

Lecture 5: Universalising the rights of man: Kant's cosmopolitan point of view

Last week's lecture was on the abstract universality of the rights of man and citizen.

Lynn Hunt argued that though the declaration of the rights of man was premised on multiple exclusions, there was a logic of inclusion running through it.

I ended on the reverse question:

whether every new inclusion in the rights of man leads to new forms of exclusion?

There appears to have been a sharp decline in the rights of man and citizen following the French revolution:

- Internally the rise of terror, dictatorship, xenophobia, nationalism and essentialist explanations of gender and race;
- Externally the rise of conquest and wars in Europe and colonization and reinstatement of slavery outside Europe;
- Did the logic of universality that Lynn Hunt points to fail and if so why?

The thrust of Hunt's work, as I read it, is to see external causes as responsible for the decline of the rights of man. But the question on which I ended the lecture is whether the reversal had more to do with her approach to the logic of universality.

Gurminder Bhambra argues that the solution to exclusion was not just inclusion but addressing the conditions that gave rise to exclusion in the first place (Bhambra 2008).

One attempt to do precisely this came from Kant and I said we'll discuss his cosmopolitan solution to the defects of the rights of man this week. Here we are.

The development of the cosmopolitan point of view: Kant's radicalisation of the rights of man

Today there has been a rediscovery of Kant's political essays, including 'perpetual peace' and the 'cosmopolitan point of view', written over a twelve-year period around the French revolution (Kant 1991).

Cosmopolitanism was a critique of the rights of man from the perspective of the rights of man. It was an international movement whose aim was to expand the rights of man beyond the national limitations of their protagonists and defend them against those who would restrict fellow feeling to members of the same nation, class, or religion. The cosmopolitan obstinacy was to insist, as Hegel put it, that "a human being counts as such because he is a human being, not because he is a Jew, Catholic, Protestant, German, Italian, etc." (Hegel 1991, § 209R).

It was Kant above all who gave the name "cosmopolitanism" to the movement for the extension of the rights of man beyond the nation. He recognised that no sooner were the rights of man articulated than they entered into conflict with the national organisation of political community that underwrote their existence (see Kant 1991 and Arendt 1979, 267–302). The revolutions that declared the rights of man also designated that it is the nation that grants these rights and in its more radical versions declared there could be no rights but those declared by the nation. Kant explored the contradiction between the universalism of the concept and its particular national existence and revealed the key ways in which this contradiction was played out. He referred to

- i. lawlessness of international relations,
- ii. perpetual wars that governed relations between European states,
- iii. exclusion and stigmatisation of foreigners within states, and
- iv. subjection of colonised peoples in the non-European world.

Under the heading of the "cosmopolitan point of view" Kant sought to give concrete realisation to the universality of the rights of man. His argument contained four key elements:

- (1) the generalisation of republicanism within all societies;
- (2) the establishment of legal authority at the international level;

(3) the extension of rights to foreigners; and

(4) putting an end to the barbarities associated with colonialism.

These elements together constituted a whole.

1. If the rights of man were to belong to all, then the benefits of republican government could not remain a preserve of French or American superiority but had to be made available to all nations.
2. If international law was to become more than mere words, a Federation of Nations had to be established, with the same kind of authority to enforce law between societies as the state had to enforce law within societies.
3. If the rights of man were to become truly universal, then civil and political rights had to be supplemented with cosmopolitan rights that guaranteed “hospitality” to strangers landing on foreign shores. Thus Kant’s article 3 in *Perpetual Peace* confers the right to hospitality when an alien cannot be turned away without putting his or her life at risk. It is not for Kant a generalised right, although he does write of a right to travel, visit, and associate.
4. If the barbarities associated with colonialism were to be ended, then the fiction that colonial territories were lands empty of people had to be dispelled. Kant rejected, for example, Lockean views of property that allowed Europeans to declare colonised territories *res nullius* (no-man’s land) and on this basis to justify seizure of the lands of indigenous hunting and pastoral peoples. As Kant put it, pastoralists and hunters have a legitimate right to live “the way they want to live” in their own way and defend their land by force if necessary against attempts to dispossess them.

Kant’s visionary agenda was the result of a sustained intellectual effort on the part of an ageing and sedentary philosopher to translate the abstract universality intrinsic to the rights of man into something substantial. Kant was aware that cosmopolitanism might be considered “fantastical” because European states continued to relate to one another more like atomised individuals in a Hobbesian state of nature than legal subjects under international law.

His obstinacy, however, was to hold that the idea of a cosmopolitan condition was nonetheless right

Kant maintained that the duty to act in accordance with the idea of perpetual peace was incumbent upon rulers however great the sacrifice they had to make and upon the people whether or not public opinion recognised it. All politics, Kant declared, must 'bend the knee before right' (Kant 1991: 125). Reason, he declared, 'absolutely condemns war' and makes the achievement of peace an 'immediate duty'. Such moral certainty could not be shaken by experience. Experience could not be a guide to action since it would mean that those states which prosper under current arrangements would elevate existing norms as the general standard.

He argued it was necessary to look beyond immediate circumstances to longer-term historical tendencies to see the justification of the cosmopolitan point of view:

- i. to the inter-connections of peoples around the world,
- ii. to the consequence of travel and movement across borders,
- iii. to the expansion of commodity exchange between nations,
- iv. to the risks and costs associated with war, and not least
- v. to the education of modern republican citizens.

Kant advanced three main lines of argument.

the *economic rationality* of cosmopolitanism in a commercial age in which peaceful exchange is more profitable than plunder;

the *political utility* of cosmopolitanism for states forced to arm themselves against other states and confronted by escalating risks and costs of modern warfare; and

the *affinity of cosmopolitanism to republicanism* given that republican rulers could no longer declare war without consulting their citizens and that republican citizens could be expected to have a higher level of political education and maturity than the subjects of old monarchical states.

Kant discerned an affinity between modernity and cosmopolitanism, since the modern world is one in which 'the peoples of the earth have entered in varying degrees into a universal community' and 'a violation of rights in one part of the world is felt everywhere' (Kant 1991: 107-8). In this sense it seemed that cosmopolitanism had history on its side.

Kant acknowledged the strength of anti-cosmopolitan forces

republican citizens are often civilised 'only in respect of outward courtesies and proprieties' and militarism can quickly corrupt the mind.

Yet the regulative idea that informed his cosmopolitan point of view was that the 'germ of enlightenment' works toward a universal end, 'the perfect civil union of humankind', and that 'genuine principles of right' point toward a 'universal law of humanity' (Kant 1991: 114). Behind the backs of warring humanity Providence and the Laws of Nature accomplish their universal purpose. 'Perpetual peace', as Kant put it, 'is *guaranteed* by no less an authority than the great artist *Nature* herself' (Kant 1991: *).

Kant's methodology

Kant elaborated in his *Metaphysics of Justice* a detailed and systematic analysis of republicanism within the framework of the modern nation state.

He began with the analysis of private law, placing property rights within the realm of natural laws to which 'an obligation can be recognised *a priori* by reason without external legislation' (MJ Introduction:26).

From this starting point he engaged in a series of 'deductions' from the postulates of practical reason: the idea of the 'person' as a possessor of rights whose 'moral personality is nothing but the freedom of a rational being under moral laws' (MJ Introduction:24); the idea of a 'thing' (*res*) as 'an object of free will that itself lacks freedom'; the separation of property from possession; the idea that there is nothing in the world which cannot be made into property, and so forth.

Kant moved on to the sphere of public law. From the 'Idea of the state as it ought to be' Kant deduced the institutional forms of a republican constitution: a representative legislature to establish universal norms, an executive to subsume particular cases under these universal norms, a judiciary to determine what is right in cases of conflict, and the constitutional principle of the separation of powers to maintain these distinct spheres of activity in accordance with the 'moments of its concept' (MJ §45).

Kant drew on social contract theory and moral philosophy to produce an image of a just state grounded in reason, the perfect *societas civilis* that would allow republican government to unfold even in a 'race of devils' (Ellis 2005: 36).

Having analysed private and public law within the framework of the nation state, Kant turned his focus to the sphere of interstate or international law.

He attacked what he called the 'depravity' of the existing 'Westphalian' order in which 'each state sees its own majesty... precisely in not having to submit to any

external legal constraint' and in which 'the glory of its ruler consists in his power to order thousands of people to immolate themselves for a cause which does not truly concern them, while he need not himself incur any danger whatsoever' (Kant 1991: 103). He criticised this model as one in which either there was no notion of international law or international law was interpreted merely as a right to go to war, which was in effect no law at all.

He was critical of the legal architects of this model: traditional natural law theorists (Francisco Suarez 1548-1617, Hugo Grotius 1583-1645, Samuel Pufendorf 1632-94 and Emmerich von Vattel 1714-1767) whom he lumped together as 'sorry comforters... dutifully quoted in justification of military aggression'. He argued that they painted a thin legal gloss over a system in which sovereigns granted themselves the licence to use any means of warfare deemed necessary, exploit newly discovered colonies as if they were 'lands without owners', and treat foreigners as enemies without rights (Kant 1991: 105-6). Kant maintained that this was not a genuine legal order but a Hobbesian state of nature torn apart by perpetual wars.

In order to confront the violence and lawlessness that characterised existing relations between states, Kant turned to a new social contract at the inter-state level that placed a political demand on sovereigns to renounce their 'savage and lawless freedom' and submit themselves to public coercive laws.

Kant construed cosmopolitanism as an international political order designed to establish 'lawful external relations among states' and a 'universal civic society'.

These terms referred to the establishment or consolidation of international laws to guarantee the sovereignty of nation states, prohibit interference in the internal affairs of other states and create peaceful relations among states. It also referred to what Kant called cosmopolitan right in the proper sense of the term, which he identified with the 'right of hospitality' belonging to strangers in a foreign land (Kant 1991: 47 and 172).

For Kant the three legs of the cosmopolitan condition were international law, cosmopolitan rights and an authoritative international authority.

Kant was opposed to the formation of a 'world state', akin to the Leviathan at the intra-societal level, which in his view would either be a 'counterfeit' concealing the rule of a single great power or turn into a 'universal despotism' and 'graveyard of freedom'.

The institutional vision he embraced was that of a Federation of Nations, based on *mutual co-operation* and *voluntary consent* among a plurality of independent states (Kant 1991: 105 and 114). It was a vision far closer to that of our United Nations.

The primary aim of the cosmopolitan condition, as Kant saw it, is to put an end to war between states and establish perpetual peace. He envisaged a pacific future in which standing armies would be abolished, no national debt would be incurred in connection with military costs and no state would forcibly interfere in the internal affairs of another.

Prior to the attainment of perpetual peace, the cosmopolitan order would establish provisional laws of war. They would abolish the traditional right of sovereigns to declare war without consulting their subjects, since citizens who are 'co-legislative members of the state' must give their consent to any declaration of war, and they would stipulate that wars must be conducted in accordance with principles which leave states with the possibility of still entering a 'state of right' after the war. They would criminalise acts of war which 'make mutual confidence impossible during a future time of peace' and they would preclude wars of extermination and enslavement, the ransom of prisoners, and any use of violence that renders the perpetrators of violence unfit to be citizens (Kant 1991: 166).

If colonisation was justified by its beneficiaries in terms of 'bringing culture to uncivilised peoples' and purging the home-country of 'depraved characters', an improbable combination, Kant argued this could provide no justification for the plunder, slavery and extermination which typically accompanies the acquisition of colonies (Kant 1991: 173). Instead of treating the 'condition of universal hospitality' as a justification for the subjugation of indigenous peoples by their European conquerors, as Francisco de Vitoria had done in the 16th century on the grounds that Indians had mistreated European 'travellers', Kant turned the right of hospitality into an indictment of 'the inhospitable conduct of the civilised states of our continent... in visiting foreign countries and peoples (which in their case is the same as conquering them)'.

The cosmopolitan point of view Kant reconstructed was not so much a blueprint for a future inter-state order as an elaboration of what human freedom makes possible even at the level of interstate relations.

Humanity, he wrote, is 'by its very nature capable of constant progress and improvement without forfeiting its strength... no one can or ought to decide what

the highest degree may be at which mankind may have to stop progressing, and hence how wide a gap may still of necessity remain between the idea and its execution. For this will depend on freedom, which can transcend any limit we care to impose' (Kant 1991: 189-191).

History can play tricks on all conceptions of human progress and Kant's cosmopolitanism was no exception.

Critique of Kant's cosmopolitan solution

Later critical theorists (like Hegel and Marx) tried to tease out the internal weaknesses within Kant's conception of a cosmopolitan order.

- a. The rights of man could readily be subverted into a duty of unconditional obedience to the nation that grants these rights, predisposing states towards legal authoritarianism and citizens towards militant nationalism.
- b. The extension of the rights of man through the republicanisation of other nations was fine in theory, but in practice Napoleon's armies revealed that "wars of liberation" are bitterly resisted by invaded peoples and can involve the kinds of cruelty.
- c. The federation of nations could not provide the alchemy Kant envisaged—of turning perpetual war into perpetual peace. States soon learn how to defend themselves militarily in the knowledge that legal arguments cannot win wars and they are quick to appreciate that wars can be useful to bolster internal unity, encourage self-sacrifice, impose discipline, expand territories, and designate enemies.
- d. The idea of "cosmopolitan rights" was indeed a harbinger of "human rights" to come, but there was no guarantee to prevent the "right of hospitality" from playing the traditional role it had in the old European division of the world, that of serving as a pretext for European states to subdue "uncivilised" peoples who decline to provide the required hospitality to European visitors.

We should acknowledge the visionary character of Kant's cosmopolitan thought, not endorse those critics of Kant who fail to understand the idea of cosmopolitanism, but Kant's own observation that every right is a right of coercion is a reminder that

every expansion of rights is also a re-invention of new forms of coercion. We cannot but remain aware of the gulf between the idea of cosmopolitanism and its realisation.