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EDICIONES COMPLUTENSE

Kant, Global Politics and Cosmopolitan Law. A Reply to G. Geismann

Claudio Corradetti[1]

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Abstract. In this reply I rebut Mr Geismann's charges to my work on Kant's cosmopolitanism. In that study I argue for a novel reading for the 'world republic' (*Weltrepublik*) in regulative terms. I defend also a non-perfectionist model of politics which for Kant brings us to a continuous normative striving for improvement. Unfortunately, Geismann has misunderstood the distinctive proposal I advance. The dismissive attitude towards my thesis reveals also structural problem of certain Kantian conservative scholarship towards innovative proposals coming from academically not-aligned, often peripherally situated, interpreters.
Keywords: Kant, Cosmopolitanism, Racism, Regulative Idea.

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When my book was published it was "Identified as One of the Most Interesting Publications of 2020 by the International Law Reporter" (See *International Law Reporter* (2020). Available online.). This was the sign I expected to confirm the need of a renovated interpretation of Kant's cosmoplitanism. Kant's sovereignty conundrum, as it was the problem mainly considered, is challenging for contemporary scholars since it presents the difficulty of combining state sovereignty with individual cosmopolitan rights (and duties).

Recently, Mr G. Geismann, a retired Kantian scholar found an interest in my monograph and wrote a review (Geismann 2021, pp. 195-201). This happened after I tried to contact him in order to exchange ideas on a point of interpretation. Unexpectedly, Geismann's assessment of my book resulted as a manipulative attempt. One that makes me wonder why he did so and whether the editors of the *Philosophischer Literaturanzeiger* do follow peer-review processes to determine thresholds of scientific reliability.

A reply and a clarification is urged if not for anything else, at least not to leave readers deceived. I will limit myself just to some central but crucial points, even though there are many other substantial and less substantial issues involved in Geismann's comments. For this reason, I will leave aside responses to purely pretentious allegations, like the charge on an apparently undeclared modification to Kant's Cambridge edition, or the lack of indications of lines when quoting Kant (who does so?), not to mention the use of English as a medium of communication (which is not clear why should represent a problem).[2]

I think all these criticisms show not only the unfamiliarity of Geismann with international scholarship, but also a good dose of bad faith. Just as a quick evidence, out of the 100 text interpolations Geismann contests, he does not provide even one reference.

1. The Charge of Racism

Let's move to Kantian discussions. For Geismann I claim that Kant was a racist.[3] Apparently, I'm in a good company since he directs the same complaint also to the *Berlin-Brandenburgische Akademie der Wissenschaften* for a series of recently released videos. Recent scholarship has expressed perplexity on Kant's views on race and colonialism. Undeniably, Kant makes a number of unambiguously racist considerations on non-European populations in the course of his various lectures on anthropology (which we have as transcripts). For instance, in late 1770s he affirms: "The Negroes […] are […] no longer susceptible of any further civilizing; but they have instinct and discipline, which is lacking in the Americans" (Kant ([1777-8], 2012, 25:844, p. 276). See

[1] Claudio Corradetti is Associate Professor at the University of Rome Tor Vergata. He can be reached at Claudio.Corradetti@uniroma2.it

[2] For the sake of Geismann's information my English version of the book was anticipated by the Italian shorter version, see Corradetti (2017).

[3] As he states: "Jahrhundert gerichteten Seiten spricht CC auch über Kants Kritik am Kolonialismus, was ihn jedoch nicht hindert, Kant zum Rassisten zu erklären", in Geismann (2021). Note that I will cite the version made available online by the author where pages do not appear.

also, Kant [1784-1785], 2012, pp. 335-510); whereas ten years later he admits that "The Negro race […] acquire culture, but only a culture of slaves; that is, they allow themselves to be trained" (Kant ([1781-2], 2012, 25:1187, p. 320). Such assertions are accompanied by a good dose of Eurocentrism when judging "a regular course of improvement of state constitutions",[4] which "in our part of the world […] will probably someday give laws to all the others" (Kant ([1784], 2011, 8:29-30, p. 119).

I ask then rhetorically:

> how could the defender of human emancipation and universal rationality proclaim such degrading judgments? The debates over the exploitation of non-European peoples as well as of the injustices of global commerce were already part of a flourishing discussion among several intellectuals of the Enlightenment […]. The puzzle becomes even more challenging since no traces of Kant's former considerations are left in the published work he finally dedicates to anthropology – *Anthropology from a Pragmatic Point of View* [1798] (Kant [1798], 2011, pp. 227-429). Similarly, and even more telling, is that *Toward Perpetual Peace* [1795] assumes an explicit anti-colonialist stand, which is maintained also in the *Metaphysics of Morals* [1797]. (Corradetti 2020, p.89)

In light of such dilemma a solution must be found: was Kant a rational racist? Or, did he remedied to racial prejudices, common in his time, after he developed a cosmopolitan philosophy? I believe that the second is the answer.

In such respect, I propose the following hypothesis: between 1792 and 1793 Kant deeply modified his views in order to make them congruent with his theory of a cosmopolitan philosophy. Indeed, all derogatory traces on peoples disappear starting from the publication of *On the Common Saying: This May Be Correct in Theory, But It Is of No Use in Practice* [1793] (Kant [1793] 1999, pp. 273-310).

Therefore, I categorically exclude "those hypotheses sustaining a Kantian line of continuity on racial inferiority and slavery as "one of those evils that contributed to the advance of the human race through the diffusion of European culture, a part of its 'civilizing mission'" (McCarthy, 2009, p. 64).On the contrary, I support the line of interpretation of scholars like Kleingeld whose hypothesis is one of Kant's 'second thought' on race (but I add that this started from the early 1790s", Corradetti, 2020, p.91).

In view of this clarification it becomes legitimate to ask oneself whether racism here is 'in the eyes of the beholder' rather than on my text. More dangerously, this raises a deeper question regarding the truly racist attitude that certain scholars positioned in mainstream institutions or countries express against more peripheral (not surprisingly southern) universities. For them, while research mimicking is tolerated, research innovation is inadmissible!

2. The Functions of Permissive Laws

A second charge is for Geismann the misplacement of permissive laws (*leges permissivae)*, necessary (*leges praeceptivae*) or prohibitive (*leges prohibitivae*) laws, which for Kant apply only to private subjective domain.[5] To prove his point, Geismann cites §2 of Kant's *Doctrine of Right*.[6] The problem, though, is that I do not refer to §2 but to §61. Here, Kant draws a parallel between *provisional* legal *approximation* from state of nature to *conclusively* civil condition for both individuals and states. Indeed, similar justificatory problems reappear with regard to the move from a state of nature (where things are commonly used) to a civil division of the Earth (where private property is rightfully founded). Permissive rights play a crucial role both in individual and in states' transitions to a civil condition.

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[4] Kant ([1784], 2011, 8:29– 30, p. 119). For a clarification of 'race' and Kant's various observations on a race hierarchy, Louden observes that "Race [which on Kant's view is not a social construction but a natural kind – albeit one that develops "only over the course of generations" (*On the Use of Teleological Principles in Philosophy* 8: 164)] is a prime example of what nature makes of the human being, rather than of what the human being 'can and should make of himself' as a free acting being" (see 7: 119). Nevertheless, the race issue looms large in three separately published essays included in this volume [*Of the Different Races of Human Beings* (1775), *Determination of the Concept of a Human Race* (1785), *On the Use of Teleological Principles in Philosophy* (1788)], and other versions of Kant's classroom lectures on anthropology and geography contain much more explicit and controversial discussions of race (see, e.g., *Menschenkunde* 25: 1187-1188, *Physical Geography* 9: 311-320). Additionally, related discussions of "civilized (i.e., western) Europeans" and "uncivilized natives" also feature prominently in several of the history writings included in this volume [see, e.g., *Idea for a Universal History with a Cosmopolitan Aim* (1784) 8: 21-22; *Review of J. G. Herder's Ideas for the Philosophy of the History of Humanity* (1785) 8: 64-65]". In, Louden (2011, pp. 6-7).

[5] "Kant benutzt aber die Ausdrücke, provisorisch und, peremtorisch nur mit Be-zug auf subjektives Privatrecht im Naturzustand. Erlaubnisrechte wiederum kennt Kant nicht; die Erlaubnisgesetze, von denen er spricht, nennt er zurecht nicht provisorisch. Und das Er-laubnisgesetz von § 2 *Rechtslehre* wiederum ist von anderer Art als das in den Präliminarartikeln von *Zum ewigen Frieden*". In, Geismann (2021).

[6] "Für CC ist der terminologische Faden sein Leitfaden. Er spricht von der angeblichen „contradiction between provisional and peremptory rights"und sofort danach von einer „problematic relation between permissive (provisional) and peremptory (strict) laws", wobei schon im nächsten Satz in einem Kantzitat aus den „permissive laws" „permissive rights" werden. (119) Kant benutzt aber die Ausdrücke ‚provisorisch'und ‚peremtorisch' nur mit Be-zug auf subjektives Privatrecht im Naturzustand. Erlaubnisrechte wiederum kennt Kant nicht; die Erlaubnisgesetze, von denen er spricht, nennt er zurecht nicht provisorisch. Und das Er-laubnisgesetz von § 2 *Rechtslehre* wiederum ist von anderer Art als das in den Präliminarartikeln von *Zum ewigen Frieden*". In, Geismann (2021).

So, I have to rebut to the reviewer the charge of being led merely 'by a linguistic criterion' if that means 'reasoning by assonances', whereas in all other cases I don't see what is depreciative about it.

Let's Kant speak:

> Since a state of nature among nations, like a state of nature among individual human beings, is a condition that one ought to leave in order to enter a lawful condition, before this happens any rights of nations, and anything external that is mine or yours which states can acquire or retain by war, are merely *provisional.* Only in a universal *association of states* (analogous to that by which a people becomes a state) can rights come to hold *conclusively* and a true *condition of peace* come about. But if such a state made up of nations were to extend too far over vast regions, governing it and so too protecting each of its members would finally have to become impossible, while several such corporations would again bring on a state of war. *So perpetual peace,* the ultimate goal of the whole right of nations, is indeed an unachievable idea. Still, the political principles directed toward perpetual peace, of entering into such alliances of states, which serve for continual *approximation* to it, are not unachievable. Instead, since continual approximation to it is a task based on duty and therefore on the right of human beings and of states, this can certainly be achieved. (Kant (1797) 1999, §61, p.487).

Kant deploys different formulas to refer to permissive laws defining them as provisional or *leges latae* ('wide laws'), in opposition to peremptory of *leges strictae* ('strict laws'). These were notions already present in the Roman Digest as well as in the *Decretum Gratiani* where law was divided into prohibiting, permitting, and punishing law. Permissive natural laws, from the twelfth century onwards, were also at the basis of the justification of property rights (something Kant acknowledges). The debate on permissive natural laws continued in the Second Scholastics and particularly in de Vitoria's idea of common possession of humanity.

Geismann should have been subtler in interpreting my historical-philosophical reconstructions since they were aimed to provide the legal context from which Kant's innovations would have been appreciated in later sections. What I discuss there is the consideration of permissive laws as provisional laws in light of the advancement of an international rightful condition.

Kant's text is clear:

> Although the laws cited above are objectively, that is, in the intention of the ruler/ *lams of prohibition* only *(leges prohibitivae)*, nevertheless some of them are of the *strict* kind *(leges strictae),* holding without regard for differing circumstances, that insist on his putting a stop to an abuse *at once* (such as numbers 1, 5, 6), but others (such as numbers 2, 3, 4) are laws that, taking into consideration the circumstances in which they are to be *applied, subjectively* widen his authorization *(leges latae)* and contain permissions, not to make exceptions to the rule of right, but to *postpone* putting these laws into effect, without however losing sight of the end; he may not postpone to a nonexistent date *{ad calendas graecas,* as Augustus used to promise) […]". (Kant (1795) 1999, 8:347, p. 320-1)

All this premise amounts at interpreting properly three provisional articles Kant lists in *Perpetual Peace*:

1. that "No independently existing state (whether small or large) shall be acquired by another state through inheritance, exchange, purchase or donation" (Kant [1795] 1999, 8:344, p. 318);
2. that "Standing armies *(miles perpetuus)* shall in time be abolished altogether" (Ibid).
3. that "No national debt shall be contracted with regard to the external affairs of a state" (Kant [1795] 1999, 8:345, p. 319);

The status of these three permissive articles is explained also in the final footnote of the section where Kant provides the classification of types of *leges* informing natural law debates:

> I wanted only to draw the attention of teachers of natural right to the concept of a *lex permissiva,* which reason presents of itself in its systematic divisions, especially since in civil (statutory) law use is often made of the concept, but with the following difference: the prohibitive law stands all by itself and the permission is not included in that law as a limiting condition (as it should be) but is thrown in among exceptions to it. Then it is said that this or that is prohibited, *except* for number 1, number 2, number 3, and so forth indefinitely, since permissions are added to the law only contingently, not in accordance with a principle but by groping about among cases that come up; for otherwise the conditions would have had to be introduced *into the formula of the prohibitive law*, and in this way it would have become at the same time a permissive right." (Kant, (1795) 1999, 8:348, p.321).

The reconciliation between a permissive, but normatively suboptimal order, and a peremptory one is all important for understanding the approximation towards an international civil law whose legal model is one of a cosmopolitan constitution − an expression Kant uses in different writings and in various ways as for instance, in

addition to the already mentioned "cosmopolitan constitution" (*Weltbürgerliche Verfassung*), the "cosmopolitan commonwealth" (*Weltbürgerliches gemeines Wesen*) or, "a cosmopolitan whole" (*Weltbürgerliches Ganze*),[7] as in the *Critique of the Power of Judgment*.

The conceptual possibility of a cosmopolitan constitution goes hand in hand with the idea of a world republic upon which it is institutionally realized. But Kant's thoughts are aware of a theory/practice dilemma and his conclusions take into account the difficulty of proposing a domestic analogy for the international domain (a simple replication of the cosmopolitan constitution plus the world republic). For this reason, the real interpretive challenge is to provide a subtler interpretation of Kant's cosmopolitan thought.

3. The Regulative Role of the World Republic

Let me attend now a third and final point.

The reviewer, once again, shows inaccuracy in the reading of my text. He accuses me of something I have never stated such as the claim of originality for the idea of a cosmopolitan constitution. My explicit reference is to Habermas as the authoritative reference to this. The suggestion I add of a regulative role for the world republic complements Habermas's insights which, not unusually for his style of scholarship, never produced a monograph based on a single author. In addition to Habermas, I do mention several other Kantian scholars whose contributions are in line with my reading: Cavallar, Kersting, Brown, Ellis and Keating. All these authors have worked on the role of regulative ideas in Kant's political thought.

Coming to my interpretation of the world republic: Kant notices that the possibility of "an (always growing) *state of nations* (*civitas gentium*)" (Kant [1795] 1999, 8:357, p. 328) that would arise and "finally encompass all the nations of the earth" (Ibid.) is prevented by the will of states who will never subordinate themselves to a superior power. Therefore, Kant concludes that "if all is not to be lost" (Ibid.), the league of states can be a suboptimal but realistic option to start with. This second best option, though, is not all Kant has to say. This is why I believe that the solution between the theory/practice problem comes from the consideration of a regulative role for the world republic. In this third option, both state sovereignty as well as ideal commands of international justice are saved. This helps understanding also why Kant in *Perpetual Peace* reminds us that only by subordinating politics to public right can we hold "a well-founded hope [that] *perpetual peace* […] is no empty idea but a task that, gradually solved, comes steadily closer to its goal" (Kant [1795], 1999, 8:386, p. 351).

For the reviewer this does not appear really as a problem. For Geismann, what Kant is here saying is simply that "until states become convinced of their legal duty (sic!)" to embrace the positive model of a world republic, they will keep choosing the negative surrogate of the league of states.[8] But, the implication is that eventually states will change their minds. Unfortunately, the reviewer does not see that the problem is more serious than the way he sees it, since merging states into a single world republic would be always against the political mandate that representatives receive from citizens.

At this point my interpretation could be charged of being merely a conjectural suggestion. I reply that there is some textual evidence to add to the hypothesis I make. One has to be benevolent with Kant since he did not aim here at providing a systemic treatment of the matter; additionally, international law was at its beginnings in his times.

At any rate let's consider the following text. In *Religion within the Limits of Mere Reason* (1793), Kant draws an analogy between the objective unity of religion as a rational idea and "the political idea of the right of a state [*der politischen Idee eines Staatsrechts*] in so far as this right ought, at the same time, to be brought into line with an international law which is universal and *endowed with power*" (Kant ([1793], 1998, 6:124, p. 129).

The drama which Geismann does not see is explicit. For Kant we cannot have much "hope" (Ibid.) if we rely on the expectation of an empirical peaceful unification of states under a single world state. As he immediately exemplifies, whenever we look back to history and see on how states have ever tried to approximate such an ideal, the result is one where a single state "subjugat[ed] all others to itself and achiev[ed] a universal monarchy" (Ibid.). But what follows is that the universal monarchy "[…] split up from within into smaller states" (Ibid.).

Therefore, the reasoning is that as we cannot nurture much hope for achieving the empirical unity of the church, a unity realized within one single "visible church" (Ibid.), similarly, we cannot have much hope to realize a single world state (neither in the form of a republic nor in the form of a monarchy). This distinction resembles the separation between *respublica noumenon* and *respublica phaenomenon,* built on the parallel to that of the invisible church as the original image of the visible church.[9]

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[7] For the occurrence of "cosmopolitan constitution", Kant ([1795] 1999, 8:307). For "cosmopolitan commonwealth", see Kant, ([1793], 1999, 8:311, p. 308); for "a cosmopolitan whole", see Kant ([1790] 2000, p. 300).

[8] "Kant denkt gar nicht daran, die Weltrepublik abzulehnen, auch nicht zugunsten des Völkerbundes. Er schluckt gleichsam die Kröte, und zwar – und das ist entscheidend – aus *rechtlichen* Gründen, weil nämlich die Staaten nach dem Völkerrecht nicht gezwungen wer-den dürfen". In, Geismann (2021).

[9] As Cavallar remarks: "Kant refers to the *respublica noumenon,* to the concept of a completely pure state constitution (XIX, refl.8077, 609, 30-33)". In, Cavallar (1999, p. 77). See also on this point Kersting (2016, p.428 ff.).

But here comes another possibility. As Kant writes, the unity of the church, or that of the states, can be conceived in terms of an "*idea* […] *of reason* [*eine Idee* […] *der Vernunft*] [emphasis added]" (Ibid.), that is, a "practical regulative principle [*als praktisches regulatives Prinzip*]" (I don't understand why for Geismann it is not clear what type of regulative idea I'm referring to!) (Ibid.). As a practical regulative principle, it "has nonetheless the objective reality [*objektive Realität*] required to work towards this end of unity" (Ibid.).

It is telling that in the preparatory drafts of the *Rechtslehre – Reflections on the philosophy of right* [1764–] – Kant asserts that "there is no salvation outside the republic. – A world republic [is] one where no individual state would have enough forces to fight the great republic if necessary" (Kant ([1764–], 2016 §807, p. 68).

All this reasoning informs us of a crucial point: Kant's theory does not aim to reach a perfectionist conception of right. The divide between the ideal and the real – the theory and the practice – can be brought back into unity under the idea of transitional stages of approximation. Accordingly, I do fully agree with those interpreters, like Horn who thinks that "Kant ist kein Perfektionist, sondern Liberaler; er vertritt einen *deontologischen Liberalismus*" (Horn 2014, p. 332. See also Brandt 2004, pp. 69-86 and Brandt 1982, p. 233 ff.).

4. Conclusion

Coming to an end, when I informed Geismann of my thesis on Kant's cosmopolitanism, I expressed my sympathetic tuning with his felicitous expression: "*Völkerbund als Weltrepublik*" (Geismann 1983, p. 377). I also asked myself why he dropped the project afterwards. In fact, by doing so, Geismann has missed the opportunity to present a novel reading of the political theory of Kant (Corradetti, 2020, p.116 n.66). Luckily, German Kantian scholarship has proved more lively and braver than Geismann's well-trodden views.

Mr Geismann therefore has lost two opportunities at once: he has missed not only the possibility of developing what it appeared to be a promising intuition on the regulative function of the league of states, but he has also lost the chance to understand my Kantian interpretation.

As the Latins said: *Errare humanum est* – but − *perseverare autem diabolicum!*

The author declares that there is not conflict of interests.

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