‘the way of savages’ (MdS 6:351): they go to war not as a way of resolving disputes, but in order to create them.

If war cannot be rightfully used either to acquire new territory or to enforce a right where a court is absent, or your opponent is unwilling to appear before it, the only legitimate ground for going to war is self-defence. In order to preserve itself as a rightful condition, a state may use force against an actual aggressor; in the absence of public, legal institutions, it can only do what seems good and right in its own eyes⁵ in determining whether its neighbour is about to attack. The right to go to war is restricted in its form, but, because the question of whether to go to war depends on the unilateral judgement of each state, the formal restriction is inherently unstable.

Kant also takes a dim view of the conceptual basis for many arguments that seek to rationalize colonization. In restricting Cosmopolitan Right to ‘the right to visit’ (ZcF 8:358), he self-consciously pre-empts the idea that there could be a right to settle; in so doing, he also mocks the form of

⁵ This issue is discussed in an unpublished paper by Peter Niesen, ‘Laws for which an External Legislation is Possible.’

argument, first articulated by Vitoria and Suarez, according to which conquest is justified in order to protect settlers and missionaries.⁶

These putative grounds of colonial power are inadequate, and the actual grounds of conquest were hardly more respectable. But, as we shall see, if colonization were to have come about as a result of a legitimate defensive war, it would remain morally problematic. I take no stand here on which, if any, conquests would fit this characterization: my point in mentioning it is that, although the wrong of colonization typically compounds the wrong of aggressive war, it is a distinct wrong, rather than a merely consequential wrong predicated on the nature of conquest.

6.2 The Effects of War

Kant's rejection of the grounds of colonial conquest does not, however, lead him to the conclusion that wrongs of conquest can be undone through the use of force. Instead, the possibility of peace turns on accepting that might has determined the contours of right in the past, but also that it must not in the future. The first 'Preliminary Article' of *Toward Perpetual Peace* requires that a peace treaty impose closure between the parties. Kant's point is not that every detail must be worked out in order for a peace treaty to be possible, but rather that any peace treaty must involve both parties abandoning any residual claims. But that is to say that it is in the nature of a peace treaty that parties forswear any future consideration of the merits of their past dispute. Peace requires that those merits never be reopened. It thus requires the parties to accept both that the terms of the peace will reflect the result of the war that it brings to an end, and that the war is indeed over.

That peace should require closure is in one way surprising, and in another way not. Kant conceives of peace as the condition in which every possible dispute is resolved on its merits, and never by resort to force. War is the condition in which might makes right; peace is the condition in

⁶ Thus, he is able to pre-empt their arguments without needing to point out the dubious form of 'bootstrapping' they engage in when they conclude that the prospect of attacks on settlers and missionaries justifies pre-emptive conquest. See Francisco de Vitoria (1532) *De Indis Et De Jure Belli Relectiones*, trans. Ernest Nys (Buffalo: Hein, 1917); Francisco Suárez (1612) 'On Law and God the Lawgiver (De legibus, ac Deo legislatore)', in Francisco Suárez, *Selections from Three Works*, vol. 2, trans. G. Williams (Oxford: Oxford University Press, 1944).

which right directs might,⁷ one in which force is only used subject to public law. No human being is under any obligation to defer to the unilateral judgement of another, so the only way in which a dispute about rights can be resolved on its merits is if there is an appropriate public procedure for its resolution. Peace is a condition in which disputes are resolved through procedure, either domestically, by a court, or between nations, 'as if by a lawsuit, rather than in a barbaric way (the way of savages), namely by war' (MdS 6:351). Peace is not merely marked by, but consists in, the availability of authoritative procedures to resolve disputes on their merits.

The contrapositive of the claim that peace is the condition in which disputes are resolved on their merits must also be true: the resolution of disputes on their merits cannot be a precondition of peace. Otherwise, peace would need to always precede itself, and so be unattainable, both in general and in every particular instance.

The same temporal asymmetry with respect to war animates the second, third, and fourth Preliminary Articles of *Toward Perpetual Peace*. These concern the abolition of conquest and the sale of territory, standing armies, and debts contracted for war. Kant treats them as preconditions of peace, but immediately goes on to characterize them as 'permissive' and notes that their implementation can be postponed. Although this characterization engages with other issues, one implication of it is that such actions in the past can, nonetheless, have consequences for right. Territory that was acquired through conquest, purchase, or gift can be part of the rightful territory of a rightful condition. The end of acquiring territory could never *justify* the use of such means, but the fact that territory has been incorporated into a nation is sufficient to make it part of that territory. Although it was wrongfully acquired, it would be wrongful to use force to dismember the now established rightful condition.

The requirement that peace impose closure, and that belligerents accept results that were not decided on their merits, does not entail that aggression can be licensed by the prospect of future peace. The possibility of securing some objective through military means is inherent in the structure of war: the prospect of might making right is exactly what makes war appealing to someone contemplating aggression; the prospect of might making right is what makes defensive force seem necessary and justified.

⁷ I am grateful to Jacob Weinrib for this lovely turn of phrase.

When dealing with an aggressor, you defend yourself because the aggressor has disregarded the merits, and your only hope of a result in conformity with what you take them to be is to block force with force. Indeed, anyone thinking about using force must suppose it is capable of resolving an issue. Although those using force will often believe that they are right on the merits, and so suppose that the merits justify its use, nobody thinks that using force in a dispute is justified because it correctly tracks the merits.

On this understanding, then, Kant's attitude towards conquest is parallel to his attitude towards revolution: adamant opposition, to the point of concluding that nothing can justify either, coupled with a firm insistence that if a revolution is successful and the new regime consolidates its power, it is the legitimate legal regime, representing the people, and the (formerly) legitimate regime has no basis in right for seeking a restoration, or even compensation for loss of property attendant on office. Indeed, Kant uses the same vocabulary to characterize each. Characterizing the states that use force to conquer another, claiming to do so benevolently, in order to overcome its internal discord violates 'the right of the people dependent upon no other and only struggling with its internal illness; that it would itself be a scandal given and would make the autonomy of all states insecure' (ZeF 8:346). In *Theory and Practice*, discussing revolution, he writes that it would 'make every rightful constitution insecure' (GTP 8:301).⁸

The asymmetry between prohibiting war and accepting its results invites a familiar form of objection: it seems to justify, *ex post facto*, war and colonial rule. Even if the act in question, whether colonial conquest or revolution, is wrongful, nothing succeeds like success, and so, if a wrongful act can give rise to rights, it might be thought that the prohibition of such acts works well in theory but amounts to nothing in practice. If a right can be established through what is, at the time that it is committed, a wrongful act, political actors will be guided only by the prospect of successful consolidation of such wrongful acts, and so the claims of right will be heard but not heeded.

⁸ This doesn't, simply as such, rule out punishing a former ruler for theft from the public treasury, let alone crimes against humanity. It only rules out executing him, as Louis XVI was, for treason. To punish someone simply for having held power in the *ancien régime* is, as Kant puts it, 'diametrically opposed to the law' (MdS 6:322).

As an empirical hypothesis about how the 'warped wood' of humanity is likely to conduct itself, the objection is not lacking in plausibility. But, the point of the philosophical theory of wrongdoing is not to prevent wrongdoing, and the test of the adequacy of such a theory is not whether it manages to do so, not even whether it manages to prevent the very things that it identifies as wrongs. Indeed, one of Kant's signature contributions to political philosophy is his characterization of the sense in which institutions are essential, not just to the realization or stability of rightful relations between human beings, but to their very possibility. It is a mistaken objection to his theory of private right to point out that in a state of nature people would not honour their contracts or stay off the property of others. So, too, it is not an objection to his account of revolution or of the nature of peace to note that someone who thought he could get away with it would not be dissuaded by realizing that his action was wrongful.

Kant's treatment of revolution is parallel to his treatment of the legal doctrine of *usucaptio*, or adverse possession, as it is called in the common law world. Under this doctrine, a trespasser who stays long enough can acquire land from the original owner simply by the fact of long possession. Kant remarks that this is a necessary implication of the very possibility of secure property in land because otherwise, the previous owner could always come along and assert title. The legal rule can only operate with positive law to lay down a statute of limitations, but, once it is in place, a trespasser can become true owner. Students first encountering this doctrine of property law often react with dismay, and many are relieved to learn that this or that jurisdiction has replaced the old rule of *usucaptio* with a system of mandatory title registration, which takes priority over long possession. The availability of such systems, and their moral advantage, illustrates Kant's point about *usucaptio*. For such a system could only function if the implementation of the system began by extinguishing all residual claims, and so saying 'from this day forward, title will not be acquired through trespass'. This is exactly Kant's point about 'postponing' giving effect to the prohibition of acquisition through force. That prohibition can only take effect provided that it is not retroactive, that past disputes cannot be reopened because territory was acquired through force. Just as a system of title registration requires institutions capable of making determinations in disputed cases, and the jurisdiction to apply to everyone, so, too, acquisition through war can only be prohibited through the development of legal institutions. That development, in turn, presupposes accepting borders between states, even

if they are the result of past acts of violence. Aggression is never rightful, but the things to which individual human beings or nations have rights will often be as they are as a result of war.

If the only objection to colonialism was that it is the result of war, there would be nothing more to be said about it beyond prospective prohibition. The fact that the current rightful condition came about as a result of colonial conquest can be of no more relevance than can any other historical feature of it. Kant remarks that 'it is futile to inquire into the historical warrant of the mechanism of government, that is, one cannot reach back to the time at which civil society began (for savages draw up no record of their submission to law; besides, we can already gather from the nature of uncivilized men that they were originally subjected to it by force)' (MdS 6:339). If a condition is rightful, and has the institutional capacity to protect freedom, however incompletely or despotically it does so, then no question can be raised about authority. From this it follows that past conquest cannot be raised internally. Nor can it be raised externally.

This response may seem to simply give the objection more force. It appears to enable colonial powers to answer all challenges by saying 'one cannot reach back to the time at which *our civil society* began in partnership with the colonies', or to contend that it is 'futile to inquire into the historical warrant of the mechanism *internally*, within the colonial "commonwealth"'. As we shall see, Kant's account has the resources to block this web of rationalization. From the standpoint of the right of nations, colonization is worse even than annexation. Annexation brings new territory and its inhabitants into an existing rightful condition; although colonization may set up institutions to protect the private rights of the inhabitants of a colony, it leaves the inhabitants of the colony both in and outside the conqueror's rightful condition. That difference does not justify either conquest or annexation, but we will see that it does mean that colonization cannot be treated as a juridically irrelevant feature of the past. Even by the standards of conquest, it is a wrongful and defective form of conquest.

6.3 Colonization

The distinctive feature of colonialism, from a juridical standpoint, consists not in the fact of conquest, but in the *post bellum* mode of governance.

It consists in one nation ruling over another in a way that is inconsistent with the right of the inhabitants of the latter to rule themselves through their institutions.

The small literature on *jus post bellum* has tended to focus on the relevance of the post-war conduct of a victorious country in determining whether the initial grounds for going to war were themselves just. The thought here is that the acceptability of a war depends in part on the actual conduct of the victorious party. In *The Law of Peoples*, Rawls wisely cautions that 'the way a war is fought and the deeds done in ending it live on in the historical memory of societies and may or may not set the stage for future war'.⁹ On this view, creating grounds for grievance or reprisal either in the course of a war or in its aftermath is inconsistent with fighting a just war. The literature also asks how post-war conduct shapes the legitimacy of a war undertaken on legitimate grounds and fought in a legitimate way. Thus, it treats *jus post bello* as a component of *jus ad bellum*.

Here, as elsewhere in considering the law of war, Kant sets things out differently. Rather than asking whether a war as a whole can be justified by its grounds or actual, anticipated, or probable effects, or whether particular acts bear the right relation to those grounds, Kant always asks whether there are principles of right appropriate to a form of interaction, even if the form of interaction is itself already morally objectionable. Kant considers societies that are compatible with rights, though not themselves rightful (MdS 6:306); in such societies, individual human beings cannot be secure in their rights but, nonetheless, it is possible to characterize the nature of wrongs that they commit against each other.

The availability of concepts of right, even when circumstances are inadequate to right, has important implications for the grounds of war, its persecution, and its aftermath. Nations in a state of nature with each other may go to war to resolve territorial disputes; the absence of agreement leads them to resort to war. Permissible ways of fighting a war do not depend on which side is in the right. In the same way, the question of what is permissible at the end of the war does not depend upon whether the victorious party in the war was justified in going to war, or on how it conducted itself during the war. A defensive war that leads to the defending party occupying the territory of an aggressor imposes exactly the same

⁹ John Rawls, *The Law of Peoples* (Cambridge, Mass.: Harvard University Press, 1999), p. 96.

constraints on the conduct of that occupation as would have applied if the aggressor had prevailed.

Kant's readiness to treat aggressors and defenders symmetrically while they are engaged in war—the readiness to accept a sharp distinction between *jus ad bellum* and *jus in bello*—strikes many contemporary writers as impossible to justify.¹⁰ These objections come in a number of forms, but at bottom rest on the intuitive thought that morality is at bottom concerned with ends being pursued and realized. For Kant, right always concerns the means used, and never the ends for which they are being used. The question of whether certain means are acceptable arises independently of the ends being pursued, and so must arise in exactly the same way for an aggressor and a defender. A world in which people resort to force is for that very reason morally defective. But for all that, there are moral constraints on how force may be used, and those constraints are the same, regardless of who is using the force.

As Kant puts it in the *Doctrine of Right*, 'if one wants to find a right in a condition of war, something analogous to a contract must be assumed, namely, *acceptance* of the declaration of the other party that both want to seek their right in this way' (MdS 6:346). Kant does not suppose that there is an actual agreement, only that the belligerents each accept that force will determine the outcome of their dispute. Such a possibility can only be accepted provided that both also suppose that resorting to war is in some sense a procedure for resolving disputes, so that the resolution of the dispute is the subject matter of the war. If both parties have accepted that they will resolve their dispute in this way, although neither has conceded the merits, each has accepted that the outcome will be determined by something other than the merits. Thus, there is a sense in which war as a (barbaric) mode of dispute resolution is premised on the belligerents recognizing each other as legitimate and entitled to assert claims of right. That, in turn, entails that the rules governing the conduct of the dispute must themselves abstract from the merits. If you and I decide to resolve a disagreement by playing chess, I am not allowed to insist that you are not allowed to use your queen because I am right about the dispute. The

¹⁰ Jeff McMahan, *Killing in War* (Oxford: Oxford University Press, 2009); Jeff McMahan, 'The Morality of War and the Law of War', in Rodin and Shue (eds.) *Just and Unjust Warriors* (Oxford: Oxford University Press, 2008).

structure of the situation dictates that the terms on which the parties resolve the dispute is structured by something other than its merits.

Kant's discussion of right after war works with the same requirement of symmetry; even if it is granted that one side is the aggressor and the other a defender, the war can be taken to have resolved the dispute between the parties, but it does not give the victor any new rights against the vanquished:

The right of a state *after a war*, that is, at the time of the peace treaty and with a view to its consequences, consists in this: The victor lays down the conditions on which it will come to an agreement with the vanquished and hold *negotiations* for concluding peace. The victor does not do this from any right he pretends to have because of the wrong his opponent is supposed to have done him; instead, he lets this question drop and relies on his own force. The victor can therefore not propose compensation for the costs of the war, since he would then have to admit that his opponent had fought an unjust war. While he may well think of this argument he still cannot use it, since he would then be saying that he had been waging a punitive war and so, for his own part, committing an offense against the vanquished. (MdS 6:348)

Here, Kant goes considerably further than the prior just war tradition, in insisting that the victor does not demand peace negotiations because of the wrong his opponent has done, but must let the question of wrong drop. Kant's insistence on this point reflects his distinctive conception of war as a means of resolving disputes on something other than their merits. Earlier writers in the just war tradition had supposed that a just war must be understood as a mechanism for vindicating a right that was fully determinate apart from the war, but Kant understands that such a conception of war precludes finding any right in war at all. As a perfectly general matter, Kant supposes that justice cannot be imposed unilaterally by one party to a dispute—that is why he argues that there is a duty to exit the state of nature and unite into a rightful condition. The same point applies, with modification, to relations between nations: one nation cannot unilaterally impose justice on another.

Instead, war must be understood as a barbaric way of resolving questions of right on the basis of force rather than their merits, and so, incapable of being understood to presuppose determinate answers to them. To suppose that at the end of the war the victor is entitled to act as prosecutor, judge, or punisher is to suppose that the war somehow resolves the issue in the victor's favour, and so to suppose that might makes right after all or,

what perhaps comes to the same thing, to conceive it as a sort of trial by ordeal. Kant recognizes that just as the parties are symmetrically situated during the war, so, too, they are symmetrically situated after it. So, too, the victor may not demand or even propose compensation.

More strikingly, he writes that:

A defeated state or its subjects do not lose their civil freedom through the conquest of their country, so that the state would be degraded to a colony and its subjects to bondage;

He then offers a definition of 'colony':

A *colony* or province is a people that indeed has its own constitution, its own legislation, and its own land, on which those who belong to another state are only foreigners even though this other state has supreme executive authority over the colony or province. The state having that executive authority is called the *mother state*, and the daughter state, though ruled by it, still governs itself (by its own parliament, possibly with a viceroy presiding over it) (*civitas hybrida*). This was the relation Athens had with respect to various islands and that Great Britain now has with regard to Ireland. (MdS 6:348)

For individual citizens to lose their civil freedom would be for them to be subject to the rule of others, to fall into bondage, and so to be treated like prisoners. Responding perhaps to Grotius and Locke, Kant adds further that hereditary bondage cannot be derived from defeat in war. With this in mind, we can now understand what Kant means in characterizing a state's becoming a colony as a loss of *its* civil freedom: that would mean for the people to be merely passive in relation to rule over itself. Such passivity would be contrary to the 'original right' of the people 'to unite itself into a commonwealth', that is, to rule itself through its own institutions (MdS 6:349).

Kant's characterization of passive citizens within a rightful condition makes this contrast clear: you are passive if someone else determines where you stand in relation to others, if you depend not on your management of your own business, but on arrangements made by another, or are 'under the direction or protection' of others (MdS 6:315). A passive citizen does not rule herself, even if her private rights as against others are secured by a public authority. Indeed, Kant characterizes a passive citizen as one who cannot act in his own name, but must be represented by another—exactly the condition of the colony in relation to its mother country.

Still, this definition of a colony may seem unduly narrow, focusing as it does on executive authority, and seems to allow the colony to have its own constitution and even legislation. If it does, then its individual voting citizens are not passive in relation to the laws that govern them, but the people—the union of the multitude of human beings who inhabit the colony—is passive in relation to its own independence, as it is subject to the choice of the mother country. Colonialism illustrates the problem of ‘soulless despotism’ that Kant says would characterize a world state (ZeF 8:367). A colony is ruled from outside, and such a condition is despotic, simply as such, because its people does not rule itself, and so the colony has a system of force and law but is lacking in freedom.¹¹ Such despotism is morally problematic, no matter how it is exercised. If the colonial power were to rule wisely, act exclusively on behalf of the citizens of the colony, and the citizens of the colony were satisfied to be ruled in this way, it would be morally problematic, even if there was no morally acceptable way of changing the situation.¹² Colonial rule deprives the people of governing itself, and in so doing, treats the colonized people as a subordinate rather than as an equal.

Such a condition is soulless, not only because it extends ‘over vast regions’ (MdS 6:350), but because the public culture of the mother country is imposed on the daughter country. In a condition of colonialism, the mother country rules over the daughter country without reference to the particularity of the latter. That does not mean that the Colonial Office pays no attention to the details of the history or internal conflicts of its territory. That may or may not be true of a particular colonial power in relation to any particular colony. Kant’s point is juridical: the question of whether to do so is a question for the mother country to decide, not for the daughter country. A wise and benevolent despot is still a despot.

Kant acknowledges that in certain circumstances, passivity may be temporarily unavoidable; discussing right after war, he argues that a nation that constitutes an ongoing threat to its neighbours can be compelled to adopt a new constitution. During such a period, the people of the occupied territory would be rendered temporarily passive, and unable to rule itself, making despotism unavoidable. But the transition itself is not conditional on the people reaching a level of maturity (as Mill suggests in *On*

¹¹ In *Anthropology*, despotism is defined as ‘Law and force without freedom’ (ApH 7:330).

¹² MdS 6:320; ZeF 8:372; Jacob Weinrib, *Authority, Justice, and Public Law: A Unified Theory*, 2013, unpublished doctoral dissertation, on file with author, pp. 66–110.

Liberty),¹³ but on the need to change institutional structures to prevent war. Thus, unlike Mill's view of colonialism as a temporary expedient to civilize non-European peoples, Kant's approach to *jus post bellum* focuses exclusively on institutional structures to prevent future war. There is no need or ground for broader 'civilizing' missions. As I will explain below, even in such circumstances, the fact of temporary passivity imposes obligations on the occupying power.

The passivity of a colony is most explicit in its relation to other nations. Even if the colony has its own internal parliament, it does not stand as a nation among nations, able to determine its relations to them. The most basic right that each state has under the right of nations is to avoid being drawn into a war by other nations (cf. MdS 6:344). A colony does not have this power, which is a juridical problem, even if, as it turns out, the colony is too small to supply significant numbers of troops to the mother country. The right is basic because it corresponds to the right of any nation to be a rightful condition for its citizens. It is entitled to go to war if it is threatened, or even if it believes itself to be threatened. But it alone is entitled to make that judgement. Otherwise, it is, simply as such, subject not only to the choice of another, but what must be, from the perspective of the state, the merely private choice of the mother country. Defending the mother country, let alone aiding it in an aggressive war, is not an inherent feature of the daughter country providing a rightful condition for its citizens. Even when states are 'called upon' to unite against an aggressor that by its nature threatens other nations, they are entitled to do so, but not required to. Uniting against aggression is a permissible purpose for those who are not directly threatened by it, but not a mandatory one. To be required to go to war, or even be drawn into a war, when not threatened, is inconsistent with each state's independence, and 'original right to avoid getting involved' in a state of war (MdS 6:344).

The same point can be put in the following way: The colony is neither absorbed into the 'mother country' as a proper part of it, nor independent of it. A part or province of a larger country might be disadvantaged in any number of ways—many countries have regional disparities in resources, wealth, expected lifespan, and in political power. All of these

¹³ John Stuart Mill, *On Liberty*, 2nd edn. (Boston: Ticknor and Fields, 1863), p. 24: 'Despotism is a legitimate mode of government in dealing with barbarians, provided the end be their improvement, and the means justified by actually effecting that end.'

should be repaired by the state, but, at the same time, none raises any issue about the state's rightful status. The colony is different because it does not determine how it stands in relation to the mother state or to other states. That is the significance of lacking an executive branch, and of the inability to determine its own relations with other states. This is so, as Kant notes, even if it has its own internal constitution. It is not fully a moral person because it is entirely passive in its relations to others. Thus, it merely 'inheres'.

6.4 Colonialism on its Own Terms

The mere *fact* of passivity captures what is wrong with colonialism, and why it cannot be the just outcome of a war, but it does not yet explain the specific form of wrong *within* colonialism. As always, the double structure of Kant's theory of war needs to be applied here. The further question of what can go wrong in colonization is not exhausted by an explanation of why it is unjust as such. Just as an offensive war, wrong in itself, can be waged in accordance with or contrary to the principles of *jus in bello*, so too colonization, which is unjust as such, can be carried out in a way that is in conformity with or contrary to its own principle of morality. The morality of *jus ad bellum* does not resolve all of the questions of *jus in bello*; neither is sufficient to resolve the central question of the *post bellum* wrong.

No less significantly, colonialism, in historical fact, if not by nature, also violates the normative principle appropriate to it. Certainly, the European conquest of large areas of Asia, Africa, and the Americas took place with the ambition of acquiring resources or strategic assets for the colonial powers. Having succeeded in conquering and subduing the indigenous populations, it is not surprising that the colonial powers would subsequently use their colonies for the very ends for the sake of which they sought to conquer. The connection here is empirical, but nonetheless illuminates Kant's complaints about the spurious rationales for colonialism. The problem is not just that these could not justify war—though of course they could not—but further, that many such ends, such as getting rid of an unwelcome population from the 'mother country', are also wrongful after the war is over. So, the historical practice of colonialism is wrong at three distinct levels: the grounds of war are objectionable, the status of a

colony is objectionable, and the historical practice of colonialism violates the normative standard appropriate to rule over a colony.

To characterize the nature of the wrong of colonial rule, I must first articulate the appropriate standard for evaluating it. In order to identify that standard, I will first say something about what it would be for colonial rule to be carried out in a way in which right might be found in it. By this, I do not mean to say that it could be rightful. Instead, the correct analysis of even a situation of conquest must be one in which concepts of right can be made to have some bearing. To explain that, I must first briefly say something more general about how Kant thinks about the application of normative concepts, and then show how this approach can be brought to bear on situations that are defective with regards to right.

As a general matter, Kant supposes that the norm relevant to a certain form of human interaction is in some sense to be found in the form of interaction itself. Kant's best-known (if not best-understood) argument, from the opening of the *Groundwork*, has this form: a good will is one that is fully in conformity with the standard appropriate to the assessment of a will. In the *Doctrine of Right*, the same structure appears repeatedly. The Universal Principle of Right articulates the principle for a plurality of free beings interacting with each other, each independent of the choice of the others. This structure is explicit in Public Right, in which the Postulate of public right requires that human beings who 'cannot avoid living side-by-side with all others' (MdS 6:307) enter into a rightful condition together. The idea of the original contract then specifies the normative principle appropriate to any condition that satisfies the Postulate of public right. A rightful condition that falls short of the requirements of the idea of the original contract is not, for that, a rightful condition. But it is defective in relation to the standard appropriate for evaluating it, and that standard comes from the fact that it is an instance of some human beings exercising coercive power over others.

In each of the above examples, the principle for assessing something depends upon the nature of the thing being assessed. Kant's adoption of this approach does not depend upon some more general thesis about evaluating everything in the terms on which it presents itself, but rather on his distinctive view of the nature and significance of freedom. In each case, the norm in itself is implicit in the relevant situation because it is only through the norm that we are able to understand the situation itself. This is most apparent in the case of the Idea of the Original Contract: a

condition is fully rightful if it reconciles the freedom of its members. But the possibility of the freedom of a plurality of persons being reconciled can only be understood through the ideal case in which such freedom is fully reconciled.

This same type of reasoning applies to colonialism, but with an extra layer of complexity. In both the case of the individual will and the rightful condition, the cases we encounter in experience are defective versions of something that is itself ideal. The actual carrying out of colonial rule, by contrast, could at best be the implementation of what is already a defective form of rule. Rather than simply telescoping the layers, and overlooking the distinctive aspects of colonialism, Kant's account has the resources to say instead that colonial rule is defective as such, but that there is a characteristic defect in its execution.

Let me introduce this idea that concepts of right can be made to have some bearing, even in a non-rightful situation, with an example from war, and with an example from one of Kant's discussions of the wrong of colonialism. As I noted earlier, in discussing war, Kant says that 'if right is to be found in a condition of war', we must suppose that the belligerents 'have agreed to resolve their dispute in this way'. I have already said something about the implications of this passage; I mention it here to note its presupposition. Kant is not saying that the conduct of war is rightful. Resolving disputes through war is 'wrong in the highest degree' (MdS 6:307) because it is inconsistent with the right of human beings as such to have their disputes resolved on their merits. War is a condition in which disputes are resolved through force rather than on their merits. But for all that, if war is a procedure whereby the belligerents accept that they will resolve their dispute on the basis of something other than its merits—whether by playing chess, sending champions, or sending armies—then even this barbaric process is subject to constraints of right. As I suggested above, for Kant, this requires that the conduct of war must be consistent with the belligerents surviving the dispute and regarding it as resolved. On this understanding, war is wrongful, but subject to moral evaluation based on its nature. Right can be found 'in a condition of war' by asking what war could be, such that it could be fought in a way that is consistent with the possibility of a future peace (MdS 6:346).

This requirement to find right, even in a condition that lacks it, animates Kant's objections to colonial conquest. Kant repeatedly uses the phrase 'people' to refer to those who are colonized. According to Kant, a

people, that is, the union of a multitude of human beings (MdS 6:311), has as its principle of unity a will uniting them, which in turn requires a constitution and political institutions. As he describes particular examples, it is not clear whether they have, or he supposes them to have, such institutions. It is thus not clear whether they are best characterized as a people, a conjugal or paternal society that interact in a manner compatible with right (MdS 6:306), or a violent multitude that interacts barbarously. From the standpoint of an outsider, none of these possibilities would license colonization; in each case, the outsider must refrain from claiming the territory of others:

If the settlement is made so far from where that people resides that there is no encroachment on anyone's use of his land, the right to settle is not open to doubt. But if these peoples are shepherds or hunters (like the Hottentots, the Tungusi, or most of the American Indian nations) who depend for their sustenance on great open regions, this settlement may not take place by force but only by contract, and indeed by a contract that does not take advantage of the ignorance of those inhabitants with respect to ceding their lands. (MdS 6:353)

Focusing on the need for a genuine agreement makes it clear that Kant is supposing here that nomadic peoples, without a formal structure of government, are nonetheless to be treated by others as they would be if they were in a rightful condition. The claim here is not that anyone would be in a position to identify even the rudiments of the separation of powers characteristic of republican government, let alone any approximation to the idea of the original contract. Kant's point is that the obstacle to colonization does not depend on the internal structure of such societies, but rather in the constraint that their existence imposes on others. *Others* must treat a nomadic or hunter-gatherer society as though it is in a rightful condition. That does not mean that outsiders are in a position to readily identify the people's representative in such cases; it means only that a foreign visitor must accept that, whatever uncertainty there is with respect to *who* may act on behalf of this people, the visitor must accept that the *visitor* itself is not so charged, and so must not take it upon itself to make arrangements for the inhabitants.¹⁴

¹⁴ In this passage, Kant does not appear to consider how one might interact with human beings in a condition of barbarism, of 'force without either freedom or law', and whether there might be grounds for what has come to be called 'humanitarian intervention'. In the fifth Preliminary Article of Perpetual Peace, Kant doesn't rule it out, but doesn't exactly rule

I want to take this same idea of finding right in a barbaric condition to identify Kant's characterization of the norm that applies to the exercise of colonial power. We saw above that Kant acknowledges that, after a war, the victorious party may, on an interim basis, occupy the territory of the vanquished. Kant's discussion here is brief, but provides the germ of what has come to be known as the 'law of belligerent occupation'.¹⁵

This same set of ideas provides the requisite orientation for understanding the situation of a territory that has been wrongfully subjected to colonial conquest. Just as a people occupying territory without institutions must be thought of as occupying it rightfully, and its representatives must be thought of as entitled to decide whether to welcome or forbid foreign visitors or settlers, so, too, if a colonial power has taken over a territory from war (or fraud), it must be understood as a defective realization of a recognizably moral situation, namely, that of someone ruling a territory on behalf of its residents.

The claims to which it gives rise are to be traced, not to the fact that it is the continuation of war, but rather by holding a colonial power to the implications of what it claims to be doing. Kant's scorn for the pretences of the colonial powers of his day is illuminating. His thought is that they were not entitled to use force or fraud to bring those they considered savages into a rightful condition. But if that is what they purport to do, then they have no choice but to be answerable to the standards of those who would create and maintain a rightful condition. Thus, they must act, not for their own private purposes, nor even for the purposes of the empire that backs them, but instead, on behalf of the people over whom power is exercised.

These thoughts have made it into modern international law through the so-called 'law of belligerent occupation', which sets limits on the ways in which an occupying army may treat the residents of territory captured in war. The assumption—some might say 'conceit'—of the law of belligerent occupation is that such occupation is temporary; the norm that follows from this analysis is one of the occupying power ruling on behalf of

it in either. But if it is justified, it is a matter of protecting human beings by bringing them into a rightful condition with each other, not taking it upon yourself to force them into one with you. In conditions of barbarism, an outsider might be entitled to intervene, but never to claim the people or its territory for itself.

¹⁵ See Eyal Benvenisti, *The International Law of Occupation* (Princeton, NJ: Princeton University Press, 1993); Eyal Benvenisti, 'The Origins of the Concept of Belligerent Occupation', *Law and History Review*, Vol. 26, No. 3, 2008.

its citizens.¹⁶ There is much to be troubled about in the law of belligerent occupation, given the priority it attaches to the security and military purposes of the occupying power, and the discretion it attaches to the occupying power's assessments of what that security requires. But for all that, as an imperfect realization of an imminent moral requirement, it has a good deal to recommend it. Its implicit standard is the standard of every possible rightful condition, that is, that the rulers exercise power on behalf of the citizens or inhabitants.

Kant acknowledges the possibility of rule over merely passive citizens. His choice of examples is distressing to readers two centuries later, but the distinction itself between active and passive citizenship is unavoidable. Children and resident aliens lack civil personality, and so their existence in the rightful condition is 'as it were, only inheritance' (MdS 6:314). However, the passivity that they have with respect to the public functioning of the state is, as Kant notes, 'in no way opposed to their freedom and equality as *human beings* who together make up the people... whatever sort of positive laws the citizens might vote for, these laws must still not be contrary to the natural laws of freedom and of the equality of everyone in the people corresponding to this freedom' (MdS 6:315).

I now want to suggest that there are two fundamentally different ways in which a colonial power can rule in a way that is treating the colonized people as merely passive, and so, in a sense, treating them like children. The first is to treat them paternalistically, which, contrary to Mill, is objectionable, simply as such. The second is to do so in ways that violate the freedom and equality of children as human beings. The most basic of these is, whether in the case of the subjugated people or children, to use them as tools for purposes they have not chosen. Indeed, the mother/daughter structure therefore invites exactly this thought: just as parents bring children into the world without their consent, on their own initiative, so, too, a conquering power puts itself in possession of a subjugated people, and so, as Kant remarks of the power parents have over their children, cannot treat the people either as if it were 'something they had made... or as if [it] were their property, nor even just abandon [it] to chance' (MdS 6:281).

Kant's claim here is not that the inhabitants of this or that colony are in fact incapable of making arrangements for themselves: his objection to

¹⁶ *Hague Convention no. IV of 18 October 1907, Respecting the Laws and Customs of War on Land*, 18 October 1907, 36 Stat. 2227; *Geneva Convention Relative to the Protection of Civilian Persons in Time of War*, 12 August 1949, 75 UNTS 287.

colonialism is precisely that the people of the colony are prevented from making such arrangements, not that they are incapable. Having forcibly deprived them of the possibility of making their own arrangements, the colonial power is bound by the moral standard that always applies when one takes charge of the affairs of another: it must not do so for its own advantage, but must do so entirely on behalf of the others of whose affairs it has taken charge. This is how Kant conceives of relations between parents and children; the mother/daughter structure of the imperial/colonial relation demands the same norm apply to it, that is, that the imperial power must rule on behalf of the colonized, rather than treating them as so many resources to be used for advancing imperial purposes. The colony is not a child; its immaturity is neither natural nor self-imposed, but institutional and imposed from without. If the imperial power insists or pretends that the colony or its inhabitants are incapable of self-rule, it must be held to the implications of its own insistence or pretension, and rule on behalf of those over whom it exercises power. Mill was wrong to suppose that colonialism could be justified on paternalistic grounds, or that British rule in India was motivated in that way. A benevolent motive does not justify colonization. The obligations that follow from treating other human beings as merely passive do not provide a justification for so treating them. A kidnapper wrongs his victim by the mere fact of kidnapping, and compounds the wrong by taking advantage of the situation he imposed on the victim. It might sound odd to say 'that is no way to treat a hostage', but even the treatment of hostages is subject to a moral standard. The kidnapper who honours that standard, and declines to take advantage of his power over the victim, does not commit the second, compounding wrong, but his failure to do so does not justify the kidnapping. But for all that, British rule in India was made worse by the fact that Britain exercised power over the inhabitants of India for its own purposes, not theirs.

6.5 Colonialism's Moral Reminders

Kant distinguishes three wrongs in colonialism: the wrongfulness of colonial conquest, the wrongfulness of the status of a colony, and the wrongfulness of the ways in which colonial rule is typically carried out. Each of these is independent of the others. A war of conquest is wrongful, even if it ends up incorporating the conquered people into a superior rightful condition; creating a colony would be wrongful, even if it was the result

of an unquestionably defensive war; ruling over a people for purposes set from outside is wrongful, regardless of how it came about, and regardless of whether it is done in a colony or in an independent state.

By distinguishing these three different wrongs implicated in colonialism, Kant's account makes it possible to distinguish between different legacies of colonialism, and the possibility or need to remedy them. The details of such an account and the characterization of the institutions competent to repair the various legacies must wait for another occasion.

Acknowledgements

I am grateful to Katrin Flikschuh, Joanna Langille, Jacob Weinrib, and Ariel Zylberman for comments on an earlier draft.

Bibliography

- Benvenisti, Eyal, *The International Law of Occupation* (Princeton, NJ: Princeton University Press, 1993).
- , 'The Origins of the Concept of Belligerent Occupation', *Law and History Review*, Vol. 26, No. 3, 2008.
- Grotius, Hugo (1625) *De iure belli ac pacis libri tres*, trans. William Whewell as *The Law of War and Peace* (Cambridge: Cambridge University Press, 1853).
- McMahan, Jeff, *Killing in War* (Oxford: Oxford University Press, 2009).
- , 'The Morality of War and the Law of War', in Rodin and Shue (eds.), *Just and Unjust Warriors* (Oxford: Oxford University Press, 2008).
- Mill, John Stuart, *On Liberty*, 2nd edn. (Boston: Ticknor and Fields, 1863).
- Niesen, Peter, 'Laws for which an External Legislation is Possible', unpublished paper, on file with author.
- Rawls, John, *The Law of Peoples* (Cambridge, Mass.: Harvard University Press, 1999).
- Suárez, Francisco (1612) 'On Law and God the Lawgiver (De legibus, ac Deo legislatore)', in Francisco Suárez, *Selections from Three Works*, vol. 2, trans. G Williams (Oxford: Oxford University Press, 1944).
- Tully, James, *Strange Multiplicity* (Cambridge: Cambridge University Press, 1995).
- Vitoria, Francisco de (1532) *De Indis Et De Jure Belli Relectiones*, trans. Ernest Nys (Buffalo: Hein, 1917).
- Weinrib, Jacob, *Authority, Justice, and Public Law: A Unified Theory*, 2013, unpublished doctoral dissertation, on file with author.

7

Restorative Justice in International and Cosmopolitan Law

Peter Niesen

Kant condemns unlawful behaviour in the international realm, but does not say much about setting past wrongs right. While he criticizes colonial appropriation and all annexation by military means, he gives no systematic treatment of entitlements to restoration arising out of such violations. In part, Kant's reticence may be due to the limited task he has set himself in his international law writings: he confines himself to outlining the 'conditions under which public peace is possible' (ZeF 8:368). Unlike Jeremy Bentham, his Late Enlightenment contemporary, Kant has no ambition to design a complete and unambiguous legal code for all interaction between nations.¹ Lasting peace will be brought about through contractually agreed public international law: The exact content of its norms and the exact design of its institutions cannot therefore be pre-empted by philosophical reflection. Nonetheless, some general principles may turn out to be fundamental to public international law, or to bringing it about.

Although restoration may seem like a peripheral issue within international law, it affords us a better handle on Kant's overall thoughts on a global legal condition than do current paradigms of 'distributive justice'.²

¹ See Jeremy Bentham, 'Principles of International Law', in Bentham, *Works*, ed. J. Bowring, vol. II (Edinburgh: William Tait, 1843), 537.

² For an extended critique of this paradigm, see Iris M. Young, *Justice and the Politics of Difference* (Princeton: Princeton University Press, 1990).

Much of the motivation for Kant's development of a pacific foundation comes from his sense that global history amounts to a history of violations. The horrors of colonization spur him on to protect non-state peoples in his comprehensive conception of cosmopolitan law. Besides, the idea of restoration fits Kant's dynamic understanding of an evolving international law; this is why omission of this topic in contemporary discussions of Kantian global justice is so striking.³

Restoration, for the purposes of this chapter, involves both restitution and redress. Central cases include the restitution of wrongfully usurped political dominion, after annexation or colonization, or compensation for past wrongs, as in reparation payments. While the existing literature on restorative justice is modelled on criminal law and on processing harms against individuals,⁴ I will be concerned with violations of constitutional, international, and cosmopolitan law in their collective dimensions. The pertinent cases of restorative justice⁵ are war, conquest, occupation, annexation of territory, and loss of political freedom. Independently of whether they also constitute wrongs against individuals, these acts involve transgressions that are squarely located within public law.

Before we start, it may be important to confront a fundamental doubt. Some interpreters have read Kant as rejecting claims to restoration in international law out of hand.⁶ In *Toward Perpetual Peace*, he states that historical grievances ought to be laid to rest and not be counted as reasons for war (ZeF 8:344). In the *Doctrine of Right*, he seems to doubt whether restoration is possible even in principle, as when he says that imperialist conquests have left a 'stain of injustice that cannot be washed away' (MdS 6:353). According to a sceptical approach, then, Kant may

³ T. Pogge, 'Kant's Vision of a Just World Order', in Thomas E. Hill, Jr. (ed.), *The Blackwell Guide to Kant's Ethics* (Oxford: Wiley Blackwell, 2009), 196–208; Sylvie Loriaux, 'Kant on International Distributive Justice', *Journal of Global Ethics*, 3 (2007), 281–301, esp. 297; Howard Williams, 'Towards a Kantian Theory of International Distributive Justice', *Kantian Review*, 15 (2010), 43–77.

⁴ cf. Dennis Sullivan and Brian Tiff, *Handbook on Restorative Justice: A Global Perspective* (London: Routledge, 2006); Gary Bass, 'Ius post bellum', *Philosophy and Public Affairs*, 32 (2004), 384–412, esp. 404–6.

⁵ I use the term 'justice' (*Gerechtigkeit*) in Kant's sense, as denoting what would be legitimate laws or principles for correct decisions of court-like instances, and thus synonymously with 'right' (*Recht*). See Reinhard Brandt, 'Gerechtigkeit bei Kant', *Jahrbuch für Recht und Ethik*, 1 (1993), 25–44.

⁶ See the discussion in Hans Saner, 'Die negativen Bedingungen des Friedens', in O. Höffe (ed.), *Immanuel Kant: Zum ewigen Frieden* (2nd edn., Berlin: Akademie, 2004), 43–68, at 53–4.

have held that restoration ought not, or cannot, be a task for international law. I largely reject that sceptical approach. Although I agree that, in some contexts, restorative duties do not provide solutions to historical conflicts, I propose a predominantly non-sceptical interpretation. The question is not so much whether restorative justice can and ought to be administered, but when, why, and how. More specifically, I ask at what level of law questions of restoration may or may not be appropriately raised.

The term 'levels of law' requires explaining within the systematic architecture of Kant's international legal doctrine. I begin by sketching Kant's multi-level conception of international law, comprising natural international law, transitional international law, and public international law (7.1). In the second and third section, I turn to restoration in international and cosmopolitan law. I first discuss restoration at the level of natural international law, which holds in the state of nature (7.2.1), and then consider conditions for the transition into a public international legal framework (7.2.2). Finally, I turn to the impact of restorative duties on cosmopolitan law (7.3). My claims are, first, that restorative justice is not a matter of natural international law, but of transitional and public international law and, second, that restorative justice is centrally important to, yet not entirely fulfillable within, cosmopolitan law. In making these claims, I take sides in a long-standing controversy on the character of Kant's conception of international law. Does its innovation lie in the substantive advances it makes within the natural law tradition? Or does it lie in transcending the natural law tradition altogether? My argument situates Kant's contribution firmly in the latter camp.

7.1 The Edifice of International Law

Many authors have noticed divergences between *Toward Perpetual Peace* and the *Doctrine of Right*. Some have argued that Kant changed his mind between 1795 and 1797, and in the later, more systematic work corrects the position laid out in the earlier text.⁷ In contrast, Oliver Eberl and I have

⁷ This challenge has been most forcefully stated by Sharon Byrd and Joachim Hruschka, most recently in their *Kant's Doctrine of Right* (Cambridge: Cambridge University Press, 2010), 13 f., 195 f. But see already, Katrin Flikschuh, *Kant and Modern Political Philosophy* (Cambridge: Cambridge University Press, 2000).

Table 7.1 Levels of international law in Kant's legal philosophy

	Textual basis	Task	Content
State of nature: natural international law	MdS §§ 53–60	Delineate extent of states' natural rights	Original <i>jus ad bellum</i> , <i>in bello</i> , <i>post bellum</i>
State of transition to public int'l law: transitional international law	ZeF, Prel. 1–6	Delineate conditions of transition: building public trust	Restrictions on original <i>jus ad bellum</i> , <i>in bello</i> , <i>post bellum</i>
Federation of states: public international law	ZeF, Def. 1–3, MdS § 61	Delineate lasting procedures, institutions, and norms	Transformation and replacement of original <i>jus ad bellum</i> , <i>in bello</i> , <i>post bellum</i>

argued that this impression stems from the fact that the first level of the edifice of law is erected last. We take Kant's positions in *Toward Perpetual Peace* and the *Doctrine of Right* to represent a single consistent theory that spans three distinct levels of international law.⁸ Although the *Doctrine of Right* may be the last word, chronologically speaking, the design sketched in *Toward Perpetual Peace* is of lasting systematic importance. The *Doctrine of Right* specifies the conceptually and historically prior legal conditions within the state of nature, which the first two parts of *Toward Perpetual Peace*, the Preliminary and Definitive Articles, build upon. While the Preliminary Articles specify a transitional stage of international law, the Definitive Articles formulate principles for the permanent public 'constitution' of a global federation, comprising the three elements of public law: state law, international, and cosmopolitan law (ZeF 8:349 fn). As represented in Table 7.1, legal evolution moves up from the first to the third

⁸ Oliver Eberl and Peter Niesen, 'Kommentar', in Immanuel Kant, *Zum ewigen Frieden und Auszüge aus der Rechtslehre* (Berlin: Suhrkamp, 2011), 89–416, esp. 100–4, 125–266. Howard Williams has argued that key passages of the *Doctrine of Right* may have been drafted before the publication of *Toward Perpetual Peace*, and should therefore be awarded temporal precedence. Our findings about logical precedence are consistent with this claim, but independent of it. See Williams, *Kant and the End of War: A Critique of Just War Theory* (Houndmills: Palgrave, 2012), 52–4.

level, from natural international law through transitional international law to public international law.

Adopting the three-tiered model allows us to distinguish between different normative claims at different levels. By way of example, consider preventive warfare. In the *Doctrine of Right*, Kant asserts that states have the right to wage preventive war, not only on opponents whom they take to be actively injuring them, but also on those who ‘merely’ threaten or scare them. This latter category ‘includes another state’s being the first to undertake preparations (...) or even just the menacing increase in another state’s power (*potentia tremenda*)’ (MdS 6:346). In contrast, *Toward Perpetual Peace* states that there exists a criterion, ‘very easy to use’, to identify and rule out defective legal principles. This criterion—the ‘principle of publicity’ in its weak form—denies that attacking ‘a neighbouring power that has grown to a formidable size (*potentia tremenda*)’ is permissible under international law (ZeF 8:384). The explicit reference to the older natural law terminology of *potentia tremenda* in both *Perpetual* and the *Doctrine of Right* confirms that Kant is thinking of the same problem in both contexts. Yet, it is difficult to see he can hold both views. According to the *Doctrine of Right*, preventive warfare is not illegal—indeed, states have a natural law entitlement to it. In contrast, the thought experiment employed in *Toward Perpetual Peace* is taken to show that preventive warfare is illegal. One might conclude that Kant changed his mind and rejected in the *Doctrine of Right* what he had held in *Toward Perpetual Peace*.⁹ By contrast, distinguishing between levels of international law allows us to assume that both statements hold: the position of the *Doctrine of Right* is true of natural international law, and that of *Toward Perpetual Peace* holds for public international law, where states’ authority to attack *potentiae tremendae* has been revoked at some point in the process of legal evolution.¹⁰ The present task is to bring out the implications of Kant’s dynamic three-level architecture of international law for the question of restorative justice.

⁹ Byrd and Hruschka, *Kant’s Doctrine of Right*, 13.

¹⁰ For this claim about the fate of the ‘original right’ to wage war in Kant’s legal philosophy, see the analysis of § 54 of the *Doctrine of Right* in Eberl and Niesen, ‘Kommentar’, 144–6.

7.2 Restoration as an Element of International Law

7.2.1 *Natural International Law*

In §§ 53–60 of the *Doctrine of Right*, Kant develops principles of international law that hold in a state of nature among states. Each state has an original right to go to war with another state whenever ‘it believes it has been wronged by the other state’ (MdS 6:346). In § 53, Kant had introduced states as the exclusive subjects of the law of nations. In assigning them a right to wage war, he awards them what traditional just war theory called ‘legitimate authority’.¹¹ Through their *jus ad bellum*, states address putative violations of their rights. The fact that they can base a right to wage war on the *belief* that they have been wronged shows that they themselves command full authority as to what constitutes a violation and need not bow to rival interpretations. Their authority rests on the equal ‘natural freedom’ of all nations (MdS 6:343). Because all states are free and equal moral persons in a state of nature, no state has juridical authority over other states, and any pretence at such authority, for example, in waging war for alleged ‘punitive’ reasons, is incompatible with their original independence and equality (MdS 6:347).

Having affirmed this original *jus ad bellum*, Kant goes on to explain what it entails for the conduct and consequences of warfare (*jus in bello*, *jus post bellum*), including the question of whether states may occupy or annex the dominion of their opponents through war. He denies the post-bellum rightfulness of either:

A defeated state or its subjects do not lose their civil freedom through the conquest of their country, so that the state could be degraded to a colony and its subjects to bondage. (MdS 6:348)

How does Kant arrive at this anti-colonial claim? In the *Doctrine of Right*, he relies on two types of arguments: first, certain actions could not possibly be compatible with the presupposition of states’ freedom and equality in the lawless state of nature; second, certain actions would make it difficult or impossible to proceed from that state towards a lasting

¹¹ Thomas Aquinas, *Summa Theologiae* IIaIIae 40 (‘On War’), in Thomas Aquinas, *Political Writings*, ed. R. W. Dyson (Cambridge: Cambridge University Press, 2002), 241.

lawful condition. In my terminology, the first type of argument applies to natural law, the second, to the conditions necessary to leave the state of nature, thus transitional law.¹² As the main argument on annexation and restoration in the *Doctrine of Right* is set on the level of natural international law, I will take up the second type of argument only in the next section (7.2.2). From the point of view of natural international law, the original assumption of equal freedom among states allows neither the physical extermination of the defeated party (*bellum internecinum*) nor its 'moral annihilation' (literally: its 'consumption', *Vertilgung*) in a *bellum subjugatorium*, that is, in the dissolution of an independent state, where its people 'would either become merged in one mass with that of the conqueror or reduced to servitude' (MdS 6:347). Whether the post-war order includes another people and its territory in a 'civil union' with the victorious country under full citizenship rights, or subjects the defeated people as a dependent colony, its continued occupation and rule is incompatible with natural international law.

While annexation is ruled out as an option under *jus post bellum*, *jus in bello* allows the interim occupation of territory and the subjugation of its population during warfare. As an 'extreme measure a state might use to achieve a condition of peace', occupation of enemy territory is permissible (MdS 6:347). But a lasting conquest is ruled out even in cases where a military opponent can justifiably be seen as an 'unjust enemy', that is, as an opponent who intends to sabotage all progress toward public international law.¹³ After its defeat, the victorious parties will not be entitled 'to divide its territory among themselves' because permanent annexation of an independent state 'would be an injustice against its people, which cannot lose its original right to unite itself into a commonwealth' (MdS 6:349).

What is true for the complete annihilation of a state is no less true for attempts at partial annexation. War cannot constitute 'a way of acquiring'

¹² As an illustration of the former category, consider Kant's claim that forcing its citizens to commit acts of assassination or other war crimes makes states lose their claim 'to count as a person (sharing equal rights with others) in international law' (MdS 6:347, transl. amended, PN). As an illustration of the latter category, consider his claim, in the same context, that states must not instigate assassinations for the quite different reason that they are 'treacherous means that would destroy the trust requisite to establishing a lasting peace' (MdS 6:347).

¹³ Eberl and Niesen, 'Kommentar', 162–74. For a full treatment, see Oliver Eberl and Peter Niesen, 'Kein Frieden mit dem "ungerechten Feind"? Erzwangene Verfassungsgebung

dominion; it is therefore not a permissible means of enlargement (MdS 6:347). If partial as well as total annexation through war contravene natural international law, what is to be done if they do occur? With Kant's arguments against annexation of dominion in place, it is now possible to inquire into the conditions for restoration. Here, it will be useful to distinguish between two issues: whether an act of annexation gives the defeated state a right to wage war against the occupying power to reverse that annexation (7.2.1.1), and whether a state has wronged another by annexation and is under a legal duty to right this wrong (7.2.1.2).

7.2.1.1 A Natural Right to Wage War for Restoration?

Kant is extremely cautious about all matters of reparation, compensation, and restitution in and through war in his discussion of natural international law in the *Doctrine of Right*. Instead of explicitly crediting a defeated state with a right to reverse its fortune, he argues that any immediate 'retaliation (*retorsio*)' will only give the country under attack a just cause for war (MdS 6:346).¹⁴ By the term 'retaliation (*retorsio*)' [*Wiedervergeltung*], Kant means to include not only revenge, but various ways of 'obtain[ing] satisfaction [*Genugtuung*] for an offense committed against its people by the people of another state' (MdS 6:346). These include attempts at enforced reparation or the restoration of the political *status quo ante* and therefore cover our case of a state attempting to reverse partial annexation. The reason why an attack for purposes of restoration triggers a *jus ad bellum* on the side of the attacked state is that the attack violates a formal condition. As a means of securing one's right, it 'resembles starting a war without first renouncing peace (without a declaration of war)' (MdS 6:346). States should first seek 'restoration [*Erstattung*] (by peaceful methods) from the other state' (MdS 6:346, transl. amended, PN), making a demand which the other state is free to accept or reject. States seeking

im Ausgang aus dem Naturzustand', in Oliver Eberl (ed.), *Transnationalisierung der Volkssouveränität* (Stuttgart: Steiner, 2011), 219–47.

¹⁴ Kant's terminology refers back to Gottfried Achenwall's *Juris Naturalis Pars Posterior*, § 261, p. 236–7 in the 1763 edition (Göttingen: Bossiegel), which discusses various forms of reactive warfare under the notion of *retorsio*. In his lecture notes on Achenwall, Kant is still extremely accommodating as regards the use of force in retaliation: *propria non sunt hostilitates, si maneant intra limites damni refa[r?]ciendi*. 'Erläuterungen Kants zu G. Achenwalls *Juris naturalis Pars posterior*', in Immanuel Kant, *Gesammelte Schriften* (Berlin: Akademie, 1934), vol. XIX, 323–441, 434 f.

restoration can claim, at best, a conditional *jus ad bellum*, subject to the other state's reaction on its demands.

Similarly, Kant denies that enforced restoration could be a lawful consequence of war. *Post bellum*, the victor may not 'propose compensation for the costs of the war since he would then have to admit that his opponent had fought an unjust war' (MdS 6:348). By the same argument, post-war criminal prosecution of an enemy sovereign is ruled out, as 'the concept of a peace treaty already contains the provision that an amnesty goes along with it' (MdS 6:349). Again, as in the case of an interim occupation, the *jus in bello* makes an exception from an absolute ban on enforced compensation, for tactical purposes: 'During war it is permissible to exact supplies and contributions from a defeated enemy' (MdS 6:348, transl. amended, PN). But this permission ceases to be valid as soon as armed hostilities have ceased. By invalidating demands for reparation in the state of nature, Kant opposes historical justifications of present wars. What makes demands for rectification specifically problematic is not just that they imply injustice on the part of one's opponent's past action, but that they deny the legitimacy of a state of affairs, of the *status quo* of international law itself. Demands for territorial restoration complicate matters in that they challenge not the conduct, but the very composition of the subjects of international law. I will return to the point at the end of this section.

7.2.1.2 Do Rights and Duties to Restoration Exist?

So far, I have treated the question in its subjective dimension: is a state entitled to use military force where it *believes* it is owed territorial restoration? Now I turn to the facts of the matter: does a right to restoration *exist* on the part of the defeated power, and a corresponding duty on the part of the victorious power, in the state of nature? At first glance, it seems that the defeated party has obviously been wronged by the annexing state. However, note that in setting out the fundamental categories of international law, Kant describes the state of nature as a state of latent war and holds that 'no state is wronged by another in this condition' (MdS 6:344). Of course, Kant is not saying that states, no matter what they do, cannot wrong each other in the state of nature. If he thought so, the extensive discussion in the *Doctrine of Right* of limits to the *jus ad bellum*, the *jus in bello*, and the *jus post bellum* would be pointless. Already in the state of nature, states wrong each other if, for example, they start wars for allegedly punitive reasons. And of course, Kant holds that merely by remaining in

a state of war among each other, and thereby in a 'nonrightful condition', states do violate a transitional obligation. His point is that honouring this obligation is not owed to each other in the sense that non-compliance would wrong another non-compliant state. In so far as states choose to remain in the state of nature, neither deserves not to be a victim of war.

I have dwelt on the distinction between doing wrong and wronging concrete others because, in an earlier passage of the *Doctrine of Right*, Kant uses the same opposition in a context crucial to our discussion. Towards the end of the section on Private Law, when addressing the structural defects of the state of nature and the obligatory transition to Public Law, he anticipates a problem of International Law:

An enemy who, instead of honourably carrying out his surrender agreement with the garrison of a besieged fortress, breaks the agreement cannot complain of being wronged if his opponent plays the same trick on him when he can. But in general they do wrong in the highest degree. (MdS 6:308 fn)

Kant uses the example to distinguish between what is 'merely formally wrong and what is also materially wrong' (MdS 6:308 fn). States can commit formal wrongs even where they do not violate each other's rights, as when they defy attempts towards a transition to a public legal condition. Crucially, whether a state's warfare materially wrongs another state, that is, whether it violates obligations that it owes the other state, cannot be determined independently of its earlier behaviour. A state that pays back an injustice commits no material wrong. The same thought applies to conquest and annexation. If a state successfully *reclaims* territory that formerly belonged to its dominion but was lost to another state through occupation and conquest, the newly defeated state may not be in a position to claim that its rights have been abridged. This is not to say that the victorious party is not at fault in re-annexing a part of its former territory, but it seems clear that its obligations *toward* the defeated state cannot be read off a description of the situation that focuses exclusively on the present. Retaliating victims may remain blameless on the material level if they decide to pay back or redress the injustice when opportunity affords it. While the *Doctrine of Right* is at pains to qualify the right of the violated party to exact redress or take revenge (MdS 6:346), the breach of capitulation example shows that Kant refrains from ascribing any material wrongdoing to the state that does exact reciprocal revenge. All he points out is that taking steps toward establishing an international legal condition

remains obligatory for both parties, and that both are violating the conditions of transiting to that condition.

If we acknowledge the relevance of reciprocal historical violations for the question of rightful restoration, the question of who has authority over the historical record cannot be avoided. How, for example, is a case like that of the region of Alsace to be treated, which changed hands between France and Germany back and forth from the dawn of the modern territorial state until 1919? While Kant does not discuss an analogous question in the section on Public Law, he explores a similar problem in the Private Law section of the *Doctrine of Right*, under the heading, 'On recovery (repossession) of something lost'. In conflicts over property, as over dominion, legal titles can be of questionable historical accuracy. In particular, 'since it is largely impossible to discover who was absolutely first (the original owner)', authoritative and secure acquisition of, and property in, objects in the state of nature may be impossible (MdS 6:303). Kant signals that the problem can only be solved in the civil condition, but does not claim that the historical issue will be resolved once and for all by the courts. Rather, in conflicts over repossession, courts will need to have recourse to different principles than those of original acquisition and lawful transfer. They ought to try and maximize security of allocation to make sure that their decisions create legal certainty over and above the questionable accuracy of historical titles.¹⁵ If, per analogy, we apply this argument to the question of how to solve conflicts over contested dominion in the state of nature, we face a similar antinomy: in principle, such conflicts ought to be decided on the merits of the case. But in cases where dominion has shifted frequently, any originalist endeavours amount to arbitrary fixations. Although Kant acknowledges that, in the state of nature, there may be a 'true' claimant to a horse that has changed hands frequently in the past, this cannot be the overriding principle on which a court would decide a conflict. It is similarly improbable that one could conclusively derive a current title from a non-contestable state of original dominion in international law, and in many cases, resolving claims to former dominion will be largely impossible.

On balance, the problems with restorative claims in the state of nature set severe limits on their value as justifications for war and as grounds

¹⁵ I thank Anna Schriebl and Christoph Horn for a discussion of this parallel case, and Martin Brecher for helpful comments.

for legal duties vis-à-vis each other. Even before we consider the added empirical likelihood for war that comes with them, a number of principled considerations speak against restorative wars and the existence of clear-cut restorative claims and duties. Before moving on to transitional international law, I want to suggest a systematic explanation for Kant's difficulty. The fact that he is uneasy about claims that do not respect the status quo of dominion and territory may rest on his view that international law, unlike private law between individuals, does not concern itself with the acquisition of external objects. He insists that

the idea of international law involves only the concept of an antagonism in accordance to principles of outer freedom by which each can preserve what belongs to it, but not a way of acquiring, by which one state's increase of power could threaten others. (MdS 6:347)

Kant's systematic point goes back to a distinction he made earlier on in the *Doctrine of Right* between rights to a *meum et tuum internum*, which is innate, and rights to a *meum et tuum externum*, which must be acquired.¹⁶ States, Kant argues, cannot lay claim to external objects; all that can concern them is their internal set-up. We will need to qualify this reading in section 7.3, when discussing cosmopolitan law, but in the context of international law, the relation between a state and its territory is presumed to be stable. In securing states' *meum internum* and denying them all claims to *meum externum*, Kant can rely exclusively on a priori elements of natural law. Like the innate right of a person to freedom, states' rights under natural international law are determinate in advance and abstract away from all questions of acquisition. Any form of territorial re-assignment of political dominion must therefore cut across the systematic integrity of natural international law, a body of law constitutively forced to presuppose that whatever is beyond the boundary of this or that state falls outside its scope. Thus, the questions of whether there is a right to wage war on grounds of territorial restoration, or whether there exist legal duties

¹⁶ cf. MdS 6:237. Arthur Ripstein forcefully makes this point in his *Force and Freedom* (Cambridge, Mass.: Harvard University Press, 2009), 227–9. Ripstein gives a distinctively territorial reading of the passage and argues that for Kant, '[t]he state is always necessarily in possession of its territory, just as a person is always in possession of his or her own body' (228). Although I agree that Kant relies on a territorial interpretation of a state's dominion, I read him as arguing that states establish dominion over a population first, and over territory as a consequence.

to restoration, remain aporetic: they cannot be answered in the affirmative, as wars can never be fought for enlargement, and international law privileges the status quo. At the same time, states, however conditionally, remain within their rights to wage war, even restorative war, once they believe they have been wronged.

I conclude that, while the restoration of annexed territory may under narrow conditions be a legitimate cause for a right to go to war in the state of nature, we cannot confidently deduce a material legal obligation on the part of the annexer to return dominion. The vindication of historical grievances must be thought of as similarly subjective and arbitrary as the satisfaction of present violations. *Ex hypothesi*, there is no institutional position that could decide on the merits of the situation. This cannot prevent states from seeking subjective and unilateral satisfaction through war, but leaves undecided who can claim substantive restorative rights in a given conflict.

7.2.2 *Transitional International Law*

While the discussion of restorative claims within natural international law ended aporetically, this section will argue that Kant offers a coherent normative conception of restoration within transitional international law. This intermediate level between the state of nature, with its straightforward authorization to use force whenever a state believes it has been wronged, and the condition of omnilateral coordination between states within a league of nations, is carved out in the Preliminary Articles of *Toward Perpetual Peace*. The main function of the transitional level is to create a condition of public trust among states.

In order to contribute to building trust between states, some Preliminary Articles outlaw some practices that would not have been obviously illegal in the state of nature, with a view toward transcending that state. Take the ban on standing armies (Art. 3), the ban on war credits (Art. 3, 4), or the ban on selling or gifting political dominion, or acquiring it through marriage (Art. 2). None of these practices is explicitly ruled out in the *Doctrine of Right*.¹⁷ Kant believes that such practices need to be curbed if there is to

¹⁷ By this, I do not mean to say that the practices singled out in the Preliminary Articles as war-prone are clearly compatible with natural international law. My point is that even if they should turn out to be incompatible, they may not be obviously incompatible. When states violate non-obvious natural international law provisions in the state of nature, it cannot be ruled out that they are still acting *bona fide*.

be a chance of moving toward the global 'constitution' set out in the three Definitive Articles, where republican constitutionalism reigns in all states, an international institutional framework resolves conflicts among states, and where cosmopolitan rights are protected. With regard to restorative justice, at first glance, the Preliminary Articles send a confusing message. On the one hand, Kant urges states to disregard historical claims, even where they appear to constitute sufficient grounds for warfare; on the other hand, he urges them to restore dominion to each other. I will first focus on the apparent rejection of restorative claims (7.2.2.1) and then look at the restoration of political freedom after dominion has been sold, gifted, or acquired through marriage. I will argue that restoration of dominion following such transfers, although not enumerated in the Preliminary Articles, is one of their binding provisions (7.2.2.2).

7.2.2.1 The Apparent Rejection of Restorative Duties under Transitional International Law

Kant is on record as opposing the rectification of historical wrongs. He demands that historical grievances be laid to rest in Preliminary Article 1 of *Toward Perpetual Peace*. In committing to a peace treaty, the contracting parties must not harbour 'secret reservations of material for a future war'; they must disregard 'old claims' (ZeF 8:343–4), such as former dominion over territory. This follows from the conceptual distinction between a peace treaty and a mere truce. Not only should specific historical claims be disregarded—a genuine peace treaty will disqualify all later invocations of historical reasons for war at any future time, even if those reasons are 'as yet unrecognised' and only discovered at a later date (ZeF 8:344). This requirement revokes states' (conditional) right to wage war in response to an earlier violation, leaving only new violations as rightful bases of exercise of their *jus ad bellum*. On transitional grounds, this makes good sense. Claims to restitution can always come up and destabilize the move toward public international law. Disregarding old claims, even at the cost of non-restitution, contributes to building trust among nations. However, it is difficult to ward off a sense of injustice, in that a current peace treaty, typically negotiated and signed under conditions of inequality and duress, where 'the victor lays down the conditions' (MdS 6:348), should perpetually ratify the current status quo of political dominion and, with it, distributions of territory.

The precise aim of Article 1, however, is not to draw a final line (*Schlussstrich*) under the invocation of past grievances. The article

prohibits relying on historical grievances as ‘material for a future war’. It does not rule out the future use of claims, for instance, in a court of law or court of arbitration, which could conceivably occur within the coming framework of international law. Nor does it reject the use of such claims in future negotiations about the content of public international law.¹⁸ In Article 1, Kant only rules out future unilateral attempts at rectification of past wrongs. Thus, the prohibition on secret reservations for war in transitional law does not prejudge whether bringing up historical claims on the transitional level or within a public international legal condition would or would not contribute to realizing the conditions for lasting peace. The same distinction applies to Kant’s opposition to post-war compensations and criminal prosecution. Kant’s Hobbesian opposition against prosecuting sovereigns (MdS 6:317) does not necessarily translate to the transitional or public international level. Questions of reparation and prosecution that need to be set aside under natural international law can be taken up again after a reciprocal transitional commitment not to pursue such measures unilaterally has been made. But in order to go beyond the in-principle conceivability of a treatment of restorative claims, we need to introduce evidence that Kant is at all in favour of addressing such claims in international law.

7.2.2.2 Restorative Justice in Transitional International Law

A constructive reading of restorative justice within transitional international law can start from Preliminary Article 2. Although all Preliminary Articles contain laws of ‘objective practical necessity’ (ZeF 8:348), Kant distinguishes between two kinds of prohibitions: some are ‘strict’ laws (*leges strictae*) where the corresponding practice is to be done away with immediately, while the implementation of *leges latae* (‘wide laws’) may be postponed until favourable conditions hold. The distinction between strict and less than strict laws does not echo that between laws properly so-called and rules of virtue (MdS 6:232–3), but refers to two kinds of equally definitive and compelling norms. Articles 1, 5, and 6 (the bans on secret reservations in international contracts, on military interventions into the constitutional affairs of other states, and on inhumane and punitive modes of waging war) bind immediately, regardless of empirical

¹⁸ See already, Georg Cavallar, *Pax Kantiana: Systematisch-historische Untersuchung des Entwurfs ‘Zum ewigen Frieden’ (1795) von Immanuel Kant* (Vienna: Böhlau, 1992), 105.

conditions. The remaining Articles 2, 3, and 4 (the bans on commercial or conjugal acquisition of states, on standing, and on credit-financed armies) are likewise valid without exception, but allow taking into account political contingencies to delay implementation to a later stage. While other states may infer from active violations of Articles 1, 5, and 6 that a state does not now comply with the Preliminary Articles, they cannot deduce the same conclusion from present or continued violations of Article 2, 3, or 4.

At first glance, Kant's taxonomy appears to contain a misclassification. Why should an international ban on the acquisition of states through purchase, marriage, inheritance, or gift be deferred in this way? Other deferrals seem to be based on considerations of stability. A state's reliance on a standing army, like its continuing reliance on an autocratic constitution, may be advisable in the context of a warmongering environment (ZeF 8:373). Similarly, pulling the plug on an established transnational credit system may destabilize the current international constellation and lead to financial and military collapse on the part of some states. In contrast, it is not clear why the prohibition on the nuptial, hereditary, or financial acquisition of states should not take immediate effect. Kant's decision to classify Article 2 with the deferrable conditions of transitional law may therefore be taken to indicate that its central provision is not the one stated in its headline. This interpretation is confirmed by the fact that in the long final remark to the Preliminary Articles, Kant does not elaborate on territorial acquisition by non-violent means at all, but on its implications for restitution. One may not postpone, he says,

to a nonexistent date (*ad calendas Graecas*, as Augustus used to promise) putting into effect the law, for example, to restore in accordance with number 2 the freedom of certain states deprived of it, and so not restore it. (ZeF 8:347)

This passage shows that the central provision of Article 2 lies in the 'wide' prohibition against not returning dominion that was acquired through a private law transaction. Although technically the duty in question is a prohibition on non-restoration, it can more plausibly be formulated as a positive legal duty of restorative justice, holding on the level of transition to public international law:

(RJ1) *If a state has deprived another state of its freedom by means of purchase, inheritance, marriage, etc., it must restore it when circumstances make it safe to do so.*

RJ1 has the status of a preliminary article toward perpetual peace. It binds states reciprocally in a quasi-contractual sense. It awards them some

time for implementation, but requires them to comply as soon as conditions look safe from their perspective. In contrast to the legally indeterminate status of restorative claims in the state of nature, the transitional level identifies at least some clear cases for restoration, cases in which territorial annexations came about, not through the use of force, but through private transactions.¹⁹

Two remarks are necessary before I can enlarge on this clear-cut duty of restorative justice. The first concerns the specifics of violation and restoration. We saw in the discussion of natural international law that it is the political freedom of peoples that Kant means to protect against subjection and annexation. In the Preliminary Articles, he draws on the same argument. Article 5 makes it clear that the 'autonomy of all states' lies in political self-determination, in their freedom of constitutional choice unhindered from outside interference (ZeF 8:346). The same concern is protected in Article 2. The state 'is a society of human beings that no one other than itself can command or dispose of' (ZeF 8:344). However, putting civil freedom centre stage makes it difficult in some cases to see what 'restoring' the abrogated freedom of a state would consist of. Of course, where a republican state was absorbed into a larger empire by conquest, etc., restoring independence means restoring self-government. But not in all cases will annexed states have been republics, and it is not clear what then 'restoring' their freedom ought to be taken to mean. In 'zero hour'-type situations after a defeat in war, Kant does recommend letting a people start afresh with a new constitution (MdS 6:349). But in other cases, restored dominion might seem to have to be handed back to an autocratic dynasty. Perhaps Kant's subversive description of what goes on in private law acquisitions of states provides a clue to his strategy. In the case of hereditary acquisition, 'the state acquires a ruler [*einen Regenten*], but the ruler as such . . . does not acquire the state' (ZeF 8:344 fn). The ruler, as Kant is careful to point out, is not the sovereign, but the head of the executive and thereby subject to the law (MdS 6:317–8). 'Restoring' freedom under these circumstances is compatible with re-hiring a formerly autocratic monarch or member of his family as head of administration, who would then need to leave legislative supremacy to the people. Restoration

¹⁹ In cases where states, like horses, have undergone multiple sales, etc., every intermittent possessor is under the same duty to restore their freedom. In the next paragraph I try to answer the question: to whom is their freedom to be restored?

of dominion would thus bring about, rather than re-establish, a people's civil freedom.

The second remark concerns the legal status of the traditional practice of 'acquiring' states through the various transactions of private law. Kant describes the widespread conviction that states can be legitimate objects of purchase, gift, inheritance, or marriage as *Vorurteil dieser Erwerbungsart*, 'prejudice of this mode of appropriation' (ZEF 8:344). The prohibition contained in Article 2 affects 'the way of acquiring, ... but not the status of possession, which, though it does not have the required legal title, was nevertheless in its time (that of putative appropriation) taken to be rightful according to the public opinion of the day, by every state' (ZEF 8:347, transl. amended, PN). Although no property title arises from a putative appropriation that follows a widespread prejudice, its resulting distribution of possessions ought to be tolerated, if only for the time being. Appropriations of dominion over peoples through private law transaction are not in fact rightful, not even provisionally so, but the presumption seems to be that if an action was considered rightful by all states at the time of the deed, this does not trigger an *immediate* claim to rectification.

In closing this section, I want to consider whether the scope of RJ1 can be extended. Can the principle be generalized to cover other modes of appropriation and annexation of peoples? In contrast to the passages on the law of war in the *Doctrine of Right*, which focused on standard cases of annexation through war, the Preliminary Articles only covered the small and somewhat bizarre selection of cases where dominion is thought to be transferable by private law transaction. If a state has robbed another state of its freedom, not through purchase or inheritance, but through military occupation, must it restore it on the level of transitional international law when conditions seem safe? If a people does not forfeit its claim to liberty when its state is bought or sold, it would be counter-intuitive to assume it did so in the case of acquisition by occupation. Also, it is hardly the case that in Kant's day, a shared public opinion defended acquisition by occupation. However, three possible objections against generalizing RJ1 to post-war cases of annexed dominion come to mind. The first is that reversing annexation through war may be less pressing than returning dominion that has been bought and sold, and therefore not a provision of comparable importance for transiting to a state of public international law. This seems obviously wrong. The second is that a duty to restore dominion acquired through war would lead to less, not more

international stability, and is therefore less conducive to building public trust. Clearly, there is something to this argument. It may be difficult and controversial to implement a general post-war restorative duty, so that it could turn out to be counter-productive in the process of transition to public international law. The third objection is that a duty to restore what has been acquired through war would arbitrarily fix on the final proprietor as the one responsible to reconstitute dominion. This objection has some force too. It appears that the indeterminacy of the historical situation in the state of nature can neither be overcome through unilateral redress by war (7.2.1.1), nor through a general duty of restoration on the transitional level (7.2.2.2). The second and third objection should thus make us hesitant to assign general duties for post-war restoration under transitional law. They should not prompt us to reject the idea of post-war restorative duties altogether, but rather to reopen discussions at another level of international law. If it is the task of public international law to settle conflicts about claims 'as if through an arbiter' (MdS 6:350, transl. amended, PN), restitution should be considered a plausible topic for public international conflict resolution:

(RJ2) If a state has deprived another state of its freedom, measures of restorative justice should be addressed within public international law (at the latest).

RJ2 is a much weaker principle than RJ1, in that it leaves open not only where and when, but also how conflicts over restorative claims are to be resolved. While RJ2, like RJ1, rejects the alleged impossibility to redress violations of rights between states, in contrast to RJ1, it does not entail that all annexation will have to be reversed.

7.3 Colonialism and Restoration under Cosmopolitan Law

When Kant denounces the European colonial practices that have subjected large parts of the globe's population, he does not dwell on remedies. His wholly negative verdict on European colonialism may make it seem that he has resigned himself to the status quo. On the other hand, he claims that the world has reached a stage in which it is not only the case that 'a violation of right on one place of the earth is felt in all', but in which the communication of historical injustice has constituted a global community

that pushes toward the realization of the 'public rights of human beings' [*öffentliches Menschenrecht*] (ZeF 8:360). I want to argue that, although there is one sense in which historical injustice seems beyond possible restitution or redress, a comprehensively sceptical interpretation of cosmopolitan restorative justice is not borne out by a close reading of Kant's conception of cosmopolitan law. The very point of Kant's introduction of cosmopolitan law in *Toward Perpetual Peace* in 1795 is to extend to non-state entities the protection that was formerly only accorded to states under international law.²⁰

In order to explore possibilities for restoration within Kant's framework, we need to distinguish between three distinct forms of colonization. A first case can be singled out immediately, namely, the case of a settler colony appropriating formerly unoccupied and unused territory. Here, no questions of rightful appropriation are raised if 'there is no encroachment on anyone's use of his land,' provided adjacent non-state peoples consent and are neither outsmarted nor defrauded (MdS 6:353). In the other two cases, colonial appropriation is problematic. In *Toward Perpetual Peace*, Kant describes the case of 'East Indian' colonization as one of straightforward international conflict: the European states brought in armies under the pretext of setting up trading posts, and thus conquered and subjugated the several Indian 'states' (ZeF 8:358–9). Hence, although the invading powers pretended not to have annexed a state, but to have set up a state for a stateless people, the colonial appropriation of India can be criticized already under the principles of natural international law. What makes this case a problem within cosmopolitan law is that Europeans went beyond their cosmopolitan entitlements in claiming territory to set up trading posts. In introducing cosmopolitan law in the Third Definitive Article, Kant had explicitly 'limited' it to a right to hospitality in order to rule out that claims to appropriation can be based on it (ZeF 8:357). The subjection of India further differs from less clear-cut intra-European conflicts in that the idea of a reciprocal history of violations is irrelevant by stipulation. Kant starts from the observation that the European powers established voluntary, unilateral contact and are unequivocally to blame for intentional, unprovoked annexation.

²⁰ cf. Peter Niesen, 'Colonialism and Hospitality', *Politics and Ethics Review*, 3 (2007), 90–108; Pauline Kleingeld, *Kant and Cosmopolitanism: The Philosophical Ideal of World Citizenship* (Cambridge: Cambridge University Press, 2012), 72–91.

The final case, entertained in the sections on Private Law and on Cosmopolitan Law in the *Doctrine of Right*, is the most problematic one. The *Doctrine of Right* deals with cases of genuine non-state peoples where Europeans pursue an agenda of state-building *ab initio* (MdS 6:266). Apart from the spurious civilizational justifications that Kant rejects out of hand (MdS 6:353), there is one principled argument from the spread of a global legal condition intended to absolve the colonizers:

It can still be asked whether, when neither nature nor chance but just our own will brings us into the neighbourhood of a people that holds out no prospect of a civil union with it, we should not be authorised to found colonies, by force if need be, in order to establish a civil condition? (MdS 6:266)

Kant replies that it is 'easy to see through this veil of injustice—such a way of acquiring land is therefore to be repudiated'. Although the fact that a non-state people remains in the state of nature does not accord with its transitional legal obligations, analogies to the justified use of force from the *Doctrine of Right's* treatment of private law break down.²¹ Unlike in the case of the state of nature among individuals, the use of violence in introducing a state of public law in a non-state people cannot be justified by reference to a 'permissive law'.²² It is for the act of coercing a non-state people into submission that Kant reserves his most damning verdict: 'But all these supposedly good intentions cannot wash away the stain of injustice in the means used for them' (MdS 6:353). The external enforcement of a people's transition to the civil condition violates its claim to freedom. But the prospective restoration of this freedom introduces a further difficulty. Even if state-building *ab initio* through colonization were to be set right along the lines of the voluntary restoration of gifted acquisitions discussed above, the historical injustice is more recalcitrant than in the European cases. In the case of former non-state peoples, even constitution-making under popular sovereignty disregards their former option to remain in the state of nature amongst themselves and not build up a system of public law. Restoration of freedom will, by Kant's standards, have to occur in the form of a system of coercive law, and within the arbitrary bounds of statehood that the European nations have established. Even if a forced transition to statehood is redressed by awarding a people political freedom in decolonization, the original injustice cannot be wholly set right.

²¹ For a full treatment, see Niesen, 'Colonialism and Hospitality', 95–6.

²² cf. MdS 6:247, 257, 353.

Granting that the restoration of a people's freedom will not redress all wrongs, the important question is where and why a duty to restore political liberty to colonized peoples or states exists under cosmopolitan law. On this question, the textual basis is slim, so the persuasiveness of what I will say will depend entirely on the correctness of the overall interpretation defended in this chapter. Kant never mentions an explicit duty of immediate decolonization after annexation through war. In view of the reasons given in the last section, his silence on this point implies that we need to treat the second and third case of colonial appropriation under RJ2. RJ2 is a very weak principle indeed: it leaves the prescriptive status of restorative concerns open. If we rely on RJ2 alone, once the level of public international law is reached, a league of nations would be within its rights to bring about comprehensive decolonization. However, we lack instructions for the transitional stage, as well as recommendations as to what restorative claims, if any, ought to be granted under a fully transformed, permanent system of international law.

The reason a stronger restorative principle seems to apply in response to violations of cosmopolitan law, if not violations of international law, is stated at the juncture of International and Cosmopolitan Law. § 61 reads:

Since a state of nature among nations, like a state of nature among individual human beings, is a condition that one ought to leave in order to enter a lawful condition, before this happens any rights of nations, and anything external that is mine or yours which states can acquire or retain by war, are merely provisional. Only in a universal association of states... can rights come to hold conclusively and a true condition of peace come about. (MdS 6:350)

This passage has different implications for restoration under international and cosmopolitan law. What should be uncontroversial is that § 61 is concerned with the development from the state of nature to a condition of global public law in a 'universal association of states'. It describes the internal dynamic of moving from the first to the third level of global law. The route suggested by Kant is that we start with a situation in which rights are 'merely provisional' and end up in a situation in which rights 'hold conclusively'. My suggestion is that although both international and cosmopolitan law strive to realize such a definitive legal condition, the particular route laid out by Kant applies exclusively to cosmopolitan, not international law, and that it yields more stringent restorative duties within cosmopolitan law than within international law.

The notion of provisional rights that § 61 takes up is introduced in the Private Law section of the *Doctrine of Right*, where provisional rights ground the justification and limits of first acquisition. Unilateral acquisition of unowned objects is permitted as a first step towards erecting an interpersonal civil condition. All possessions acquired in this way are of provisional validity only, since they lack ratification by a general will, but as they are compatible with moving on to a condition of public law, they hold 'comparatively as rightful possession' (MdS 6:257). It follows that the category of provisional right is not applicable to international law, since international law, as discussed above, is exclusively concerned with states' *meum internum*.²³ International law holds between states, in a situation where borders are already defined and any foreign acquisition would permeate another state's borders. If the relation of a state to its territory is like the relation of a human being to its body,²⁴ it seems inconceivable that other states should be in a position to rightfully acquire part of it as first owners. Of course, we saw in the section on natural international law that acquisition of dominion over territory through war is *possible* (though non-rightful) in international law. But the very idea that war takes place between states rules out that such acquisition can be first acquisition, and therefore be considered *provisionally* rightful.

While it is impossible that international conquest should generate provisional rights, this possibility cannot be ruled out in cosmopolitan interaction. In order for this possibility to arise, border-crossing interaction would need to take place between states and non-state entities or among non-state entities. The relevant form of acquisition would need to lay claim to being *prima occupatio*. Recall that the motive for Kant's introduction of cosmopolitan law is that European nations base their claims to colonization on *prima occupatio* wherever the state of nature reigns. The conflict between indigenous populations and European new arrivals can be described as a clash resulting from first acquisition: The new arrivals claim to have established provisional property in the respective territory under their control, so that they can rightfully mobilise force to establish dominion over the indigenous population. In the case of an uninhabited stretch of land, Kant considers such *prima occupatio* to be unproblematic, while in the other two cases of colonization, cosmopolitan law requires

²³ MdS 6:347, cf. section 7.2.1.2.

²⁴ Arthur Ripstein, *Force and Freedom*, 229.

that the conflict be resolved along the lines of § 61. § 61 presupposes, beyond Ripstein's reading, that it is possible for states to claim and retain *meum externum* through war, if only provisionally.²⁵

Again, two cases along the lines of the second and third type of colonization under cosmopolitan law have to be distinguished. In the case of unowned 'white spots' on the territory inhabited and used by a non-state people, it seems conceivable that foreign *prima occupatio*, although problematic, could lead to provisional possession. Claiming territory in distant stretches of the globe is not covered by cosmopolitan law, to be sure; however, it is not altogether implausible to envisage cases of successful provisional appropriation. It is harder to see how a provisional right to territorial possession could be brought about in the case of a presumptive non-state public authority (the case of 'East India' in *Toward Perpetual Peace*). But the European tradition justified conquests precisely by the argument that private citizens had set up trading posts in 'white spots' of unclaimed territory.²⁶ What seems inconceivable from the perspective of international law, namely foreign first occupation *within states*, is less implausible under a description as cosmopolitan interaction. In both cases of colonization, the conquering powers' description of the situation is one of justified *prima occupatio*, either by the state (vis-à-vis a non-state people) or by individual claimants. This weakly normative description of the case in claiming provisional validity for territorial annexation differs from the description of the outcome of wars under international law.

Why should we think of states as being obliged to return dominion to (presumptive) former non-state peoples? There seem to be two main differences to the weaker case of international restoration after forced annexation. The first reason why annexations of (purported) new colonies put states under stronger duties than RJ2 is that they claim to act rightfully in appropriating provisional property or in securing their citizens' appropriation of provisional property. For reasons of consistency, claiming provisional property under cosmopolitan law, in contrast to conquering and annexing a country in disregard of international law, puts them under an obligation to cooperatively see through the process of legal evolution, starting in provisional and ending in conclusive

²⁵ See Ripstein, *Force and Freedom*, 228, and text at fn. 16.

²⁶ Francisco de Vitoria, *De Indis Recenter Inventis et De Iure Belli Hispanorum in Barbaros* (Tübingen: Mohr Siebeck, 1952), 99–103. See Eberl and Niesen, 'Kommentar', 254–7.

claims. They will have to face the fact that their grounds of appropriation will not survive an enlightened understanding of cosmopolitan law, which is limited to hospitality. The second reason is that under cosmopolitan law, Kant chooses to concentrate on the violent encounters between European and non-European peoples, and thereby abstracts away from potentially earlier historical complications (which may well be treated later, under RJ2). These two reasons notwithstanding, we have to face the remaining reason to the contrary that, as in the parallel case under international law, any immediate decolonization may cause instability and thereby slow down or obstruct a transition to public international law. This argument is to be taken seriously, but it can perhaps be deflected through a normative interpretation of the licence to defer compliance, in analogy to the temporal leeway that is accorded states under the 'wide' prohibitions of the Preliminary Articles. Whereas under the Preliminary Articles, deferral is granted for reasons of self-interest until states find it safe to comply, the process of decolonization may be thought to depend on when restoration of liberty would be safe for the former colonies, with a view to remaining independent and becoming subjects of public international law in a league of nations. These considerations enable us to formulate a third, more stringent, principle:

(RJ3) If a state has deprived a (presumptive) non-state people of its freedom, it must restore it when it seems safe to do so.

The freedom to be restored, again, will be civil freedom, not the freedom to return to the pre-civil condition. The question remains whether this duty of restoration within cosmopolitan law can be completely discharged on the level of transitional law, or whether comprehensive decolonization can only be brought about when the condition of global public law is realized. What makes the first option more attractive than the second one is that it would award subject status to the peoples of former colonies already in the transition to a global legal condition. While a league of nations could provide an appropriate framework to address the claims and interests of colonized peoples, the peoples themselves would not be actively taking part in bringing about, and thereby shaping, the permanent constitution of public international law.

Bibliography

- Achenwall, Gottfried, *Iuris Naturalis Pars Posterior* (Göttingen: Bossiegel, 1763).
- Aquinas, Thomas, *Summa Theologiae* IIaIIae 40 ('On War'), in Thomas Aquinas, *Political Writings*, ed. R. W. Dyson (Cambridge: Cambridge University Press, 2002), 239–46.
- Bass, Gary, 'Ius post bellum', *Philosophy and Public Affairs*, 32 (2004), 384–412.
- Bentham, Jeremy, 'Principles of International Law', in Bentham, *Works*, ed. J. Bowring, vol. II (Edinburgh: William Tait, 1843), 535–60.
- Brandt, Reinhard, 'Gerechtigkeit bei Kant', *Jahrbuch für Recht und Ethik*, 1 (1993), 25–44.
- Byrd, Sharon and Hruschka, Joachim, *Kant's Doctrine of Right: A Commentary* (Cambridge: Cambridge University Press, 2010).
- Cavallar, Georg, *Pax Kantiana: Systematisch-historische Untersuchung des Entwurfs 'Zum ewigen Frieden' (1795) von Immanuel Kant* (Vienna: Böhlau, 1992).
- Eberl, Oliver and Niesen, Peter, 'Kommentar', in Immanuel Kant, *Zum ewigen Frieden und Auszüge aus der Rechtslehre* (Berlin: Suhrkamp, 2011), 89–416.
- , 'Kein Frieden mit dem "ungerechten Feind"? Erzwungene Verfassungsgebung im Ausgang aus dem Naturzustand', in Oliver Eberl (ed.), *Transnationalisierung der Volkssouveränität* (Stuttgart: Steiner, 2011), 219–47.
- Flikschuh, Katrin, *Kant and Modern Political Philosophy* (Cambridge: Cambridge University Press, 2000).
- Kant, Immanuel, 'Erläuterungen Kants zu G. Achenwalls Iuris naturalis Pars posterior', in Immanuel Kant, *Gesammelte Schriften*, vol. XIX (Berlin: Akademie, 1934), 323–441.
- Kleingeld, Pauline, *Kant and Cosmopolitanism: The Philosophical Ideal of World Citizenship* (Cambridge: Cambridge University Press, 2012).
- Loriaux, Sylvie, 'Kant on International Distributive Justice', *Journal of Global Ethics*, 3 (2007), 281–301.
- Niesen, Peter, 'Colonialism and Hospitality', *Politics and Ethics Review*, 3 (2007), 90–108.
- Pogge, Thomas, 'Kant's Vision of a Just World Order', in Thomas E. Hill, Jr. (ed.), *The Blackwell Guide to Kant's Ethics* (Oxford: Wiley Blackwell, 2009), 196–208.
- Ripstein, Arthur, *Force and Freedom* (Cambridge, Mass.: Harvard University Press, 2009).
- Saner, Hans, 'Die negativen Bedingungen des Friedens', in O. Höffe (ed.), *Immanuel Kant: Zum ewigen Frieden* (2nd edn., Berlin: Akademie, 2004), 43–68.
- Sullivan, Dennis and Tift, Brian, *Handbook on Restorative Justice: A Global Perspective* (London: Routledge, 2006).

Vitoria, Francisco de, *De Indis Recenter Inventis et De Iure Belli Hispanorum in Barbaros* (Tübingen: Mohr Siebeck, 1952).

Williams, Howard, 'Towards a Kantian Theory of International Distributive Justice', *Kantian Review*, 15 (2010), 43–77.

—, *Kant and the End of War: A Critique of Just War Theory* (Houndmills: Palgrave, 2012).

Young, Iris, *Justice and the Politics of Difference* (Princeton: Princeton University Press, 1990).

8

Provisional Right and Non-State Peoples

Anna Stilz

Recent interpreters of Kant have emphasized his credentials as an anti-imperialist, relying heavily on those passages in his discussion of cosmopolitan right where he criticizes the colonialist practices of European states in his own time.¹ These interpretations have usefully corrected earlier misreadings that characterized Kant as advocating the forcible assimilation of aboriginal peoples to European-style systems of property and political organization.² But in my view, they have not done enough to acknowledge the *surprising* nature of Kant's anti-imperialism.

Kant's anti-imperialism is surprising because, given his account of the relation between property and state authority, non-state peoples occupy a precarious position in his system. Since they lack an internal constitution, non-state peoples are not official subjects of international right, which regulates only states' interactions with other states.³ Therefore, they are not safeguarded—as states are—against annexation or intervention by international right: they are simply not covered under it. Additionally, a

¹ Sankar Muthu, *Enlightenment against Empire* (Princeton: Princeton University Press, 2003); Peter Niesen, 'Colonialism and Hospitality', *Politics and Ethics Review*, vol. 3, no. 1 (2007), pp. 90–108.

² James Tully, *Strange Multiplicity: Constitutionalism in an Age of Diversity*, (Cambridge: Cambridge University Press, 1995), pp. 79–81. There may have been a shift in Kant's attitudes toward colonialism from his earlier to his later political writings. See Pauline Kleingeld, 'Kant's Second Thoughts on Colonialism', this volume.

³ See Peter Niesen, 'Varieties of Cosmopolitanism: Bentham and Kant on International Politics', in *Kant's Perpetual Peace: New Interpretive Essays*, ed. Luigi Caranti, (Rome: Luiss University Press, 2006), pp. 248–50.

non-state people's title to its land seems questionable on Kantian grounds. Kant argues that conclusive property rights can only be acquired by submission to a political authority. But since non-state peoples lack public authority, at first blush, this would seem to call into question their rights over the land they occupy.

Despite this, Kant's cosmopolitan right grants non-state peoples very broad claims, including the right to exclude foreigners from their land. This paper rereads Kant's property theory in the light of these anti-imperialist remarks. How does Kant's acknowledgment of the legitimate land claims of stateless peoples affect his property argument? What is the relation of the provisional claims to land made in the state of nature to the conclusive property rights imposed in a civil condition? Can a forward-looking theory of justice that holds that property rights are not natural rights still acknowledge indigenous peoples' land claims? The chapter is in four parts: in section 8.1, I reconstruct Kant's account of cosmopolitan right and its implications for non-state peoples. In section 8.2, I argue that non-state peoples' rights to exclude foreigners are best viewed as based on their provisional right to their land, and in section 8.3, I investigate the concept of a 'provisional' right more closely. I argue that though it is a deficient form of right, it still places important normative demands on us. Section 8.4 sums up my reading of Kant's theory of property and political obligation and concludes. Throughout, I illustrate my argument with examples drawn from the history of US–Indian relations.

8.1 Cosmopolitan Right

The main source for Kant's anti-imperialism is his discussion of cosmopolitan right. Kant argues that right—the sum of conditions under which the external freedom of one person can be united with the external freedom of others under universal law (MdS 6:230)—has three parts: domestic, international, and cosmopolitan. Each of these parts must be in place in order for freedom to be fully secured (MdS 6:311). Cosmopolitan right's role in Kant's overall system is more obscure than the other forms of right, however. It is easy to see why domestic and international right are necessary: they bind us to establish authoritative institutions to overcome the state of nature, both among individuals (a republic), and among states (a federation of republics). But why supplement domestic and international right with cosmopolitan right?

Cosmopolitan right prescribes principles to regulate commerce and interaction between people who do not share a state: it applies to travel, migration, intellectual exchange, and cross-border trade.⁴ This category is especially important for non-state peoples. Taken by itself, Kant's account of domestic and international right leaves open how we are to interact with non-state peoples. Since ownership depends on political authority, can we take their land because they lack conclusive title to it? Can we force them into a civil condition, perhaps through annexation or colonial rule?

Cosmopolitan right helps address these questions. It is concerned with possible communication or commerce [*Verkehr*] across borders, and it prescribes a right to *hospitality* to regulate these interactions (ZeF 8:357). The right of hospitality has two parts. It entails (1) a claim on the part of each individual as a *world citizen* to travel to other countries to make *communicative offers* to foreign individuals, states, and peoples; but also (2) a reciprocal claim on the part of foreign states and peoples to *refuse permanent society* with the offerors, by excluding them from their territory. Kantian cosmopolitan right is thus Janus-faced: on the one hand, it grants some 'global' entitlements to individuals by virtue of their status as human beings who are common owners of the earth. But on the other hand, these entitlements do not usher in a world of open borders in which all humans join together in cosmopolitan association. Instead, cosmopolitan right equally protects the claims of existing states and societies to refuse such association.

As world citizens, individuals and groups have a right to 'present [themselves] for society' with foreigners, or to offer to engage in commerce with them, without fear of being treated as an enemy simply for having made the offer (MdS 6:352). This right of hospitality is a communicative right, and it correlates with a duty on the receiving party (a) not to receive the traveler with hostility or prevent the offer's expression (though it need not be accepted); and (b) not to turn the speaker away if doing so would result in his destruction (ZeF 8:358).⁵ Essentially, the right of hospitality ensures that world citizens are able to turn up on foreign shores and offer their society without fear of violence. The right of hospitality requires 'access' [*Zugang*] to foreign territory, and though it is unclear whether this entails

⁴ For a useful discussion, see Pauline Kleingeld, *Kant and Cosmopolitanism* (Cambridge: Cambridge University Press, 2012), ch. 3.

⁵ Peter Niesen, 'Colonialism and Hospitality', pp. 92–3.

a right to actually be *admitted* to foreign territory, for example, as a tourist or visitor, it might.⁶ On this view, cosmopolitan right requires that each individual be granted a temporary ‘communication visa’ in every country on the globe: as world citizens, we each have a right to ‘*try to establish community with all and, to this end, to visit all regions of the earth*’ (MdS 6:353).

The second element of the right to hospitality, however, is the right to exclude those making communicative offers from permanent residence in our society. If his offer is not accepted, a traveler may legitimately be required to leave, unless his life is at stake, in which case, he ought to be granted a status akin to that of a refugee as, for example, a shipwrecked traveler ought to be (ZeF 8:357). Both states and non-state peoples have a right to refuse offers they receive, and this correlates with a duty on the foreigner to exit, or, in the case of foreigners approaching a non-state people, to avoid encroachment. As Kant notes, the right to make an offer is not the same as ‘a right to be a guest’ (ZeF 8:358; MdS 6:353). For this, a specific contract is necessary, and except in the case where the traveler’s life is at stake, whether or not to make that contract is at the receiving society’s discretion: ‘the other can turn him away, if this can be done without destroying him’ (ZeF 8:358).⁷ Indeed, Kant praises China for allowing traders ‘access but not entry’ and Japan for ‘allowing access to only a single European people, the Dutch, but excluding them, like prisoners, from community with the natives’ (ZeF 8:359).⁸ So, the purpose of Kant’s right of hospitality is at least as much to guarantee the rights of societies to

⁶ See Garrett Brown, ‘Kantian Cosmopolitan Law and the Idea of a Cosmopolitan Constitution’, *History of Political Thought*, vol. 27, no. 4 (2006), p. 667, who interprets it this way. The main difficulty for this view is that Kant endorses the trade policies of Japan and China, which involved confining foreigners to certain port cities. But this could be enough to guarantee a right to be admitted to the territory, though it would fall short of a right to move freely in the receiving society.

⁷ Kant does argue that states have a moral duty to associate together in a federation for the prevention of war. But states might fulfill *this* moral duty while refusing immigration by foreigners, and closing their markets to economic imports. Foreigners have the right to visit and to *seek* commerce, but they do not have a right to permanent association or exchange. See Kleingeld, *Kant and Cosmopolitanism*, ch. 3, for a similar view.

⁸ Eighteenth-century China had only one harbor—Canton—open to international trade, restricted the European merchants allowed entry, and refused any direct contact between Chinese civilians and the European traders. Under its *sakoku* policy, in effect until 1850, Japan did not allow any foreigner to enter the country and restricted all Japanese from leaving on

refuse permanent association, if they choose, as it is to guarantee the right of world citizens to trade and communicate with foreigners.

By conceiving of the right of hospitality as *limited* in this way, Kant identifies himself with one side in a long-running debate concerning the prerogatives of European states and trading companies vis-à-vis non-European peoples. Conceptions of hospitality as a robust, enforceable global entitlement were often invoked to justify colonial practices abroad, notably the annexation of Indian territory in the Americas. Francisco de Vitoria, in his reflections on the title of the Spanish to conquer the Indians, relies on a natural right of 'partnership and communication' that encompassed the right to travel, to dwell in the countries visited, to preach the Gospel, to trade, to appropriate unoccupied land, and not to be expelled without just cause.⁹ Unlike Kant, however, Vitoria conceived this right as both enforceable and independent of the consent of the receiving society: 'if the barbarians deny the Spaniard what is theirs by the law of nations, they commit an offence against them. Hence, if war is necessary to obtain their rights, they may lawfully go to war'.¹⁰ Similarly, Hugo Grotius held that rights of free passage and free trade must be granted to all persons, and that travelers should be allowed to stay in the countries they passed through, appropriating any unoccupied land they might find.¹¹ If non-state peoples denied European settlers the freedom to trade or to dwell in their territory, Europeans had cause for war against them, and might justly conquer them.

Kant's reflections on hospitality allow him to formulate a very different theory of how foreigners are to treat non-state peoples. Among our duties, he says, are the following:

1. We may not approach nomadic tribes with the intent to plunder them (ZeF 8:357).
2. We may not bring in foreign soldiers under the pretext of merely establishing trading posts, and then proceed to conquer the territory (Britain in India) (ZeF 8:359).

pain of death. Though Japan traded with China and Korea, the only Westerners allowed were the Dutch East India Company, and they were confined to an island called Dejima.

⁹ See Georg Cavallar, *The Rights of Strangers* (Aldershot: Ashgate, 2002), pp. 107–12.

¹⁰ Francisco de Vitoria, *Political Writings*, ed. Anthony Pagden and Jeremy Lawrence, (Cambridge: Cambridge University Press, 1991), p. 282.

¹¹ Hugo Grotius, *The Rights of War and Peace*, ed. Richard Tuck (Indianapolis, IN: Liberty Fund, 2005), vol. II, ch. II, secs. 13–17, pp. 439–49.

3. We may not force an indigenous people to adopt land-use practices they wish to resist, that is to say, forcing a hunting people to become a farming people (Mds 6:265) or encroaching on land that a nomadic or hunting people depends on for their sustenance (MdS 6:353).
4. When we are present in a non-state people's territory voluntarily, we may not 'found colonies, by force if need be in order to establish a civil union with them and bring them into a rightful condition', even if that would further civilization or the goal of history (MdS 6:266).
5. We may not conclude a contract that is fraudulent or takes advantage of an indigenous people's ignorance to get them to cede land to us (MdS 6:266, 353).¹²

So, Kant's cosmopolitan right grants standing to non-state peoples. Specifically, it gives them the right to exclude foreigners from their territory (as long as the foreigner's life is not at stake). This claim correlates with a duty on the foreigner not only to leave the non-state people's territory, but also to refrain from further encroachment, as would happen if he interfered with their land-use practices, appropriated nearby land, or concluded a contract with them based on fraud or property concepts with which the non-state people is unfamiliar.

8.2 Provisional Rights and Non-State Peoples

But why exactly can non-state peoples exclude foreigners from their territory? The fact that Kant gives stateless groups such broad rights is surprising, given his more general views about the relationship between property and state authority. Kant argues that anyone claiming property—the right to control an object or space, and to exclude others from it, even when not physically connected to it (MdS 6:245)—is obliged to submit to a political

¹² Kant's remarks show a sophisticated understanding of the way land transactions between settlers and indigenous people unfolded. North American Indians often had different concepts of property from European settlers, and did not understand early land cessions to be a permanent alienation of territory. Settlers also exploited Indians' lack of written language to conclude one contract orally, and then wrote a different description into the written deed. Finally, settlers often made Indians drunk for the purpose of selling land, or concluded agreements with individuals who had no authority to sell lands on behalf of their tribe. For more on this history, see Stuart Banner, *How the Indians Lost their Land* (Cambridge, MA: Harvard University Press, 2005).

authority, which is the condition of possibility of conclusive ownership. He also suggests that a person claiming property is permitted to coerce his neighbors to enter a state along with him (MdS 6:255). Thus, it would seem that non-state peoples are *themselves* under a coercible duty of right to enter a civil condition: indeed, when he describes persons in the state of nature, Kant often draws an analogy to 'savages' who ought to give up their 'wild, lawless freedom' (ZeF 8:354, 357; MdS 6:316, 343, 344). According to him, these 'savages' do 'wrong in the highest degree' by refusing to enter the state.

So, the logic of Kant's property argument seems to point him towards the following conclusion: non-state peoples ought to construct a political authority. This is a coercible duty of justice that they are currently shirking. Since they exist in this wrongful condition, shouldn't foreigners have the right to coerce them into a civil state, perhaps by annexing their territory or subjecting them to colonial rule? When confronted with an individual who refuses to submit to the state, individuals in a state of nature have a right to use force against him: 'a human being (or a nation) in a mere state of nature already wrongs me just by being near me . . . and I can coerce him either to enter with me into a condition of being under civil laws or to leave my neighborhood' (ZeF 8:349). Why can't we do the same with non-state peoples?

One answer may be that non-state peoples *don't make property claims*, so they don't have a duty to submit themselves to a political authority. On this view, political obligations are triggered only by appropriation of exclusive individual holdings, and non-state peoples do not appropriate in this way. Peter Niesen argues that 'the right to coerce others to join the civil condition is wedded to a specific vision of individual private property'.¹³ Niesen further argues that foreigners are under an obligation to avoid *introducing* private property practices: 'if from within a non-state people there does not arise the dynamic of introduction of a private law order . . . then it must not be introduced from abroad'.¹⁴

It is plausible that, for Kant, the duty to form a state is triggered only with external acquisition of property:

if it must be possible, in terms of rights, to have an external object as one's own, the subject must also be permitted to constrain everyone else with whom he comes

¹³ Niesen, 'Varieties of Cosmopolitanism', p. 268.

¹⁴ Niesen, 'Colonialism and Hospitality', p. 98.

into conflict about whether an external object is his or another's to enter along with him into a civil constitution. (MdS 6:255)

The 'if' clause here leaves open the possibility that those who do not appropriate property, if there are such people, are not under any political obligations. In seventeenth-century England and America, Lockean theories of appropriation through individualized agricultural labor were often employed, in this vein, to argue that Indians did not claim property rights.¹⁵ But it is doubtful that Kant shares the view that non-state peoples do not claim property, for two reasons.

First, many non-state peoples *did* actually engage in agricultural land-use practices, and *did* allocate plots to individuals, so even accepting *arguendo* the Lockean premise about appropriation, the conclusion that Indians did not make exclusive property claims does not follow. Many non-state peoples in Kant's time, such as the North American Indians east of the Mississippi, were agricultural peoples that had perfectly recognizable property systems.¹⁶ Tribes claimed distinct territories (with boundaries specified by natural landmarks) and, within that territory, they allocated exclusive land rights to individuals.¹⁷ Families had the exclusive privilege of cultivating their land, though they lacked a right to alienate it, and their title reverted to the tribe if they stopped using it.¹⁸ Moreover, even hunting or pastoral peoples make exclusive claims to moveable goods and chattels, and these claims too would seem to trigger a Kantian duty to submit to political authority.

A second reason for doubt is that Kant in fact rejects this Lockean premise about land appropriation: his conception of property is capacious enough to cover many non-European land-use systems, including those of nomadic, pastoral, and hunting peoples. Unlike Locke, Kant defines appropriation very minimally, as taking first possession of an object with the will to exclude others (MdS 6:258). Kant argues that cultivating,

¹⁵ Barbara Arneil, *John Locke and America* (Oxford: Oxford University Press, 1996), p. 137.

¹⁶ There is a legitimate question as to whether Kant would have known this, especially since the image of Americans as non-agricultural peoples was popular among Enlightenment thinkers. There is a passage where he briefly refers to 'most of the American Indian nations' as 'shepherds or hunters', implying he knew at least some were not (MdS 6:353). The sedentary, agricultural lifestyle of the Eastern Indians also contrasts sharply with the Plains Indians, whose mode of subsistence and ideas about property rights were much closer to the Enlightenment caricature.

¹⁷ Linda Parker, *Native Estate* (Honolulu: University of Hawaii Press, 1989), p. 16.

¹⁸ Parker, *Native Estate*, p. 10.

enclosing, transforming, or building on a piece of land is not necessary in order to appropriate it. All that is necessary is that a person or group be the first claimant and give a sign of the will to possess. But this sign can take many different forms:

In order to acquire land is it necessary to develop it (build on it, cultivate it, drain it, and so on)? No... When first acquisition is in question, developing land is nothing more than an external sign of taking possession, for which many other signs that cost less effort can be substituted. (MdS 6:265)

Kant is also quite happy to countenance collective property on land. Appropriation, for Kant, does not require individualized ownership:

[I]n Mongolia... since all the land belongs to the people, the use of it belongs to each individual, so that anyone can leave his pack lying on it or recover possession of his horse if it runs away, since it is his. (MdS 6:265)

Thus, Kant's property conception seems quite accommodating. Given this, there is no reason why Kant shouldn't treat nomadic, pastoral, or hunting peoples as the rightful possessors of their land, and many passages indicate he does so:

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

Kant's terms—'their own boundaries' and 'their land'—imply that he recognizes even hunting peoples as legitimate possessors of their territory. He also says that land can be acquired from a people of 'shepherds' or 'hunters' only by contract, which again suggests that they have ownership of it (MdS 6:363). Finally, Kant states that simply claiming an area as a permanent residence is itself a form of appropriation: 'the will that... a specific, separate place on the earth... be mine' is 'original acquisition', which occurs by 'taking control of... a specific and separate piece of land' (MdS 6:263). So, it seems unlikely Kant takes the view that non-state peoples do not make property claims, and therefore are not obliged to enter the civil condition. Instead, his remarks consistently indicate that he thought that even hunting or pastoral peoples *did* make property claims.

But if non-state peoples *do* engage in appropriation, then it seems that—like other groups—they are under political obligations that they ought to acknowledge and act on. If people raise possession claims vis-à-vis one another, on a Kantian view, they are under an obligation to submit to a political authority to regulate these claims. And if a group makes a claim to exclude outsiders from their territory, then they are likewise under an obligation to submit to international institutions. So, if a non-state people is under an obligation to construct a political authority, why did Kant think Europeans were not permitted to force them into a civil condition?

One possibility is that Kant may have thought indigenous peoples already had a civil condition of their own, though it differed greatly from European-style territorial states. In *Perpetual Peace*, he claims that nations that ‘already have a rightful constitution internally’ cannot be coerced to enter ‘a more extended law-governed constitution’ (ZeF 8:356). But there is no textual evidence to show that he believed indigenous peoples were already in a civil condition. Instead, he consistently refers to ‘American savages’ as examples of ‘barbarous’ attachment to the ‘lawless freedom’ of a state of nature (ZeF 8:354), and suggests that ‘savages’ do not ‘constitute states but only tribes’ (MdS 6:343). Indian societies also lacked characteristic features of a Kantian civil condition, such as positive law, courts, or judges, and a monopoly of coercion.¹⁹

A better answer, I think, is that Kant believes our authorization to coerce others to fulfill their political obligations depends on a prior assumption that our interaction with them is *unavoidable*. If those with whom I unavoidably interact will not coordinate around an authoritative, public interpretation of acquired rights to property and contract, then my presence near them subjects me to their arbitrary will, since the security of my rights is continually dependent on their choices about how to interpret and enforce their claims against me. Because of this ongoing threat to my

¹⁹ For most Indian groups, political organization was limited to villages of a few extended families in which day-to-day leadership was provided by a chief or *sachem*. But the *sachem* had no binding legislative authority: he could not impose legal obligations on the members of his band. Unanimity rule, or at least the suppression of visible dissent, was a common feature of band decision-making. Nor was there any centralized coercive enforcement power: the *sachem* could not rely on a police force to carry out his directives. See *The Handbook of the North American Indians*, vol. 15: *Northeast*, ed. Bruce Trigger (Washington, DC: Smithsonian Institution, 1978). A general overview is Robert H. Lowie, ‘Some Aspects of Political Organization Among the American Aborigines’, *The Journal of the Royal Anthropological Institute of Great Britain and Ireland*, vol. 78, no. 1/2, (1948), pp. 11–24.

independence, I may force them to enter a state. But where I can avoid spatial coexistence with others, I am not necessarily subject to their will, and so I am not authorized to force them into a civil condition. Instead, I can preserve my independence simply by leaving their vicinity, and this is what I ought to do. It is compatible with my leaving that these others may have a moral duty to people with whom they *do* unavoidably interact (but not necessarily to me) to form a state. But their moral duty to others is not a duty to *me*, and it generates no authorization in me to coerce them. Stateless people may wrong one another by refusing to enter the civil condition, then, but this does not entail that third parties have a right to force them into political association. Since European settlers are not unavoidably side by side with the indigenous peoples of North America—but rather decided to engage the Indians for reasons of plunder, conquest, and glory—they can claim no right to enforce their political duties. Kant consistently describes this type of cross-border interaction as initiated not by ‘nature’ or ‘chance’, but rather ‘by will’ (MdS 6:266).²⁰

8.3 What is a Provisional Right?

The argument from avoidable interaction explains why European colonizers are not authorized to force indigenous peoples into political association with them. But Kant also holds that Europeans must respect stateless groups’ first possession of land. It is perfectly possible to dispossess a group of their land, however, without politically incorporating them: one can simply appropriate part of their territory and force them to move elsewhere. Indeed, this is what settlers in America actually did: indigenous peoples were not incorporated into the United States until the latter half of the nineteenth century. Until then, they remained politically autonomous, but were gradually pushed off their lands and moved West.

²⁰ Sankar Muthu argues that for Kant, hunting or pastoral peoples are not under a political obligation to enter civil relations because they lack the sustained and unavoidable interactions characteristic of a sedentary lifestyle. Muthu holds that Kant makes a special exception to the obligation to enter the state in cases where individuals may easily exit a social group. I am skeptical that hunting or pastoral peoples are accurately characterized as voluntary associations from which individuals can easily separate at will. But Muthu’s interpretation shares with mine the view that enforceable obligations to enter the state are not triggered when people can avoid interacting. See Muthu, *Enlightenment against Empire*, p. 208.

Kant explicitly disallows such takings. He states that Europeans may not purchase indigenous lands through fraud, 'making use of our superiority without regard for their first possession' (MdS 6:266); they may not make a settlement on indigenous territory, unless they have received special permission from the native group (MdS 6:353); and they may not appropriate empty spaces near 'hunters' or 'shepherds' if that would infringe on these peoples' use of 'great open regions' for their sustenance (MdS 6:353). This implies that the natives' first possession of their lands imposes some duties on Europeans. But what is the basis for these duties?

The most obvious answer is that Kant thought that indigenous peoples, as prior possessors, had a right to their territory, and this imposed an obligation on foreigners to respect their claims. Since non-state peoples remain in a state of nature, however, on a Kantian view, their land rights are only 'provisional', since conclusive property rights depend on public authority. But what does it mean for a right to be merely 'provisional'? Does the fact that a non-state people's land claims are 'provisional' imply that they have less robust rights to territory than a European state would?

Kant's idea that rights to land are 'provisional' outside a civil condition is linked to fundamental commitments of his political philosophy. His property argument holds that the rights that we gain through appropriation in the state of nature are defective because they are established through our *unilateral* private choices. In seeking to impose obligations on people to respect our property without their consent, we exercise an objectionable form of authority over them.²¹ To be conclusively binding, the duties correlative to property rights must be imposed by a collectively authorized state. Yet, though acquisition in the state of nature is unilateral, Kant thinks it is also necessary. Only by unilaterally appropriating things can we transition from a state of nature into a civil condition.

Kant resolves the problem that appropriation is *both* necessary *and* also wrongful by arguing that there is a *permissive law* in favor of unilateral appropriation. The permissive law gives us 'an authorization that could not be got from mere concepts of right as such, namely to put all others under an obligation, which they would not otherwise have, to refrain from using certain objects of our choice, because we have been the first to take them into our possession' (MdS 6:247). A permissive law temporarily

²¹ See Ripstein, *Force and Freedom* (Cambridge, MA: Harvard University Press, 2009), p. 150: 'Kant thus treats initial acquisition as a special case of political authority.'

authorizes an action incompatible with right, on condition that it contributes to achieving a state of affairs in which right is more fully guaranteed.²² A 'provisional' right to land is a right conferred by this permissive law:

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

But what kind of rights are these 'provisional' rights? Do they bear any relation to the conclusive rights that will one day be recognized in the state? And do others in the state of nature have a duty to respect them? These questions are very important for understanding Europeans' duties to respect indigenous peoples' possession of land. Since natives' possession was only unilaterally established, on what grounds does it bind others?²³

Kant scholarship offers us two schools of thought about these issues. On the one hand, we might interpret Kantian 'provisional' rights as nearly equivalent to Lockean natural rights to property.²⁴ On this view, the civil state simply 'rubber stamps' the property rights that have been pre-established in the state of nature, perhaps by resolving difficulties in their application to particular cases and publicly enforcing them. This approach holds that we can succeed in placing others under an obligation by

²² My understanding of permissive principles has been greatly enhanced by Lea Ypi, 'A Permissive Theory of Territorial Rights', *European Journal of Philosophy*, published online early view, February 2012, available at <onlinelibrary.wiley.com> accessed 2 March 2014; and Katrin Flikschuh, *Kant and Modern Political Philosophy* (Cambridge: Cambridge University Press, 2004).

²³ This is not only a problem in the case of non-state peoples. In the current world, all land titles are to some degree 'provisional'. Even in long-established states, Kant says an individual's property rights will remain 'provisional' vis-à-vis his fellow-citizens until a perfect republic is established, since that is 'the only condition in which each can be assigned *conclusively* what is his' (MdS 6:340). And each state's right to its territory remains provisional, according to Kant, in the absence of an international federation. So, the issue reflects a broader problem in Kant's property theory: for him, 'acquisition will always remain only provisional [until the original contract] extends to the entire human race' (MdS 6:266).

²⁴ A recent interpretation along these lines is Sharon Byrd and Joachim Hruschka, *Kant's Doctrine of Right: A Commentary* (Cambridge: Cambridge University Press, 2010), p. 101: 'For Kant it is not in the first instance the state that introduces rights to external objects of our choice, because as Kant notes, property ownership must exist *before* one moves to civil society.' On their view, the state is only required 'to provide the institutions I need to be an owner of property'. For similar views, see Bruce Aune, *Kant's Theory of Morals* (Princeton: Princeton University Press, 1979), p. 157; Mark LeBar, 'Kant on Welfare', *Canadian Journal of Philosophy*, vol. 29, no. 2 (1999), pp. 225–49.

appropriating unilaterally in the state of nature. And the account has some textual evidence to support it: in his remarks on cosmopolitan right, Kant criticizes European settlers for treating 'America, the negro countries, the Spice Islands, the Cape, and so forth' as if they were 'countries belonging to no one' (ZeF 8:358). But the view has other, less plausible implications: for example, it suggests that, once established, the civil state ought to be morally constrained by prepolitically grounded property rights.

Yet, there is ample textual evidence to suggest, to the contrary, that Kant believes the civil state is *not* constrained by provisional rights established in the state of nature, since it can justly redistribute property. He refers to the state's authorization to tax the rich to meet the basic needs of the poor, and argues in favor of state-sponsored hospitals, orphanages, and state funding for education (MdS 6:236). He suggests that the state is entitled to place limits on inheritance or succession, especially in the case of aristocratic or clerical orders (MdS 6:324). Even more tellingly, Kant strongly supports the confiscation of church property during the French Revolution, claiming that 'the state, with full right, takes control of the property the church has arrogated to itself, namely the land bestowed on it through bequests', though the state must compensate the church for this confiscation (MdS 6:369). And he holds that a sovereign must be free to adapt property rights 'to the needs of the time', by altering the terms of foundations or corporate titles, or even abolishing them altogether (MdS 6:369). It seems clear, then, that Kant sees nothing sacrosanct about the distribution of property established in the state of nature.

A second school of thought sees provisional rights as imposing no duties at all to respect others' possessions in a state of nature (though appropriation does impose a duty to enter the civil condition). On this view, all rights to property are politically established. In the state of nature, we may have rights to seize things and to defend them, but these bare liberty-rights impose no duties on others to respect our appropriations.²⁵ This view also sees the distribution of prepolitical property holdings as morally irrelevant to the civil sovereign. As 'lord of the land', a citizen legislature may allot holdings however it likes. And there is some textual evidence supporting this view as well: Kant says that 'no one is bound to

²⁵ For this kind of view, see Alan Brudner, 'Private Law and Kantian Right', *University of Toronto Law Journal*, vol. 61, no. 2 (2011), p. 293: 'the rightful ownership of particular objects is the *exclusive* product of public law'. And at p. 291: 'no one can wrong another person by

refrain from encroaching on what another possesses if the other gives him no assurance that he will observe the same restraint towards him' (MdS 6:307). He also suggests that the sovereign 'possesses everything, since he has the right of command over the people, to whom all external things belong (*divisim*) (the right to assign each what is his)' (MdS 6:234).

But this second view sits quite uncomfortably with Kant's remarks on indigenous peoples. If all property rights must be politically established, why are we under any duty to respect the land claims of peoples who lack public authority? Kant also makes a number of other statements that tell against this view: for example, he says that first possession has 'a rightful basis', that 'to interfere with the use of a piece of land by the first occupant is to wrong him' (MdS 6:251), and that 'provisional acquisition is true acquisition' (MdS 6:264). These statements seem incompatible with a view that sees provisional rights as pure liberty-rights that impose no duties. Such a view would also entail some unpalatable implications. Can we conquer and appropriate the land of foreign countries, since there is no international authority to impose duties on us to respect their territorial claims? Kant denies that such territorial conquest is permissible, even in an international state of nature (MdS 6:348–9). These remarks suggest Kant wishes to resist the implications of this second view.

I believe that we can reconcile these apparent tensions if we read Kant's remarks about provisional and conclusive rights through the lens of his distinction—outlined early in the *Doctrine of Right*—between empirical and intelligible possession (MdS 6:245–6, 249). When he declares that all property rights must be politically established—for example, 'it is possible to have something external as one's own only in a rightful condition' (MdS 6:255)—Kant refers to intelligible possession. But when he suggests that provisional rights can indeed bind others in the state of nature—for example, 'first possession has a rightful basis' (MdS 6:251)—Kant refers to empirical possession. On the reading I propose, then, some aspects of *both* schools of thought outlined above are correct. Unilateral acquisitions *do* impose duties on others in the state of nature: it is for this reason that European settlers have an obligation to respect indigenous peoples' first possession of land. Yet, this does not mean that provisional rights amount

the unauthorized use of anything that person has acquired [in the state of nature]'. See also Ripstein, who seems to endorse a similar view: 'outside of a rightful condition, people need not abstain from the possession of others', *Force and Freedom*, p. 176.

to natural property rights. Our empirical holdings must be made compatible with a rational title of acquisition, a process that can only occur under a rightful public authority. Only once our claims are ratified by the civil state do we attain *intelligible*, not just empirical, possession of our holdings.

Kant defines intelligible possession as a form of possession that depends, not on my physical link to a thing, but rather on an a priori connection between the object and the understanding that is independent of any spatiotemporal conditions (MdS 6:246, 247). I can 'intelligibly possess' land even when I have no physical attachment to it and indeed, when I am nowhere near it (MdS 6:253). Kant uses various synonyms for intelligible possession: he speaks of 'having' rather than 'holding', and of *possessio noumenon* rather than *possessio phaenomenon*. He also says that these rights of intelligible possession depend on a united general will, which confirms that others could rationally consent to my holdings, and which can only be articulated in a civil condition. Only inside the state can I legally require every other physical possessor of my property to restore my goods to me, as their rightful owner. The establishment of conclusive rights of intelligible possession is the final goal of Kant's property theory. These rights depend on a rational title of acquisition (*possessio noumenon*) that can only be finally established once the original contract is extended to the entire human race.

But since intelligible possession is a pure rational concept, it must somehow be applied to the spatiotemporal world: 'the concept of merely rightful possession is not an empirical concept...yet it has practical reality, that is, it must be applicable to objects of experience' (MdS 6:253). Physical holdings in the phenomenal world must first exist before they can come to be aligned with rational concepts of right.²⁶ Kant therefore emphasizes that there is also an *empirical* title of acquisition that is generated by our physical appropriation of things in a state of nature (MdS 6:264). We gain this empirical title simply by taking physical possession (*possessio phaenomenon*) of land that has not already been acquired by someone else, and giving a sign of our will to exclude others from it (MdS 6:258). Kant calls this process 'original acquisition':

Taking possession of a separate piece of land is an act of private choice, without being unsanctioned... By being the first to take possession he originally acquires

²⁶ Katrin Flikschuh highlights this in 'Freedom and Constraint in Kant's *Metaphysical Elements of Justice*', *History of Political Thought*, vol. 20, no. 2 (1999), p. 262.

a definite piece of land and resists with right anyone who would prevent him from making private use of it. (MdS 6:251)

Provisional rights, then, are rights of *empirical* possession that are established through a process of physical appropriation that occurs in time and space.²⁷ Still, these empirical acquisitions are not rationally unsanctioned: others have reason to respect my provisional claims because empirical appropriation is part of a process—mandated by practical reason—of applying concepts of intelligible possession to the spatiotemporal world, and is a prerequisite to the future establishment of a civil condition. Indeed, Kant says that there is ‘an a priori general will’ which corresponds to innate possession in common of the earth’s surface, and which permits the establishment of private holdings on it (MdS 6:251, 267). The legitimacy of my empirical title therefore derives from the fact that it is part of this rationally sanctioned process, a process which aims at a future rightful condition:

since there is only possession in *appearance* to put under possession in accordance with rational concepts of right, a title to take intellectual possession (setting aside all empirical conditions of space and time) must correspond to this empirical title of acquisition ... But the *rational title* of acquisition can lie only in the idea of a will of all united a priori (necessarily to be united). (MdS 6:264)

Insofar as one’s acquisition looks forward to the establishment of a rightful condition that can issue a rational title to confirm one’s empirical title, one’s empirical possession binds others to respect it now. It is legitimate, even if not perfectly just.

On the view I propose, then, provisional rights of possession have four important characteristics:

- 1) A provisional right reflects particular claims to specific pieces of land.

By physically appropriating, particular people and groups establish claims to particular places. People do not just have a general right to reside somewhere on the earth: by appropriating, they acquire a special right to the particular place they empirically possess. In this way, a ‘*particular*

²⁷ Kant also suggests that a right based on prolonged possession is part of natural right, so that the current possessor in good faith must be assumed to be the first possessor (MdS 6:293, 364).

possession for each on the common land [is] determined' (MdS 6:267). By taking physical control of an area or object, giving a sign, and attempting to defend my possession, I raise a claim to certain definite things. Kant speaks of establishing a 'residence (*sedes*)', which is 'a chosen and therefore an acquired *lasting* possession' (MdS 6:262). It is plausible to think that my place of residence matters specially to me because I physically possess it, and therefore it features uniquely in my projects and plans.

Now, the fact that I physically appropriate a space does not mean that my *rational* title corresponds exactly to what I have appropriated. Kant says that though 'merely physical possession of land (holding it) is already a right to a thing', it is 'certainly not sufficient for regarding it as mine' (MdS 6:251). To be conclusive, individuals' provisional rights must also be ratified by the united general will, and they are therefore subject to the standing possibility of future alteration by a political authority. But the fact of empirical possession does make a claim specially eligible to be ratified by a political authority: absent a compelling challenge, it ought to stand. The person or group who has appropriated land therefore has a presumptive, though defeasible, claim to this particular place:

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

If no compelling challenge is available, then the particular landholdings that are established in the state of nature ought to pass over into the civil condition.

- 2) Provisional rights are defeasible by considerations of distributive justice.

The united general will sets out the terms under which each person's property rights can be justified to others, who are required to respect them. If our physical holdings cannot be so justified, then we lack a rational title: an 'act of a general will...giving an external law through which everyone is bound to agree with my choice' is necessary in order to draw the conclusion that 'this external object is mine', thereby inferring intelligible from sensible possession (MdS 6:259). A just system of property must meet substantive requirements in order to bind others to respect it, including compatibility with each person's innate right to independence. Redistribution

to secure these substantive guarantees does not violate prior property rights, but simply enforces the terms on which we can intelligibly possess things: 'those affected by such reforms,' says Kant, 'cannot complain of their property being taken from them' (MdS 6:325). A rational title of acquisition depends on what can be ideally justified to others, and this is susceptible to change as circumstances change: 'someone who thereby loses his title... cannot say that he was deprived of what was his, since he could call it his only under the condition that this form of state continued; but a state has the right to alter its form (e.g. to reform itself into a republic)' (MdS 6:370).

Still, the requirement that our empirical possessions be reconfigured when they cannot be justified to others does not mean they have no weight: it simply means they are *defeasible*. 'Taking first possession,' Kant says, is 'a rightful basis for acquisition on which every first possessor can rely' (MdS 6:251). The burden of proof, then, is on those who wish to reconfigure provisional rights. They must provide a compelling case for why the empirically established pattern of holdings is incompatible with everyone's independence. In the absence of such a case, empirical possessions ought to be ratified by the general will. Physical possession thus gives a *pro tanto* reason for granting a person rational title to an object. Property can be partly 'grounded' in the state of nature, then, even if it is not fully 'fixed' there. The existing distribution of property will need to be continually altered by domestic and international authorities to bring it in line with ongoing demands of distributive justice, but a public authority may not distribute property in a purely discretionary way, disregarding all prior claims. Instead, distributions should be altered in ways that reflect our provisional rights as much as possible, consistent with guaranteeing everyone's innate right to independence.²⁸

3) Provisional rights impose present duties on other subjects of right.

Since legalizing the state of nature is an ongoing process that will not end until 'the original contract... extends to the entire human race' (MdS 6:266), we are very far from knowing what our conclusive property rights are. Individuals' current holdings are subject to reconfiguration under a

²⁸ I here disagree with Alan Brudner, who suggests that, for Kant, there is no 'requirement that the right be impaired only to the extent necessary to satisfy the defeating reason'. Brudner, 'Private Law and Kantian Right', 290.

more just republican constitution, and the territorial rights of states and peoples may be altered by a future international federation. But in the meantime, Kant says that we may not forcibly dispossess people of things to which they have a provisional right: 'to interfere with the use of a piece of land by the first occupant is to wrong him' (MdS 6:251). Whatever physical possessions people now hold, within existing institutions, must be assumed by others to bind legitimately. Empirical titles thus have a 'rightful presumption' in their favor (MdS 6:257).

Kant's statements about provisional rights can be elucidated by analogy with his remarks about sovereignty and revolution. Kant insists that even where an existing constitution is afflicted with 'great defects and gross faults' and is 'in need eventually of important improvements', the people must still obey their existing sovereign (MdS 6:372). The basis for this duty to obey is the ideal of a purely rightful state, a republic where individuals give themselves laws, which serves as 'a norm for every actual union into a commonwealth' (MdS 6:313). Even if their empirically existing constitution falls grossly short of this norm, it is still legitimately binding because the existing juridical union is an important prerequisite for progress *toward* a republican condition. It is for the ruler to reform the constitution legally, not for the subject to use force to usher in a new order of things. Here too Kant invokes the same empirical/rational distinction that he uses with respect to possession: the aim is to replace 'the old (empirical) statutory forms', with the 'original (rational) form' of a republic. Under 'those other forms of state,'—the empirical ones—'no absolutely rightful condition of civil society can be acknowledged, but only *provisional* right within it' (MdS 6:341). The thought, I take it, is that empirically existing (and often defective) institutions have an internal ideal or norm embedded within them. Respect for this norm grounds both the duty to respect the existing institution, and a duty to gradually reform it to bring it into closer correspondence with its own internal principle.

Kant's argument for the legitimacy of provisional property rights has an analogous structure. The idea of the a priori general will serves as the norm for a just distribution of property, towards which the existing configuration of holdings ought to be reformed. Still, even if existing property institutions are less than ideal, subjects of right ought to respect others' empirical possessions because these possessions are an important prerequisite for progress towards the future establishment of pure rational titles. Provisional property rights are legitimate, even if not fully just. They

bind us both to respect the existing (defective) distribution and to work to reform it.

Rightfully constituted public authorities are therefore under a duty to gradually bring the distribution of holdings into line with a pure rational will of all united a priori (MdS 6:264). This duty applies, not just to the domestic state, but also to a future international federation. Just as individuals should establish a state to make their property rights conclusive, so too states should form a federation to conclusively bind other states to respect their territorial claims. It is certainly possible that an international federation—were one to have existed at the time of European colonization—might have revised the Indians' territorial rights, on distributive justice grounds. After all, as many would-be settlers noted, the Indians disposed of a lot of land, which was sparsely populated and inefficiently used. English settlers frequently also drew attention to the overpopulated state of their own country, and to the impoverished people whose needs would be relieved by opening new spaces to settlement.²⁹ But these distributive justice considerations are not for private individuals or states to act upon, but are rather grounds for action by a rightful authority. In the absence of a public authority to reform them, then, empirical possessions are legitimately binding on us even when they are not fully just.

- 4) Provisional rights entail duties on their claimants to work to establish rightful authorities.

One's provisional right to land is dependent on the willingness to submit one's claim to the future adjudication of a rightful authority and to cooperate with others in setting up such an authority:

Possession in anticipation of and preparation for the civil condition . . . possession which therefore accords with the possibility of such a condition, is provisionally rightful possession. Prior to entering such a condition, a subject who is ready for it resists with right those who are not willing to submit to it and who want to interfere with his present possession. (MdS 6:257)

In order to have a provisional right, I must aim at a future rightful condition through my appropriation. This duty *in foro interno* also entails certain outward duties: that is, if others are willing to enter the civil condition,

²⁹ Robert Williams, *The American Indian in Western Legal Thought: The Discourses of Conquest* (Oxford: Oxford University Press, 1992), p. 175.

I should be too. In circumstances where others are *not* willing to enter the civil condition, I may legitimately defend my provisional rights against their encroachment. In circumstances of noncompliance, however, it may be difficult to distinguish merely through outward behavior who is acting in accordance with this *in foro interno* duty. This would certainly have been the case with respect to the European states system at the time of North America's discovery. No state at the time was willing to submit its territorial claims to international jurisdiction. Thus, European states' claims to their own territory were not comparatively more rightful than the Indians' claims to theirs. A provisional right can generate a title to defend one's holdings against potential dispossessors in these circumstances, that is, in a situation where others are not prepared to enter a rightful condition. But the claimant of a provisional property right must look forward to the establishment of a legitimate state, and be willing to submit to just institutions (with the power to revise his claim), should such institutions become possible.

8.4 Conclusion

To sum up, then, I think Kant's brief remarks about the land claims of non-state peoples provide us with important insight into what provisional rights are like. Provisional rights are not radically indeterminate: instead, they have moral content, and they make normative demands on others in the state of nature. These rights can legitimately bind others to respect our empirical possessions, even when our holdings were unilaterally established, and even when they are not fully distributively just. Unilateral appropriations are binding because they are a necessary part of a process of gradually applying concepts of intelligible possession to the phenomenal world. This does not entail, however, that provisional rights are natural property rights: instead, they are *temporary* claims that hold for now, but that can be legitimately altered in the future by a rightful public authority.

Rereading Kant's property theory in the light of his remarks about non-state peoples ultimately alters our understanding of that theory. Kant held that stateless groups had a claim to political independence, and a claim to possession of their territory, that could impose binding duties on others in a state of nature. This may come as a surprise to those familiar with Kant's

more general theory of property and political obligation. That theory holds that conclusive rights of property can only be acquired by submitting to a political authority, and that individuals are permitted to coerce others into political association. Yet, in the case of non-state peoples, Kant seems to reject both conclusions: he holds that stateless peoples cannot be coerced into a civil condition, and also that they have legitimate possession of their lands.

Yet, we can understand Kant's theory of property and political obligation in a way that provides rational grounding for these views. The authorization to enforce others' political obligations is not perfectly general, but rather applies only under specific circumstances, namely, where sustained, spatial interaction between persons is unavoidable. And though they are not natural property rights, provisional land claims are still capable of imposing binding duties in a state of nature. A prerequisite for any just future redistribution of land claims is that we must first bring into being a rightfully constituted international authority that could legitimately undertake such reforms.

Bibliography

- Arneil, Barbara, *John Locke and America* (Oxford: Oxford University Press, 1996).
- Aune, Bruce, *Kant's Theory of Morals* (Princeton: Princeton University Press, 1979).
- Banner, Stuart, *How the Indians Lost their Land* (Cambridge, MA: Harvard University Press, 2005).
- Brown, Garret, 'Kantian Cosmopolitan Law and the Idea of a Cosmopolitan Constitution', *History of Political Thought*, vol. 27, no. 4 (2006), pp. 661–4.
- Brudner, Alan, 'Private Law and Kantian Right', *University of Toronto Law Journal*, vol. 61, no. 2 (2011), pp. 279–311.
- Byrd, Sharon and Hruschka, Joachim, *Kant's Doctrine of Right: A Commentary* (Cambridge: Cambridge University Press, 2010).
- Cavallar, Georg, *The Rights of Strangers* (Aldershot: Ashgate, 2002).
- Flikschuh, Katrin, 'Freedom and Constraint in Kant's *Metaphysical Elements of Justice*', *History of Political Thought*, vol. 20, no. 2 (1999), pp. 250–71.
- , *Kant and Modern Political Philosophy* (Cambridge: Cambridge University Press, 2004).
- Grotius, Hugo, *The Rights of War and Peace*, ed. Richard Tuck (Indianapolis, IN: Liberty Fund, 2005).

- Kleingeld, Pauline, *Kant and Cosmopolitanism* (Cambridge: Cambridge University Press, 2012).
- LeBar, Mark, 'Kant on Welfare', *Canadian Journal of Philosophy*, vol. 29, no. 2 (1999), pp. 225–49.
- Lowie, Robert, 'Some Aspects of Political Organization among the American Aborigines', *The Journal of the Royal Anthropological Institute of Great Britain and Ireland*, vol. 78, no. 1/2 (1948), pp. 11–12.
- Muthu, Sankar, *Enlightenment against Empire* (Princeton: Princeton University Press, 2003).
- Niesen, Peter, 'Colonialism and Hospitality', *Politics and Ethics Review*, vol. 3, no. 1 (2007), pp. 90–108.
- , 'Varieties of Cosmopolitanism: Bentham and Kant on International Politics,' in *Kant's Perpetual Peace: New Interpretive Essays*, ed. Luigi Caranti (Rome: Luiss University Press, 2006), pp. 247–88.
- Parker, Linda, *Native Estate* (Honolulu: University of Hawaii Press, 1989).
- Ripstein, Arthur, *Force and Freedom: Kant's Legal and Political Philosophy* (Cambridge, MA: Harvard University Press, 2009).
- Trigger, Bruce, *The Handbook of the North American Indians*, vol. 15: *Northeast* (Washington, DC: Smithsonian Institution, 1978).
- Tully, James, *Strange Multiplicity: Constitutionalism in an Age of Diversity* (Cambridge: Cambridge University Press, 1995).
- Vitoria, Francisco de, *Political Writings*, ed. Anthony Pagden and Jeremy Lawrence (Cambridge: Cambridge University Press, 1991).
- Williams, Robert, *The American Indian in Western Legal Thought: The Discourses of Conquest* (Oxford: Oxford University Press, 1992).
- Ypi, Lea, 'A Permissive Theory of Territorial Rights', *European Journal of Philosophy*, published online early view, February 2012, available at <onlinelibrary.wiley.com>.

9

Colonial Mentality: Kant's Hospitality Right Then and Now

Martin Ajei and Katrin Flikschuh

9.1 Colonialism Past and Present

We study the thoughts of dead philosophers for different, if related, reasons.¹ We deem particular thinkers' ideas worthy of study in their own right; alternatively, we treat the history of philosophy as a toolbox containing an assortment of theories and methods by reference to which we explore perennial philosophical problems. Studying the history of philosophy, or particular thinkers of that history, tells us who we are philosophically: we think how we do in virtue of how our predecessors thought.

Occasionally, we study a dead thinker's thoughts in order to distance ourselves from him or her. Western theorists often discuss Kant's racism, for example, in acknowledgement of what now strikes them as a shameful aspect of their philosophical tradition. Here, the hope is not to 'learn from' an eminent predecessor, but to register one's unqualified disapproval of the philosophical position expressed.² What motivates such repudiation?

¹ cf. Allen Wood, 'What Dead Philosophers Mean', in Wood, *Unsettling Obligations* (Stanford: CSLI Publications, 2002), 213–44.

² cf. Robert Bernasconi, 'Who Invented the Concept of Race? Kant's Role in the Enlightenment Construction of Race', in Bernasconi (ed.), *Race* (Oxford: Blackwell Publishers, 2001), 11–36; Charles W. Mills, 'Kant's Untermenschen', in Andrew Valls (ed.), *Race and Racism in Modern Philosophy* (Ithaca: Cornell University Press, 2005), 169–93.

Is the aim *only* to castigate a past thinker for his racist views or is it also, in some oblique way, to exonerate oneself?

The same question arises in relation to colonialism. Racism is not the only acknowledged blemish on the Western philosophical tradition: imperialism and colonialism are further, distinct blemishes. Interest in the wrong of Western colonialism is on the ascendance in contemporary global theorizing. It is not, however, the philosophy of race that has brought colonialism into global theorists' purview. Within the global debate, colonialism tends to be conceptualized as an instance of the more general category of 'historical injustice'. The latter was, in a sense, born on a point of technicality: early cosmopolitans had declared spatial distance morally irrelevant from the point of view of justice; advocates of justice towards future generations soon followed suit by suspending temporal constraints, and then proponents of historical injustice came along and declared past time no less relevant, morally, than future time.³ Throughout this debate, justice conceptions themselves have been held relatively constant. Historical wrongs tend to be treated as relatively marginal instances of past wrongs that stretch our basic justice intuitions into hitherto unconsidered domains without demanding wholesale revision of those intuitions.

Yet, colonialism is hardly a marginal issue: at its height, the British Empire alone is estimated to have subjected a fifth of the world's population under its rule. Colonialism is a past injustice of considerable magnitude, the multiple and complex effects of which continue to reverberate across present time. Reflection on it should unsettle received justice conceptions rather more than it appears generally to have done thus far.⁴

But is colonialism even (or only) a *past* wrong? If the effects of past colonial domination are with us still, is colonialism not also a *present* injustice? Perhaps we should talk not only of the *effects* of past colonial wrongs, but should consider also the possibility of *abiding* colonial practices or assumptions. This is an uncomfortable possibility to contemplate. As with the literature on race, critiques of imperialism usually proceed from the standpoint of a morally unblemished present: past philosophers of

³ cf. Derek Parfit, 'Future Generations: Further Problems', *Philosophy and Public Affairs*, 11 (1982), 113–72; Jeremy Waldron, 'Superseding Historic Injustice', *Ethics*, 103 (1992), 4–28.

⁴ James Tully, *Public Philosophy in a New Key*, Vol. II (Cambridge: Cambridge University Press, 2005).

imperialism are unmasked, exhibited, and reprimanded. The tone is one of moral distancing: *we* do not now think as *they* thought then.

How plausible is this? In many parts of the post-colonial world, philosophical talk is *rife* about neocolonialism, about colonial mentality, and about the need for conceptual reorientation. Non-Western theorists worry that colonial ways of thinking are with them still. Modern African philosophical thinking offers a particularly acute example of sustained concern with abiding inheritances of colonial rule. If descendants of the former colonized continue to be preoccupied with problems of neocolonialism, can descendants of former colonizers presume to have escaped the past unscathed?

In this chapter, we consider the possibility of abiding colonial attitudes among descendants of former *colonizers* from a Kantian perspective. Frantz Fanon diagnosed the problem of colonial mentality when examining the mental and psychological predicament of descendants of the formerly colonized.⁵ However, 'colonial mentality' in fact picks out a reciprocally reinforcing pair of mindsets: the mindset, first, of (descendants of) the colonized, who (continue to) think like colonial subjects, and the mindset, second, of (descendants of) the colonizers, who (continue to) think like colonial overlords. The mindset of the first group is usually associated with pervasive and ingrained, if non-voluntary, feelings and attitudes of cultural and intellectual inferiority; correspondingly, that of the second group may be associated with pervasive and ingrained, if non-voluntary, feelings and attitudes of cultural and intellectual superiority. Though both feed off each other, only the first has received critical attention to date.

Perhaps surprisingly, given his much-discussed racism, Kant may have been in a position to acknowledge the—then incipient—problem of colonial mentality. He had the theoretical resources to do so. These resources relate to Kant's moral formalism, more specifically, to his rights formalism. In what follows, we shall focus on Kant's category of cosmopolitan right: on his repudiation of substantive hospitality rights in favour of a formal right to attempt communicative contact with strangers. We shall examine the resources of Kant's communicative hospitality right in relation to current, not past, problems of colonial mentality. Our principal

⁵ Frantz Fanon, *The Wretched of the Earth* (London: Penguin Books, 2001, original French publication, 1961).

concern is with the effects of the phenomenon on current global justice debates; we shall ask whether reading Kant's hospitality right from the perspective of current global justice debates may enable us to confront the possibility of colonial mentality within those debates. We begin with an overview of modern African thinkers' ongoing engagement with problems of colonial mentality and ask why these problems figure so little in Western global debates. We then analyse Kant's reformulation of traditional hospitality rights into a formal right of communicative contact. Following this, we examine possible examples of abiding colonial mentality in current global justice talk before asking how Kant's communicative hospitality right may enable us to get a better grip on the problem of post-colonial colonial mentality.

9.2 Colonialism and Liberation: Decolonizing the Mind

At the dawn of independence celebrations across Africa in the late 1950s and early 1960s, several authors cautioned against the unrestrained euphoria of the moment.⁶ This caution expressed a wish to clarify the kind of freedom at stake in the achievement of formal independence. It signalled deep misgivings about the dependability of the freedoms—national and individual—ostensibly gained by the 'constitutional transfer' of formerly colonial powers. Did such a transfer of colonial powers mark a new beginning or did it signal the preservation, by other means, of the colonial status quo? As the end of centuries of slavery and colonialism appeared in sight, utterances and choices of the national liberators evoked suspicion. Kwame Nkrumah's dictum, 'seek ye first the political kingdom and all else will be added unto you',⁷ was widely interpreted by his newly independent country's citizens as *de-emphasizing* the importance of local ownership of the economy, hence as *betraying* an early anti-colonial aspiration. Similarly, the eagerness of the erstwhile French colonies to cede control of monetary policy to France invoked requests for clarification of

⁶ Kofi Anyidoho, 'National Identity and the Language of Metaphor', in Helen Lauer and Kofi Anyidoho (eds.), *Reclaiming the Human Sciences and Humanities through African Perspectives*, Vol. II (Ligon: Sub-Saharan Publishers, 2012), 1153–72.

⁷ Kwame Nkrumah, *Ghana: The Autobiography of Kwame Nkrumah* (London: Panaf Books, 2002), 164.

how the liberators intended to ensure that the continent's future would indeed pass firmly into native hands. This general sense of apprehension is vividly captured by Ayi Kwei Armah's depiction of the newborn Ghana as an 'old-man-child', which 'had been born with all the features of a human baby, but within seven years had completed the cycle from babyhood to infancy to youth, to maturity and old age, and in the seventh year had died a natural death.'⁸ Was independence in the form of a constitutional transfer of powers a victory stillborn?

From the start, political theorists and leaders sounded cautionary notes. Prominent among them was Nkrumah himself. Nkrumah's concept of neocolonialism endures as a keynote description of mechanisms other than direct military or political control by which Western (and former Soviet) powers exploit and perpetuate their influence over developing nations—usually former colonies.⁹ Nkrumah argued that neocolonialism replaces colonialism as the main instrument of imperialism. With this diagnosis, coloniality emerged as a prominent factor in explaining the fragility of states in Africa.¹⁰ On Nkrumah's account, independence in Africa threatened merely to enact a changing of the guard of states, which appeared destined to remain appendages of their ex-colonial masters.

While Nkrumah's term 'neo-colonialism' is now usually invoked to describe post-colonial states' continuing *material* dependence on more powerful states, the deeper and no less intangible issue concerns the abiding effects of erstwhile *intellectual* tutelage—the effects, that is, of having been taught to think of oneself as a colonial subject.¹¹ Frantz Fanon first diagnosed this problem in his powerful study of the psychological effects of colonial denigration on former colonial subjects. Several works have since explored the historical sources of contemporary Africans' sense of cultural diffidence and intellectual self-alienation. African as well as Western scholars have

⁸ Ayi Kwei Armah, *The Beautiful Ones Are Not Yet Born* (London: Heinemann Publishers, 1988), 63.

⁹ Nkrumah defines neocolonialism as the circumstances where a state enjoys *de jure* independence, including all the usual trappings of international sovereignty, but where its economic system and political policy are in fact largely directed and regulated by powers external to the state's own official governing bodies. Cf. Kwame Nkrumah, *Neo-colonialism: The Last Stage of Imperialism* (New York: International Publishers, 1966), ix.

¹⁰ cf. Eghosa Osaghae, 'Fragile States', *Development in Practice*, 17 (2007), 691–9, at 692–3.

¹¹ Nkrumah, *Consciencism* (New York: Monthly Review Press, 1970), 2–4.

studied Europeans' positive valuations of their own civilizations by means of contrasting accounts of imagined barbarism in other parts of the world, especially in Africa. Enlightenment philosophers—Kant among them—implicitly or explicitly articulated paradigmatically European conceptions of rational thought and moral virtue as the apogee of human knowledge and development, contrasting them with denigrating images of Africa and Africans.¹² With the emergence of anthropology as a new discipline, such images were subsequently often accorded scientific validation.¹³ Such 'evidence' of African barbarism and backwardness in turn supplied the epistemological and moral justification for colonial theory and practice.

The history of *past* denigration is by now well documented. Much less widely recognized is the fact that Africans today continue to flee from their harshly adjudged indigenous heritage by continuing to define and form their world on the basis of Western categories and conceptual systems. Concerning the overbearing presence of colonial mentality in present African life, Niyi Osundare has wondered whether, for the African intellectual, there is anything, theoretically and practically, worth talking about beside 'coloniality'.¹⁴ The legitimacy and urgency of this question derives from the fact that the colonial experience and neocoloniality, its sequel, even now define African lives. That they do is notable in the political and the wider social environment. It would be a mistake, for example, to regard as a thing of the past the old colonial practice of 'breaking in'¹⁵ the colonized to the point of the latter's conscious or subconscious acceptance of 'the idea that they are destined to be ruled by the West'.¹⁶

¹² V. Y. Mudimbe, *The Invention of Africa: Gnosis, Philosophy and the Order of Knowledge* (Bloomington: Indiana University Press, 1988), 1–23 and 44–52; Tsenay Serequeberhan, *The Hermeneutics of African Philosophy: Horizon and Discourse* (London: Routledge Publishers, 2012), 21–3.

¹³ Lucien Levy-Bruhl conceives African mentality as 'primitive' and 'pre-logical', in contrast to the civilized and rational deliberative capacity of the European. See his *Les fonctions mentales dans les sociétés inférieures* (Paris: Presses Universitaires de France, 1910) 505–6. Other denigrating terms, such as 'brutish, ignorant, idle, crafty, treacherous, bloody, thievish, mistrustful and superstitious' were variously used by philosophers and anthropologists to characterize the mental state or capacity of the African. Cf. Emeywo Biakolo, 'Categories of cross-cultural cognition and the African condition', in P. H. Coetzee and A. P. Roux (eds.), *Philosophy from Africa* (Oxford, Oxford University Press, 2002), 9–19.

¹⁴ Niyi Osundare, 'African Literature and the Crisis in Post-Structuralist Theorising', in Lauer and Anyidoho (eds.), *Reclaiming The Human Sciences*, op. cit. 941–54, at 946.

¹⁵ cf. Fanon, *The Wretched of the Earth*, op. cit., 33–4.

¹⁶ Tsenay Serequeberhan, 'Africa in a Changing World: An Inventory', *Monthly Review*, 61 (2010), 2.

Even today, the formal education of most Africans in positions of power remains implicitly premised on such breaking-in—on induction into the presumed superiority of Western forms of social and political organization that subsequently occasions an interiorized and pervasive ‘north-bound gaze’ politically as well as culturally.¹⁷ In the wider social context, seemingly mundane examples abound of the overbearing presence of colonial mentality in African lives. An overwhelming majority of African women conceive beauty to include wigs and synthetic hair extensions of Euro-American appearance. All over the continent, inherited colonial languages persist as official and classy means of communication. Religious modernity is identified with subscription to a denomination of Christian or Islamic faith as against indigenous religious practices, which are considered barbaric and anachronistic.

It is against this context of the continuing psychological and intellectual domination of formerly superimposed ways of life and patterns of thought and self-perception that African theorists have coined terms like ‘epistemicide’ and ‘valuecide’. M.B. Ramose employs the first of these terms to describe the suppression of Africans’ conceptions of reality, knowledge, and truth by Euro-American philosophical traditions—the ‘power-knowledge’ of the epistemological field. A salient philosophical feature of this domination is the overbearing governance of Africans’ lives by foreign epistemologies that invariably leads to the ossification of native knowledge systems.¹⁸ Similarly, ‘valuecide’ denotes the domination of Western normative values and the corresponding denigration of normative categories in African thought and lives.

Western theorists may shy away from such seemingly deterministic terminology. One reason for Western neglect of early African liberation thinking during the Cold War period of the 1950s and 1960s may have been its explicit Marxist leanings. Both W. E. B. Du Bois’s theory of the double consciousness of the black man in America (and his related pan-Africanist activism) and Fanon’s study of the psychology of the colonial subject betray strands of Marx-inspired critical analysis. Fanon unveils a structural connection between racism and colonial capitalism that recalls Du Bois’s theory of double consciousness. Nkrumah was deeply influenced, in

¹⁷ cf. M. B. Ramose, “‘African Renaissance’: A Northbound Gaze”, in *Philosophy from Africa*, op. cit., 601–9, at 608–9.

¹⁸ M. B. Ramose, *African Philosophy through Ubuntu* (Harare: Mond Books, 2002), 36.

turn, by both Du Bois and Fanon. For all three thinkers, colonialism was more than economic exploitation and political domination. It was also a practice in alienation—of creating a double consciousness—that involved the undermining of indigenous socio-political institutions, the denigration of indigenous historical self-understanding, and the diminishment of the very sense of being of the colonized.¹⁹ Marxist language and analysis offered conceptual tools by means of which both to name the problem and to gain distance from oppressive Western categories of thought. Yet, neither Fanon nor Nkrumah were vintage Marxists. Fanon ‘was more an innovator, not a disciple’ of Marxist theory.²⁰ Nkrumah deemed Marxist-socialism a preferable political and economic philosophy for an independent Africa because he saw it as compatible with the humanistic ethics of traditional African society.²¹ Nonetheless, Marxism needed always to be ‘stretched when it comes to addressing the colonial issue,’²² stretched to be compatible with the existence and growth of a vigorous private sector in the economy.²³

Today, modern African philosophers of a decidedly anti-Marxist disposition continue to raise calls for mental decolonization. Kwasi Wiredu, a classically analytic thinker, recommends a programme of ‘conceptual decolonization’ that comprises, first, an attitude of critical self-awareness in the form of avoiding or reversing the unexamined assimilation of foreign philosophical conceptual frameworks in the thinking of the African philosopher, and second, the critical appropriation of indigenous categories of thought in conceptual deliberations.²⁴ Implicit in Wiredu’s prescriptions is the belief that colonial oppression impaired intellectual confidence and capacity for autonomous thinking, and that this facilitated the extroversion and misplaced euphoria for independence of the 1950s and 1960s. Self-examination is thus needed to understand why the fruits of independence seem often so sour, and to reactivate confidence in providing African directions for the African future.

¹⁹ Frantz Fanon, *Black Skin, White Mask* (New York: Grove Press, 2008), 2.

²⁰ Lewis Gordon, *Fanon and the Crises of European Man: An Essay on Philosophy and the Human Sciences* (London: Routledge Publishers, 1995), 93.

²¹ Nkrumah, *Consciencism*, op. cit., 73.

²² Fanon, *The Wretched of the Earth*, op. cit., 5.

²³ Samuel Obeng (ed.), *Selected Speeches of Kwame Nkrumah*, Vol. 2 (Accra: Afram Publications, 1979), 142–3.

²⁴ Kwasi Wiredu, *Cultural Universals and Particulars* (Bloomington: Indiana University Press, 1996), 136.

Against this modern African intellectual background one may ask: if descendants of the victims of colonialism are preoccupied with the issue of colonial mentality, why are descendants of the former colonizers so unperturbed by the possibility of colonial mentality on their part? Is it plausible to assume that descendants of the perpetrators of colonialism have escaped their intellectual past unscathed? *Prima facie*, this seems implausible. Colonialism defines a two-way relation of political and cultural domination. If a formerly colonial relationship continues to cast its shadow on descendants of the colonized, this alone implicates descendants of the colonizers. Additionally, however, descendants of former colonizers may themselves be labouring under the effects of past practices of cultural denigration.

There is little explicit sense of historical burden among Western global theorists as descendants of former colonizers. In stark contrast to the underlying apprehension that characterized early African celebrations of independence, Western thinkers have generally put the colonial experience behind them as settled business. Neither colonialism nor decolonization preoccupied Western philosophical minds during the politically disengaged philosophical reign of logical positivism of the 1950s and 1960s. Nor did it figure during the 1970s and thereafter, when the publication of John Rawls's *A Theory of Justice* heralded philosophy's political re-engagement. Today, in the heyday of global normative reasoning, the tendency is towards complacency. Global theorists characterize post-1945 political events as a moral and political watershed. Post-war international arrangements are said to have laid to rest 'Westphalian statehood'. The Universal Declaration of Human Rights, conveniently conflated with the quite separate process of decolonization, is depicted as marking the global fruition of Enlightenment aspirations of a kind first realized through the American Declaration of Independence and the French Revolution.²⁵

The ease with which Western theorists have managed to dissociate Western political morality from its not so distant colonial past is disquieting. Current advocates of global justice are motivated by a genuinely well-intentioned yet frequently high-minded moral concern to improve the lives of those about whose actual circumstances they often know

²⁵ See, for one example, Charles Beitz, *The Idea of Human Rights* (Oxford: Oxford University Press, 2009). In contrast, see Brian Simpson, *Human Rights and the End of Empire* (Oxford: Oxford University Press, 2004).

very little. Recommendations for change, reform, and improvement flow freely: but they tend to flow from north to south exclusively. All too often, well-intentioned moral concern betrays an unreflectively patronizing attitude. Global theorists' desire to render services to humanity by theorizing solutions to injustices suffered by the global poor remains shaped by intellectual legacies of colonialism in subtle and incalculable ways.

This judgement may seem harsh, but it is not groundless. Justifications for colonial violence were often couched in the language of benevolent service and sacrifice.²⁶ As late as 1959, Placide Temples, a philosophically influential Belgian missionary who lived in (still colonial) Congo between 1940 and 1966, endorsed the widespread belief among his European peers that 'our civilizing mission alone can justify our occupation of the lands of the uncivilized people.'²⁷ It is not inconceivable that the ideological impact of this idea of service and sacrifice has filtered into the theoretical practice of current global normative thinkers.²⁸ This practice proceeds from unreflective acceptance of sedimented, largely negative conceptions and images that constitute the idea of Africa as 'an innately dysfunctional continent, incapable of doing for itself'.²⁹ Benevolent service to help restore the dignity and humanity then appears rationally and ethically apposite. As we shall see in section 9.4 below, well-intentioned though the global justice debate undoubtedly is, it nonetheless also often implicitly presupposes the historically favoured conception of Africa as a place cursed by bloodshed, hunger, corruption, and incompetence.

9.3 Kant's Communicative Cosmopolitan Right

It is against *current* problems of colonial mentality as sketched that we turn now to an interpretation of Kant's category of cosmopolitan right as a communicative right to attempt intellectual contact with distant strangers. We proceed in two steps: we first outline Kant's rejection of

²⁶ Serequeberhan, 'Africa in a Changing World', op. cit., 1–2.

²⁷ Placide Temples, *Bantu Philosophy* (Paris: Presence Africaine, 1959), 171–2.

²⁸ Placide Temples's sentiments are repeated more or less verbatim in Arthur Isak Applbaum, 'Forcing a People to be Free', *Philosophy and Public Affairs*, 35 (2007), 359–400, at 365/6.

²⁹ Serequeberhan, 'Africa in a Changing World', op. cit., 6.

colonizers' 'Jesuistic' appeal to traditional substantive hospitality rights, and then reconstruct his alternative, formal communicative right. We begin with a general ground-clearing remark. As noted, recent philosophers of race identify Kant as a paradigmatically racist Enlightenment thinker. Kant is charged with having invented the concept of race and with having developed the first (pseudo-) scientific theory of race.³⁰ He is also generally thought to have supported European colonialism, at least initially. While his late anti-colonialism is hard to contest, many writers on race believe Kant to have held racist views throughout.³¹ Given the generally close association between racism and colonial denigration, Kant may therefore seem an unlikely basis from which to critique colonial mentality. Nonetheless, in so far as Kant's mature anti-colonial position is premised on his—equally mature—rights formalism, his final stance on race may be irrelevant to his final anti-colonialism.

Racism is essentially attitudinal: it is the disposition to view another as morally inferior on the grounds of race. In the *Doctrine of Right*, Kant rejects the juridical relevance of dispositional attitudes. The morality of right is a strictly *external* morality that pertains to the rightness of action and abstracts from inner motives and maxims (MdS 6:214). One need not think another morally virtuous to enter into rights relations with her. Nor does one need oneself to be well disposed towards her. One need bear a person with whom one enters into a rights relation no good will, nor think her cultured, educated, or even civilized. All one needs do to find oneself in a rights relation with her is to raise a rights claim against her.

One might object that those who despise others on racial or cultural grounds do not typically raise rights claims against them. But that is obviously incorrect. People frequently raise rights claims against those whom they despise on racial or cultural grounds: the right to enslave, the right to invade, the right to liberate, the right to civilize. The power of Kant's critique of colonial abuse of traditional hospitality rights lies in the attention he draws to the formal presuppositions of rights claims in general. Given these presuppositions, the above kind of rights claims are in fact bogus rights claims.

³⁰ For references, see footnote 2.

³¹ In contrast, see Pauline Kleingeld, 'Kant's Second Thoughts', and her contribution in this volume with Bernasconi, 'Kant's Third Thoughts on Race'.

Consider the exposition of the general concept of right in the *Doctrine of Right*. Kant departs from ordinary juridical usage of the concept as specifying a formal, external, strictly reciprocal relation of choice between two or more agents (MdS 6:230). Rights relations are formal, in that they abstract from the matter of choice (goods, services, benefits, etc.). They are external, in that they abstract from agents' inner motives (wishes, desires, and attitudes). They are reciprocal, in that they assume strict equality of juridical status: neither party can bind the other to more than he can bind her in turn.

This rights specification suggests that Kant takes the prototype of a rights relation to be contractual. The difficulty that centrally preoccupies him in the *Doctrine of Right* is how rights relations thus conceived are morally possible. Conceptually, the difficulty lies in the apparent conflict between the strictly reciprocal structure of valid rights relations and the necessarily coercive nature of any particular rights claim. Every rights claim is coercive merely in virtue of the claimant's affirmation of an authority to bind the other's will. However, the demands of strict rights reciprocity disallow unilateral affirmations of juridical authority. The resulting 'antinomy' of rights (cf. MdS 6:255) is resolvable only through entrance into the civil condition and common submission under a public coercive authority as the relevant omnilateral rights-pronouncing authority.³² The *Doctrine of Right* thus ties reciprocal rights realization to the establishment of a coercive public authority—a tie that creates difficulties for Kant's subsequent treatment of non-coercible international and cosmopolitan right.³³ We disregard these difficulties for now. Of immediate relevance to Kant's critique of colonizers' abuse of traditional hospitality rights is the presuppositional status of juridical equality in relation to rights claims: rights claims are *only* publicly enforceable *because* rights reciprocity demands mutual acknowledgement of each party's juridical equality vis-à-vis the other.

Consider traditional hospitality rights. They obliged hosts to extend assistance to vulnerable foreigners: food, shelter, and protection. Hospitality rights were not meant to serve as pretexts to colonial conquests;

³² For more detailed analysis, see Katrin Flikschuh, *Kant and Modern Political Philosophy* (Cambridge: Cambridge University Press, 2000), 113–78.

³³ Katrin Flikschuh, 'Kant's Sovereignty Dilemma: A Contemporary Analysis', *Journal of Political Philosophy*, 18 (2010), 469–93.

however, they were often abused for this purpose.³⁴ Their focus on visitors' substantive entitlements against hosts may have encouraged such abuse. Kant's formal critique draws attention to abusers' violation of requisite rights reciprocity. On Kant's account, to raise a rights claim against another is to predicate juridical equality of her: this is a condition of the intelligibility of adverting to the concept of right at all. Recall Kant's juridical abstraction from inner dispositions. We said that it is not uncommon for persons to raise rights claims against those whom they despise as inferior to themselves. The Spanish conquerors are a good example: they raised claims to hospitality rights against native Americans whom they despised as uncivilized. It is not unreasonable to suppose that the Spanish conquerors took themselves to be entitled to raise such rights claims *on the grounds* of their assumed superiority vis-à-vis their hosts. On Kant's account, they committed a critical conceptual error: anyone who raises a rights claim against another is committed by *the formal reciprocal structure of such claims alone* to acknowledging his addressee's reciprocal juridical equality. One who, in raising a rights claim against another, fails to acknowledge his addressee's equal juridical status is not raising a rights claim at all. Instead, he abuses or misunderstands the language of rights reciprocity.

Since the racist or colonialist will often appeal to the concept of right in order to justify actions that are in fact inconsistent with the reciprocity conditions of rights talk, the function of Kant's critique lies essentially in depriving the racist or colonist of such justificatory appeal to rights language. Kant's rejection, as 'Jesuistic', of colonizers' appeal to hospitality rights charges them with a contradiction in conception: the purported rights claim undermines itself because it fails to meet the condition of its own validity. There cannot be a *right* to colonize another because no one can legitimately dominate one whose juridical equality he is bound to acknowledge merely in virtue of invoking the concept of right against her.

To reject a right to colonize, or more properly, to reject colonizers' abuse of traditional hospitality rights, is not to reject the idea of rightful contact between strangers. Indeed, the rejection of colonizers' abuse of traditional hospitality rights hardly warrants rejection of those rights themselves. Why did Kant not simply expose colonizers' 'Jesuistic' justification and reinstate traditional substantive hospitality rights? In his 'Colonialism

³⁴ Anthony Pagden, *Lords of All the World: Ideologies of Empire in Spain, Britain, and France. c.1500–c.1800* (New Haven and London: Yale University Press, 1995).

and Hospitality', Peter Niesen offers an elegant reconstruction of Kant's cosmopolitan right as a formal and restrictive communicative right:

The central component of [Kant's] hospitality is the right 'to present oneself to society' or alternatively to attempt to 'engage in commerce'. Thus it seems straightforward to claim that hospitality entails a communicative right. It provides people arriving at the border of a foreign nation with a right to make communicative offers.³⁵

'Entailment' is somewhat misleading here: it seems more natural to say that cosmopolitan right *is* a communicative right. In its general thrust, however, Niesen's characterization is consistent with Kant's rights formalism. Recall: the concept of right abstracts from the *matter* of choice in order to focus on the reciprocal structure of the rights relation. Given his rights formalism, Kant *cannot* commit to antecedently given substantive hospitality rights. Nor is the restricted formulation of the cosmopolitan right to *attempt* contact surprising. Niesen points out that 'the limiting condition on hospitality has its political background in Kant's critique of European colonialism and imperialism'.³⁶ This may be so; conceptually, however, the entitlement to no more than attempting contact is a consequence of rights reciprocity: while one party can extend the offer of contact, it must wait for the other party to take up the offer. Significantly, as in the case of international right, Kant's restricted hospitality right includes no title to coerce: where the prospective host rejects the offer of contact, the visitor cannot compel contact, but is obliged to withdraw.³⁷

Niesen further points to the broad scope of this communicative right: one may offer oneself for commercial, cultural, or even civil contact. Similarly, there are no limits on the specific content of cosmopolitan communication. Niesen concludes that the cosmopolitan communicative right is a 'right to free speech', akin to subjects' right to freedom of the pen against the sovereign (GTP 8:304), and to their right against one another to communicate their thoughts freely (MdS 6:238). He calls the communicative cosmopolitan right a 'third category of subjective right to

³⁵ Peter Niesen, 'Colonialism and Hospitality', *Politics and Ethics Review*, 3 (2007), 90–108, at 92.

³⁶ Peter Niesen, 'Colonialism and Hospitality', 94.

³⁷ The host is obliged not to turn the visitor away if doing so spells the latter's certain death: note, however, this is a rights duty on the part of the host, not an enforceable right on the part of the visitor. The host would do wrong to turn the visitor away, but it does not follow that the visitor can rightfully enforce his claim against the host.

communication.' This classes cosmopolitan right as a right each person has in his capacity as a private agent.

In this last respect, our position differs. We agree with Niesen that the right to attempt contact is a formal communicative right governing reciprocally equal juridical contact between strangers. However, merchants, settlers, travel writers, and missionaries did not encounter members of other polities as private agents. On the contrary, they typically sailed under the protection of a designated public flag, and so encountered each other and third parties as representatives of established states. The public nature of these visitors' status makes it misleading to speak of cosmopolitan right as a subjective right—that is, as a right persons have in their capacity as private persons. Kant specifically designates cosmopolitan right as a form of *public* right—albeit one that crucially lacks a designated omnilateral rights enforcing authority (MdS 6:311). Cosmopolitan right is a form of public right that binds the conduct of merchants, travel writers, settlers, and missionaries to the juridical commitments of the respective states under whose flags they sail and whom they claim to represent. Anytime a merchant or travel writer sets foot on foreign soil, she does so in her capacity as a citizen of an already established rightful state.³⁸ Unless the visitor claims such status, appeals to cosmopolitan right have no purchase. But if the visitor claims such status, the demands of cosmopolitan right obligate *her*, not the receiving host, in the first instance. The visitor, not the host, must extend the offer of communicative contact, since it is the visitor, not the host, who has initiated the meeting.

Structurally, cosmopolitan right resembles international rights relations between states more than it resembles rights relations between private persons within a state. Recall the antinomical structure of rights claims between private persons in the pre-civil condition. The impermissibility of unilateral rights enforcement necessitates entrance into the civil condition; submission under a common coercive juridical authority is the only condition under which strict rights reciprocity is practically possible. Yet, at the international level, Kant rejects the possibility of an analogous supra-state coercive authority by means of which to regulate rights relations between states: states have to negotiate their rights

³⁸ Travel writers, explorers, and would-be colonists typically regarded themselves as emissaries of European states—and were received as such. Cf. Berman, *Enlightenment or Empire?*

relations as sovereign powers and absent a coercive supra-state authority (ZeF 8:354, 367; MdS 6:350/1). Cosmopolitan right is similarly non-coercive. Kant operates with a coercive rights conception domestically and a non-coercive rights conception at international and cosmopolitan levels of public right. Conceptual consistency is preserved only on the assumption that, in contrast to pre-civil relations between private persons, who are obliged to enter into the civil condition with each other, the international and cosmopolitan contexts *never* constitute state-of-nature contexts. Instead, these realms are conceptually tied to juridical statehood. Prior to the existence of states, talk of international or cosmopolitan spheres of political agency is meaningless. With the emergence of states as juridical agents, obligations of international and cosmopolitan right become binding for those who claim to represent their states conceived as juridical agents.³⁹

On this account, international and cosmopolitan right are predicated on the existence of states conceived as a type of juridical agent which, in contrast to private persons in the pre-civil condition, always already encounter one another as juridically competent agents. When a representative of a state encounters stateless peoples, he does not stand to them as one private person stands to another in the pre-civil condition: if he did, he could compel them into the civil condition with him. But Kant expressly denies this.⁴⁰ No representative from a European state is entitled to compel stateless peoples to enter into the civil condition with him. Given the general prohibition against remaining in the state of nature, the prohibition against compelling stateless persons into a civil condition makes sense only on the assumption that European representatives and stateless persons are *not* encountering one another in a state of nature. They are *already* in a juridical relationship of some sort with one another—that is, merely in virtue of at least one party's citizen membership within an established state as juridical agent. A merchant from Holland does not stand to his Chinese trading partner as two persons stand to each other in the state of nature. Nor do they relate to each other as two citizens within a single established polity. Instead, they relate to each other as representatives of

³⁹ Kant *should* not, therefore, invoke state-of-nature language in the international and cosmopolitan contexts.

⁴⁰ For further discussion of Kant's position on this, see the contribution by Liesbet Vanhaute in this volume.

their respective domestic jurisdictions. European travellers, merchants, and immigrants are emissaries of states that claim juridical status as agents of right: this fact alone binds them to act towards others in a manner consonant with that status.

Kant does not himself explicitly characterize cosmopolitan right as an ambassadorial rights duty of citizens on business abroad. But he clearly intends visitors to be cognisant of their ambassadorial duties, broadly conceived. Kant's standard foreigner is not some castaway who washes up on the shore pleading for food, shelter, and protection. Standardly, the visitor arrives bearing goods she wishes to trade. Such a person is not typically in need of natural law's subjective hospitality rights. She comes voluntarily and with purpose. Yet, although the merchant's private purpose may be to trade, her public purpose is to make contact as a citizen of one polity with those of another. Why else would Kant include a right to offer oneself for commerce under cosmopolitan right as a form of *public* right? From the perspective of right, commercial exchange is merely a means to rightful contact with foreigners as members of different polities.⁴¹ This is precisely why the form in which trade is conducted matters: whatever the *matter* of exchange, its *form* must be strictly reciprocal if cosmopolitan contact is to succeed. Hence, Kant thought Japan and China justified when, in response to Europeans' non-reciprocal trade policies, they closed their countries to European traders.

In sum, we take Kant's communicative cosmopolitan right to grow out of a conceptually oriented critique of colonizers' abuse of traditional hospitality rights. Kant's insistence on the reciprocal structure of any rights relation forms the basis of that critique. His subsequent formulation of a communicative cosmopolitan right should be reconstructed consistently with his rights formalism: here, we are in agreement with Niesen's account. We depart from Niesen in viewing cosmopolitan right as a form of public right. Cosmopolitan rights claimants act in a distinctively public capacity. They encounter foreigners—stateless peoples as well as members of foreign states—as ambassadors of states whose claim to juridical status

⁴¹ We thus disagree both with Peter Niesen in 'Colonialism' and with Anna Stilz in this volume that Kant's hospitality right is specifically designed to deal with the rights of stateless peoples. The rights of stateless peoples vis-à-vis members of constituted polities are included within cosmopolitan right, but the latter also comprises relations between members of constituted states.

places them under a duty of right to comport themselves towards foreigners in a manner that is consistent with that status.

9.4 Colonial Mentality in Contemporary Cosmopolitan Discourse

In the last section, we outlined Kant's critique of traditional hospitality right and his formulation of an alternative cosmopolitan communicative right. We claim no particular originality in this regard. Our account is distinctive principally in that it emphasizes the reciprocal structure of Kant's rights formalism—still, we largely follow Niesen in his reading of Kant's cosmopolitanism as specifying a *communicative* rights relation: we merely conceive that relation as taking place in the domain of public, not private right. The reading of Kant's hospitality right as a communicative right has gained ground generally: perusal of the contributions in this volume alone reveals broad consensus, by now, on this score. All the more noticeable is the absence of reflection on such a right's implications in relation to *current* cosmopolitan concerns. What may it mean *in the present context* to affirm a cosmopolitan right to attempt communicative contact with distant strangers?

In section 9.2, we indicated the urgency of theorizing the possibility of communicative cosmopolitan contact. In the final section of this chapter, we shall suggest that the biggest pay-off in thematizing Kant's communicative cosmopolitan right under present conditions may be that it draws attention to the problem of current *non*-communication. Our task in this section is to substantiate our initial worry that remnants of what we call colonial mentality may continue to shape the current global justice debates. Given limited space, our remarks are indicative rather than firmly diagnostic. We restrict our discussion to three terms whose dominance in current global justice debates is indicative of the continuing effects of an historically inherited image of African haplessness and passivity: the 'resource curse', 'failed states', and 'backward traditions'.

Consider what many modern African thinkers perceive as the historically skewed 'politics of naming'. The Yoruba say that it is only mad people who do not mind the names they are called, or who refuse to see the difference between the names they adopt and the ones others choose to call them by.⁴²

⁴² cf. Osundare, *op. cit.*, 359.

The Yoruba saying confirms a widely accepted view among philosophers and linguists on the social character of designation established by participants in that culture to facilitate communicative intentions. Naming indexes a world of cultural designation.⁴³ In many African cultures, a name affirms the personality, status, and dignity of its owner. A name is a stamp of identity within a given cultural context. Besides expressing a person's belonging to a particular community, a name also encodes clues to its bearer's expected course in life. The appellations and connotations attached to a name are suggestive of the sort of person the community expects its bearer to be. In short, naming is a socially and culturally sensitive matter.

Not least in view of the social importance traditionally accorded the practice of naming, Africans understandably find the abiding legacies of a colonially constructed image of Africans hurtful as well as inaccurate and unhelpful. Ill-considered terminology may justifiably be viewed as offensive, even where it is not intended to offend.⁴⁴ The general tenor of much global normative theorizing remains continuous with that of several 'development' strategies recommended for Africa from the end of the colonial period to the turn of the twenty-first century. Assumptions about African 'backwardness' and about the need to follow the Western developmental model as a panacea to overcoming such backwardness characterize early modernization theory, neoliberal Structural Adjustment Programmes, and post-neoliberal Poverty Reductions Strategy Papers alike. Rather than querying their underlying normative assumptions, much global normative theorizing uncritically absorbs developmental terminology.

Consider the recent flurry of normative interest in the notion of a resource curse. Originally floated as a likely idea by one of the old hands of early modernization theory, the 'resource curse' has since been worked up into a general research hypothesis by a number of social scientists and development economists.⁴⁵ In general, theories of development

⁴³ Gareth Evans and J. E. J. Altham, 'The Causal Theory of Names,' *Proceedings of the Aristotelian Society, Supplementary Volume*, 47 (1973), 187–227, at 202, 242.

⁴⁴ For an excellent discussion, see Miranda Fricker, *Epistemic Injustice: Power and the Ethics of Knowing* (Oxford: Oxford University Press, 2007), 30–59.

⁴⁵ The original idea is associated with Samuel Huntington's *The Third Wave: Democratization in the Late Twentieth Century* (Norman, Okla.: University of Oklahoma Press, 1991). The resource curse hypothesis, as explanatory variable, has been variously developed and tested since. See, for example, Michael Ross, 'Does Oil Hinder Democracy?', *World Politics*, 53 (2001), 325–61; Leonard Wantchekon, 'Why do Resource Dependent Countries have Authoritarian Governments?', *Journal of African Finance and Economic Development*, 2

economics are premised on the expectation that a country's natural resource wealth should contribute positively to its economic growth. Against this general expectation, the resource curse hypothesis claims the novel finding that, under certain conditions, natural resource wealth tends to undermine both economic growth and democratic development. Resource-rich African countries are said to be particularly prone to the curse. An air of paradox attends the diagnosed problem, which appears to transform what would ordinarily be a 'blessing' into a 'curse'. This air of paradox accounts for the hypothesis' theoretical appeal—though recent assessment of its actual explanatory power has been notably deflationary.⁴⁶

We are here concerned with the migration of an alluringly named research hypothesis from the social sciences into global normative theorizing. In the context of descriptive analysis, the colourful notion of a 'resource curse' may pass as an innocently named complement to similar economic paradoxes, such as the 'Dutch Disease'. It is more difficult to abstract from the term's underlying connotations in the *evaluative* context of normative argument. Normative discussions of the 'resource curse' cannot overlook the fact that Africa's encounter with the West is replete with instances in which names have been invoked to malign, humiliate, and dispossess. In the normative context, we should ask ourselves: what is a 'curse', such that entire countries can be 'struck' by one? The meaning of the word 'curse', used as a noun, implies notions of evil and misfortune.⁴⁷ As a type of evil or misfortune that 'strikes' people—or entire countries—as if from on high,

(2002), 57–77; more generally, Macartan Humphreys, Jeffrey Sachs, and Joseph Stiglitz (eds.), *Escaping the Resource Curse* (New York: Columbia University Press, 2007). Normative global theorists have emphasized Western governments' knowing participation in such resource mismanagement. See Thomas Pogge, *World Poverty and Human Rights* (Oxford: Polity Press, 2002), and *Politics as Usual* (Oxford: Polity Press, 2010); also Leif Wenar, 'Property Right and the Resource Curse', *Philosophy and Public Affairs*, 36 (2008), 2–32, and 'Clean Trade in Natural Resources', *Ethics and International Affairs*, 25 (2011), 27–39.

⁴⁶ cf. Stephen Haber and Victor Menaldo, 'Do Natural Resources Fuel Authoritarianism? A Reappraisal of the Resource Curse', *American Political Science Review*, 105 (2011), 1–26; also Samuel Jones, 'Sub-Saharan Africa and the "Resource Curse": Limitations of the Conventional Wisdom', *Danish Institute for International Studies* (2008) Working Paper No. 2008/14.

⁴⁷ A curse means: (1) An imprecation of evil; any profane oath. (2) Calamity invoked or threatened. (3) A source of calamity or evil; also, the evil which comes as a result of invocation or as punishment. (4) An object of execration. See *New International Webster's Comprehensive Dictionary of the English Language, Encyclopedic Edition* (Naples, Florida: Trident Press International, 1998), 317.

it carries distinctly metaphysical connotations.⁴⁸ While the descriptive literature on the resource curse claims to define a causal relation between a particular set of observed circumstances and a corresponding set of outcomes, invocation of the notion of a *curse* in the context of normative argument rekindles age-old associations of the continent with witchcraft, idolatry, primitivism, and general, inexplicable moral and physical malaise. Small wonder if normative discussions of the supposed curse adopt a lopsided agency perspective upon it, occluding consideration of potential domestic policy options in favour of often highly prescriptive international response strategies that subject hapless Africans to extraneously administered 'cures'.⁴⁹

The resource curse is not the only concept to have migrated from the social sciences into normative global discourse. A second example is that of the 'failed state'. Descriptively, the concept refers to a territorially delimited political entity with accorded sovereign powers, in which that entity is judged as failing to discharge in several basic respects. Although definitions of state failure lack broad consensus, the characteristics of a *failing state* are said to include a central government so weak or ineffective that it has little practical control over much of its territory; non-provision of public services; widespread corruption, and criminality; refugees and involuntary movement of populations; and sharp economic decline. Of 178 states participating in the Failed States Index of 2012,⁵⁰ 51 are African. Twelve indicators, each supplying a maximum mark of 10, were used to assess the risk of state failure.⁵¹ The total marks earned formed the basis for placing participating countries on a ten-point scale of assessment, ranging from 'very high alert' (the lowest on the scale and therefore harbouring the most risk of failing) to 'sustainable' (the least risk of failing). The only two

⁴⁸ This is not only because of the prominence of 'evil' in the meaning of the term, but also because of the belief in several cultures that a curse is a misfortune inflicted by, or through, some supernatural agency, such as God or a spirit, or by some paranormal means, such as magic or witchcraft.

⁴⁹ Leif Wenar, for example, proposes the establishment of a US-administered 'Clean Hand Trust' that collects proceeds from 'illegitimately' sold resources and holds them in trust for the peoples of afflicted countries until such time as the latter have acquired a minimally decent government. The US based Freedom House Index is to supply relevant measures of political development. Cf. Wenar, 'Property Rights and the Resource Curse', op. cit..

⁵⁰ J. J. Messner (ed.), *Failed States Index 2012* (Washington, DC: Fund for Peace, 2012), available at <<http://www.fundforpeace.org/global/library/cfsir1210-failedstatesindex2012-06p.pdf>> accessed 3 March 2014.

⁵¹ Messner (ed.), *Failed States Index 2012*, 12.

countries on 'very high alert' were African, and of the 12 on 'high alert', 7 were African. Fifteen African countries were among the worst scoring 20.⁵²

Normatively, the problem pertaining to the concept of a failed state is subtly different from that attending to a resource curse. The resource curse tends to be portrayed as a force that simply 'strikes' afflicted countries—the absence of a plausibly developed agency perspective is its most striking feature. In relation to the concept of state failure, by contrast, the normative literature often implicates state agents directly. State failure tends to be associated with more or less deliberate, more or less wanton political abuse: state agents fail to live up to standards of good governance. This assumes that agents' could have lived up to those standards—they merely chose not to. Frequently, the diagnosis of wanton state failure is followed by pleas for humanitarian intervention.⁵³ And yet it may not be the agents who fail. The theory may fail the agents. The indicators of state failure collated under the Failed States Index are predicated on assumptions which themselves fail adequately to reflect conditions of statehood in modern African contexts. Against these assumptions, Claude Ake has wondered whether we can properly speak of a 'state' in post-colonial Africa. It might even be misleading to talk of states in formation: the process of state formation in Africa appears to unfold within 'contradictions which stubbornly refuse transcendence and it would appear that a new complex reality has in fact emerged.'⁵⁴

To be clear: our complaint is not that Western theories of the state are obviously or wholly inapplicable in relation to African contexts. They may, however, be in need of considerable theoretical revision and adaptation. Yet, Western political theorists, including global normative theorists, rarely consider the need for theoretical reappraisal in the light of contrasting African experience and related alternative theorizing. The effect is not only to perpetuate the image of African moral, intellectual ineptness or wanton political destructiveness: given the political implications frequently drawn from the diagnosis of state failure—international intervention—misdiagnosis of the sources of the problem carries enormous costs

⁵² Messner (ed.), *Failed States Index 2012*, 4–5.

⁵³ For a particularly belligerent argument along those lines, see Arthur Isak Applbaum, 'Forcing a People to be Free', *Philosophy and Public Affairs*, 35 (2007), 359–400.

⁵⁴ Claude Ake, 'The State in Contemporary Africa', in *Government and Politics in Africa: A Reader*, ed. Okwudibia Nnoli, (Harare: AAPS Books, 2000), 57–64, at 60. See also Eghosa Osgahe, 'Fragile States', *Development in Practice*, 17 (2007), 691–9.

for those primarily affected. We should be as sure as we can be that it is the agents who fail the theory, not the other way round.

A third terminological quagmire that merits at least brief mention is the highly pervasive contrast between 'traditional' and 'advanced' societies. The notion of a traditional society is often taken to imply backwardness, especially social and moral backwardness. This assessment of tradition is deeply embedded in the logic of modernization theory, which insists on eliminating the values of traditional society on the road to (economic) development. Following Enlightenment thinkers like Adam Smith before him, influential modernization theorists like W. W. Rostow distinguish five stages of economic development through which all societies seeking it must travel.⁵⁵ Rostow places traditional society at the bottom of this pile. According to him, the five stages 'constitute in the end both a theory about economic growth and a more general, if still highly partial, theory about modern history as a whole.'⁵⁶

Global theorists often adopt this developmentalist logic when they portray 'traditional' value as synonymous with relations of inequality—most notably perhaps in the context of 'women's development' or of human rights disagreements.⁵⁷ In so doing, they often misdiagnose real problems in the developing world and overlook local perspectives and solutions to these problems. From an African perspective, tradition often has much more positive connotations. Numerous African philosophers and theorists are emphatic that any vision of the African future should pay heed to the thought and values underlying practices in traditional society.⁵⁸ It is now largely recognized, for example, that the traditional African preference for a congenial approach to dialogue and decision-making valorizes the type of level-headedness that can take the adversarial edges off liberal multi-party democracy in practice in several African countries.⁵⁹

⁵⁵ W. W. Rostow, *The Stages of Economic Growth: A Non-Communist Manifesto* (Cambridge: Cambridge University Press, 1960).

⁵⁶ W. W. Rostow, *The Stages of Economic Growth*, 1

⁵⁷ For a critical appraisal of Western perceptions of gender inequality in Africa, see Anene Ejikeme, 'Engendering African History: A Tale of Sex, Politics, and Power', in Peyi Soyinka-Airewele and Rita Kiki Edozie (eds.), *Reframing Contemporary Africa* (Washington, DC: CQ Press, 2010), 291–306.

⁵⁸ cf. Kwame Gyekye, *Tradition and Modernity* (Oxford: Oxford University Press, 1997).

⁵⁹ Kwasi Wiredu, 'Democracy and Consensus in African Traditional Politics: A Plea for Non-Party Politics', in E. C. Eze (ed.), *Post-Colonial African Philosophy* (Oxford: Blackwell Publishers, 1997); also Ajume Wingo, 'Fellowship Associations as a Foundation for Liberal

Conversely, it is increasingly contended that many of the social practices that are judged to be morally retrograde by critics of traditional society reflect the influence of colonizers' imposition of nineteenth-century Western codes, including the economic and political disempowerment of women, for example, or the low tolerance of homosexuality in many deeply Christianized African societies.⁶⁰ Again, our claim here is not that the contrast between tradition and modernity is always misleading, or that it can never be usefully employed in the context of social—and even, occasionally, normative—analysis. However, unselfconscious endorsement of a highly problematic developmental logic that tends to associate tradition with 'backwardness' and modernity with 'progress' may frequently turn out to be morally harmful, not merely morally disrespectful.

9.5 Attempting Post-Colonial Contact

In the light of the preceding section, how may we draw on Kant's communicative cosmopolitan right as a possible basis from which to approach the problem of colonial mentality in *current* global justice debates? As indicated, the most important service Kant's communicative right may render in this respect is that it makes it possible to diagnose the problem. The distinctively formal character of Kant's rights conception enables him to abstract from the material aspects of traditional hospitality rights in order to focus on the *mode* of colonizers' comportment towards their hosts. We have here adopted a similar strategy in relation to current global justice debates: we have abstracted from substantive issues of global justice to consider the mode of intellectual engagement with distant strangers. There can be little doubt that the current mode of theorizing largely fails as a form of global theorizing. The terms of debate are strikingly parochial. They are often predicated, moreover, on underlying, historically inherited assumptions about African intellectual and moral passivity, political haplessness, and comparative cultural backwardness.

Democracy in Africa', in Kwasi Wiredu (ed.), *A Companion to African Philosophy* (Oxford: Blackwell Publishers, 2005), 450–60.

⁶⁰ On the colonial disempowerment of African women, see Ejikeme, 'Engendering African History'. On the status of homosexuality, we recall the heated discussion over a recent case of homosexual marriage in Malawi—a deeply Presbyterialized polity.

To claim the diagnostic power of Kant's communicative right in relation to current global justice debates is not, of course, to contend that current problems of cosmopolitan lack of communication or miscommunication are of precisely the same kind as they may have been in Kant's time. In many respects, Kant's late conversion to the anti-colonial camp is difficult to fathom.⁶¹ It is odd that he should have made such an unambiguous case *against* the European colonization of stateless peoples in a text—the *Doctrine of Right*—that makes an equally unambiguous case in favour of state entrance as an unconditional duty of right. Granted, the legitimacy of *reciprocal* compulsion into the civil condition does not entail the legitimacy of third-party compulsion. Where persons agree, 'as if by mutual consent', to remain in a state of lawless freedom, no one else may rightfully compel them to do their duty.⁶² Nonetheless, stateless peoples must surely be judged by Kant's standards to be doing wrong by 'willing to be and remain in a condition that is not rightful' (MdS 6:307/8). Given such unambiguous moral censure of the failure to enter into the civil condition, the fervent tone of Kant's late condemnation of European colonialism is surprising.

One might conclude that Kant must have accorded stateless peoples some rights that secured them limited juridical status, even if not, perhaps, full juridical status.⁶³ At least, from the perspective of Kant's communicative right, this would be to presume too much. Kant's emphasis on a right to *attempt* contact implies a peculiar kind of reticence that is more in keeping with Arthur Ripstein's reflections on the issue of European comportment towards stateless peoples:

Kant is supposing that nomadic peoples, without a formal structure of government, are nonetheless to be treated by others as they would be if they were in a rightful condition. The claim here is not that anyone would be in a position to identify even the rudiments [of good governance]. Kant's point is that the obstacle to colonization does not depend on the internal structures of such societies, but on the constraint that their existence imposes on others. Others must treat a nomadic or hunter-gatherer society as though it is in a rightful condition.⁶⁴

This is exactly right. Ripstein's general point, that the obstacle to rightful colonization lies in a constraint of rightful comportment, tallies with

⁶¹ cf. Pauline Kleingeld's contribution in this volume.

⁶² Contrast Applbaum, 'Forcing a People to be Free', op. cit.

⁶³ See Anna Stilz's contribution in this volume.

⁶⁴ Ripstein, this volume, chapter 6, section 6.4, at 165.

our reading, according to which merchants' and missionaries' status as emissaries of established states are bound by their status to act towards foreigners in a juridically appropriate manner. But in the above quotation, Ripstein also suggests, more specifically, that European visitors are under an obligation to comport themselves towards stateless peoples in a manner that is cognisant of Europeans' general ignorance about them. For all they know, stateless peoples do in fact possess political institutions; for all they know, they are in fact in a civil condition of sorts. This stance expresses an epistemic modesty against which the cautiously formulated right to *attempt* contact makes good sense. In our dealings with distant strangers, we should not presume too much about them. We should accept that they are agents in their own right, with reasons for action, about which we are likely to know and understand very little.⁶⁵

In retrospect, one might evaluate Kant's right to *attempt* contact as an intervention in relation to the then still incipient European imperialism that hoped to avert what subsequently came to pass. European colonizers patently did not comport themselves with epistemic modesty towards those they eventually colonized: in that sense, Kant's communicative right was repudiated. The effects of that repudiation should in turn guide our response to Kant's cosmopolitan right now. Let's assume, if only for the sake of argument, that had Kant's cosmopolitan right been heeded at the time—had epistemic modesty prevailed—cosmopolitan communicative contact would now be less distorted by prejudicial assumptions than in fact it is.⁶⁶ Communicative relations between European and non-Europeans would then be different now, from how they in fact are: they would not be plagued, let's assume, by the legacies of colonial mentality. Under this thought experiment, prejudicial attitudes flourish because (something like) Kant's communicative right was not heeded. The point is this: in contrast to pre-colonial European merchants and missionaries who *could have* encountered non-European peoples with a relatively open mind, we *cannot* now ourselves assume an attitude of epistemic openness *because* our predecessors comported themselves differently from how they could

⁶⁵ In his remarkable study of Yoruba moral epistemology, Barry Hallen reports of the Yoruba attitude of epistemological restraint towards foreigners: 'We don't take strangers to be bad or good, because we have not been living with them and don't know what kind of person they are.' Barry Hallen, *The Good, the Bad, and the Beautiful: Discourse about Values in Yoruba Culture* (Bloomington: Indiana University Press, 2000), at 67.

⁶⁶ This is, of course, an idealizing assumption—but it serves a heuristic purpose.

(and should) have done. We—descendants of colonized and colonizers alike—are epistemically burdened: we must seek to undo inherited terms of miscommunication.

But how should we go about this? With great circumspection. Recall the argument from section 9.2: modern African thinkers find themselves labouring under the continuing effects of colonial mentality. Part of their problem is the simple fact that their diagnoses of post-colonialism generally fall on deaf ears in the wider academic—and certainly in the global normative—context. One side will continue to be stuck in a given mode of discourse if the other side continues to fail to acknowledge that it is being addressed. The reticence on the part of Western theorists to acknowledge that they are being addressed is understandable. Not only is it morally painful to confront legacies of this sort, confronting them is also liable to incur terminological and hence epistemological costs.⁶⁷ Recall the African experience of epistemicide and valuecide alluded to in section 9.2. Surely, these are exaggerations, Western theorists may contend. Perhaps they are, but maybe not: loss of knowledge and value is most acute where it is genuinely felt. If global normative theorists were to desist from their routine appeal to the type of terminology briefly examined in section 9.4, how would this impact their frameworks of normative analysis more generally? What else becomes unsayable, what other assumptions become questionable merely as a result of eliminating a few central terms of analysis? This is not an argument for failing to revise dominant terms of global normative debate; after all, the cost of non-revision is continued miscommunication. But it is an argument in favour of proceeding with care and caution on both sides—an argument for not asking too much of each other all at once. African theorists are only too aware, after all, of the costs of loss of concepts and values: they will not expect miracles from their Western counterparts.⁶⁸ But what they can expect from their Western counterparts is a good faith effort at attempting intellectual contact—a better effort, to say the least, than that of Western theorists' predecessors. In that sense, we may say that we are again at the crossroads: we still confront one another as distant strangers, but this time as ones who share a painful past whose

⁶⁷ cf. Fricker, *Epistemic Injustice*, 129–47.

⁶⁸ On the loss of concepts in a rather different colonial setting, see Jonathan Lear, *Radical Hope: Ethics in the Face of Cultural Devastation* (Cambridge, Mass.: Harvard University Press, 2006).

enduring legacies must be acknowledged on both sides if genuine open exchange of one another's views and thoughts is to be possible.

Bibliography

- Ake, Claude, 'The State in Contemporary Africa', in Okwudibia Nnoli (ed.), *Government and Politics in Africa: A Reader* (Harare: AAPS Books, 2000), 57–64.
- Anyidoho, Kofi, 'National Identity and the Language of Metaphor', in Helen Lauer and Kofi Anyidoho (eds.), *Reclaiming the Human Sciences and Humanities through African Perspectives*, Vol. II (Legon: Sub-Saharan Publishers, 2012), 1153–72.
- Applbaum, Arthur Isak, 'Forcing a People to be Free', *Philosophy and Public Affairs*, 35 (2007), 359–400.
- Armah, Aye Kwei, *The Beautiful Ones Are Not Yet Born* (London: Heinemann Publishers, 1988).
- Beitz, Charles, *The Idea of Human Rights* (Oxford: Oxford University Press, 2009).
- Berman, Russell A., *Enlightenment or Empire? Colonial Discourse in German Culture* (Lincoln and London: University of Nebraska Press, 1998).
- Bernasconi, Robert, 'Who Invented the Concept of Race? Kant's Role in the Enlightenment Construction of Race', in Bernasconi, (ed.), *Race* (Oxford: Blackwell Publishers, 2001), 11–36.
- , 'Kant's Third Thoughts on Race', in Stuart Elden and Eduardo Mendieta (eds.), *Reading Kant's Geography* (New York: State University of New York Press, 2011), 291–319.
- Biakolo, Emeywo, 'Categories of Cross-Cultural Cognition and the African Condition', in P. H. Coetzee and A. P. Roux (eds.), *Philosophy from Africa* (Oxford: Oxford University Press, 2002).
- Ejikeme, Anene, 'Engendering African History: A Tale of Sex, Politics, and Power', in Peyi Soyinka-Airewele and Rita Kiki Edozie (eds.), *Reframing Contemporary Africa* (Washington, DC: CQ Press, 2010), 291–306.
- Evans, G. and Altham, J. E. J., 'The Causal Theory of Names', *Proceedings of the Aristotelian Society, Supplementary Volume*, 47 (1973), 187–227.
- Fanon, Frantz, *The Wretched of the Earth* (London: Penguin Books, 2001).
- , *Black Skin, White Mask* (New York: Grove Press, 2008).
- Flikschuh, Katrin, *Kant and Modern Political Philosophy* (Cambridge: Cambridge University Press, 2000).
- , 'Kant's Sovereignty Dilemma: A Contemporary Analysis', *Journal of Political Philosophy*, 18 (2010), 469–93.
- Fricker, Miranda, *Epistemic Injustice. Power and the Ethics of Knowing* (Oxford: Oxford University Press, 2007).

- Gordon, Lewis, *Fanon and the Crises of European Man: An Essay on Philosophy and the Human Sciences* (London: Routledge Publishers, 1995).
- Gyekye, Kwame, *Tradition and Modernity* (Oxford: Oxford University Press, 1997).
- Haber, Stephen and Menaldo, Victor, 'Do Natural Resources Fuel Authoritarianism? A Reappraisal of the Resource Curse', *American Political Science Review*, 105 (2011), 1–26.
- Hallen, Barry, *The Good, the Bad, and the Beautiful: Discourse about Values in Yoruba Culture* (Bloomington: Indiana University Press, 2000).
- Humphreys, Macarten, Sachs, Jeffrey, and Stiglitz, Joseph (eds.), *Escaping the Resource Curse* (New York: Columbia University Press, 2007).
- Huntington, Samuel, *The Third Wave: Democratization in the Late Twentieth Century* (Norman, Okla.: University of Oklahoma Press, 1991).
- Jones, Samuel, 'Sub-Saharan Africa and the "Resource Curse": Limitations of the Conventional Wisdom', *Danish Institute for International Studies* (2008) Working Paper No. 2008/14.
- Kleingeld, Pauline, 'Kant's Second Thoughts', *The Philosophical Quarterly*, 57 (2007), 573–92.
- Lear, Jonathan, *Radical Hope: Ethics in the Face of Cultural Devastation* (Cambridge, Mass.: Harvard University Press, 2006).
- Levy-Bruhl, Lucien, *Le fonctions mentales dans les societes inferieures* (Paris: Presses Universitaires de France, 1910), 505–6.
- Messner, J. J. (ed.), *Failed States Index 2012* (Washington, DC: Fund for Peace, 2012), available at <<http://www.fundforpeace.org/global/library/cfsir1210-failedstatesindex2012-06p.pdf>> accessed 3 March 2014.
- Mills, Charles W., 'Kant's Untermenschen', in Andrew Valls (ed.), *Race and Racism in Modern Philosophy* (Ithaca: Cornell University Press, 2005), 169–93.
- Mudimbe, V. Y., *The Invention of Africa: Gnosis, Philosophy and the Order of Knowledge* (Bloomington: Indiana University Press, 1988).
- Niesen, Peter, 'Colonialism and Hospitality', *Politics and Ethics Review*, 3 (2007), 90–108.
- Nkrumah, Kwame, *Neo-Colonialism: The Last Stage of Imperialism* (New York: International Publishers, 1966).
- , *Consciencism* (New York: Monthly Review Press, 1970).
- , *Ghana: The Autobiography of Kwame Nkrumah* (London: Panaf Books, 2002).
- Obeng, Samuel (ed.), *Selected Speeches of Kwame Nkrumah*, Vol. 2 (Accra: Afram Publications, 1979).
- Osaghae, Eghosa, 'Fragile States', *Development in Practice*, 17 (2007), 691–9.
- Osundare, Niyi, 'African Literature and the Crisis in Post-Structuralist Theorising', in Lauer and Anyidoho (eds.), *Reclaiming The Human Sciences* (Legon: Sub-Saharan Publishers, 2012), 213–25.

- Pagden, Anthony, *Lords of All the World: Ideologies of Empire in Spain, Britain, and France c.1500–c.1800* (New Haven and London: Yale University Press, 1995).
- Parfit, Derek, 'Future Generations: Further Problems', *Philosophy and Public Affairs*, 11 (1982), 113–72.
- Pogge, Thomas, *World Poverty and Human Rights* (Oxford: Polity Press, 2002).
- , *Politics and Usual* (Oxford: Polity Press, 2010).
- Ramose, M. B., *African Philosophy through Ubuntu* (Harare: Mond Books, 2002).
- , '“African Renaissance”: A Northbound Gaze', in P. H. Coetzee and A. P. Roux (eds.), *Philosophy from Africa* (Oxford: Oxford University Press, 2002), 601–9.
- Ross, Michael, 'Does Oil Hinder Democracy?', *World Politics*, 53 (2001), 325–61.
- Rostow, W. W., *The Stages of Economic Growth: A Non-Communist Manifesto* (Cambridge: Cambridge University Press, 1960).
- Serequeberhan, Tsenay, 'Africa in a Changing World: An Inventory', *Monthly Review*, 61 (2010).
- , *The Hermeneutics of African Philosophy: Horizon and Discourse* (New York: Routledge Publishers, 2012).
- Simpson, Brian, *Human Rights and the End of Empire* (Oxford: Oxford University Press, 2004).
- Temples, Placide, *Bantu Philosophy* (Paris: Presence Africaine, 1959).
- Tully, James, *Public Philosophy in a New Key*, Vol. II (Cambridge: Cambridge University Press, 2005).
- Waldron, Jeremy, 'Superseding Historic Injustice', *Ethics*, 103 (1992), 4–28.
- Wantchekon, Leonard, 'Why do Resource Dependent Countries have Authoritarian Governments?', *Journal of African Finance and Economic Development*, 2 (2002), 57–77.
- Wenar, Leif, 'Property Right and the Resource Curse', *Philosophy and Public Affairs*, 36 (2008), 2–32.
- , 'Clean Trade in Natural Resources', *Ethics and International Affairs*, 25 (2011), 27–39.
- Wingo, Ajume, 'Fellowship Associations as a Foundation for Liberal Democracy in Africa', in Kwasi Wiredu (ed.), *A Companion to African Philosophy* (Oxford: Blackwell Publishers, 2005), 450–60.
- Wiredu, Kwasi, *Cultural Universals and Particulars* (Bloomington: Indiana University Press, 1996).
- , 'Democracy and Consensus in African Traditional Politics: A Plea for Non-Party Politics', in E. C. Eze (ed.), *Post-Colonial African Philosophy* (Oxford: Blackwell Publishers, 1997), 303–12.
- Wood, Allen, 'What Dead Philosophers Mean', in Wood, *Unsettling Obligations* (Stanford: CSLI Publications, 2002), 213–44.

Index

- abolition 5, 6, 50, 64
Africa/African 3–4, 16–17, 32, 36–7,
49, 51n, 56–8, 62n, 64–5, 145, 162,
223–30, 238–44, 247
agrarian 68, 71–6, 78, 80n, 81, 83
non-agrarian 12, 69, 71, 75–7, 79n, 81,
86, 91n
agriculture 34, 37, 57, 74, 78–9, 81, 119–20,
134, 204
Ajei, Martin 16–17
Ake, Claude 242
America 4, 17, 23, 35–7, 51, 56, 58, 62n,
86, 118, 128, 145, 148, 162, 201, 204,
206–7, 210, 218, 227, 229
Native Americans 15–16, 34, 46–7, 50,
54–5, 57–8, 62n, 107, 120, 165, 202n,
204, 233
annexation 32, 88, 155, 170–1, 175–9, 182,
186–9, 191, 193, 197, 199, 201
antagonism 69, 71n, 74–6, 82–3, 87–96,
102, 104, 181
Armah, Ayi Kwei 225
Asia/Asians 4, 32, 47, 56–7, 145, 162
Augustine 29

Bartolus 27
Bedouin 76–7
Bentham, Jeremy 170
Berman, Russell 4–5, 10
Bernasconi, Robert 9–10, 48, 61–3
Bonnet, Charles 108–9
Britain/British 21, 23–4, 32, 53, 159, 168,
201, 222
Buffon, Georges-Louis Leclerc 108

Cape 56, 86, 118, 128, 210
China/Chinese 56, 87, 99, 122, 129n, 137n,
200, 236–7
Cicero 25
colonial mentality 17, 221–50
colonialism 1–17, 23, 41, 43–66, 69, 81,
84, 86, 99–102, 118–22, 124, 128, 133,
145–70, 175, 188–91, 197, 199, 201,
203, 221–6, 228–34, 245, 247
anti-colonialism 10, 13, 53, 128, 175,
224, 231, 245
mother/daughter 20–4, 31, 33, 38, 40,
52–3, 55, 58, 60, 84, 159–62, 167–8
neo-colonialism 223, 225–6
post-colonialism 3, 16–17, 44, 223–5,
242, 244–7
colonists 14, 33n, 35–6, 59, 127–44, 148,
233, 235n
colonization 3, 10–11, 13–15, 28, 31–3,
38, 41, 93–4, 128–30, 146–8, 150–1,
155, 160, 162, 164–5, 167–8, 171, 180,
190–4, 207, 217, 228, 233, 245–6
decolonization 3, 190–1, 194, 224,
228–9
commerce 6, 10, 13, 37–8, 52, 56, 73, 81,
83, 85–7, 90, 95, 99–107, 109, 111–24,
127–30, 134–43, 185, 199, 234, 237
communities 21–2, 31, 34–5, 75, 79n, 84–8,
90, 121, 132, 135, 143, 188, 200, 239
conflict 58, 104–5, 115–7, 122, 124, 141,
160, 172, 180, 182–3, 188–9, 192–3
conquest 9, 12, 19, 22–4, 30–2, 53, 55–7,
68, 79, 81, 86–8, 90, 93–5, 118, 123,
128–9, 145–53, 155, 159, 162–4, 166–8,
171, 175–6, 179, 186, 189, 192–3, 201,
207, 211, 232–3
anti-conquest 92
contracts/contractualism 12–14, 27, 32,
35–6, 38–40, 57, 59, 79, 88, 120, 128,
130–2, 134–40, 143, 149, 152, 154, 157,
163, 165, 170, 183–5, 200, 202, 205–6,
209n, 212, 215, 232
Cook, James 5, 49
cosmopolitan(ism) 2–4, 7–10, 13, 16–17,
27–8, 43, 66, 68–9, 73, 84, 87, 89,
95–6, 102, 117, 189, 192–3, 199, 222,
234, 238, 245
condition 40, 44–5, 90, 121
justice 84–5, 87, 189
law 170–3, 181, 188–94
relations 99, 102
right 26–7, 40, 55–8, 62, 69, 75, 84, 86,
88, 90, 95, 100, 102, 118, 121–3, 130,

cosmopolitan(ism) (*Cont.*)

146, 150, 183, 197–200, 202, 210, 223,
230, 232, 234–8, 244, 246

culture 4–5, 9–10, 12, 16, 37, 46, 50, 59, 70,
75, 82–3, 94–5, 104, 111, 116–7, 160,
223, 225, 227, 229, 231, 234, 239, 244

domination 11, 68–72, 74, 81–3, 86–90,
93–6, 100, 115, 222, 227–9
counter–domination 68

Du Bois, William E. B. 227–8

Dutch 47, 56, 119, 137n, 200–1, 236, 240

East Indies 56, 86, 119, 128

Eberl, Oliver 172

Engel, Johann Jacob 49

England/English 22–3, 34, 40, 46, 119,
204, 217

Enlightenment 1–5, 7–8, 10, 17, 80, 85, 89,
96, 99–100, 106, 117, 171, 226, 229,
231, 243

epigenesis 108–9

equality 7, 50n, 64, 72, 90, 92, 167, 175,
183, 232–3

inequality 3, 71, 74, 82, 116, 137n, 143

Eurocentrism 2–4, 9–10

Europe/European 2–6, 9–14, 16–17, 24,
36–8, 43–60, 62, 64–5, 68–9, 76, 78,
82–4, 86–8, 100, 106–7, 112, 118–9, 122,
124, 145, 149–50, 162, 188–90, 192–4,
197, 200–1, 202n, 206–11, 217–8,
226–7, 230–1, 234, 236–7, 245–6

exploitation 6, 11, 15, 34, 71, 74, 79, 87,
100, 124, 127, 129, 133, 136, 141, 147,
202n, 225, 228

Fanon, Frantz 223, 225, 227–8

fatherland/Vaterland 20, 22, 38

federalism 58, 140

Flikschuh, Katrin 16–17

Forster, Georg 5–6, 9, 12, 49

France/French 6, 12, 46, 51, 64, 115, 124,
180, 210, 224, 229

freedom 7, 13, 25, 30–1, 34, 37, 46–7, 50n,
53, 64, 71–2, 77, 79–80nn, 81, 89–94,
99, 101–2, 105–6, 112–3, 117, 123, 131n,
137n, 142, 150, 155, 159–60, 163–4,
165n, 167, 171, 175–6, 181, 183, 185–8,
190–1, 194, 198, 201, 203, 206, 224, 245

Gandhi, Mohandas 96

Gentili, Alberico 31

Germany/German 1, 3, 5–6, 26, 33, 59,
73, 108, 180

germs 101, 107–12, 111, 166

Ghana 225

global(ization) 2, 4, 7–8, 15, 68–9, 72,
74–5, 78, 81–91, 94–6, 122, 170–1, 173,
183, 188, 190–1, 194, 199, 201, 222,
224, 229–30, 238–42, 244–5, 247

God 92, 101, 109, 114

Greeks 10–11, 19, 21–3, 30, 53

Grenadines 51

Grotius, Hugo 25, 28, 34, 40, 145, 149,
159, 201

Guadeloupe 51

Haiti 64

Haller, Albrecht von 108–9

Harvey, David 3, 9–10

Hedrick, Todd 44

Hegel, Georg 2

Herder, Johann Gottfried von 5, 9, 20

hierarchy 5–6, 11, 13, 43, 46–50, 57, 61, 63–6,
73–4, 76, 79n, 101, 106–7, 111, 114, 118

Hobbes, Thomas 39, 124

hospitality 16–17, 27, 56, 62n, 68, 86–8,
102, 118, 128–9, 133, 135, 137, 146,
189, 194, 199–201, 221, 223–4, 231–4,
237–8, 244

inhospitality 56, 118, 128–9

hostility 55, 73–4, 77n, 83, 85, 90–2, 118,
129, 178, 199

Hottentots 34, 54, 57, 79n, 120, 165

Hume, David 2

imperialism 2–3, 7, 11–12, 52, 56n, 68, 76,
78–9, 81–4, 86–8, 92–5, 99, 102, 128,
130, 133, 145, 168, 171, 186, 222, 225,
234, 246

anti-imperialism 88, 92, 96, 100, 118,
197–8

neo-imperialism 7

India 23–4, 46–7, 49, 56–7, 73, 86, 118,
129, 168, 189, 201

interaction 12–13, 55, 69, 72–7, 84–6, 95–6,
105, 108, 118, 120, 142–3, 156, 163, 165,
170, 192–3, 197, 199, 206–7, 219

Ireland/Irish 21–2, 53, 55, 159

Japan/Japanese 56, 87, 97, 122, 129n, 137n,
200, 201n, 237

jus ad bellum 28, 156–7, 162, 173, 175,
177–8, 183

- jus cosmopolitanum* 19, 26–8, 30, 40, 85
jus gentium 20, 25n, 26–8
jus in bello 28, 157, 162, 175–6, 178
jus post bellum 28–31, 33, 156, 161, 175–6, 178
 justice 2, 7–8, 15, 24–5, 29, 33, 40, 69, 75–7, 79, 83n, 84–5, 87–8, 90, 93–4, 100, 103, 105, 115–7, 119–20, 139–41, 158, 170–2, 183–6, 188–9, 198, 203, 214–5, 217, 222, 224, 229–30, 234–5, 238
 injustice 12, 15, 38, 56, 68, 70, 74, 79, 82, 84–6, 92–3, 95, 106, 118, 121, 128–9, 133, 140n, 148, 171, 176, 178–9, 183, 188–90, 222, 230
- King, Martin Luther 93
 Kleingeld, Pauline 5, 9, 11–13
- law 3, 8–9, 15, 22, 24, 28–9, 32, 35, 39, 43–4, 51, 53, 56, 58–9, 88–9, 106, 117, 123, 133, 139–40, 146, 149–50, 152, 154–7, 167, 172, 180–1, 184–5, 206, 214, 216
 civil 40, 203
 cosmopolitan 170–3, 181, 188–94
 criminal 150, 171
 international 14–15, 24, 28, 140, 148, 166, 170–82, 184, 186, 188–9, 191–4
 mechanical 109–10
 natural 25, 27–8, 31, 34, 78n, 167, 172–7, 179–82, 184, 186, 189, 192, 237
 permissive 208–9
 positive 27, 154, 167, 206
 private 133, 179–81, 185–7, 190, 192, 203
 property 154
 public 139, 152, 171, 173, 179–80, 190–2, 194, 214
 public international 170, 172, 174, 176, 183–5, 187–8, 191, 194
 transitional international 15, 172–4, 181–4, 187
 universal 25, 198
 law of belligerent occupation 166–7
 law of continuity 19–41
 law of equilibrium 90–1, 102
 law of nations 25n, 26, 34, 40, 80, 175, 201
 lawlessness 25–6, 28, 34, 36–7, 39, 79n, 83, 175, 203, 206, 245
 laws of contract 36
 league 3, 122
 nations 182, 191, 194
 states 24, 26, 28, 41
 Livy 22
- Locke, John 34, 145, 159, 204, 209
 Longuenesse, Béatrice 44
- Maine, Henry 22–3
 Martinique 51
 Marxism 227–8
 McCarthy, Thomas 4, 8–10, 45
 Mill, John Stuart 2, 145, 160–1, 167–8
 Milner, Alfred Lord 32
 Mongolia 120, 130, 205
 morals/morality 2–8, 10, 12–13, 15–17, 23, 26, 30, 32, 36, 39, 45, 49, 52, 54, 61–3, 65, 69, 70–4, 79–83, 88, 92–3, 99, 102–5, 107, 111–15, 117, 121–4, 131n, 146–7, 149, 151, 154, 156–8, 160, 162, 164, 166–8, 175–6, 200n, 207, 210, 218, 222–3, 226, 229–32, 241–7
 motherland/mother country 20–2, 38, 60, 84, 159–62
 Muthu, Sankar 11–13, 37–8, 57
- Negroes 6, 46–7, 50–2, 56, 58, 62–3, 65, 86, 107, 118, 128, 210, 227
 Nehru, Jawaharlal 96
 New Holland 34, 37, 54
 New Zealand 5, 37
 Niesen, Peter 11, 14–15, 40, 133, 137n, 203–4, 234–5, 237–8
 Nkrumah, Kwame 224–5, 227–8
 nomads 9, 11–12, 15–16, 37, 69, 71, 73, 75–81, 120, 128, 130–2, 135n, 165, 201–2, 204–5, 245
- occupation 30, 32–4, 36, 38, 40, 44, 88, 93, 120, 131, 135, 156–7, 160–1, 166–7, 171, 175–9, 187, 192–3, 198, 230
 O'Neill, Onora 8
 oppression 56, 68, 71, 86, 92–3, 95–6, 115, 117–8, 129, 133, 228
 Osundare, Niyi 226
- Pagden, Anthony 10–12, 14
 peace 10, 12, 14–15, 28, 31–2, 58, 78, 85, 87, 89–93, 95–6, 99, 102, 115, 117–8, 120–22, 127, 139–43, 150–2, 154, 158, 164, 170, 176–8, 183–5, 191
 plurality 13, 68, 88, 90–1, 100, 163–4
 possession 16, 20–1, 27, 35–7, 39, 54, 79, 104, 114, 120, 123, 129, 130–7, 154, 167, 180, 187, 192–3, 204–19

- provinces 11, 20–4, 30, 33, 38, 40, 53, 60, 159, 161
- Pufendorf, Samuel 25–6, 30, 39, 102, 145
- race/racism 1–2, 4–7, 11–13, 17, 43, 46–50, 53–5, 58, 61, 63–5, 79n, 99–101, 107–11, 118, 221–3, 227, 231, 233
- Ramose, Mogobe B. 227
- rationalism 2, 7–8, 54, 70, 72–3, 138, 148–50, 155, 212–7, 219, 226, 230
- Rawls, John 7–8, 156, 229
- rebellion/revolution 6, 11–12, 15, 39, 56, 60, 64, 68, 86, 115, 117–8, 124, 129, 153–4, 210, 216, 229
- rectification 15, 178, 183–4, 187
- religion 20, 38, 70, 73, 81, 83, 89, 91n, 105, 227
- republic 20, 27, 30, 32–3, 43, 53, 58, 89, 165, 183, 186, 198, 209n, 215–6
- resistance 11–12, 38–9, 68–96, 100, 115, 149
- restoration 15, 153, 170–2, 175–8, 180–3, 186, 188–91, 193–4
non-restoration 185
- rights 8–9, 11, 14–16, 20, 25, 28, 30–5, 37–40, 43, 45, 52–7, 60, 62, 64, 73, 80n, 84–5, 93, 99, 115, 117–24, 129–43, 145–6, 148–53, 156–61, 163–8, 171–6, 178, 180–1, 187–8, 190, 192–3, 203, 229, 231–3, 237, 243, 245–6
- citizenship 20–1, 96, 176
- civil 39, 75, 115
- communicative 16, 27, 224, 230–1, 234–5, 238, 244–6
- compensation 32
- conquest 31, 87
- contract 128, 206
- cosmopolitan 26–7, 40, 55–8, 62, 69, 75, 84, 86, 88, 90, 95, 100, 102, 118, 121–3, 130, 146, 150, 183, 197–200, 202, 210, 223, 230, 232, 234–8, 244, 246
- emigration 38
- free passage 201
- free trade 201
- freedom 7, 53, 81, 93
- hospitality 16–17, 118, 137, 189, 199–201, 221, 223–4, 231–4, 237–8, 244
- immigration 36, 59, 61
- jurisdiction 40
- land/territory 204–5, 208–9, 216–8
- liberty 210–11
- national/international 19, 26–8, 31, 37, 40, 69, 75, 78n, 88, 90, 115, 121, 123, 155, 161, 191, 197, 199, 234–5
- natural 27, 32, 35, 39, 129, 131, 173, 177, 198, 201, 209
- occupation 33, 36
- parental 23
- peace 28
- political 30
- possession 16, 27, 36, 212, 214, 217
- prevention 29
- private 15, 77, 136, 154–5, 159, 238
- property 10, 16, 33n, 36, 40, 78n, 131, 198, 204, 206, 208–12, 214–9
- provisional 192, 197, 202, 207, 209–11, 213–8
- public 26, 77, 163, 189, 235–8
- sovereign 11
- state 26, 28, 32, 40, 121, 123, 162, 173, 216
- war 28, 158, 160, 164, 175, 177, 181–2
- Ripstein, Arthur 11, 14–15, 23–4, 29, 193, 245–6
- Romans 10–11, 19–24, 30, 34, 39
- Rostow, Walt W. 243
- Rousseau, Jean-Jacques 12, 68, 70–2, 74, 77, 82–3, 86, 94–5, 124
- savages 19, 25, 34–5, 37, 51, 54, 83, 111, 116n, 145, 148–50, 152, 155, 166, 203, 206
- self-love 70–1, 73–4, 83, 95
- settlers/settlement 12–13, 16, 19, 25, 33–4, 36, 38, 50, 55, 57, 59–60, 76, 81, 120, 127–35, 139, 146, 148–51, 165–6, 189, 201, 202n, 207–8, 210–11, 217, 235
- slavery/slaves 5–6, 17, 45–7, 49–52, 54–5, 57–8, 61–5, 107, 224, 231
- Smith, Adam 100, 119, 243
- sociability 36, 68, 85–7, 96, 118
commercial sociability 102, 104–6, 115, 117, 119–20, 124
unsociability 70, 89, 96, 104, 118
unsocial sociability 12–24, 68–72, 74–5, 77, 87, 94–5, 101–2, 104–7, 111–5
- sovereignty/monarchy 11, 19, 22–4, 30, 38–9, 46, 59–61, 87–9, 96, 105, 124, 150, 178, 184, 186, 190, 210–11, 216, 234, 236, 241
- Spain/Spanish 22, 27, 40, 51, 148–9, 201, 233

- Spice Islands 56, 86, 118–9, 128, 210
 state/statehood 2–3, 7–10, 12, 14, 16,
 20–33, 36–41, 52–3, 55–9, 68–9,
 75–8, 80–3, 86, 88–91, 99, 102, 104–6,
 115–9, 121–4, 127n, 128–9, 132–4, 135n,
 137n, 139–40, 143, 148–50, 153–4,
 158–62, 167, 169, 173–94, 197–203,
 206–8, 210, 212, 215–8, 225, 229,
 235–8, 241–2, 245–6
 non-state 14–16, 36, 55, 132–3, 171,
 189–90, 192–4, 197–209, 218–9
 Stilz, Anna 15–16, 36, 78n
 Suárez, Francisco 148, 151
 subjugation 12, 41, 56, 102, 129, 167, 176,
 189
 Sugar Islands 51–2
 Surinam 47, 51
- Tahiti 37
 teleology 2, 6–7, 10, 12–13, 19, 27, 44,
 48–9, 51, 79n, 93, 100–3, 105–9, 111–3,
 115–7, 121–2, 124, 141–2
 Temples, Placide 230
 Tonga 37
 trade 6, 10, 13–14, 52, 55–6, 58, 61–4, 75,
 81, 85–6, 99–100, 102, 104–6, 116–20,
 124, 127–43, 145n, 189, 193, 200–1,
 236–7
- Tully, James 2–4, 8–10
 Tungusi 57, 77, 120, 165
- universalism 2–3, 7–8, 12, 19, 22, 24–5,
 27–8, 31, 40, 43–5, 50, 58, 78n, 85, 89,
 91n, 99, 103, 108, 114, 118, 123, 191, 198
 usurpation 12, 40, 171
- Vanhaute, Liesbet 13–14
 Vattel, Emer de 26–8, 30, 80, 102, 145
 violence 2, 10, 52, 54, 60, 65, 68, 71, 77,
 79, 82–4, 86, 94, 121, 129, 133, 155, 165,
 190, 194, 199, 230
 virtue 46, 99, 184, 226, 231
 Vitoria, Francisco de 27–8, 102, 118, 148,
 151, 201
- war 10–11, 14, 22, 24–6, 28–33, 52–3, 56,
 62n, 83–4, 86, 89, 92–4, 115, 117–8,
 121–2, 127, 129, 141, 145–62, 164, 166,
 168–9, 171, 174–84, 186–8, 191–3,
 200n, 201, 227
 anti-war 92
 whites 5, 44, 46–50, 56, 62, 65
 Wiredu, Kwasi 228
 Wolff, Christian 27–8, 30, 102
- Ypi, Lea 11–13

