Kant’s Regional Cosmopolitanism

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In his 1795 essay ‘Toward Perpetual Peace’ the East-Prussian university metaphysician Immanuel Kant (1724-1804) named ‘Hugo Grotius, Pufendorf, Vattel’ as the ‘miserable comforters’ of the law of nations. This was a bon mot that became celebrated retrospectively, with the late-twentieth-century reception of Kant’s cosmopolitanism in political philosophy and international relations theory. In formulating it, Kant was accusing Grotius, Pufendorf and Vattel of using a concept of right (jus) in relation to war that not only lacked all legal force in restraining the belligerence of nations, but actually encouraged this belligerence. According to Kant, the concept of right employed in their jus gentium or law of nations was defective in that it only brought particular wars to an end in negotiated compromises or modi vivendi. It did not end war as such by eradicating the warlike disposition of mankind or nations, thereby bringing perpetual peace in the form of a world republican federation governed by global justice or ‘cosmopolitan right’.¹ In this accusation and prophecy Kant invoked the existence of a dormant inner ‘moral disposition’ through which man would ‘eventually become master of the evil principle within him’. Apparently this was the moral disposition that Kant’s own moral philosophy had awakened, by recovering a metaphysical normative principle so pure and universal that it applies not just to human beings but to ‘rational beings’ as such.² It was also a disposition that a ‘universal history with cosmopolitan intent’ would realise empirically, through the gradual synthesis of a world republic or a world federation of republics.³

We are not unaccustomed of course to seeing philosophers display contempt towards their predecessors. This is usually grounded — as it is here in Kant’s case — in hostility towards all philosophical cultures other than their own, and in studied

indifference toward the historical contexts in which earlier cultures were anchored and the purposes that they served. Kant thus made no attempt to characterise or understand the formidable intellectual cultures that informed Pufendorf’s and Vattel’s *jus gentium*: in Pufendorf’s case, the Christian-Epicurean political philosophy through which he sought to undermine scholastic political metaphysics, and in Vattel’s case the updated Wolffian rationalist political metaphysics through which he sought to provide a kind of political casuistry for the conduct of war and peace within a European ‘society of nations’. Neither in his passing denunciation of the ‘miserable comforters’ of *jus gentium* did Kant make any attempt to comprehend the historical contexts that had called forth these intellectual programs: namely, those contexts associated with the post-imperial territorialisation and secularisation of political authority in central Europe, and the consequent regularisation of intra-European warfare — contexts that constituted the political order in which Kant unwittingly lived and philosophised.

It is perhaps not surprising if a philosopher intent on establishing the normative pre-eminence of his own philosophical culture should fail to develop a detached intellectual-historical understanding of his predecessors. We should be less resigned, though, when modern commentators replicate Kant’s anachronistic philosophical arrogance towards his predecessors in the law of nature and nations; for when modern scholars do this they fail to understand such early modern political thinkers as Pufendorf and Vattel in terms of the intellectual instruments at their disposal, the cultural struggles in which they were caught up, and the historical contexts that framed their struggles. Just as problematically, if Kantian philosophy is treated as the truth that these earlier thinkers failed to realise, then it too is decontextualised. It comes to stand for a timeless truth towards which the history of political thought has been leading, and that defines the terms of debate for our political present. This is what happens, I would suggest, in Habermas’s discussion of the so-called ‘constitutionalisation’ of early modern *jus gentium* or international law. Habermas argues that such a process has been taking place in accordance with a Kantian philosophical-historical transformation of state-centred political prudence into universal cosmopolitan justice. In doing so, he joins an array of other commentators

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4 For exemplary instances see Habermas, ‘Does the Constitutionalisation of International Law Still have a Chance?’; Cavallar, The Rights of Strangers; and Otfried Höffe, *Kant’s Cosmopolitan Theory of Law and Peace*, trans. A. Newton (Cambridge:
who assume that Kant indeed recovered a universal normative principle for
international law that a global history is realising in our time: as if Kant’s
universalism allowed him to escape the specifically European character of
Pufendorf’s and Vattel’s constructions of justice, and to adumbrate a cosmopolitan
conception capable of joining all peoples within a single global normative order.

Underlying this assumption is the view that unlike the kind of natural law
doctrines elaborated by Pufendorf and Vattel, Kant’s twin principles of morality and
right are not based in a ‘comprehensive’ metaphysical doctrine: for example, in a
substantive metaphysical anthropology or cosmology. Rather, Kant’s normative
principles are supposed to be based in a rationality — ‘pure practical reason’ —
whose universality is guaranteed by its ‘formal’ character. The formality of Kant’s
conception of practical reason is constructed in terms of the principle of whether a
particular norm is ‘universalisable’ among a universe of suitably specified rational
beings. Modern receptions of Kant’s practical philosophy typically operate with
‘detranscendentalised’ and historicised surrogates for the principle of universalisation,
such as those provided by Rawls’s ‘original position’ construction, or Habermas’s
specification of an ‘ideal speech situation’.

It turns out that a good deal hangs on this issue, particularly with regard to the
recent reception of Kant’s cosmopolitanism in political philosophy and international
relations theory, and, within this reception, with regard to debate over the role of
European jus gentium in the history of colonialism and imperialism. If as Habermas
and Rawls argue, Kant did indeed recover a universal normative principle — or one
that is being universalised through the sociology of globalisation — then from the
1780s it was possible in principle for European and non-European cultures to be
incorporated within a global normative order. It would thus have been possible in
principle for such cultures or political orders to enter into reciprocally just relations
based on a common moral or juridical order. This is what makes it possible for us
‘critical moderns’ to condemn the unjust relations of colonisation and imperial
subjection that actually obtained.

Cambridge University Press, 2006). See also, the essays collected in James Bohman and
Matthias Lutz-Bachmann, (eds.), Perpetual Peace: Essays on Kant’s Cosmopolitan Ideal
(Cambridge Mass.: MIT Press, 1997); and Dieter Hüning and Burkhard Tuschling, (eds.),
If though as others have argued — James Tully for example — Kant’s cosmopolitan justice was itself based on a particularist or Eurocentric metaphysical anthropology and cosmology, then it could not even in principle have been used to unite European and non-European cultures within a global normative order — ‘international justice’. As a result, far from showing how reciprocally just relations might have been established between these cultures, Kantian cosmopolitanism was itself an instrument of European colonialism and imperialism, imposing as universal what was in fact a European moral culture. Much of Tully’s argument is convincing, I think. But he does not clarify whether he thinks that there was some other moral or political philosophy that might in principle have included European and non-European cultures within a global normative order. And this makes a big difference to how the Eurocentric character of Kant’s cosmopolitanism is treated. For if there is no such global normative order even in principle, then Kant’s Eurocentrism cannot be theoretically comprehended and criticised for failing to be truly global. It could only be comprehended historically and possibly ethnologically: as one among the many European and extra-European forms of moral anthropology and political metaphysics that have jostled against each other, sometimes violently, and more or less unpredictably. And our position as commentators in the present would thus not be to diagnose the degree to which Kant’s cosmopolitanism had realised a global norm of justice, but only to deal with the unpredictable historical outcomes of the absence of such a norm.

That is the broader position that informs the present paper. On this occasion, though, I only use it to frame an historical account of the metaphysical basis of Kant’s cosmopolitanism; by which I mean its grounding in the teaching of a certain form of European university metaphysics. The immediate aim of this account is to clarify what I’ll call the regional character of Kant’s political metaphysics and construction of cosmopolitan justice; that is, the sense in which it was both regional to Europe and within Europe. Less immediately, it is envisaged that this historicisation of Kant can also shed light on the larger question just adumbrated: that is, how international relations — or relations of conflict, hegemony and colonisation — look in the absence of a universal norm of justice; although that is something that I’ve addressed in a separate paper.
I

Seen from the standpoint of contextual intellectual history, I argue, Kant’s principles of morality and right — and the ‘test’ of universalisability itself — are indeed grounded in a specific, substantive and comprehensive metaphysical anthropology and cosmology. Drawing on a Christian-Platonic anthropology deeply embedded in the history of north-German Protestant university metaphysics, Kant characterised man as the empirical harbinger of a pure rational being (Vernunftwesen). This being is understood as a pure intelligence (homo noumenon), existing independently of space and time, and possessing twin spontaneous intellectual capacities: to intelligise the pure forms of experience, and to govern the will by thinking the ‘idea’ or form of its law. In willing in this way, Kant’s homo noumenon or rational being is supposed to free himself from the ‘sensuous inclinations’ that otherwise tie the will of empirical man (homo phenomenon) to extrinsic ends or goods.

It is this substantive metaphysical anthropology of man’s rational being that supplies the two central features of Kant’s moral philosophy. These are his conception of the good will as one that transcends distracting sensuous inclinations by spontaneously conforming itself to pure reason’s intellection of the idea of the law; and his conception of moral community as the ‘kingdom of ends in themselves’ that is formed when the universe of rational beings is joined through transparent

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5 For a more detailed discussion, see Ian Hunter, ‘Kant’s Cosmopolitanism from a Historical Viewpoint’, in Barry Hindess and R.B.J. Walker (eds), The Cost of Kant, (forthcoming).
7 Kant, Groundwork, pp. 52-8.
reciprocal willing in accordance with this intellation.⁸ This same metaphysical anthropology and its associated cosmology lie at the heart of Kant’s ‘doctrine of right’ (*Rechtslehre*) and his cosmopolitan *jus gentium*. In fact Kant’s political and legal doctrine is formed on the basis of the extraordinary conception that right or justice originates when this pure intelligence existing outside space and time seeks to exercise its freedom ‘externally’ by occupying the global surface of the earth.⁹ It is on this ground that Kant formulates his principle of right or justice — namely, as the harmonisation of the external freedom of each with the external freedom of all in accordance with a universal law — and thence his conception of the juridical community.¹⁰ Kant constructs juridical community as the devolved form of the moral community, emerging when rational beings form a common will on the basis of ‘universal reciprocal coercion’, as opposed to universal reciprocal intellation.¹¹

Formulated in this historically-oriented manner, the metaphysical doctrines underlying Kant’s cosmopolitanism appear recondite even esoteric to us moderns, not least because of the depth at which they have been buried in the exoteric receptions of Habermas and Rawls. It is thus worth supplying a full quotation that encapsulates them, this one taken from Kant’s unpublished working notes to his *Rechtslehre* — *Vorarbeiten zur Rechtslehre* (‘Preliminary Works for the Doctrine of Right’) — where the connection between the metaphysical anthropology and his conception of justice is starkly apparent:

> When it is thought in terms of the relations between men as pure intelligences in no relation to things and to each other in space and time, right is easy to determine according to general rules. One needs to allow for nothing more than freedom and the power of willing [*Willkür*] in relation to one another, either immediately or mediated through things. In any case, one can say in general that all external right [can be regarded] as possession of the free choices of others (because one has control of their

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⁸ Kant, *Groundwork*, pp. 81-4.
willing). When, for this right to be concretely actualised, man is viewed as a being of the senses [Sinnenwesen], then the idea of a community of wills forms the basis of: 1. the sensory conditions for the determination of right required in regards to [external] things, under which alone a communal will is possible; 2. such conditions through which [a communal will] becomes real; 3. the condition of the use of persons as things through which a unified will becomes necessary.¹²

The central elements of Kant’s juridical and political philosophy flow directly from this metaphysical picture. Kant thus begins his construction of right or justice by posing the philosophical problem of ‘noumenal possession’ (possessio noumenon): how can a pure intelligence existing outside space and time occupy the physical surface of the earth? According to Kant’s metaphysical anthropology, cosmology and cosmography this problem is inescapable and fundamental. This is because men as noumenal or spiritual beings are required to make use of the earth in order to redeem it from the morally vacuous status of res nullius — an ownerless thing — and in order to obtain embodiment for themselves in the world of space and time.¹³ The spherical character of the earth’s surface turns out to be crucial for this construction; as it is the continuous and finite nature of the globe that establishes contiguity among the rational beings seeking to occupy it. This is what allows their exercises of ‘external freedom’ to conflict, and gives rise to right or justice as the principle that resolves this conflict through communal will-harmonisation.¹⁴

Noumenal or rightful possession of the earth — that is, the capacity of pure intelligences existing outside space and time to occupy the surface of the earth — is thus reciprocally related to the formation of a communal will. This is understood in terms of the harmonisation of the choices of each with the choices of all through ‘universal reciprocal coercion’; and it permits the universe of rational beings to achieve a justly distributed possession of the surface of the earth without having to physically attach themselves to it and thereby lose their noumenal freedom. It is this communal will that forms the basis of justice in Kant’s public law and for his construction of the civil state. As the rightful condition established by the common

¹² Immanuel Kant, Kants Gesammelte Schriften (Berlin: Prussian Academy of Sciences/de Gruyters, 1902-), vol. xxiii, pp. 299-300.
¹³ Kant, Metaphysical Elements of Justice, pp. 52-3.
¹⁴ Kant, Metaphysical Elements of Justice, pp. 56-64.
will remains ‘provisional’ in the ‘state of nature’, Kant understands the civil state as the actualisation and execution of this will by means of coercive public law applied to man ‘as a being of the senses’. For Kant the only legitimate polity is the ‘ideal republic’ as characterised by the relations of freedom, equality and reciprocity among citizens forming a common will. It now starts to appear that Kant’s ideal republic is the direct outcome of his conception of the state as the means of executing the communal will through which rational beings achieve noumenal possession of the globe.

For its part, Kant’s cosmopolitan or global spatialisation of justice is the result of the metaphysical reciprocity that he establishes between the community of space in a spherical earth, and the community of wills formed among the rational beings seeking to occupy this space: ‘Since the earth is a self-enclosed surface rather than a limitless one, then both civil law [Staatsrecht] and the law of nations (ius gentium) together lead inevitably to the idea of a law of nations (ius gentium) or cosmopolitan right (ius cosmopoliticum).’ For Kant jurisdictional space is thus inherently global, as right or justice is conditional on the harmonisation of rational wills required to occupy a global space. This suggests that Kant’s political metaphysics cannot formulate a sub-global or territorial conception of jurisdiction or justice. For the same reason, the only truly legitimate form of political authority for Kant is that exercised by a world republic; as it is only the harmonisation of wills of the entire universe of rational beings that makes just possession of the earth possible and that is actualised in the cosmopolitan right of the cosmo-polis:

Since nature has enclosed all nations within limited boundaries (by virtue of the spherical shape of their dwelling, as globus terraqueus) … so all nations originally hold a community of the land … [which is] that of possible physical interaction (commercium), that is, a community which involves a universal relationship of each to all the others such that they can offer to trade with one another, and have the right to trade with a foreign nation without being regarded as an enemy. — This right, insofar as it involves the unification of all nations for the purpose of establishing

15 Kant, Metaphysical Elements of Justice, pp. 64-72, 76-7.
17 Kant, Metaphysical Elements of Justice, pp. 75. (Translation modified).
a certain universal law of their possible interaction, can be called cosmopolitan right (*ius cosmopoliticum*).\(^{18}\)

This is the view expressed in Kant’s *Rechtslehre* and in his essay ‘Idea for a Universal History with Cosmopolitan Intent’. In his essay on ‘Perpetual Peace’ Kant recast the world republic into a world federation of (presumably) territorial republics, although this is done somewhat ambivalently, with Kant characterising the world federation as a ‘negative surrogate’ for the world republic. Once we compare Kant’s republicanism with Vattel’s, however, then it is clear that for Kant there can be no legitimate territorial embodiment of the republican will; as for him there is no conception of the nation as a localised corporate moral personality, and no equivalent of Vattel’s national ‘country’ or territory where natural-law virtues are cultivated in a nationally-specific form. Again, this is because Kant’s cosmopolitan or global spatialisation of justice is grounded in the metaphysical reciprocity between the spatial community of the globe and the noumenal community of rational beings formed to occupy it.

II

It is possible to argue, then, that Kant’s so-called ‘universal’ conception of justice was not only regional to Europe but was also regional within Europe. The foundation of this argument lies in the historical observation that the metaphysical anthropology and cosmology on which this conception was based belonged not to universal reason, but to the teaching programs of an archipelago of north-German Protestant philosophy faculties.\(^{19}\) It is thus quite implausible to imagine that Kant’s metaphysical anthropology and cosmology could form a global normative order by harmonising with those of non-European political metaphysics: for example, political mythographies teaching that the nation has been chosen by god, or that its denizens are the cyclical incarnations of divine beings; or cosmologies teaching that the world hatched out of a divine egg; or cosmographies teaching that the world’s nations are organised around a privileged ‘middle kingdom’ — the centre of civilisation — or,

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alternatively, that the world is divided into the ‘abode of Islam’ (*dar al-Islam*) and the ‘abode of war’ (*dar al-harb*), and so on. There are thus good reasons for thinking that Kant’s conception of justice — as the form in which rational beings harmonise their wills in order to occupy the surface of the earth — is regional to Europe, and could only appear alien to non-European cultures ordered in accordance with quite different anthropologies and cosmologies.

But there are equally good reasons for thinking that Kant’s metaphysics of cosmopolitan justice is regional within Europe. After all, if we compare Kant’s metaphysics of justice and politics with the very different constructions of Pufendorf and Vattel, then what we find is an array of conflicting political anthropologies and cosmologies embedded in rival cultural and political programs. According to Pufendorf’s quasi-Epicurean or Hobbesian anthropology, men are thus not rational beings who must harmonise their wills to occupy the cosmic sphere. Rather, they are mutually threatening creatures of their passions, who occupy only as much territory as is defensible, and who reach agreement only by appointing a territorial sovereign capable of commanding their obedience. As mentioned, Pufendorf’s was a political philosophy suited to an anti-imperial and anti-papal program aimed at the secularisation and territorialisation of political authority in central Europe. Similar remarks can be made in relation to Vattel’s *jus gentium*. Vattel deployed a modified Wolffian version of the Aristotelian anthropology focused on man’s self-perfecting ‘rational and sociable nature’, which allowed him to conceive of nations as self-determining corporate persons. At the same time, he used the public-law history of European war- and peace-making in order to historicise and pluralise this political anthropology, treating each nation as autonomously self-determining, and thence treating the sovereigns of such nations as equally just when making war on each other. Vattel’s political anthropology and cosmology should thus be seen as geared to a program for the secularisation and regularisation of European warfare, to be understood not as war of annihilation against heretics or infidels, but as regulated war between equally just sovereigns of a ‘society of nations’.

Situated alongside Pufendorf and Vattel’s, Kant’s metaphysical anthropology and cosmology should be treated as regionally European in the same manner as theirs: that is, grounded in a local intellectual culture and attached to a particular cultural and political program. The only reason it isn’t is that Kant and his modern followers claim that his political metaphysics possesses a higher degree of truth: namely, the truth of a
pure ‘theory’ or philosophy in relation to which historical politics and law are only instantiations in the domain of ‘practice’. Under this construction, ‘theory’ refers to the philosopher’s self-reflexive recovery of the ‘idea’ or principle of right. Kant identifies the thinking of this principle with the purging of ‘sensuous man’s’ inclinations and interests. He thus envisages philosophical theorisation as transforming the philosopher into the personification of the community of rational beings in whose pure willing he now ‘participates’.  

For its part, ‘practice’ is supposed to refer to the empirical or historical domain inhabited by ‘sensuous man’ (the Sinnevense). Here the pure moral norms of the intelligible community are either forestalled by the inclinations and interests of empirical man (homo phenomenon), or actualised in the conduct of the theorist (homo noumenon) who acts in accord with the awakened moral disposition and the purposive history in which this disposition is being unfolded.

The persona of the theorist whom Kant identifies with the ‘philosopher’ is thus ascribed an intrinsic moral and cognitive superiority over the personae inhabiting the unredeemed domain of practice: namely, the ‘miserable comforters’ of the jus gentium tradition and the jurisconsults to historical states, whom Kant stigmatises with moral and cognitive corruption for their complicity with the tyranny of man’s sensuous interests and inclinations. Through an extraordinary attempt to convert metaphysical purity into political prestige, Kant makes the philosopher — in the persona of the ‘moral politician’ — into the lynchpin of the universal historical actualisation of the moral community. Kant thus assigns this personage the role of adviser to the prince, in which capacity he will oversee the transformation of the maxim’s of state prudence into the cosmopolitan principle of justice. This will be achieved by advising the prince to enact a republican constitution for his state, and to join a cosmopolitan federation of states as the ‘surrogate’ for an intrinsically pacific global moral community. Conversely, beginning with Hobbes and the jus gentium ‘miserable comforters’, Kant identifies the jurisconsults with the figure of the ‘political moralist’ who serves the interests of power rather than right. According to Kant, as a result of their empirical conception of justice based on the political

governance of permanently conflicting interests, the juristic political moralists are themselves accomplices of the war and repression through which empirical politics satisfies mankind’s sensuous interests and inclinations. Here we can see the emergence of a key intellectual source for the postcolonial critique of jus gentium as an accomplice of European colonialism and imperialism.

We have seen, though, that Kant’s supposedly ‘universal’ metaphysical anthropology of man’s rational being — and the ‘universalisability’ criterion of moral reason internal to it — is no less regional and substantive than the other jus gentium political rationalities that we have mentioned: the quasi-Epicurean anthropology of man’s passion-driven nature from which Pufendorf derives the norm of imposed sociability; and the updated Christian-Aristotelian anthropology from which Vattel derives the norm of self-perfecting corporate ‘national’ moral personality. In each case, a particular anthropology and cosmography is associated with the shaping of a particular intellectual persona, understood as a specific way of acceding to knowledge and truth. It is in this historical-intellectual light that we should view Pufendorf’s Epicurean political jurist deriving knowledge of natural law from observation of man’s passionate and dangerous nature; and so too Vattel’s Aristotelian statesman-diplomat, unfolding casuistical norms for the ‘society of nations’ in the space between the natural and necessary law of global perfection and the voluntary law of national self-interest.

Kant’s philosophical derivation of a ‘pure’ norm of right — through the reflective recovery of an a priori principle supposedly latent in the philosopher’s own ‘rational being’ — thus has no greater intrinsic validity than their constructions. It pertains not to universal truth, but to a particular regional way of acceding to truth as ‘universal’. Its supposed theoretical superiority over the so-called ‘empirical’ constructions of Pufendorf and Vattel does not come from the fact that it knows more about law and politics than they do. Rather this prestige arises from the fact that in claiming to retrieve the concept of right through pure thought, the theoretical personage invokes his spiritual superiority over all those whose empirical methods supposedly tie them to man’s sensuous inclinations and interests. But that claim of course is internal to Kant’s metaphysical anthropology and cosmology, and to the philosophical persona

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that it forms: the prophetic theorist as ‘wise man’ of an intellectual culture regional to and within Europe.

III

Despite the central role that he claimed for the philosophical adviser to the prince, Kant did not occupy this office. In this he differed significantly from Pufendorf and Vattel: the former occupying the office of political adviser and court historian to the Protestant territorial states of Sweden and Brandenburg-Prussia, the latter seeing diplomatic service on behalf of Protestant Saxony as consul to the Swiss Federation. Kant instead spent his whole adult life as a student and then professor of philosophy (metaphysics and logic) at the East-Prussian university of Königsberg. Here he dedicated his considerable intellectual energies to philosophical tasks associated with the defence of Protestant university metaphysics against such perceived threats as scientific empiricism, ethical pragmatism, and Hobbesian conceptions of politics and law.  

I have argued that Kant’s juridical and political philosophy — his contribution to the history of the law of nature and nations — was wholly contained within his regional academic metaphysics and the publicistic defence of its philosophical culture. By cultivating his persona in terms of participation in the willing of a community of pure intelligences, the Kantian political adviser could not engage the interests of the territorial prince; as the advice he had to offer — ‘Convert your own state into a rational republican community and then amalgamate it with a world republic or federation of republics’ — was not given in a political capacity or persona; neither was it addressed to a political personage: the Prussian prince or political class. Rather, it was addressed to the only group within the Protestant German Bildungsbürgertum — academically educated middle classes — who were disposed to think of the political and juridical order in a metaphysical manner: as if it were the form in which a universe of pure intelligences achieves a devolved mutually coercive form of communal willing. In fact this was the cultural stratum educated via the regional Protestant scholasticism of Leibniz and Wolff, and then Kant himself.

It is thus not the case that Kant had formulated a universally true theory of cosmopolitan law and politics that was blocked by the merely historical and contingent political interests of territorial princes, and that hence might yet take wing

in the enlightened law and politics of a cosmopolitan future. In conceiving of law and politics in terms of the self-purifying intellection of a pure idea to which empirical reality will eventually approximate, Kant was not offering a true theory of them. Rather he was providing the ‘spiritual’ means of forming a particular way of acceding to their truth: as the devolved historical-empirical manifestations of a self-governing community of pure intelligences. This does not mean that Kantian legal and political philosophy was ineffectual in the domains of positive law and politics. It does mean, though, that its effects were not realised through technical mastery of these domains. Rather, these were achieved through the supervening presence of the philosophical persona through whose spiritual purity the need for a ‘pure’ theory of law is first generated.

If further research shows that, in comparison with Grotius, Pufendorf and Vattel, there is little use of Kant’s *Rechtslehre* in nineteenth-century positive law — whether as a natural-law reception framework, or as a cited legal authority — then that will tend to confirm the preceding account. This account will also find a degree of confirmation if the juristic reception of Kant’s legal metaphysics takes place principally through the supervention of a pure theory of cosmopolitan justice, acceded to via the persona of the philosophical jurist or ‘moral politician’. That, I take it, is one of the central lessons of Koskenniemi’s illuminating account of the reception of Kant by German international lawyers — Gerber, Heilborn, Triepel, Holtzendorff, Jellinek — in the years between 1870 and 1914. In their ceaseless efforts to ‘square the circle’ of national self-interest and a pacific cosmopolitan legal order, the Germans drew on Kant’s principle of right as the communal will of a rational community, while combining it with a neoKantian sociological history. According to the latter, the rational community’s universal normative will is gradually being realised via the sociological globalisation of justice through the extension of international treaties and conventions, and the continuing growth of international

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trade and communications — much as Habermas still argues in his account of the ongoing ‘constitutionalisation’ of international law.

In grounding itself in a metaphysical anthropology and cosmology geared to the formation of a prophetic-hermeneutic philosophical persona, this account, though, remained underdetermined in relation to any given state of political and juridical affairs. The same political reality could be interpreted as symptomatic either of the practical embodiment of the principle of the ideal common will — as Kant interpreted the rule of Frederick the Great, for example — or of the failure to realise in practice this ideal, which nonetheless remained true ‘in theory’. The grounding of their theory of international justice in a regional national metaphysics — one that only engaged political reality by setting it a cosmopolitan moral task — meant that the German international jurists were ill equipped to deal with the play of state-centred political forces that drew Germany into a catastrophic war and then extracted vengeful reparations based on war guilt. Buckling under this unbearable pressure on their national philosophical premises and culture, some of the Kantian international jurists defaulted to the defence of Germany’s patriotic interests, while others took refuge in a utopian future still to come.29

In comparison with the territorial construction of jurisdiction and the European localisation of the law of nations that we find (in different ways) in Pufendorf and Vattel, the global spatialisation of justice in Kantian philosophical international law initially had no direct anchorage in a concrete political and juridical order. Schmitt’s account of the destruction of the early modern public-law ‘nomos’ of a European society of nations under the impact of rising extra-European ‘hemispheric’ political hegemonies — particularly the expanding imperial hegemony of the USA — does suggest, though, that Kantian cosmopolitanism may have found post-facto anchorage in this new imperialism at one remove. One can see this, for example, in John Rawls’s Kantian rejection of a Vattelian modus vivendi between ‘just enemies’ as a basis for international stability, and his argument that international relations must be based instead on ‘stability for the right reasons’. Apparently this will emerge when each of the members of a ‘society of peoples’ undergoes a ‘moral learning’ that sees it suspending its ‘comprehensive’ cultural doctrines and achieving co-operation on the

basis of a ‘reasonable and rational’ conception of justice.\textsuperscript{30} In using the device of the ‘veil of ignorance’ to suspend divergent comprehensive doctrines — and thereby allow different peoples to achieve consensus through the moral learning of a shared conception of right — Rawls elaborates a devolved simulacrum of Kant’s self-transformative participation in a community of rational beings as the means of transcending divisive empirical interests.\textsuperscript{31} Given that this ‘universal’ construction of international law is actually an adaptation of the Kant’s regional political metaphysics — but now tied to the interests of a different national philosophical clerisy — then the global norms of Rawls’s ‘law of peoples’ can only find a \textit{de facto} anchorage: namely, in the global projection of United States power and culture.

The symptom of this anchorage is to be found in Rawls’s conception of ‘outlaw states’. In conceiving such states in terms of their failure to achieve a ‘decent’ domestic simulacrum of liberal-democratic rule — which is then aligned with their aggressive foreign policies — Rawls treats them as unjust in relation to the shared conception of justice that constitutes the ‘law of peoples’, and thence as subject to military sanction by an international force acting in the name of this conception.\textsuperscript{32} This does indeed point to the eclipse of the secularised territorial \textit{jus gentium} of Pufendorf and Vattel, according to which all ‘regular’ warring nations are ‘just enemies’ as there is no determinable global normative principle or agent capable of effectively deciding who has justice on their side. In being based on a transposed deployment of Kant’s regional metaphysics of justice, however, Rawls’s confidence that his philosophy can indeed decide this question — his confidence that his philosophy can include all the earth’s ‘peoples’ within a single global justice — relies \textit{de facto} on the existence of a global hegemon intent on projecting its own politics and culture as ‘universal’.

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\item \textsuperscript{30} Rawls, \textit{The Law of Peoples}, pp. 44-5.
\item \textsuperscript{31} Rawls, \textit{The Law of Peoples}, pp. 30-5.
\item \textsuperscript{32} Rawls, \textit{The Law of Peoples}, pp. 80-1.
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