

The Rights of States, the Rule of Law, and Coercion: Reflections on Pauline Kleingeld's *Kant and Cosmopolitanism*

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Abstract

Pauline Kleingeld argues that according to Kant it would be wrong to coerce a state into an international federation, due to the wrongness of paternalism. Although I agree that Kant opposes the waging of war as a means to peace, I disagree with Kleingeld's account of the reasons why he would oppose coercing a state into a federation. Since she does not address the broader question of the permissibility of interstate coercion, she does not properly address the narrower question of whether coercion to compel a state to join a federation can be permissible. I revise and supplement her arguments.

Keywords: Kant, Kleingeld, Byrd, Hruschka, Ripstein, Rawls, cosmopolitanism, war, state of nature, global justice, republicanism, coercion, self-government, paternalism, barbarism, sovereignty, moral politician

Pauline Kleingeld's valuable new book, *Kant and Cosmopolitanism: The Philosophical Ideal of World Citizenship* (2012), casts light from a variety of angles onto Kant's multi-faceted political philosophy. She discusses his views about international relations, global institutions and world citizenship, and also his views about related economic and cultural questions. By setting Kant's work in the context of the wider debate about cosmopolitanism that took place in the last quarter of the eighteenth century, Kleingeld enables the reader to understand more fully the positions Kant took, as well as how and why he developed those views.

I found especially interesting the chapter on Kant's political cosmopolitanism. It follows the chapter on moral cosmopolitanism, in which Kleingeld examines Kant's defence of duties toward one's own country, and it precedes the chapter on Kant's theory of cosmopolitan right, which attributes 'equal juridical standing to humans on every continent' (7). In the chapter on political cosmopolitanism, Kleingeld discusses Kant's conception of world-wide political institutions. She shows that in the 1780s he 'defended the establishment of a strong international federation with coercive powers much like a state', and that in the mid-1790s he began arguing that the first step toward establishing it must be a voluntary, non-coercive league of states (7, 43–4). She contends that Kant does not contradict himself by arguing both for a plurality of states and for 'a state-like international federation', and that he argues 'convincingly' that using coercive force in order to establish such a federation would be impermissible (44).

My focus here is on Kleingeld's view about the reasons why it would be wrong, according to Kant, to coerce a state or regime into an international juridical condition. In this connection I will discuss a disagreement among interpreters of Kant's Doctrine of Right. Those opposing Kleingeld's position on the issue of the permissibility of coercing a state in an international state of nature include the authors of a new commentary on the Doctrine of Right, B. Sharon Byrd and Joachim Hruschka (2010).

Central to Kleingeld's defence of her view is her interpretation of an 'infamous' passage of text:

As concerns the relations among states, according to reason there can be no other way for them to emerge from the lawless condition, which contains only war, than for them to relinquish, just as do individual human beings, their wild (lawless) freedom, and to accustom themselves to public, binding laws, and to thereby form a (continually expanding) *state of peoples* (*civitas gentium*), which would ultimately comprise all of the peoples on earth. But they do not want this at all, according to their conception of the right of peoples (thus rejecting *in hypothesis* what is right *in thesi*); therefore, instead of the positive idea of a *world republic* (if not everything is to be lost) only the *negative* surrogate of a lasting and continually expanding *league* (*Bund*) that averts war can halt the stream of law-shunning and hostile inclination, but with a constant threat of its breaking out. (Kant, *TPP*, 8: 357)¹

Kleingeld argues against those who interpret Kant as ‘scaling back what reason demands on the basis of the empirical consideration that states *do not want* to join a state of states’, which would, they contend, be a ‘decidedly unKantian move’ (43–4, 51). Her view is that, given ‘Kant’s other theoretical commitments, especially his commitment to the political autonomy of the peoples involved, the states’ not wanting to join actually constitutes a *good* reason for him to advocate the establishment of a voluntary league’ as ‘necessary for the purpose of leaving the state of nature and moving toward peace’ (51).

I agree with Kleingeld that Kant should be understood as advocating the establishment of a voluntary league as necessary for that purpose, and also as opposing the waging of war as a means to peace, but I have reservations about her account of the reasons why Kant opposes the use of coercive force to establish a federation. I agree with her that there is an important disanalogy between the interpersonal state of nature and the international state of nature, due to the existence of the rule of law in the latter case, and that this disanalogy blocks the inference (made by other scholars) to the conclusion that violently coercing a state into a federation would be permissible. However, I disagree with her regarding precisely why the existence of the rule of law is relevant to this issue.

Central to Kleingeld’s account of Kant’s reasoning is her claim that his conception of political autonomy implies that paternalistic interstate relations would be wrong. I find this claim problematic. Furthermore, Kleingeld argues that a state that tries to coerce another state into a federation commits the wrong of disrespecting a people’s political autonomy, self-legislation and self-determination. This idea seems alternatively expressible in terms of violating a state’s sovereignty. If this is Kant’s conception of the wrong, then he holds either that state sovereignty is inviolable or else that coercing a state into a federation is not among the permissible cases of interstate coercion. If state sovereignty is not inviolable and interstate coercion can be permissible, then it is necessary to specify what determines permissibility, and whether the purpose of compelling a state to join a federation renders interstate coercion permissible.² Since Kleingeld does not address the broader question of whether interstate coercion can ever be permissible according to Kant, she does not properly address the narrower question of whether interstate coercion for the purpose of compelling a state to join a federation can be permissible according to him.³ I propose both to revise and supplement her arguments.

1. Anacharsis Cloots's Challenge

Kleingeld relates Kant's views on the topic of perpetual peace not only to those of the most well-known figures who wrote about this topic, the Abbé de Saint-Pierre and Jean-Jacques Rousseau, but also to those of a less well-known figure, Anacharsis Cloots. As she informs us, Cloots was a high-ranking Jacobin in revolutionary France who published, between 1791 and 1793, several books in which he argued that 'the social contract tradition, by its own logic, should lead one to defend world-state cosmopolitanism' (40). Cloots did not present his argument as a criticism of social contract theory; instead he endorsed the idea of eliminating state boundaries and establishing 'a republic of the united individuals of the world' (40). Cloots contended that the 'human rights and interests of individuals are not adequately protected in a multi-state world' as long as an international state of nature persists, that is, as long as relations among states remain without government by law (41). He advocated establishing a universal republic, partly on the basis of the argument that a federation would not have the power to force the member states to comply with its laws, if the federated states were still sovereign; and that if they had given up their sovereignty, then they would no longer be distinct states. In Cloots's view, either states merge into a world republic, or else the threat of war remains.

Kleingeld recounts that Cloots got elected to the National Convention, and that after becoming the president of the committee on foreign affairs he handled the French war effort. Aiming to put his theory into practice, he undertook to build a universal republic by enlarging France, and opposed making the conquered territories into federated republics, instead advocating 'their merger with what he started to term "the country formerly called France" but now properly called "universal republic"' (41). Later on, after finding out that he had been too optimistic in expecting that the conquered peoples would gladly join the world republic, he wrote (Kleingeld tells us) that these peoples 'had been so enslaved under the yoke of their tyrants that their judgment was numbed and stupefied', and that it was therefore 'necessary to force them into the world state', after which they could 'learn to recognize their true interests' (42).

Kleingeld says that 'what little philosophical literature there is on Cloots grants him' his claim that he alone had applied social contract theory consistently (43). She frames her discussion of Kant's views about international relations and global peace by posing the question of whether Kant can meet Cloots's challenge, that is, whether Kant's arguments can be interpreted as showing the incorrectness of Cloots's

view that the ideal of an international federation with coercive powers is incoherent, and also as showing that it is impermissible for states to coerce each other into a world republic, whether federal or not. Her position is that ‘Kant’s political cosmopolitanism, when properly understood . . . constitutes an answer to Cloots’s challenge’ (44).

2. Republicanism and the Ideal World Order

Kleingeld contends, contrary to a widely accepted reading and assessment of Kant’s theory of international relations, that he does not advocate ‘merely the establishment of a voluntary league of states’ or ‘congress of states’ without coercive powers, but instead advocates this ‘as the proper way to leave the state of nature’ and views this league as the first step on the road toward a state-like international federation of states (43–4, 49). She further argues that Kant thought that ‘the ideal state of states becomes a real possibility only after a certain level of development has been reached’, and that his republicanism ‘rules out the coercive establishment of a world state, on the one hand, and supports the feasibility of a strong international federation, on the other’ (49, 65).

As Kleingeld reminds us, in *Toward Perpetual Peace* Kant argues that ‘self-interest moves states internally in the direction of a republican government, and that republics, in contrast to despotic states, naturally tend toward peace’ because the citizens decide whether or not to go to war (65). Since it is they who must fight the wars, and ‘offensive wars run counter to their self-interest in many ways . . . this will make them significantly less inclined to start a war’ (66). However, says Kleingeld, Kant emphasizes that ‘even a general moralization of humanity would not make the state of states superfluous’ (69).

Kleingeld thinks that Kant had good reason, given his philosophical commitments, to hold both that the ‘ultimate ideal’ is ‘a federative republic of republics’ and that a merely voluntary league is a necessary intermediate step on the way there and would have ‘genuine importance’ (49, 63). She argues that Kant thought a voluntary league would contribute to progress toward the ultimate goal by reducing warfare and increasing stability; that this would permit the advancement of the internal development of states (including the education and enlightenment of their populations and the reform of their political institutions), which would in turn strengthen the peace process; and that once agreement on universalist normative principles emerges, a voluntarily created federative republic of republics can be actively pursued (66–7).

In connection with her interpretation of Kant's ultimate ideal, Kleingeld criticizes a view about Kant's conception of the ideal world order expressed by John Rawls. Rawls says he 'follows Kant's lead' in rejecting world government in the sense of 'a unified political regime with the legal powers normally exercised by central governments' (Rawls 1999: 36). Kleingeld points out that Kant distinguished between a global federation and a world government (which he termed a 'universal monarchy'); she argues that, although he rejected world government in the sense of a universal monarchy, he did not reject world government in the sense of a global federation. In Kleingeld's view, 'what is missing in *The Law of Peoples* is the *ideal* of a lawful and enforceable global arbitration of conflicts' in the form of 'a world federation of states with coercive powers' (188–9). She thinks not only that Kant advocated such a federation but also that he was right to do so, since a league of republics providing non-enforceable arbitration would have 'no real mechanism to settle disputes' among them (189). Kleingeld's criticism of Rawls is not that Kant would oppose the kind of global order she thinks Rawls advocates, but instead that Kant did, and Rawls did not, also advocate the subsequent development of a strong global federation of states, which would become possible only after a league or congress of states (or, to use Rawls's term, a Society of Peoples) had been established.⁴

Byrd and Hruschka (henceforth 'B&H') argue that Kant 'envisions a state of nation states and a cosmopolitan legal order, both with courts backed by coercive enforcement powers, as the ideal solution to ensuring peace on the international and cosmopolitan levels' (2010: 188). Kleingeld apparently agrees with them about this. However, B&H contend that, just as individuals in a state of nature may use force in order to replace their lawless condition with a juridical state, so states in a state of nature may use force for an analogous purpose. According to B&H, Kant held that 'states have a right in the state of nature to coerce their neighbouring states to enter a juridical state of states', and even to 'wage war to coerce the neighbours to do so' if they are unwilling (2010: 195). Here Kleingeld disagrees. Like Kleingeld, I disagree with B&H's view about war. However, I do not think Kleingeld's arguments for her own position are adequate. I now turn to revising and supplementing them.

3. State Autonomy, Brutal Oppression and Paternalism

According to Kant, before individuals establish a system of laws for themselves, they are merely 'a multitude of human beings', but afterward

they have become ‘a people’, as Kant uses this term in the Doctrine of Right (6: 311). The individual members of a people, so understood, do not necessarily share ethnicity or ancestry (although in at least two instances in *Toward Perpetual Peace* Kant says that different peoples will have different histories and may well have different languages and religions). (Kant 1996: 318, 336; *TPP*, 8: 344, 367). Likewise, the term ‘a nation’, as Kant uses it in the Doctrine of Right, does not imply that the individuals constituting the nation share ethnicity or ancestry. When speaking of ‘the right of nations’, Kant uses the term ‘a nation’ to refer to states considered with regard to interstate relations, while his term ‘a people’ carries connotations of the state’s internal political relations, i.e. the relations among the individual human members of the political society, thought of as the source of the government’s authority. Notice how Kant uses the terms ‘a people’ and ‘a state’ in the following passage. ‘Public right . . . is a system of laws for a people, that is, a multitude of human beings, or for a multitude of peoples, which, because they affect one another, need a rightful condition under a will uniting them. . . . This condition of the individuals within a people in relation to one another is called a civil condition . . . and the whole of individuals in a rightful condition, in relation to its own members, is called a state’ (Kant 1996: 455; *DR*, 6: 311, italics omitted).

Arguing on Kant’s behalf, Kleingeld contends that coercing a state into a federation ‘would run counter to the basic idea of the people as a self-determining and self-legislating political union’, and that although this is ‘most clearly true where a despotic state of states would destroy rights and freedoms already secured within relatively just states’, it ‘holds true even when the coercion is intended to be for the population’s own good’ (54). As she acknowledges, one might think that ‘citizens of brutally oppressive states would prefer to live in a republican federation rather than under their oppressive rulers, and hence that their political autonomy might be served by coercing them into a federation’ (54). However, she points out, it does not follow from the fact that the people want to get rid of their despot ‘that they want to join a particular self-proclaimed ‘liberator’ world state with its own particular conception of right and justice’ (54). Such a world state might itself be despotic, she notes, since it is likely that ‘the strongest state (or group of states) would end up setting the terms, subjecting other states to its laws’, and there is no reason to assume that the strongest state(s) would act rightly (55–6). Kleingeld emphasizes that the states with less power might ‘stand in better accord with right’, and ‘a despotic state of states might quash any already existing rights that are secured internally by the

subjected states' (55–6).⁵ Furthermore, she argues, if a state were to coerce another state into a federation or world state 'for the good of its population, on the basis of the coercing state's understanding of what this good consists in', it would be 'pass[ing] over the political autonomy of the people it purports to serve', thus treating them paternalistically; and, as she says, 'Kant's objections to paternalism are well known' (54). Kleingeld argues that, since a 'people in the political sense has . . . "outgrown" tutelage and paternalism',⁶ the citizens of despotic and brutally oppressive states 'should be granted the opportunity to decide for themselves' whether to join a federation, and 'should be put in a position to determine [by] themselves the shape of their political institutions' (54, 57).

By using the phrases 'citizens of brutally oppressive states' and '[coercion that is] intended to be for the population's own good', Kleingeld raised in this reader's mind several questions not explicitly addressed in her book, including the following. If, as she says, Kant regards a people as 'a self-determining and self-legislating political union', do brutally oppressed populations indeed constitute autonomous peoples that have "'outgrown" tutelage and paternalism'? If, as Kleingeld says, brutally oppressed populations 'should be put in a position to determine' the shape of their own political institutions and 'should be granted the opportunity to decide for themselves' whether to join a federation, then by whom is this to be done, and how? Is it indeed plausible that Kant forbids all efforts by other states to help brutally oppressed populations by either overthrowing their rulers or else compelling these rulers to join their state to a federation formed in order to bring about a just and perpetual peace? And does the wrongness of paternalism indeed constitute sufficient reason to forbid all such efforts? Furthermore, while it is true, as Kleingeld contends, that a despotic state of states might quash rights that had been secure in a state compelled to join it, it is also possible (as Kleingeld clearly thinks) that a federation would not be despotic; it seems that a non-despotic federation could not only avoid violating individuals' rights but also facilitate reform in non-republican states while improving the security of republican states.

It can be hard to determine whether something is or is not a state, or whether a population does or does not constitute a people. Since Kant defines a state in terms of the idea of laws of right, not every purported state is one. Not every powerful person or group of persons who purport to govern by law actually do so; not every political structure actually performs the function of determining and securing what is

mine and what is yours. A powerful entity that dominates a territory's population and meets none of the requirements of right to any significant degree, is not classifiable as a state, and its population does not constitute a people (in the political sense). Kant distinguishes a despotism (a state in which there is a legal system that does not secure freedom) from a condition of barbarism (in which a population is dominated by the lawless power of an organized group that rules by prerogative).⁷ Although he argues that the form of government that best fulfils the function of a state is republican, he does not argue that only republican political societies are states, and he does not offer minimal requirements of governmental legitimacy as criteria for determining whether what appears to be a state or a people really is one.⁸

Recall Kleingeld's statement that brutally oppressed populations should be put in a position to determine the shape of their own political institutions, and then allowed to decide whether to join a federation. Now consider the following four cases: (1) a democratic republic in which the people, through their representatives, express their desire to remain independent of the federation; (2) a non-democratic state, in which there is a political structure of the kind John Rawls calls a 'consultation hierarchy' (Rawls 1999: 62–78) and in which the people, through their representatives, express their desire to remain independent of the federation; (3) a despotic state in which the vast majority of the population lacks political rights and political representation, but enjoys a tolerable standard of living under a somewhat benevolent government; (4) a country in which the regime denies political rights and political representation to the vast majority of the population, poverty is widespread and severe despite the great wealth of the ruling class, and there is widespread violence and brutality by the regime or by militias it tolerates. The rulers in all four cases resist joining the federation. Note that Kleingeld does not argue in favour of respecting the will or political autonomy of rulers as distinct from the populations under their rule; note also, however, that since the populations in cases (3) and (4) lack political representation, it is difficult or impossible for them to determine together what they want and to express this (and arguably they do not constitute peoples in Kant's sense of this term).

Now suppose a powerful federation of republican states were deliberating about whether to attempt to overthrow the ruler in case (4) in order to help the population establish a legitimate regime. Would it be wrong for such a republican federation to make the attempt, according to Kant as Kleingeld interprets him? To me the answer to this question

is not fully clear, since Kleingeld does not discuss the distinction between despotism and barbarism. It may seem that Kant would regard such an attempt as wrong, because he formulates the fifth preliminary article for perpetual peace as follows: ‘No state shall forcibly interfere in the constitution and government of another state’ (Kant 1996: 319; *TPP*, 8: 346). However, the right of non-intervention ascribed to states by the fifth preliminary article does not oppose such an intervention because the target is a barbaric regime (not a state, as Kant understands this term), which cannot validly claim the right of non-intervention.⁹

Kant seldom uses the term ‘paternalism’ in his writings about law or politics, and when he does, he uses it to refer to a relation between rulers and their own subjects, in which they ‘are constrained to behave only passively, so as to wait only upon the judgment of the head of state as to how they *should be* happy and, as for his also willing their happiness, only upon his kindness’ (Kant 1996: 290–1; *TPP*, 8: 290–1). As far as I know, Kant does not use the term ‘paternalism’ to refer to any relations *between states or peoples*. And it is not clear that we may infer that he would so use it. Such an inference would, it seems, have to be based on the assumption that what can be true of rulers in paternalistic relations to the peoples they rule, and/or what can be true of individuals in paternalistic relations to other individuals, can be true also of states or peoples in relation to other states or peoples. But this assumption is by no means obviously true, and Kleingeld neither discusses nor defends it. Indeed, she points out an important disanalogy between the interpersonal and international states of nature, which I discuss below.

4. The Two States of Nature and the Rule of Law

According to B&H’s interpretation of Kant, a state has a right of self-defence to coerce another state into a juridical condition, and this right is analogous to human beings’ right of self-defence in the interpersonal state of nature. In both cases, they contend, coercion is authorized because necessary for securing rights, i.e. hindering a hindrance to freedom.¹⁰ Kleingeld disputes the analogy on which their argument is based. As she points out, there is an important disanalogy between the interpersonal state of nature and the international state of nature, which concerns the existence of the rule of law. While individual human beings are in the interpersonal state of nature, the rule of law does not exist, but in an international state of nature (prior to establishment of an international legal order), the rule of law already exists within each state. Kleingeld argues that, although the only form of state compatible

with each individual's fundamental right to freedom is a republican state in which citizens give themselves laws through their representatives, the people of any kind of state should be recognized as politically autonomous and respected as such, since every state embodies the rule of law, even if very imperfectly. On this basis she contends that coercing a state into a federation would be wrong because paternalistic.

Unlike Kleingeld,¹¹ I think that rebutting B&H requires more argumentation than she offers.¹² They assert, contrary to both Kleingeld's and my view, that in the Doctrine of Right 'Kant abandons his position in *Toward Perpetual Peace* that states have "outgrown" the force needed to enter a juridical state' because they already have a juridical constitution internally (B&H 2010: 195). B&H dismiss that position as an error, saying that it is 'beside the point anyway, since logically an internal constitution *cannot* unilaterally govern the state's external relations to other states' (2010: 15, 196). Unlike B&H and like Kleingeld, I regard the fact that a state has an internal constitution (public law) as important in relation to international right, even though an internal constitution cannot unilaterally govern a state's external relations to other states. I agree with Kleingeld that the existence of the rule of law constitutes an important disanalogy between the two states of nature. However, I interpret its significance differently, as I explain below.

5. Kant on War and Interstate Coercion

In the Doctrine of Right Kant argues against war, both in the sense of the condition of war (the state of nature) and in the sense of hostilities. He says that, if states are 'in the condition of natural freedom' in their external relations to each other, then they are in a 'nonrightful' condition, which is 'a *condition* of war (of the right of the stronger), even if it is not a condition of actual war and actual attacks being constantly made (hostilities)' (Kant 1996: 482; DR, 6: 344). He argues that the condition of war is 'wrong in the highest degree', and that neighbouring states are obligated to leave it in order to enter a lawful condition (Kant 1996: 482; DR, 6: 344). However, he does not argue that war is never permissible.

Kant criticizes and rejects various types of justification for war, including some justifications for self-defensive war (in §56), but he also says (in §60) that it is obligatory for states in an international state of nature to unite against an 'unjust enemy' (an aggressive state that rejects moral constraints on its uses of force) and, if they defeat it, to

give it a new constitution.¹³ He does not, however, say that other states may initiate war against an unjust enemy. What he seems to mean is that states must unite defensively and may (if necessary) fight a defensive war.

According to Kant,¹⁴ peacefully allied states trying to bring about a lasting peace by establishing a rightful international condition are entitled to defend their peaceful alliance (since its purpose is not domination but securing rights). They are permitted to defend themselves and each other against attack (as in a standard defensive alliance), to penalize states that undermine or threaten the peace, and if necessary to forcibly change the constitution of an unjust enemy state. Intervention in an unjust enemy state (as a step beyond self-defence in reaction to aggression) is permissible, in view of its being a state and having a functioning legal system, only if it has committed certain offences, and the intervention is carried out on behalf of a pacific league or federation that has followed an appropriate procedure of deliberation and decision-making, and the intervention uses permissible means for permissible ends. Intervention in the territory of a barbaric power-wielder (as distinct from intervention in a civil war) is justifiable, in view of its not being a state, only if the intervention is carried out on behalf of a pacific league or federation that has followed an appropriate procedure of deliberation and decision-making, and the intervention uses permissible means for permissible ends. In both cases permissible means may include overthrowing the state's ruler; permissible ends do not include seizing territory or resources but do include rescuing people from genocide and enabling them to establish a legitimate government.¹⁵

In the Doctrine of Right Kant raises the question of whether it is permissible for a state to undertake war in order to establish 'a condition more closely approximating a rightful condition' (Kant 1996: 483; DR, 6: 344). It is important to note that he neither rules out such war as never permissible, nor asserts a right to war.¹⁶ Instead he argues against the idea that every state has a general right to go to war and can therefore rightfully direct its people 'to serve in a way full of danger to them' (Kant 1996: 484; DR, 6: 346). He does so by first arguing against the idea that a monarch or other despot has such a right, and then arguing that a non-despotic state cannot rightfully wage war unless the people 'give their free assent, through their representatives, not only to waging war in general but also to each particular declaration of war' (Kant 1996: 483–4; DR, 6: 345–6). This leaves open the possibility that the people of a republic might give their free assent to a war

undertaken in order to coerce a country into a juridical condition. The fifth preliminary article for perpetual peace¹⁷ apparently forbids forcible interference in any state's constitution and government, even if undertaken by one or more republics with the free assent of their people(s). However, non-violently coercing a state into a juridical condition would not necessarily violate this prohibition, under the right conditions.¹⁸

As I understand Kant, his position on the question of the permissibility of non-violently coercing a state into a juridical condition is the following.¹⁹ If securing lasting peace under the rule of law requires coercion, then this is permissible, but only for the purpose of achieving that goal, and only to the extent and in the ways necessary for effectiveness, and only by agents who have the authority to do so;²⁰ and if interstate coercion is not necessary to that end, then it is not permissible. Kant also conjectures that securing lasting peace under the rule of law does not require interstate coercion, since republics can choose to create an association for peace, and once the rudiments of international law are thus established, non-coercive progress toward the ideal world order is possible.

The case of a state that does not want to join a federation or state of states (due to mistakenly believing that states have a right to remain in a state of nature²¹) is a borderline or 'hard' case requiring careful judgement. Kant could have taken the position that a state's or people's wanting to retain its lawless freedom (*vis-à-vis* other states) by remaining in the state of nature is a mere wish; and that since the moral concept of right 'does not signify the relation of one's choice to the mere wish . . . of the other . . . but only a relation to the other's choice' (Kant 1996: 387; DR, 6: 230), such a wish would not render wrong all efforts to coerce the state into a juridical condition. Yet he did not take that position.

The following considerations support the view that attempting to coerce a (non-aggressive) state to join a federation would be, in many if not all cases, impermissible. Possibly the target state's response would be resistance, which could lead to all-out war. And even a short war could cause much destruction, not only physical but also social and psychological. A state's resistance to joining a federation or state of states might be due to rejecting all forms of the ideal of a juridical condition among states; such a case would be quite different from resistance for reasons such as those Kleingeld mentions, which concern fears about losing protections of rights and losing political autonomy. A state that rejects the ideal of a juridical condition among states is, in this regard, like an unjust enemy state; however, if it does not meet all

of the criteria of an unjust enemy state (e.g. if it has not been very aggressive towards other states), coercing it may not be justifiable. And if a state's people fear losing their rights and their political autonomy, then such fears, even if not well founded, must be taken into consideration as reasons against attempting to coerce this state into a federation or state of states. If making the attempt would be likely to aggravate the fears, provoke resistance and lead to all-out war, thus setting back progress towards the goal of a peaceful order of legitimate states securing everyone's rights, and if refraining would allow such progress to occur, albeit slowly, then it would be wrong to attempt to coerce this state into a federation or state of states.

Kleingeld is right that there is a significant disanalogy between the interpersonal state of nature and the international state of nature, due to the existence of the rule of law within states. It gives rise to a constraint on the actions of states towards each other that bears some similarity to the ethical requirement to treat other individual human beings with due respect for their humanity, yet is not an ethical requirement but instead a duty deriving from the postulate of public right (Kant 1996: 451–2; DR, 6: 307–8, including the footnote). Political leaders must avoid returning people to the state of nature (Kant 1996: 340–1; *TPP*, 8: 372–3, including the footnote). Therefore they must avoid acting in ways that cannot be justified except by undermining the authority of legitimate rulers including themselves, as well as in ways that cannot be justified except by undermining other conditions of the possibility of a just and lasting peace. Their proposed actions must not be self-defeating and their justifications must not be self-contradictory or internally inconsistent. For example, if either the ideal peaceful order among states, or the first step beyond the international state of nature toward that ideal, is a voluntary league from which every state has the right to withdraw at will, then the maxim of an action²² aiming to coerce a state into such a juridical condition would seem to be incoherent (since the action could not succeed; the coerced state, which does not want to be part of such a league, would withdraw); therefore such coercion would be impermissible. If coercion of another state cannot be rationally justified, then it is not a necessary means of fulfilling duties of right and therefore not a permissible means of doing so.

Depending how the ideal peaceful order among states must be conceived, it may never or almost never be possible adequately to justify attempting to coerce an unwilling state into a juridical condition; so it

may always, or nearly always, be wrong to do so. Kleingeld argues that Kant regarded it as wrong in all cases, due to the wrongness of paternalism. My own view is that, according to Kant, determining whether it would be wrong in any given case requires considering how a moral politician,²³ fully informed by the relevant particular and general empirical facts and sound probability estimates as well as aiming to fulfil all of the relevant duties of right, would ideally judge the question. However, due to space constraints I cannot fully present my own view here. Kleingeld has opened a path to this issue and facilitated discussion of it by resolving difficult interpretative questions that had obscured it. In this way among many others, her book is highly valuable. I thank Kleingeld for her interesting and enjoyable book on Kant and cosmopolitanism, which sends beams of light into the crystalline structures of Kant's political philosophy, thus drawing more appreciative attention to it and stimulating further worthwhile discussion of it.

Notes

- 1 Kant, *Toward Perpetual Peace*, 8: 357, as translated by Kleingeld (2012: 50). I use Mary Gregor's translations of Kant's texts, with the exception of Robert B. Loudon's translation of *Anthropology from a Pragmatic Point of View* (Kant 2006); for more information, please see the list of references. I use *TPP* to refer to Kant's text *Toward Perpetual Peace*, and *DR* to refer to his Doctrine of Right. I would like to thank Allen Wood, Jeppe von Platz, David G. Sussman and Loren Goldman for especially helpful comments and suggestions. I thank also the anonymous reviewers for *Kantian Review*, and Richard Aquila.
- 2 I attempt to do this in Bernstein (forthcoming).
- 3 Similarly, the discussion of sovereignty in Flikschuh (2010) omits analysis of the broader question of whether interstate coercion can be permissible.
- 4 I say a little more about Kleingeld's views about Rawls's Law of Peoples in Bernstein (2013). I do not (yet) fully endorse Kleingeld's interpretation of Kant's conception of the ideal global order, partly because I think it is not yet clear whether it can be defended against Arthur Ripstein's conflicting interpretation. Although Kleingeld argues against Ripstein's interpretation (2012: 52, n. 20), she does not specifically address his view that states cannot acquire rights. I say a little more about this issue in Bernstein (forthcoming).
- 5 Kant says that a people could want autocracy (Kant 1996: 480; *DR*, 6: 340). As Ripstein explains, 'despotism could be a possible form of the general will, because the arrangements made for the members of a despotic state are legal, and secure them in what is theirs' (Ripstein 2009: 339). Although not every organized use of power and violence is a legitimately constituted state, 'a constitutional system of government takes priority over the claims of natural right, even if the constitution and the positive law passed under it are flawed in any number of ways' (Ripstein 2009: 338).
- 6 Kleingeld quotes from *TPP*, 8: 356; here Kant uses the term 'outgrown' but not the terms 'tutelage' or 'paternalism'. I think that in this passage Kant may be referring simply to the fact that a state is a population organized by the rule of law, and that this constitutes a disanalogy between the interpersonal state of nature and the international state of nature (the significance of which I discuss later).

- 7 Kant, *Anthropology from a Pragmatic Point of View*, 7: 330.
- 8 John Rawls's Law of Peoples, which builds upon Kant's political philosophy, provides such criteria, as I argue in Bernstein (2009). See also Bernstein (2008: 64, n. 36).
- 9 I argue in support of this claim in Bernstein (2008). Ripstein offers a similar argument (2009: 336–43).
- 10 '[W]hatever is wrong is a hindrance to freedom in accordance with universal laws. But coercion is a hindrance or resistance to freedom. Therefore, if a certain use of freedom is itself a hindrance to freedom in accordance with universal laws (i.e., wrong), coercion that is opposed to this (as a *hindering of a hindrance to freedom*) is consistent with freedom in accordance with universal laws, that is, it is right' (Kant 1996: 388; DR, 6: 231). According to Kant, everyone has the right to live in conformity with the universal principle of right, which says: 'Any action is *right* 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' (Kant 1996: 387; 6: 230). The right to live in conformity with this principle, which Kant calls 'the right of human beings as such', is a right to live in a state under the rule of law. Kant says that to destroy a state is to wrong its people, 'which cannot lose its original right to unite itself into a commonwealth' (Kant 1996: 487; DR, 6: 349). Here Kant speaks of that right of every human being as a right of a people, as if a people could exist prior to the establishment of the legal institutions that make it possible (as Arthur Ripstein points out in 2009: 337, n. 27).
- 11 Also unlike myself at an earlier time; here I revise what I wrote about Kleingeld's argument in Bernstein (2008: 76–7, 87). My thinking about this question has benefited from the contributions made by audience members (including in particular David G. Sussman, Allen W. Wood, Richard W. Miller and David Copp) to the discussion that followed the presentations in the Author Meets Critics session on Kleingeld's book, *Kant and Cosmopolitanism*, at the March 2013 meeting of the Pacific Division of the American Philosophical Association, in which I presented an earlier version of this article. I thank both Sussman and Wood for very helpful subsequent correspondence and comments on paper drafts. I thank also Marina Oshana for organizing the session and inviting me to take part in it.
- 12 I argue against B&H's view about war in Bernstein (forthcoming).
- 13 However, Kant casts doubt on the concept of an unjust enemy by pointing out that both 'enemy' and 'unjust' refer to violation of the constraints of right, and says that the concept of a 'just enemy' also makes little sense: 'A just enemy would be one that I would be doing wrong by resisting; but then he would also not be my enemy' (Kant 1996: 487; DR, 6: 350).
- 14 I support this paragraph's claims in Bernstein (2008).
- 15 Here I revise the corresponding paragraph of Bernstein (2008: 93).
- 16 Here I correct my statement in Bernstein (2008: 90, n. 195) that Kant affirms that states in a state of nature have an original right to go to war with one another. This is B&H's interpretation of Kant. I argue against this interpretation in Bernstein (forthcoming).
- 17 'No state shall forcibly interfere in the constitution and government of another state.' (Kant 1996, 319; *TPP*, 8: 346).
- 18 Both Allen Wood and Jeppe von Platz have expressed this idea (in personal correspondence with me). Louis-Philippe Hodgson contends that a world state's actions would be restricted to protecting the rights of states, and that it would not interfere in their internal affairs; see Hodgson (2012: 130, n. 19).
- 19 I offer additional support for this interpretation in Bernstein (forthcoming).

- 20 In the conclusion of Bernstein (forthcoming), I say that not every *state* has authority to do so. I should have said that not every *ruler* does.
- 21 Kleingeld so interprets the case that Kant describes in *TPP*, 8: 357 (Kleingeld 2012: 51).
- 22 A maxim is a principle of volition. Examples of maxims given by Kant include: (1) 'From self-love I make it my principle to shorten my life when its longer duration threatens more troubles than it promises agreeableness.' (2) 'When I believe myself to be in need of money I shall borrow money and promise to repay it, even though I know that this will never happen' (Kant 1996: 74; *Groundwork*, 4.422).
- 23 According to Kant, a moral politician is one who takes the principles of political prudence in such a way that they can coexist with morals instead of 'fram[ing] morals to suit the statesman's advantage' (Kant 1996: 340; *TPP*, 8: 372).

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