

Chapter 2

Justice and Imperialism

On the Very Idea of a Universal Standard

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I

In the modern era, imperialism refers to relations between states and peoples in which one state is able to effectively impose, constrain, dominate, and exploit others in ways that affect their most important interests.¹ This can occur either directly or indirectly, formally or informally. Of course, it is never complete and there is always room to maneuver on the part of those subject to these relations of power. However, that room to move can be severely limited. The imposition of “metropolitan law” within an imperial political order can be defined in terms of its inherently hierarchical structure: one state is hegemonic and its will trumps other legal and normative systems. The independence of any other legal orders is, therefore, by definition contingent and shifting, depending on the interests of the imperial power.

In the fields of political theory and public law, the structure of imperialism is associated above all with the period of formal Western imperialism stretching from the sixteenth century (at least) until the mid- to late twentieth century and the various movements and processes of decolonization. However, it has also been associated with developments *since* decolonization, especially the rise of the United States and the new global political, legal, and economic order formed in its wake. This “new imperialism” is associated with the United States and its allies working with (and at times

against) an informal league of cooperating and competing sovereign states and transnational corporations, as well as a complex of global institutions such as the International Monetary Fund (IMF) and the World Bank (WB), and transnational legal regimes such as the General Agreement on Tariffs and Trade (GATT). There remains considerable debate about the extent to which various responses to this form of imperialism—among them, the discourse of moral cosmopolitanism—manage to escape or remain entangled within imperial relations. Here is one formulation of this kind of concern:

[cosmopolitan discourse] is abstract and utopian in the worst sense . . . the sovereignty-based model of international law appears to be ceding not to cosmopolitan justice but to an imperial project of dominance and indirect control of key “peripheries.” The world’s sole superpower makes good use of cosmopolitan discourse in its efforts to marginalize international institutions and undermine international law, especially law restraining the use of force and the legal principles of non-intervention and self-determination. What we face is not a simple effort to evade international law by a powerful actor, but rather a serious bid to reorient it in an imperial direction—under the heading of “global right.”²

How does empire become transposed onto justice? There are two kinds of question here, one historical the other conceptual, though they are often entwined. First, we may ask whether there are particular arguments about justice that were subsequently used in the justification of empire or colonialism. Or, we may seek to trace the conceptual structure of arguments justifying imperialism to their roots in particular philosophical views, debunking their supposed universalism.³ Second, we may ask about the very nature of the concept of global justice and the values it expresses in relation to other important values. Is the very *notion* of global justice imperialistic, just because it claims there are universal values applicable to everyone everywhere, whatever their particular ways of life or worldviews?

The form of justice I am concerned with here is *distributive* or *social* justice. The challenge of global or international justice is the extension of this framework from the domestic to the global sphere. How do you reconcile a deep commitment on the part of liberal egalitarianism to *moral* egalitarianism with an assumption that distributive justice applies only to those who share membership (usually citizenship) in a territorial state.

The central question of this chapter lies at the intersection of the historical and conceptual questions. I am interested in the historical question about the relationship between particular conceptions of justice and the justification of imperialism and actual imperial practices. But I am also interested in the conceptual questions: the tension between the demand

for universal principles (or at least standards) of justice and moral particularism; the idea that there may well be principles of justice, but that they apply only within states or “peoples” or hold only among individuals who stand in certain practice-mediated relations. The broader, normative issue at stake is something like this: Liberals are committed to tolerating cultural diversity and value pluralism, along with something like what Rawls calls the “fact of reasonable pluralism.”⁴ Reasonable pluralism is a “fact” for Rawls, at least within liberal democratic states, given the free exercise of our reason. If people exercise their reason freely, we have no reason to expect that they will all agree on the same comprehensive view of the good, or on fundamental questions of morality. Within liberal democratic states this picture presents an acute problem for the egalitarian liberal: according to at least some conceptions of liberalism, a state will be legitimate only to the extent that the exercise of coercive power is based on reasons that no one could reasonably reject. But what kinds of reasons are these, and how could they not fail to be comprehensive in some way?

If the task is daunting *within* liberal democratic states, it is positively Herculean when turning to the global sphere. Here we have to contend with diversity not only between individuals but also between “peoples,” to use Rawls’s phrase. Do peoples have a collective right to determine their own political arrangements free from interference, including the distribution and allocation of various rights and resources within that collective? How should liberals respond to this kind of diversity? How much difference should be tolerated? How universal can (or should) principles of justice be? What would the *grounds* of such principles be?

If you believe that there are universal standards that apply to all individuals (and groups) then you must be committed to seeing those principles or standards realized in some way. And thus an imperial dimension to considerations of justice might enter here. It comes with the very idea of a universal standard, whether that standard is understood in terms of basic human rights or as an egalitarian redistribution of resources. Is it possible to hold all societies to a common standard that is thick enough to protect important human interests and yet not grounded in a particular set of cultural values that would mean essentially imposing one way of life on another?

In what way could the very idea of a universal standard be potentially imperialistic? It may involve the justification of the imposition of European ways of life, or liberal political orders, on non-European and non-liberal societies. What is wrong with that? One argument is that it denies the capacity of those peoples to exercise their collective freedom, which in turn is a necessary condition of the legitimacy of domestic and international political and legal orders to which we assume they are subject. Of course, the appeal to the value of collective freedom—or to what James Tully calls their *democratic*

freedom—is itself an appeal to a universal value.⁵ So what makes the latter more acceptable or less imperialistic than the former? The details of that argument will have to be evaluated elsewhere, but the gist of it lies in the idea that the laws and norms people are subject to must always be open to criticism, negotiation, and modification. The suggestion by scholars of both formal and informal imperialism is that this participatory and reflexive freedom of negotiation has been subverted by imperialistic practices and ideologies that have their origins in early modern and modern political thought.

A crucial question here is whether the debunking of supposedly universal political forms (such as we find in Kant) invalidates the very idea of global justice itself. It's one thing to say a *particular* constitutional form is universal or not; it's another to deny there are any universals whatsoever. Every argument has its origins in some particular cultural form, but does that mean there are no claims or values that can be vindicated across cultures? What would the structure of a conception of global justice be that took plurality and history seriously?

II

So what are the crucial features of the legitimating ideology of an imperialistic mode of global justice? There are many potential sources, but Kant looms large, especially along two dimensions: (1) the normative and juridical language of an international system of constitutional states; and (2) a philosophy of history of humanity's progress through various stages of development from savagery to civilization and modernization. The meta-narrative that Kant presents is not only of the right normative order of states in the international system but also a philosophico-historical account of their movement toward that destination. The normative theory is provided most prominently in *Perpetual Peace* (1795), but undergirded by the moral philosophy of the *Groundwork to the Metaphysics of Morals* (1785) and the first part of the *Metaphysics of Morals* (the *Rechtslehre*) (1797). The philosophico-historical account is provided, among other places, in "Idea for a Universal History from a Cosmopolitan Viewpoint" (1784).

Kant also plays an important role in the history of distributive justice in at least two ways, although he is not a theorist of *social* justice per se. First, he offers a powerful philosophical defense of the equal worth of all human beings. This is a crucial premise required for linking equality with distribution. Respect for the rights of others means all of us will have duties to ensure each can exercise their freedom (compatible with the freedom of others). Thus everyone has, as Kant put it, "a right to enjoy the good things of this world" (27: 414). If morality is understood under the aegis of law as

command, then what is owed to others—including the poor—is owed as a matter of right, not beneficence or charity, and not based on an assessment of people's needs. Although no defender of the modern welfare state, Kant did, in fact, see it as part of the role of the state to “constrain the wealthy to provide the means of sustenance to those who are unable to provide for the most necessary natural needs.” He also supplies one strand of the notion that each of us has a set of potentials for fully free action that can be realized only in certain natural and social circumstances. These two premises—that each of us is owed certain things by right in order to realize our “potential”—aren't explicitly linked in Kant's moral and political theory, but they would be developed much more extensively by later political philosophers.

The second broad influence Kant has is in relation to the *scope* of justice. His delineation of the domain of “cosmopolitan right” provides a way of conceiving of the interdependence between domestic and international justice. Kant's conception of “cosmopolitan right” thus continues to shape contemporary debates over the nature of global justice and human rights.⁶ Critics, however, have been quick to point out that far from embodying genuinely a priori principles that could reasonably be adopted by people everywhere, Kantian and neo-Kantian cosmopolitan justice represents a parochial, historically particular (and peculiar) set of highly contestable claims: in other words, it offers only a false universalism.⁷ Kant's cosmopolitanism is thus vulnerable to the very charge of imperialism his defenders and interpreters claim he provides a bulwark against. Before exploring these claims directly, I want to try to lay out the structure of Kant's argument as charitably as possible in order to try to identify what many liberal interpreters, in particular, have found so compelling about it.

One of Kant's most powerful ideas is that human beings possess an innate worth that can never be traded off against other ends—even ends we might find extremely desirable or valuable for all kinds of reasons. Human beings possess *dignity* or, in another formulation, human beings should never be treated as a “means” but always as “ends” in themselves. But what does this mean? How can it provide guidance for action in the complex and conflicted world of politics? One thing Kant's approach does is anchor claims about rights in what he calls “pure practical reason.” People have rights, and others have duties to respect them, in virtue of a theory of justice that is derived from a particular account of the relation between reason and freedom. Duties are morally basic, not needs or interests. And those duties are tied to a view about the nature of human freedom.

In the *Groundwork of the Metaphysics of Morals*, Kant says that “what has a price can be replaced by something else as its equivalent; what on the other hand is raised above all price and therefore admits of no equivalent has a dignity.”⁸ This he associates with our fundamental rational being, our

humanity (4: 434). It's one thing to act out of fear, or to be constrained by others to act as a means to an end, but it's another thing to set an end for oneself—to act genuinely freely. The appeal to dignity here isn't so much an appeal to a principle of action as it is to an *attitude* that we should take up toward others. Elsewhere in the *Groundwork* Kant expresses it another way: "I say that the human being and in general every rational being exists as an end in itself, not merely as a means to be used by this or that will at its discretion" (4: 428). Appealing to the fundamental dignity of human beings is now a familiar way in which we talk about the rights. In fact, it's written into Article 1 of the *Universal Declaration of Human Rights*. But what follows from it?

For Kant, morality involves rational agents imposing a law on themselves that at the same time provides a motive for them to obey. What does this mean? The basic idea is that morality presupposes freedom. To think of myself as free is to think of myself as able to act according to self-legislated principles. To be self-governing in this way is to be autonomous.⁹ But what is the moral law and how can it show us what we ought to do (and not do)? In order to be consistent with our autonomy, the moral law must be formal, or a priori, that is, we must be capable of acting on it merely by thinking its idea, independently of all interests or purposes we might have—hence the idea of moral duties as flowing from the "categorical imperative." To say that an imperative—a principle for action—is "categorical" is simply to say that its bindingness does not depend on the pursuit of some end set independently of it.

But this is only the beginning. Kant provides two further formulas, one that draws our attention to those affected by our actions, and another from the perspective of our being a member of a community that so wills. The second formula states, "So act that you use humanity whether in your own person or that of another, always at the same time as an end, never merely as a means" (4: 429). This says that the ends of others, as long as they are morally permissible, set limits to our own and that we must respect them. In doing so we are respecting others as "ends in themselves," that is, not using them as "things" or coercing them for our own purposes. This is a good way of making sense of Kant's appeal to the inherent dignity of "humanity" with which we began above. The duties that the moral law will prescribe will be—just given their form—coordinate with the rights of others (or at least, so he claims).

The third is the "formula of autonomy": "the idea of the will of every rational being as a will giving universal law (4: 431), and that "all maxims from one's own lawgiving are to harmonize with a possible kingdom of ends" (4: 436). This third formula instructs us to think of ourselves as members of a society of beings whose permissible ends are respected in the right

way, as ends in themselves rather than as ends for some particular purpose. We should act to help bring about such a community of harmonized ends.

None of these formulas are intended as moral algorithms that tell us how to act in each and every situation, whatever the context. But put together, they add up to a powerful set of rules or norms against which to test our actual or intended behavior. In particular, they act as a set of constraints on our tendency to excuse ourselves from the demands of reason we place on others. And they structure how we should think about our rights as well as the rights of others.

How does morality relate to the establishment of civil society and to politics more generally? On the one hand, Kant is faced with a familiar question: If human beings are fundamentally free and equal, how can they be legitimately subject to coercion? It should be clear now that Kant cannot help himself to the kind of argument Hobbes makes about the genesis and legitimacy of the state—namely, that people in pursuit of the minimal morality of social peace are driven through mutual fear to appoint a sovereign power whose laws will compel them to be mutually peaceful. And this raises the very difficult question about the ultimate relation between morality and politics in Kant, or more precisely, between morality and right (or justice).

Right is distinguished from ethics in three basic ways: it is the subject of external legislation; it relates only to duties of justice (“perfect” as opposed to “imperfect” duties); and it is concerned only with the external actions of others rather than their moral will. The crucial question, however, is the extent of the dependence of Kant’s political theory on the metaphysics underpinning his moral philosophy, as much of the force of the criticism of Kant’s cosmopolitanism stems from pushing hard against this connection. There are generally two ways of making sense of this relation. First, one could argue that we should see Kant’s theory of right (and thus ultimately his political theory) as derived from his ethical writings. Second, one could argue that we should distinguish sharply between his ethical theory and his theory of right. Let us consider the second more closely.

III

The political upshot of Kant’s argument in the *Rechtslehre* is something like this: If I am autonomous in the way Kant suggests, then no other external authority—whether the state, the church, or “society”—has the right to (or even could) impose *moral* obligations on me. In principle at least, I am both free and able to impose moral obligations on myself and in doing so provide myself with the motive to act in accordance with them. Freedom is

conceived of as *independence*: I am free in the sense that I can set my own purposes, as opposed to having them set for me. Moreover, I am truly independent only when I am not dependent on others for granting or allowing me to possess what is truly mine. If I have to depend on the benevolence of others, at least with regard to what is mine by right, then my autonomy as a moral agent is undermined. Kant thinks that it follows from this view of human agents as self-governing, autonomous moral beings that social and political arrangements have to be organized in a certain way. Each of us should have the freedom in which to determine our own actions. Others should not be allowed to interfere with our moral autonomy by telling us what morality requires. Nor should they be allowed to undermine our independence by using us as a means for their own purposes (for example, by defrauding us) or by depriving us of our means (by controlling our person or harming us). To do this is to treat someone as a means to purposes other than their own—to treat them as a “thing” instead of a person.

Ethics concerns how a human being regulates her own conduct according to self-given laws, as we’ve seen. The theory of right, however, concerns the rational standards for externally coercive laws and the framework within which laws are applied in society. A crucial difference between ethical duties and political duties (imposed by right), of course, is that the latter can be coercively enforced, but the former cannot. Why? Justice has to do only with *external* relations, not internal motives. The ethical and the political share similar ends, but different motives; they are continuous, but at the same time distinct.¹⁰ In other words, right concerns the concrete, observable actions taken by us that affect other agents. As Kant says, “in this reciprocal relation of choice no account at all is taken of the matter of choice, that is, of the end each has in mind with the object he wants. . . . All that is in question is the form. . . . and whether the action of one can be united with the freedom of the other in accordance with universal law” (6: 230). Thus, every action is “right” Kant declares, “if it can coexist with everyone’s freedom in accordance with a universal law, or if on its maxim the freedom of choice of each can coexist with everyone’s freedom in accordance with a universal law” (6: 230). Kantian politics doesn’t require so much the right kind of *willing* (as Kantian morality does) as the right kind of *acting*, which can be achieved through what Kant calls the “principle of universal reciprocal coercion.” Still, respect for persons is supposed to provide a crucial limiting condition for politics. Part of the whole point of establishing public right is to create the conditions in which people will be treated as ends and not means in their unavoidable interactions with others.

For Kant, each of us has what he calls an “innate right” of humanity: a “right of humanity in our own person.” It is this aspect of Kant’s moral and political theory—grounding law and politics in the innate rights of

man—that is considered to be the core of Kantian politics for many readers today. But what does Kant mean when he says we have innate rights, and how is our having them supposed to shape politics? Each of us has the right of *independence* from others (and equal to others) innately, that is, “by nature,” independently of any affirmative act to establish it (6: 236–7; see also 8: 290). Not only do we have an innate right to our person, which is crucial to our setting and pursuing any kind of end in the first place, but we also have rights to usable things and to establish various kinds of rational relations.

But if we are all equally free, then how can we interact in ways that don't compromise our independence? Since we are all fundamentally free and equal, nobody should have the power to interfere with or control how I set my purposes, except insofar as it's required to preserve the freedom of others. This is *private right*: the right to make something external one's own. Kant relates it to three categories: property, contract (i.e., our capacity to transfer our rights), and status, or asymmetrical but rightful relations with others, such as masters/servants, parents/children, teachers/students (6: 254–5).

IV

Consider Kant's theory of property, which is central to his general account of political legitimation. Free beings must be able to choose objects to use for their own purposes, as means toward their ends. Kant thinks of the “surface of the earth” as a common possession of all and that each of us has by nature the will to use it (6: 261–2). This is a “practical rational concept,” not a historical fact as it tends to be conceived in the natural law tradition. And he will move from the possibility of unilateral acquisition to this idea of original possession in common, as opposed to the other way round, as it was for the natural lawyers. However, the limited nature of the earth's surface is also crucial to his argument and supplies an important premise for the cosmopolitan scope of his theory of right:

Since the earth's surface is not unlimited but closed, the concepts of the Right of a State and of a Right of nations lead inevitably to the Idea of a Right for all nations or cosmopolitan Right. So if the principles of outer freedom limited by law is lacking in any one of these three possible forms of rightful condition, the framework of all others is unavoidably undermined and finally collapse. (6: 311)

To deny the possibility of exclusive possession would be to unjustifiably restrict the freedom of persons. (6: 251). Here Kant distinguishes between “phenomenal” and “intelligible” possession. The first applies to objects we

are in immediate physical contact with and control, like the computer on which these words are being written. When something I physically possess is taken away from me or damaged against my will, I am being coerced unjustifiably. But this is also true of objects that aren't in my immediate physical possession, but which form part of my "intelligible" or rational possession (of "concepts of the understanding": 6: 253): objects secured through a *relation* between rational wills. Relations of right specify relations between *subjects*, not just between subjects and objects. I can claim something as rightfully mine only if others recognize the legitimacy of my claim, and it is this idea that Kant is referring to with regard to intelligible possession; that is, when I say I own something I mean this to hold even if I don't actually have physical control of it (6: 246). Thus for Kant, ownership has to do with my intention to occupy land, for example, and to bring it under my will, not with my current actual possession, or the way I've used it, or the fact that I've invested my labor in it, as was the case for Locke.

Pure practical reason tells us how we should interact as rational wills: exercise your freedom in a way compatible with the freedom of all. But reason also tell us, given the fact that the world is finite, that some of our actions will unavoidably limit what others would otherwise be able to do. The principle of right provides a (supposedly) formal principle for resolving those conflicts, but one informed by certain empirical facts as well. Thus, even if it is the case that I can institute rational relations with others to secure nonphysical ownership, I cannot do so on the basis of my judgment *alone* as to what should be the case. My possessing something will have consequences for your freedom. As Kant puts it, "a unilateral will cannot serve as a coercive law for everyone with regard to possession that is external and therefore contingent, since that would infringe upon freedom in accordance with universal laws" (6: 256).

This means we are necessarily subject to the principle of right, to justice. Therefore, what is wrong with remaining in the state of nature is that it is a state of indeterminacy about the boundary between mine and thine.¹¹ We know we have to respect each other's freedom and property, but we need a mechanism for determining what that actually entails. We cannot fulfill our duty to "harm no one" (see section II above) without the determinacy provided by a civil order. Neither can we, *in principle*, establish unilaterally the intelligible possession that is a necessary aspect of the exercise of our freedom in a finite world we share with other agents. Unilateral judgment is incompatible with the innate rights of humanity. This is what Kant means by the "*a priori* idea of a general and united will" (6: 258). It is not just that we are likely to disagree over property (contra Locke), but that we must already be in the right relationship for my act to have significance for you.¹² I need to acquire means for my purposes, but

your freedom must be respected in the process (6: 250–1; 6: 312). These two requirements can be satisfied only in a “rightful” condition, and the same holds true for contractual and “status” relations.

Interestingly, Kant does allow for an intermediate stage of possession, what he calls “provisional right.” In a state of nature, something may be able to be seen as mine (or thine) but only “provisionally”; that is, “in anticipation of and preparation for the civil condition.” Possession in the civil condition, however, is “conclusive” (6: 256–7).¹³

To remain in a state of nature, then, is to subject oneself to the potential interference of others, which is to live in a way incompatible with one’s autonomy (6: 255–6). It follows from our being free that to be subject to the right kind of coercive authority is not only permissible but required. Doing so is the only way to make our freedoms mutually compatible. Thus we have a duty to enter into the civil condition (6: 256). This gives rise to the social contract, as distinct from private contract. The social contract grounds the “right of men to live under public coercive law, through which each can receive his due and can be made secure from the interference of others.” (8: 289) But the notion of a contract is not doing any real work here. It is as if the initial violation of others’ equally valid claims to freedom is provisionally legitimate (*lex permissiva*), as a means to engendering (internal, reflective) recognition on the part of the first acquirers that a unilateral will cannot serve as the basis for coercive law (6: 256). The legitimacy of the state flows from what it does (or should do), as opposed to our having literally consented to it, or from the conditionality of mutually incurred obligation on the part of each party to the agreement. To use an abstract Kantian formulation, the state as an *idea*, not as embodied in any particular empirical or historical manifestation, is justified in terms of its role in enabling and coordinating our freedom and, over time, the promotion of moral ends (like peace). Political right, in general, is grounded in the natural principles of respect for autonomy.

The enforcement of rights, in other words, has a distinctly public character in Kant’s political theory. It is not just that the private enforcement of rights is inconvenient or likely to lead to conflict (as both Hobbes and Locke suggest) and, therefore, prudentially warranted, but that it is fundamentally incompatible with our status as free and equal. Even if it never did lead to conflict, private enforcement is wrong. The only imposition of force compatible with our freedom is one that issues from an “omnilateral” as opposed to unilateral will. The only rights I can have are those compatible with a system of rights in which your rights are guaranteed as well, including their mutual enforcement.

But Kant also says we have a duty to establish not just any common authority but rather a *republican* political order, one compatible with our

innate rights. Formally he defines it as “the political principle of separation of the executive power (the government) from the legislative power” (8: 352, 354). But it is also a regime in which the sovereign will of the people is represented to the ruling power, which is then charged with implementing it.

Our innate rights, thinks Kant, help explain the kind of powers the state has, as well as the nature of our obedience to it. For one thing, the justification has to be formal in order to be universal. Free persons (ideally conceived), concerned to protect their freedom, can only ever agree (ideally, not actually) to enter a civil condition in which their freedom is secure. So a state is never justified in seeking to promote the happiness of its citizens, only their freedom (8: 290–1). Nor is a state justified in appropriating the property of its citizens to help meet the needs of landless or poorer citizens. As we’ve seen, as a matter of private right, no one can be made to serve as the means for another, just as no one has a right to means that are not already their own. As a matter of public right, the state is not justified in using me as a means for promoting social justice or substantive equality, even if I can afford it and others are in genuine need. However, the state still needs enough authority to make the division between “mine and thine” determinate and rightful, that is, to “hinder the hindrances” to our freedom, and this ends up justifying considerable state power.

V

A problem with Kant’s account, however, is the extent to which it is dependent on a comprehensive and hence potentially particularistic metaphysical anthropology. The conception of ideal rational beings at the heart of his account—independent of being determined by any kind of sensible impulse—has attracted criticism ever since he first made the argument. Kant’s work is replete with indications, however, that he is not so naïve about politics and, moreover, sees a crucial role for freely willed human action in relation to it, although it is not immediately clear how much weight these remarks bear on his wider argument about the relation between morality and politics. One of the most notorious examples can be found in *Perpetual Peace*:

The problem of setting up a state . . . is solvable even for a people of devils (if only they have understanding). It is this: A set of rational beings who on the whole need for their preservation universal laws from which each is however secretly inclined to exempt himself is to be organized and their constitution arranged so that their private attitudes, though opposed, nevertheless check one another in such a way that these beings behave in public as if they had no such evil attitudes. (8: 366)

“Mere” legal order is thus possible through natural incentives, as Hobbes showed. But Kant also clearly indicates (here and elsewhere) that it’s not enough (can only ever be provisional), and that progress through enlightenment includes the transition from mere legal order to a civil society in which one’s autonomy is genuinely respected. The transition from the state of nature to civil society includes a stage in which a legal order may be in place, but not yet just. Still, it ought to be respected if it promotes the *possibility* of eventual rightful possession under a truly just civil authority.

A more “political” reading of Kant is that there is some independent value to the notion of external freedom such that each of us has an enlightened interest in establishing a political and legal order in which our lives are determined by our own choices, rather than those coercively imposed by others.¹⁴ To borrow from Rawls, it would be that the appeal to external freedom in the *Rechtslehre* could be grounded on a “freestanding” as opposed to comprehensive conception. For Rawls, a comprehensive conception relies on “conceptions of what is of value in human life, as well as ideals of personal virtue and character that are to inform our non-political conduct.”¹⁵ The claim would be, then, that we can read the *Rechtslehre* as somehow detachable from Kant’s moral philosophy and transcendental idealism. More precisely, the claim would be that even if it’s true that Kant sees his doctrine of *Recht* as the only one that fits his moral philosophy, it doesn’t follow that his right or justice cannot stand without that moral philosophy.¹⁶

There are deep challenges for such a reading, however. Ian Hunter, for example, has argued that we need to see Kant’s entire philosophical approach as a historically specific intellectual or spiritual exercise aimed at forming the kind of self that the philosopher must become if he is to accede to the principle of right as a metaphysical truth. Kant is engaged, in other words, not in the philosophical project of justifying metaphysical truth, but in “the grooming of the intellectual department required to accede to such truth.”¹⁷ In short, Kant’s metaphysics needs to be treated as a contingent historical form, the product of a specific regional set of intellectual practices and institutions, as opposed to a valid claim about the structure of human understanding.

We must be careful to avoid something like the genetic fallacy here. Unveiling the historical specificity of an argument says nothing in itself about its ultimate validity. It denaturalizes the concept and renders it more contingent, but it does not in itself refute it or even suggest we should abandon it. Contingency does not entail arbitrariness. It may well refute certain *beliefs* we have about the concept or theory, but equally it may not.¹⁸ A genealogy of a concept or theory can be debunking, but also vindicatory.¹⁹ It will depend on how that genealogy sits within the self-understanding of the tradition or community of interpreters involved, or for whom the argument or concept

has significance. What historical reflection can do is debunk the seeming obviousness of our assumptions about the problem at hand. In doing so it can generate not necessarily a new set of answers as much as a new set of questions. And it can pluralize conceptual possibilities in ways no amount of conceptual analysis can provide. Arguments and theories can spill over the bounds of their historical specificity in a range of different ways. They can be put to work in new circumstances, sometimes with surprising results.

Recall the distinction between “freestanding” and “comprehensive” doctrines. The problem with comprehensive doctrines—for Rawls, this includes Kant’s doctrines—is that they are socially divisive and unable to gain the reasoned assent of individuals understood as free and equal. If a conception of social justice depends on the state extracting resources from individuals in order for them to be redistributed, and if that conception is grounded in a “comprehensive” view, then the danger is that state power will be required to maintain that shared understanding (through public education etc.) and it will be seen as alien or illegitimate in the eyes of those with different comprehensive views. Since the presence of a diversity of comprehensive views is unavoidable in free societies, such a doctrine could be sustained only through state “oppression.”²⁰

The liberal reading of Kant depends on the plausibility of an interpretation of the *Rechtslehre* as “free-standing” in some way, given the independent value of something like external freedom understood as independence or “non-domination.”²¹ Liberal cosmopolitan readings of Kant then depend on the scope of justice that Kant’s argument implies and which I have attempted to highlight above. The “fact of proximity,” as I suggested above, or the spherical limits of the earth’s surface, seems to point to the unavoidability of developing transnational standards for evaluating the behavior of states and other actors in relation to individuals’ basic rights (or claims) to freedom. The interdependency between property rights and political legitimation also points to the issue of a politically adequate motivational basis for justice: *Cognitivist* Kantians appeal to the more robust metaphysical account of the nature of our political agency, given what they take to be the need for a fundamental change in our thinking regarding our obligations of justice. The *political* Kantian appeals to a form of enlightened self-interest.

This returns us to the challenge of imperialism, since the same argument applies, *mutatis mutandis*, to a purportedly global theory of justice. The most peculiar (and difficult) aspect of Kant’s argument here is the extent to which his notion of the “cosmopolitan intent” of history plays a central role in the argument of the *Rechtslehre*. For critics such as Hunter or Tully, it presents a picture in which mankind’s perfection will be realized on earth through a philosophical history in which nature itself will perfect man using empirical means in accordance with history’s hidden cosmopolitan purpose.²² Man’s

asocial sociability, including his tendency to engage in expansionary wars and colonization, along with an ethos of competitive individualism, leads to the development of institutions and processes that moves the world closer to the normative ideal outlined in the definitive articles of *Perpetual Peace*. This makes colonization seem to be a necessary stage in the development of the human species toward the realization of Kant's vision of a world order of republican states. The violence inherent in colonialism is unjust, but the consequences seem to provide a necessary stage in the development of perpetual peace. It also seems to present a cosmopolitan future in which there is only one legitimate constitutional form, embedded within a body of international law that extends equal recognition to other similarly constituted states but permits intervention into the affairs of non-republican states, which are treated as essentially outside of the law.

This philosophical history seems hard to reconcile with any kind of liberal interpretation of the cosmopolitan structure of Kant's argument in the *Rechtslehre*. Therefore, it must be either read completely *out* of that argument—which seems difficult to do—or read down in such a way that the appeal to the teleology of man's asocial sociability bears considerably less philosophical weight than Hunter's or Tully's reading suggests.²³

VI

If we have good reason to worry about the Kantian structure of cosmopolitan argument in its either "metaphysical" or "political" mode, then are there other ways of conceiving of the nature of global justice? There are, and to conclude I set out some broad distinctions as a way of beginning to think differently about global justice.

Charles Beitz has pointed to the difference between "social liberalism" and "cosmopolitan liberalism."²⁴ Social liberalism takes a two-level conception of international society that embodies a division of labor between the domestic and international. States take responsibility for "their" people, while the international community is concerned with the conditions in which those societies can flourish. Cosmopolitan liberals, however, seek principles that are acceptable from a standpoint in which everybody's prospects are equally represented, without representing the standpoints of "societies" *per se*. Three crucial principles are usually appealed to here: the fundamental moral worth of individuals (as opposed to nations, tribes, or ethnic or cultural groups); their fundamental equality; and the existence of obligations binding on all. In addition to the difference between social liberals and cosmopolitan liberals, Beitz and other scholars distinguish

between “moral” and “institutional” cosmopolitanism.²⁵ The three principles alluded to in the previous sentence amount to a form of moral cosmopolitanism. Institutional cosmopolitanism entails a commitment to certain global political institutions. So one could be a moral cosmopolitan without being an institutional cosmopolitan. The claim would be that moral cosmopolitanism is not committed, as Caney claims, to “any specific empirical or explanatory claims about what forces shape the global realm.”²⁶

In yet another attempt to map the domain, Thomas Nagel has distinguished between a “political” and “cosmopolitan” approach to global justice. The cosmopolitan approach is close to what Beitz describes. The “political” approach suggests that states “give the value of justice its application, by putting the fellow citizens of a sovereign state into a relation they do not have with the rest of humanity, *an institutional relation* which must then be evaluated by the special standards of fairness and equality that fill out the content of justice.”²⁷ What I want to draw attention to here is the suggestion of justice being an *institution-dependent* concept. Perhaps a better way of making sense of this idea is to say that principles of justice hold only among individuals who stand in certain “practice-mediated” relations with each other.²⁸

A practice-independent approach to thinking about the nature of justice would be one in which the contingent, practice-mediated relations in which we find ourselves should not affect or change the justifying reasons and premises underpinning the content and scope of justice. The intuition that justice should be grounded on the premise that we should seek to mitigate the effects of brute bad luck—or people’s “circumstances” (as opposed to their choices)—on our life prospects is practice-independent in this sense. The appeal is to moral values alone. The institutions and practices to which they are meant to apply play no role in the content, scope, and justification of the principles.

Practice-dependent theorists, however, think that our living under certain institutions (whatever their origins) or our sharing specific kinds of practice-mediated relations should have a bearing on our thinking about justice. A practice-dependent theorist is committed, therefore, to saying that a conception of justice rests at least as much on an interpretation of actually existing institutional systems as it does on common values: the content, scope, and justification of the conception will be determined, in part, by the role it is meant to play given those institutions and practices.²⁹ Although this might allow for principles of justice with less than global scope, it would not be limited to *only* such principles: there could well be principles that are global—or at least transnational—given the nature of the practices or institutions at issue. In fact, I think this is very likely to be the case. We might call this a form of non-cosmopolitan global justice.

The difference between cosmopolitan and non-cosmopolitan global justice hinges, ultimately, on differing interpretations of the role, legitimacy, and normative distinctiveness of the state (or other non-state but effective political entities) and its relation to the interests—including the rights, liberties, and responsibilities—of individuals. The cosmopolitan liberal infers from moral cosmopolitanism that if the ultimate unit of moral concern is the individual, then only individuals have intrinsic moral worth and our principles of justice should reflect this. However, states can be said to retain normative relevance for a theory of justice without thinking either that they *ought* to always do so, are the *only* collective political entities that could do so, or that this requires giving up on some plausible interpretation of respecting the equal worth (or agency) of individuals, including non-citizens. A non-imperialistic doctrine of universal right needs to reconcile these different intuitions without appeal to either the hidden hand of teleology, or a radical disjuncture between a cosmopolitan heaven and a devilish earth.

Notes

1. Research for this chapter was supported by a grant from the Australian Research Council. I am grateful to Andrew Fitzmaurice, Henry Reynolds and especially Ian Hunter for their suggestions and help.
2. Jean L. Cohen, "Sovereign Equality vs. Imperial Right: The Battle over the 'New World Order,'" in *The Modernist Imagination*, ed. Peter E. Gordon, A. Dirk Moses, Samuel Moyn and Elliot Neaman (New York: Berghan Books, 2009), pp. 346–67 (p. 353).
3. See, for examples, the various postcolonial critiques of European philosophical universalism discussed in Ian Hunter's chapter in this volume. Hunter's own argument offers a different version of this critique.
4. John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993).
5. James Tully, *Public Philosophy in a New Key, Vol. II: Imperialism and Civic Freedom*, 2 vols. (Cambridge: Cambridge University Press, 2009).
6. See James Bohman and Matthias Lutz-Bachman, *Perpetual Peace: Essays on Kant's Cosmopolitan Ideal* (Cambridge: MIT, 1997); Katrin Flikschuh, *Kant and Modern Philosophy* (Cambridge: Cambridge University Press, 2000).
7. Tully, *Public Philosophy*; also Hunter's chapter in this volume.
8. *Immanuel Kant: Practical Philosophy*, ed. and trans. Mary J. Gregor (Cambridge: Cambridge University Press, 1996), 4: 434. English translations of Kant are taken from the Gregor Cambridge edition. All subsequent citations of Kant are given in text, using the volume and page numbers from the Berlin Academy edition—Immanuel Kant, *Kants Werke: Akademie Textausgabe* (Berlin: De Gruyter, 1902).

9. J.B. Schneewind, *The Invention of Autonomy: A History of Modern Moral Philosophy* (Cambridge: Cambridge University Press, 1997).
10. Patrick Riley, *Kant's Political Philosophy* (Totowa, NJ: Rowan & Littlefield, 1982), pp. 100, 173; see also Robert Pippin, "Mine and Thine? The Kantian State," in *The Cambridge Companion to Kant and Modern Philosophy*, ed. Paul Guyer (Cambridge: Cambridge University Press, 2006), pp. 416–46 (p. 434).
11. This phrase is from Pippin's "Mine and Thine?" pp. 432–33.
12. I am indebted here to Arthur Ripstein, "Private Order and Public Justice: Kant and Rawls," *Virginia Law Review*, 92 (2006), 1391–1438.
13. See Elisabeth Ellis, *Kant's Politics: Provisional Theory for an Uncertain World* (New Haven: Yale University Press, 2005).
14. Thomas Pogge, "Is Kant's *Rechtslehre* a Comprehensive Liberalism?," in *Kant's Metaphysics of Morals: Interpretive Essays*, ed. Mark Timmons (Oxford: Oxford University Press, 2002), pp. 133–58.
15. Rawls, *Political Liberalism*, p. 175.
16. Pogge, "Is Kant's *Rechtslehre* a Comprehensive Liberalism?"
17. See Ian Hunter, "The Morals of Metaphysics: Kant's *Groundwork* as Intellectual *Paideia*," *Critical Inquiry*, 28 (2002), 908–29.
18. Hunter for example, may not be making a claim about the ultimate truth value of Kant's moral philosophy, so much as offering an alternative description that attempts to deconstruct its claims to transcend historical particularity.
19. See Bernard Williams, *Truth and Truthfulness* (Princeton, NJ: Princeton University Press, 2002).
20. Rawls, *Political Liberalism*, p. 37.
21. On freedom as non-domination see Philip Pettit, *Republicanism: A Theory of Freedom and Government* (Oxford: Oxford University Press, 1996).
22. See Tully, *Public Philosophy*, II, pp. 145–49; 15–42.
23. For example, Ellis, *Kant's Politics*.
24. Charles Beitz, "International Liberalism and Distributive Justice," *World Politics*, 51 (1999), 269–96.
25. See Simon Caney, *Justice Beyond Borders* (Oxford: Oxford University Press, 2005).
26. *Ibid.*, p. 6.
27. Thomas Nagel, "The Problem of Global Justice," *Philosophy and Public Affairs*, 33 (2005), 113–47 (p. 120).
28. Amartya Sen, *The Idea of Justice* (Cambridge, MA: Harvard University Press, 2009); Bernard Williams, *In the Beginning Was the Deed* (Princeton, NJ: Princeton University Press, 2005).
29. See *Ibid.*.