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The Law of Continuity: Conquest and Settlement within the Limits of Kant's International Right

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1.1 Defining Colonies

Kant wrote extensively about empires—or 'universal monarchies' (not always one and the same thing)—and about race, and about the rights, or otherwise, of the 'civilized' nations of the world to enlighten the savage and barbarous ones. But he had, in fact, relatively little to say about *colonies* as such, and if we take his historical and contemporary examples seriously, as he clearly intended us to do, what he does say is seemingly confused and contradictory. This derives in part from the various historical and legal definitions of the Roman 'colony' and the Greek *apoikia* (literally 'from home') available to him. But only in part. More interestingly, his sometimes puzzling account of the legitimacy of warfare and of conquest and settlement would seem to derive ultimately from his overriding concern with the need for legal continuity and the tension which this created between his understanding of the 'right of nations,' which is unwaveringly atemporal, and his teleology, which requires that all peoples work actively towards the fulfillment of the *jus cosmopoliticum*.

Kant provides four accounts of settlements overseas. The first two of these are closely linked, as are the third, and fourth. The first comes, albeit

indirectly, in the context of a discussion of the legal status of persons in their own and foreign countries. All peoples are divided by their languages and religious beliefs, things which for Kant, no less than for his former pupil, Johann Gottfried von Herder—although they disagreed on much else—was nature's way to 'prevent peoples from intermingling and to separate them' (ZeF 8:367). Every people constitutes a 'country [*Land*] or *territorium*'. This is made up of fellow citizens who are subject to the same constitution simply by 'birth', rather than through any legal act. As such, every 'country' is inescapably what Kant, despite his dislike for patriarchal conceptions of government, calls a '*Vaterland*' (MdS 6:337).[1] The citizens of these 'fatherlands' are those 'who constitute a nation' (*Volk*); and they derive whatever legitimacy and social cohesion they possess by analogy with those born as 'descendants of the same ancestors (*congeniti*) even though they are not.' They belong, that is, to a single lineage, although this is 'intellectual' and 'from the perspective of rights', rather than natural, whose common *mother* is the republic, understood as a constitution, rather than a particular patch of ground. A nation, then, is a conceptual and legal, rather than a biological, *gens* or *natio* (MdS 6:343).[2] (Kant's concept of citizenship is based strictly on *ius sanguinis,* despite his recognition that the *sanguis* in question was wholly metaphorical.) A foreign country, by contrast, is described merely as one in which a person is not a citizen, and therefore not a member of the *gens* or *natio*. However, when this *foreign* country 'is a part of a larger realm' [*Landesherrschaft*] of the native land it is what Kant calls 'a province (in the sense in which the Romans used this word'. Because it is not an 'integral part of the realm [*Reich*] (*imperii*)' or 'a place of *residence* [*Sitz*] for the fellow- citizens', but is instead 'only a *possession* [*Besitzung*], a secondary house [*Unterhaus*]', it is compelled to 'respect the land of the state that rules it as a *mother country (regio domina)*' (MdS 6:337). Those who live in such provinces, while bound to obey the ruling state, do not enjoy the rights of citizenship, which they would have done had they been living in the motherland itself.

[1] As with so many of Kant's Roman legal tags, this one is misleading. The *Digest* defines a 'territorium' as simply 'all the land included within the limits of any city. Some authorities hold that it is so called, [from terror] because the magistrates have a right to inspire fear within its boundaries, that is to say, the right to remove the people', which on Kant's use of the term would seem to be the one right that they would *not* have (*Digest* 50.I.8).

[2] True patriotism, he insisted, derived its name 'from *patria* not from *pater,* for paternal government . . . is the worst.' *Reflexionen zur Rechsphilosophie* no. 7979 (R 19:570).

This, at least, would seem to be the conclusion to be drawn from Kant's subsequent claim that a ruler may banish a recalcitrant subject either to a 'province outside the country' where he 'will not enjoy any of the rights of a citizen' or alternatively, he may 'exile him altogether (*ius exilii*) to send him out into the wide world' (MdS 6:338). On Kant's understanding then, a province is a subject state or community whose residents, although beholden to the *Reich*, are clearly not represented by it.

In all of this, Kant never uses the term 'colony.' Later, however, in the one single definition he does provide, a colony is spoken of as if it were identical with a province, and defined as 'a people that indeed has its own constitution, its own legislation and its own land' (MdS 6:348).[3] This would make it, in most respects, indistinguishable from a *Land*, for which reason it is also described as a 'daughter state' or one which is *ruled*, by the '*mother-state*,' which 'has supreme *executive* authority (*oberste ausübende Gewalt*) over the colony or province.' Unlike the first version of the province/colony, however, this one would appear to exercise a far higher degree of independent executive autonomy, for it is said to *govern* itself 'by its own parliament', or 'possibly with a viceroy presiding over it (*civitas hybrida)*.' Here, all outsiders are 'foreigners', even if they are also citizens of the 'mother state.' The examples he gives for this are 'the relation Athens had with respect to various islands' and 'that Great Britain now has with regard to Ireland' (MdS 6:348).

We would appear, then, to have two distinct definitions of a province/colony. Neither it should be said really corresponds, as Kant's use of Latin—if not consistently Roman—legal tags would imply, to Roman practice, since a Roman *provincia* was originally only the territory over which a magistrate exercised his authority (*imperium*) and the term was used to describe territories both within and beyond Italy, although it later came to be confined largely to those acquired overseas. It might include citizens and non-citizens, free cities, and even colonies within its borders. Although every province certainly 'respected the state that rules it as a *mother country*' (MdS 6:337), it was clearly not a *possession*, either in the Roman sense of the term or in Kant's own. On the other hand, neither account looks much like a Roman *colonia* either. The best-known description of the status of the Roman, as distinct from the Greek, colonies

[3] 'Eine *Colonia* oder Provinz ist ein Volk, das zwar seine eigene Vefassung, Gesetzgebung, Boden hat….'

(and the one probably familiar to Kant) is Livy's account of Emporiae in Spain, in which the Romans, unlike their Greek predecessors, who had erected a wall between themselves and the native Spanish, are described as living together with the indigenes and granting them citizenship, so as to Romanize them.[4] Roman colonies, that is, were, and were clearly recognized as being, examples of the kind of attempts to incorporate non-citizens into a 'universal monarchy' on which Rome prided herself, and which Kant looked upon as merely a form of tyranny.[5]

The second account of the province/colony has some affinities with the ancient Greek understanding of the *apoikia* as a semi-independent community made up of persons displaced from, but still dependent upon, a *metropolis*, or 'mother-city.' However, and rather puzzlingly, Kant uses this second definition to characterize a people who are said to have 'been degraded to a colony and its subjects to bondage' (MdS 8:348) through defeat in war, and the examples he provides certainly fit this description. In English law, Ireland was held to be a 'land of conquest', and the Athenian *arche* was the result of an abuse of power by Athens over the cities of the Delian League. In neither case, however, could the relationship of power *also* be said to be analogous to that between a mother and a daughter. There is a further complication with Kant's twofold account of the province/colony and its relationship with the *motherland.* For whereas in the first case what is clearly being described is a creole state, whose relationship to its original *Vaterland* might therefore plausibly be cast in terms of familiar daughter–mother metaphors, the second is explicitly a land of conquest, and those who *govern* themselves 'by its own parliament', are—like the Irish or the Melians—indigenes with no connection in terms of lineage or ethnos to the 'mother state.' To describe them as the offspring of

[4] Livy 26.1.7–10. I would like to thank Clifford Ando for this reference and for all his help in sorting Roman from Greek colonial practices. See 'The Roman city in the Roman period', in *Rome, a City and its Empire in Perspective: The Impact of the Roman World through Fergus Millar's Research. Rome, une cité impériale en jeu: l'impact du monde romain selon Fergus Millar,* ed. Stéphane Benoist (Leiden: Brill, 2012), 109–24.

[5] See Sankar Muthu, *Enlightenment against Empire* (Princeton: Princeton University Press, 2003), 155–62. Muthu calls this 'state paternalism', although what Kant understood by 'paternalism' was 'a government established on the principle of benevolence towards the people, like that of a father towards his children—that is a paternalistic government . . . is the greatest despotism thinkable' (TP 8:290). Roman government, in particular under the Principate, could certainly be described as 'paternalistic' in this sense; but it made no distinction between Roman citizens on grounds of ethnicity or place of birth.

a mother who had, in fact, conquered them and brought about the 'moral annihilation' of their state (MdS 6:347) seems, therefore, decidedly odd.

In the course of the seventeenth and eighteenth centuries, the 'mother–daughter' analogy became something of a commonplace to characterize a largely benign and beneficial kind of colonial rule of supposedly Greek origin, to be distinguished from a rapacious and destructive version of supposedly Roman origin, and this may well be what Kant had in mind. Built into the 'mother–daughter' analogy, however, was also, of course, the troubling—at least for the colonial power—implication that one day the 'daughter' would grow up and acquire full independence. The same applies, as Arthur Ripstein points out here, to the implications of Kant's recognition that parental right extends only until 'the time of his [the child's] emancipation (*emancipatio*) when they [the parents] renounce their parental right to direct him' (MdS 6:281). There would seem to be no reason to suppose, therefore, that the citizens of such 'daughter' states should be any more deprived of their right to be represented by the 'mother state' than its actual inhabitants. They are, in effect, neither 'colonies'—as the Romans understood them—nor 'provinces', as Kant seems to understand the term, so much as municipalities. As several disgruntled 'British Americans' pointed out in the 1760s, their status should be thought of not as a colonial one at all, but as analogous with that of the citizens of the kingdom of Hanover. 'The people of England', wrote one 'Britannus Americanus' in the *Boston Gazette* in the winter of 1765, 'could have no more political connection with them or power and jurisdiction over them, than they now have with or over the people of Hanover who are also subjects of the same King'.[6]

The problem with this was that it relied upon the assumption that sovereignty would be divided between the mother and the daughter states: the daughter being entirely sovereign within her own borders, while the mother exercised exclusive authority over all the external affairs of state. This description was, for instance, applied both to the thirteen colonies of British North America as it was later to the Princely States of India (although these were never described as 'colonies'), whose rulers, in the words of Henry Maine, Regius Professor of Civil Law at Cambridge and

[6] Quoted in Jack P. Greene, *Peripheries and Center: Constitutional Development in the Extended Polities of the British Empire and the United States, 1607–1788* (Athens and London: University of Georgia Press, 1986), 94–5.

the Law Member of the Viceroy of India's Council, 'may administer civil and criminal justice, may make laws for all his subjects and for his territory, may exercise power over life and death, and may levy taxes and dues, but nevertheless he may be debarred from having foreign relations with any authority outside his territory.' In such states, there could, therefore, be no, what Maine called, 'undisputed legislator.' Sovereignty was inescapably divided between 'mother' and 'daughter' for, as Maine rightly insisted, Hobbesian indivisible sovereignty had no place in 'international law.' [7]

Although he was clearly aware of the need for some kind of division of sovereignty within his future 'league of states', *Völkerbund,* Kant was also certain that, as Arthur Ripstein points out in this volume, the people of states which cannot be the 'undisputed legislators' of their own affairs must consider themselves to be 'passive in relation to their own independence'. Certainly, Quebecois and Basque nationalists believe so today, as do many Europeans (most either British or on the extreme right, or both) about their relationship with the European Union.

No matter how apparently contradictory Kant's description of the province/colony might be, one thing is abundantly clear: both the first and second type of province/colony can only have been acquired initially—and this was certainly an implicit part of 'the sense in which the Romans used this word' (MdS 6:337)—through conquest. Both types, therefore, although this is only explicit in the case of the second, must lack the essential qualifications of a legitimate state. Both can only be, in effect, war booty, and Kant's account of both only makes sense, therefore, in the light of his views on the legitimacy of war.

1.2 The Justice of War

Kant was no pacifist. True, in the condition in which he lived he looked upon war as the greatest of all human scourges—with the sole exception of 'universal monarchy' (ZeF 8:367). But it had sometimes served mankind well in the past, and might continue to serve it well, under certain very specific conditions, in the future. It had been war which had forced humans

[7] *International Law. A series of lectures delivered before the University of Cambridge, 1887* (London: John Murray, 1888), 57–8. 'Undisputed legislator' is Maine's rendering of Justinian's description of the Roman Emperor as *legibus solutus*.

to occupy the entire globe. Without it they would, like all other animals, still be huddling together on the small patch of land where they had first emerged. How else could one explain the presence of human settlements around the Arctic Ocean, or in the Altay Mountains, or in Patagonia (ZeF 8:363)? It had been warfare 'as great an evil as it may be' which had motivated humankind 'to pass from the crude state of nature to the civil state' (*bürgerliche Gesellschaft*) (ApH 7:330 and ZeF 8:364–5). At a later stage it had been war, all wars, which are only 'so many attempts . . . not, to be sure, in the aims of human beings, but yet in the aim of nature', which had compelled the more socialized human populations to establish relationships between states and create new ones (IaG 8:24–5). Man is the only animal which 'works so hard for the destruction of his own species' (KdU 5:430), and because of this it is war, and the fear of future war, which demands 'even of the heads of states', to observe a certain '*respect for humanity*' (MAM 8:121).

War for Kant constitutes an extreme form of coercion, and coercion can be justified, only if it is '*hindering of a hindrance to freedom*', for only then will it be 'consistent with freedom in accordance with universal laws, that is, it is right' (MdS 6:231).[8] As with all previous accounts of the justice of warfare since Cicero, and the entire natural law tradition, Kant therefore assumes that a just war can only ever be a defensive one when a state 'believes it has been wronged by the other state', since this 'cannot be done in the state of nature by a lawsuit' (MdS 6:346). But precisely because there cannot, on Kant's understanding of inter-state relations, exist any international courts, since 'states considered in external relation to one another, are (like lawless savages) by nature in a nonrightful condition' (MdS 6:344), and since *all* warfare must necessarily take place in a 'lawless condition', the very concept of a *law*—or right—of war would seem to be so inherently meaningless that 'it is difficult even to form a concept of this or to think of law in this lawless state without contradicting oneself' (MdS 6:347).[9] This is the reason for Kant's apparent contempt for what he famously called the 'sorry comforters'—Hugo Grotius, Samuel Pufendorf,

[8] 'The best state never undertakes war except to keep faith or in defense of its safety' (*De Republica* 3.34), and see Pierre Hassner, 'Les concepts de guerre et de paix chez Kant', *Revue française de science politique XI* (1961): 642.

[9] The translation of 'ius gentium' as 'law of nations', although conventional, is not unproblematical: *ius* can mean both 'right' and 'law' and *gens* can mean a 'nation' in something like the modern sense of the term, but also a 'people.'

Emer de Vattel 'and the like'—in effect, the entire tradition of thinking on the 'law of nations,' the *jus gentium*, which preceded him. For, in his view, 'although their code, couched philosophically or diplomatically,' is always 'duly cited in justification of an offensive war' it could never have any legal force in the state of nature in which all states currently exist because none of them are 'subject to a common external constraint' The continuing existence of this ineffectual law of nations is merely evidence that the human being possesses the 'moral predisposition' required to overcome the 'evil principle within him' (ZeF 8:355). But encouraging though this might be, it did nothing to set limits on the condition of war which existed between states as they were currently constituted.

This outright dismissal of the law of nations as nothing more than a sign of good intentions is, however, curious, since shortly after this outburst against his predecessors, Kant goes on to offer a threefold division of 'public right' into the 'right of a state', the 'right of nations', and *cosmopolitan right* (ZeF 8:365). Although in the *Doctrine of Right* he claims that in German the second of these is called 'not quite correctly, the *right of nations* [*Völkerrecht*] but should instead be called the 'right of states' [*Staatenrecht*] (*ius publicum civitatum*)', it is, in either version, indistinguishable from the *jus gentium* (MdS 6:343), and is explicitly described as such in *Towards Perpetual Peace* (ZeF 8:349). Just to make matters more perplexing still, in the description in the *Doctrine of Right* of the inevitability of the progress of humanity towards the 'cosmopolitan right (*ius cosmopoliticum*)', this too is described as a 'right of nations (*ius gentium*)' (MdS 6:311). Furthermore, although the 'right of nations' can clearly only exist in the present condition of lawlessness (that is, before the creation of the 'league of states'), in *Towards Perpetual Peace* Kant asserts unequivocally that it makes sense to speak of such a right 'only under the presupposition of some kind of rightful condition' (ZeF 8:383). Presumably, since the possibility of any kind of international court is explicitly excluded, this could, at least in 1795, only take the form of the kind of diplomatic solution favored by Vattel. Treaties clearly do constitute what might count, on Kant's understanding, as a rightful condition, but they do so only as long as the parties to them find it in their individual interests to observe them. For it had been precisely Kant's point that in the absence of any superior authority capable of enforcing oaths, the hallowed formula *pacta sunt servanda* could be based only on calculated self-interest.

It is here that the tension between Kant's the 'right of nations' and 'cosmopolitan right' begins to show. For unless we take all these different, and seemingly contradictory, descriptions to be merely manifestations of what one scholar has called the 'terminological indecisiveness' of Kant's later writings, we must assume that what Kant understood by the 'right of nations' was what Bartolus, and most of the writers in the natural-law tradition, had called a natural law 'in a secondary sense'.[10] It was, in effect, a positive law framed in accordance with what the Spanish Dominican Francisco de Vitoria had described as the *respublica totius orbis*—the 'republic of all the world'. It was what Kant, in referring to the idea of an 'original contract', called '*only an idea* of reason' (GTP 8:297), that is, a law which all mankind *could* have been brought to agree upon, if it were possible to discover what its collective opinion might be; and this, broadly speaking, is how all the 'sorry comforters', had envisioned it.[11] They, however, had been able to extend it to all relations between states only because it had, in effect, and particularly in the hands of Christian Wolff and Vattel, been given a strongly cosmopolitan and teleological component, a working-towards what Wolff called the *civitas maxima* and Vattel a 'universal republic'. Kant, however, wished to keep the *Völkerrecht* and the *jus cosmopoliticum* strictly separate, not only as two distinct kinds of right, but also as the manifestation of two distinct phases in human history. This is especially true of Kant's understanding of the right to 'conditions of universal *hospitality*' (ZeF 8:357–8). This closely resembled Francisco de Vitoria's 'right of natural partnership and communication'. But whereas for Vitoria hospitality belongs with the *jus gentium*, and, despite its reliance on the natural right 'to visit and travel through any land', is therefore a positive law, for Kant it depends upon the far from unproblematic claim that all human beings have a 'right of possession in common of the earth's surface' (ZeF 8:358)[12] and is the cornerstone of the *jus cosmopoliticum*—indeed, in *Towards Perpetual Peace* the *jus cosmopoliticum* is famously said to be 'limited to conditions of universal *hospitality*' (ZeF

[10] Simone Goyard-Fabre, *Kant et le problème du droit* (Paris: Vrin, 1975), and Brian Tierney, *The Idea of Natural Rights, Natural Law, and Church Law, 1150–1625* (Atlanta, Georgia: Scholars Press, 1997), 74.

[11] For an exhaustive analysis of the various ways in which the *jus gentium* was understood, see the discussion in Annabel Brett, *Changes of State: Nature and the Limits of the City in Early Modern Natural Law* (Princeton: Princeton University Press, 2011), 75–89.

[12] cf. MM 6:267.

8:357–8). Stripped, in this way, of all the 'cosmopolitan' components, with which the 'sorry comforters' had provided the *jus gentium*, all that Kant's 'right of nations' could possibly do, in effect, was to place limitations on the conditions and conduct of war. Only the *jus cosmopoliticum*, which would someday come to replace it, is directed towards *peace* or what the Academy of International Law at the Hague now defines as 'general rules concerning the right of peace'.[13]

Kant's 'right of nations' rests upon a series of rules and procedures, which follow, exactly as the 'sorry comforters' had done, the, by then, conventional division between the *jus ad bellum* (the right to make war), the *jus in bello* (the law governing conduct during war), and—most crucially for Kant's views of colonization—the *jus post bellum*, that is, the laws which determine the behavior, and the rights, of states after the war is over. For Kant, however, unlike any of his predecessors, the sole purpose of *all* these laws is to ensure that after the conclusion of any war they 'always leave open the possibility of leaving the state of nature among states (in external relation to one another) and entering a rightful condition' (MdS 6:347). No state, that is, should be prevented by its involvement in any war from finally entering into the league of states which can alone bring about a condition of perpetual peace. In other words, although the *Völkerrecht* is strictly atemporal, it is also clearly understood to play a crucial, if only preventative, role in bringing about the future 'universal *cosmopolitan condition*.'[14]

War, as we have seen, can only be justified for Kant if it can be described as defensive. However, unlike most of the previous theorists in the natural law tradition, from Vitoria to Grotius to Wolf and Vattel, Kant was fully prepared to accept what was called the argument from 'just fear', as grounds for a just war.[15] For in Kant's view, in a condition of lawlessness it is perfectly reasonable for a state to act pre-emptively against any

[13] Quoted in Robert Kolb, *Réflexions de philosophie du droit international* (Brussell: Editions Bruylant, 2003), 24, and see Alexis Philonenko, 'Kant et le problème de la paix', in *Essais sur la philosophie de la guerre* (Paris: Vrin, 1976), 32–5. And see the comments on Kant's' conception of the 'right of nations' in Otfried Höffe, *Kant's Cosmopolitan Theory of Law and Peace*, trans. Alexandra Newton (Cambridge: Cambridge University Press, 2006), 189–93.

[14] See Pauline Kleingeld, *Kant and Cosmopolitanism: The Philosophical Ideal of World Citizenship* (Cambridge: Cambridge University Press, 2012), 76.

[15] See Peter Haggenmacher, 'Mutations du concept de guerre juste de Grotius à Kant', *Cahiers de philosophie politique et juridique*, *10* (1986): 117.

other state which, although it has not caused any 'active injury', nevertheless poses a threat of war. Such threats include either being the first 'to undertake preparations, upon which is based the right of prevention (*ius praeventionis*), or even just the menacing increase in another state's power (by its acquisition of territory) (*potentia tremenda*). This is a wrong to the lesser power merely by the condition of the superior power [. . .] before any deed on its part, and in the state of nature an attack by the lesser power is indeed legitimate' (MdS 6:346).

Most previous accounts of the laws of warfare had also assumed that a just war was a contest in which the justice of the victor's cause was demonstrated by his victory. It was, that is, believed to be exactly the kind of primitive substitute for the domestic law court as a means of resolving a dispute on the merits of the case involved (see Arthur Ripstein in this volume) which Kant describes, and condemns, it as being. For this reason, it also constituted a species of revenge for wrongs inflicted on the victor—by definition the righteous party—in which the victor was entitled to seek compensation for the sufferings he had supposedly endured. 'Wars are just', St Augustine had written, in what was one of the most frequently cited passages in support of this view, 'which revenge the injuries caused when the nation or *civitas* with which war is envisaged has either neglected to make recompense for illegitimate acts committed by its members, or to return what has been injuriously taken.'[16] Even the 'sorry comforters', although they placed clear restrictions on what could and could not be claimed under the *jus post bellum*, and were generally much more stringent than their predecessors about the justifications for war, were, nevertheless, broadly in agreement. Kant, however, argues that, not only cannot the merit of a case be decided by simple force, but that whatever the outcome of the war, both sides are likely to believe that their cause is just and that it is they who are the offended party. For this reason: 'Right cannot be decided by war and its favorable outcome, victory' (ZeF 8:355). Any claim that the victor should be reimbursed for the cost of the war, furthermore, would have the effect of transforming the war 'into a war of punishment and thereby would in turn offend his opponent'. It is also the case that 'No war of independent states against each other can be a punitive war (*bellum punitivum*). For punishment occurs only in the relation of a superior

[16] *Quaestionum in Heptateuchem*, VI.X.

(*imperantis*) to those subject to him (*subditum*), and states do not stand in that relation to each other' (MdS 6: 347). Consequently, the *jus post bellum* must be determined not, as had previously been assumed, 'from any right he (the victor) pretends to have because of the wrong his opponent is supposed to have done him; instead, he lets this question drop and relies on his own force' (MdS 6:348). This is an outright rejection of the claim of the Roman jurists that the occupation of enemy territory in pursuit of a just war implied that the inhabitants of that territory, and their goods, both moveable and immovable, became the legitimate booty of the occupier. They, thereby, forfeited whatever political rights they had previously possessed and, their states became, not colonies, in the Roman (or in the Greek) understanding of the term, but precisely provinces.

Although Kant, like Pufendorf, Wolf, and Vattel, assumes that states are 'moral persons', he also, paradoxically makes a clear distinction between the state itself in the person of its sovereign, and the citizen body, and therefore between the agent responsible for initiating any war and the people who have to fight it. Unlike all previous theorists of the just war, who treated states as indivisible persons, he insists that the blame for fighting a war must fall exclusively on the state and its sovereign, and not on the citizens. As a consequence, the citizens of defeated states cannot be deprived of either their freedom or their personal goods since 'it was not the conquered people that waged the war; rather, the state under whose rule they lived waged the war *through the people*'. For the same reason, although the victor may 'exact supplies and contributions from a defeated enemy', he may not 'plunder the people', and is obliged to provide 'receipts… for everything requisitioned'. It also follows, of course, that the defeated state is not 'degraded to a colony' (MdS, 6:348). (This could not, of course, apply to states with republican constitutions since here there can be no separation between the state and its citizens, and as the latter must 'give their free assent, through their representatives, not only to waging war in general but also to each particular declaration of war', they would have to be held collectively responsible (MdS 6:345–6). But then Kant's general assumption is that such republics will be the ultimate bearers of the *jus cosmopoliticum* precisely because they will never fight unjust wars.)

Like most theorists of the 'just war', Kant avoided claims made on behalf of third parties, unless these were, specifically involved as 'allies'.[17] Any interference in the internal affairs of other states, no matter how

[17] See Jonathan Barnes, 'The Just War', in *Cambridge History of Later Medieval Philosophy*,

awful their rulers might be, constituted a 'violation of the right of a people dependent upon no other and only struggling with its internal illness' and was, therefore, eo ipso unjust (ZeF 8:346). There would, however, seem to be one category of enemy whose behavior posed a threat, not simply to another state, but threatened, in some way, the whole of human kind. This Kant calls the '*unjust enemy* in terms of the concepts of the right of nations'. It is defined, in accordance with the terms of the Categorical Imperative, as 'an enemy whose publicly expressed will (whether by word or deed) reveals a maxim by which, if it were made a universal rule, any condition of peace among nations would be impossible and, instead, a state of nature would be perpetuated' (MdS 6:349). Should such an enemy arise, then 'all nations whose freedom is threatened by it […] are called upon to unite against such misconduct in order to deprive the state of its power to do it'. War against an unjust enemy should be pursued until it has been defeated, no matter what the cost, short of resorting to precisely those means—the use of such things as assassins, snipers, poisoners, spies, etc.—(Kant had an abhorrence of all forms of warfare which were not transparent)—which would render the belligerents 'unfit to be citizens' once the war was over, render the state itself unfit to qualify, in accordance with the right of nations, as a person in the relation of states (MdS 6:347), and would consequently make 'mutual trust impossible during a future peace' (ZeF 8:346).

This, at least in its potential scope, comes remarkably close to the claim made by the sixteenth-century Italian jurist Alberico Gentili—among the earliest of the 'sorry comforters'—which was taken up by most of the writers in the natural-law tradition: 'It is the duty of man to protect men's interests and safety, this is due to any man from any other, for the very reason that they are all alike men; and because human nature, the common mother of the all, commends one to the other.'[18] However, neither Gentili nor Kant were prepared to accept that even a war fought against an enemy such as this could confer upon the victor—in this case the international community itself, or any state acting on its behalf—the traditional rights of conquest, appropriation, and colonization. Kant's account of the *jus post bellum* is unequivocal. It leaves the victor in a just war no grounds

eds. Norman Kretzmann, Anthony Kenny, and Jan Pinborg (Cambridge: Cambridge University Press, 1982), 775–8.

[18] *De iure belli* 1.15, 111–2.

for the occupation of conquered territories or any but the most minimal compensation for damages suffered during the course of war, or even for any punishment of the aggressors as a *people*. (He would, presumably, have approved of the Nuremberg Trials.) Consequently, the victors have no right to 'divide its territory among themselves and to make the state, as it were, disappear from the earth since that would deprive the people of that state of their original right to unite itself as commonwealth' (MdS 6:349). Any attempt, therefore, by one state to annex or colonize another which, 'like a trunk', has 'its own roots; and to annex it to another state as a graft is to do away with its existence as a moral person and to make a moral person into a thing', and whatever violation of natural right it might otherwise involve, it also violates the most basic 'idea of the original contract, apart from which no right over a people can be thought' (ZeF 8:344).

For Kant, not only would the state which had defeated an 'unjust enemy,' not be in a position to acquire any rights to compensation, it would instead be under an obligation to bring about a condition which would allow the conquered *people* 'to accept a new constitution that by its nature is unfavorable to the inclination to wage war' (MdS 6:349–50). This may look remarkably like a charter for colonization under another name, or some kind of 'veiled protectorate'—the term used by Lord Milner to describe the British occupation of Egypt between 1822 and 1922. In fact, however, Kant is adamant that victory does not allow the victor to impose his own rulers, or even native rulers of his own choosing, on the vanquished (a practice used widely by the British in Asia and Africa), since that too would be a violation of the right of all peoples to form themselves into a commonwealth. Kant assumes that all peoples, if given the opportunity, cannot but choose a '*republican* constitution', which is the 'sole constitution that can led towards perpetual peace' (ZeF 8:350).

For much the same reason, although somewhat less precisely and a great deal more problematically, Kant also seems to have been prepared to accept that some kind of coercion might be justified in pursuit of what he describes as the 'original right' which every state has to exit from the state of nature and to 'establish a condition more closely approaching a rightful condition' (MdS 6:344). So long as states remain, like isolated individuals, in the state of nature and consequently 'independent from external laws', they constitute a standing threat to each other by their very existence, and thus if any one of them wishes to bring an end to this condition, it 'can and ought to require the others to enter with it into a constitution, similar to a

civil constitution, in which each can be assured of its rights' (ZeF 8:354).[19] What is unclear is whether this demand could legitimately be backed up by some kind of military action, since it might be argued, although Kant himself does not, that any state which refused would, in effect, fall into the category of the 'unjust enemy'. Yet even if it did, the same rules governing the *jus post bellum* would obviously have to apply. The defeated state would be encouraged, assisted, or even coerced into creating what it would, in any ideal situation, clearly have chosen for itself: a representative republican constitution. Whatever else it might become, it could certainly not be either a province or a 'daughter' of the victorious state.

For Kant, at least, there would seem to be no legitimate grounds for the colonization, under whatever pretext, or in whatever form, of any part of the territory of a defeated enemy, no matter what the justice of the war fought against him, nor on whose behalf that war had been waged. One could say that the difference between the settlements reached in Paris in 1919—in which the German and Ottoman empires were carved up into colonies, mandates, and protectorates, all reasonable simulacra of 'daughter-states'—and in February 1947 when the Allies sought successfully to impose upon the defeated states 'a new constitution', marked a Kantian transformation in the evolution of the understanding of the *jus post bellum*—not that an attentive reading of Kant can be said to have had very much, if anything, to do with it.

1.3 The Right of Occupation

No province or colony can, therefore, legitimately be created through war. There would, however, seem to exist at least two other kinds of settlement 'from home', which, as they do not depend upon acts of war, are legitimate.[20] The first is by the settlement of what Kant calls 'newly discovered

[19] On Kant's really very extensive conception of the possible grounds for war in pursuit of a final juridical world order, see B. Sharon Byrd and Joachim Hruschka, 'From the state of nature to the juridical state of states', in *Law and Philosophy*, 27 (2008): 599.

[20] Kant also accepts the possibility of colonization by invitation. The ruler of a state, although he clearly does not possess property rights in it, and cannot, therefore, alienate, any part of it, can, nevertheless, 'promote the immigration and settlement of foreigners (colonists) even though his subject might not take a liking to this, as long as the latter are not deprived of any of their private property' (MM 6:338). It is not clear, however, if these *Colonisten* would in fact be true colonizers, or merely immigrants, who would eventually acquire citizenship and thus become full members of the *nation*.

lands (*accolatus*)' (MdS 6:353).[21] Kant makes no direct allusion here to the supposedly Roman notion of 'lands of no-one' (*terrae nullius)*.[22] But it is clear from his insistence that any such occupation has to take place at a sufficient distance from 'where that people resides that there is no encroachment on anyone's use of his land'. True *terrae nullius* still belong in what he calls the 'primitive community (*communio primaeva*)' (MdS 6:258) in which no property relations exist at all, so their acquisition can involve no interruption of the status quo ante. All that the settler had to do was to settle. For, unlike most of the writers on the natural law and the law of nations since Grotius, Kant rejects the so-called 'agriculturalist argument'—the claim that 'occupation' necessarily implies development or exploitation. All it requires is 'taking control of it (*occupatio*)' (MdS 6:263). In reply to the question 'in order to acquire land is it necessary to develop it (build on it, cultivate it, drain it and so on)?', he gave an unqualified no. 'Shepherds or hunters' who take up a lot of space, have clear and inviolable rights over the 'great open regions' they require for their livelihood (MdS 6:353), even if this contributes to the 'lawless freedom,' which prevents them from fulfilling their human duty to exit from the state of nature. For even when 'our own will brings us into the neighborhood of a people that holds out no prospect of a civil union with it,' we may not, because of this, legitimately 'found colonies by force if needs be in order to establish civil union with them and bring these men (savages) into a rightful condition (as with the American Indians and the Hottentots and the inhabitants of New Holland)'. Even though it was the case that, had it not been for such actions in the past, 'great expanses of land in other parts of the world, now splendidly populated, would have otherwise remained uninhabited by civilized people,' the acquisition of territory by this means 'is . . . to be repudiated' (MdS 6:266). For Kant, unlike Locke, what the English colonists

[21] *Accolatus* is, in fact, an obscure word of biblical, pre-Jerome origin which was glossed as synonymous with *incola* and applied to persons who had residence but neither origin nor citizenship in a place. (I would like to thank Clifford Ando for this information.) What Kant understood by it in this context, or in the context of the *ius incolatus* at 6:353, in connection with the 'right of a citizen of the earth to *attempt* to enter into community with all others', however, is anyone's guess.

[22] Kant does not use this term, as a claim to the right to occupy *land* as opposed to things (*res nullius*). *Terra nullius* was, in any case, a dubious sixteenth-century appropriation of a few brief passages in Roman law. See Randall Lesaffer, 'Argument from Roman law in current international law: Occupation and acquisitive prescription', in *The European Journal of International Law*, 16 (2005): 25.

in North America called 'improvement' could not, in itself, constitute an act of possession, but 'nothing more than an external sign of taking possession, for which many other signs that cost less effort can be substituted' (MdS 6:265). 'Taking first possession' has therefore 'a rightful basis (*titulus possessionis*), which is original possession in common', is 'a basic principle of natural right' (MdS 6:251), and anyone who 'expends his labor on land that was not already his has lost his pains and toil to he who was first' (MdS 6:269). The same applies to moveable goods, since mankind's 'common possession of the land of the entire earth (*communio fundi orginaria*)' (MdS 6:258) includes both the earth itself and the things upon it. Even driftwood, without which the peoples of 'the cold wastes around the Arctic Ocean' (ZeF 8: 363) would hardly have been able survive, cannot be considered truly *res nullius* (MdS 6:270).[23]

What this means is that in the state of nature all human beings enjoyed private possession of the earth and of its goods. It does not mean, however, that there existed what Kant calls an original 'community (*communio*) of what is mine and yours' (MdS 6:258). For this could only have been created by a common agreement which, in turn, could only have come into being through some kind of contract in which 'everyone gave up private possessions, and by uniting his possessions with those of everyone else, transformed them into a collective possession', and history has no record of any such contract, for 'savages draw up no record of their submission to law' (MdS 6:339).[24] Although it would seem that individual possessions would require the existence of legal institutions—a *lex iustitiae distributiva*—which can only exist in the civil condition, it is nevertheless our 'duty to proceed in accordance with the principle of external acquisition', even 'before the establishment of the civil condition but with a view to it, that is, provisionally', because we all have an obligation qua human beings to exit from the state of nature as rapidly as we can, and the acquisition of personal property is the first step in that direction (MdS 6:267–8).[25]

[23] On Kant's innate right to land see Leslie Arthur Mulholland, *Kant's System of Rights* (New York: Columbia University Press, 1990), 218–20. Kant's comments on the dependence of the Inuit on driftwood for their boats, weapons, and huts is at ZeF 8:363.

[24] Arthur Ripstein, *Force and Freedom Kant's Legal and Political Philosophy* (Cambridge, Mass: Harvard University Press, 2009), 89–90 and 155–6.

[25] On Kant's three categories of *lex*, see B. Sharon Byrd and Joachim Hruschka, 'Lex iusti, lex iuridica und lex iustitiae in Kants *Rechtslehre*', *Archiv für Rechts und Sozialphilosophie*, 91 (2005): 484.

It would seem to follow, therefore, that 'herding or hunting peoples', although they may have a due right to occupy the lands on which they live, and to live by whatever means they choose, 'so long as they keep within their own boundaries', cannot, as Anna Stilz points out in this volume, exercise true property rights over them. They might, therefore, be said to have only the use rights—or *possessio*—in the lands they occupy, but not true *dominium* over them. That, however, could never, in itself, be sufficient grounds for any more 'developed' people to expropriate them. 'Newly-discovered' lands, furthermore, would have to be truly 'newly discovered' in the sense of being entirely unknown to anyone prior to the arrival of the new settlers. It was presumably into lands such as these that those who, in the beginning of human history, having reached the stage of 'sociability and civil security', had extended themselves 'everywhere from a single point, like a beehive sending out already-formed colonists' (MAM 8:119–20). In Kant's day, it was possible that such lands might still be found; but they clearly did not exist on any of the four continents already known to Europeans.

The second means by which land might legitimately be acquired for settlement is through contract. This, however, would seem to be possible only between persons living in states and non-state individuals, for although a person living in a legally constituted state has the right to immigrate, all he is allowed to carry away with him are his moveable goods. He cannot sell any land he might have owned 'and take with him the money he got from it', for although the 'moral person' of the state is independent of the land on which it stands, it cannot exist without it (MdS 6:338). Non-state persons, not being bound by any civil constitution, are apparently able to dispose of their lands as they choose, and to leave them with whatever they had received in exchange. Kant insists, however, that the laws of contract must still apply, even if one of the parties is, in effect, living in a condition of lawlessness. For any contract to be valid, therefore, it has to be drawn up without exploiting 'the ignorance of those inhabitants with respect to ceding their lands'—something which Kant seems to have been aware had happened all too often in Africa and America (MdS 6:353) (see Anna Stilz in this volume).[26] It is not entirely clear, however, what the

[26] cf. MdS 6:266, where he speaks of founding 'colonies by fraudulent purchase of their land, and so [becoming] owners of their land, [by] making use of our superiority without regard to their first possession'.

settler is, in fact, buying, for if 'savages' only have the mere possession of their lands, then all they would seem to be able to sell would be something like a right of exclusive use. At best, this comes down merely to the claim that, in accordance with 'the right of nations', all peoples, even 'savages', should be treated in accordance with due legal process.

Kant's defense of the rights and legal standing of nomadic or pastoral peoples should not, however, be taken to imply any particular respect or liking for them on his part, or indeed, any suggestion that theirs could for long remain a viable alternative to the agricultural-commercial state of civilization. Kant may, as Sankar Muthu argues in this volume, have had scant appreciation of the species of 'civilization' which the European states of his day were so eager to export to the 'barbarian' peoples of the world. He may sometimes have deplored the 'glittering misery' of modern cities (MAM 8:120). But he was in no doubt that sooner or later, 'savages' would have to be brought into the historical process, which only properly begins with the creation of a civil constitution. In *Towards Perpetual Peace*, hunting is described as the way of life 'undoubtedly most opposed to a civilized constitution', since 'families, having to separate, soon become strangers to one another and subsequently, being dispersed in extensive forests, also hostile since each needs a great deal of space for acquiring its food and clothing' (ZeF 8:364). No people, he wrote, are more senselessly cruel than those 'from the so-called state of nature', and he was horrified by all that he had read about 'the scenes of unprovoked cruelty in the ritual murders of Tofoa, New Zealand, and the Navigator Islands [Samoa] and the never-ending cruelty . . . in the wide wastes of northwestern America from which indeed no human being derives the least benefit' (Rel 6:33). Like most of his contemporaries, he also accepted that all humankind progressed, often despite itself, from the 'lawless freedom of hunting, fishing or pastoral life' to that of agriculture and the urban life associated with commerce (ZeF 8:364). All those, the peoples of Africa, Tonga, New Holland, and America, and most famously Tahiti, who had failed to do so had chosen to detach themselves altogether from the process of amelioration which is the natural condition of the species as a species. They are in a sense worthless as human beings, for such is man's 'propensity to perfect himself' that it could be said that 'the world would lose nothing if Tahiti were simply swallowed up' (R 15:785). Luckily for the Tahitians, however, as presumably for all the other primitive peoples of the world, they have now been visited by more 'cultured nations' (*gesittetern Nationen*) who might, much as

Kant despised their rapacious ways, have the unintended merit of returning them to their true purpose (RezH 8:65).

But this is simply the ineluctable progress of human history. It certainly did not confer a *right* of any kind on the more advanced peoples of the world to help the less to hurry on up the scale of civilization. None of the arguments for occupation or settlement of the kind which European colonizers had employed in varying degrees—'the world's advantage', the fact that 'these crude people will become civilized', or the idea that 'one's own country will be cleaned of corrupt men, and they or their descendants will, it is hoped, become better in another part of the world'—although they might be grounded on 'supposedly good intentions', could ever, in Kant's view, 'wash away the stain of injustice in the means used for them' (MdS 6:353).

Just what political status any settlement created on either vacant land or in lands acquired through contract would have, however, is not at all clear. Since the settlers must have originally come from somewhere, and since their migration must have taken place in historical time, that somewhere can only have been a *Vaterland*. They are literally 'from home', yet if the states which are subsequently created by those settlers are to be legitimate ones—which, by implication at least, they must surely be, since 'a subject (regarded also as a citizen)' of any state has a 'right to emigrate, for the state could not hold him back as its property', they cannot belong to either type of province/colony (MdS 6:337). Such states must, therefore, be truly independent foundations created ex nihilo, by means of a new 'original contract'. In time, they will become true 'native lands' in their own right and their peoples a true *gens*. It would, therefore, be unreasonable to suppose that such former subjects would continue to be subject in any way to their 'mother country'. None of this could apply, however, if the original act of colonization had, in fact (as was generally the case), been carried out under the aegis of a 'mother country'. For Kant, neither a creole people nor a colonized one, once it has been colonized, can claim any kind of right to self-determination, any more than may the subjects of an un-colonized state groaning under an unjust sovereign. Sankar Muthu is quite right to insist in this volume that Kant urges resistance 'against political religious and commercial authorities' when they appear to threaten the individual's right to self-determination. But that resistance may only take the form of what he famously called the '*public use*' of reason. Subjects may grumble. They may even go so far as to exercise the 'freedom of the pen'—provided

that 'it is kept within the limits of a great esteem and love for the constitution' (GTP 8:304). But they may not offer any kind of *private* resistance. Even their public resistance may only be critical, not prescriptive, for they are prohibited from suggesting any alternative constitution, since every actual decision can only be taken by the sovereign himself.[27] 'All resistance against the supreme legislative authority, all incitement in order to express through action the dissatisfaction of subjects, all protest that leads to rebellion, is the 'highest and most punishable crime within a commonwealth because it destroys its foundation' (GTP 8:299). For any insurrection against 'a constitution that already-exists', no matter how that constitution had come into being, nor how good or bad it might be, 'overthrows all civil-rightful relations and therefore all right'. It constitutes, that is, a violation of that 'law of continuity (*lex continuo*)' which is precisely what separates civil society from the lawless condition of the state of nature. It is thus not a change of the civil constitution, 'but a dissolution of it' and '[T]he transition to a better constitution is not then a metamorphosis but a palingenesis, which requires a new social contract on which the previous one (now annulled) has no effect' (MdS 6:340). Despite a passing remark that everyone is bound to obey whoever is in authority 'in whatever does not conflict with inner morality' (MdS 6:371), Kant's citizens are not even, as Hobbes' subjects, provided with the natural right to self-protection.[28] As Pufendorf, whom Kant follows quite closely on this issue, put it, all subjects have an 'obligation to obey whoever is in possession of the Crown . . . [for] a state cannot survive without some kind of government and a good citizen who loves his country, should, on such occasions, give rise to no further troubles.'[29]

Although he never invokes it, Kant's position on the creation of new states is analogous to the Roman law of prescription, which allowed for

[27] See Jeremy Waldron, 'Kant's theory of the state', in *Towards Perpetual Peace and Other Writings on Politics, Peace and History*, ed. Pauline Kleingeld (New Haven: Yale University Press, 2006), 194–7. Waldron suggests that for Kant certain organizations which might call themselves states are in fact not in that they do not 'amount to a legal system and administer what actually counts as law'. In such cases their 'citizens' would be under no obligation to obey their rulers. This, however, would require that the citizens pass an initial judgment on their rulers in precisely the way that Kant denies that they have the right to do.

[28] On Kant's agreements and disagreements with Hobbes, see Richard Tuck, *The Rights of War and Peace: Political Thought and the International order from Grotius to Kant* (Oxford: Oxford University Press, 1999), 207–25.

[29] *De iure naturae et gentium libri octo,* VII. 8, para. 10.

long-term de facto occupation *(preascriptio longi temporis)* to be recognized de iure as conferring retrospective rights of property and of jurisdiction. The English sometimes drew upon this in justification of their occupation of Virginia, and it has been used subsequently on a number of occasions, most notably in the case of the state of Israel since 1948, for the acquisition of Palestinian lands. It posed—and poses—some clear and obvious difficulties, the most obvious being the length of time required to establish title. There was also the broader and more telling point, which Grotius had made, that since prescription was a truly existential argument, it could only be a matter of civil law rather than part of the law of nations, in which case it clearly could not apply to contracts between 'kings or between free peoples'. Kant's understanding, however, would appear to be that once a state has been created under, or even in defiance of, the 'right of nations', once, that is, it has come into being de facto, it then passes under the jurisdiction of a 'state right of a state' which, unlike 'the right of nations', 'has binding force' and 'hence objective (practical) reality' (GTP 8:306).

Given his overwhelming concern with the continuity of human legal institutions, all of Kant's injunctions on matters of the 'right of nations' can only take the form of warnings against future acts of usurpation. Colonies cannot be formed under 'the right of nations'—provisional and illusory—but neither can they be dissolved under the very precise terms of the 'right of a state' once they exist. Although Kant does, as Peter Niesen argues in this volume, make claims in favor of some kind of restorative justice, he is unable to countenance any kind of right to self-determination, whether it be by creoles or by displaced native inhabitants, on the part of either form of his province/colony. Both *Unterhäuser* and 'daughter-states' are bound to obey their de facto rulers until such time as those rulers choose to leave of their own accord. Of course, all of this will be resolved when the wholly unsatisfactory 'right of nations' gives way to the 'cosmopolitan right' and with it, the 'universal *cosmopolitan condition*'. For Kant, of course, that existence was not merely the solution to a problem, it was the final end of human existence, 'the end . . . which nature has as its aim', and the 'womb in which all original predispositions of the human species will be developed' (IaG 8:28).

Kant's discussion of colonies would seem to leave anyone who might hope to employ what would appear to be the ultimately emancipatory force of *jus cosmopoliticum* as a ground for opposing any form

of colonial regime with severe problems of consistency. For although Kant is insistent that no kind of colonial regime, unless it has been established literally in *terra nullius*, can initially be a legitimate one, it is also clear that foundation is not all that matters, and that his insistence on the need to preserve the legal continuity of the state at all costs empathically rules out any kind of struggle for independence. All that the colonized can do, like the subjects of all unjust but legitimate rulers, is to protest in the hope that the public assertion of their individual autonomy will contribute to the final realization of the 'league of states' (*Friedensbund*) in which all forms of involuntary subjugation would be unthinkable. But that is still a long way in the future.

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Bibliography

Ando, Clifford, 'The Roman city in the Roman period', in *Rome, a City and its Empire in Perspective: The Impact of the Roman World through Fergus Millar's Research. Rome, une cité impériale en jeu: l'impact du monde romain selon Fergus Millar*, ed. Stéphane Benoist (Leiden: Brill, 2012), 109–24.

Barnes, Jonathan, 'The just war', in *Cambridge History of Later Medieval Philosophy*, eds. Norman Kretzmann, Anthony Kenny, and Jan Pinborg (Cambridge: Cambridge University Press, 1982), 775–8.

Brett, Annabel, *Changes of State: Nature and the Limits of the City in Early Modern Natural Law* (Princeton: Princeton University Press, 2011).

Byrd, B. Sharon and Joachim Hruschka, 'Lex iusti, lex iuridica und lex iustitiae in *Kants Rechtslehre*', *Archiv für Rechts und Sozialphilosophie*, 91 (2005): 484.

——, 'From the state of nature to the juridical state of states', *Law and Philosophy*, 27 (2008): 599.

Goyard-Fabre, Simone, *Kant et le problème du droit* (Paris: Vrin, 1975).

Greene, Jack P., *Peripheries and Center: Constitutional Development in the Extended Polities of the British Empire and the United States, 1607–1788* (Athens and London: University of Georgia Press, 1986).

Haggenmacher, Peter, 'Mutations du concept de guerre juste de Grotius à Kant', *Cahiers de philosophie politique et juridique*, 10 (1986): 117.

Hassner, Pierre, 'Les concepts de guerre et de paix chez Kant', *Revue française de science politique* XI (1961): 642.

Höffe, Otfried, *Kant's Cosmopolitan Theory of Law and Peace*, trans. Alexandra Newton (Cambridge: Cambridge University Press, 2006).

Kleingeld, Pauline, *Kant and Cosmopolitanism: The Philosophical Ideal of World Citizenship* (Cambridge: Cambridge University Press, 2012).

Kolb, Robert, *Réflexions de philosophie du droit international* (Brussell: Editions Bruylant, 2003).

Lesaffer, Randall, 'Argument from Roman law in current international law: Occupation and acquisitive prescription', *The European Journal of International Law*, 16 (2005): 25.

Maine, Henry Sumner, *International Law: A Series of Lectures Delivered before the University of Cambridge, 1887* (London: John Murray, 1888).

Mulholland, Leslie Arthur, *Kant's System of Rights* (New York: Columbia University Press, 1990).

Muthu, Sankar, *Enlightenment against Empire* (Princeton: Princeton University Press, 2003).

Philonenko, Alexis, 'Kant et le problème de la paix', in *Essais sur la Philosophie de la Guerre* (Paris: Vrin, 1976), 32–5.

Ripstein, Arthur, *Force and Freedom: Kant's Legal and Political Philosophy* (Cambridge, Mass.: Harvard University Press, 2009).

Tierney, Brian, *The Idea of Natural Rights, Natural Law, and Church Law, 1150–1625* (Atlanta, Georgia: Scholars Press, 1997).

Tuck, Richard, *The Rights of War and Peace: Political Thought and the International order from Grotius to Kant* (Oxford: Oxford University Press, 1999).

Waldron, Jeremy, 'Kant's theory of the state', in *Towards Perpetual Peace and Other Writings on Politics, Peace and History*, ed. Pauline Kleingeld (New Haven: Yale University Press, 2006), 194–7.