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A Kantian Argument for Sovereignty Rights of Indigenous Peoples

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Abstract: Kant's non-voluntarist conception of political obligation has led some philosophers to argue that he would reject self-government rights for indigenous peoples. Some recent scholarship suggests, however, that Kant's critique of colonialism provides an argument in favor of granting self-government rights. Here I argue for a stronger conclusion: Kantian political theory not only can but must include sovereignty for indigenous peoples. Normally these rights are considered redress for historic injustice. On a Kantian view, however, I argue that they are not remedial. Sovereignty rights are a necessary part of establishing perpetual peace. By failing to acknowledge the sovereignty of native groups, states once guilty of imperialism leave open the in principle possibility for future violence, even though no current conflict exists. Only in recognizing self-government rights can states truly commit to the cosmopolitan ideal.

Key words: Immanuel Kant, indigenous peoples, sovereignty, cosmopolitan right, perpetual peace.

Kant's cosmopolitan right has been used to explore modern questions of global politics, international relations, and multicultural identities.[1] Less attention has been paid to self-government rights for indigenous peoples, but they remain a point of dissention.[2] On one interpretation, it appears Kant would reject sovereignty rights for indigenous peoples because of his non-voluntarist conception of political obligation (Waldron 2000).[3] That is, since Kant holds that human beings wrong each other simply by being in proximity in the state of nature, they are bound to form a civil condition. As such, indigenous groups are likewise bound to join the societies that they neighbor. In response, however, Kant's critique of imperialism seems to suggest that he would allow native populations freedom from the control of the very states that have wronged them in the past (Niesen 2007, Waligore 2009). Here I argue self-government rights are not merely a possibility but a necessity in Kant's political theory. Contrary to contemporary understandings of the claims of indigenous peoples, I argue that sovereignty rights are not remedial on a Kantian view. That is, rights to self-government and to land are not reparations for the past injustices; they are rather requirements for progress toward perpetual peace. I argue that on a Kantian account self-government rights are necessary for lasting peace because states that fail to acknowledge the sovereignty of their indigenous populations keep open the in principle possibility that they will resume the conflicts of colonialism. Pleas for self-government are thus long-standing pleas for a peace agreement that should have taken

1] For an example of this scholarship, see Bohman and Lutz-Bachmann 1997, Kleingeld 2012, Flikschuh and Ypi 2014.

2] By "self-government rights," I mean rights with which indigenous peoples can demand, in the words of Will Kymlicka, "some form of political autonomy or territorial jurisdiction." (Kymlicka 1995, 27)

3] I use the term "non-voluntarist" here as Helga Varden uses it (2008, 1).

place but never did. Only in recognizing the sovereignty of indigenous peoples can states that once engaged in imperialism commit to the cosmopolitan ideal.

Because Kant's remarks about native peoples and colonialism are found primarily in his writing on the cosmopolitan right, determining the implications of that right has been central to the current debate about indigenous peoples.[4] Kant describes the cosmopolitan right both in "Toward Perpetual Peace" and in the *Metaphysics of Morals*.[5] In "Toward Perpetual Peace," Kant explains that the cosmopolitan right is "the right of a foreigner not to be treated with hostility because he has arrived on the land of another" (8:357). The cosmopolitan right follows from the fact that all human beings share the earth's surface. Since that space is finite, humans will inevitably have to co-occupy certain areas and travel on each other's land (PP 8:358). If foreign travelers are welcome to visit other places, they can try to enter into commerce with the people there. Kant argues that by facilitating these kinds of relations, "distant parts of the world can enter peaceably into relations with one another, which can eventually become publicly lawful" (PP 8:358). If various parts of the world can relate peacefully to each other, the federation of nations will grow and the world will be one step closer to perpetual peace. In the *Metaphysics of Morals*, the cosmopolitan right reappears in the third section on public right. Here, Kant claims that this right is "the relation of each to all the others of *offering to engage in commerce* with any other" where the party being approached is not permitted to "behave toward [the offering party] as an enemy" (6:352, Kant's emphasis). Kant uses the same justification of shared space that appears in "Toward Perpetual Peace:" because all humans have a right to occupy their shared space they must be able to traverse that space without being subject to hostility (MM 6:352).

After introducing the cosmopolitan right, Kant turns to questions about making new settlements and it is in this context that the critique of colonialism appears. Although humans have the right to travel to other lands, Kant rebukes the behavior of foreign explorers as inhospitable, saying that, "the injustice they show in *visiting* foreign lands (which with them is tantamount to *conquering* them) goes to horrifying lengths" and that colonialism has spawned "the whole litany of troubles that oppress the human race" (PP 8:358, Kant's emphasis). Additionally while the cosmopolitan right permits visitors to offer to engage in commerce, Kant claims that permanent settlement requires the consent of the indigenous peoples. Settlements may be established without consent of the native peoples only if the new settlement does not encroach on their land (MM 6:353). But if the new settlers should encroach on occupied territory, Kant writes that, "this settlement may not take place by force but only by contract" (MM 6:353). So although the cosmopolitan right allows us to

4] Muthu (2003), Neisen (2007), Waligore (2009), and Kleingeld (2012) all use the cosmopolitan right as the primary starting point for the discussion of Kant's critique of colonialism.

5] All references to Kant are from the Gregor Cambridge translations. Abbreviations are as follows: PP = "Toward Perpetual Peace," MM = Metaphysics of Morals.

travel to distant lands without being treated as an enemy, that right does not mean that we are permitted to settle on those lands if there are already people living there.

Because the critique of colonialism is paired with the cosmopolitan right, it seems that Kant believes the actions of the colonists to be violations of that right. But because the content of the cosmopolitan right is limited, teasing out the implications of this violation requires constructing a plausible position using related passages. The primary argument against self-government rights for native peoples relies on section 44 in the *Rechtslehre*. It is here that Kant claims that humanity exists in a state of conflict and that the civil condition is the only way to escape it. Kant writes:

> So, unless it [a people] wants to renounce any concepts of right, the first thing it has to resolve upon is the principle that it must leave the state of nature, in which each follows its own judgment, unites itself with all others (with which is cannot avoid interacting), subject itself to a public lawful external coercion, and so enter into a condition in which what is to be recognized as belonging to it is determined *by law* and is allotted to it by adequate power (not its own but an external power); that is, it ought above all else enter a civil condition. (MM 6:312, Kant's emphasis)

Jeremy Waldron contends that this famous passage encapsulates not only the heart of Kant's political theory, but also the true spirit of the cosmopolitan right (2000, 238). The cosmopolitan right rests on the same foundation as the impetus to leave the state of nature: because people are unavoidably side-by-side, we must find a way to live together that is lawful and not fraught with the potential for hostility. According to Waldron, this must include people with whom we share a geographic region despite the history of how we came to occupy the same space. Waldron writes that a long-established settlement--even if it was settled wrongfully--has no choice but to come together in a civil condition: "[The descendants of the settlers] and the descendants of those whom their ancestors invaded and expropriated now have nothing to do but come to terms with one another… and establish a fair basis for sharing lands and resources that surround them" (2000, 239). In other words, Kant never claims that the obligation to enter the civil condition is contingent upon the circumstances that lead to the sharing of space. It is merely the fact of proximity--however it came to be--that necessitates leaving the state of nature. According to Waldron, we simply cannot pick and choose with whom we want to enter civil society and this mandate holds true even for groups that are radically different from one another (2000, 241). Since we move around the limited space of the world, "there is no telling who we will end up living alongside of, no telling who our neighbors might be" (Waldron 2000, 239). The spirit of the cosmopolitan right, for Waldron, means that we must find a way to live together under a common civil framework despite our differences and past histories.

Although Waldron's arguments appear consistent with one part of Kant's view, they seem to be inconsistent with other parts of Kant's view. As Timothy Waligore points out, the position seems to take too lightly the issue of past injustices (2009, 34). Despite

the right to travel freely, Kant's critique of colonialism is severe.[6] It is because of the past behavior of the colonists that Kant claims that some countries like China and Japan, who had in the past "given such guests a try" have "wisely" restricted their borders by allowing others "access but not entry" (PP 8:359). So although the cosmopolitan right gives everyone the right to travel, since the colonizers have abused that right with violence, nations appear to be permitted to restrict access to their land at least for a time (Waligore 2009, 39). Waligore argues that the spirit of the cosmopolitan right is about trust between nations. He writes: "Past injustice has undermined the conditions for trust and for the peaceable exchange of ideas" (2009, 34). Since Kant permits states that have experienced the violence of imperialism in the past to restrict access, Waligore claims that there is theoretical ground to accommodate sovereignty rights: self-government rights allow native peoples to limit their interaction with the states who wronged them. He concludes, "The spirit of the cosmopolitan right [...] permits, and even requires, protections for the cultural integrity and recognition of land claims stemming from historic injustice" (2009, 48).

Ultimately, I think neither of these accounts is satisfactory. While Waldron is correct that passage 44 of the *Rechtslehre* is one of the key components of Kantian political theory, Kant's remarks about imperialism suggest that it is a special case to be treated differently than a case where human beings simply find themselves in proximity with one another. In spite of his non-voluntarism, Kant never claims that the new settlers can force the native peoples to join them. In fact, he is critical of that reasoning precisely because it has been used to justify the violence of imperialism. Kant writes that imperialists have appealed to "specious reasons to justify the use of force are available: that it is to the world's advantage [...] because these crude peoples will be civilized [...]"(MM 6:353). Likewise, Kant rejects the idea that states have the right to form colonies so that they can "bring these human beings (savages) into a rightful condition [...]" (MM 6:266). The key difference is that colonial settlers are not merely a collection of individuals that happen to find themselves in a new land.[7] They are representatives of the colonizing state and they intend to gain more land for that state. Imperialism is a matter of land and power acquisition and not a matter of establishing another instance of the civil condition. So although Kant claims that individuals are permitted to use force to impel other individuals into the civil condition, a state cannot forcibly "civilize" an indigenous group. Waldron's reconstruction of the spirit of the cosmopolitan right cannot provide adequate grounds to reject sovereignty rights. Without passage 44 of the *Rechtslehre* to supplement the content of the cosmopolitan right, the right alone cannot show that Kant would prohibit indigenous sovereignty.

The trouble with Waligore's reconstruction, however, is that he frames contemporary claims of indigenous peoples as matters of restorative justice for past injustice (2009, 29).

6] Muthu (2003), Neisen (2007), and Kleingeld (2012) all give accounts of Kant's critique of colonialism, but they do not address the question of indigenous sovereignty rights.

7] Although there can in principle be new settlers that break away from their mother states, Kant's examples more closely resemble the intentional establishing of colonies, such as those of the first British Empire.

He argues that indigenous peoples have a claim to the "return of land," which is an appeal to redress for the theft of land that took place originally (2009, 48). In addition, he claims that reparations are owed to native peoples: "[A] society should begin by articulating an account […] of for how long reparations are owed, or a serious account for why they are not owed […]" (2009, 31). Such an appeal is conceptually problematic on a Kantian account for two reasons.[8] First, restorative justice is a judicial matter, yet Kant never explains whether violations of the cosmopolitan right are to be treated this way. Although Kant claims all humans have the cosmopolitan right, he never specifies how that right is enforced and by whom. The most Kant says about the status of the cosmopolitan right is the following:

> Since the […] 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 […] 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 […]. (PP 8:360)

Here Kant simply claims that the right is not a fiction and that it is a "supplement to the unwritten code" of the rights of states and nations. But such a claim still does not explain exactly how the right could be enforceable. In the context of the normal civil condition, when another citizen takes my land, I can appeal to the court for its return, but only because the same judiciary has authority over both of us. Not only is there is no corresponding judiciary in the case of the cosmopolitan right, Kant also rejects the idea that there ought to be some meta-state that presides over the collection of independent states (PP 8:355).[9] The second problem with treating the claims for self-government as matters of restorative justice is that the victim and aggressor nation exist in a state of nature together.[10] Claims to justice only make sense in the context of the civil condition, but since there is no meta-state, states do not have a civil condition. As Kant claims, "It is *pleonastic*, however, to speak of an unjust enemy in a state of nature; for a state of nature is itself a condition of injustice" (MM 6:349-50, Kant's emphasis). One cannot demand reparations for what happens in the state of nature because there is no such thing as injustice in the state of nature. Because there can be no justice claims at all, there is no claim that the native peoples can make to be compensated and no one to whom they can make it.[11] Asking for reparations from the state that took their land in the first place is the equivalent of asking that the thief return stolen property of his own volition. Additionally, even if the cosmopolitan right were in principle enforceable, there is no textual evidence to explain how a violation of that right ought to be redressed. Why should a violation of

8] For arguments in favor of a Kantian account of restorative justice, see Niesen 2014.

9] For a detailed discussion of the literature on this claim, see Chapter 2 in Kleingeld 2012.

10] I will return to the question of whether indigenous peoples can be seen as a state in Kant's view.

11] For the argument for Kant's need for a public authority in order to establish a condition of justice, see Varden 2008.

the cosmopolitan right dictate the return of land at all? That the cosmopolitan right allows peoples to limit their interaction with aggressive nations simply is not enough to construct a restorative claim for return of land or self-government rights. It may provide theoretical space to make such a claim, but theoretical space is all it provides.

Both Waldron and Waligore must reconstruct a Kantian position on the rights of native peoples because the content of the cosmopolitan right is underdetermined. In order to do so, they both attempt to situate the cosmopolitan right into a larger discussion in Kant's political theory: Waldron uses the argument for the non-voluntarist conception of the state and Waligore uses Kant's critique of imperialism. Here I offer a third and, I argue, more compelling alternative: that in order to determine the status of self-government rights we must understand what role they play in establishing perpetual peace. Kant is clear that the point of the cosmopolitan right is so that people can travel freely and attempt to engage in commerce. But the purpose of that interaction is to foster peace among nations. As Kant writes, "In this way, distant parts of the world can enter peaceably into relations with one another, which can eventually become publicly lawful and so finally bring the human race ever closer to a cosmopolitan constitution" (PP 8:358). If peaceful travel were not possible, there is no way that states would be able to establish relations with one another. Perpetual peace is not the same thing as mere avoidance of all interaction; states can never form a cosmopolitan constitution if they never come into contact. So the cosmopolitan right functions as a precondition for the possibility of establishing lasting peace, which is why Kant refers to it as a "supplement to the unwritten code" of the rights of nations (PP 8:360). States that refuse to entertain visitors also refuse to entertain the possibility of peaceful relations. If the primary role of the cosmopolitan right is to foster perpetual peace, then violations of the cosmopolitan right are problematic because they disrupt or hinder the progress toward the cosmopolitan constitution. Under this description, if imperialism does damage to perpetual peace, then the wrongs done to native peoples during colonialism have to be understood as part of that damage. In what follows, I argue that thinking of the wrongs done to indigenous peoples this way is a faithful reconstruction of Kant's own view, and it provides the theoretical grounds for a Kantian argument in favor of self-government rights.

First, let me explain the textual evidence that supports the connection between imperialism and war. Kant seems to understand the wrongs done by imperialists as a violation of the cosmopolitan right, but one aspect of his critique has largely gone unnoticed: Kant claims that colonialism represents a commitment to continuing future war, both in terms of the motivation behind it and the way it is implemented.[12] Kant remarks that the colonies in the so-called Sugar Islands, for example, "serve only a mediate

12] As Williams puts it, "For Kant colonialism helps fuel the flames of European wars and renders Africa, India and the Americas into the sites of endless indigenous wars which have their origins in the greed of the European traders" (2004, 169). Muthu's Chapter Five deals extensively with Kant's anti-imperialism (2003). Most recently, Ripstein argues that Kant's criticizes colonialism as "an illicit ground for going to war" and an "illicit mode of conduct after war" (2014, 146).

and indeed not very laudable purpose, namely, training sailors for warships, and so in turn, carrying on further wars in Europe […]" (PP 8:359). Likewise, Kant claims that the colonizers want to increase their land so that they can "increase the number of their subjects, and so too the multitude of their instruments for more extensive wars […]" (PP 8:355). Thus one motivation for founding new colonies is to gain more raw materials for war. The other is to amass more land and thus more power, which, as Kant points out, is already a wrong against less powerful states. The "*menacing* increase in another state's *power* (by its acquisition of territory)" wrongs less powerful states "by the *condition* of superior *power*, before any deed on its part […]" (MM 6:346, Kant's emphasis). So in acquiring more territory, a powerful state creates conditions for war since the smaller states will feel threatened simply by the existence of a great imbalance of power. In undertaking colonization in the first place, a state thus demonstrates that it is committed to continuing war and not to lasting peace.

In addition, imperialism as it is carried out in practice violates Article Six of perpetual peace, namely that "No state at war with another shall allow itself such acts of hostility as would have to make mutual trust impossible during a future peace […]" (PP 8:346). Kant specifically prohibits wars of extermination and wars of subjugation for this reason (PP 8:347 and MM 6:347). With regard to indigenous peoples, Kant specifically condemns the slavery of the colonies and claims that the behavior of the colonizers counts as "conquering" the native peoples (PP 8:359 and PP 8:358). Because imperialism enslaves and slaughters native peoples in forming new settlements, much like underhanded war tactics like spying and assassination, it makes the establishment of mutual trust between the parties engaged in hostility impossible once the violence has ended. Indeed, as Kant points out, the previous hostility that visitors directed toward China and Japan caused them to "wisely" restrict their borders (PP 8:359). Here Kant provides an example of the way that imperialism has undermined future trust between nations. The establishment of mutual trust is essential to lasting peace because states must be able to be a part of the international federation together. If one state attempts to subjugate another, peaceful cooperation will be unlikely or perhaps impossible. Imperialist states jeopardize any future relations they may with have the native peoples they enslave and slaughter.

One may object that even if Kant criticizes imperialism because it is a commitment to future war, it cannot matter in the discussion of native peoples. War, as this objection would go, takes place only between two established states and Kant does not classify native peoples as states.[13] It is true that Kant does not think all nations qualify as states. The fact that native peoples do not belong to a state is of course one of Kant's critiques. He claims that we "regard with profound contempt" the "attachment of savages to their lawless freedom" (PP 8:354). But the exact status of native peoples is ambiguous in the

13] Kant does argue that only states can agree to go to war by means to the consent of their citizens (MM 6:345-6). But, just because only official states can consent to war, it does not mean that violence and conflict cannot take place between states and non-states. Kant's discussion of imperialism makes this clear: even though native peoples are not states, they can be conquered and invaded like states.

text. Indigenous peoples have what I will call *proto-state* status in at least three ways: (1) they can enter into contracts with states, (2) they have (at least) provisional ownership of their land, and (3) they are members of nations even though they are not states.[14] Let me explain how these components comprise proto-state status.

With regard to the restrictions on colonies, Kant claims that the state seeking new settlements must make a fair contract with the native peoples to share the land (MM 6:353). This claim implies that even though the indigenous group does not necessarily have a constitution, it is still capable of entering into formal agreements. If it can do so, Kant has to believe that the group has some level of political autonomy. Without at least some degree of group self-determination, the population could not come together enough to be a contracting party at all. Moreover, if the settlers must contract with the indigenous peoples to share the land, then they must have some legitimate claim to that land in the first place. Indeed Kant claims that native peoples have at least provisional ownership of their land: "All human beings are originally […] in a possession of land that is in conformity with right, that is, they have a right to be wherever nature or chance […] has placed them (MM 6:262). What is more, Kant makes allowances for a form of land possession that would be more prominent among indigenous groups, namely communal land ownership (MM 6:265). In other words, a native population where land is shared among all members still has a claim to that land even if it is not privately owned by individuals. But the right they have to their land is still a collective right. A land-sharing contract with a state would be between that state and the tribe, not between that state and each member of the tribe. Finally, although native peoples do not constitute states, they are members of nations along with states. Kant describes the relation between citizens and native peoples as constituting "one family" even though the citizens make a state and the native peoples comprise only a "tribe" (MM 6:343). Kant's distinction between states and nations is not a sharp line: in "Toward a Perpetual Peace," he seems to use the two interchangeably. What is important to note is that Kant makes the claim that native peoples are members of nations in Section II of the *Rechtslehre*, the same place where he discusses war. In this way, we can understand Section I as detailing the internal workings of a state while Section II is focused on relations between states. These relations include their "external relations" (MM 6:344). States are in external relations with one another because they exist in physical territories that neighbor each other. In this way, states and nations are co-spatial. If the state is invaded by a foreign enemy, the nation is by definition also invaded because the nation includes the land where the state exists. Moreover, if a state invades a land where there are only native peoples and no formal state, such an act would still count as the invasion of a nation. And since Kant claims that new settlers must establish a land-sharing contract with the native peoples, nations (even though they are not states) still have claims that their land not be invaded (MM 6:353). Thus Kant's definition of war cannot preclude native peoples simply because they are not official citizens. While

14] Stilz argues that non-state peoples have "provisional rights" (2014).

indigenous peoples may not qualify as full-fledged states, we must understand them as having some kind of politically autonomous status in order for them to have the powers and attributes Kant describes.

If indigenous peoples have the status of proto-states, combining this claim with Kant's critique of colonialism as a means to future war allows a more faithful Kantian account for understanding the wrongs of imperialism. Traditionally, these wrongs have been understood as violations of the cosmopolitan right. As I pointed out, this conception is problematic in one way because of the issue of enforcement: there is no third party to ensure the right or to adjudicate violations of the right. But it is problematic for additional reasons. Calling imperialism a violation of the cosmopolitan right simply fails to adequately describe the actions of the colonizing state. The cosmopolitan right only establishes that human beings have the right to travel to foreign lands without being treated with immediate hostility. Although certainly the colonists treated the native peoples with hostility, the harm goes beyond mere hostility. Imperialism involved conquering, enslaving, and exterminating indigenous peoples as a way of amassing more land and gaining slave labor for gathering resources. The wrong done during colonization is closer to a war of extermination or subjugation than it is to treating a foreign visitor with hostility. As Kant describes it, wars of subjugation and extermination "would be the moral annihilation of a state (the people of which would either become merged in one mass with that of the conqueror or reduced to servitude)" (MM 6:347). Knowing the history of colonialism, it is hard to find a phrase more apt than "moral annihilation."

What is more, the cosmopolitan right is held by individuals. Although native peoples do not comprise a state, they are more than simply a collection of individuals. The colonialists did more than treat harshly the members of indigenous groups; they violated the autonomy of the indigenous peoples by invading their land and refusing to contract with them. Understanding the wrongs of imperialism as violations of the cosmopolitan right fails to acknowledge the way in which native peoples were wronged as a group. Even if native peoples are not states, they (as an autonomous people) still have claims not to be invaded, conquered, and exterminated. But if we think of imperialism as one state waging war on a proto-state, we are able to better explain how it is wrong. Although Kant maintains that nations can never completely leave the state of nature, forming the cosmopolitan constitution is the closest they can come to securing their freedom (PP 8:355-6). War makes that cosmopolitan ideal impossible and so does imperialism. Imperialism, like war, violates the sovereignty of the invaded nation, which threatens the security of all nations.

Understanding the wrongs done to indigenous peoples within the framework of war also cuts a clearer path to a Kantian position on how to remedy the wrong done. If imperialism is like war, then the remedies for the wrongs done will be analogous to establishing *jus post bello*. According to Kant, the first step after a war concludes is to undertake peace negotiations (MM 6:348). Peace negotiations aim at a peace treaty that can be upheld by both parties and that will contribute to perpetual peace. As Article One of perpetual peace states: "No treaty of peace shall be held to be such if it is made with a secret

reservation for material for a future war" (PP 8:343). Such a treaty would be, according to Kant, "a mere truce, a suspension of hostilities, not *peace* […]" and this holds true even if the causes for future war are "yet unrecognized by the contracting parties themselves […]" (PP 8:343, Kant's emphasis). So any treaty that ends immediate hostility but still contains the potential for future war is only a truce. If we examine the historical relations between states and their indigenous populations and think of them in the context of war, what we find is that peace negotiations either never took place or took place without earnest. Take for example the United States' history with the Native Americans. Prior to the Indian Removal Act of 1830, there were various peace treaties between the government and certain tribes. The 1785 Hopewell Treaty, for instance, aims to end conflict between the US and the Cherokee, Chickasaw, and Choctaw tribes. Included in the terms of the treaty is an express commitment to peace and friendship along with the establishment of territory boundaries.[15] While these treaties may have been good faith efforts at peace negotiations, on Kant's view no treaty signed after the 1830 could have been anything more than a truce.[16] The Indian Removal Act specifically aimed at amassing more land for the United States (Merijan 2010, 614-16). Kant already sees the expansion of territory as problematic precisely because of the threat it poses to less powerful states (MM 6:346).[17] Treaties of peace that are signed as a means to increase land would, according to Kant, contain the conditions for future war whether the contracting parties intend for it to do so. Because the contracts were drawn up with the hidden agenda of gaining more territory for the U.S., Kant would claim that they could only be considered a truce. For Kant, whatever agreement is reached between a state and the native peoples with which it has had past conflict, it must be an agreement that commits to lasting peace.

If the relation between a state and indigenous peoples is nothing more than a truce, then for Kant the potential for war still looms. Even though there are no current acts of violence, the suspension of hostilities is still suspect because of the very nature of imperialism: the violence of imperialism is almost entirely one-sided. That is, the colonizing state invades, enslaves, and kills the people of the native proto-state. Like wars of extermination or subjugation, the violence of imperialism only ends because the aggressor state decides to end it. The problem is that any peace treaty in the face of this kind of imbalance, for Kant, contains the potential for future conflict; the conflict only ended at the whim of the aggressor as such the aggressor can resume its campaign any time it wants. Given Kant's stipulation that peace treaties must not contain the potential for future war, I suggest that the recognition of self-government rights is the only way that

15] For the text of the treaty, see http://digital.library.okstate.edu/kappler/vol2/treaties/che0008.htm.

16] There is, of course, the possibility that these treaties were not in fact undertaken in good faith, but for the sake of argument, they could at least in principle be sincere.

17] Additionally, although the United States engaged in the process of contract signing, it knew that the agreements were unfair and if tribes refused to sign, they were eventually bullied into doing so (Merijan 2010, 614, n. 20).

relations between the native population and the aggressor state can count as establishing lasting peace. Why must this be so?

Sovereignty rights ensure that the cessation of conflict is peace rather than merely a truce for two reasons. First, in acknowledging sovereignty of indigenous peoples, the aggressor state essentially sets up for itself obstacles to any future conflict. Since states are bound to uphold their own laws, legislation that establishes sovereignty for indigenous peoples binds the aggressor state to adopt a policy of non-interference and to engage in state-to-state negotiations. If the aggressor state is not by its own laws allowed to interfere with the affairs of the native population, then any future conflict will at least be harder to justify given its own legislation. If the aggressor nation is willing to erect barriers for itself to engage in future conflict, it demonstrates a substantive commitment to lasting peace.

Second, although there is no meta-state, the federation of nations can still play a role in these kinds of relations. According to Kant one of the hallmarks of a warring state is that it willingly engages in "violation of public contracts" (MM 6:349). A proper peace treaty between an imperialist nation and native peoples would be a public contract that the rest of the nations would witness. Should the aggressor nation resume the conflict, it would show itself willing to disregard peace treaties more generally. As Kant writes, "Since [the violation of a peace treaty] can be assumed to be a matter of concern to all nations whose freedom is threatened by it, they are called upon to unite against such misconduct [...]" (MM 6:349). If the aggressor state is willing to breach the sovereignty rights of indigenous peoples, the rest of the league of nations would rightly feel threatened by its willingness to disrupt established peace. In other words, if an imperialist state is willing to break a peace treaty with a native population, in principle nothing rules out its willingness to break any peace treaty. In recognizing the self-government rights of native populations, the aggressor state thus opens itself up to criticism and sanction from the international federation. Again, though this action would not completely preclude future conflict with indigenous groups, it would make that conflict much harder to justify. Thus, given Kant's insistence on states' commitment to perpetual peace, sovereignty rights for native peoples are not just a possibility in Kantian political theory, but a necessity. On a Kantian account, sovereignty rights for indigenous peoples are not matters of restorative justice, but a necessary part of ending conflict in a substantive and lasting way.

Again, relations between the U.S. and the Native American tribes provide a clear case to apply the Kantian argument for sovereignty rights. After the policy of removal in the early-to-mid 1800s, U.S. expansion into the west gave rise to the need for more privately owned land (Merijan 2010, 614-5). As such, the U.S. passed the Indian Appropriation Act of 1871, which voided any previous treaties that the government had signed with the Native American tribes and wrote into law the denial of tribal sovereignty.[18] Thus, the

18] U.S. Code Title 25: Indian Tribes 25 U.S.C. Section 71 Future Treaties with Indian Tribes: "No Indian nation or tribe within the territory of the United States shall be acknowledged or recognized as an independent nation, tribe, or power with whom the United States may contract by treaty; but no obligation of any treaty lawfully made and ratified with any such Indian nation or tribe prior to March 3, 1871, shall be hereby invalidated or impaired."

U.S. unilaterally decided to legislate away the need for any kinds of negotiations precisely because it did not acknowledge the self-government of the tribes. This legislation paved the way for the Dawes Act and policies of allotment, which denied tribes their rights to any communal landownership (Merjian 2010, 615-18). Although the policies of allotment have been repealed and reservations have been established, Native American tribes are still considered dependent populations in need of management and protection rather than groups with whom the United States must negotiate (Merjian 2010, 612, n. 14 and D'Errico 1999, 10). It can thus now cherry pick when it interferes in Native American affairs and when it does not (D'Errico 1999, 10-12). In the words of the federal court (as quoted in D'Errico), "The blunt fact […] is that an Indian tribe is sovereign to the extent that the United States permits it to be sovereign -- neither more nor less" (D'Errico 1999, 10). Sovereignty that is contingent upon the policies and decisions of the aggressor state is not sovereignty at all. Because formal peace was never established and because the U.S. legislated away the negotiation process, the original campaign of violence can resume any time the U.S. chooses to resume it and the native peoples would have no recourse to resist. From a Kantian perspective, at best a truce exists between the U.S. and the Native American tribes and a truce can never establish lasting peace.

I want to close by answering a possible objection. Recognizing self-government rights would not entail that native populations become states. Indigenous peoples may indeed decide to continue to embrace their "lawless freedom" rather than form a republican constitution. One might argue that Kant would reject this outcome. After all, the league of nations is supposed to be a group of proper states, the acceptable form of which is a republic (PP 8:350-4). If native peoples establish a non-republican system of self-rule, would these rogue nations not threaten perpetual peace more than if they were to remain protected parts of a state with a proper civil condition? Moreover, Kant claims that each state "can and ought to require" other states to enter into the league of nations for the same reason that individual humans should enter a civil condition with each other: they wrong each other simply by being in the state of nature (PP 8:354). But only states with a civil constitution can enter the league of nations. If that is true, then would it not be better to demand that native peoples enter the civil condition of the aggressor state?

I think Kant would reject the idea that states can be forced to become republican. First, Kant insists that states are not permitted to interfere with the internal workings of an independent state (PP 8:346). We might think this holds true only of official states and not peoples, but Kant claims this is true even when one state "gives scandal" to another state, which Kant defines as being "the example of the great troubles a people has brought upon itself by its lawlessness" (PP 8:346). So even a state that is lawless, while it may be offensive to republican states, still has a claim to sovereignty. In fact, the only time interference is justified is when a state in the midst of a civil war tries to split in two and both attempt to claim the land as its own (PP 8:346). So even if indigenous peoples decide not to have republican government, it does not justify interference in their affairs. Second, unlike individuals who can force each other to enter a civil condition, nations cannot force other

nations to join the league. They can and ought to require states to join, but states cannot be forced to enter because, as Kant argues, the league of nations is not itself state (PP 8:354). If one state could force another to enter the league of nations, it would be requiring that state to relinquish its sovereignty, which would amount to dissolving the state itself. The league is only an "association" of states that "can be renounced at any time" (MM 6:344). Kant describes the league of nations this way:

> This league does not look to acquiring the power of a state but only to preserving and securing the *freedom* of a state itself and of other states in league with it, but without there being any need for them to subject themselves to public laws and coercion under them (as people in a state of nature must do). (PP 8:356, Kant's emphasis)

Kant is clear that states have no need to subject themselves to the rule of law as people do. The best we can hope for with the league of nations is to secure the freedom of all the states in the league by committing to perpetual peace. As such, the league is a "free federalism" that gradually gains more members over time when states realize that the league will help preserve their freedom (PP 8:356). States must come to freely join the league on their own. In this way, native peoples can maintain their sovereignty--even if it is "lawless"--and cannot be forced to become republican just to join the league of nations. It may be true that they have to have a republican constitution in order to formally join the league, but even then, Kant is flexible to a certain extent. Kant claims that the republican constitution is the best form of government because it is the government most likely to foster lasting peace. Because a republican constitution is representative, the citizens must consent to undertake war. Kant believes citizens will be naturally more hesitant to do so than their leaders, and so as a result republican governments will be less likely to start wars (PP 8:350). Thus, the hallmark of a republican constitution is that it is representative, but representative governments need not be homogenous in other respects. Indigenous peoples could very well join the federation of states if their rule of law was sufficiently representative. One could object that Kant allows for too minimal a conception of multiculturalism. While this objection is a substantive one, it does not lessen the status of self-government rights for indigenous peoples. Native populations may govern themselves as they wish even if they may not be permitted to join the league of nations. Their sovereignty still affords them claims to their land, claims to non-interference, and the right to engage in state-to-state negotiations.

I have argued that Kantian political theory not only can, but indeed must allow for the self-government rights of indigenous peoples. Sovereignty rights are necessary not as instances of restorative justice, but as parts of meaningful peace agreements that can curtail the possibility for future conflict. Only with sovereignty rights can indigenous peoples be assured that the aggressor nations will not arbitrarily resume violence against them. Aggressor nations must legislate self-government rights for native populations to show real commitment to establishing perpetual peace.

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