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Bounded and cosmopolitan justice

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1. The scope of justice

Since antiquity justice has been thought of as a political or civic virtue, more recently as belonging in a 'bounded society',[2] or as a primary task of states.[3] All such views assume that the context of justice has boundaries, which demarcate those who are to render and to receive justice from one another from others who are to be excluded. Yet the view that justice is intrinsically bounded sits ill with the many claims that it is cosmopolitan, owed to all regardless of location or origin, race or gender, class or citizenship. The tension between moral cosmopolitanism and institutional anti-cosmopolitanism has been widely discussed over the last twenty years, but there is still a lot of disagreement about its proper resolution.[4]

Take, for example, the specific version of this thought that views justice as wholly internal to states. If we start with cosmopolitan principles, the justice of states will suffice for justice only if we can show that any system of just states will itself be just.

[1] An earlier rather different version of this article appeared under the title 'Civic and Cosmopolitan Justice' as the Lindley Lecture for 2000, published by the Philosophy Department of the University of Kansas.

[2] John Rawls relies on the idea of a *bounded society* throughout his work. References to Rawls's writings cited here may be abbreviated in subsequent footnotes: *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971); 'Themes in Kant's Moral Philosophy' (1989), in *Collected Papers*, Samuel Freeman (ed.), (Cambridge, MA: Harvard University Press, 1999), pp. 497–528; *Political Liberalism* (New York: Columbia University Press, 1993); *The Law of Peoples* (Cambridge, MA: Harvard University Press, 1999).

[3] This view evidently underlies the UN *Universal Declaration of Human Rights* of 1948; the text uses a varied range of seemingly nonequivalent terms, including *member states*, *peoples*, *nations* and *countries*; a coherent reading of the document requires us to take all of these as referring to states.

[4] A selection from this literature might begin by noting Charles Beitz, *Political Theory and International Relations* (Princeton, NJ: Princeton University Press, 1979), 'Cosmopolitan Ideals and National Sentiment', *Journal of Philosophy*, 80 (1983), pp. 591–600 and 'Cosmopolitan Liberalism and the State System', in Chris Brown (ed.) *Political Restructuring in Europe: Ethical Perspectives*, (London: Routledge, 1994); Simon Caney, 'Global Equality of Opportunity and the Sovereignty of States', in *International Justice*, ed. Anthony Coates (Aldershot: Ashgate, 2000), and 'Cosmopolitan Justice and Equalizing Opportunities', forthcoming in *Metaphilosophy*; Joseph Carens, 'Aliens and Citizens: The Case for Open Borders', *Review of Politics*, 49 (1987), pp. 251–73; Charles Jones, *Global Justice: Defending Cosmopolitanism* (Oxford: Oxford University Press, 1999); David Miller, 'The Nation State: A Modest Defence', in *Political Restructuring in Europe*, Chris Brown (ed.), pp. 137–62 and 'The Limits of Cosmopolitan Justice' in *International Society: Diverse Ethical Perspectives*, David R. Mapel and Terry Nardin (eds.) (Princeton, NJ: Princeton University Press), Thomas Pogge, 'Cosmopolitanism and Sovereignty' in *Political Restructuring in Europe,* Chris Brown (ed.), pp. 89–122 and 'An Egalitarian Law of Peoples', *Philosophy and Public Affairs*, 23 (1994), pp. 195–224; Onora O'Neill, 'Justice and Boundaries', in *Political Restructuring in Europe,* Chris Brown (ed.), pp. 69–88 and *Bounds of Justice* (Cambridge: Cambridge University Press, 2000), Henry Shue*, Basic Rights: Subsistence, Affluence and US Foreign Policy*, 2nd edn. (Princeton, NJ: Princeton University Press, 1996).

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But this claim is implausible. We can certainly imagine a system of states that would be just provided that each state was just. For example, a set of just states without mutual influence or effects (imagine that they are located on different continents in a premodern world, or on different planets today) could be just provided that each state was just. But the system of states in the various forms in which it has existed in recent centuries is not at all like this. The prospects and powers of states, and the structures they can establish internally, are always shaped by the relations of domination and subordination between them, and the exclusions which state boundaries create may themselves be sources of injustice. The same line of thought suggests that it is equally implausible to think that bounded societies, or cities, or communities, or other bounded entities, provide the sole contexts of justice. Boundaries of whatever sort are not unquestionable presuppositions of thinking about justice, but rather institutions whose structure raises questions of justice.

Equally, commitment to cosmopolitan principles does not entail—although it also may not rule out—commitment to cosmopolitan political institutions, such as a world state, or a world federation. Principles are intrinsically indeterminate, and may be institutionalized in many distinct ways.[5] In some circumstances the best way of institutionalizing a commitment to cosmopolitan justice might be to abolish certain sorts of boundaries, and in others it might not. The risk of cosmopolitan institutions is that they concentrate power, and that we have very good reasons for ensuring that power is not concentrated at a global level, just as the political philosophers of the seventeenth and eighteenth century had very good reasons for insisting on the separation of powers within states. On the other hand, the risk of anti-cosmopolitan institutions is that they may institutionalize justice in ways that groundlessly exclude some from its benefits—and its burdens.

In this article I shall contrast two views of justice beyond borders; both of them are supposedly alert to the claims both of bounded institutions and of universal principles. The two positions are those proposed by Immanuel Kant in a number of works, but in particular in his political writings of the 1780s and 1790s, and by John Rawls in *Political Liberalism* (1993) and in *The Law of Peoples* (1999). Rawlsian and Kantian views of justice are often thought of as quite similar: Rawls speaks of his own work as 'Kantian', and follows Kant in building his account of justice on a conception of 'public reason' which has certain affinities with Kant's conception of public reason. More specifically, both Rawls and Kant advance what may be loosely called a semi-cosmopolitan view of just institutions: neither endorses a world state, but each thinks that justice requires more than can be delivered by the internal institutions of states. I shall not, however, say very much about the specific institutional proposals for international justice that Rawls and Kant put forward, and will concentrate mainly on their respective starting points rather than their policy recommendations.

There are two reasons for choosing this focus. The first is that comparisons between proposals that address such different worlds may mislead. Kant's proposals were in their day a remarkable blend of political realism and radical thinking.

[5] Alan Gewirth, 'Ethical Universalism and Particularism', *Journal of Philosophy*, 85 (1988), pp. 283–302; Onora O'Neill, *Towards Justice and Virtue* (Cambridge: Cambridge University Press, 1996), and 'Principles, Practical Judgement and Institutions', in *Bounds of Justice* (Cambridge: Cambridge University Press, 2000), pp. 50–64.

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Writing at a time when there were few republican states and no full democracies, he proposes a league of republican states that acknowledge certain obligations not only to their own citizens but also to the citizens of other (republican) states. By contrast, Rawls's proposals for justice across boundaries are quite conservative for our day. Writing at a time in which the United Nations and its organizations, the World Bank and various international courts have all existed for some time, he suggests simply that international justice will require some institutions of roughly these sorts.[6] My second reason for saying rather little about the specific institutions of justice across borders to which Kant and Rawls point is that much has already been said by many others.[7] But in my view too little has been said about the respective starting points of their thought about justice beyond borders; so it is to these that I shall turn. For reasons that will become clear, I shall discuss Rawls before Kant rather than sticking to the historical order.

2. Communitarians and justice beyond boundaries

Before turning to Rawls, it is useful to call to mind the communitarian views he opposes, in which the very principles of justice and the reasoning that is to support them are viewed as bounded. A merit of communitarian thought is that it incorporates a strong view of the basis of practical reasoning, which it views as legitimately formed and bounded by the categories, norms and practices of actual communities and their cultures. Although this move may seem arbitrary from the point of view of outsiders, it is anchored in a conception of human identity as shaped by the constitutive norms and practices of the communities and traditions of which a given individual is part, and so offers substantial premises for working out an account of justice and other normative issues appropriate to that community. These norms and practices are, to use a useful Hegelian phrase, seen as *nicht hintergehbar*: there is no going behind them. Since they are constitutive of the identity of the community or tradition, and so of its members, there is no deeper range of premises that could provide a basis for challenging these norms.

Communitarians are not unaware of the possibility that the constitutive norms of communities and traditions may change, indeed be changed by those within a community. They see the categories and values of communities as open to revision in the light of its internal conceptual resources. Hence it would be a mistake to think that communitarian reasoning is inevitably *conservative*. However, I believe that it would

[6] By contrast many of his critics have argued that Rawlsian conceptions of domestic justice should be applied globally, for example that the difference principle should be applied to global distributive justice, or that fair equality of opportunity should be extended globally. See especially the works by Beitz, Caney and Pogge cited in fn. 4.

[7] See in particular the papers in James Bohman and Matthias Lutz-Bachmann (eds.), *Perpetual Peace: Essays on Kant's Cosmopolitan Ideal* (Cambridge, MA: MIT Press, 1997), especially Jürgen Habermas, 'Kant's Idea of Perpetual Peace, with the Benefit of Two Hundred Years' Hindsight', pp. 113–53, and on Rawls, see Charles Beitz, *Political Theory and International Relations*; Andrew Kuper, 'Rawlsian Global Justice: Beyond *The Law of Peoples* to a Cosmopolitan Law of Persons', *Political Theory*, forthcoming; Thomas Pogge, *Realizing Rawls* (Ithaca, NY: Cornell University Press, 1989), esp. part III, and 'An Egalitarian Law of Peoples', as well as papers in the forthcoming issue of *Metaphilosophy* on the theme of Global Justice, edited by Thomas Pogge.

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not be mistaken to think that reasoning which proceeds within the constraints set by the categories, norms and other resources of a community or tradition must inevitably be *ethnocentric*. Communitarian reasoning is inevitably insiders' reasoning, and takes no account of the categories, the concerns or the views of outsiders. This does not, of course, mean that communitarians can have no view of the proper treatment of outsiders: they might be convinced of the merits of exclusion or of integration, of neglect or of assimilation, or perhaps (more worryingly) of marginalization, colonization or extermination.[8] However, they do not think that there could be reasoned dialogue with unassimilated outsiders, with whom neither categories nor norms, nor therefore the means of reasoning, are shared.

Although communitarians take a realistic view of the possibilities for change within any given tradition, I believe that they take an unrealistic view of the boundaries between traditions and communities. Political boundaries form highly variable filters; the cultural boundaries with which communitarian reasoning is chiefly concerned are yet more diverse and malleable. Many people are conversant with the categories and norms of a number of traditions; those who are not initially familiar with the thought of some community can often grasp a good deal about others' categories and norms, and therefore about their reasoning.[9] (For contemporary evidence, consider the amazing spread of the rhetoric of rights.) Sense of identity is not invariably anchored in the actual norms and categories of a single community; even where it is, the ways of thought and life of that community may allow understanding of and by a fair range of outsiders. Like the rest of us, communitarians in fact hold that foreigners and other cultural outsiders are persons with whom we can communicate, if not perfectly, still a great deal, and that trade and translation, travel and collaboration are real possibilities. In my view these everyday assumptions undermine the plausibility of any communitarian conception of practical reason and show that it offers no convincing basis for reasoning either about domestic justice or about justice beyond boundaries.

However, reasoning that does not draw on culturally specific categories and norms will be considerably impoverished. It is not obvious what alternative premises for practical reasoning will be available. Once we allow that not all reasoning about justice can be based on the rich conceptual resources of a tradition or community, we must look for an alternative account of practical reason. One promising direction in which to look is to John Rawls's work, and in particular to his later work, in which he both advances and deploys a conception of practical reason as 'public' reason to address questions of justice.

3. Rawls on public reason

In *Political Liberalism* and in *The Law of Peoples*, which is published together with a further separate essay on 'The Idea of Public Reason', John Rawls explicitly rejects

[8] Communitarian reasoning has often been put forward by writers whose substantive political commitments are more or less liberal—but its potential is not adequately assessed unless account is taken of the fact that communitarianism is equally hospitable to substantive norms that are anti-liberal, excluding, separatist or even imperial.

[9] See the papers in Onora O'Neill, *Bounds of Justice*, part II.

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the underlying assumption of the communitarian project: 'pluralism is not seen as a disaster but rather as the natural outcome of human reason under enduring free institutions'.[10] If this is the case, it will not always be possible to identify constitutive categories and norms for the very units for which Rawls thinks questions of justice primarily arise. Justice, as he sees it, has its context in a *bounded society*, a perpetually continuing scheme of cooperation that persons enter only by birth and leave only by death, and which is self-sufficient.[11] Within each bounded society, reasonable persons will not come to complete agreement about ethical matters and may be expected to form differing 'conceptions of the good'. However, as reasonable, they may be expected to accept a form of reciprocity, namely to be 'ready to propose principles and standards as fair terms of co-operation and to abide by them willingly, given the assurance that others will likewise do so'.[12] Reasonable persons are committed to a conception of public reason, and prepared to work out the framework for the public social world they share and to construct the principles of justice by which they will live together, despite their irresolvable ethical disagreements. Public reason, as Rawls construes it, is "citizens' reasoning in the public forum about constitutional essentials and basic questions of justice".[13] Evidently this conception of public reason as reciprocity between fellow-citizens presupposes the constitutive institutions that define not just *citizenship* but *fellow-citizenship*: the bounded society and the constitutional basis of citizenship (including liberal rights and democracy in just societies, on Rawls's account). This essentially civic conception of public reason is coupled with what we might view as an associative conception of practical reasoning for narrower spheres (Rawls calls this 'non-public reason'; his thought is close to Kant's writing on 'private uses of reason').[14]

In short, although Rawls's conception of public reason in *Political Liberalism* does not assume the shared culture that communitarian reasoning presupposes, it does presuppose shared political arrangements, including boundaries, and (for just societies) liberal democracy and citizenship. It is a nice question whether the boundaries that are presupposed are—contrary to Rawls's intentions—in fact state boundaries. On the one hand he claims only to presuppose a 'bounded society', on the other hand the assumption that nobody enters except by birth or leaves except by death suggests that Rawlsian bounded societies are well policed, that within their territories legitimate force is exercised, so presumably monopolized. And this is the Weberian definition of a state.

These issues are discussed in more detail in Rawls's *The Law of Peoples*. Here he argues that issues of justice beyond boundaries are to be approached by considering public reasoning as conducted by *peoples*. He rejects both the communitarian thought that the basis of reasoning is to be culturally defined (a community, a tradition), and the thought that the parties who consider justice beyond boundaries

[10] John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), xxiv; cf. pp. 47, 55. 3; *Law of Peoples*, pp. 31–2. 'The Idea of Public Reason' (included in *Law of Peoples*), p. 131.

[11] This formulation is to be found throughout Rawls, *A Theory of Justice*; in later works the emphasis on bounded societies continues, but their liberal democracy and the citizenship of their members are increasingly emphasized; these shifts are corollaries of Rawls's shift to a 'political' conception of justification.

[12] Rawls, *Political Liberalism*, p. 49 including the note.

[13] Ibid., p. 10; cf. pp. 212 ff. and *Law of Peoples*, pp. 132–3.

[14] For Rawls's views on non-public reasoning see *Political Liberalism*, pp. 213 ff., esp. pp. 220–2 and *Law of Peoples*, p. 134; for Kant's views on public and private reason, see sections 4 to 6 below.

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are to be thought of either as individuals or as states.[15] Liberal peoples are thought of as inhabiting their own territories, and as negotiating standards of international justice with other liberal peoples, as well as with those non-liberal peoples who have what Rawls calls a 'decent hierarchical society'. Rawls believes that the principles that would be mutually accepted will include those of non-aggression, non-intervention except in self-defence (and sparingly to end grave violations of human rights in other societies).[16] He also thinks that reasonable peoples are likely to agree on some version of the UN organizations, some form of World Bank and some form of global trade agreement.[17] Reasonable peoples also, he thinks, have some duty of assistance to help heavily burdened societies to progress towards justice; but the difference principle is not to be extended to global economic institutions.[18] Since the procedures of Rawlsian public reasoning are specified only in very general terms, it is reasonable to ask whether there would be mutual agreement on these specific arrangements. Rawls's claims that the 'Law of Peoples' will take this limited view of transnational economic justice depends crucially on his assumption that boundaries—but not state boundaries—are prior to justice. Otherwise it would be obscure why reasonable peoples would not agree to a more extended view of the duties of richer towards poorer societies.

The conception of the state that Rawls rejects in *The Law of Peoples* is in my view indeed a pretty unpromising basis for any account of justice beyond boundaries. What he rejects is the realist conception of states as 'anxiously concerned with their power—their capacity (military, economic, diplomatic)—to influence others and always guided by their basic interests'.[19] However, this has always been an idealized, indeed ideologized, conception of the state; it is certainly not the only option. Others have thought that states themselves are capable of action that is not self-interested, and that they can and should be bound to justice in their dealings with other states.

Curiously, the conception of a 'people' on which Rawls builds his account of justice beyond boundaries is in fact remarkably state-like, since it views peoples too as preoccupied by protection of territory and self-interest:

> Liberal peoples do, however, have their fundamental interests as permitted by their conceptions of right and justice. They seek to protect their territory, to ensure the security and safety of their citizens, and to preserve their free political institutions and the liberties and free culture of their civil society.[20]

Evidently Rawls conceives of peoples as territorially bounded and politically organized, and as able to appoint representatives[21] through whom they are to reason with other peoples about justice beyond boundaries. In short, peoples are conceived

[15] Rawls, *Political Liberalism*, p. 18; *Law of Peoples*, pp. 23–30.
[16] Rawls, *Law of Peoples*, p. 35.
[17] Ibid., p. 38.
[18] Ibid., pp. 115–19; for contrary views see Charles Beitz, *Political Theory and International Relations* and Thomas Pogge, *Realizing Rawls*, 'Towards an Egalitarian Law of Peoples' and more recently 'On Global Economic Justice', *Metaphilosophy,* forthcoming.
[19] Rawls, *Law of Peoples*, p. 28.
[20] Ibid., p. 29. Note also the following: 'The point of the institution of property is that, unless a definite agent is given responsibility for maintaining an asset … that asset tends to deteriorate. In this case the asset is the people's territory and its capacity to support them in perpetuity; and the agent is the people themselves as politically organized', *Law of Peoples*, p. 39.
[21] Ibid., pp. 32, 34.

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as having all the powers, capacities and features of states, and in addition the concern 'to preserve their free political institutions and the liberties and free culture of their civil society'. There is little here that distinguishes liberal peoples from liberal states. Rawls, however, holds that

> What distinguishes peoples from states—and this is crucial—is that just peoples are fully prepared to grant the very same proper respect and recognition to other peoples as equal.[22]

In Rawls's view, peoples can be reasonable, but states are wedded—or condemned—to rational self-interest.

Rawls's choice of *peoples* rather than *states* as the agents whose deliberations are basic to justice beyond boundaries is, I think, motivated in large part by the inaccurate assumption that states must be ideal typical structures that fit the realist paradigm. Yet states, *as we have actually known them* do not fit that paradigm.[23] The view that states and governments have limited powers, yet can adhere to fundamental principles by which they modify the pursuit of rational self-interest, is central to the liberal tradition of political philosophy and to contemporary international politics. States *as they have really existed and exist* never had and never have unlimited sovereignty, internal or external—although various theorists of sovereignty, proponents of strategic reasoning, hawks in powerful states, and romantic nationalists without powerful states have made grandiose claims. States *as they currently exist* are committed by numerous treaty obligations to a limited conception of sovereignty and a degree of respect for human rights; and there is nothing contradictory about these commitments, although like other commitments they are sometimes not honoured. Peoples as *they may once have existed* independently of state structures, lack bounded territories; peoples who negotiate with other peoples, who keep outsiders out and make agreements achieve this by building on state and governmental structures.

It is not hard to see what leads Rawls to his distinctive view of the basis for thinking about international justice. Since he has proposed an account of public reason that focuses on the notion of reciprocity among agents, he has to determine who the relevant agents shall be, among whom reciprocity is to be achieved—or not achieved. Since he assumes that the realist conception of the state, according to which states must act solely from self-interest and will not be capable of reciprocity, is canonical it follows that states cannot be agents of justice who rely on Rawlsian public reason. By default, the reasonable agents who are to carry the burden of international negotiation and justice across boundaries are then identified as *peoples*. Yet in reality the only peoples who have well defined and controlled boundaries and capacities to negotiate with outsiders on a sustained and potentially reasonable basis are peoples with states. There is something laborious about anchoring an account of reasoning in a conception of territorial agents not well exemplified in our world, who (if they were exemplified) would acquire the political capacities Rawls imputes to them only by developing the very state and governmental structures from which he tries to detach his argument.

[22] Ibid., p. 35.

[23] Theorists of international relations acknowledge that many of the states we see around us fall far short of the realist paradigm of statehood: they speak of quasi-states and dependent states; Rawls acknowledges that realism about state action is false—yet leaves realists in possession of conceptions of the state, see *Law of Peoples*, p. 46.

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4. Kant: public reason as non-derivative

Rawls views his philosophy as in many ways Kantian, and makes frequent references to Kant in his writing on justice across boundaries. However, he also, and in my view rightly, distances his work from Kant's. In *The Law of Peoples* he writes:

> Since my presentation of the Law of Peoples is greatly indebted to Kant's idea of *foedus pacificum* and to so much in his thought, I should say the following: at no point are we deducing the principles of right and justice, or decency, or the principles of rationality, from a conception of practical reason in the background. Rather, we are giving content to an idea of practical reason and three of its component parts, the ideas of reasonableness, decency and rationality. The criteria for these three normative ideas are not deduced, but enumerated and characterized in each case. Practical reasoning as such is simply reasoning about what to do, or reasoning about what institutions and policies are reasonable, decent, or rational and why. There is no list of necessary or sufficient conditions for each of these three ideas …[24]

As Rawls sees it, Kant's reliance on an account of practical reason has unacceptable metaphysical presuppositions.[25] Kant, by contrast, does seek to derive his account of justice from an account of practical reason. However, it is not obvious that Kant's conceptions of practical reason, of ethics, of justice or specifically of international justice *must* be derived from transcendental idealism under a strongly metaphysical interpretation. In particular, Kant's distinctive non-Rawlsian understanding of public reason provides relatively accessible arguments, which do not draw on metaphysical assumptions, yet aim to vindicate a specific conception of practical reason: they can be given, indeed they invite, an anti-metaphysical reading.[26]

The central thought of Kant's account of public reason is that the standards of reason cannot be derivative. Any appeal to other, external authorities to buttress our reasoning must fail. Just as a learner cyclist who clutches at passing objects and leans on them to balance thereby fails to balance at all, so a would-be reasoner who leans on some socially or civilly constituted power or authority which lacks reasoned vindication fails to reason.

This view is explicit in the quite distinctive way in which Kant characterizes the difference between his conceptions of *public* and *private* uses of reason in various

[24] Rawls, *Law of Peoples*, pp. 86–7; see also John Rawls, 'Themes in Kant's Moral Philosophy' for further elaboration of ways in which Rawls views his position on reason as differing from Kant's.

[25] For a discussion of some of Rawls's reasons for distancing himself from Kant, and some of the ways in which he arrives at a very weak conception of public reason,see Thomas McCarthy, 'A Reasonable Law of Peoples', in James Bohman and Matthias Lutz-Bachmann, *Perpetual Peace: Essays on Kant's Cosmopolitan Ideal* (Cambridge, MA: MIT Press, 1997), pp. 201–17. For further suggestions for an anti-foundationalist reading of Kant's vindication of reason see Onora O'Neill, *Constructions of Reason: Explorations of Kant's Practical Philosophy* (Cambridge: Cambridge University Press, 1989), especially the first two papers, and 'Vindicating Reason' in Paul Guyer (ed.), *The Cambridge Companion to Kant* (Cambridge: Cambridge University Press, 1992), pp. 280–308 and 'Kant's Conception of Public Reason', Proceedings of The VIIIth Kant Kongress, Berlin 2000 (Berlin: de Grunter), forthcoming.

[26] Kant offers other non-metaphysical arguments for his account of reason, which do not make explicit use of the conception of *public reason*. In various texts he leans more heavily on terms such as *negative self-discipline*, *authentic interpretation* and *autonomy*.

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works of the 1780's and 1790's.[27] Here I shall refer only to two short essays of the 1780's, neglecting Kant's other extended discussions of public and private reason and of related notions.[28] In these essays Kant characterizes uses of reason that appeal to rationally ungrounded assumptions, such as the civilly constituted authority of Church or state, not as public but as private. In *What is Enlightenment*? he speaks of the reasoning of military officers, of pastors of the established Church and of civil servants in carrying out their roles as *private*: these functionaries derive their authority from their civil offices. Their official communications assume *without argument* the authority of the civil power that establishes the office and its constitutive powers and rules. Kant states explicitly that 'the private use of reason is that which one may make of it in a certain *civil* post or office with which he is entrusted'.[29] It follows that the sorts of reasoning exhibited in democratic political debate and in communitarian thought, as well as in the civic reasoning Rawls commends, are all in Kant's view *private*, because each presupposes the authority of civilly and socially constituted roles, institutions and practices. Rawlsian peoples are not identifiable independently of their bounded territories and the constitutive institutional structures that secure these territories, distinguish citizen from non-citizen, and provide the contexts for their (democratic) government, including that part of (democratic) government which counts as foreign policy: hence Kant would see their reasoning as private.

Kant himself offers a quite different view of (fully) public reason as *intrinsically* non-derivative. He contrasts all 'private' uses of reason with 'the public use of one's own reason … which someone makes of it *as a scholar* before the entire public of the *world of readers*',[30] a scholar 'who by his writings speaks to the public in the strict sense, that is, the world'.[31]

In these and other passages Kant sets out a dilemma. If we appeal to any civilly or socially constituted powers or authorities, let alone to mere brute force—if we try to constrain or control attempts to reason—we lose the very justifications we seek. Discourse that defers to authorities that lack reasoned vindication achieves at best restricted scope and authority, and those who buttress their conclusions by appealing to authorities they do not vindicate end up relying on the dubious merits of an argument from authority.

[27] All references to Kant's works and all quotations are taken from the *Cambridge Edition of the Works of Immanuel Kant*, Paul Guyer and Allen J. Wood (eds.) (Cambridge: Cambridge University Press). The relevant volumes are *Practical Philosophy*, Mary J. Gregor (trans.), 1996 and *Religion and Rational Theology*, trans. Allen J. Wood and George Givoanni (Cambridge, 1996). The volume and page references are to the Prussian Academy edition; they are included in the margins of the Cambridge edition. The following titles cited here may be abbreviated in subsequent footnotes: *What is Enlightenment*? (1784); *Groundwork of the Metaphysic of Morals* (1785); *What Does it Mean to Orient Oneself in Thinking?* (1786); *The Metaphysic of Morals* (1797); *Toward Perpetual Peace* (1795); *On the Common Saying: That May be Correct in Theory, but Is of No Use in Practice* (1793); *Religion Within the Boundaries of Mere Reason* (1793); *The Conflict of the Faculties* (1798). Only the latter two are in the *Religion and Rational Theology* volume.

[28] In particular, I shall say nothing about Kant's discussion of public and private uses of reason in the interpretation of Scripture, which is a major theme of *Conflict of the Faculties*, and discussed using the closely related conception of *authentic interpretation* in *Religion Within the Boundaries*.

[29] Kant, *What is Enlightenment?*, 8, p. 37.

[30] Ibid., 8, p. 37.

[31] Ibid., 8, p. 38.

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5. Kant: public reason as freedom without lawlessness

Kant's criticism of *private* uses of reason is both convincing and problematic. It is convincing because it is clear enough what any appeal to contingently available authorities amounts to—the introduction of some arbitrary premise asserting the claims of that authority; and clear enough what it costs—the relativization of conclusions to that arbitrary premise. It is easy to agree that reasoning is limited as soon as it takes for granted some civilly constituted authority, indeed any contingent 'authority' for which no justification is provided, and that this independence is the condition of reaching audiences of wider scope. It is easy to see how this Kantian criticism of 'private' reason can be extended to undermine attempts to develop *democratic*, *communitarian* and even Rawlsian—in short, *civic*—conceptions of public reason.

However, it is less easy to understand what we are going to be left with when all appeal to 'alien' authorities is set aside. Kant's favoured image of public reason is scholarly communication with the world at large. It has evident limitations. Perhaps Kant could find no better image of non-derivative reasoning than this; but we are more suspicious, and in my view rightly suspicious, about the relations between power and knowledge. Practices of scholarly communication include and exclude, highlight and suppress. Can we seriously expect to find, or to live by, communicative practices which do not introduce unargued assumptions—even if these assumptions change through history? (I personally doubt whether the much heralded emerging global communication regime, which some see as the basis for a deeper democratization of political life, lives up the Kantian ideal of public reason any better than the communication among scholars to which Kant points.)

Can we expect to say *anything* about the requirements of reasoned communication, other than making the negative point that it fails wherever it merely defers to the edicts and assumptions of civil or other powers or authorities? Reasoning surely cannot be merely a matter of discourse that does not defer—for if this were the case, every sort of gibberish and incoherence would count as reasoned, provided only that it does not draw on the authority or edicts of whatever powers there be.

Clearly Kant thinks that we can say more about the demands of public reason. He never maintains that reasoning has *merely* to be free and non-deferential. He sets out the other requirements of reasoning quite clearly in *What Does it Mean to Orient Oneself in Thinking*?, which was published soon after *What is Enlightenment*?. In the second essay he argues that nothing could deserve to be called reason if it was wholly without structure and discipline, because a minimal condition for any discourse to count as reasoned is that it be *communicable*, that it be *followable* by all whom it is to reach. And without a structure that can be followed there will be no communication, *a fortiori* no reasoning. Reasons are the sorts of things that we can give to others, receive or refuse to receive from others. Since Kant rejects the idea that reasons could be devised by the arbitrary fiat of individual reasoners, he rejects the thought that reasoning can be wholly unfollowable:

> … how much and how correctly would we think if we did not *think* as it were in community with others to whom we *communicate* our thoughts, and who communicate theirs with us![32]

[32] Kant, *What Does it Mean to Orient Oneself in Thinking?*, 8, p. 144.

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The standards of reason cannot be found in solitary thinking: on the contrary those who seek to reason *must* structure their thought, speech and communication in ways that others *can* follow. This double modal constraint is fundamental to the positive aspect of Kant's account of public reason, and a crucial part of his entire vindication of reason.

At times Kant uses a fiercely sarcastic rhetoric[33] to chastise those who try to purvey the illusion that reasoning could be without all structure or discipline and delude themselves that this 'lawless' freedom will be liberating, and that freedom is all there is to reasoning. He had clear targets in mind, including the fans of religious enthusiasm (Schwärmerei) and of exaggerated views of the powers of genius; today his targets might include a fair range of postmodernists, new-agers and deconstructionists. In each case he believes that the opponents of reason fail to see that *by itself* the unstructured liberation of thought and discourse that they crave will be a disaster, and an illusion:

> … if reason will not subject itself to the laws it gives itself, it has to bow under the yoke of laws given by another; for without law, nothing—not even nonsense—can play its game for long. Thus the unavoidable consequence of *declared* lawlessness in thinking (of liberation from the limitations of reason) is that the freedom to think will ultimately be forfeited …[34]

The illusions of 'lawless' thinking end, Kant thinks, not merely in intellectual confusion, but in lack of defence against the very sorts of deference and subordination which enthusiasts for 'lawless' thinking wish to escape. Because anarchic, 'lawless' thinking is no more than babble, it is defenceless in the face of the claims of superstition, of enthusiasm and of the rules extolled by those who peddle religious and political dogmas.

6. Kant: public reason as law-like

If 'lawless' thinking ends not in freedom of thought and communication, but in gibberish and isolation, even in superstition and cognitive disorientation, whose political consequences include vulnerability to tyrants and demagogues, then any activity in human life that can count as reasoned must be structured. This structure must enable us to distinguish good reasons from poor reasons, to distinguish claims we ought to accept from those we ought to reject. Reasoning—whether theoretical or practical—will lack authority and normative force if it has no structure by which this distinction can be made. So if anything is to count as more than 'private' reason, in Kant's sense of the term, if there is to be anything that is to count as fully public reason, then its structure cannot be derived from existing institutions and practices. What then can provide the internal, non-derivative discipline or structure of fully public reasoning? Kant's answer is straightforward:

> Freedom in thinking signifies the subjection of reason to no laws except *those, which it gives itself*; and its opposite is the maxim of a *lawless* use of reason …[35]

[33] As those who seek to reason with postmodernists often discover, rhetoric is the only remaining way to engage with those who purport to dispense with reason and deny its authority.
[34] Kant, *What Does it Mean to Orient Oneself in Thinking?*, 8, p. 145.
[35] Ibid., 8, p. 145.

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Public uses of reason must have *law-like* rather than *lawless* structure, but since they are not to derive their law-likeness from any external sources, it will have to be freely chosen: the discipline of reason is that of *self-legislation* or *autonomy*.

Kant's identification of reason with autonomy is initially startling, despite the fact that familiar passages in the *Groundwork of the Metaphysic of Morals* make it plain that he identifies *practical* reason with autonomy.[36] The reason that it is startling is, I believe, that the contemporary conception of autonomy identifies it with independence rather than with reason. But Kant distinguishes autonomy sharply from mere freedom or independence.[37] Unlike most recent 'Kantian' writers (and many of their critics), he views autonomy or self-legislation as emphasizing not *some* (*rather amazing sort of*) *self that does the legislating*, but rather *legislation that is not borrowed from unvindicated sources, that is not derivative, that is both freely chosen and has the form of law*. Non-derivative 'legislation' cannot require us to adopt the actual laws or rules of some institution or authority; it can therefore only require that any principle we use to structure thought or action be law-like, that it have 'the form of law'. Only those who freely choose principles that have the 'form of law' meet the demands of Kantian autonomy; only they show commitment to the Kantian conception of public reason: indeed this is all that there is to his conception of practical reason, which explains why he can write:

> Now the power to judge autonomously—that is, freely (according to principles of thought in general)—is called reason.[38]

Another way of formulating the same point is to note that Kant identifies public reason with a double modal criterion: with the *requirement* of structuring our thought, discourse and action in ways in which (we believe) others *can* follow. A general statement of this criterion can be found at the end of *What Does it Mean to Orient Oneself in Thinking*? where Kant identifies reasoning with the practice of adopting principles of thinking and acting that have the form of law, which can be adopted by all:

> To make use of one's own reason means no more than to ask oneself, whenever one is supposed to assume something, whether one could find it feasible to make the ground or the rule on which one assumes it into a universal principle for the use of reason.[39]

We are most of us more familiar with a restricted version of this principle, formulated specifically for the domain of action, which Kant rather pompously calls 'the supreme principle of practical reason' or 'the Categorical Imperative'. The best known of these more restricted formulations is the Formula of Universal Law version of the Categorical Imperative, whose double modal structure is particularly plain: '*act only in accordance with that maxim through which you can at the same time will that it become a universal law*'.[40]

[36] See esp. Kant, *Groundwork of the Metaphysic of Morals*, 4, p. 440.
[37] Kant holds that various *specific* forms of independence (Selbständigkeit, sibisufficientia) are important—but they are quite different from Kantian autonomy. A just, republican state is one where independence of action is safeguarded by the fact that nobody is either outside or above the law; active citizens need a degree of economic independence. Kant, *On the Common Saying*, 8. pp. 294–6; *The Metaphysic of Morals*, 6, pp. 314–5.
[38] Kant, *Conflict of the Faculties*, 7, p. 27: the important phrase here is the one in parentheses!
[39] Kant, *What Does it Mean to Orient Oneself in Thinking?*, 8, p. 146n.
[40] Kant, *Groundwork of the Metaphysic of Morals*, 4, p. 421.

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7. Kant and domestic justice

Where does this account of the vindication of practical reason take Kant's account of justice, and specifically of justice beyond boundaries? I shall first comment briefly on Kant's account of domestic or 'internal' justice. His justification of political institutions does not appeal simply to a version of social contract[41] or contractarian thought but to a more abstract 'Universal Principle of Justice'. A particularly clear formulation of this principle is given early in the *Doctrine of Right* (the first part of the *Metaphysics of Morals*). It runs:

> Any action is *right* if it can coexist with everyone's freedom in accordance with a universal law, or if on its maxim the freedom of choice of each can coexist with everyone's freedom in accordance with a universal law.[42]

The Universal Principle of Justice makes no explicit reference to consent. Its justification lies rather in its relationship to the formulae of the Categorical Imperative, and so to Kant's vindication of practical reason as grounded in the necessary conditions for any possible fully public reasoning. Kant's argument for justice begins simply from the requirement that reasoned thought and action adhere to principles that could be fully public, in the sense that it never invokes arbitrary authority, but rather can be followed in thought or adopted in action by all, without presupposing any pre-established agreement, shared ideology or religion or other given (and unvindicated) source of coordination.

The most familiar statement of this requirement for the domain of practical reason is the Formula of Universal Law version of the Categorical Imperative. This principle covers maxims—practical principles—for all sorts of action, inward and outward, personal and public. By contrast the Universal Principle of Justice is restricted in two ways. First, it is concerned only with maxims for outward action, that is with the aspects of action, which could be enforced (so not, for example, with maxims for virtue or with moral worth). Second, it is concerned only with maxims for structuring the domain of external freedom, that is the public domain, so not with maxims for all outward aspects of personal conduct. The Universal Principle of Justice therefore requires the rejection of those basic maxims for structuring the domain of the external use of freedom that could not be adopted by all.

Kant thinks that the implementation of this principle in the actual conditions in which we live is not straightforward. We find ourselves living on a spherical and finite globe that brings us into contact with others with whom we compete for scarce

[41] For Kant the term 'social contract' refers not to the fundamental principle of political justification, but to a specific step in the derivation of an account of just institutions from the Universal Principle of Justice. Unlike that principle, the idea of the social contract takes cognizance of historically specific conditions, for example of the fact that we live with moderate scarcity and limited altruism, yet in mutual proximity. Hence in our world the social contract has to accept state coercion, but can require state structures to take a republican form. See Onora O'Neill, 'Kant and the Social Contract Tradition', in F. Duscheneau, Y. LaFrançe and Claude Piché (eds.), *Kant Actuel: Hommage à Pierre Laberge* (Paris: Vrin, 2000), pp. 185–200.

[42] Kant, *The Metaphysic of Morals*, 6, p. 230.

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resources; and we are not reliably altruistic.[43] In our world, external freedom will be perpetually insecure without at least limited forms of coercion, aimed at 'hindering the hindrances of freedom'. In these conditions the Universal Principle of Justice can, as Kant sees it, best be implemented not by unlimited freedom—anarchy—but by establishing states with republican constitutions, which guarantee freedom within the law at least within bounded territories. Although such states will coerce, and although their boundaries create unjust exclusions, they provide a better realization of justice than any universal state of nature: the first requirement of justice is therefore to leave the state of nature.[44] However, this requirement is not unconditional. Kant fiercely repudiates the Hobbesian view that any state is to be preferred to the state of nature: tyranny can be worse than insecurity, and legitimate state power is always not absolute but limited. On Kant's view, state power is not an intrinsic requirement of justice, but the compromise which we have to make under actual conditions.

Kant's statement of the elements of this compromise is succinctly formulated in his statement of the requirements of a republican *constitution* in *Perpetual Peace*:

> A constitution established, first on principles of the *freedom* of the member of a society … second on principles of the *dependence* of all upon a single common legislation … third, on the law of their *equality (as citizens of a state)*—the sole constitution … on which all rightful legislation of a people must be based—is a *republican* constitution.[45]

Republican justice is evidently not democratic justice, but I do not think it is trivial. Consider how much it rules out. Societies or states that do not secure the rule of law (anarchic or despotic societies) undermine or jeopardize external freedom for some or for all, so base their constitutions on principles that cannot be principles for all; they are unjust. Societies or states which leave some persons above or outside the law (monarchies, dictatorships, states within states, slave states) undermine or jeopardize external freedom for some or for all, so base their constitutions on principles that cannot be principles for all; they are unjust. Societies or states which do not secure equality of status for all citizens under law (feudalism, caste societies) undermine or jeopardize external freedom for some or for all, so base their constitutions on principles that cannot be principles for all; they are unjust. It is plausible to think that Kant's account of domestic justice could be extended to show that patriarchal and undemocratic states, which undermine or jeopardize external freedom for many, so also base their constitutions on principles that cannot be principles for all, are also unjust.

[43] For Kant then, it might be said, boundaries are still basic to justice, although he considers what is enclosed within the bounded globe rather than within bounded societies. The analogy fails because for Kant the boundary of the globe is significant not because it excludes non-earthlings, but because it requires us to share the earth with all others with whom we have even remote connection. If human life were to spread beyond the planet, the boundaries of Kantian justice would spread with it. Kant's recognition that the globe is bounded does not mean that his thinking on justice ceases to be cosmopolitan.

[44] Kant, *On the Common Saying*, 8, p. 302.

[45] Kant, *Toward Perpetual Peace*, 8, p. 350; cf. *The Metaphysic of Morals*, 6, p. 340.

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8. Kant on justice beyond boundaries

I want now to indicate quite briefly some advantages of an approach to justice across boundaries based on Kant's conception of public reason. The first advantage is that his conception of public reason does not presuppose the *status quo*; it merely insists on the modal conditions that all discourse must meet if it is to be capable of being fully public, hence fully reasoned. If anything can count as a vindication of reason, as opposed to the mere assertion that something is reasonable because it is liked, or accepted, even liked or accepted by lots of people, or even by lots of peoples, this seems to me the most promising strategy.

The second advantage is a corollary of the first. Because he has offered a distinctive, modal vindication of reason, Kant need not presuppose any institutional structures in arguing for the basic principles of justice: he can address the agenda of seeing which principles would and which would not be reasonable without begging questions. In Kant's thought human rights, democracy, state power *and boundaries* are all of them institutions whose justice is to be established rather than presupposed.

The approach has several further advantages. Kant does not ground his account of justice in the realist conception of the state, with its ethically disreputable disregard of the moral standing of others on the far side of borders whose lives are in fact whom economic and foreign policies affect, and to whose suffering such policies may contribute. Nor does he argue for a merely abstract cosmopolitanism. Nor does he anchor justice in the puzzling conception of a territorial people who lack a state but police their boundaries tightly.

For Kant a just world is one in which cosmopolitan principles of justice are realistically institutionalized, and this will be a world in which boundaries are not absent, but also one in which there are further institutional structures which support international justice between states and cosmopolitan justice for people when they interact across borders. In such a world, he argues, the justice of republican states would be complemented by structures that secure international justice and cosmopolitan right, including a league of states.[46]

Kant's entire account of just republican states, of international justice and of cosmopolitan right—is grounded in his account of the reasons we have for rejecting principles unless they can be adopted by all. The Universal Principle of Justice formulates this requirement specifically for the public domain—the domain in which conflict is least avoidable—and suggests why in human conditions universal principles of justice may nevertheless be best instituted through a plurality of bounded republican states, linked by commitments to international justice and cosmopolitan right. Since there are no *a priori* reasons for thinking that states must be anything like those about which realists fantasize, the way is left open for considering which sorts of interaction between all agents, including states, are compatible with justice and which are not.

In my view this strategy may provide a better route for thinking about justice beyond boundaries than the one Rawls offers, not only because the Kant's strategy of vindication aims deeper, but because it is *more realistic* and *more open*. The

[46] Kant, *Toward Perpetual Peace*, 8, pp. 357–60, 367, 385; *The Metaphysic of Morals*, 6, pp. 311, 352–7.

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greater *realism* lies in Kant's clear acknowledgment that republican states are not ideally just: they are a compromise we have to make in order to start securing freedom under real world conditions. By the same token the boundaries of these states are not invariably just: the particular filters they institutionalize, the inclusions and the exclusions, the domination and the subordination which they secure, may constitute unjust action towards outsiders. If boundaries are a requirement of realism, their construction and adjustment and the sorts of filters that they institutionalize raises questions of justice. Kant's views on justice are also *more open* in that they do not preclude the possibility that institutions other than states may contribute towards the institutionalizations of justice. States may usually be the primary agents of justice, but where they are either unjust or weak other institutions—including Churches, nongovernmental organizations and transnational corporations—can also contribute to justice (and by the same token often contribute to injustice).[47]

In the world as we now know it, state boundaries are porous not in all but in many ways: they are for the most part highly porous to transfers of goods and capital, communications, and technologies, but rather less so to ideas, cultures and religions. The respects in which they are least porous are to flows of people and of public finance.[48] However, for Kant the *status quo* is not the end of the story. If we can find more just ways in which to structure boundaries in the world as it actually is, or can construct institutions which are able to secure improvements of justice within and between just states, they these may form part of a better implementation of the Universal Principle of Justice. In the meantime we deceive ourselves if we imagine that power relations between states are exempt from considerations of justice, or that the degree of international and cosmopolitan justice established at the start of the twenty-first century is all that might be achieved.

[47] Thomas Risse-Kappen (ed.), *Bringing Transnational Relations Back in: Non-State Actors, Domestic Structures and International Institutions* (Cambridge: Cambridge University Press, 1995); Onora O'Neill, 'Agents of Justice', *Metaphilosophy*, forthcoming.

[48] Brian Barry and Robert E. Goodin, *Free Movement: Ethical Issues in the Transnational Migration of People and Money*, (PA: Pennsylvania State University Press) for comparisons of ways in which boundaries are porous for different purposes.

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