

Executions of the Cosmopolitan Law in Kant

Shohei Edamura

Introduction

In this paper, I will argue that Kant does not justify a forceful execution of the cosmopolitan law, which guarantees all the people in the world to settle in their own land and not to be invaded by any nation whatsoever outside of its territory. In the first part of the paper, I discuss the concepts of the cosmopolitan law and right, and argue that the right to settle in a land and to avoid any invasion is considered as a cosmopolitan right. The second part comments on a possible explanation for exercises of military force in the name of universal law outside of the territory of an intervening nation. This leads finally to the conclusion that though Kant is an enthusiastic supporter of the cosmopolitan law, he actually does not authorize a third party to execute the cosmopolitan law.

1. The Concept of Cosmopolitan Law or Right

According to Kant, any person has her own right to keep away from violence, invasions and any harmful actions even before the origination of civil societies. Further, for Kant, this cosmopolitan right depends upon the morality which pure reason tells us. It is not dependent upon conventions. In the case of a principle of right, the truth of the cosmopolitan right is contingent upon the objective reality of the fundamental concepts of freewill and autonomy.

The representative textual resource for the concepts of the cosmopolitan law and right is the *Metaphysics of Morals*. In the part of the doctrine of public right, after discussing the right of a state and the right of nations, Kant introduces the cosmopolitan right which all the human beings have. In his discussion of the right of nations, Kant argues that a nation basically does not have a right to wage a war with another nation (A 6 343-8 = MS 114-8). Also, the second and fifth preliminary articles for perpetual peace explicitly include the right of any nation of being independent (A 8 344-6 = EF 108-9). More over, Kant also considers the right of individuals in a primitive society. To be sure, the *Perpetual Peace* mainly discusses the right of nations, and the right of people without government is not explicitly explained in this work. But this does not mean that Kant ignores the right of people when they do not form a government. In the *Metaphysics of Morals*, Kant argues that all the people on the earth can stay on their own land and they should be free from any invasion. For example, Kant examines whether the settlement outside of the country is legitimate or not:

If the settlement is made so far from where that people resides that there is no encroachment on anyone's use of his land, the right to settle is not open to doubt. But if these peoples are shepherds or hunters (like the

Hottentots, the Tungusi, or most of the American Indian nations) who depend for their sustenance on great open regions, this settlement may not take place by force but only by contract, and indeed by a contract that does not take advantage of the ignorance of those inhabitants with respect to ceding their lands. (A 6 353 = MS 122)

Kant basically does not admit any settlement which the original residents would not voluntarily accept. Without explicit consents, foreigners cannot settle even in a huge land in which only a small number of shepherds or hunters live. Kant also takes note that the right of foreign visitors does not include any right to settle on a land, since “a right to make a settlement on the land of another nation (*jus incolatus*)” requires a specific contract, in which a voluntary agreement of the original settlers must be involved (A 6 353 = MS 121). To be sure, we can find many examples of invasion, and many people have settled on the land outside of their country without any peaceful agreement of original dwellers. However, for Kant, this fact merely shows that they have not observed moral requirements:

This is true despite the fact that sufficient specious reasons to justify the use of force are available: that it is to the world’s advantage, partly because these crude peoples will become civilized... (A 6 353 = G 122)

Thus we always have to respect and observe this objective right of all the people. The cosmopolitan right is the most universal right that is by nature prior to generations of any government. As I indicated at the outset, Kant must have some philosophical justifications to argue that anyone has to respect the cosmopolitan right of others on the earth. I believe that some fairly conclusive observations can be made concerning Kant’s manner of defining the right and obligation of individuals. First, Kant argues that any person has her own freewill, and there is no real constraint on this will (A 5 29 = KPV 26). But this does not mean that she can rightly will and do anything she desires. Jerome B. Schneewind states that for Kant “[i]n order to know what is right all we need to know is what the perfectly good agent would do” (Schneewind 1992, p. 317). This best agent or God is considered as having a completely rational will. Thus the idea of the most perfect being plays a significant role in Kantian philosophy. The perfect being always acts in accordance with the objective and universal law, which all rational agents should follow. One of the basic laws of rational willing is about goal-oriented actions in general:

Who wills the end, wills (so far as reason has decisive influence on his actions) also the means which are indispensably necessary and in his power. (A 4 417 = G 84-5)

The argument is like this: If someone wills P, then given P entails Q, she necessarily wills Q as well as P. Kant assumes that if someone wills to live well, then she necessarily wills to live in the order of universal will. Indeed, one might hold a more egoistic maxim to maximize her own pleasure. But Kant’s principle of “categorical

imperative” excludes this alternative. This principle is understood through one of the most famous passages in the *Groundwork*:

There is, therefore, only a single categorical imperative and it is this: act only in accordance with that maxim through which you can at the same time will that it become a universal law. (A 4 421 = G 31)

Even for Kant, it is possible to conceive of a world in which people are indifferent to one another’s distress. But a rational agent cannot will the existence of that world. A rational agent necessarily wills the means to any of her ends. Given she needs the help of others, it is irrational to will to exclude such a help (cf. A 4 423 = G 90-1). Hence she cannot reasonably generalize her egoistic maxim.

In general, Kant requires us to act in such a way that you always treat humanity, whether in your own person or in the person of another, never simply as a means, but always at the same time as an end (A 4 429 = G 96). It seems evident that for Kant anyone must deserve to be treated as a person, not as a means. According to Kant, any individual has her practical reason. By this practical reason, she can recognize her own purpose of action, and make an action in accordance with her own plan. The concept of autonomy is also important here. Any individual is supposed to be autonomous, since she sets the purpose independently. No external setting of a plan is required. If an individual is treated as a means, it is a kind of contradiction.

2. A Critical Examination of a Possible Justification for the Execution of Cosmopolitan Law

I turn now to some questions concerning executions of the cosmopolitan law outside of the territory of an intervening nation. It should be noted that its execution by the world government is a different issue, since the world government rules all the territories on the earth, while any nation in this world does not. In this paper, I will focus upon the intervention of nations in accordance with the cosmopolitan law.

As I indicated at the outset, Kant must have some philosophical justifications to argue that anyone has to respect the cosmopolitan right of others. However, Kant does not explicitly mention to any judgment or execution concerning the cosmopolitan law. As for domestic criminal laws, the court is in charge of the judgment, and the administrative power is supposed to execute the punishment in accordance with the judgment. In contrast, it is not easy to find any name of organization to execute the cosmopolitan law in Kant’s works. Does he think that the world government needs to apply international and cosmopolitan laws and execute them? This is an interesting question, but it is hard to take the United Nations to be the world government in the framework of Kantian philosophy. In some passages of the *Perpetual Peace*, Kant seems to be reluctant to accept the idea of the world government. He states that the concept of a nation consisting of nations would be contradictory, “for in every nation there exists the relation of ruler (legislator) to subject (those who obey, the people)” (A 8 354 = EF 115). Further, Kant states that the idea of fusing nations into a single one is not relevant to the discussion of the right of nations, intentionally avoiding to discuss the possibility of a single world government. Thus Kant recommends us to try to

endure the peaceful federation of nations rather than to hold the positive idea of a “world republic” (A 8 357 = EF 117). Clearly, the United Nations is closer to the federation than to the world government. Also, there are problems in regarding Security Council, International Court of Justice and others as organs of the world government, since they are organs of the United Nations, which is not the unique sovereign of the earth, but merely an alliance of the majority of countries. Even though almost all the countries of the world have signed up to the United Nations, there seems to be a gap between this alliance and the world government.

However, the main topic of this paper is not concerning the world government. A typical case upon which this paper focuses is that a country intervenes with force when humanitarian law is violated (i.e. when a holocaust takes place) in a foreign country. There is little doubt that a holocaust is considered to be a violation of cosmopolitan law, since for Kant, even in a territory without any government, people have the right to settle the land and be free from invasions. The problem is that this intervening country is not a sovereign in charge of punishing the criminals who committed the holocaust, since they are not citizens of the intervening country. One can wonder if the intervening country is legitimately authorized to punish people outside of its territory. I will examine whether Kant holds that a country is allowed to (or rather, should) exercise its force to execute the cosmopolitan law when the law is violated outside of its territory. Indeed, Kant does not mention to Security Council, International Court of Justice, International Criminal Court or other organs we have. So perhaps Kant assumes that unlike domestic criminal laws, there is no power to execute the cosmopolitan law. But one may say that without a power for execution, the cosmopolitan law will not be observed. Any nation is supposed to execute its domestic law, and by doing so all the citizens in the nation is obliged to observe the law. We cannot have such an expectation concerning the cosmopolitan law.

In contrast, Jürgen Habermas claims that the regime of the United Nations is clearly better than that of the League of Nations, which lacked an armed force of its own. By introducing Security Council and International Court of Justice, human beings remarkably advanced in the course of history. For Habermas, there is a philosophical justification for executing the humanitarian law in accordance with a resolution of Security Council. Indeed, according to Habermas, the United Nations “can impose sanctions, and grant mandates for humanitarian interventions” (Habermas 2001, p. 106 cf. Eriksen and Weigard 2003, p. 237). Furthermore, a nation can intervene another given it is authorized by the organs of the United Nations.

A question is whether Kant has any explanation to necessitate the power to execute the cosmopolitan law as Habermas does. As the following well-known passage shows, Kant strongly emphasizes the necessity of actual punishment or execution when he discusses domestic criminal laws:

Even if a civil society were to be dissolved by the consent of all its members (e.g., if a people inhabiting an island decided to separate and disperse throughout the world), the last murderer remaining in prison would first have to be executed, so that each has done to him what his deeds deserve and blood guilt does not cling to the people for not having insisted upon this punishment; for otherwise the people can be regarded as

collaborators in this public violation of justice. (A 6 333 = MS 106)

Thus Kant argues one of the most important roles for a civil society is to bring justice by an execution of the criminal law. Also, if the people do not insist upon the punishment, they may be “collaborators” of the violation of justice. In light of this passage, we can formulate one thesis concerning the execution of law:

A: Anyone who does not insist upon an execution of the domestic law or the cosmopolitan law is regarded as a collaborator of the violation of justice.

Now whether an execution of cosmopolitan law by third nations is legitimate hinges upon the understanding of “insistence.” If an actual exercise of power is among insurances, then we might understand that if the people of different regions do not exercise any power when the cosmopolitan law is violated by a holocaust, then they can be considered to be collaborators of this horrible action. Probably any third nation whose military is strong enough may attack the personnel, organization or nation who committed that holocaust, in accordance with the resolution of Security Council.

However, there are good reasons to suppose that Kant does not hold this strong claim A. First, it should be noted that whenever Kant discusses executions of the law, he only refers to the sovereign as a punisher. The sovereign can punish its citizens when they commit crimes. But the situation is essentially different in the case of the cosmopolitan law. Criminals are not citizens of a nation in charge of “punishing” them. Besides, the people killed in Kosovo were not citizens of any member of NATO at that time. Kant states that the people can give a judgment upon criminals only indirectly by means of representatives or jury (A 6 317 = MS 94). In the same way, an execution has to pertain to the administrative power of the sovereign. Therefore, according to Kant, a punishment “occurs only in the relation of a superior (*imperantis*) to those subject to him (*subditum*), and states do not stand in that relation to each other” (A 6 347 = MS 117 cf. Mulholland 1990, p. 367).

Second, Kant suggests that any intervention of one nation to another is illegitimate, since there is no general will to govern these two nations. It seems that for Kant an intervening nation is not authorized to intervene, as Leslie Arthur Mulholland states:

The problem with international justice lies in the difficulty of giving actuality to the idea of the general will, that is, to produce the actual organization of states under law. (Mulholland 1990, p. 365)

One nation has no right to intervene another, and moreover, it has no obligation to do so. Thus it is concluded that there is no external obligation for a nation even if the cosmopolitan law is remarkably violated (Mulholland 1990, p. 366). Indeed, for Kant, “no war of independent states against one another can be a punitive war” (A 6 347 = MS 117), and any nation cannot legitimately punish another. Of course, it should be noted that this reason against

an execution of the cosmopolitan law only holds for an intervention among nations. So, even one accepts this reason, it might be possible that a nation legitimately punishes the individuals who violated the cosmopolitan law outside of the territory of the nation. But the reason raises a serious problem concerning an execution.

Third, Kant's prohibition of revolution suggests that a physical exercise of power is legitimate only between the sovereign and its citizens, and any other exercise is not accepted in accordance with the universal law. It is evident that Kant refuses to admit any revolution in the framework of republic. One of the passages in which Kant proposes his prohibition of revolution is the following:

Only if it is not contradictory to believe that an entire people can agree to such a law... That is, the power of the nation that makes law effective is also unopposable (irresistible), and there is no rightfully constituted commonwealth without the power to put down all internal resistance, for such resistance would have to derive from a maxim that, if made universal, would destroy all civil constitutions, thus annihilating the only state in which men can possess rights. (A 8 299 = GTP 79)

Thus for Kant, even if the ruler does something against the universal law, any revolution is a worse violation of the law. Sarah Holtman points out that Kant frequently appeals to self-contradiction to explain what is wrong with revolution (Holtman 2002, p. 218 cf. A 6 320) . To commit a revolution is to regard oneself as somebody outside of the order of the law. In that case, she thinks as if she were allowed to “judge” others without referring to the objective rules. In a note of the *Metaphysics of Morals*, Kant criticizes the “maxim” of those who commit a revolution:

His maxim is therefore opposed to the law not by way of default only but by rejecting it or, as we put it his maxim is diametrically opposed to the law, as contrary to it (hostile to it so to speak). (A 6 321-2 = MS 97 cf. Holtman 2002, p. 219)

In short, Kant prohibits revolutions since they are cardinal violations of the law. Instead, Kant emphasizes the importance of the freedom of expression. He believes that citizens can improve their society through critical speech or writing.

I hereby propose two different claims:

A': Anyone who does not make efforts to execute the domestic law or the cosmopolitan law, by any means including an exercise of military force, is regarded as a collaborator of the violation of justice.

A'': Anyone who does not explicitly criticize the violation of the domestic law or the cosmopolitan law by verbal expressions is regarded as a collaborator of the violation of justice.

The content of these two are so different: A' takes "insistence" to be an actual exercise of force, while A'' limits the scope of insistence to speech, writing and other types of expression. As we have seen Kant seems to hold A'' rather than A'. Without a sovereign governing the world, which has never existed in the course of history, an execution of the cosmopolitan law outside of a nation's territory is illegitimate.

Conclusion

I have argued that Kant's accounts of punishment and sovereign do not accept any nation's execution of the cosmopolitan law outside of its territory. Indeed, we uncover that another way to commit the order of the cosmopolitan law, that is, an expression of criticism against violations. Features of Kantian political theory provide a reason to assume that, despite the hazards of the violation of the cosmopolitan law, Kant does not present any argument to justify such an execution of the cosmopolitan law. Although the efficacy of the Kantian method to cope with violators is controversial, the order of law will require nations to stay in peace.

Abbreviation

- A. = *Kant's gesammelte Schriften*. Königlich Preußischen Akademie der Wissenschaften. Cited by volume and page.
 G. = *The Groundwork of the Metaphysics of Morals* (originally *The Moral Law*). Trans. H. J. Paton. London: Hutchinson, 1949.
 GTP. = "On the Proverb: That may be true in theory, but is of no practical use" in *Perpetual Peace and Other Essays*. Trans. by Ted Humphrey. Hackett 1983.
 KPV. = *Critique of Practical Reason*. Trans and ed. by Mary Gregor. Cambridge University Press. 1997.
 MS. = *Metaphysics of Morals*. Trans and ed. by Mary Gregor. Cambridge University Press. 1996.
 EF. = "Perpetual Peace" in *Perpetual Peace and Other Essays*. Trans. by Ted Humphrey. Hackett 1983.

References

- Eriksen, Erik Oddvar and Jarle Weigard. 2003. *Understanding Habermas: Communicative Action and Deliberative Democracy*. Continuum.
 Guyer, Paul ed. 1992. *The Cambridge Companion to Kant*. Cambridge University Press.
 Habermas, Jürgen. 2001. *The Political Constellation: Political Essays*. Polity Press.
 Hill, Thomas E. 2002. "Punishment, Conscience, and Moral Worth." In Mark Timmons ed. *Kant's Metaphysics of Morals Interpretative Essays*. pp. 233-54.
 Holtman, Sarah. 2002. "Revolution, Contradiction, and Kantian Citizenship." In Mark Timmons ed. *Kant's Metaphysics of Morals Interpretative Essays*. pp. 209-32.
 Kersting, Wolfgang. 1992. "Politics, freedom, and order: Kant's political philosophy." In Paul Guyer ed. *The Cambridge Companion to Kant*. pp. 342-66.
 Mulholland, Leslie Arther. 1990. *Kant's System of Rights*. Columbia University Press.
 Schneewind, Jerome B. 1992. "Autonomy, obligation, and virtue: An overview of Kant's moral philosophy." In Paul Guyer ed. *The Cambridge Companion to Kant*. pp. 309-41.
 Timmons, Mark. ed. 2002. *Kant's Metaphysics of Morals Interpretative Essays*. Oxford University Press.

[Kanazawa Seiryō University, Associate Professor]

