Kant and the Supreme Proprietor: A Response[1]

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Theories of global justice range from the utilitarian philosophy of Peter Singer to the institutional design arguments of Thomas Pogge.[2] These works have grappled with a wide range of issues, but almost all of them have been driven by the recognition of two core problems: the huge numbers of people mired in poverty and the increasing levels of inequality. Much of this literature begins with these two problems and then proposes schemes to resolve them. This problem-solving approach to the issue of global poverty and inequality has tended to avoid engagements with figures in the history of political thought. One thinker who has certainly inspired much of this literature, either explicitly or implicitly, is Immanuel Kant. With his rigorous method, systemic structure of metaphysics and morality, and celebration of Enlightenment reason over staid authority structures, Kant presents a model for how to undertake rational arguments in response to moral dilemmas.

Yet what is surprising is the lack of engagement with Kant's political philosophy by those working on questions of global distributive justice. This reflects, perhaps, John Rawls's famous claim that he wanted a 'Kantian conception of justice' detached from certain background elements of Kant's thought (1971: 11). As many of the theorists who have contributed to this global justice literature follow Rawls's lead,[3] they may well be indebted to Rawls on this point. Those theorists of international or global affairs who do look to Kant's political philosophy tend to focus on one of two themes: his contribution to cosmopolitan political theory[4] and his idea of perpetual peace as a theory of global security.[5] Both these approaches, while touching on global justice in some ways, have not sought to link Kant's own theories of politics to wider concerns of

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the international and global economic and political order (Doyle 1983a,b).[6]

So Howard Williams's paper is a welcome and important contribution to what is, and has long been, a central concern of anyone who thinks about global politics. Importantly, Williams places Kant's own texts at the centre of his analysis, which tends not to be the approach of those who work in international political philosophy, where the focus is on the problem and an analysis thereof rather than on developing an account of how a specific thinker can help us to understand the political at the global and international levels. The paper also zeroes in on the question of property, a topic that much of the work in international political philosophy avoids.[7] Ownership and property are one key place where the economy and political order meet. If one wishes to address questions of global poverty and the distribution of wealth, it seems that the question of property must be addressed. Williams's paper provides a useful supplement to, or dare I say great improvement on, this body of literature.

In taking this route, Williams continues the emphasis on Kant's understanding of property that is found in his excellent 1983 book, *Kant's Political Philosophy*. In that work, as with most attempts to understand Kant's scattered writings on politics, Williams begins with history and moves through individual morality to the idea of justice underlying Kant's work. But, unlike most, Williams then interjects the centrality of property into our understanding of Kant's political philosophy before moving on to his understanding of the state and constitutionalism. He returns to the question of property when he addresses Marxist critiques of Kant, before concluding on the well-known Kantian conception of peace through the creation of republican governments.

The paper, then, is not simply an improvement on the works of Pogge, Singer and others because it turns to a historical thinker. Rather, by turning to this specific historical thinker, Williams orientates our understanding of global distributive justice to a set of political questions that must be addressed if we intend to examine the pressing problem of global poverty. His paper does not give us the final answer to this problem, and I will highlight a few places where I find some of the arguments problematic, but it orientates us in the right direction if we are to take seriously global poverty as a problem of international political theory.

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In this short response, I will focus on three themes: internal vs. external distribution; global constitutionalism; and the problem of the virtuous politician. In each of these, I suggest areas of slight disagreement with Williams, and perhaps ways in which his analysis can lead in new directions.

Internal and External Distribution

Williams's paper builds upon Kant's conception of the supreme proprietor as the 'owner not in a collectivist sense but in a distributional one' (2010: 51). This sovereign is 'the people understood as a legislative union' (2010: 51). Put differently, Kant is not arguing for individuals as property owners, whose ability to own property will create a liberal order in which rights are protected. Instead, Kant is proposing a sovereignty that relies upon a collective conception of ownership that will produce a just distribution of wealth. It does not seem, in Williams's reading of Kant, that there is a specific mode of property ownership that is required by this conception. Rather, this is a theory of how the domestic political context creates a rule of law system that will distribute goods in a just way. In Williams's interpretation of Kant, the central institution by which this sovereignty manifests itself is through a body that creates law, in other words a legislature.

As a foundation for a paper on *global* distributive justice, this seems strange at first glance. While there is a great deal of literature on cosmopolitanism, there are very few attempts to locate a global legislative body.[8] As Williams explains, however, one might suppose, as with *Perpetual Peace*, that states rather than people serve as the agents of this global legislative body. Following this logic, one might make the case that, when states act together through institutions such as the United Nations, European Union or World Trade Organization, they embody the 'sovereignty' necessary for the creation of a rule of law system or just distribution of property. That is, perhaps there exists a kind of global legislative body in international organizations. Continuing the logic of Kant's *Perpetual Peace* further, in order for those states to act justly in these different international institutions, they need internally just economic polities. Hence, both because they are just internally and because they come together to act through global institutions, a just economic order may well

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arise from considering states as agents of a global commonwealth in which they act as a 'legislative union' that seeks to pass just laws concerning the distribution of property.

But I think this misunderstands the way global capitalism works. As any standard work in international political economy will note, the global capitalist system is run not only by states, but by a wide-ranging conglomeration of individual persons and firms pursuing their interests with little regard for justice or peace. As a result, unlike in *Perpetual Peace*, where the logic of states waging war leads one to see how the creation of republics will create more peace, in this case it is not at all clear how the creation of justly distributing states internally will lead to a just distribution of wealth globally. States wage war against each other, so putting them together into a federated republic will lead to a better chance for peace than war (this suggests that Kant's solution to war would not really help with issues such as terrorism or civil war – but that is another paper). Global economic relations rely on agents pursuing wealth who are not necessarily 'given' wealth by a supreme proprietor. Indeed, those who create the vast disparities in wealth at the global level are not usually states but individual persons and firms who seek wealth without regard for the impact they have on distributing wealth. They seek out wealth in any possible way they can through the exploitation of materials and labour.

The international order does not lend itself to the kind of sovereignty that underlies Kant's supreme proprietor. There are, of course, efforts by states to play the role that Williams is asking them to play; rules concerning the global economic order most certainly do arise from things such as the World Trade Organization and the various summits of powerful economic states. However, these are not the same kind of supreme proprietor that underlies Kant's theory of economic justice. Unless there is a more profound alteration in international politics, it is unlikely that such an institutionalized structure will come into existence. Perhaps one reason why Kant's argument in *Perpetual Peace* has been more widely accepted is that he does not presume the necessity for a sovereignty that would be the kind of rule-making body found in most legislative contexts. Williams's paper tries to unite the logic of *Perpetual Peace* with the supreme proprietor, but I am not entirely convinced he is successful at this.

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Relying on a supreme proprietor legislature to distribute wealth may not be the way to bring Kant to bear upon global distributive justice. This does not mean, however, that Kant is irrelevant in constructing alternatives to the current order; one might see in Kant's conception of a constitution something that not only protects rights but must also limit agents so that no one agent's rights suffer. This notion of limits would include not just individual persons but corporate agents as well.[9] Nevertheless, this would be a different conceptual apparatus from the one on which Williams draws.

In other words, the practice of the global economy arises from other agents than the practice of global security. Kant's logic in *Perpetual Peace* may well work in terms of providing a just distribution of security, because it is states that use violence and so must be constrained. This logic does not work for the global economy, however, because the agents are not just states. So, I am not sure how Williams's interpretation of Kant's proposal for peace will actually lead to a more just global distribution of wealth.

Global Constitutionalism

So, if it is difficult to see how internal just distribution would lead to external just distribution, are we left without any means to alleviate poverty on Williams's reading of Kant? I think there is something hinted at here, which I would like to see more fully developed. This is the idea of global constitutionalism. This concept draws upon the history of constitutional thought and transports those ideas to the global level; not as a written constitution, but as the recognition that international affairs have become more rule governed and more institutionally integrated through various international organizations. These shifts in world politics have created a global constitution-like order, one more akin to the unwritten British constitution than the American constitution.[10]

But identifying such an order is not without difficulty, of course. For most who write within this genre, primarily international legal theorists, global constitutionalism is the increasingly law-governed nature of international affairs as manifest in different types of international organizations. Some theorists focus on international judicial institutions, such as the International Court of Justice or the International Criminal Court (ICC). Others point to the Security

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Council as providing evidence of a legalization of international politics. Still others look to institutions such as the World Trade Organization as evincing a rule-creating institutional framework.

We might, however, turn away from a purely legal focus toward a political one. Just as constitutionalism includes not only an emphasis on the rule of law, but a set of institutional limits on power, so the global constitutional order exhibits some of these same characteristics. If we look to the institutional design of the international order, one can see that the relationship between such institutions as the UN Security Council and the ICC manifests a kind of balance of institutional design that may not have been intended but certainly is creating a kind of constitution-like order. The 2008 decision by the European Court of Justice to overrule an attempt to implement a UN Security Council resolution concerning sanctions – the Kadi case – points to how different institutional actors interact in such a way that no single actor can govern the international system as a whole.[11] This balance of institutions reveals a proto-constitutional order at the global level.

Some theorists of these developments look to Kant as an important progenitor.[12] This literature does not necessarily propose the creation of a global or even regional governing structure. Rather, it looks to how the processes of rule making, rule enforcement and rule interpretation that take place through international fora have a distinctly constitutional quality.

The idea of the supreme proprietor as a legislative unity points us toward something that has not been developed in the global constitutionalism literature. Most of that literature focuses on two strands of governance: judiciaries and executives. That is, there is a great deal of work on how judicial bodies exercise constitution-like functions and how the Security Council functions as an authoritative agent in enforcing the rules of peace. Yet there is very little about how the legislative function operates, or, more importantly, does not function. I would suggest that a more interesting avenue to pursue would be the one found in Kant, in which states function as members of a legislative unity in their capacity as moral and political persons.

There are certainly many problems with assuming states are persons. However, most of international relations and, indeed, most of the world talks about states as persons that will, act and deliberate. This assumption could be the foundation for reforming

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the UN General Assembly to create a better-functioning legislative body (where, currently, all resolutions it passes are non-binding). Such a body might then play a more direct role in the kind of global wealth distribution policies towards which Williams is pointing us. This would be not an apolitical push to redistribute wealth, but an attempt to build on the idea of the supreme proprietor as a potential source for new legislative policies concerning the economy.

It is interesting to note that gatherings of powerful states do try to play this role, as in various G8 or G20 summits. What is striking about these efforts, however, is how inequitable they are. The rules are clearly being created by the powerful states, and they will have an impact on a wide range of states and corporations around the world. What is perhaps even more dispiriting is the way in which powerful corporate and financial interests make rules concerning wealth distribution that privilege their interests above others.[13] Would a more formal institution of a state-based legislative body accord with Kant's ideas? Would it actually create a more just distribution of goods? I leave this to Williams and other Kant scholars to develop.

Legislatures, Virtue and Global Distributive Justice

Outside of the institutional ideas proposed above, one other way to promote more equitable distribution of wealth is through the idea of duty. While Peter Singer has posed this problem in terms of individual persons, Williams's reading of Kant points to a possible alternative: the idea of states acting out of something like virtue. 'The wealthy citizens of one federating state would not directly be obligated to help the less well-off subjects as a matter of right, but there would be a non-coercible obligation to support the efforts of a partner state in dealing with the its less favoured subjects' (Williams 2010: 58). This is not an obligation, as Williams points out in the discussion of virtue. Rather, this must take place 'within the framework of right' (2010: 66). In other words, there is no apolitical giving and receiving of wealth, but such matters must take place in a political context. At the same time, this political context would leave space for acts that arise from some notion of virtue.

Let me conclude with some of the difficulties of this option, ones that relate not to international affairs but to the difficulties of being

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a politician with an interest in justice, or what one might call a virtuous politician. This was a very real concern of Kant's, one that manifested itself in his attention to the question of virtue, something Williams highlights in his paper. One way to see this problem in more concrete detail is to look to the life of particular legislator.

As I finished writing this piece, the news has come out that US Senator Robert Byrd has died. Byrd served 51 years in the US Senate and, with six additional years in the US House, he was the longest-serving legislator in US history. As he progressed through the ranks in the US Congress, he increasingly became a defender of the prerogatives of the legislative house, especially in relation to the executive office. In the mid-1990s he published a book on the Roman Senate and the dangers of giving over power to the executive. He was seen as a progressive politician at the end of his life, one who worked assiduously for the distribution of wealth in the United States. He was a strong advocate for the recent health care reforms in the United States and played an active role in introducing more progressive tax rates in the US political system.

But Byrd was certainly not a saint. He entered politics in West Virginia through initially being part of the Ku Klux Klan – he was encouraged to run for office by fellow Klan members who saw in him a natural leader. Although he later apologized for his membership and was a strong advocate for civil rights in the United States throughout the later part of his career, he was never able to shake his reputation as an opponent of equal rights for all. But his election to office in West Virginia back in the 1940s and1950s may well have been helped by these kinds of associations.

The second element of his career that was problematic, and one more directly related to Williams's paper, is the way in which he redistributed funds to his constituents. Byrd eventually became chairman of the Appropriations Committee in the Senate, the body charged with drafting bills concerning spending, one of the primary functions of the legislator. He came to that office openly proclaiming his intention to ensure that the largely poverty-stricken West Virginia would be a recipient of federal largesse. And his efforts were successful, for he diverted billions of dollars to development projects in West Virginia, earning him a reputation as the ideal of a 'pork barrel' politician. Byrd was explicit about the fact that this was his legislative duty – to ensure that the wealth that was generated in the country as a whole went to where he felt it was needed.

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West Virginia certainly has been one of the poorer parts of the US, but this use of his position as a legislator also meant money was diverted from other places, such as inner-city neighbourhoods.

So, what does this have to do with Williams's and Kant's ideas about distributive justice being linked to the role of the supreme proprietor? Legislators have three main roles in a political order: representation, law making and oversight/balance of the other branches. Kant's ideas about economic justice focus on the law-making part, which is, of course, the primary role that legislators are to play. But, Byrd's career demonstrates that being a representative requires that you respond to what your constituents want and need. This may well result in a just outcome, as the need to provide money to West Virginia demonstrates. However, being interested in your own constituents can easily become more important than the role of law maker who can see the whole community and ensure it is just. It would seem that this would be even more difficult at the global level, where seeing the just distribution of resources across the planet may well not be possible at all. Instead, legislators, especially states as legislators, will focus on doing what those who brought them to their position would like most, especially the distribution of resources to themselves.

One might say that Byrd lacked any sense of justice for the United States as a whole. Alternatively, one might say that he was not virtuous. I am not sure either one of these answers is the correct one, however. In light of the nature of the role of legislator, one has to sometimes act in opposition to justice for all, especially if one is to be a representative. As Williams's paper reminds us, Kant understood that virtue does not fit well into the political realm. This means not that legislators do not have a responsibility to try, but only that their role should be orientated toward the creation of certain kinds of political structures and not necessarily to create angels.

This problem of virtue and the legislator is even more difficult at the global level. If individual states seek to promote their own interests and yet also contribute to the creation of international institutions that might alleviate poverty, they are branded as cynical or self-interested. However, it would seem that that is a problem of any law-making body. So, while Williams wants a supreme proprietor who can distribute the goods of the world justly, any proprietor will have to struggle with the dual role of being a representative of a specific constituency and the creator of something more general. I

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think Kant is aware of this, for this is why he (and Williams) emphasize the fact that true distribution must begin in domestic political structures. At the same time, however, the essentially self-interested character of representation will mean that true justice may well not be possible. By relying on the idea of a legislative unity as the foundation for the supreme proprietorship, Kant has neglected the other political roles that the legislature plays, roles that militate against a globally just political and economic order.

Notes

[1] This paper was prepared as a response to Howard Williams's presentation at the Paton Colloquium held at the University of St Andrews, 30 June 2010. Thanks to Jens Timmermann for inviting me to participate in the seminar, and Patrick Hayden and Nick Rengger for helpful suggestions on the argument.

[2] For a collection of many of the most important contributions to this literature, see Pogge and Moellendorf (2008) and Pogge and Horton (2008). In organizing the two volumes, which are collectively entitled Global Responsibility, Pogge has placed his institutional approach under the category of 'justice' and Singer's individualist approach under 'ethics'. I am not entirely convinced of this distinction, although it is accepted by many working in contemporary ethical and political philosophy.

[3] Pogge is the most obvious example here, going back to his seminal work, *Realizing Rawls* (1989).

[4] For two examples, see Franceschet (2002) and Brown (2009).

[5] Doyle's articles helped spawn what has become known as the 'democratic peace thesis', or the idea that democracies do not go to war with each other. This literature has moved far from Kant, but it certainly has its foundations in Kant's *Perpetual Peace* essay.

[6] An interesting exception to these categories is Franke (2001).

[7] For instance, in a recent textbook overview of global justice (Tan 2010), the theme of property is not mentioned once.

[8] Although some cosmopolitans have argued for a greater 'global democracy', one that centres on the creation of some sort of legislative body at the global level; see, for instance, Archibugi (2009), Marchetti (2009) and Falk and Strauss (2001).

[9] Thanks to Patrick Hayden for suggesting this alternative.

[10] The literature here is rapidly growing. For works that draw on international law, see Klabbers, Peters and Ulfstein (2009) and Dunoff and Trachtman (2009). For an analysis from a political science perspective, see Wiener (2008).

[11] The case has been the subject of many legal analyses in the last two years. For a brief overview of the legal issues see Wessel (2008).

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[12] The best example is Jurgen Habermas; see Habermas (2006).
[13] For one description of this process, see Schneiderman (2008).

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