

International Political Obligations

1.0 Introduction

Over the last few years, there has been intense political debate concerning the rightful use of coercion in the international sphere. Strong political forces have maintained that in addition to being inefficient, the current international authority, the United Nations (UN), is neither necessary nor desirable for the realization of international justice. This is seen not only in how recent efforts to improve and strengthen the UN are met with considerable resistance from powerful nations, but also by the fact that individual nations claim it rightful to unilaterally use coercion to solve conflicts in the international sphere. Though many other voices have argued that we need the UN, especially to enforce human rights internationally, there is little explanation why justice *necessarily* requires an international authority, rather than merely one or more just, strong nations. Therefore, current sentiment in favour of maintaining the UN is rarely supported by cogent justification that the UN is strictly necessary for international justice. From a philosophical point of view, the state of the contemporary debate is good evidence that we need to rethink the status of a distinctly international authority.

In this paper, I take a first stab at this task by arguing that international justice is in principle impossible without an international authority. The proposed conception of international political obligations can explain why due respect for human rights and mutual respect of sovereignty among internally just states is only possible through the establishment of an international authority. Moreover, the justification for an international authority is not linked to the typical aggressiveness of states. *Even if* all states are non-aggressive, I argue, they are still obligated to establish cosmopolitan laws and institutions *together*, since such a legal framework is a precondition for international justice.

The aim is to show that only an international authority can enable rightful relations among states, because only it can put the interacting parties under universal laws and therefore also have standing to rightfully solve conflicts and use coercion with regard to other states. In addition, I add to Kant's explicit account the argument that international justice requires just states to relate to stateless individuals and oppressive and/or aggressive states through an international authority. Both arguments strengthen the conclusion that the liberal ideal of international political obligations must be non-voluntarist, even if, as Kant argues, it's prudent to initially create the international authority voluntarily. A particular advantage of the position is its promise for solving some recalcitrant problems in current international politics, such as issues concerning rightful borders, trade – including the operation of multinationals, poverty, illegitimate and aggressive states, and the rights of stateless persons.

2.0 A Kantian Conception of Political Obligations

Kant claims that justice in the international sphere requires states not only to adhere to some reasonable conception of international law, but also to establish an international legal authority to regulate their interactions. The justification for this claim has its foundation in Kant's understanding of justice (political freedom) and his conception of political obligations at the state level. Before turning to the international sphere, let us therefore briefly outline how Kant's non-voluntarist conception of political obligations at the state level follows from his conception of justice.

2.1 National Political Obligations

In "The Doctrine of Right" Kant argues that justice is possible only within civil society, or within a liberal, legal framework. Civil society is an enforceable precondition for justice – and not merely a

remedy for the inconveniences characterizing the state of nature (8: 313, 8:354¹).² These conclusions are grounded in Kant's relational understanding of justice. Justice requires individuals' interactions to be respectful of their innate right to freedom, meaning that no one's freedom is subjected to the arbitrary choices of others but only to universal law (6: 230f, 237). Such rightful interaction is deemed impossible in the state of nature understood as a condition without a *public* authority. Justice cannot be realized privately by *each individual* acting virtuously, since it's impossible for private individuals to provide rightful assurance and to overcome certain problems of specification characterising the acquisition of private property, contract relations and status relations. The problem, in short, is that property, contract, and status relations among individuals cannot be both rightful³ and determined, enforced or assured by a *private* authority. And private authority is the extent to which there is authority in the state of nature. Indeed, there are universal principles, namely the Universal Principle of Right and what Kant calls the 'principles of private right' that must determine private property, contract and status relations (6: 258ff, 271ff, 277ff). The difficulty is in determining rightfully how these abstract universal principles should be *applied* and *assured* in empirical cases so that the resulting set of restrictions constrains each person's actions universally and non-arbitrarily (symmetrically and non-contingently).⁴ Even mutual agreement cannot make relations among individuals rightful, since everyone's freedom is still subject to one another's

¹ I refer to Kant's work by means of the Prussian Academy-pagination. I have used Mary Gregor's translation of *The Metaphysics of Morals*, Cambridge University Press, 1996. Prussian Academy pagination: (6:203-493).) Other works cited below include 'On the Common Saying: "This may Be True in Theory, but It Doesn't Apply in Practice"', Prussian Academy pagination: (8:273-313), and "Perpetual Peace – a Philosophical Sketch", Prussian Academy pagination: (8:341-386). Both are printed in T. Humphrey (transl./ed) *Perpetual Peace and Other Essays*, Hackett Publishing Company, 1983.

² A prudential reading of Kant's argument is often found in Kant interpretations and in contemporary Kantian theories. For example, see Murphy, Jeffrie G. *Kant: The Philosophy of Right*. Mercer University Press: Macon, ROSE-edition (1994), pp. 34, 70, 75f, 104, 107; Rawls (1999: 110, cf. 1996: 66); Thomas Pogge "Is Kant's Rechtslehre a 'Comprehensive Liberalism?'" in M. Timmons (ed.): *Kant's Metaphysics of Morals*, Oxford University Press (2002), p. 147; Onora O'Neill (O'Neill 2000: 139); Williams, Howard Williams, Howard L. *Kant's Political Philosophy*, St. Martin's Press: New York (1983), pp. 10f, 70, 73, 164, 169f, 185.

³ Rightful simply means respectful of each person's innate right to freedom.

⁴ See... (reference to paper) for an explication of these points.

arbitrary choice, namely that we continuously choose consent on these matters of the correct application of the principles.

Due to the problems of assurance and specification, therefore, to stay in the state of nature is to commit wrongdoing. It's to stay in a condition where we subject one another's freedom to one another's arbitrary choices rather than to universal law. At most, the state of nature is a condition *devoid of justice*, meaning that in the best scenario it's a condition in which particular individuals don't wrong *one another*, but yet in choosing to remain in the state of nature they renounce any concept of right (6: 312,) or 'do wrong in the highest degree' (6: 307f). In order to interact rightfully with others we must therefore establish a condition in which our interactions are subject to universal laws rather than to one another's arbitrary restrictions. And the only way to do this is by establishing a will that is the will of each and yet the will of no one particular private individual, that is, a *public* will or a public authority (6: 345f, 8:344, 351f). To refuse to enter civil society is therefore to refuse the condition under which interaction consistent with each person's right to freedom is respected, which is to commit wrongdoing in the highest degree. Thus, individuals have a strict or enforceable duty to set up a *public* authority to provide assurance and to specify the rules for their interaction (8:371, 6: 230, 232). Because consent cannot be a necessary condition for the establishment of a rightful state, the liberal ideal of political obligations (at the state level) is non-voluntarist in nature.⁵

2.2 International Political Obligations

Kant's theory of justice requires a non-voluntarist conception of international political obligations for the same kinds of reasons it requires a non-voluntarist conception of national political obligations. Although the suggested scheme provides a way of conceptualizing solutions to "contemporary problems... [such as] freedom from destitution, abject suffering, hunger, and

⁵ I give a fuller exposition of this point below in the explanation why a superpower cannot provide assurance or enable rightful private property, contract or status relations.

environmental catastrophe” (Bohman and Lutz-Bachman 1997:19f), the argument establishes the necessity of an international legal order *even if* no such problems exist. Rather, as in the national case, the main problems that cannot be overcome in the state of nature concern the provision of assurance and the application of international laws to actual interactions.⁶

First, a superpower cannot provide assurance in the international sphere since it lacks an impartial *form*. On the one hand, a superpower has its own national interests, and hence cannot reasonably be seen as impartial to particular disputes in the international arena. On the other hand, the superpower cannot provide assurance in its own relation with other states. In order to provide assurance for the relation between the superpower and the other states, yet another stronger power is needed – leading to an infinite regress. Therefore, in order to provide assurance in the international sphere we need at the very minimum a conception of a *public* power, meaning a power that represents no national interests yet can be seen as representing the interests of each nation – that is, an *international authority*. Since only an international authority in principle has the appropriate form, only it can provide assurance in international relations, and we have a first reason why international political obligations cannot be voluntarist.⁷

The lack of the right kind of impartiality also explains why rightful relations between bordering nations require an international authority.⁸ Rightful relations require states to subject themselves to universal (symmetrical and non-contingent) laws. It’s impossible, however, for any state to apply the Universal Principle of Right so as to make objective or non-contingent determinations of what constitutes the border between itself and its neighbours.⁹ Any proposal here

⁶ Note that even under the assumption that the world is comprised only of internally just states that happen not to want to trade with one another, the international authority is required to provide rightful assurance and rightful borders.

⁷ For an expansion of this point, see... (reference deleted to facilitate blind review).

⁸ This discussion loosely corresponds, respectively, to Kant’s discussion of ‘The Right of Nations’ (6: 343-351), a discussion mainly concerned with the issue of war, and his discussion of ‘Cosmopolitan Right’ in (6: 352-353), which focuses mainly on commerce or trade.

⁹ Jürgen Habermas also argues that the problem of application is of particular interest to Kant’s position and he also understands Kant to be arguing that even if states were to enforce *reasonable* conceptions of international law when

can reasonably be challenged by its neighbours, entailing that a state that uses might to defend its proposed border will subject other states to non-contingent and asymmetrical – or unjustifiable – restrictions. Of course, neighbouring states may happen to agree on borders making coercion unnecessary. But their relation is not thereby made *rightful*, since their peaceful co-existence is still subject to each other's consent. By refusing to enter an international civil society, or to establish a public, international authority with standing to determine possible, future disputes in their relations, states commit the worst kind of wrongdoing.¹⁰

The above set of issues concerns the arguments put forward in Kant's own political texts.¹¹ In my view, however, we must move beyond Kant's own text when describing the need for an international authority, since we must pay closer attention to 'non-ideal considerations'. In particular, we must analyse the relationships between internally just states and stateless individuals, as well as between internally just states and members of oppressive states, more carefully than does Kant. With regard to stateless individuals and members of oppressive states, Kant seems to claim that until they have organized themselves into a just state, little can be done to protect their rights beyond considering the possibility of granting them (permanent) visiting rights. In my view, however, this claim is inconsistent with Kant's position for a reason similar to why his account of hospitality¹² (visitors) seems to be in tension with his account of rightful relations.¹³ The problem is, I find, that

interacting with other states the result is not justice or rightful relations (Habermas 1997: 113, 116, cf. 6: 350). The reason is that the application of international law must go through an international authority. See Habermas, Jürgen: "Kant's Idea of Perpetual Peace, with the Benefit of Two Hundred Years' Hindsight", transl. by James Bohman, in J. Bohman and M. Lutz-Bachman (eds) *Perpetual Peace*.

¹⁰ Kant argues that 'this condition [the state of nature] is in itself... wrong in the highest degree' (6: 343). We find this expression that staying in the state of nature is to do wrong in the highest degree several places in Kant's texts. See for example "Perpetual Peace" (8: 380) and the chapter on public right regarding the national right (6: 308).

¹¹ Kant explicitly discusses the necessity of an international authority under ideal conditions to settle issues concerning borders and the encroachment on state sovereignty in his discussions of 'the right of nations' (6: 343-351), (8: 307-313), and (8: 341-386).

¹² See (8: 358ff).

¹³ Kant appears to argue that citizens of just states are rightfully subject to the laws of the countries they visit, whereas stateless individuals and members of oppressive states should not be turned away. In contrast, Kant states that stateless individuals and members of oppressive states in conflict with any (other) state should largely be regarded as brute savages

visitors, stateless persons and members of oppressive states are necessarily precluded from rightful relations with the state in question since they cannot be subject to universal law in their interactions with it. *Rightful* relations are impossible here, because any general will of which they are not citizens is not a general will constitutive of them. Therefore, Kant seems to be unable to explain how the state can interact rightfully with visitors, stateless individuals and members of oppressive states.

Nevertheless, I believe Kant's theory offers a way to remediate this problem. In my view, the better interpretation of Kant's position focuses on how these relations can *become* rightful, or in the case of stateless individuals and members of oppressive states, as close to rightful as possible. And the only way to do this must go through a general or public, *international* authority since only it can have the requisite standing to subject the interacting parties (states, stateless individuals and members of oppressive states) to universal law.¹⁴ The public, international will comes as close as possible to representing the will of each interacting party and so is the means through which relations can be made as rightful as possible given the circumstances. In this way, stateless individuals and members of just states are given political freedom in their interactions with just states. The possibility of establishing rightful relations with the stateless and members of oppressive states is therefore another Kantian reason why the liberal ideal of international political obligations must be non-voluntarist in nature.¹⁵

with whom truly civil relations are impossible. Of course, states should still respect their rights, such as not steal their property or colonize them (8: 357-360), but truly rightful relations with them are impossible.

¹⁴ We can make this point more strongly. Because a state assumes a right to exclude non-citizens from its territory, there arises an additional principled reason for establishing an international authority since it must make the relation between itself and non-citizens rightful. In my view only an international authority can enable rightful relations between just states and between a just state and stateless individuals, such as refugees.

¹⁵ This view seems to go against Kant's own interpretation of his position, since Kant never considers the need for a public authority to regulate the relations between states and stateless individuals. In his discussion of 'hospitality' Kant does argue that states must at least consider giving stateless individuals, meaning individuals who cannot be turned away without 'destroying him' (8: 358), 'the right to be a *permanent visitor*' (ibid.). But he doesn't consider hospitality (8: 358f) or even the possibility of rightful hospitable relations with stateless persons, as in principle requiring an international authority with standing in the relationship. This is surprising because arguing for a public, international authority to regulate these relations follows from his general account of political freedom.

A fourth reason why the liberal ideal of political obligations must be non-voluntarist in nature concerns the possibility of contract right.¹⁶ As is the case at the national level, the Kantian account maintains that enforceable international trade contracts require a judge impartial in its form. For reasons similar to the requirement on sovereign coercive authority, adjudicating bodies must also be impartial in their form. Therefore, rightful contractual relations require more than a third private judge, no matter how impartial it claims to be or actually is, to settle disputes between contracting parties. Allowing private adjudication merely reproduces the contractual problem, since either party to the dispute can reasonably disagree with the way in which the judge performs her contractual duty in settling the dispute.¹⁷

We must also move beyond Kant's own theory to ensure rightful relations in international trade under non-ideal situations. In particular, we must deal with the fact that international trade today often consists in multinational organizations operating in oppressive countries or in states that fail to meet the minimal institutional conditions for a legitimate state. This yields a special problem for the Kantian account because the relation between the multinational companies and their employees must be made rightful.¹⁸ The problem in the case of oppressive states is that there exists no institutional framework constitutive of rightful trade relations. Therefore, rightful relations between companies and between companies and their employees in those states are impossible. In my view, the better interpretation of the Kantian position will here argue that internally just states cannot permit their companies to operate in oppressive states unless they also establish a public,

¹⁶ It's less strict in that it follows only under the assumption that international trade and travel is found desirable. Nevertheless, given that they do, states must ensure that international trade is made rightful. It seems that states can deny their citizens the right to trade with other states without thereby denying them their innate right to freedom. States cannot rightfully deny their citizens the right to emigrate, but it seems hard to say that political obligations cease if they deny citizens the right to trade with other nations. But the ideal circumstance, or the ideal to strive towards, is to permit a condition under which a state enables its citizens to trade with citizens of other states under universal law.

¹⁷ This argument is not clearly made in Kant's own texts, but it seems the most reasonable interpretation of it. For a fuller interpretation of this point in the national case, see my...

¹⁸ If the states where the companies operate are internally rightful, then conflicts between companies or between companies and their employees can be handled first at the state level – and then at the international level if necessary.

cosmopolitan framework that regulates those companies' operations there. This cosmopolitan framework sets and enforces rules for trade in these countries, so that something approaching rightful trade relations is possible. In this way, although not fully, a cosmopolitan authority enables rightful interactions in international trade.¹⁹

A Textual Puzzle

Maintaining, as I have done, that Kant *actually* defends and that the best Kantian conception *should* defend a non-consensual conception of international political obligations is currently controversial.²⁰ To argue in this way is challenging not only because in his various political essays Kant appears to hold a voluntarist view of international political obligations, but also because the theory challenges deeply held intuitions that obligating political institutions require voluntary consent, since anything else challenges state sovereignty. Nevertheless, I believe that in part it was exactly the theory's challenge to deeply held intuitions that led Kant to predict that nations would not recognize the strict necessity of establishing the necessary 'world republic' and instead settle for the second best solution of establishing a voluntarist association or league of nations. In my view, this is why Kant argues that people will refuse to establish the only means through which rightful interactions are possible, because they find that it conflicts with 'their idea of the right of nations' or their idea of state sovereignty. '[C]onsequently', Kant continues, 'they discard in *hypothesis* what is true in *thesis*' (8: 356f).²¹ Treating the establishment of the international political authority as a voluntarist project is therefore a wise strategy, even if international political obligations are non-voluntarist in nature.

¹⁹ Indeed, a similar argument follows from Kant's analysis of status, or caregiver – care-receiver relations, when transformed to the international context. Again, under non-ideal situations the cosmopolitan authority is necessary to enable rightful relations between caregivers and care-receivers living in illegitimate states.

²⁰ For example, contrast this reading to much secondary literature on Kant, for example most of the articles in *Perpetual Peace* (1997).

²¹ 'Reason can provide related nations with no other means of emerging from the state of lawlessness, which consists solely of war, than that they give up their savage (lawless) freedom, just as individual persons do, and by accommodating

A second reason why Kant argues that it's prudent to consider the establishment of a world republic a voluntarist project is that a world republic would be practically unmanageable.²² Instead, he suggests, more limited, voluntary 'congresses' of states should be instituted to solve particular problems of interaction.²³ The main idea, I suggest, is that until international co-operation is sufficiently advanced the means of establishing a cosmopolitan legal framework may still have to be voluntarist. Premature attempts to coercively establish a cosmopolitan legal framework might only add to the anarchy characterizing current international relations. After all, what we have a right to do is to establish a rightful legal order – not to dissolve all relations.²⁴ Nevertheless, these pragmatic

themselves to the constraints of common law, establish a nation of peoples (*civitas genitum*) [Gregor: 'state of nations'] [Völkerstaat] that (continually growing) will finally include all the people of the earth. But they don't will to do this because it doesn't conform to their idea of the right of nations, and consequently they discard in hypothesis what is true in thesis. So (if everything is not to be lost) in place of the positive idea of a world republic [Weltrepublik] they put only the negative surrogate of an enduring, ever expanding federation [in M. Gregor's translation: 'league'] [German: 'immer ausbreitenden Bundes'] that prevents war and curbs the tendency of that hostile inclination to defy the law, though there will always be constant danger of their breaking loose' (8: 356f).

²² 'Since a state of nature among nations, like a state of nature among individual human beings, is a condition that one ought to leave in order to enter a lawful condition, before this happens any rights of nations, and anything external that is mine or yours which states can acquire or retain by war, are merely provisional. Only in a universal association of states [in einem allgemeinen Staatenverein] (analogous to that by which a people becomes a state) can rights come to hold *conclusively* and a true *condition of peace* come about. But if such a state made up of nations were to extend too far over vast regions, governing it and so too protecting each of its members would finally have to become impossible, while several such corporations would again bring on a state of war. So *perpetual peace*, the ultimate goal of the whole right of nations, is indeed an unachievable idea. Still, the political principles directed toward perpetual peace, of entering into such alliances of states, which serve for continual *approximation* to it, are not unachievable. Instead, since continual approximation to it's a task based on duty and therefore on the right of human beings and of states, this can certainly be achieved' (6: 350).

²³ 'Such an association of several states [Verrein einiger Staaten] to preserve peace can be called a permanent congress of states [den permanenten Staatencongreß], which each neighboring state is at liberty to join... By a congress is here understood only a voluntary coalition of different states which can be dissolved at any time, not a federation [nicht eine solche Verbindung, welche (so wie die der amerikanischen Staaten) auf einer Staatsverfassung] (like that of the American states) which is based on a constitution and can therefore not be dissolved. – Only by such a congress can the idea of a public right of nations be realized, one to be established for deciding their disputes in a civil way, as if by a lawsuit, rather than in a barbaric way (the way of savages), namely by war' (6:359f).

²⁴ Hence, in my view those passages where Kant appears to argue that the international public authority should not have coercive powers must be read in light of pragmatic considerations. For example, on (8: 383f), Kant argues that: 'There can be talk of international right only on the assumption that a state of law-governedness exists (i.e., that external condition under which a right can actually be accorded man). For as a public right, its concept already contains the public recognition of a general will that determines the rights of everyone, and this *status iuridicus* must proceed from some contract that cannot be founded on coercive laws (like those from which the nation springs), but can at best be an *enduring free* association, like the federation of different nations mentioned above. For in the state of nature, in the absence of law-governedness, only private right can exist' (8: 384). From this passage, it's certainly tempting to conclude that Kant conceives of international authority in voluntarist terms. Nevertheless, I believe that this interpretation is too quick. Instead, we must interpret this (and similar) passage in light of his general account of political obligations in combination with his prudential cautions. Thus, in this passage we must pay attention to how Kant argues that 'at best' the international authority is considered as a voluntarist project, where 'at best' is understood as referring to practical considerations. Kant's reference to the talk of a 'federation' above fits this interpretation. Kant talks about the voluntary

considerations don't undermine Kant's argument that in principle the establishment of a public or international authority is constitutive of rightful international relations (6:311, 350, 8:310f, 356).²⁵

If we contrast Kant to Hobbesian and Lockean conceptions of international relations, we see two main differences. First, Kant argues that international justice in principle requires an international authority. He challenges their claim that the main reason why we would want an international authority is considerations of prudence, since he argues that it's in principle impossible to establish rightful relations without also establishing an international authority. Second, Kant turns the claim around and argues that considerations of prudence make it necessary to proceed on a voluntary basis as we seek to establish rightful international relations. Moreover, because *rightful* international relations in principle requires the establishment of a cosmopolitan authority, the theory explains why we need to conceptualize what such an authority looks like, namely so that we know what to aim for and so that we can see which steps must be taken together (even if they are voluntary). For example, we will be able to see why voluntary trade by companies originating in internally just countries cannot set up companies in other just or unjust states without also setting up an international authority to regulate it. Consequently, in addition to explaining why it's never correct to say that we can realize international justice outside of an international or cosmopolitan framework, the theory can identify institutional requirements of international justice as we proceed towards the ideal.²⁶

federation in (8: 357) – just after he points out that people reject in 'hypothesis what is true in thesis. So (if everything is not to be lost) in place of the positive idea of a *world republic* they put only the *negative* surrogate of an enduring, ever expanding *federation* that prevents war and curbs the tendency of that hostile inclination to defy the law, though there will always be the constant danger of their breaking loose'. So again, Kant refers his readers back to where he explains that the world republic will not be put in place even though it's strictly necessary for justice and why a voluntary federation will take its place.

²⁵ And of course, as we have seen above non-voluntarist conception of international political obligations is the only one reconcilable with Kant's general understanding of rightful relations (justice). The non-consensual conception of international political obligations is therefore not only expressed in Kant's texts, but it also constitutes the best interpretation of the Kantian position.

²⁶ Kant's conception of the legitimate cosmopolitan authority, the world republic, is not reducible to the institutional requirements given above. Engaging this question of the nature of the world republic beyond indicating those that follows directly from Kant's conception of political obligations are beyond the scope of this paper.

3.0 Conclusion

I have argued that the liberal ideal of political obligations in the international sphere is non-voluntarist in nature. I argued with Kant that the *impartial form* of the international authority is what gives it, and never anyone else, rightful standing to solve problems of assurance and application in the international sphere. The legitimacy of the cosmopolitan authority stems from how it represents each of the interacting states, stateless persons and members of oppressive states – and yet none of them individually. Any state that insists on providing assurance or applying international laws on its own, commits wrongdoing ‘in the highest degree’ on this account, since this fails to respect the sovereignty of other states and the rights of stateless individuals. It is therefore because international justice is possible only through the establishment of an international authority that it has a special status that individual states cannot possibly have.