International Theory (2015), 7:2, 294–329 © Cambridge University Press, 2015
doi:10.1017/S1752971915000056 First published online 5 May 2015

The legitimacy of the global order

HAYE HAZENBERG
Institute of Philosophy, KU Leuven/ FWO-Flanders, Leuven, Belgium

E-mail: haye.hazenberg@gmail.com

This paper presents a framework within which to understand the legitimacy of the global order called 'cosmopolitan sovereign equality'. It is Kant inspired and consists of three formal and three political duties. The formal duties are those of structural coherence, innate right and publicity, and the political duties those of legitimate enforcement within states, non-intervention between states, and free communication between entities within different states. These duties are constructed from a reading of Kant's Doctrine of Right and are defended in current International political theory debates on human rights, the role of the state and international law. The framework enables conceptualization of legitimate international relations between a world state and a system of autarkic states, and places a premium on states as legitimators of force, while working from the premises of moral cosmopolitanism.

Keywords: cosmopolitanism; Kant; legitimacy; human rights; sovereignty; international law

> It is only from the social order established among us that we derive the ideas of the one we imagine. We conceive of the general society in terms of our particular societies, the establishment of small Republics leads us to think of the large one, and we do not properly begin to become men until after having been Citizens (Rousseau, Geneva Manuscript, Book I Chapter 2).

This paper will present a framework within which to understand the legitimacy of the global order that is inspired by the work of Immanuel Kant.[1] The position of Kant is most clearly set out in 'Perpetual Peace' and in the 'Doctrine of Right', and will be summarized as 'cosmopolitan sovereign equality' (henceforth 'CSE'). CSE offers a way of thinking about the legitimacy of the global order that is halfway between a world state and

[1] Besides page numbers, the author referred the entries in the Metaphysics of Morals (which contains the Doctrine of Right) with 'MM', and to the entries in Perpetual Peace with 'PP'.

an autarkic collection of states. This intermediate global legitimacy is relevant today as almost all states are engaged in extensive cross-border global relations, without approaching anything close to a federal world state. We are hence faced with the problem of how to judge the legitimacy of this intermediate position, when it is no longer possible to rely on the partial viewpoints afforded by autarkic states, and not yet possible to ascertain legitimacy from the view of a global sovereign. In the debate on international political theory, two positions have attempted to answer this question: the John Rawls' 'Law of Peoples' position and the cosmopolitan 'global justice' position (Pogge 1994; Rawls 2001; Beitz 1999). For Rawls, global legitimacy is constructed through a social contract situation between representatives of 'peoples', who together arrive at a set of principles. For cosmopolitans, global legitimacy should instead be viewed from the perspective of individuals, who would together arrive at principles not unlike those chosen in domestic settings. Though it is debatable whether these two positions lead to diverging substantive conclusions about what responsibilities each of us have to foreigners, both accounts do have problems. For the Rawlsian position it remains unclear how principles agreed upon between representatives at the international level should affect domestic state principles. Do international or domestic principles take precedence? And who is responsible for integrating and mitigating between principles, when at the domestic level it is individuals who construct them and it is delegated representatives who are tasked with doing so at the international level? To whom are representatives then accountable, to other representatives or to their own people? The cosmopolitan account faces a related kind of problem. As individuals are ultimately tasked with constructing global principles, states are often viewed as mere impediments to global justice, construing justice as if a global sovereign viewpoint were real. A general cosmopolitan line of argument thus seeks to further legitimate international institutions and undercut the partial legitimacy of states, in order to conform global legitimacy principles to the direct demands of individuals. However, what if international institutions fall short of the legitimacy that democratic states are thought to have? Should we sacrifice representative state democracy on the altar of cosmopolitanism, and simply trust that moral cosmopolitans are less fallible political actors because their principles are more high-minded?

The problem of global justice is thus intricately linked with the problem of global legitimacy, because cosmopolitan justice principles must be, regardless of their moral imperative, legitimately worked out through the structures, boundaries, and allegiances that characterize our global order. Finer institutional issues, such as the role of statist representative democracy in furthering cosmopolitanism (Kleingeld 2000; Nagel 2005;

Ypi 2012), the role of international law and international institutions in guiding this process (Buchanan *et al.* 2006; Besson *et al.* 2010), the legitimacy of coercive cross-border intervention on humanitarian or economic grounds (Wenar 2008; Valentini 2011), and the structures through which citizens can hold power-holders accountable in this cosmopolitan process thus become pressing. The view that will be defended here, and that I derive from Kant, is that when moral cosmopolitan principles are legitimately integrated with our current (non-cosmopolitan) order, that order will over time melt into thin air, as each will come to recognize the priority of moral cosmopolitan relations over partial group relations. However, for that to happen, structural conditions must become similar for all persons in the world, so that each can come to recognize that the moral-political obligations each has to each other are equal and reciprocal in form. Much space will thus be spent on the formal or structural pre-conditions that enable such truly cosmopolitan action (which Kant called principles of Right), and only toward the end will the cosmopolitan contours of CSE become clear. Throughout the paper contemporary concerns will furthermore be interwoven with clues from Kant's work, often blurring the distinction between the two, because Kant not only offered substantive arguments, but also structural ways of thinking about global legitimacy. Though I do not have the space to argue that the interpretation of Kant is ultimately the correct one, I hope an engagement with Kant will shed some light on contemporary issues.

CSE will consist of two parts. In the first part, three formal duties will be outlined that are inherent in our understanding of 'right'. These are duties of structural coherence, duties of innate right and duties of publicity. In the second part, three political duties will be discussed that arise from our common global practices. These are duties of enforcement within states, duties of non-intervention between states, and duties of recognizing the right to make contact between citizens of different states. Where the political duties present a theoretical account of a stable system that describes our political reality, the formal duties present the force of our formal presumptions of right that operate on that system. The latter can be categorized as importantly 'practice independent' and the former as 'practice dependent'.

The account of legitimacy presented here can thus be summarized as follows: 'Any law x is legitimate when it A) is enforced by a legitimate authority within a state, B) does not coerce anyone not subject to the authority of that state, C) does not prevent individuals and non-state entities from initiating contact across the borders of states, and D) works towards the abolishment of differences in right between states for reasons of structural coherence, in accordance with innate right and conditions A), B) and C), so as to publicly justify any external acquisition'. The account of

legitimacy is contiguous between domestic and international law, as its standards apply to any law. This radical conclusion, which I believe no account of a legitimate global order can avoid, is that all law must be cosmopolitan to be legitimate. What emerges is a picture of equal states that hold each other rightfully together in the absence of force and through free cosmopolitan communication, for reasons of structural coherence, public justification, and our understanding of the moral basis of right. Each is only sovereign in the use of force over its subjects, and serves to guarantee the legitimate exercise of force for all persons in the world. In what follows, I will discuss the formal duties and their relation to theory debates in the first three sections, and the political duties in the fourth section. The first three sections take up more space because they give an introduction to both Kant's political theory and to contemporary debates, respectively, on the legitimacy of international law and human rights. Having presented the outline of CSE in the fourth section, the fifth section then addresses three common objections that can be leveled against it, while the second last section outlines some of the implications of CSE for looking at trade, war, culture, and federative integration. The last section concludes.

It is important to keep in mind that to build up CSE I use Kant's theory of right, which concerns the structurally legitimate use of force. Coercion, when used legitimately, ensures the external freedom necessary for individuals to exercise their autonomous agency, and Kant saw this as the principal political and legal question. The theory of legitimacy thus only indirectly addresses other issues that might be considered political like culture, trade, or civil societal action. As I hope to show with Kant, the free and just exercise of these other forms of political action are dependent on a legitimate exercise of force, so that a legitimate global order enables us to freely and justly politicize culture, trade, and social action when no one is illegitimately coerced. I will refer to these other elements of trade, culture, and social action in order to show what a legitimate order makes possible, but will not dive deep into the ways in which Kant thought they contributed to a just and free world. I furthermore locate these non-coercion elements in the space that Kant called 'cosmopolitan right', which cuts across both what we call the state and what we call the international. A true cosmopolitanism, which extends moral-political concern to foreigners as much as co-citizens, can thus only arise when a structure of legitimate coercion is in place; the outlines of which I hope to sketch here.

Much has also been made of the excessive formalism of Kant's thought, which becomes particularly pressing when applied to the contingent and chaotic elements that make up international politics. As I hope to make clear, Kant's critical method is not one that instructs us to adopt strictly formal solutions to the paradoxes we encounter in international politics,

but rather one that generates suggestions for how to deal with these inevitable contradictions (Walker 2009, 163–72). Every formal and political duty I discuss will refer to such a paradox and reveal how it is still present in contemporary debates. I suggest with Kant that its resolution must ultimately be sought in the autonomous, free, and moral action of individual persons. Each and every time Kant suggests that the most promising way to deal with these contradictions is to accord the power necessary to resolve them to autonomous persons, who must take up the enlightened responsibility to freely make their own world better (Kant 1999b, 458–59). Though these autonomous individuals are in the Doctrine of Right viewed as abstract rights-bearers, the introduction to the Metaphysics of Morals as well as Kant's other writings on culture, virtue, anthropology, and taste suggest that he does not think that persons should merely be viewed through this abstract and formal lens of legal autonomy (Kant 1999b, 370–71, MM 6:215–16; Muthu 2003, 122–200). For now, I ask to keep in mind that for persons to be truly free they must first of all not be unduly coerced, suppressed, or dominated. To how that might be achieved, I will now turn.

Format duty I: structural coherence

The first element that spells out the legitimacy of our global order is structural coherence, which defends rightful relations as a 'coordination' or 'compossibility' system, which reveals how the choices of persons and states can be mutually adjusted so that duties and obligations are logically connected. Structural coherence is of primary importance because many arguments about international legitimacy suffer from a 'moral–legal structural coherence' deficit. What is crucial for legitimacy is that claims such as rights are not merely taken as possessed by an individual, but that opportunities exist for linking the fulfillment of rights to obligations on the part of duty-holders (Shue 1988). The deficit is both moral and legal. It is moral because it signifies a 'justice gap' in our moral reasoning, preventing any one person engaging in moral reasoning from fulfilling such basic rights as a right to sustenance and life for people in dire need of them abroad. When we posit that all persons have a basic right to sustenance and life, we immediately find compelling moral reasons for not placing a duty on any one person or group. Because of the morally more demanding duties one might have toward one's family, nation, group of democratic co-citizens, because of the limits of one's power, or because of the absence of institutions that can amplify, structure, or coordinate the right fulfillment (Miller 2007). A theory of global legitimacy must hence grapple with this inconsistency. At the legal level the structural deficiency is as pressing. For just as with

moral duties, legal relations of right must hold between a right holder and an obligation bearer. Though there are many candidates for coherently construing these relations within a sovereign state system, it is less clear how structural coherence can be met within the order where no sovereign is present.

Take for example the theory of international legitimacy put forth by John Tasioulas (Tasioulas 2010), which he himself labels as a positivist 'service' conception. In his account, bodies that promulgate an international rule, be it a state, the WTO, an NGO, or the UN, are legitimate creators of international law only when 'following their directives better conforms to the reasons that apply to the entity that follows them' (Tasioulas 2010, 100). Whether I as a state or person should be obligated to follow an international law hence depend on the reasons I independently have for conforming to that particular international rule. Tasioulas constructs his account in this way to create room for entities to remain free (or independent) in their ability to create legal obligations that apply to them internationally. By bypassing the substantive reasons any entity might or might not have for following an international law as a generalized criterion, Tasioulas gives priority to coordinating right relations. Under conditions of pluralism, Tasioulas argues, it is more important to make free self-determined choices than to conform to the authority of a system of law that leaves my state or me no real room to either obligate or not obligate myself. Tasioulas account nevertheless remains *ad hoc* throughout, leaving open the possibility that discordance between different entities holding obligations might feature prominently in international law. In the words of Tasioulas:

> 'Certain PIL [public international law] norms might enjoy legitimacy with respect to some, but by no means all, of its putative subjects. The service conception admits this possibility, since whether the NJC [normal justification criterion] is fulfilled is a relational matter that can vary from one subject to another' (Tasioulas 2010, 103).

Thus, under Tasioulas account the structure of right as one that links duties to obligations breaks down. This is problematic, as it opens up a space in which powerful states can come to act imperially, as they can pick and choose which obligation they want to incur, and which ones they seek to circumvent. As the most powerful financial state, I might for example obligate all others under international law to support international debt repayment rules, while remaining free from strict repayment myself. While I do not see the reasons to obligate myself under these rules, I can still push for them to become law in relation to all others. Speaking about right hence becomes an almost pointless exercise. Though you might in the abstract posses a set of rights, your enjoyment of that right is under international law

wholly contingent on the willingness of all states to obligate themselves equally. If not all do, rights are reduced to mere aspirations.

This structural lenience can have problematic practical implications. I think it can lead to one of two ways in which its subjects will come to view the legitimacy of international law. The first is quite radical, and sees international law as licensing some relatively powerful states to codify what is in their particular interest, enforcing those rules that they have created. This tilts the power balance in a system of states toward the law-creating and law-imposing state, creating an undue structural domination of the most powerful state over the others. To make matters worse, the powerful state licenses its interests through law, creating the appearance that others are bound by generality and not by mere imposition. The remaining options for the other states thus become similarly problematic. These non-dominating states might reject the general force of international law, as 'rogue states' like Iraq, North Korea, and Libya might be thought to have done, or as 'dominated' states in sub-Saharan Africa have done in relation to international financial institutions and international courts. Non-hegemonic states might, however, also accept the tilted rules of the international law game, and simply wait their turn to jump in the structural loopholes created by hegemonic states. It is possible to construe Russia's recent actions in this light, as they make use of the interventionist pretext created by the Balkan and Gulf Wars to legitimize their interventions in the Ukraine. A less cynical second view is, however, also made possible by the structural leniency. Powerful states might not simply act as self-interested hegemons that seek to dominate others, but instead act as enlightened hegemons that want to codify what is in the general interest of all states. Without conforming international law to a structure that links duties to obligations, it, however, becomes almost impossible for powerful states to know what such an order would look like, as it is only by imposing a formal structural order on chaotic interactions that can law be truly general. To see more closely why this is the case, I now turn to Kant.

Kant offers an account of rights that incorporates the linkage of rights to obligations from the start. For Kant, right applies to three things: (Weinrib 1992; Kant 1999b, 387, MM 6:230) first to the external and practical relations between one person and another so far as their acts have influence on each other, second to the mere choices of persons, not their needs or wishes, and third to the form and not the matter of the relationship. This third point describes purposive activity free from its content, so as to leave it up to persons to choose what to do as long as their choice can be combined with the freedom of others in accordance with a hypothetical universal law. The condition for freedom is hence its formalism. Not because formalism adheres to some strict idea of abstract logic (O'Neill 1989; Flikschuh 2000),

but because it negatively creates a free space for substantive acts and deeds that is not determined by another's choice or by nature. For Kant, nature is empirically determined and thus inimical to freely chosen action, but human action can be free in imposing its will on nature and thereby change it.[2] The function of right is then to generate formal spaces within which agents are able to enact this free will, so that they can bend the natural world toward their moral purposes. When these formal negative spaces are absent, natural circumstances easily push us through our needs and wishes toward a certain determined course of action, making free moral choices more difficult, and law a mere reproduction of the empirical *status quo*. According to Kant, it is thus supremely difficult to know what any person or state would freely choose when a formal system of law is not in place. The structure of law makes autonomous and moral action possible, and the position of the enlightened hegemon that seeks to codify from his presumed free position what law would be general is not really that free to do so at all, as his sphere of action must first be formally and structurally delineated from the natural world in which it operates.

Right is for Kant and in CSE hence a 'right relation' or a spatial coordination system between persons, which creates a negative space within which the formal moral status of persons is spelled out, by way of a material accommodation of conflicting interests, doctrines, or desires. This spatiality takes right to be about a framework or structure that positions persons and states at the right distances from each other, so that their respective dependence on each other is equidistant (Kant 1999b, 389, MM 6:232–33). Right is hence not a good to be promoted, but merely a constraint on the conduct of others. It is a 'coordination' or 'compossibility' system, showing how the choices of persons and states can be mutually adjusted so that duties and obligations are logically connected (Ripstein 2009). The content of any individual volition (interest, desire, doctrine) is left open, so as to enable a framework of right conducive to freedom, and the spatial ordering of right is taken as prior to resolving conflicting interests. For example, when you set fire to the school I seek to attend, you do not necessarily pose a threat to my freedom as long as enough other schools in the area are present. Though you have violated my interest, it is not certain that you have hampered my freedom until I am unable to receive education. What matters is the general interest, not the particular one. Right is hence first a structure of relations and makes the accommodation of substantive issues

[2] This reading of Kant hinges on the acceptability of Kant's controversial invocation of the 'fact of reason'. I do not have the space to more fully discuss the deeper problems associated with this reading, but believe my reading can be combined with the 'reciprocity thesis' set out by Allison (1986).

secondary, and the structural coherence of a legal order makes it uniquely possible to set out the confines within which each can make truly free and general choices.[3]

Now Tasioulas' account seeks to preserve the substantive freedom of states similarly to the way Kant protects the freedom of persons. For Kant, the priority of an external structure of equidistant independence is similarly generated from the assumption that interest accommodation will touch on more substantive moral consideration, and that these substantive considerations require a different kind of justification. Kant's approach, however, moreover exerts a systemic pressure on legitimate relations to be structurally coherent, by demanding that right coordinates relations, or makes them compossible. The duty of structural coherence that is extracted from the Kantian account hence leaves ample room for a host of pluralistic substantive reasons for obligation, while exerting an *a priori* systemic pressure to make rightful relations structurally coherent. States must thus legislate as if they did so under a universal law that obligates others as much as themselves, if they want to be sure that they themselves act free from their naturally determined interests and wishes. When a state thus seeks to bind others under an international law, it must similarly bind itself and expect others to act similarly under that law. Many questions, however, remain, such as those pertaining to extent of the specification of duties under Kant's account for both states and individuals, and whether they might in the end not be substantive after all. Another question concerns the contiguity between the obligations of individuals under right and those of states, but only after the full system of CSE has become clear is it possible to go into them.

Formal duty II: innate right

The second formal duty in CSE is that of innate equal freedom. It outlines the second element of an account of legitimacy, which concerns the

[3] Again, one might object to this overt formalism on the ground that it abstracts away from any particular political problem, which in the end might be said to be what politics is really about. Only within the space that a legitimate rightful structure creates, however, these truly 'political' issues can come to be freely and legitimately resolved. Already, the framework sketched here consists in this way of two levels: one where legitimacy is constituted, and one in which legitimate relations are worked out. Here Kant is at his most Hobbesian, as Hobbes is most well known for conceptualizing legitimate politics to only be possible under a sovereign constitution. However, where for Hobbes it is sovereignty that does most of the work at the initial 'constitutive' stage, Kant sides with Rousseau in construing the constitutive stage as operating through the (formal) elements of law. This innovation will come back later, as it allows Kant to open up the anarchy of international relations through reciprocal law-making, something that is scarcely possible from the Hobbesian account.

intelligibility of the category of equal and free rights in a world characterized by a plurality of values. Because even when we accept that the formal structure of law is required for us to act freely and, possibly, morally, it is as of yet unsure why every person should have the equal rights to do so. In many places in the world, and even in Kant's own work,[4] it is thought that freedom is not equal, so that the wills of some people should be subjected to the wills of other people. Slavery comes to mind, or the continuing denial of equal rights to women. In our time, international human rights treaties have fortunately sought to address these rights inequalities through international legal cooperation. However, what is the basis on which these presumptions of equal individual freedom can be defended against those who do not share them? Must human rights be like 'natural rights'? And, more problematically, should one respect the equal freedom of those who contest its specific western elaboration? Might the idea of 'equal rights' even be culturally specific, and if so, to what degree should any global extension of the idea of equal rights be sensitive to cultural differences? A legitimacy account must hence say something about the scope of values that ground political morality, the possibility of arriving at a moral consensus in a situation of deep disagreement, and the implications for international political theory when such consensus is lacking. After getting a better grip at what is at stake by looking at this debate as it has been held in human rights theory, a suggestion for its resolution will be unearthed from a somewhat freewheeling interpretation of Kant's concept of innate right.

There are broadly three accounts that try to grapple with the universal intelligibility of the concept of right in human rights theory. The first specifies human rights through a common moral core, which is, like a kind of natural right, simply innately shared by all human beings. As all share this moral property, such as a basic human interest or capability, political authorities must abide by it, or so it is argued (Nussbaum 1997; Griffin 2009). The second way specifies human rights as a kind of overlapping consensus, where their content is determined by the role they play in international politics. Human right norms serve as a political practice, within which it is possible to globally communicate about moral-political issues. This second way says nothing conclusive about the normative limit that a common moral core could provide, subsuming such conclusions under the priority of the discursive role of global human rights practice (Rawls 2001; Raz 2007; Beitz 2011). The third way is different still, and

[4] Kant did not think highly of women and was at times racist, which severely detracts from any universalist conclusions one would seek to derive from his thought. For careful discussions on what beliefs Kant held and how to deal with them in light of his universalist aspirations, see Kleingeld 1993, 2007.

defines human rights as a criterion of social and political membership in a community. The normative underpinnings of the rights are left unspecified as in the second account, but are now related to full inclusion and participation in the collective goods of a community. In contradistinction to both the first and second account, the third defines the content of human rights by way particular communal practices, and not through global intercultural interaction, nor through moral reflection on the normativity of right (Taylor 1999; Cohen 2004a). All accounts, however, have serious problems.

What speaks against the first account is what Allan Buchanan calls 'the parochialism objection',

> 'according to which what are called human rights are not really universal in the sense of being rights of all individuals but instead merely reflect (1) an arbitrarily restricted set of moral values; or (2) an arbitrary ranking of certain moral values' (Buchanan 2008, 40).

The objection cuts both ways. To be truly universal, human rights cannot reflect a culturally arbitrary ranking of moral values, but in order to be recognized as right they must reflect in some way the western tradition from which they originate. The first account errs on the universalism, while the second and third accounts are in danger of erring in their neglect of the western-based origin of the tradition of human rights. The second account is furthermore vulnerable to an objection about power. Because if the moral content of human rights is defined by the role human rights play in global political practice, it is at least possible that those with the most power in the practice are able to fix its meaning. In no way can human rights then be said to really guarantee equal rights; they merely reflect a practice of power relations. The third account faces a related problem: if human rights are defined by the role they play in including persons in a community their content in different communities could differ beyond recognition, and they might not at all apply in communities where nothing compared to a right exists. Proponents of the third account therefore painstakingly attempt to locate something akin to a right in diverse belief systems such as Islam and Confucianism, when it is doubtful if any such outside victory can count as decisive.

A tension hence exists in human rights theory between the requirement to ground right in a shared human moral core, and the limit to knowing what this shared human core consists of when we take it to be shared by all human beings. On the one hand, human rights need to be grounded morally, but cultural and political differences as well as historical contingencies limit our ability to do so. Fortunately, this tension and a solution to it can also be found in Kant's account of innate right. As with human rights, innate right seeks to morally ground legal rights. Innate right is

defined as 'Freedom', in the sense of being independent from being constrained by another's choice, and as 'the only original right we have by virtue of our humanity' (Kant 1999b, 393, MM 6:237). The best way to understand innate right is as the formal presumption of being a legal subject that any system of law requires. When Kant seeks a moral basis for legal rights, he starts from the 'fact of ordinary right practice', where we experience being subjects of the law. Innate right furthermore 'already involves [several] authorizations: innate equality, or independence from being bound by others more than one can in turn bind them, as well as a human being's quality of being his own master' (Kant 1999b). Further authorizations are those of being presumed innocent, as well as of being authorized to do anything to others that does not diminish what is theirs, which primarily means communicating one's thoughts freely. Innate right prevents any person from subjecting another person to their will at the most fundamental level.

Kant is, however, an anti-foundationalist, and he thus rejects positing substantive moral limits by way of reason. Innate right must hence grapple with the tension between the need for one foundational right to make sense of the moral dimension of right, and the difficulty of arriving at such a right *a priori*. In order to avoid an infinite regress when speaking about right as relations between persons, Kant needs to posit an absolute foundational value that places limits on these relations (such as equal freedom, 'being one's own master' or do not kill). However, in order to avoid simple declaratory statements that cannot be proven, nor unequivocally shared by everyone, Kant must find other ways of arriving at these most fundamental moral limits than simple declarations of faith. The way out for Kant is through formal transcendentalism, or by talking about the conditions of knowing what we think we know about rights. This means looking for the fundamental moral limits to what rights can be within actual systems of positive law themselves. With Kant, positive law is divided into private and public right, both of whose networks of external relations between the choices of persons are 'regulated' by innate right. External relations between persons as expressed in rights are 'acquired rights', or rights that enable a person to acquire something external, such as a physical object, a portion of another person's time or labor through a contract, or the guardianship of a child. Acquired rights are then the material conditions of specifying what really belongs to me, you, or someone else (Kant 1999b). Now, Kant starts from the idea that it is on the one hand possible in a legal system to acquire something external, because people *own* things, and from the idea that on the other hand legal subjects are under a presumption of innate right to acquire external objects, because we presume it possible to *rightly* own a thing. These two experiences inform each other. I can only

rightly acquire something external (a table) when you presume that I have some morally rightful status, and you can only presume that I have a morally rightful status by actually seeing me choose to buy a table. Innate right is hence the formal condition of a moral status in right, required by the material spelling out of legal rights claims between persons, *and vice versa*.[5] Rightfully acquiring something requires presuming all to have equal moral status, and presuming all to have equal moral status requires spelling their status out in the real world through material acquired right claims. In other words, the moral grounding of right requires material systems of positive law to be fully fleshed out, just like any system of positive law requires a moral grounding of rights to be considered a system of positive law at all. Moral rights are then meaningless outside a system of positive law, while systems of positive law such as human rights law can be morally grounded by showing that we cannot think about rights without presuming each to have equal moral status.

Please note that the concept of 'ownership' is here largely illustrative. The point is that expressing a right claim in terms of material external relations ('I must be allowed to leave the house', 'I must be allowed to drive a car') makes my freedom intelligible and actual. 'Imposing' equal freedom on someone is hence nonsensical, as once persons make free (moral) choices additional reasons to comply with these choices become superfluous. Human rights law can thus at most extend the external conditions that are conducive to 'moral' freedom, not make persons 'autonomous', or internally 'free'. What this means in practice is that the project of pushing human rights law forward must see those subjected to human rights law as autonomous co-authors of that law, and take the idea that some might choose to adhere to cultural norms seriously. The moment we ascribe to a person legal status under human rights law, that person becomes as equally free as we presume ourselves to be under the dictates of our held moral beliefs. Extending human rights law around the world so that it comes to constrain ever more powerful actors thus means according more power over human rights law-making to the individuals that it seeks to protect. Both human rights law and its substantive moral underpinnings, which we presume it to have, must thus change as it extends over the globe. This is not a failure of our own commitment to its moral foundations, but precisely a confirmation of it. If we pretend that the moral demands encased in human rights law have truly universal reach, we must allow others to modify it so that we can come to understand more about the ways in which political morality can truly be universal.

[5] The author thanks Katrin Flikschuh for showing the way of interpreting innate right.

By applying Kant's treatment of innate right to human rights theory, it thus becomes clear that a moral grounding and the contingency of positive law are intricately linked. It is only through an extension of a system of positive law that it is possible to come to a fuller understanding of the moral contents of human rights, while at the same time constraining this extension through the moral limits contained within human rights. When extending systems of right outward, that is, from the particular historical tradition and geographical position within which we operate toward other parts of the globe, more is revealed about the moral universality of human right. And while doing so, those engaging in human rights practices are at least bound by the presumptions of human rights, which formally constructs other subjects as co-authors. Rainer Forst is thus correct when he asserts that it is primarily the basic (formal) right to justification that grounds all human rights, and not 'autonomy' when understood as a kind of natural right (Forst 1999). The point is that the search for a fixed moral grounding for human rights is necessary as a transcendental condition for the intelligibility of right, but that conclusively specifying such a ground undermines its rationale. The practice of human rights is thus not helped by outlining a deep moral basis as authors such as James Griffin suggest (Griffin 2009), as human rights are about creating an external legal framework within which moral consensus might, but might also not, arise. Jacques Maritain, who reported back from a survey of philosophers on the justifications for human rights around the time of the inception of the Universal Declaration, was thus right to conclude that 'we agree about the rights but on the condition that no one asks us why' (Moyn 2012, 67).

However, what would a material spelling out of the innate presumption of equal freedom encased in human rights look like under conditions of structural coherence? A more practical proposal for materially spelling out the formal force of human rights has been set out by Allan Buchanan. According to Buchanan, human rights are social-epistemological concepts, as their moral guidance in setting up global legal practices requires 'institutions that contribute to the articulation of human-rights norms'. These institutions

> 'ought to provide venues for deliberation in which the authority of good reasons is recognized, in which credible efforts are made to reduce the risk that strategic bargaining or raw power will displace rational deliberation, in which principled contestation of alternative views is encouraged, in which no points of view are excluded on the basis of prejudicial attitudes toward those who voice them, and in which conclusions about human rights are consonant with the foundational idea that these are moral rights that all human beings (now) have, independent of whether they are legally recognized by any legal system' (Buchanan 2008, 63).

In this process, human rights norms can both morally steer and practically elaborate international legal practice. Human rights norms serve as a limiting formal condition on the functions of international law, while at the same time requiring human rights law's elaboration within institutions that allow for all those subject to human rights law to be equally free co-authors of those laws. The relation between human rights institutions and the system of states is, however, more tricky than it is made out to be by Buchanan here. I will return to that relation in the sixth section below.

Formal duty III: publicity

The third formal duty of a legitimate global order is the duty to publicly justify private right. It shows why the duty to fairly allocate private rights such as property, contract or status does not depend on any particular political or economic system, but must inform any practice of right in the same way the presumptions of innate right and structural coherence do. This is worthwhile for two reasons. The first is that it allows us to think about 'distributive' relations as affecting all persons in the world, regardless of their implication or contribution, and the second is that it provides pointers for the direction to which these 'distributive' relations should morally conform in order to be legitimate. I will first discuss Kant's system of external right as set out through the concepts of private and public right, and then relate these to distributive relations more generally.

Having set out the conditions of structural coherence and innate right, Kant then moves to the proper rightful system of external relations. The puzzle Kant begins this discussion with is how it is possible to have a rightful relation to an object external to me, outside of just physically holding it. Private possession concerns more than just having something in our hand, and my claim to something external has to extend in time and space beyond the position I am currently in. Kant describes three distinct ways in which I can have something external as my own. I can first have an external claim to a thing, which is a relation of property. Second, I can have an external claim to the performance of a specific deed of another person, which is a relation of contract. And third, I can have 'a right to a person akin to a thing' (Kant 1999b, 401–03, MM 6:245–49), which is a status relation such as parental guardianship. However, in order to possess something in relation to all others even when I am not physically in possession of it, I must in a sense be in two places at once: in the place I am physically, as well as in the place where I have my external right. The first important innovative conclusion Kant arrives at (against Locke and later Hegel) is hence that property, contract, and status are all merely intellectual constructs (Kant 1999b, 406, MM 6:252) between persons with no real counterpoint

in reality. I do not magically mix my will with the world, but merely come to an agreement with others that I have a claim to something external.

Kant thus constructs an account of external relations that stands in direct contrast to the one advanced by Locke, who thought that individuals privately acquired things and only had to justify such appropriation collectively by leaving 'enough, and as good, left in common for others'. For Kant the public and private dimensions are from the start intimately linked, so that any private acquisition that seeks to exclude others from it must be justified publicly to be legitimate (Kant 1999b, 408–09, MM 6:255–57). Kant pointed out against Locke that we can never really know what is 'enough, and as good, left in common for others' privately, so that when we think about the external acquisition we run into a political paradox. On the one hand, for moral rights to be grounded in positive law, we must be able to use external objects. We are directed to 'take what you can to be who you are', in classical liberal fashion. On the other hand, however, as the world is spherical, space is limited (Kant 1999b, 489, MM 6:352; Flikschuh 2000, 113–44). Any acquisition of something external therefore prohibits all others from acquiring that external thing, significantly limiting their freedom. Not because resources are limited, but because a legitimate global order that is structurally coherent and respectful of innate right creates equal and reciprocal coercion. This immediate contradiction appears to collapse any idea of right, as any acquisition of an external object is a limitation on the freedom of all others (Kant 1999b, 408, 411–13, MM 6:255, 6:258–61). There thus seems to be a trade-off between freely imposing our will on the world and structuring law so that all are in an equal position to impose their will at all times. Now Kant offers a 'publicity' solution to this problem by categorizing any acquisition of an external object in positive law under 'permissive' or provisional right (Kant 1999b, 406, MM 6:247) that must be made conclusive. As we reciprocally constrain the freedom of others by putting them under an obligation to respect our acquisition, any acquisition over external objects already implicates us in a justificatory relation with them. The only way to therefore secure our private acquisition is by reciprocally and publicly working out what that justificatory relation entails. From the moment anyone acquired an external object, him putting others under a rightful obligation to respect the acquisition was thus premised on setting up a system of rightful law that covers all other persons in the world. The three formal duties are hence not just structurally legal and innately moral, but also cosmopolitan. Any private, or particular, acquisition of something external must thus be publicly justified. Though this reading might seem somewhat controversial, in a global context this means that even 'public' relations within states are private or provisional relations that must be globally publicly justified.

Now it is often argued that this Kantian relation between private and public relations is not relevant to political and economic 'distributive relations' in the contemporary sense, but this is far from the case. Instead of seeing duties of distributive justice arise from some ex post effect of either natural acquisition or profitable cooperation, distributive duties are for Kant instead immanent in the structure of right (Ripstein 2009, 270–72). For Kant, Right generates 'distributive' duties because it structurally links the equal freedom of one person to that of another. It does so under a presumption of formal legal equality, which is contained in the notion of right, and must be structurally explicated through systems of positive law. It is as with collective healthcare or education provision in a state: we do not receive either because we are coerced, skillful private appropriators or because we are emotionally involved with our co-nationals, nor because we have or have not reaped the benefits from the collective economic cooperative system, but because it ensures that each remains structurally equidistant from others. If some but not all can enjoy quality education and healthcare, we must presume that our system of right has a structural imbalance tilted toward some, or at the very least that preventable sickness and illiteracy prevent some from helping us understand what an equidistant structure of right would consist of. From the 'publicity duty' it is thus possible to generate a formal reason distributing private rights so that each becomes as materially independent as any other, which could go a long way toward an 'egalitarian' distribution. What formally generates this publicity duty is then not necessarily an intuition about fairness, but our conceptual grasp of the exclusionary nature of the idea of material control over the external world. Precisely because we think private rights must be exclusionary held by one person or entity, any such external acquisition must be justified to each and every other person in the world.

However, why is it important to already link these two dimensions of private and public property acquisition at the formal level, and to distinguish them from political and economic structures that obtain within our shared political practice? The most important reason is that the formal publicity duty pushes us to with others enter a public condition when we privately interact with them, thereby imputing a legislative impulse on our political system in which we must use international public institutions to justify any locally held private form of property. This impulse might seem worrying and reminiscent of colonial expansion, but Kant imposes great structural political limitations on that impulse under the political duties. The formal duty is instead a corrective to the Lockean unilateral appropriation license, whose private expropriation of any resource is more recognizably colonialist. Arguing with Locke that private appropriation can be justified when enough is left, and when the private use of labor can

be shown to increase the value of a good many times over, is only right when done so publicly and accepted collectively. In more practical terms, both the idea of a private market that elopes public regulation and the idea that domestic private acquisition does not incur global cosmopolitan duties are thus mistaken. The effects of any (global) market must be publicly justified through shared institutions, and the exclusionary acquisition of things that might be considered common, such as natural resources, knowledge, and art, must be justified to each, even those not directly implicated in the (domestic) system that made its acquisition possible. I will return to these issues of international trade and international economic cooperation in the sixth section below.

Political duties: domestic, international, and cosmopolitan

Having outlined the three formal duties of CSE, the three 'political' duties will now be treated. These duties deal with the enforceability of right in non-ideal circumstances instead of with our formal presuppositions. While this theorization of our political condition is in line with the three formal duties, being structurally coherent, respecting innate right and offering avenues to publicly justify the acquisition of external objects, it furthermore structures disagreements over substantive issues, dealing with classically 'political realist' problems such as enforcement, war, sovereignty, the rule of law, and the separation of powers. They moreover concern non-ideal situations such as the contingent existence of legitimate states. The three political duties are derived from three political practices. The first practice under which individuals relate to each other and to each from the perspective of the whole is called a state, and will be referred to as domestic right below. The second practice is that in which states relate to other states, and it is called international right. The third practice is that in which individuals of one state relate to other states, to multi-and trans-national organizations and to individuals of other states, and is called cosmopolitan right. From the three practices three political duties obtain; duties of enforcement within states, duties of non-intervention between states, and duties of recognizing the right to make contact between citizens of different states. As for Kant, 'if the principle of outer freedom limited by law is lacking in any one of these three possible forms of rightful condition, the framework of all the others is unavoidably undermined and must finally collapse' (Kant 1999b, 455, MM 6:311).

The political duty of enforcement within states is generated from the legitimate authority within states, which arises through a collective law to which every citizen consents. The legitimacy of the state is conceptualized by way of three problems that we run into when moving from our formal

https://doi.org/10.1017/S1752971915000056 Published online by Cambridge University Press

presuppositions to their application to fallible human nature: unilateralism, a lack of assurance, and indeterminacy (Kant 1999b, 455–64, MM 6:313–19; Ripstein 2009, 145–82). First, persons cannot just appropriate external objects and put all others under a similar obligation without a third-party authorization. I might find that a particular thing belongs to me, you might disagree, and in order to avoid resolving our dispute through force a collective body has to stipulate a rule that holds for all equally and authorizes each one to make use of his or her external acquisition. However, even when a rule shows how each can bind another reciprocally, the second problem of assurance remains, as there is no guarantee that either you or me will act in accordance with the rule. We might simply continue to deceive each other in thinking that we will adhere to it, and in reality continue to act in our personal benefit. In order to resolve this prisoner-dilemma type problem, an authority should coerce everyone to abide by the rule. Only when I have the assurance that you will abide by the rule that obligates all others to respect my right can I act on that right (Stilz 2009, 35–55). A third problem, however, remains, as rules will by definition be 'insufficient to classify particulars falling under them' (Ripstein 2009, 168). Because if a rule needs another rule to be applied to a particular case, the new rule would itself also need another rule, and so forth *ad infinitum*. In order to overcome the indeterminacy that rules give rise to, some body has to apply general rules to particular cases, judging in what way and to what degree the case fits this or that rule.

The immediate application of an equation of the conditions of legitimacy with the exercise of coercion would, however, lead to despotism. When a person acts as a direct enforcer, the double function of coercing and legitimation is fatally conflated. No person, not even the people as a whole, can coerce another person directly as it would then violate the conditions of equal freedom, placing the coercing person above the coerced person. Though the coercion might be in accordance with a collective rule to which all might consent, its execution by one or more members will in reality violate the presuppositions of citizenship. Any system of right therefore 'can only be a system *representing* the people' (Kant 1999b, 481, MM 6:341). As the legitimate constitution of a collective people is just a 'thought-entity', it must never be a material person coercing other persons in a state. What coerces is the law, and the persons assigned public offices by way of the law. When a public official executes law it thus does so under a mandate that all autonomous persons have willed, and not as citizen. Similarly, when a system of right is in place, citizens can never act to overthrow it completely, but act only through changes in the law itself. Existing systems of right in the form of states must therefore be taken as given, as they offer a unique way through which we can legitimate force collectively in non-ideal conditions. It might, however, now seem like we are stumbling into a justification for states.

However, yielding to seemingly contingent existence of states as legitimators of force gives rise to a twofold problem (Flikschuh 2010). On the one hand, for right to be conclusive and not merely provisional, right has to extend to all persons in the world. Through peaceful integration, where none is forced contrary to right, the claims of all persons in the world must be brought in accordance. However, on the other hand, right can only be made conclusive for persons within a state that discerns, enforces, and determines the use of force through law, and several states exist in the world. The conditions for the rightful exercise of force thus contradict the imperative to extend systems of right to cover all persons in the world. The solution, however, lies within the problem itself. Precisely because the use of rightful force is limited to states that discern, enforce, and interpret, it will remain impossible to legitimate force between states. At the same time, because it is necessary to adjust our systems of domestic right in such a way that they guarantee a structure of equal right for all persons in the world, persons must be made to interact freely across state borders, so that domestic right within states serve the interests of all persons in the world and not merely those within it.

The second practice of international right is thus the practice that obtains through the relation between states (Kant 1999b, 482, MM 6:343, 319–20 PP 8:346–48, 325–28, PP 8:354–57). It generates the second political duty, which is the negation of the use of force between states. As the absence of a shared authority negates the legitimate use of force, no force should be used between states or between citizens of one state and another. Furthermore, as there is no legitimate body that can authoritatively specify what constitutes rightful force internationally for all states, it is *also* impossible to discern conditions of rightful force outside of our own domestic right system. Not only is the use of rightful force through international right unknowable to us, but the rightful use of force on persons in foreign states whose law does not subject us is also unknowable. As citizens of one state, we experience the mediating role of right in legitimating force by subjecting ourselves to the law of our state, but because we are not subject to the law of another state, we cannot structure rightful force equally for foreigners. A second reason follows. If we presume right to exist, as innate right imparts, it must have been possible for right to exist in one place or time. However, because we are ignorant of the legitimacy of rightful force beyond our own state and because persons in other states are equally ignorant of the legitimacy of rightful force in our state, using force against any other state could presumably destroy a condition more closely approximating the ideal legitimation of force through a republic than the one to which we are subject. Such destruction would destroy an advance in right overall. Thus, because we are constrained in knowing how to

rightfully use force by our law-governed coercive state apparatus, and because we must assume that right is being approximated somewhere and at sometime, we are prohibited from applying force beyond our state. Any relation between states should thus be geared toward preventing the use of force between them, as rightful force can never be known nor legitimated to those not subject to it. The point is not that we cannot have any knowledge of right in other states, but that we can never have sufficient knowledge of that right to authorize force beyond our own borders. What these arguments pertain to is that under the second practice of international right there must be a presumption of 'sovereign equality' where it comes to the use of force. If we presume that our own state legitimately uses force, we must presume the same equally for all others.

The third political duty arises from the cosmopolitan practice (Kant 1999b, 328–31, PP 8:357–61, 489, MM 6:352–54) and operates on cross-border relations that remain, and it is the duty of recognizing the right to make contact between citizens of different states. The relations of cosmopolitanism are those between individuals of different states, of individuals of one state to another state, as well as of non-state entities such as non-state peoples and stateless persons toward other states and individuals. The form of the cosmopolitan practice is hence very extensive. In contemporary parlance, it would include international NGO's like Greenpeace and Amnesty International, digital communication, multinational corporations, indigenous peoples, supranational organizations, global public–private partnerships, and global activist movements. However, as rightful force cannot operate on these relations, cosmopolitan right is limited to the conditions of universal hospitality. Hospitality is 'the right of a foreigner not to be treated with hostility' (Kant 1999b, 489, MM 6:352; Niesen 2007), and its central components are to present oneself to society and to engage in commerce. Cosmopolitan right is hence a communicative right, and it provides for all persons at the borders of foreign states the right to make communicative offers. These offers may be offers to engage in modes of exchange, or of 'offering oneself' for community with them. No state should thus prevent or hinder the expression of offers any person wants to make under its jurisdiction, and states are permitted to use force in preventing the hindrance of foreigners who make communicative offers. Importantly, however, all offers can be rejected, and the person making the offer can be turned away, as long as the person will not perish as a result. That no authoritative laws are set up to structure right within the cosmopolitan practice does, however, not mean that no valuable social interaction can take place. Though fraught with conflicts and uncertainties about right, within the cosmopolitan practice cultural, aesthetic, and even moral relations can flourish.

Now, though the content of cosmopolitan right might seem limited, its strength lies in its conjunction with both domestic and international right. While the existence of distinct states seems to arbitrarily limit the use of force through international right, cosmopolitan right corrects this seemingly contingent delineation of all persons in the world under separate conditions of right. It does so because cosmopolitan right enables the *mutual adjustment* of systems of domestic right so as to bring them in conformity with a global structure of right that holds equally for all. Travel, international communication, migration, and non-forceful economic exchange all work to make the effects of any particular system of domestic right visible to all those not subject to it. The point is not to enable rightful coercion beyond state borders, as this would require more assurance than interactions through cosmopolitan right could provide. However, through cosmopolitan right, domestic right can come to be sure about not coercing persons not subject to their regime. Through cosmopolitan right, domestic states adjust their laws to each other so that they only subject those present on their territory and no others. An example. It has recently become clear that the disparities between domestic tax regimes enable some people to exempt themselves from taxes, while preventing many states from adequately raising the revenues that maintain their systems of right. At a 2013 G20 meeting leaders from many states agreed to 'close the tax loopholes' and adjust their tax systems to each other, so that no multinational corporation or citizen could systematically avoid paying taxes by virtue of its multiple locations. This measure will bring more persons under systems of domestic right and strengthen them by virtue of their material contribution. Without being forced, the information shared through the cosmopolitan communicative right hence moved all persons closer to a coherent global structure of right, where domestic systems of right do not subject foreign persons or states, but merely those within their jurisdiction, while at the same time bringing more persons under the purview of domestic systems of public right. It legitimated the global order further.

Objections: sovereignty, democracy, and hegemony

Now two objections are often leveled against the Kantian order, which apply to CSE as well. The first objects to duty of non-intervention between states and the duty to work through states, and the second to the defense of states as legitimate lawmakers rather than as democratic associations. However, when seen from the perspective of the final picture of CSE it becomes clear why one should place such a premium on states as legitimate lawmakers. Working through the authority of the state, even when it is not fully legitimate yet, and *prima facie* prohibiting intervention in other states

under the presumption that they can better legitimate force than any other state can even when they are scarcely legitimate, seems unrelentingly strict. There are, however, two mutually reinforcing reasons for why the alternative is worse. First, an almost unconditional adherence to the 'thought-system' of domestic right is essential not only for mediating between the ideal and non-ideal and between the ruler and the ruled through law, but also for the global extension of right. Only by working through the legitimate structures of domestic right to which we are subject can we come to understand more about right, and work not only to structure our own state so that no citizen coerces another, but also that no citizen coerces a foreigner through the state. The destruction of our own system of domestic right then does not so much spell bad news for ourselves, but also for all other persons whose acquired rights have to be brought in conformity with right all over the globe. When one state falters, the possibility of bringing the provisional acquired rights of all under in conformity with those of the failed state is destroyed. This reason comes from cosmopolitan right, and the recognition that world is spherical so that we must all inevitably come into contact with one another. The second reason stems from international right, and concerns the judgment of systems of domestic right that are not our own. Just because a foreign state is despotic, it should not be overthrown. The duty of non-intervention between states hence denies states the right by any one state to overthrow any other state when it is perceived as illegitimate, or even claiming publicly that the overthrow of that one state should be done any other state. In order for that to be rightful, it would have to be made from a general sovereign position, which does not currently exist. In a sense, a lack of consensus on authorizing international force in the UNSC should thus be a sign that the international system of functioning effectively, rather than a cause for moral concern.

The insistence on states as legitimate lawmakers instead of as full democratic associations reinforces the point. When states are taken to be 'thought-systems' representing people through law instead of merely associations expressing the contractual obligations between all those subject to it, the power of the state *vis-à-vis* all persons in the world not subjected to it is watered down. Right works through states, and serves not only those subject to it as in a democracy, but all persons in the world. The representation of persons through law enables a revision of domestic right that takes into account the structures of right in other states. When we view the state as democratic association, where the state is represented as a contract between the people inhabiting it, no such revision is even possible. We can thus learn from Kant that there are really two opposing ideas at work in what we now call 'democracy'. Democracy as an institutional representative state structure is nothing but the most legitimate entity possible to use

force against its subjects. However, democracy as an ideal is more radical and unstable. The ideal of democracy is really unbounded, as it presents an ideal in which each person in the world has an equal share of power in decision making. In this ideal sense, states are inimical to democracy, as they arbitrarily limit citizen power to the confines of the state. CSE locates this radical unbounded ideal of democracy under cosmopolitan right, and highlights that it can only come to fruition under very strict conditions. States must respect each other as sovereign equals, they must view each person as an autonomous lawmaker, and they must be egalitarian in their distributive actions, so that each person can truly enact their equal share of power.

It can still be countered, however, that there is no absolute guarantee that right will develop so that all systems of domestic right will mutually adjust. When systems of domestic right do not adjust, it can be because states can split up, lose their rightful equality through economic imbalances, colonize other parts of the globe, or simply resort to external violence against other states. However, when the principles of sovereign equality are obeyed, mutual adjustment will take place. One can therefore now see why a simple replication of right within states to the global level in the form of a world state is politically undesirable. When force is abolished and communicative interaction takes place between states, states will naturally adjust to each other based on the freely obtained information they receive. That one state will exploit another is out of the question, as that constitutes a violation of freedom by imposing force, and of equality by failing to treat the other state as sovereignly equal. The need for a central assurance mechanism, or a global state, hence disappears in the ideal. Moreover, in the non-ideal, the use of force in bringing about the world state central assurance mechanism will only spur war and retaliation, leading us astray from the ideal. If there is a moral imperative to enter a world state voluntarily (not by force), then the system of sovereign equality performs the same functions as the world state, and if there is an obligation on all states to force all other states into a world state then total war can be the only outcome (Kant 1999b, 317–38, PP 8:343).

However, how can states actually make their systems of right cohere with a global structure for all, and step away from representing just the will of their peoples? A recent institutional proposal made by Mathias Koenig-Archibugi (2011) uniquely shows an outline of how it might be possible to revise our political duties in line with the formal duties. As states serve to rightfully represent through law the whole of humanity and not just its citizens, it might be helpful to elect foreigners to the legislature of every state to help them figure out how to only enforce right within its borders and eradicating the use of force beyond them. When every state contains a

representative sample of those foreigners who are linked to the state, be it because of historical, geographical or economic ties, direct input can be had on the cosmopolitan quality of the law that the state makes. Note that this makes states more fully 'sovereign' in the exercise of their power, as they come to more fully apply their laws to their subjects.

The reading of Kant's presented here also overcomes another forceful criticism leveled against it (Franceschet 2002), of whom I take RBJ Walker's discussion of Kant as the best one, even as it is unsure whether Walker sought to 'criticize' Kant (Walker 2009, 163–72). Walker argues that Kant is faced with a choice between the supremacy of an idealized rule of international cosmopolitan law or the equality of sovereign state laws that knows no hierarchy (Walker 2009, 167). According to Kant's critics, both options are problematic: when international law constraints states to make persons more cosmopolitan, politics is replaced by an idealized account of morality, and when the law of sovereign states is made supreme nothing resembling a theory of international relations obtains. This worry is familiar and contemporary, as those wanting to escape the sovereign constraints of the state have nowhere to go except to some idealized cosmopolitanism that can easily slide into the hegemony of one state's domination over the others. The only way to prevent such hegemony is then to reinforce the balance of a system of state sovereignty, which leaves us without anything to politically conceptualize international relations. An additional worry also presents itself. Where for Kant the autonomous enlightenment of individuals seems most important, these individuals can only be enlightened through the apparatus of a sovereign state whose scope is necessarily limited. Must persons then follow global moral imperatives, or simply obey the force of their state? And how do global moral imperatives become politicized, when state coercion is limited to its boundaries? As I have set it out here, the reading of Kant that inspires CSE sets out an original solution that accords power back to persons. The mistake that is made is that Kant's international theory does not simply present these two levels, but theorizes international politics through three interrelated kinds of right: domestic, international, and cosmopolitan. Domestic right is enforced by states, international right characterizes the negative absence of 'politics' between sovereign states, and cosmopolitan right relieves the ambivalence that critics find problematic. Cosmopolitan right politicizes international issues relating to trade, culture, and social action across borders, and imputes individuals to enact and contest these issues through their own state apparatus. The moralizing global impetus thus moves through cosmopolitan right and is premised on the absence of force in international right, which blocks off hegemonic global politics. Every increase in cosmopolitan integration thus requires a decrease in international coercion.

As force can only be legitimated through the state, individuals must take up their cosmopolitan citizen responsibility to reform their states in line with cosmopolitan principles, so that the law of each state takes into account what its global effects are. What Kant leaves out of his Doctrine of Right is most revealing here, and probably contributes to the confusion critics exhibit. As Ingeborg Maus (Howard 1996) points out, when read in conjunction with the Doctrine of Right the personal enlightenment ideal set out in 'What is Enlightenment?' focuses reformist action on publicly active citizens, who must live up to the responsibility granted to them by a legitimate global order, and take action to conform their state law further toward a cosmopolitan order. Against Maus, the reading presented here does not limit the sphere of radical moral citizen action to the confines of the state, but makes it necessarily cosmopolitan. To the problem of contradiction that is so forcefully highlighted by critics like Walker and others, Kant thus offers a solution that relates power back to autonomous individuals, who must take up the cosmopolitan responsibility to freely politicize international issues within their own state.[6]

Applying CSE: trade, integration, and war

The role of trade and property becomes furthermore particularly important in the space of cosmopolitan right, structuring international integration at the appropriately intermediate level that lies between domestic and international politics. I can therefore now more fully outline what kinds of global 'distributive' duties CSE entails. As the formal duty of publicity imputes us to publicly justify any private rights globally, citizens must take care to not only ensure that economic class relations in the state conform to the formal structure of equal freedom, but that they also do so globally. There is thus a weighty responsibility on citizens and by extension the legislature to discern the effects of domestic class relations on global class relations. The distinction between the negation of force in International Right and the positive cosmopolitan responsibilities enabled by Cosmopolitan Right is again helpful here. Economic relations across states must not be

[6] Note that they can only do so in conditions of relative stability. As I see it, the opposition between 'natural' and 'moral' drivers of history merely denotes a sequence that presents itself to us in thought. This sequence is as follows: there are first 'commercial' (or before that 'warlike') drivers that order our opposing self-interests into (amoral) regimes, then rightful relations that make these regimes objectively legitimate, and only then, within orderly states and through stable external freedom, spaces within which we can reasonably be expected to act morally. Such moral action must, however, at all times arise from a sense of hope, which this conjectural natural teleology provides by placing despairing historical trajectories in the hopeful framework we require to sustain morally motivated actions. For an excellent discussion, see Cavallar (2002).

coercive, making trade between persons and corporations of different states truly 'free trade'.[7] No economic associations must thus be able to overpower the state, and remain subservient to their legitimate exercise of force. Only if they do will citizens be able to work through their own state apparatus to act on the formal publicity duty. Kant furthermore discerned two distinct kinds of 'commercium' within the space of cosmopolitan right; the first mere market oriented trade, and the second the more encapsulating idea of positive cultural interaction between peoples of different states. Both go together and do not necessarily oppose each other, as mere market trade and the 'power of money' can prudentially nudge us to respect the full cosmopolitan interaction necessary for mutually adjusting domestic system of right. When both, however, conflict so that mere market trade comes to debase and exploit persons, the absence of force of international right takes precedence and instructs us to devolve cosmopolitan market interactions back to equal relations between sovereignly constituted states. The duty to justify private relations publicly thus oscillates between these two spheres of non-intervention and cosmopolitan integration, or between engaging and rejecting cosmopolitan offers, and it is never fully clear which course of action to generally take. However, when trade enhances a structure of equally free independence we must continue it, and when it debases equal relations between states it is better to cut off commercial ties (Kleingeld 2011, 124–48). When discussing the second and fourth preliminary articles in his essay perpetual peace, Kant furthermore makes clear that balanced trade takes precedence over 'free trade'. Kant forbids the accumulation of national wealth, likening it to raising armies, as well as incurring national debts. Both create a power imbalance in the international system that will ultimately entangle all others in the affairs of the outlier, violating the non-coercive duty of international right. Not merely fair trade, but trade balance is thus important, so that the realm of right outside state remains free of force and open to the communicative right of hospitality. States should furthermore not be bought or inherited, as they are systems of domestic right enabling the legitimate use of force in the world, not objects that can be externally acquired. As cosmopolitan right furthermore states that no one should perish as a result of a rejection of cosmopolitan offers, Kant insulates himself against the charge that cutting off commercial ties so as to

[7] I tend to think that quite lenient (open borders) 'economic' migration can positively assist in integrating a concern for domestic class relations with global class relations, but that would require spelling out a quite elaborate contemporary theory of international economics, which I have not found in Kant beyond the elements spelled out here, and on which I cannot further speculate for reasons of space. At the very least, CSE would require the justification of exclusion to migrants when such exclusion can be construed as coercive (see Abizadeh 2008; Miller 2010).

enhance an equal structure of property rights can simply let the poor in other parts of the world die in isolation (Kant 1999b, 329, PP 8:358). A further last worry might, however, arise from Kant's differentiation between 'passive' and 'active' citizens, or between those who 'have the right to manage the state itself as active members of it' and those who neither have the right to vote, nor the right to independently control external rights. Women certainly belonged to that passive category, damningly undermining the universalist aspirations of Kant's thought. Kant, however, goes on to write that 'whatever sorts of positive laws the [active] citizens might vote for, these laws must still not be contrary to […] equality of everyone in the people, […] namely that anyone can work his (*sic)* way up from this passive condition to an active one' (Kant 1999b, 458–59, MM 6:315). I thus tend to read this distinction, pace its misogyny, as an emancipatory note that imputes 'active' citizens everywhere to grant global 'passive' citizens increasing independence, as Kant is explicit about the global reach of this distinction.

There is also a third kind of argument possible that extends the reading of Kant through CSE here further. Not only is the twofold political duty to negate force in international right and extend mutual adjustment through cosmopolitan right premised on the ability of persons to legitimately coerce others through the state, but it also conforms to a less formalized understanding of autonomy. For Kant, autonomy is first of all a boundary concept, which denies the possibility of metaphysical knowledge and thereby presumes that there always will be a part of ourselves and of others that we cannot understand (Kant 1999b, 458–59, MM 6:315). Autonomy thereby primarily resists any attempt to turn persons into mere intelligible things, and gives each person the ability to freely determine what he or she truly is. Autonomy thus says nothing 'positive' about what humans are, even though much can and must be said on that topic without metaphysical certainty. For Kant as for others it was obvious that we naturally perceive ourselves and others as made up from the environmental materials with which we are surrounded, such as traditions, languages, vocations, and affections. Autonomy, however, works to negatively limit that perceptive impulse, by presuming that any such positive description can never be complete. These societal and cultural materials are necessary for each person to understand him or herself, and to at any point in time enact what kind of person he or she thinks she herself is. Autonomous choice, in short, cannot exist without the cultural context from which we fashion our autonomy. I think it is possible to see this more elaborate view of Kantian autonomy as mirroring the structure of the formal duty of innate right, as both at the same time respect the context within which a person exists as well as his or her equal freedom. Allowing for free cultural interaction is then directly legitimized by the interactions between the three kinds of right, but indirectly

relevant for the cultural expression of innate equal freedom. The presumption against coercive interference also incorporates a respect for collective cultural materials, and against 'civilizing' those whom are different. Kant did then not fail to stress the role of culture in his theory of legitimacy and his account of autonomy because he did not value them, but precisely because he valued them too much to make them the direct subject of coercive force or moral instruction. Again, legitimacy creates the negative space within which the most important cultural, economic, and democratic action can take place by ensuring that persons can do it freely, by presuming that both individuals and collectives autonomously constitute themselves when not coercively interfered with. To presume that something more general and true can be said about what humans are and how they should become more moral cosmopolitan citizens is, to quote Kant, to 'conjecture'.

There are two further issues to which CSE can provide helpful pointers. The first concerns the institutional legitimacy of human rights institutions and international humanitarian law, and the second the possibilities for integration of sovereign states into federative associations. I will discuss humanitarian law and human rights law first, and the transfer of state sovereignty to a federative association second.

CSE showed that what is commonly referred to as international law actually consists of two distinct practices. The international practice fits with International Humanitarian Law and Just War, or the guidance of moral limits in limiting state sovereignty (Cohen 2004b). These consist in not much more than the duty of non-interference, or the non-use of force, though with one important qualification. Following Kant,

> 'it would be quite different if a state, by internal discord, should fall into two parts, each of which pretended to be a separate state making claim to the whole. To lend assistance to one of these cannot be considered an interference in the constitution of the other state (for it is then in a state of anarchy)' (Kant 1999b, 319, PP 8:345–46).

The prohibition of force in international right should be lifted when a state splits up so that it cannot legitimate force. In contemporary parlance, the denial of membership of at least one group constitutes a reason for intervention, which can be most readily ascertained though gross state failure or genocide (Buchanan 1997). As said, the non-interventionist stance of CSE can seem somewhat strict when compared with contemporary just war theory or theories of humanitarian intervention. It is, however, not only because of the structural coherence required for rightful integration or the respect for cultural context that CSE places such a premium on non-intervention. More practically, CSE reveals how it always remains supremely difficult to judge the justness of any war claim. Kant argued that

war is the archetype of a state of nature, and that is thus almost conceptually impossible to think about war in terms of right. Moreover, because there is no global sovereign, it is very difficult to impartially judge the reasons states use in relation to war, making non-intervention the rightful default. Some very limited reasons can, however, be judged as rightful even in this condition, and I will discuss them through the concepts of just war (Kant 1999b, 482–88, MM 6:343–51). For *Jus ad bellum*, or right to go to war, only smaller states can really be trusted to take up defensive measures, as the threat to their existence can be readily inferred by the existence of more powerful states. Aggression, subjugation, and extermination are furthermore never right reasons to go to war, and even defensive wars conducted by powerful states should be viewed with great suspicion, as force cannot exhaust the means they have available. However, allowing smaller states to wage defensive wars and respond with war to threats also has a further structural advantage, in that small states with large militaries enhance the sovereign equality of states in practice, and thereby lower the prospect of war overall. For *Jus in bello*, or right in war, Kant points out that it is never the people that go to war, but only the state. States wage war under international right, and cannot do so under the pretense of cosmopolitan right, as that is premised on the absence of force. The goal of any war can therefore only be the destruction of the state apparatus, and never the subjugation or extermination of persons. This familiarly protects non-combatants from war, focusing combat on only those mandated by the law to act in the name of the state. In a more radical sense, what is really attacked in war is therefore the represented state law, and not even the persons acting in the name of that law. When combatants therefore lay down their domestic mandate, they cannot be rightfully attacked. Now for *Jus post bellum*, or right after war, Kant outlines that the restoration of sovereignty over state territory is paramount, and that victors can therefore not claim the conquered possessions and territory as their own. To, however, see in more detail how states should act when no sovereign domestic right is present on a territory, I will have to turn to the ways in which federative integration is rightful and to the powers it can accord to those state involved in it. However, before doing so, I will discuss the implications of CSE for human rights law.

Where it was International Right that structures intervention, cosmopolitan right structures human rights law more generally in its (amoral) role of political communication through shared human rights principles (Beitz 2011). Human rights law thus generates opportunities for states to mutually adjust to each other. The relation to Buchanan's idea of materially elaborating human rights through institutions set out in the second section should then be viewed through the dichotomy between non-intervention and

integration, whose functions are often conflated. International institutions that play the double role of elaborating positive law while constraining it through the human rights framework should operate on the basis of two distinct principles. On the one hand, they should avoid coercing domestic systems of right, and on the other hand enable communication between systems of right. A test for human rights institutions, as for all other 'international law-making institutions' hence consists in this twofold scheme; ascertain first to what degree the international law-making institution coerces and counter it, and second support it only to the extent that it facilitates communication about right.

The 'inflation' of human rights that is so often lamented is hence only a problem when human rights are wrongly categorized as moral limits on state sovereignty within the practice of international right. Within the practice of cosmopolitan right such inflation is instead a solution to the problem of mutual adjustment. Therefore, describing 'human rights institutions' as institutions that 'specify and apply human rights norms' (Buchanan 2008, 61) as Buchanan does wrongly conflates both practices. For the specification part, human rights bodies should play as extensive a role as possible within the cosmopolitan practice, as exemplified by organizations like Human Rights Watch, Freedom House, and Amnesty International. *Applying* human rights norms, however, remains under the purview of states that can uniquely legitimate force. National human rights bodies that relate cosmopolitan findings to domestic law are thus a necessary precondition for the global enforcement of human rights principles. Those courts that seek to 'apply' human rights norms transnationally are therefore at best operating within the cosmopolitan practice and at worst violating the duties of non-coercion in international right. This is why the charge that human rights reports by the UN and rulings by the ICJ or ICC suffer from a lack of enforcement is mistaken. As long as not all states have brought their full systems of domestic right in line with supranational organizations, enforcing human rights norms is simply illegitimate. Human rights law is then not really law at all as law is within a state, but merely a global practice that enables cross-cultural discussion on global vs. sovereign concerns. This, however, does not make it any less important, just not so important as to legitimate the use of force.

There is, however, a kicker, which reveals why integration between the domestic right of different states is actually necessary, and how international federative integration can assist in determining what is rightful. As right must be structurally coherent, force none contrary to the innate presumption of equal freedom and publicly justify private right, there is actually a duty to adjust systems of right through the cosmopolitan practice. Any person subject to state law and any person mandated to act as a representative of the

state must work to integrate its domestic system of law more closely with those of all other states. They can for example do so through a voluntary association of states that shapes cosmopolitan interactions to a 'law-like' relation. Fuller integration has to, however, adhere to the political conditions of legitimacy outlined above, where the negative duty of non-coercion between states is balanced with the positive duty to initiate contact between systems. Full political integration, where each state decides to give up its sovereignty and enter a new condition of right with others that legitimately coerces across borders can only take place among sovereign equals, and only when the separation of powers is in place at the supra-state level. Setbacks in this integrative process can occur at any time, as when force is illegitimately used across states (as some EU member states have accused the European Court of Human Rights and the European Commission of doing), or when economic imbalances coerce the sovereignty of one or some of the members (as some accuse the EU of doing to Greece, and others Greece of doing to the EU). At these points, in order to cohere with the non-intervention duty, members must be free to exit any voluntary association.

Federative integration can nonetheless positively assist in ascertaining matters of war and peace, even as it can provide no general rightful claims. Institutions such as the UN and the UNSC can provide pointers on a case-to-case basis, without ever mandating interventions as generally rightful and applicable throughout time. The restoration of a republican or despotic sovereign rule of law, the relative size and physical contiguity of the aggressor state, and the agreement within the federative association can all positively reinforce the basis on which to intervene in another state and on which to restore sovereignty to defeated states. The only truly rightful way to do so is, however, through cosmopolitan cooperation and an absence of force, and any negation of these conditions signals a step back from a rightful condition. It is therefore important to last point out that I have here construed CSE as stable system, and not one that necessarily progresses toward a more rightful condition. Cosmopolitan integration over time can never be generally judged to be more rightful, as there is no sovereign point of view from which to do so. Doing so would be to conjecture. Federative integration is thus a duty that is most fallible, and must therefore be renewed and judged time and time again by cosmopolitan citizens on the basis of the duties that CSE outlines.

Concluding remarks

In wrapping up, I will first go through the CSE duties outlined here one more time, in order pick up some loose threads and look more closely at the force the formal duties exert on the political ones.

https://doi.org/10.1017/S1752971915000056 Published online by Cambridge University Press

The first duty of CSE was structural coherence, which sought to bring domestic systems of right in line with a global structure of right. It did so by coercing only those subject to a state authority and no others. It hence becomes clear that there is in the end not much that Tasioulas could object to. For both accounts it was paramount that the structure of right left persons and states free to obligate themselves, while only for Kant it remained as important that each did so under the constraint of structural coherence. However, from both individuals and state representatives it is only asked that they ensure that each person can autonomously enact cosmopolitan right through a human rights discourse that they only enforce in their own state, that they ensure that their system of domestic right does not coerce those not subject to it, that their state respects the right to initiate contact, and works toward the integration of its system of right with those in other states. The sovereign freedom with which Tasioualis is concerned seems preserved. Though CSE does not force states, precisely this extrication of states from mutual force spurs the mutual adjustment of systems of right. Sovereignty does therefore not stop at the border of the state. It incurs duties on any sovereign state to respect the equality of other sovereign states by ensuring that does not coerce foreigners. For a state to thus be truly sovereign, its citizens must know its cosmopolitan effects. More practically, we should thus be wary of international structural legal deviations, whose policy recommendations are usually justified because of exceptional and radically new events. The 'war on terror' is an important example, whose novel and somewhat arbitrary categorization of combatants invites, according to CSE, structural regress. With the new category of 'terrorism' in hand, states are invited to flaunt pre-existing humanitarian state-based law. It seems more promising to attempt to integrate novel events into pre-existing categories, treating 'terrorists' as the sovereign entities they aspire to be, while thereby structurally constraining their international interventionist aggression.

The second formal duty of CSE was innate right, and its effect on the political duties is as follows. As the discussion on the political duties made clear, innate right does not simply instruct us to build ever more institutions in order to justify power to all persons. Some cosmopolitans suggest that more interactions require more justificatory institutions, but a careful examination of the political duties reveals that it matters that the right kinds of institutions do the justificatory work. Extending the innate right to justification to non-state institutions should then not undermine representative state institutions, but only contribute to the cosmopolitan character of states. So what would a reading of innate right amount to when constrained by the political duties? Innate right steers the practice of international right by connecting autonomy under legitimate state institutions to the negation of the use of force where no legitimate authority is present. It steers the practice of domestic right by

enabling the participation and election of foreigners in legislatures so as to ensure that right within states respects right of those outside the state, and it steers cosmopolitan right by enabling free communication globally, allowing each to enact their autonomy by contributing to the moral basis of human rights, and by not punishing the free communication of thoughts.

The third formal duty of CSE was that of publicity. It steered domestic right by extricating the state's coercion from those outside its view and vice versa, while demanding that states take into account the external effects their 'private' actions, and relate it to a publicly justifiable standard. It steers international right by prohibiting international institutions from coercing states, as Thomas Pogge has more eloquently argued (Pogge 2007), and it steers cosmopolitan right by instructing citizens to ensure the distributive effects of their international actions are publicly justified. Refusing to produce and consume from exploitative and polluting companies extricating oneself from global coercive practices might be a result, but so might developing new forms of trade or cooperation that further spur cosmopolitan integration. Against Pogge, the cosmopolitan responsibility of citizens to justify private rights publicly must, however, go primarily through their state apparatus, and is not an ambition that should be addressed through international federative integration, or primarily by setting up of new international institutions. The legitimacy of these global institutions is very difficult to ascertain, and the presumption should be that they likely detract from the legitimacy set out through CSE. As with any other duty, every increase in cosmopolitan engagement should go hand in hand with a decrease in international coercion.

On closing, CSE makes it possible to view the legitimacy of the global order as operating along a similar process to the legitimacy of democratic politics. Democratic politics construes legitimacy over time through the sequence of election debates, voting, representative authorization, execution, and judicial check, after which the cycle can start again. In CSE, a proposal for an increase of right within one's own state must be coordinated with other states through communication or debate with foreign representatives in one's legislature, after which the proposal is amended to the extent that it coerces those not subject to the authority of one's state, while enabling the communication of foreign viewpoints throughout. Far from offering a blueprint for any legitimate action in the global order, CSE instead offers a way to structure the considerations that come into play when thinking about which action is legitimate and which is not.

Acknowledgments

The author thanks Anna Stilz, Helder de Schutter, the anonymous reviewers, and the editors of this journal for helpful and extensive comments.

When referencing Kant's works, the author continuously made use of the Cambridge edition of his *Practical Philosophy*.

References

Abizadeh, Arash. 2008. "Democratic Theory and Border Coercion No Right to Unilaterally Control Your Own Borders." *Political Theory* 36(1):37–65.

Allison, Henry E. 1986. "Morality and Freedom: Kant's Reciprocity Thesis." *The Philosophical Review* 95(3):393–425.

Beitz, Charles R. 2011. *The Idea of Human Rights*. USA: Oxford University Press.

—— 1999. *Political Theory and International Relations*, 2nd revised ed. Princeton, New Jersey, USA: Princeton University Press.

Besson, Samantha, and John Tasioulas. 2010. *The Philosophy of International Law*. USA: Oxford University Press.

Buchanan, Allen. 1997. "Theories of Secession." *Philosophy & Public Affairs* 26(1):31–61.

—— 2008. "Human Rights and the Legitimacy of the International Order." *Legal Theory* 14(1):39–70.

Buchanan, Allen, and Robert O. Keohane. 2006. "The Legitimacy of Global Governance Institutions." *Ethics & International Affairs* 20(4):405–37.

Cavallar, Georg. 2002. *The Rights of Strangers: Theories of International Hospitality, the Global Community, and Political Justice Since Vitoria*, 321–49. Farnham, UK: Ashgate.

Cohen, Joshua. 2004a. Minimalism About Human Rights: The Most We Can Hope For?" *Journal of Political Philosophy* 12:190–213.

Cohen, Jean L. 2004b. Whose Sovereignty? Empire versus International Law." *Ethics & International Affairs* 18(3):1–24.

Flikschuh, Katrin. 2000. *Kant and Modern Political Philosophy*. Cambridge, UK: Cambridge University Press.

—— 2010. "Kant's Sovereignty Dilemma: A Contemporary Analysis." *Journal of Political Philosophy* 18(4):469–93.

Forst, Rainer. 1999. "The Basic Right to Justification: Towards a Constructivist Conception of Human Rights." *Constellations* 6(1):35–60.

Franceschet, Antonio. 2002. *Kant and Liberal Internationalism: Sovereignty, Justice, and Global Reform*. New York: Palgrave Macmillan.

Griffin, James. 2009. *On Human Rights*. USA: Oxford University Press.

Howard, Dick. 1996. "Just Democracy." *Constellations* 2(3):333–53.

Kant, Immanuel. 1999a. "What is Enlightenment." In *Practical Philosophy*, edited by Mary J. Gregor, 17–22. Cambridge, UK: Cambridge University Press.

—— 1999b. *Practical Philosophy*. Cambridge, UK: Cambridge University Press.

Kleingeld, Pauline. 1993. "The Problematic Status of Gender-Neutral Language in the History of Philosophy: The Case of Kant." *Philosophical Forum* 25:134–50.

—— 2000. "Kantian Patriotism." *Philosophy & Public Affairs* 29(4):313–41.

—— 2007. "Kant's Second Thoughts on Race." *The Philosophical Quarterly* 57(229):573–92.

—— 2011. *Kant and Cosmopolitanism: The Philosophical Ideal of World Citizenship*. Cambridge, NY: Cambridge University Press.

Koenig-Archibugi, Mathias. 2011. "Fuzzy Citizenship in Global Society." *Journal of Political Philosophy* 1–25, doi:10.1111/j.1467-9760.2011.00405.x.

Miller, David. 2007. *National Responsibility and Global Justice*. Oxford, NY: Oxford University Press.

—— 2010. "Why Immigration Controls Are Not Coercive: A Reply to Arash Abizadeh." *Political Theory* 38(1):111–20.
Moyn, Samuel. 2012. *The Last Utopia: Human Rights in History*, reprint ed. Cambridge, MA: Belknap Press.
Muthu, Sankar. 2003. *Enlightenment against Empire*. Princeton, NJ: Princeton University Press.
Nagel, Thomas. 2005. "The Problem of Global Justice." *Philosophy & Public Affairs* 33: 113–147.
Niesen, Peter. 2007. "Colonialism and Hospitality." *Politics and Ethics Review* 3(1):90–108.
Nussbaum, Martha C. 1997. "Capabilities and Human Rights." *Fordham Law Review* 66:273.
O'Neill, Onora. 1989. *Constructions of Reason: Explorations of Kant's Practical Philosophy*. Cambridge, UK: Cambridge University Press.
Pogge, Thomas W. 1994. "An Egalitarian Law of Peoples." *Philosophy and Public Affairs* 23(3):195–224.
—— 2007. *World Poverty and Human Rights*, 2nd ed. Cambridge, UK: Polity.
Rawls, John. 2001. *The Law of Peoples*, new ed. Cambridge, MA, USA: Harvard University Press.
Raz, Joseph. 2007. "Human Rights without Foundations." In *The Philosophy of International Law*, edited by Samantha Besson and John Tasioulas, pp. 321–338. USA: Oxford University Press. Oxford Legal Studies Research Paper No. 14/2007.
Ripstein, Arthur. 2009. *Force and Freedom: Kant's Legal and Political Philosophy*. Cambridge, MA, USA: Harvard University Press.
Rousseau, Jean-Jacques and Victor, Gourevitch. 1997. *Rousseau: "The Social Contract" and Other Later Political Writings: v. 2*. pp. 157-158, Cambridge, UK: Cambridge University Press.
Shue, Henry. 1988. "Mediating Duties." *Ethics* 98(4):687–704.
Stilz, Anna. 2009. *Liberal Loyalty: Freedom, Obligation, and the State*. Princeton, NJ, USA: Princeton University Press.
Tasioulas, John. 2010. "The Legitimacy of International Law." In *The Philosophy of International Law*, edited by John Tasioulas and Samantha Besson, 97–119. USA: Oxford University Press.
Taylor, Charles. 1999. "Conditions of an Unforced Consensus on Human Rights." *The Politics of Human Rights* 101–19.
Valentini, Laura 2011. "Coercion and (Global) Justice." *American Political Science Review* 105(1):205–20.
Walker, Rob B. J. 2009. *After the Globe, Before the World*, 1st ed. London, NY: Routledge.
Weinrib, Ernest J. 1992. "Law as an Idea of Reason." In *Essays on Kant's Political Philosophy*, edited by Howard L. Williams, 15–50. Chicago, IL, USA: University of Chicago Press.
Wenar, Leif. 2008. "Property Rights and the Resource Curse." *Philosophy & Public Affairs* 36(1):2–32.
Ypi, Lea. 2012. *Global Justice and Avant-Garde Political Agency*. Oxford, NY: Oxford University Press.