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0521826764 - Kant's Cosmopolitan Theory of Law and Peace

Otfried Hoffe

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KANT'S COSMOPOLITAN THEORY OF LAW AND PEACE

Kant is widely acknowledged for his critique of theoretical reason, his universalistic ethics, and his aesthetics. Scholars, however, often ignore his achievements in the philosophy of law and government. At least four innovations that are still relevant can be attributed to Kant. He is the first thinker, and to date the only great thinker, to have elevated the concept of peace to the status of a foundational concept of philosophy. Kant links this concept to the political innovation of his time, a republic devoted to human rights. He extends the concept by adding to it the right of nations and cosmopolitan law. Finally, Kant democratizes Plato's notion of philosopher-kings with a concept of "kingly people." This book examines all aspects of this important, but neglected, body of Kant's writings.

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OTFRIED HÖFFE

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Translated by Alexandra Newton



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CONTENTS

<i>Abbreviations</i>	<i>page</i> xi
<i>Translator's Preface</i>	xiii
<i>Preface</i>	xv
1 Kant's Challenge and Relevance Today	1
1.1 <i>The More Fundamental Theory</i>	1
1.2 <i>Natural Law and Metaphysics</i>	5
1.3 <i>False Estimations</i>	9
1.4 <i>The Cosmopolitan Leitmotif</i>	13
PART I. MORALS	
2 Aristotle Instead of Kant?	21
2.1 <i>Kant as a Follower of Aristotle</i>	22
2.2 <i>Aristotle's Ethics Is Universalistic</i>	24
2.3 <i>An Outline for an Aristotelian-Kantian Virtue Ethics</i>	27
2.4 <i>An Ethics of Striving or an Ethics of the Will</i>	34
2.5 <i>Does Aristotle Already Have a Concept of the Will?</i>	39
3 Universalistic Ethics and the Faculty of Judgment	45
3.1 <i>A Deflationary Theory of Judgment</i>	45
3.2 <i>A New Faculty of Judgment</i>	49
3.3 <i>An "Esprit Moral"</i>	55
3.4 <i>Conflicts of Principles</i>	62
4 On Evil	68
4.1 <i>The Concept</i>	69
4.2 <i>Does Moral Evil Exist?</i>	74
4.3 <i>Evil by Nature?</i>	75

PART II. RIGHT AND MORALS

5	Kant's More Nuanced Approach	81
5.1	<i>Morality and Political Justice</i>	81
5.2	<i>Morality as an Improvement on Legality</i>	84
5.3	<i>Juridical and Ethical Legality</i>	87
5.4	<i>Against an Ethics of Private Conviction and Moralizing</i>	91
6	The Moral Concept of Right and Law	94
6.1	<i>A Rehabilitation of Natural Law</i>	95
6.2	<i>Is Natural Law Alone Scientific?</i>	97
6.3	<i>An A Priori Construction</i>	100
6.4	<i>Excursus: The Welfare State</i>	106
6.5	<i>The Moral Concept of Right</i>	110
6.6	<i>The Authorization to Use Coercion</i>	113
6.7	<i>Appendix: Two Partially Legal Phenomena</i>	115
7	Categorical Imperatives of Right According to Ulpian	119
7.1	<i>A Categorical Preliminary Achievement</i>	120
7.2	<i>Categorical Imperatives of Private and Public Right?</i>	124
7.3	<i>A Duty of Right Contrary to Right?</i>	128

PART III. LEGAL MORALS AND PEACE

8	The Neglected Ideal	135
8.1	<i>The Comprehensive Theory of Peace</i>	135
8.2	<i>"Kingly People"</i>	144
8.3	<i>Kingly Humanity</i>	149
8.4	<i>Truncated Influence</i>	153
9	The "Idea": Legal Progress	159
9.1	<i>Critical Thought and Progress</i>	160
9.2	<i>A Contradiction in the Federation of Peoples</i>	166
9.3	<i>Mechanism plus Moral Maturation</i>	172
10	<i>Peace I: Are Republics Peaceable?</i>	177
10.1	<i>Kant's Concept of the Republic</i>	178
10.2	<i>A Separable Thesis</i>	182
10.3	<i>Skeptical Considerations</i>	184
11	<i>Peace II: Federation of Peoples or World Republic?</i>	189
11.1	<i>A Contradiction?</i>	189
11.2	<i>A Modest World Republic</i>	193

Cambridge University Press
0521826764 - Kant's Cosmopolitan Theory of Law and Peace
Otfried Hoffe
Frontmatter
[More information](#)

CONTENTS	ix
11.3 <i>Ideal or Surrogate?</i>	195
11.4 <i>Evil in Relations among Different Peoples</i>	201
12 <i>The Critique of Pure Reason: A Cosmo-Political Reading</i>	204
12.1 <i>Three Motives</i>	204
12.2 <i>“Critique” Instead of “Meditation”</i>	209
12.3 <i>For the Benefit of the Common Good</i>	210
12.4 <i>A Democratic Discourse</i>	212
12.5 <i>A Juridical State of Reason</i>	216
12.6 <i>Beyond an Alternative</i>	219
12.7 <i>The Cosmo-Political Concept of Philosophy</i>	223
12.8 <i>The Self-Governance of Reason</i>	225
<i>Bibliography</i>	229
<i>Index</i>	245

ABBREVIATIONS

Works by Kant

<i>Anthropology</i>	<i>Anthropology from a Pragmatic Point of View</i> (<i>Anthropologie in pragmatischer Hinsicht</i> , VII:117–334)
CJ	<i>Critique of Judgment</i> (V:165–485)
“Common Saying”	“On the Common Saying: That May Be Correct in Theory, but It Is of No Use in Practice” (“Über den Gemeinspruch: Das mag in der Theorie richtig sein, taugt aber nicht für die Praxis,” VIII:273–313)
<i>Conflict</i>	<i>The Conflict of the Faculties</i> (<i>Der Streit der Fakultäten</i> , VII:1–116)
“Conjectures”	“Conjectures on the Beginning of Human History” (“Mutmaßlicher Anfang der Menschengeschichte,” VIII:107–123)
<i>Correspondence</i>	<i>Kant’s Correspondence</i> (X–XIII)
CPR	<i>Critique of Pure Reason</i> (A: IV:1–252; B: III:1–552)
CPrR	<i>Critique of Practical Reason</i> (V:1–163)
DR	<i>Metaphysical First Principles of the Doctrine of Right</i> (<i>Metaphysische Anfangsgründe der Rechtslehre</i> , first part of the <i>Metaphysics of Morals</i> , VI:203–372)
DV	<i>Metaphysical First Principles of the Doctrine of Virtue</i> (<i>Metaphysische Anfangsgründe der Tugendlehre</i> , second part of the <i>Metaphysics of Morals</i> , VI:373–492)

xii	ABBREVIATIONS
GMM	<i>Groundwork of the Metaphysics of Morals</i> (IV:385–464)
“Idea”	“Idea for a Universal History with a Cosmopolitan Purpose” (“Idee zu einer allgemeinen Geschichte in weltbürgerlicher Absicht,” VIII:15–31)
<i>Logic</i>	<i>Logic. A Handbook for Lectures</i> (<i>Logik, Ein Handbuch zu Vorlesungen</i> , ed. G. B. Jäsche, IX:1–150)
MFS	<i>Metaphysical Foundations of Natural Science</i> (<i>Metaphysische Anfangsgründe der Naturwissenschaft</i> , IV:465–565)
<i>Peace</i>	<i>Toward Perpetual Peace</i> (<i>Zum ewigen Frieden</i> , VIII:341–386)
<i>Prolegomena</i>	<i>Prolegomena to Any Future Metaphysics That Will Be Able to Come Forward as Science</i> (IV:253–384)
<i>Religion</i>	<i>Religion within the Boundaries of Mere Reason</i> (<i>Die Religion innerhalb der Grenzen der bloßen Vernunft</i> , VI:1–202)
“Supposed Right”	“On a Supposed Right to Lie from Philanthropy” (“Über ein vermeintes Recht aus Menschenliebe zu lügen,” VIII:423–430)
“What Is Enlightenment?”	“An Answer to the Question: What Is Enlightenment?” (VIII:33–42)

Works by Others

EN	Aristotle, <i>Ethica Nicomachea</i> / <i>Nicomachean Ethics</i>
SC	Rousseau, <i>Social Contract</i>

TRANSLATOR'S PREFACE

Kant's Cosmopolitan Theory of Right and Peace: The German title of this book is a phrase taken from Kant's treatise on peace: "Königliche Völker." Mary Gregor's translation of the phrase as "royal peoples" in the context of Kant's work does not bring out the importance of Kant's point for the purposes of this study. The phrase, literally translated as "kingly people," poignantly captures Kant's democratic response to Plato's philosopher-kings: The state should be ruled by an "enlightened" people, rather than by an elite society of philosophers.

Otfried Höffe's rewarding study of Kant's cosmopolitan theory of law and of peace has long deserved to be read and discussed in English-speaking countries. In my translation, I have relied on former renditions of Höffe's work into English on related topics, especially Marshall Farrier's translation of *Immanuel Kant* and Mark Migotti's translation of *Categorical Principles of Law*. These have been particularly helpful in translating important terms that have no clear counterpart in English.

I should like to take this opportunity to express my thanks to Henry Pickford for his kindness in revising and indexing the manuscript and to Jochen Bojanowski for many valuable suggestions. Any infelicities that remain are entirely my own responsibility. I should also like to thank the Fritz Thyssen Stiftung for the generous grant that made this translation possible.

Cambridge University Press

0521826764 - Kant's Cosmopolitan Theory of Law and Peace

Otfried Hoffe

Frontmatter

[More information](#)

PREFACE

To the educated, Kant is known as the author of a critique of reason who tears down traditional metaphysics to create a new edifice on its ruins. They acknowledge his moral philosophy and perhaps his theory of art, but not his philosophy of law and of government. Despite dispersed acclaim, Kant's *Doctrine of Right* does not, even in scholarship on legal and political theory, attain the status of that narrow canon comprising Plato's *Republic*, Aristotle's *Politics*, Augustine's *City of God* (*De civitate dei*), Machiavelli's *Il principe*, Hobbes's *Leviathan*, Locke's *Second Treatise on Government*, Rousseau's *Social Contract*, and Hegel's *Philosophy of Right*. Kant's treatise on *Perpetual Peace* might play a prominent role in contemporary peace debates, but it is not fully acknowledged as an attempt to provide a foundation for a comprehensive philosophy of right and law that is linked to a doctrine of political prudence and a philosophy of history. It thereby yields no fewer than four innovations that still remain relevant today: (1) Kant is the first thinker and to date the only great thinker to have elevated the concept of peace to the status of a foundational concept of philosophy. (2) He links this concept to the political innovation of his time, a republic devoted to human rights. (3) He extends it with a cosmopolitan perspective by adding the right of nations and cosmopolitan law. (4) Finally, Plato's notion of philosopher-kings receives a republican bent with the concept of a "kingly people." Kings are not a separate elite, the philosophers, but rather the people themselves, insofar as they rule "themselves according to laws of equality."

The reasons accounting for the decline of Kant's influence are more contingent than philosophically substantive, such as the replacement of his innovations by Hegel's philosophy of right, which quickly became predominant. But as exemplified by the following study, Kant's legal

Cambridge University Press

0521826764 - Kant's Cosmopolitan Theory of Law and Peace

Otfried Hoffe

Frontmatter

[More information](#)

xvi

PREFACE

and state philosophy, emerging at the intellectual peak of the European Enlightenment, is no less innovative than that of Machiavelli, Hobbes, Rousseau, or Hegel. Prejudices that are neither philosophically nor politically convincing do enter his political philosophy, such as the excessive importance placed on the protection of property in the justification of the state, the priority of men over women, the discrimination against wage laborers, and the defense of castration as a legal penalty. But methodological considerations show that few of these statements are intended as expressions of principles, which are Kant's professed concern. Therefore, if one focuses on the central purpose of the legitimation of right and state on the basis of a priori concepts, then Kant ranks among the classical thinkers of legal and political theory. Due to his aforementioned innovations, his theory is even more future-oriented than most alternatives. A political philosophy of freedom is indispensable in an age of weaponry that endangers the entire human race. And in an age of globalization, this philosophy should not confine itself to the borders of nations. Nor is a worldwide order of peace conceivable without the extension of the right of nations by cosmopolitan law.

Peace does not become a foundational concept of philosophy merely by its occurrence in the title of a significant text that addresses issues still relevant today. It must also have a bearing on and even be central to larger areas of discussion. For Kant, peace belongs mainly, but not exclusively, to right and law, which in turn are an important domain of morals: Kant's philosophy of right and law, of the state, and of peace is an *ethics* of right and law, of the state, and of peace. Consequently, we should first elucidate the foundation of Kant's philosophy of peace, namely, the moral concept itself. Following introductory remarks on the current relevance and challenge of Kant's theory (chapter 1), this study will turn to reflections on morals (part I), then consider the moral concept of right and law (part II) and the relation between peace and legal morals (part III).

In philosophical interpretation, it has become fashionable to place classical texts on the dock, following the North American model of criminal trials, in order to reveal the ambiguity of their concepts, the fallacies of their arguments, the contradictions in their claims, and even the deceptive character of their basic intuitions. The primary task of providing a consistent interpretation often recedes behind this objective of revealing inconsistencies. A closer reading of the texts urges the contrary. It is rather facile criticism that should be placed on the

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Otfried Hoffe

Frontmatter

[More information](#)

PREFACE

xvii

dock, not out of compassion, as of late suggested by the “principle of charity,” but rather out of estimation for Kant’s insights. This study will not settle for an interpretation unless it can rationally account for the meaning of Kant’s line of thought. Only thereafter is criticism appropriate. This is especially exigent with respect to two elements of Kant’s ethics of peace, namely, the alleged peaceableness of republics and his indecisiveness with respect to the alternative between a “federation of peoples or world republic.” However, this is a matter for a “fine-grained debate with Kant.” His general cosmopolitan approach still remains convincing.

The studies here pursue not only hermeneutical, but also systematic interests. For this reason, the three topics – morals, right, and peace – are not treated as comprehensively as in Kant himself. Guided by the intuition that debates on perpetual issues may profit from Kant’s inspiration, only relevant factors have been chosen for inquiry (for a methodical outline, see Höffe 2002a).

The substantive question of part I concerning the epochal difference between classical antiquity and modernity is preliminary. Are the two paradigms of occidental ethics, namely, Aristotelian ethics with its principle of eudaemonism and the preponderance of virtue, on the one hand, and Kantian ethics with its principle of autonomy and the preponderance of principles, on the other, in fact incompatible alternatives, such that it is unproblematic today to adhere to Aristotle instead of Kant? A positive answer would considerably weaken the persuasiveness of Kant, for his philosophy of right and law, and of peace, would be relativized in the face of an alternative ethics. However, if considered more closely, the putative discrepancy may be moderated, Aristotle awarded his due, and the superiority of Kant acknowledged on a more fundamental level (chapter 2: “Aristotle Instead of Kant?”). The faculty of judgment, which is indispensable to a legal and state ethics, and is often only accredited to Aristotle, is not absent in Kant. He even extends it with a fundamentally new dimension. Whereas Aristotle only acknowledges a moral-practical faculty of judgment, Kant additionally introduces a genuinely moral faculty of judgment. Both the lasting significance of a moral-practical faculty of judgment and its expansion by a genuinely moral dimension are preliminary to Kant’s novel interpretation of philosopher-kings (chapter 3: “Universalistic Ethics and the Faculty of Judgment”). Further, the problem of evil is to be regained as an issue that was recognized as deeply problematic by Kant and was already discussed in Aristotle as various stages of vice (*kakia*). Strangely,

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Otfried Hoffe

Frontmatter

[More information](#)

xviii

PREFACE

it is missing in contemporary Kantian ethics, such as in Apel and Habermas, whereas it plays a role for Kant both in his legal theory and in the theory of peace (chapter 4: “On Evil”).

Part II demonstrates in an exemplary fashion why a fundamental moral philosophy should not neglect right and law, and conversely, why a fundamental legal theory should not neglect morals. Their interconnectedness should play a part in determining the relationship between law and morals (chapter 5: “Kant’s More Nuanced Approach” and chapter 6: “The Moral Concept of Right and Law”) and their principles, the “Categorical Imperatives of Right According to Ulpian” (chapter 7).

Part III shows that moral law culminates in a theory of public right, which leads to the theory of a peaceful global juridical order. It is precisely for this reason that peace becomes a foundational concept of philosophy in Kant (chapter 8) and that his philosophy of history is developed from a global perspective out of a legal ethics of peace (chapter 9). Two elements, however, demand further critical inquiry: “Are Republics Peaceable?” (chapter 10) and which option is more convincing in the face of the alternative “Federation of Peoples or World Republic” (chapter 11)? Finally, a novel political reading of the *Critique of Pure Reason* shows that the cosmopolitan concept of peace, relevant to Kant’s entire philosophy, has implications even for what continues to be his most renowned work, the first *Critique*. Contrary to the popular contention that Kant’s theoretical philosophy resembles a monologue, it in fact has both a republican and a world citizen character. In certain respects, this is already shown by Kant’s innovative interpretation of the Platonic principle of the philosopher-king, namely, the idea of a kingly people (chapter 12).

Several chapters have been written expressly for this book. Others are taken from essays already published, but they have been changed to such an extent that they often do not resemble the original. I thank my students and colleagues, especially Dr. Alessandro Pinzani and Philipp Brüllmann, for their suggestions and help.

Tübingen, July 2000