Refugee Right from a Kantian Perspective

Samuel William Hutchinson

Department of Philosophy, School of Humanities

The University of Adelaide

February 2021

Thesis submitted in fulfilment of the requirements for the degree of Master of Philosophy.

Table of Contents

Abstract

KEY TERMS:

Refugee right. Law of hospitality. Original right to a place. Principle of Right. Cosmopolitan right. Right of nations. Sovereignty and self-determination. Coercion. Moral progress.

Despite the importance to and influence of Kant's work on contemporary moral and political philosophy, little has been written concerning the possible application of Kant's moral and political principles to the issue of refugee right. Such lack of exploration seems even more surprising in light of recent refugee crises making headlines across the globe. This thesis constructs a Kantian account of refugee right by examining and applying the Kantian principles of the law of hospitality and the original right to a place on Earth, while balancing these rights against the right of nations to self-determination. As such, this thesis starts with a thorough analysis of Kant's moral and political framework, drawing from both the *Doctrine of Right* and *Perpetual Peace*. The law of hospitality and original right to a place on Earth are explicated and drawn upon to construct a concept of refugee right in accordance with Kant's Principle of Right and wider principles of freedom. Then the scope of the thesis is broadened to examine how such a refugee right could realistically be implemented across the globe at the level of international relations and law. After careful examination of Kant's views on sovereignty and self-determination, it is found that nations cannot be coerced to follow laws as individuals can. As a result, Kant's admittedly vaguer concept of moral progress will be found to be an essential factor with regard to the realisation of - a refugee right.

Thesis Declaration

I certify that this work contains no material which has been accepted for the award of any other degree or diploma in my name, in any university or other tertiary institution and, to the best of my knowledge and belief, contains no material previously published or written by another person, except where due reference has been made in the text. In addition, I certify that no part of this work will, in the future, be used in a submission in my name, for any other degree or diploma in any university or other tertiary institution without the prior approval of the University of Adelaide and where applicable, any partner institution responsible for the joint-award of this degree.

I give permission for the digital version of my thesis to be made available on the web, via the University's digital research repository, the Library Search and also through web search engines, unless permission has been granted by the University to restrict access for a period of time.

I acknowledge the support I have received for my research through the provision of an Australian Government Research Training Program Scholarship.

I also give permission for the digital version of my thesis to be made available on the web, via the University's digital research repository, the Library Search and also through web search engines, unless permission has been granted by the University to restrict access for a period of time.

Signed:

Date: 28/0

Acknowledgements

I'd like to begin by thanking my friend Mark, who proofed several drafts of this thesis, offered valuable insight into elements of the argument, and helped me locate elusive books and articles. I'd also like to thank the philosophy department at the University of Adelaide, who offered great feedback to my argument over my years of study, especially after I presented at the university's colloquium.

Most of all, though, I'd like to thank my supervisor and co-supervisor, Denise Gamble and Garrett Cullity. Denise showed the patience of a saint while I researched and wrote this thesis, offering essential advice and support, without which this thesis wouldn't have been possible. Our regular meetings didn't only help develop my thesis, but also my development as a thinker and for this I'm also very grateful.

Introduction

"No man is an island, entire of itself; every man is a piece of the continent, a part of the main. If a clod be washed away by the sea, Europe is the less, as well as if a promontory were, as well as if a manor of thy friend's or of thine own were: any man's death diminishes me, because I am involved in mankind, and therefore never send to know for whom the bells tolls; it tolls for thee" – John Donne, Devotions Upon Emergent Occasions, "Meditation XVII".

The moral inspiration for this thesis can be found in the refugee crisis that affected Europe between 2014 and 2019. The European Refugee Crisis was caused, in large part, by the Syrian Civil War, with many Syrians crossing into Europe to escape the vicious conflict that had broken out in the Middle East. In addition to Syrians, the United Nations High Commissioner for Refugees noted that Afghanis and Iraqis were among the top three nationalities migrating to Europe. The crisis triggered debate within European nations, with many questioning the extent to which Europe was practically able to house these refugees and to what extend European countries were obligated to do so.

Refugee crises have been common throughout history, the Israelites fled Egypt, the Irish after the Great Famine, and the Jews and other displaced peoples before, during, and after World War Two. As the effects of climate change become more and more profound, refugee crises could be set to become far more common. How will nations distribute citizens of another country after their home falls into the sea, as has already started happening in Kiribati? Will states be able to force other, nearby states to accept refugees? What state benefits will refugees be able to access in their new home?

To gain answers to these questions, I turned to the work of Prussian philosopher of right, Immanuel Kant. While not particularly known for his work in the political sphere, Kant had fascinating ideas on enlightenment and how nations should interact with one another. This thesis will begin by exploring Kant's philosophy, examining the roots of his entire moral outlook – freedom, before then going to explore the complex framework of rights that grow from freedom, resulting in the

formation of the juridical state. With this knowledge in mind, the second chapter will focus on constructing a Kantian refugee right that is compatible with the theories and ideas outlined in the first chapter. The second chapter will draw on Kant's existing ideas of the law of hospitality and the original right to a place on Earth to construct this Kantian account of refugee right. Following this, the third chapter will explore international law in Kant and the right of nations in an effort to determine whether an international framework can be established with the power to enforce rights, such as refugee right, between states. The final chapter will follow on from the conclusions of the prior chapter, determining how a refugee right could be implemented internationally and how this could tie into Kant's ideas of perpetual peace. While the initial aim of this chapter will be to have an international refugee right implemented in a similar manner to rights in the domestic state, international law will be shown to be far more complicated than domestic law. Kant's conclusions on cosmopolitan right, perpetual peace, and the universal society of humans will tie into the theme of Donne's poem at the start of this introduction, showing that 'a violation of rights in one part of the world is felt everywhere (6:352)'.

Chapter One: Freedom, Right, and the Juridical State

Before we consider the construction of a Kantian refugee right, we need to examine key aspects of Kant's philosophy of right and freedom. Kant's entire philosophical body of work comprises a delicate and complex framework, of axioms, rights, postulates, principles, and syllogisms. This chapter will lay down the groundwork for any further discussion on right and coercion across the remainder of this thesis, providing the framework upon which any form of refugee right may attach itself. This chapter will begin with the foundations of Kant's *Doctrine of Right*, briefly introducing internal freedom before going on to explore external freedom as the basis for Right in Kant. If freedom is the petrol in Kant's moral engine, then right and coercion are the inner workings that direct the flow of that petrol. Kant's notions of property and possession will also be briefly discussed, highlighting his analysis of land acquisition and possession of the Earth in common. Finally, Kant's notions of the state of nature and an individual's obligation to leave it in order to form a juridical state will be discussed. The aim of this chapter will be to understand Kant's notion of freedom as the cornerstone of Kant's political philosophy and a foundation to Kant's juridical state. This will provide the framework upon which the remainder of this thesis will construct a Kantian account of refugee right.

1. Kantian Freedom: An Overview

Before any discussion on right, or even refugee right can begin, we must explore Kant's idea of freedom. This not only comes from the fact that freedom is the basis of all rights in Kant, but also from the fact that, if we are to protect the freedom of both refugees and citizens, how the concept ought to be understood should be spelt out clearly. For, questions that will come up later in this thesis, such as how refugee right could be enforced, whether a refugee right would violate the ownership rights of citizens, and even why refugees flee their home states in the first place, come back to the concept of freedom in Kant. While the ensuing discussion of refugee right will ultimately expand beyond the bounds of the domestic juridical state and into international and cosmopolitan right,

everything must come back to the principle of right and its integral relation with freedom.

While external freedom is of direct concern to our discussion, it is important to at least have a brief understanding of Kant's notions of internal freedom. For Kant, human nature can be understood in terms of three different categories; animality, humanity, and personality (Wood, 1999, pp 118). Animality refers to a creature's base desires such as a survival drive or a drive to propagate the species. In *Religion* Kant refers to this as 'mechanical self-love' (6:26-27). Humans share this aspect of their nature with other animals. However, it is in the category of humanity that Kant separates humans from the wider animal kingdom. The category of humanity allows for the capacity to set one's own ends according to reason (4:437). The category of humanity is also tied closely to the personality category, which is essentially autonomy. Personality allows for an individual to give oneself to the moral law and follow the moral law as a sole motive of will (4:435, 439-40). This mention of will, however, also ought to be briefly elucidated before moving onto the concept of external freedom.

Freedom is defined as the 'independence of the capacity for choice from coercion by sensuous impulses' (Caygill, 1995, pp 414). This is because we have in us a power of self-determination manifest in the 'ought', which Kant refers to as the will. Kant's discussion of the will is conducted in terms of a distinction between the will (*Wille*) and 'capacity for choice' (*Willkür*). For Kant, *Willkür* relates to a negative account of freedom. More specifically, *Willkur* is the capacity of an agent to act on the basis of a free choice. While 'brutes' (animals) as Kant calls them may have a capacity for choice (*Willkur*)[1], they do not have will (*Wille*).[2] For Kant, only a choice can be free, as a will is neither free nor unfree (6:226).[3] *Wille* relates

[1] 'Kant uses the distinction of *Wille* and *Willkür* when he identifies the will as the source of the ought which determines the capacity for choice, and effects its independence from sensuous impulses (Caygill, 1995, pp 414)'.
[2] *Willkur* is capacity of a rational agent to act on the basis of maxims, i.e. in the light of an idea or representation of law. Which involves the capacity of acting independently from or even against inclinations or particular desires. Instead of responding automatically to the strongest desire (pathological necessitation), a free agent can weigh and evaluate desires, prioritise some and repress others.
[3] "Laws proceed from the will, maxims from choice. In man the latter is a free choice; the will, which is directed to nothing beyond the law itself, cannot be called either free or unfree, since it

to a positive account of internal freedom. This account is positive as it allows for the 'capacity to follow determinate laws given by the faculty of reason' (6:214). More specifically, it is the capacity to act for reasons other than those of feelings, impulses, or desires (Wood, 1999, pp 119-120). The positive side of internal freedom is that it is pure practical reason that can determine what actions will be. Actions are determined by reason when one abides by the categorical imperative (and when one acts for obligatory ends of reason, as per theory of virtue), that is, to 'act only in accord with those maxims through which you can simultaneously will that they become a universal law (4:421).'

Now that the internal notions of freedom have been briefly introduced, the discussion will turn to external freedom – a concept that operates as Kant's keystone for his entire *Doctrine of Right*. As with internal freedom, external freedom has both a negative and a positive aspect.[4] The negative aspect is described as the independence from being constrained by 'another's necessitating choice (6:237)' (*Nötigender Wilkür*). The positive aspect is 'dependence on law… in a juridical state (6:237)', though this will be explored in more depth later in the chapter. Here, it is the negative aspect of external freedom that will take centre stage. For Kant, external freedom is vital to his *Doctrine of Right* as it concerns action in pursuit of one's chosen ends where actions have effects in the world that impact other people:

> Freedom (independence from being constrained by another's choice), insofar as it can coexist with the freedom of every other in accordance with a universal law, is the only original right belonging to every human by virtue of his humanity (6:237).

In other words, Kant believes that every human is innately free to pursue their own ends so long as pursuit of these ends can co-exist with the freedom of others in accordance with a universal law. In other words, one's freedom to pursue one's chosen ends ought not to be limited by others unless their maxim, if universalised, would conflict with others' rights to pursue legitimate ends. This right ought to be

---

is not directed to actions but immediately to giving laws for the maxims of actions (and is, therefore, practical reason itself) (6:226).

[4] The positive side of external freedom will be discussed in a later section as it is, essentially, the idea of moving into a juridical state and submitting before public law.

understood in relational terms of one individual to another, as the innate right to freedom gives each person a right to his own freedom so long as it also restricted by the rights of others to do the same under universal law (Ripstein, 2010, pp 30). While everyone possesses a right of external freedom, this ought not to be seen as every human possessing equal amounts of freedom; rather, Kant's view is focussed on 'the respective independence of persons from each other (Ripstein, 2010, pp 33)'. More specifically, Kant's external freedom encompasses both positive and negative accounts of freedom. Kant is not saying we all have equal positive freedom to do things (to be athletes, artists, intellectuals and so on) but we all have equal negative freedom. Kant derived a general principle of right from the innate right to freedom:

> 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 (6:230).

The innate right to external freedom is the only innate right humans possess and it gives rise to countless acquired rights, maxims, and axioms that form Kant's *Doctrine of Right*. Directly, the right to external freedom also entails four other rights that may, at first, appear separate from the axiom. Those rights are the right to equal treatment under the law; the right to legal independence; the right to be presumed innocent until the contrary is proved; and the right to freedom of expression:

> This principle of innate freedom already involves the following authorisations, which are not really distinct from it: innate equality . . .; hence, a man's quality of being his own master (*sui iuris*), as well as being a man beyond reproach (*iusti*), since before he performs any act affecting rights he has done no wrong to anyone; and finally, his being authorised to do to others anything that does not in itself diminish what is theirs so long as they do not want to accept it (6:237-8).

The right to equal treatment under the law was implicit in the right to external freedom. The right to equal treatment under the axiom of external freedom can be seen clearly in the *Doctrine of Right* 'innate quality, that is, independence from being bound by others to do more than one can in turn bind them (6:238)'. In other words, I can only obligate others to respect my right to own land if I will do the same in return. The right to legal independence can be seen in the right to be

one's own master – 'a man's quality of being his own master (*sui iuris*) independence from being constrained by another's choice… (6:238)'. If I am to be presumed to be externally free according to the law, then only I may determine what my actions will be. If my action is compatible with the freedom of everyone in accordance with a universal law, no other individual has the right to force me to do anything. Thirdly, the right to be presumed innocent can be seen in Kant's assertion that an individual is 'beyond reproach (6:238)'. This prohibits anyone from being charged with a crime without good reason or evidence. This may at first appear to line up with the thoughts of the natural-law philosophers, with Pufendorf's claim that 'everyone is presumed to be good unless the opposite is proved (*De Jure,* P.803)' and Achenwall's claim that 'everyone is presumed to be just, until the opposite is proved' (Byrd and Hruschka, 2011, pp 82). Kant, however, suggests that one does not need to presume goodness on the part of others, rather, one should presume they are 'not bad' and that they are 'externally just' (6:301; Byrd and Hruschka, 2011, pp 83). The innate right to external freedom also entails the right to freedom of expression, as the right to express one's own thoughts does not impact on others' freedom of choice (Byrd and Hruschka, 2011, pp 81).

In sum, internal freedom is associated with ability to act from internal reasons rather than causal necessitation, whereas external freedom regulates the behaviour of others in a reciprocal manner in order to balance the freedom of all. External freedom is an innate right – because it is something others can affect or curtail but generally should not interfere with (except in cases of justified coercion, though this will be explored in the following section). External freedom, according to Kant, is the only innate right we can possess. It is denial of such freedoms that are often the cause of refugees fleeing their countries to gain entry to countries where these freedoms are more established and institutionally protected. This section raises significant considerations for the future discussion of a refugee right. If there is a refugee right in Kant it will have to be shown to flow from the innate right to external freedom and be compatible with the freedoms of others in accordance with universal laws.

2. Universal Principle of Right and Coercion

While the prior section introduced the Kantian concepts of both internal and external freedom, it is external freedom that will be the cornerstone of this chapter. For Kant, right, as opposed to virtue, is concerned only with the *external actions* of an agent. For virtue and ethics, the worth of the action is based on the end the agent has in mind, or their motivation for acting. For instance, if one is to care for one's mother one must do so with the mother's well-being as an end in and of itself, rather than the promise of wealth or so on, if the action is to have moral worth. On the other hand, right is concerned an agent's external actions and their impact on the freedom and rights of others rather than their internal reasons for acting. Right does not take into account whether one acts according to the 'wish of the other… as in actions of beneficence or callousness' (6:230), rather, it depends solely on the fact that the *choice* is free and whether the actions of one person may be harmonised with the freedom of others in accordance with a universal law (6:230). For Kant, right is:

> … the sum of the conditions under which the choice of one can be united with the choice of another in accordance with a universal law of freedom (6:230).

We can see from the above that Kant views right as an action that can in principle be harmonised with the freedom of others. It is with that in mind that Kant states his Universal Principle of Right:

> 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 (6:230).

If James eats an apple every day before work, and the act of eating this apple coexists with the freedom of others in accordance with a universal law, it would be *wrong* to hinder or prevent James from eating his apple. Preventing James from eating his pre-work apple would not be compatible with freedom in accordance with a universal law (6:230-1). The universal principle of right, while implying an obligation, does not demand that the *agent limit himself* to these conditions for the sake of right (6:231). Rather, the idea of freedom simply is limited to the conditions of right in accordance with the freedom of others.[5]

[5] Separating right from virtue is the very basis of Kant's *Metaphysics of Morals*, with one half named the *Doctrine of Right* and the other the *Doctrine of Virtue*.

Limiting oneself in accordance with the freedom of others gives rise to a discussion of Kantian duty. While the focus of this section will be on the distinction between ethical and juridical duties, it would also be germane to give a brief introduction to Kant's notions of positive/ negative duties and imperfect/ perfect duties. Firstly, a positive duty is one that commands action, whereas a negative duty is one that prohibits certain actions (6:419). In addition to the distinction between positive/ negative duties, Kant also made distinctions between perfect/ imperfect duties. For Kant, a perfect duty is one we must always do, allowing for "no exception in favour of inclination" (4:421). We have perfect duties to both ourselves and others. An example of a perfect duties to oneself is refraining from suicide and an example of a perfect duty to others is to refrain from making promises you have no intention of keeping. On the other hand, an imperfect duty is one that ought not to be ignored but has multiple methods of fulfilment (4:421). In a similar vein to perfect duties, we also have imperfect duties to others and ourselves. Examples of imperfect duties to others are to contribute to the happiness of others and an imperfect duty to oneself is to develop one's talents (6:419).

With this understanding of duty in mind, the discussion can now move onto ethical and juridical duties. The difference between ethical and juridical duties is tied to their motivations (Potter, 1994, pp 97). Juridical (external) duties are imposed by juridical laws, which may make use of external means of coercion to ensure compliance. On the other hand, ethical duties require solely internal means of motivation, such as duty as an end itself. All juridical duties are external in the sense that they require (or forbid) only external actions, rather than internal motivations. This relates to the fact that a Kantian juridical duty is a perfect duty, as it requires performance or non-performance of an external action (Ripstein, 2010, pp 17):

> The doctrine of Right and the doctrine of virtue are therefore distinguished not so much by their different duties as by the difference in their law giving, which connects one incentive or the other with the law (Potter, 1994, pp 98).

On the other hand, ethical duties require that the agent adopt their ends at will (Ripstein, 2010, pp 11). More specifically, ethical duties require the adoption of

obligatory ends from the motive of respect for law or duty, without any specific action required to follow that end – this makes them an imperfect duty.

On the surface, the idea that Kant supports coercive juridical force may appear to conflict with the right to external freedom. However, these strict rights are based on the idea that it is possible to deploy external coercion in accordance with universal laws. It was shown above that a prohibited action is defined as that which is incompatible with freedom in accordance with universal laws (6:231). With this in mind, Right also contains an authorisation to hinder the freedom of others in certain circumstances. If a free action is hindering the freedom of others in accordance with universal laws, then coercion used in opposition to this is consistent with freedom in accordance with universal laws (6:231). Therefore, according to the principle of contradiction, right contains a permission to coerce others if Right is infringed (Gregor, 1988, pp 772). It ought to be made clear, however, that this only affects external actions and not internal motivations for action. Where coercion is in principle justified, the intent of the coercion is purely to modify the external actions of the offender, not change their internal attitudes or motivations (Wood, 1999, pp 44).

One notable addition to the notion of Right is that it is reciprocal. Kant describes this clearly within the *Doctrine of Right* in the following passage:

> The law of a reciprocal coercion necessarily in accord with the freedom of everyone under the principle of universal freedom is, as it were, the construction of that concept, that is, the presentation of it in pure intuition *a priori*, by analogy with presenting the possibility of bodies moving freely under the law of the equality of action and reaction (6:232-3).

Kant uses the notion of equal and opposite reaction to highlight the need for universal and reciprocal rights. For instance, with regard to the innate right to external freedom, this right is a negative right in the sense that it is a right to be free from someone's necessitating will; that is, the right to be free from another's choice (Byrd and Hruschka, 2011, pp 78). However, it also requires that everyone respects everyone's innate right to external freedom. It is reciprocal coercion, as Kant calls it, that makes the 'presentation of that concept [of right] possible' (6:233).

The main conclusion that ought to be drawn so far is that the concept of external freedom flows directly from the innate right to freedom, and the universal principle of right is also derived from this innate right to freedom. The authorised use of coercion pertains only when a use of freedom (free choice of action) is a hindrance to freedom in accordance with universal laws (coercion is justified in these instances by being a hindrance to a hindrance to freedom, therefore a promotion of freedom, hence 'right') (6:231). *Right* is thus connected by the principle of contradiction with authorised coercion (6:231). The concept of 'a right' is inherent in the idea that universal reciprocal coercion is essentially linked to the possibility of everyone's freedom (6:232). The *Doctrine of Right* (*ius*) is the sum of those laws for which an external lawgiving is possible (6:229). The concept of a right is inherent in the idea that universal reciprocal coercion is essentially linked to the possibility of everyone's freedom (6:232). With regard to the future discussion of refugee right, it would thus seem that any form of refugee right must abide by the universal principle of right and, as it concerns external actions, may even be supported by coercion.

3. Private Right and Property

In the *Doctrine of Right,* Kant extends the right to external freedom to include rights to private property. The right to property is of vital importance to Kant's *Doctrine of Right*, as it acts as the foundation of the juridical state. Consequently, he dedicates lot of time to exploring the concept of possession. Kant must not only explain how the innate right to freedom leads to a right to property, but he must also show how intelligible (non-physical) possession can be possible.

Kant gives two different interpretations of the concept of that which is externally mine, or possession. The *nominal definition* of external possession is as follows:

> That outside me is externally mine which it could be wrong (an infringement upon my freedom which can coexist with the freedom of everyone in accordance with a universal law) to prevent me from using as I please (6:248).

The *real definition* of what is externally mine, however, can be deduced as 'something external is mine if I would be wronged by being disturbed in my use of it even though I am not in possession of it (not holding the object) (6:248)'. In other words, I must have a claim over an object for that object to be mine,

otherwise if someone used that object contrary to my will it would not wrong or affect me. The nature of this claim, however, is yet to be determined. According to Kant, rightful possession can include two different kinds of possession, sensible and intelligible possession:

> That is *rightfully mine* with which I am so connected that another's use of it without my consent would wrong me. The subjective condition of any possible use is *possession*. But something *external* would be mine only if I may assume that I could be wronged by another's use of a thing even *though I am not in possession if it*. So it would be self-contradictory to say that I have something external as my own if the concept of possession could not have different meanings, namely *sensible* possession and *intelligible* possession, and by the former could be understood *physical* possession but by the later *merely rightful* possession of the same object (6:245).

From the above, we can gather that Kant conceives of two different kinds of possession – sensible and intelligible possession. Sensible possession is the idea that I possess the iPhone because I am currently holding the iPhone. Intelligible possession, however, is the idea that even if I am not in *physical* possession of the iPhone, I would be wronged by someone's use of it against my will. Kant draws the justification of intelligible possession from the permissive postulate[6]:

> It is possible for me to have any external object of my choice as mine, that is, a maxim by which if it were to become a law, an object of choice would in itself (objectively) have to belong to no one (*res nullius)* is contrary to rights (6:246).

Kant then restates this idea later as a postulate of practical reason with regard to rights:

> It is a duty of right to act towards others so that what is external (usable) could also become someone's… (6:252).

This right to possession is not separate from the innate right to freedom, rather, it is acquired directly from the innate right (Flikschuh, 2000, pp 144). Although the innate right to freedom implies that subjects have a right to freedom of choice, including property rights, these rights are not contained within the innate right but follow as a *result of it* (Byrd and Hruschka, 2011, pp 102). The right to

[6] Permissive in this sense is not simply permitted, but 'merely permitted'.

what is externally mine is therefore *acquired from the right to freedom* (Flikschuh, 2000, pp 144), making property an acquired right. The possibility of intelligible possession follows from the above postulate of practical reason with regard to rights:

> If it is necessary to act in accordance with that principle of right, its intelligible condition (a merely rightful possession) must then also be possible (6:252)

If practical reason forbade the intelligible private possession then freedom would not have the rightful power to use objects of choice over which we have physical power, even if this would be consistent with the freedom of everyone in accordance with universal laws. However, this would be inconsistent with the axiom of outer freedom[7] and would result in *res nullius*:

> Having an absolute prohibition against ownership of things would render usable things useless, limiting choice and thereby introducing a contradiction into the axiom of freedom (6:246-7).

If practical reason were to suggest that an external object of our choice was unusable, it would make our right to exercise freedom dependent on the objects themselves, rather than the principle of its compatibility with the freedom of everyone. Consequently, if an object was beyond the use of anyone, it would be a contradiction of reason with itself in prohibiting what is right according to its own formal principle (Gregor, 1988, pp 775). In other words, reason cannot support a blanket prohibition against use of an 'external object of choice' as this would be 'contradiction of external freedom with itself (6: 246)'. Kant goes on to suggest that, if using an external object of choice 'to the exclusion of others' was wrong, 'freedom would rob itself of the use of its choice in regard to an object by placing all *usable* objects beyond any possibility of actually using them…' (6:246, Byrd and Hruschka, 2011, pp 114). Byrd and Hruschka sum up Kant's worries of *res nullius* with the following:

> If practical reason contained an absolute prohibition against using an external object of choice, I could not take an unowned apple and eat it… *No one would be permitted to take and use anything*. Such a prohibition would make us spectators in a world filled with usable objects of choice we could not use. The entire land and the things upon it could not be used *by force of law*. We cannot

[7] Freedom (independence from being constrained by another's choice), insofar as it can coexist with the freedom of every other in accordance with a universal law, is the only original right belonging to every human by virtue of his humanity (6:237).

conceive of such a law as a law of *reason* and thus a law of freedom (Byrd and Hruschka, 2011, pp 114).

Consequently, the postulate of pure practical reason and intelligible possession is an extension of practical reason facilitated by the innate right to external freedom and pure practical reason. This permissible law allows for each individual to place everyone else under the obligation to not use objects of their choice due to prior possession. This possession is not physical possession, but the concept of *having* the object. In other words, an object is considered 'mine' when my will controls the object even if I am not in direct contact with the object.

The possibility of a rightful relation with regard to property (external objects) flows from the postulate of practical reason with regard to rights, which shows that it must be possible to possess objects external to one's own body (Ripstein, 2010, pp 23). The purpose of the permissive postulate is to extend the right to external freedom to external objects. However, an owner's relation to their object is not the core of Kant's right of possession, it is the right to 'constrain others with respect to that object' that is the focus of this right (Ripstein, 2010, pp 63). If an external object is the property of an agent, it is subject to their choice and this forbids others from interfering with it. Intelligible possession is possession from 'a pure concept of understanding' (Byrd and Hruschka, 2011, pp 111). The concept in terms of right is that an external possession is an object that is *distinct from an agent* but remains under the control of that agent and is also possible for them to use it. Understanding Kant's notions of possession are vital to the upcoming discussion on the juridical state.

4. Original Possession of the Earth

The first chapter has so far focussed on the importance of freedom and property right to the Kantian domestic state. However, Kant also works from an underlying assumption of a notion of original possession of a place on Earth in connection with the innate right to freedom. Kant's notion of original possession will be elucidated in the following three subsections:

1. The original possession of the Earth.
2. The original community of the Earth.
3. The original united will.

The notion of original possession of the earth is not only vital to understanding Kant's formation of the juridical state but will also be vital in understanding the refugee right that will be elucidated in the second chapter of this thesis.

4.1

Gottfried Achenwall, a German philosopher, statistician and prominent influence on Kant's philosophy, especially Kant's account of original possession, endeavoured in his *Ius Naturae* to establish how one could own property originally, rather than only through acquisition (Achenwall, §100). For Achenwall, the right to use unused things is related '*promiscuously'* to unspecified objects (including land), rather than specific objects (Byrd and Hruschka, 2011, pp 125). This promiscuous right to unspecified objects flows from humanity's *innate right to freedom and is therefore innate in our species*. The exercise of this right does not injure anyone, tying it to the concept of non-damaging use in natural law theory.[8]

Achenwall's ideas provide a foundation for Kant's own ideas of original possession of the Earth and the right to unused things (Byrd and Hruschka, 2011, pp 126). Kant understood land to mean 'all habitable ground', and if one is to possess moveable items on the land, one must first be in rightful possession of the land (6:261). If the land belonged to no one this would be *res nullius*. Consequently, Kant draws the rational concept of original possession from the postulate of practical reason and allows people to use the Earth according to the principle of right. However, the notion of original possession raises an important question. As explained earlier, Kant's theory of rights includes two kinds of rights, original and acquired (Flikschuh, 2000, pp 153). However, the *only original right* is the innate right to freedom. The conceptual problem here is that, if an object is acquired *originally* it is acquired without being derived from someone else's will – if so, how does one *acquire* an external object originally?

[8] Non-damaging use (*ius utilitatis innoxiae*) is a right rooted in natural law theory that allows an individual to use the property of another if this use doesn't harm either the owner or the object. Examples of this are drinking from a stream belonging to another or crossing land for a reasonable purpose (Byrd and Hruschka, 2011, pp 206).

The answer to the conundrum of original acquisition flows from the innate right to freedom. As was shown in the first section, there is only one original right and that is the right to external freedom. The idea here is that, in a similar manner to Achenwall's concept of promiscuous right, the original right to a place on Earth originates directly from this fundamental right of freedom. As Kant stated:

> All men are originally (i.e., prior to any act that establishes a right) in a possession of land that is in conformity with right, that is, they have a right to be wherever nature or chance (apart from their will) has placed them… original possession in common is, rather, a practical rational concept which contains *a priori* the principle in accordance with which alone men can use a place on the earth in accordance with principles of right. (6:262).

This right to a place on earth exists without will (*unbescholten)* and 'merely in virtue of their physical entrance into the world' (Flikschuh, 2000, pp 157). This right relates, to use Achenwall's term, promiscuously to an *indeterminate* piece of land *unused by others*. However, Kant's disjunctive right to a place on Earth has a far broader scope. This right relates to a place on the earth even if *all the land on earth has been claimed by others* (Byrd and Hruschka, 2011, pp 128)[9]. In other words, the original right to possession of the earth can be described as a *right to exist on Earth*, 'I find myself originally on the land, since it is inseparable from my existence (6:262)':

> The right to freedom means *inter alia* that no one may kill or injure me physically. Denying me a piece of the earth (by throwing me into the ocean or rocketing me into space) would result in my death, which makes disjunctively universal possession a right (Byrd and Hruschka, 2011, pp 128).

Rather than using Achenwall's term, Kant labelled this a disjunctive right (*disjunktiver Allgemeinbesitz*), specifically meaning that 'everyone can possess this or that place on the earth.' It is in contrast to particular possession[10] and is, therefore, not a right to a permanent place – it is *a right to some place*. As one can only express their right to freedom if they able to be somewhere, the disjunctive right follows directly from the innate right to freedom. The need for this right follows from the fact that the Earth is finite and interaction between

[9] "Everyone has an innate right to all places on the earth to take one *or* the other place" (Preparatory DoR, AA XXIII, p323).
[10] Division of land according to legal right between citizens.

individuals is inevitable. In other words, the disjunctive right is not a right to a specific place, but a right *to be somewhere*.

Thus, the disjunctive right to a place on earth is contained within the innate right to freedom and constrained by the finite nature of the earth (Byrd and Hruschka, 2011, pp 128).

4.2

The restricting, finite nature of the Earth leads individuals to see themselves as part of a universal community, highly likely to interact. This notion of the universal community is tied to Kant's postulate of public right and the obligation to form a juridical state.[11] Kant references the geography of the Earth several times throughout his published work, taking note of the Earth's finite nature and implying that 'nature has confined [us] together (by virtue of the spherical form [of our] location, as *globus terraqueus*) within specific borders (6:352).' The importance of the finite earth in Kantian philosophy is not the justification of interaction between peoples, rather:

> The Earth's surface is that empirical given space for possible agency within which human beings are constrained to articulate their claims to freedom of choice and action… the global boundary constitutes an objective given, unavoidable condition of empirical reality within the limits of which human agents are constrained to establish possible relations of right (Flikschuh, 2000, pp 166).

The spherical nature of the earth is a 'circumstance of justice' that constrains our agency in a similar vein to our mortality or physical limitations, as opposed to a justification of a right (Flikschuh, 2000, pp 167). The Earth's finite geography and the likelihood of interaction compels individuals to form a civil condition (via the postulate of public law)[12]. If the Earth was an infinite land, then a finite number of humans could disperse so as to never interact with each other; however, as this is not the case then we, as a community, are in a perpetual state of 'possible interaction (Byrd and Hruschka, 2011, pp 129).' Concerning the word 'community', Kant makes use of the following two terms; *communio and*

[11] From private right in the state of nature there proceeds the postulate of public right: When you cannot avoid living side by side with others you ought to leave the state of nature and proceed with them into the rightful condition, that is, a condition of distributive justice (MM 6:307).
[12] This will be elucidated later in this chapter.

commercium. The definition of *communio* appears to shift slightly depending on who is using the term. For instance, Achenwall uses the word in a *legal sense* to define a community of rights holders. Kant appears to lean into Achenwall's legal use of the term, using *communio* in reference to a rights holder 'in the narrow sense' (Byrd and Hruschka, 2011, pp 130). On the other hand, *Commercium* can refer to trade and community *in general* (6:352). The importance of the distinction between the two is that *communio* is not integrally related to the interaction of humans, whereas *commercium* is so related (Byrd and Hruschka, 2011, pp 130). Kant uses *commercium* in reference to the internal relations of a community. Thus, in using *commercium* when discussing the original right to a place on Earth, Kant is talking about human beings as a global collective, forming a community due to the physically possible interaction (*commercium)* (6:352). The community is original because the right each has against the other is the original right to the Earth's surface and is a 'necessary consequence of our existence on Earth' (Byrd and Hruschka, 2011, pp 131).

As humans live on a finite earth and are highly likely to interact, they form a community. This community is *commercium* in reference to their right as joint holders of the land, a right each individual has against the other that gives them a right to be *some place* on Earth. This community is an original community as it flows directly from the right to innate freedom. The possibility of interaction compels us to follow the postulate of public right and join a civil condition. This notion of universal community is, therefore, essential to the Kantian framework of rights explored in this chapter.

4.3

The existence (or postulation) of this *commercium* of humans also invokes the existence (or postulation) of an originally united will. Kant's explanation of this will also has roots in Achenwall's philosophy. For Achenwall, every society has a common goal that determines the common good of that society. Thus, one can speak of the society as if it has a will akin to an individual. Kant's term for this is the 'common will' (*voluntas communis)*. This fundamental will is present in every society but is distinct from the wills of *individual* members of society. As each society has a common will, so does the original community of the earth. As the

original community of the earth is a community of *commercium*, a community with claims against each other, the common goal is division of the earth:

> All human beings are originally in *common possession* of the land on the whole earth (*communion fundi originaria*) with the will (of each) given to them by nature to use the land (*les iusti*), which, because of the naturally unavoidable confrontation of choice of each against the choice of the other, would extinguish all use of the land if this will did not simultaneously contain the law for choice, according to which a *particular possession* for each can be determined on the common land (*lex iuridica*) (6:352).

Furthermore, this particular division of the earth is possible only from an originally united will:

> The distributive law of mine and thine of each regarding the land can come only from an *originally* and *a priori* united will according to the axiom of external freedom (6:267).

In other words, for particular possession to be possible, a shared and united will must be postulated in authorisation of this division of land. Not only are people in possession of a disjunctive right to a place on earth, but this right is also linked to a concept of particular possession. This is Kant's term for the division of land according to legal right between citizens, i.e., the conclusive right to private property under the formation of a civil condition. This right to particularisation is a natural product of disjunctive right. For instance, the disjunctive universal right to a place on earth would be rendered academic by the 'unavoidable conflict of the choice of each against the choice of the other.' Therefore, there is a command to divide the earth between humankind (capacity to be the legal owner of things).[13*]

In sum, Kant's notion of original possession is grounded in the innate right to freedom. In order to express one's innate right to freedom, one must have a place on Earth upon which they can express this autonomy. As everyone has a right to a place on earth and wishes to use the land, this would lead to conflict over the land. Therefore, practical reason contains the principle of particular possession

[13] Kant also dispenses with the possibility that the Earth could be originally free. For, if the land were originally free then the freedom of the land would be an absolute prohibition against anyone's use of it. This would contradict with external freedom and put the land beyond any possibility of use, rendering it *res nullius* (and into absurdity).

[*] For Kant, ownership is a legal requirement that would also require a juridical state and public law.

in order to divide the land so it can be used. This requires *a priori* an originally united will and the formation of a civil condition in order to make conclusive that which is rightful.

5. The State of Nature

Due to the reciprocal nature of universal laws, right also requires that I respect the claims of others to restrict my use of their objects or their land. It is coercive reciprocity that gives rights their content – rights are worthless if they are not respected. It is for this reason that Kant argues that it is only by a collective united will, accompanied by public law giving and executive authority, that rights can become (rightfully) enforced.

Prior to the existence of this conclusively united will, individuals are living in a state of nature. The state of nature is a concept that has been explored by several philosophers, particularly during the enlightenment period. Kant's state of nature is a state without any *juridical order* within which to secure or enforce rights. (Gregor, 1988, pp 785). The Kantian state of nature is a state in which moral agents *do have* rights by virtue of their humanity, however those rights are merely provisional and not secured by law (Gregor, 1988, pp 785). Consequently, an agent living in the state of nature possesses private rights *provisionally*, but it is only by entering into a civil condition by which they can secure their rights *conclusively*.

To highlight this more explicitly, we will now return to Kant's concept of the external mine and thine:

> Something external is mine if I would be wronged by being disturbed in my use of it *even though I am not in possession of it* (not holding the object) (6:249).

This right *does* exist in the state of nature, but its existence is only provisional. For in the state of nature, external objects that are mine or yours *are* possible. Possession, then, which accords with the possibility of a civil condition is *provisionally rightful* possession, but possession actually found in the civil condition is *conclusive* possession (Gregor, 1988, pp 785). Further, it is the *possibility* of ownership that makes it necessary to leave the state of nature and form a juridical society:

> If no acquisition were cognised as rightful even in a provisional way prior to entering the civil condition, the civil condition itself would be impossible. For in terms of their form, laws concerning what is mine or yours in the state of nature contain the same thing they prescribe in the civil condition, insofar as the civil condition is thought of by pure rational concepts alone. The difference is only that the civil condition provides the conditions under which these laws are put into effect (in keeping with distributive justice). – so if external objects were not even *provisionally* mine or yours in the state of nature, there would be no duties of right with regard to them and therefore no command to leave the state of nature (6:313).

The foregoing quotation highlights the fundamental importance of the concept of property and ownership to Kant's state. Its importance is necessary to the extent that if 'external objects could not be mine or yours', there would be no duty to leave the state of nature and enter into a juridical state (Byrd and Hruschka, 2011, pp 26). This need for the existence of a civil society in which we can secure our rights is what drives Kant to state the Postulate of Public Right or the command to enter civil society:

> From private right in the state of nature there proceeds the postulate of public right: When you cannot avoid living side by side with others you ought to leave the state of nature and proceed with them into the rightful condition, that is, a condition of distributive justice (6:307).

As I mentioned earlier, there needs to be a condition in which we can secure a moral agent's choice in order to make sure it is compatible with everyone's outer freedom. This is the aim of the postulate of public law.[14]

When discussing ownership in the first section of the *Doctrine of Right*, Kant makes a distinction between two kinds of ownership – provisional and conclusive. Provisional ownership is unsecured and effectively amounts to physical possession, or possession in which a moral agent's actual control over an external object still amounts to 'comparatively legal possession (6:257).' On the other hand, conclusive possession is legally secured. Private rights are held in the state of nature (a condition without law) but are only held *provisionally*. In

[14] This postulate will become more relevant in chapter three.

order to hold rights that are conclusive, one must leave the state of nature and form a juridical society.

However, Byrd and Hruschka have raised a potential objection to Kant's justifications for leaving the state of nature (Byrd and Hruschka, 2011, pp 139). One could argue that external freedom of choice alone and without any ownership of external objects of choice is enough to require us to leave the state of nature and enter a juridical state in order to secure our freedom (Byrd and Hruschka, 2011, pp 139). The answer to this objection follows from the aforementioned foundational nature of property to Kant's juridical state, or more specifically, land ownership. As explained in section 4.2, humans form an original (prior to any relevant legal act) community in relation to the division of land, and it is this relation to the land and community alone that can call forth a united will. Without the end and duty to divide the Earth, Byrd and Hruschka argue that there would be no original community of human beings – '…because the spherical surface of the Earth unites all the places on its surface… if its surface were an unbounded plane, human beings could be so dispersed on it that they would not come into contact with any community with one another, and community would not then be a necessary result of their existence on earth… (6:262)' (Byrd and Hruschka, 2011, 140). As Kant says in the *Doctrine of Right*, 'original possession in common is, rather, a practical rational concept which contains *a priori* the principle in accordance with which alone human beings can use a place on the Earth in accordance with principles of right (6:262)'. One could believe that humans would still harm each other even without having the duty to divide the land and that some of them might wish an end to the violence and demand that a juridical state be established. To be able to totally disregard the duty to divide land, we would have to assume that problems arising with the scarcity of the land did not exist, and this would require one to assume that the earth is an infinite plain (Byrd and Hruschka, 2011, pp 129). If the earth was indeed an infinite plain, then this would allow the pacifist to avoid the warmonger for an infinite amount of time; leading to human interaction no longer being unavoidable; meaning that leaving the state of nature and forming a juridical state is no longer necessary, leaving the postulate of public right *sans* foundation. From this, we can see that

it is the problem of division of land that requires the postulate of public right (Byrd and Hruschka, 2011, pp 129).

While there is an obligation to leave the state of nature and form a juridical state, Kant is clear that it is not *wrong* to continue to live in the state of nature. When one lives in the state of nature, they have already agreed to 'the rules' of the state of nature, or at least are aware of the state of being in which they live and are therefore not being wronged by neighbours during conflicts, assuming the neighbours are also in the state of nature:

> It is true that the state of nature need not, just because it is natural, be a state of injustice (*iniustus*), of dealing with one another only in terms of the degree of force each has. But it would still be a state devoid of justice (*status iustitia vacuus*), in which, when rights are in dispute (*ius controversum*), there would be no judge competent to render a verdict having rightful force. Hence each may impel the other by force to leave this state and enter into a rightful condition (6:312).

Consequently, a state of nature is not necessarily an unjust or barbaric state, it is simply a state without the means to enforce right if those rights were to come into dispute. This lack of justice in the state of nature appears, therefore, to justify the use of force in coercing moral agents sharing a state of nature to form a civil condition.

Kant's state of nature then is not a state in which any form of order doesn't exist but is instead a state of being in which the *civil condition* does not yet exist. This is not to say that there are no rights in the state of nature, there are still natural laws, the only caveat is that those laws are not secured and are therefore held provisionally. For these rights to become conclusive, one *must* follow the postulate of public right, submit to public laws, and form a juridical society.

6. United Will and the Civil Condition

So far, the state of nature and its inability to secure a moral agent's rights conclusively have been discussed. It is from this that moral agents have an obligation, as rational beings, to leave the state of nature (according to the postulate of public right) and form a civil society. As shown, private right exists in

the state of nature, but there can be no public right; that is, rights cannot be conclusive in the state of nature.

In the civil condition, however, there exists both private and public rights; to have both is dependent on public or distributive justice (coercion). Before explaining Kant's concept of the civil condition, one must delve deeper into the concept of the public right or law. Kant states that one can only have rightful, external possession "under an authority giving laws publicly (6:256)". Kant goes on to state that:

> A unilateral will cannot serve as a coercive law for everyone with regard to possession that is external and therefore contingent, since that would infringe upon freedom in accordance with universal laws. So, it is only a will putting everyone under obligation, hence only a collective general (*common*) and powerful will that can provide everyone with this assurance (6:256).

For Kant, the condition of being subject to a general external lawgiving accompanied with the power to enforce these laws is the civil condition, which is why Kant states that "only in the civil condition can something external be mine or yours (6:256)". The civil condition doesn't rewrite the rights previously held in the state of nature, it codifies them in law. As Kant states, the totality of statutes that need to be announced to the public in order to create a juridical state is *public law.'* This can be seen more clearly when returning to Kant's fundamental discussion of property rights discussed in section three. My possession over a thing requires a 'constant act of possession'. If my possession of an object is to become enforceable it requires a '*public* ownership of possession' or a '*publicly* valid sign of documentation of my possession', and this would require some kind of certification (Byrd and Hruschka, 2011, pp 31). Kant's idea of public law in the juridical state, then, flows from his concept of private law in the state of nature.

For Kant, the purpose of public law is simply to secure individual rights (Byrd and Hruschka, 2011, pp 144). Consequently, we have the *same* rights compared to that which can be conceived in the state of nature[15], the only difference being

[15] Kant also allows for introduction of new positive laws as societies develop – their introduction is fine so long as they do not conflict with natural law rights.

that these rights have been made public and secured by the *united will of the people* and the state:

> When people are under a civil condition, the statutory laws obtaining in this condition cannot infringe upon natural right (i.e., that right which can be derived from a priori principles for a civil constitution); and so the rightful principle "whoever acts on a maxim by which it becomes impossible to have an object of choice as mine wrongs me", remains in force. For a civil constitution is just the rightful condition, by which what belongs to each is only secured, but not actually settled and determined (6:257).

Private law is the idea that 'everyone follows his own judgement.' The juridical state, on the other hand, is a state of public law; particularly, a state in which those private rights in the state of nature have been codified and are now legally coercible.

Kant's analysis of the juridical state encompasses three types of justice implemented through three distinct human-made public institutions that serve and are available to everyone (Williams, 1983, pp 171-172). *Legislative* – the arm of government that sets the laws of the land; *Executive*/*Sovereign (iustitia commutativa)* – the arm of government that executes the will of the legislative; *Judicial (iustitia distributiva)* – The decisions of the judiciary are binding and final. They decide our rights in cases of dispute. The three institutions are necessary conditions for the creation of a juridical state; Kant states that public justice is the formal principle of the possibility of a juridical state.

6.1

The first arm of the state, the legislative body, can 'only belong to the united will of the people (6:313)'. The reasoning behind this is that all right flows from this united will and if the united will decides upon a law, then no wrong can be done by that law. Only the general united will of the people can be legislative (6:313-4)'. This appears to be problematic upon first reading, as it appears that Kant is suggesting that every law of the state must be agreed upon unanimously before it becomes law. However, what is being proposed is the very ideal of Kant's legislative body. Kant is not suggesting that literal consensus on every law will be possible or necessary in order to run a functional republic.

6.2

The second institution of public justice, executive body, is so named as it protects our natural rights by making them public and *therefore coercible* (Williams, 1983, pp 171). While it may, at first, appear to be contrary to Kant's axiom of outer freedom to have an element of 'coercibility' in law, the two are compatible. If a freedom is a hindrance in accordance with universal laws, coercion is opposed to this and (hindering the hindrance) is consistent with freedom, in accordance with universal laws (6:231). For instance, if I own a house my ownership would be academic if I could not enforce my right to live in that house.

This means that in the juridical state natural law, made up of only *a priori* principles, is applicable only after it has been formulated and published – or codified into positive law[16] (Byrd and Hruschka, 2011, pp 34). Throughout the *Doctrine of Right*, Kant refers to positive law, fulfilling the requirements of which is significant for determining which rights moral agents possess. For instance, Kant repeatedly states that the owner of an external object must exercise constant possession of that object through documentation of that ownership, and failure to do so will result in legal consequences – 'one who fails to document his act of possession' is liable to lose her ownership through adverse possession. Thomas Pogge notes that positive law irons out the incompleteness of the natural laws, by empirically selecting one system of constraints from among those that satisfy pure practical reason (Pogge, 1988, pp 414). This 'ironing out of incompleteness' is the juridical state giving an official statement on what is just in a variety of different situations. The executive, then, allows a central legislative institution to complement the constraints of natural law.

So positive law, as laid down by protective justice, is a form of law containing *a priori* principles of reason about what a law is but gives these principles an effect as they are legally coercible (Byrd and Hruschka, 2011, pp 35).

[16] It's worth highlighting here that positive law can go beyond natural law, but positive law cannot contradict natural law.

6.3

The final requirement of the juridical state is the state judiciary. This form of justice is distributive justice, meaning that this institution decides and determines what is established as right, therefore distributing or assigning rights to individuals when those rights are being disputed (Williams, 1983, pp 172). This form of justice is the 'justice of a country' and the existence of such a justice can be called the most important of all juridical issues. Juridical justice involves both civil courts (civil justice) and criminal courts (criminal justice). As Kant often notes in the *Doctrine of Right,* the state of nature is a state without justice, as there is no judiciary to decide with binding force in cases of dispute over our rights (Byrd and Hruschka, 2011, pp 39).

The juridical state then, is a state in which the institutions of legislative, executive, and the judiciary are combined to form a public law or right, protecting and securing a moral agent's rights. If all three of these institutions do not exist, then a state is not a juridical state.

The Kantian juridical state, then, is made up of three distinct powers that share the job of governing the state equally. The legislative decides the laws, the executive enforces the laws, and the judiciary preside over matters of justice.

7. State in the Idea

The presentation of the juridical state so far has specified the minimum requirements for a state to be considered juridical; that is, they are the requirements a state needs to have in place in order for citizens to be able to enjoy their rights securely.

Kant also describes the *concept* of a state with *ideal* constitutional principles. This state is referred to as the state 'as it is supposed to be according to pure principles of law, which provides the norm for every actual union to form a commonwealth (6:313)' (the state in the idea). Thus, there can be many different types of juridical state still securing the rights of the citizen. Nevertheless, there can only be one state in the idea, a state that is *perfect* in every manner. This idea will become important in our later discussion as it is important to remember that Kant gave

examples of ideal scenarios, not as literal goals to achieve, but as ends to aim for and get as close to as possible. Furthermore, the discussion on Kant's disdain for despotism will also have a bearing on the discussion of the cosmopolitan law in the third and fourth chapters. While the practicality of actually creating the perfect state is non-existent, there remains a duty on the behalf of the state to strive towards constitutional perfection and to get as close as possible to this ideal.

One way in which we can understand the distinction between the state as an idea and the judicial state is to examine Kant's questioning of the ideal lawgiver. Kant states that:

> The legislative authority can belong only to the united will of the people. For since all right is to proceed from it, it *can* not do anyone wrong by its law (6:313).

This means that the citizens of a state, or those eligible to vote, will have to vote for a piece of legislation *unanimously*. Kant's line of reasoning behind the requirement of unanimity comes from the idea of *volenti non fit iniuria* (to the consenting, no wrong happens). Kant, however, understands that such an ideal is impossible in any state existing at his time, or the time of writing this thesis; so, Kant asserts that any juridical state:

> Therefore, only a majority of the votes, not directly from the voting population (in a large people) but only from a delegation as representatives of the people, is all that can be foreseen as attainable (8:350).

That being said, the existing juridical state has the duty to aim for a constitution as close as possible to the perfection in the ideal state. Even if the ideal state is impossible, governments must 'gradually and continually' update its constitution so that it 'harmonises' with the 'only constitution that accords with right' (6:340).

The discussion on Kant's ideal state and the powers it should have is not complete without mentioning his ideal forms of government and sovereign. In *Perpetual Peace*, Kant highlights two important functions of government: the form of sovereignty and the form of government. The form of sovereignty is concerned with the ruler of the state and Kant puts forward the 'traditional' three forms of rule: the rule by one person, rule by a group of people, or rule by all people. Kant's position on his ideal form of sovereignty changes slightly between the publication

of *Perpetual Peace* in 1795 and the *Metaphysics of Morals* in 1797. In *Perpetual Peace*, Kant rejects democracy out of hand as it would "necessarily" lead to despotism. Kant's reasoning here is that the legislative and executive bodies of power would not be separated, and this would necessarily lead to despotism. Nevertheless, he is also not entirely favourably disposed to the first two forms of sovereignty either. Kant favours a form of representative legislature in which the power to remove or appoint an executive power is contained. Therefore, democracy, according to Kant, is a form of sovereignty in which the people command both the executive and the legislative powers. The representation that Kant favours is that the united will of the people fulfil the role of the legislative branch, adopting the principles, and the executive is the branch that carries out these principles – ruling the state.

When it comes to the form of government, Kant writes of only two options: republicanism and despotism. Kant rejects despotism out of hand, as it is a state in which the ruler does not represent the people over which he rules. On the other hand, a republican government is described as being one in which the executive, legislative, and judicial bodies are separated. This prevents the issues seen in the despotic government as it prevents the three bodies of government from interfering with each other and/or cherry picking their applications. Kant states that government must be republican in his first definitive article for perpetual peace. There is also a duty that rulers must "…govern in a republican… manner, even although they may rule autocratically." This means that even if one rules a state in which a republican constitution does not exist, it is still the case that the ruler must legislate and govern as a representative of the people (Bielefeldt, 1997, pp 551-552). The ruler, then, must legislate in a manner that anticipates the people's republican self-legislation and paves the way for achieving an *actual* republican constitution. A non-republican state is only *provisionally* legitimate, which will be vanquished as soon as a true republican state is established (Bielefeldt, 1997, pp 551).

Kant's ideal form of government, then, is a republican constitution with some form of representation of the people. This may not be a democracy as we would

understand it, but something relatively close to it that gives representation to the people without leading to a dictatorship of the people.

In sum, Kant's practical philosophy flows from the innate right to external freedom. It is this right that unfolds into the universal principle of right, property rights, and then the obligation to form a juridical state. This chapter will act as the map which the following chapter will use as a guide in constructing its refugee right. Any future account of refugee right must mesh with the principles of right presented in this chapter. For instance, a refugee right must be clearly drawn from freedom and compatible with the universal principle of right. Now that this framework of rights has been introduced, the construction of a Kantian refugee right can begin in the following chapter.

Chapter Two: Refugee Right in Kant

Chapter One focussed on the foundational aspects of Kant's *Doctrine of Right*. For Kant, Right is concerned with external actions rather than internal motivations for actions and it is this that will become important in the upcoming discussion on refugee right. The issue of refugee right has become a pressing subject in recent years. The beginning of the Syrian Civil War was notably important in triggering a discussion on the scope of refugee right, particularly within Europe. As a consequence of the war, millions of Syrians were displaced with the majority fleeing to nearby Lebanon and Jordan, as well as around one million fleeing to Europe. In addition to Syrian refugees, Rohingyan refugees have also made headlines following attacks by Buddhist militias in Myanmar. While political refugees are headline-worthy, there is also the potential for climate refugees becoming far more common as the profound consequences of climate change begin to take effect. A Kantian discussion of refugee right is thus overdue. This chapter offers an account of refugee right that I find to be inherent within Kant's moral and political philosophy. In other words, while Kant did not explicitly offer an account of 'refugee right', there is more than enough scope for a refugee right to exist within his political philosophy. In giving an account of Kantian refugee right, this chapter will build upon the foundations presented in Chapter One, ensuring the account is consistent with innate freedom and right. Of key importance will be Kant's treatment of cosmopolitan right and the law of hospitality. This chapter will find, furthermore, that honouring the fundamental tenets of Kant's philosophy of right requires that the concept of refugee right that emerges is a necessarily modest one. I will propose a specific content for this concept of refugee right which I find to be consistent with Kant's overall framework of principles.

1. Cosmopolitan Right and the Law of Hospitality

While the focus of the prior chapter was on individual rights and the domestic state, Kant also explored wider areas of right that included international and cosmopolitan right. Across Kant's *Doctrine of Right* and *Perpetual Peace* are descriptions of a three-pillared structure of public right:

> …in all three areas of public right – public, international, and cosmopolitan right… (8:349).

Public right refers to domestic law, international law refers to the rights of states, and the cosmopolitan right, broadly, refers to the rights of *peoples*. Within *Perpetual Peace*, Kant includes three definitive articles of perpetual peace (DAPPs), each one of which correlates to a pillar of public right. The first DAPP requires that all states become republican (8:349).[17] This requires that individuals form a civil condition within which they may self-legislate and hold conclusive rights. The second DAPP is concerned with international law (8:354), and the third - with cosmopolitan right (8:357).[18] The cosmopolitan right's role in this tripartite structure changes between the publications of *Perpetual Peace* and the *Doctrine of Right*. Consequently, I will divide this section into two subsections in order to address both interpretations as closely as possible.

1.1 Hospitality in Perpetual Peace

Towards Perpetual Peace was the first of Kant's mature published works to include a specific reference to cosmopolitan right. This incarnation of cosmopolitan right was a hybrid of hospitality and the right to trade. The DAPP opens, however, with the following statement:

> Cosmopolitan right shall be limited to conditions of universal *hospitality.* Here, as in the preceding articles, it is not a question of philanthropy but of *right*, so that *hospitality* (hospitableness) means the right of a foreigner not to be treated with hostility because he has arrived on the land of another. The other can turn him away, if this can be done without destroying him, but as long as he behaves peaceably where he is, he cannot be treated with hostility (8:357-359).

It is implicit within the foregoing quote that one cannot turn away a visitor should it result in the death of that visitor. This notion of hospitality will have more important ramifications when the content of refugee right will be explored later in this chapter. However, Kant also uses hospitality here to argue for trade between peoples, as well as to critique the current wave of colonialism that was emanating

[17] First definitive article of perpetual peace: the civil constitution of every state shall be republican (8:349).
[18] Domestic and international law will be explained further in the final two chapters as I explore the implementation of a refugee right.

from certain nations. With reference to trade, Kant believes that the presence of trade wards off the advance of war:

> The commercial spirit cannot coexist with war, and sooner or later it takes possession of every nation. For, of all the forces which lie at the command of a state, the power of money is probably the most reliable (8:368).

Embedded within the cosmopolitan right, then, is the ability to facilitate the 'thoroughgoing relation of each to all the others of *offering to engage in commerce* with any other… (6:352)' by giving security to those that wish to open doors of communication and trade with foreigners. The reasoning behind this is that Kant sees the *ability* to trade with other states as being a necessary factor in achieving perpetual peace (Cavallar, 2015, pp 27). Not only because trade appeals to the self-interest of nations, meaning that a state would not want to declare war as it less beneficial than trading with that state; but also, because the very nature of trade requires interaction and a common interest (8:368). Much like the existence of the public market in the domestic level and its importance within the state, there must exist the possibility something similar in the international theatre. The public market on the domestic level serves, not only to exchange property, but also to facilitate needs and interaction, as well as to exchange thoughts through publishing (Byrd and Hruschka, 2011, pp 209).[19]

In addition, Kant's treatment of cosmopolitan right was careful not to fall into justifications of colonialism. Kant was clear in saying that hospitality was a right to only *visit*, rather than to settle:

> What he can claim is not the right to be a guest (for this is a special beneficent pact would be required, making him a member of the household for a certain time), but the right to visit; this right, to present oneself for society, belongs to all human beings by virtue of the right of common possession of the earth's surface… (8:358).

Kant was lucid in suggesting this right to visit was justified in not overextending to a right to settle, pointing to the actions of 'the civilised nations' (8:358):

> If one compares [the right to seek commerce] with the inhospitable behaviour of civilised, especially commercial, states in our own part of the world, the injustice

[19] See chapter one for more information on the domestic public market.

> they show in *visiting* foreign lands and peoples (which is tantamount to conquering them) goes to horrifying lengths (8:358).

Kant then goes on to list the atrocities that have been committed in the East Indies, the Cape, and the Spice Islands in order to highlight the importance of a right to visit only and a right to only present oneself. As a result, hospitality is reciprocal. Kant defends both China and Japan's restrictive dealings with foreign traders, specifically referencing Japan's exclusive Dutch trading policy that restricted the Dutch from entering the country and interacting with the local population (8:359). Kleingeld adds to this, highlighting Kant's point that China and Japan had both tried contact with European traders before and wanted to avoid the 'litany of troubles' that resulted. (8:359; Kleingeld, 1998, pp 77).

So, the account of *Perpetual Peace* introduces hospitality as part of cosmopolitan right, itself a part of public right, and highlights the importance of trade. It argues that trade is important to peace, believing that, in a classical liberal framework, war and trade cannot coexist. In this sense, Kant is appealing to the self-interest of nations, believing that they will opt for trade rather than peace, as it will be far more beneficial.

1.2 Hospitality in the Doctrine of Right

The '*Doctrine of Right*' was published after *Perpetual Peace,* allowing us to understand how Kant's notions of cosmopolitan right have changed and matured. The publication of the '*Doctrine of Right'* appears to shift the focus of hospitality into international law, removing it from the realm of cosmopolitan right (Byrd and Hruschka, 2011, pp 208). There is no reference to hospitality within the section on cosmopolitan right, but there are several references to a right to visit scattered throughout the *Doctrine of Right* (6:352). This shows us that, rather than abandoning the concept altogether, Kant instead believed that it was better suited to the realm of international law than cosmopolitan law (Byrd and Hruschka, 2011, pp 208). The reason for this is that cosmopolitan law, as Kant specifies in this publication, is concerned with the rights of *peoples:*

> This right, since it has to do with the possible union of all peoples with a view to certain universal laws for their possible commerce, can be called *cosmopolitan right (ius cosmopoliticum)* (6:352).

That is, cosmopolitan law is not a law concerned with individuals, but instead with the rights of a people (as a group) to offer themselves to each other for commerce (Byrd and Hruschka, 2011, pp 209). The ends in the *Doctrine of Right,* however, are the same as the ends in *Perpetual Peace* – to put an end to war. Despite highlighting the importance of trade to world peace, Kant is quick to limit the right to visit and trade in the *Doctrine of Right*:

> …the right of citizens of the world to try to establish community with all and… to visit all regions of the Earth… this is not a right to make a settlement on the land of another nation (*ius incolatus*) for this, a specific contract is required (6:353).

Kant was, again, limiting the right to visit in order to prohibit the colonisation that was prevalent in Kant's time. This prohibition against colonialism is 'true despite the fact that sufficient specious reasons to justify the use of force are available: that is, it is to the world's advantage because these crude people will become civilised' (6:353).

The main similarity in how the cosmopolitan right is presented across its two incarnations is its importance to trade. Both PP and DR highlight the need for trade between nations and both argue that trade will help facilitate a condition of peace. Another factor that remains the same is the condemnation of colonialism. This highlights that one cannot just take what one wishes from another nation or move there without permission. However, one notable difference between the two versions of cosmopolitan right is the law of hospitality. Kant explains in *Perpetual Peace* that one cannot turn away a stranger should it result in their death, but in the *Doctrine of Right*, this is omitted from the discussion on cosmopolitan right.

2. Refugee Right and the Law of Hospitality

The prior section revealed that there is a law of hospitality contained within the cosmopolitan right of *Perpetual Peace*. This law stated that it is a matter of right that a state is not able to turn away a visitor if they are unable to return to their home state. Such a statement has clear relevance to any Kantian discussion on refugee rights. It is important to remember that refugees are not a recent occurrence. Even in Kant's time, people were fleeing across state borders to avoid religious persecution, war, and oppression (Kleingeld, 2012, pp 53). As a

matter of fact, Kant's Prussia had admitted tens of thousands of refugees. While Kleingeld notes that this was in part done to increase population, it still shows that Kant would have been aware of the plight of refugees (Kleingeld, 2012, pp 53). Before discussing the connection between the law of hospitality and refugee right, the law of hospitality ought to be restated here:

> Cosmopolitan right shall be limited to conditions of universal *hospitality.* Here, as in the preceding articles, it is not a question of philanthropy but of *right*, so that *hospitality* (hospitableness) means the right of a foreigner not to be treated with hostility because he has arrived on the land of another. The other can turn him away, if this can be done without destroying him, but as long as he behaves peaceably where he is, he cannot be treated with hostility (8:357-359).

This quote will be analysed in depth in order to extrapolate the foundation of Kantian refugee right, a principle of non-refoulement. Consequently, this section will be divided into three subsections: the definition of a refugee, the structure of refugee right, and the connections of this right to the innate right to freedom.

2.1 Definition of a Refugee

There are currently two terms that are often used interchangeably in contemporary discussions concerning the rights of those fleeing foreign nations – *asylum seekers* and *refugees*. While the two terms are often used interchangeably, there is an important difference between them. Amnesty International defines an asylum seeker as an individual seeking international protection without a finalised claim for their right to stay in a particular country. Whereas a refugee is an individual with a finalised claim who has fled their home state and is unable to return home due to threats of persecution. The United Nations' Refugee Convention of 1951 defines a refugee as being:

> Someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion.[20]

Amnesty International gave a neat summary with the following, 'not every asylum seeker will be a refugee, but every refugee has been an asylum seeker.'[21] When one is granted refugee protections, they become recipients of certain obligations

[20] (2017). *Convention and Protocol Relating to the Status of Refugees*. [online] UNHCR. Available at: http://www.unhcr.org/en-au/3b66c2aa10 [Accessed 7 Nov. 2017].
[21] *Ibid*

from the host state. The UN's refugee charter requires that a refugee be treated according to the principles of non-discrimination, non-penalisation, and non-refoulement. Non-discrimination forbids refugees from being treated differently depending on their race, gender, sexuality, or disability.[22] The non-refoulement aspect of the convention contains safeguards against the expulsion of refugees. It states that 'no one shall expel or return ("*refouler")* a refugee against his or her will, in any manner whatsoever, to a territory where they fear threat to life or freedom.'[23]

The modern account of a refugee right, then, is broadly built around the principle of non-discrimination and non-refoulement. While Kant does not explicitly reference refugees in the discussion on hospitality, there is an implicit conception of non-refoulement within the law of hospitality, as the law states 'the other can turn him away, if this can be done without destroying him…(8:357-359)' The negative of this section implies that foreigners cannot be turned away if doing so would lead to their death, although this chapter will also explore the broader meaning of 'destruction' that could include life-denying persecution.

2.2 The Nature of Refugee Right

The first chapter of this thesis focussed on Kant's account of right and external freedom. For Kant, right is concerned with external actions rather than internal motivations for acting. An important element of the law of hospitality is that Kant explicitly connects hospitality to *right* and *not to philanthropy*, an assertion that Kant repeats in the Doctrine of Right:

> This rational idea of a *peaceful,* even if not friendly, thoroughgoing community of all nations on the Earth that can come into relations affecting one another is not a philanthropic (ethical) principle but a principle *having to do with rights* (6:352).

If refugee right is to be correctly characterised as a strict right, according to Kant's criteria of strict right it must be shown to be compatible with external freedom and involve some kind of reciprocity. Ben Laurence refers to the structure of strict, juridical right as the 'mine and yours' structure (Laurence, 2018, pp 9). As shown in Chapter One, the notion of right means the 'action of one [each] can be united

[22] *Ibid*
[23] *Ibid*

with the freedom of the other in accordance with a universal law' (Laurence, 2018, pp 9). Kant then draws the Universal Principle of Right from this, suggesting that any action is right if and only if it can be harmonised with everyone's freedom in accordance with a universal law. In other words, if James performs an action that is compatible with the freedom of others and Jessica chooses to hinder this action, Jessica's action is unable to be harmonised with the freedom of everyone in accordance with a universal law. Kant ties these notions to the idea of coercion. While it is wrong to coerce those acting in accordance with the principle of right, it isn't wrong to coerce a wrongdoer, for this would be hindering a hindrance to the freedom of others in accordance with a universal law (Laurence, 2018, pp 2). So, as per the arguments in Chapter One, right is also intimately connected to coercion and this is where Kant's notions of strict rights become more lucid. Kant's strict right is 'represented as the possibility of a fully reciprocal use of coercion that is consistent with everyone's freedom in accordance with universal laws' (6:231). These strict rights are not 'mingled with anything ethical' and require 'only external grounds for determining choice'. So, a 'completely external right' can be 'called strict (right in the narrow sense)'. This also includes an obligation, from which Kant suggests that the universal law of right is 'a law that lays an obligation on me', but it is not a law that means I 'should limit my freedom to those conditions for the sake of this obligation'; rather, 'freedom is limited to those conditions in conformity with the idea of it and that it may also be actively limited by others' (6:231). In constructing an implicit account of refugee right in Kant, we will need to highlight how such a right can be universal (compatible with everyone's freedom), coercible, and reciprocal. The universal nature of a refugee right can be seen in the aforementioned law of hospitality. Kant *does* write that the law of hospitality is part of the domain of *Recht* and that it is *universal* hospitality which implies that it does indeed apply to everyone.

Consequently, the issue at hand in this chapter will be what rights a person who happens to be a refugee (a condition which could befall any one of us) has against the host states to which they travel, in terms of their treatment. Citizens possess rights as citizens of their home state. However, refugees are people who may or may not have been citizens of the state in which they have lived but are forced by circumstances to flee their home state. Loss of freedoms in their original

state of residence, forcing them to flee, results in their losing their right to a place on Earth, essential to freedom according to the principle of right. Refugees are forced to find some other place to live. The need to do so has a basis in their fundamental right as a human being to have a place on Earth to live. What this right may entail specifically when applied to refugees will become clearer in the following subsection. The preliminary conclusion to be drawn from Kant here then is not that he proposes a 'refugee right' *per se*, rather that he proclaims a *universal and original* right to a place on Earth by virtue of our humanity for whom freedom is the sole intrinsic right, and *this also applies to refugees*.

2.3 Freedom, Original Possession, and Refugee Right

In Chapter One I introduced Kant's notion of the original right to a place on the Earth. This right to a place on earth is necessary for individuals to express their innate right to freedom to set and pursue legitimate ends. As explained in the *Doctrine of Right*, one can only have rights as autonomous agents if one has a place on earth upon which to express those rights:

> All men are originally (i.e., prior to any act that establishes a right) in a possession of land that is in conformity with right, that is, they have a right to be wherever nature or chance (apart from their will) has placed them. This kind of possession (*possessio*) – which is to be distinguished from residence (*sedes*), a chosen and therefore an acquired *lasting* possession – is possession in *common* because the spherical surface of the earth unites all the places on its surface… The possession of the earth in common which precedes any acts of theirs that would establish rights… *is an original possession in common…* original possession in common is, rather, a practical rational concept which contains *a priori* the principle in accordance with which alone men can use a place on the earth in accordance with principles of right. (6:262).

The above highlights the universal nature of the right to common possession of the Earth's surface, illustrating that it gives *all individuals* the right to be wherever *nature or chance* has placed them. As Flikschuh observes, the spherical nature of the Earth is 'made up of individual spaces' all of which represent 'equally valid claims to external freedom (Flikschuh, 2000, pp 144)'. From the idea of original possession in common, obligations are 'originally acquired', placing us 'under obligations of justice to one another' from our entrance into the world (Flikschuh,

2000, pp 157). In *Perpetual Peace* Kant explicitly connects the law of hospitality to this right of common possession of the Earth's surface:

> This right, to present oneself for society, belongs to all human beings by virtue of the right of possession in common of the earth's surface on which, as a sphere, they cannot disperse infinitely but must finally put up with being near one another; but originally no one had more right than another to be on a place on the earth (8:358).

This section will make the argument that since the law of hospitality is connected directly to the right to original possession of the Earth, the law of hospitality is justified by the innate right to freedom. Consequently, this chapter will conclude that, if a state were to expel a refugee from a stretch of land leaving them nowhere safely to go, it would violate that individual's right to freedom, via their original right to possession of the Earth.

In this section I highlight both the importance of the original right to a place on earth to be for realisation of an individual's intrinsic right to freedom; and the fact that a refugee's decision to depart from one place on earth for another is not in itself a free choice but arises from a necessity derived from denial of intrinsic freedom in the place they originally happen to be, in order to be able to express freedom in another place. In examining these ideas, a distinction between refugees, asylum seekers, and economic migrants will be drawn.

It is important to acknowledge the existence of economic migrants in any discussion surrounding refugee right, as economic migrants will clash significantly with the quote raised earlier, that 'all men are originally… in possession of land that is in conformity with right, that is, they have a right to be wherever nature or chance (apart from their will) has placed them'. An economic migrant is an individual who uses a refugee flow or crisis in order to move from one country to another, usually for economic or lifestyle gain. This means that, in the case of economic migrants, they haven't ended up in another country as a result of 'nature or chance'. Many cases of 'economic migrants' also comprise the customers of people smugglers, where individuals deliberately destroy

identification papers[24] that would undermine refugee claims and pay smugglers to gain entry into a country, expecting their asylum application to be falsely processed in that state.[25] The UN specifies that people smuggling is the act of procuring illegal entry of a person into a state with an end of material or financial gain.[26] This separates it from an individual helping another into a state for altruistic purposes.

One could argue that economic migrants as so defined freely exercise will in their decision to leave their original state and it is, therefore, not chance or nature that has placed them in another state. Reasons why people turn to people smugglers can vary from the taking advantage of wealth to bypass immigration laws, to desperation after arriving in countries of first call that do not subscribe to the refugee convention.[27]

Consequently, more content is needed to bridge the gap between the original right to a place on Earth and refugee right. Fortunately, the existence of economic migrants helps to shed further light on the phrase 'nature or chance' by raising the important distinction between an action and a free action. To be somewhere by 'nature or chance' suggests not by one's own free choice. To be somewhere by 'nature or chance' would encompass the contingency of parentage and place of birth (nature), but also include accidental displacements or human movements or decisions to move caused or influenced by natural disturbances or arbitrary violence (chance). In either case, the agent themselves has not initiated or freely chosen to be where they are, or to move from where they were. On the other hand, a free action requires the individual exercise of will (6:222) wherein it is practical reason qua *willkür* that determines an agent's actions, not fear, nor external physical pressure or life-threatening extremity. Economic migrants appear to be those who make free choices, for expedient or prudential reasons

[24] While the deliberate act of lying is frowned upon in Kantian philosophy, it is important to remember that, at least in some cases, these asylum seekers are being led astray by people smugglers and used as a means to their own economic end.
[25] This is important in the EU as the Treaty of Dublin requires the state of first contact to process asylum.
[26] Ohchr.org. (2019). *OHCHR | Protocol against the Smuggling of Migrants*. [online] Available at: https://www.ohchr.org/EN/ProfessionalInterest/Pages/TransnationalOrganizedCrime.aspx [Accessed 19 May 2019].
[27] As is the case in Malaysia and Indonesia.

of their own but in the absence of conditions of extremity, to leave their home countries in order to benefit from moving to another country, and who seek to do so in disregard of the immigration laws of the target country. Genuine refugees, however, typically have made coerced and stressful decisions to leave their home country to seek refuge in another. Coercive forces may include existential threats against life, threats against family, or religious persecution. In the troubling case of people smuggling of asylum seekers who are genuine would-be refugees the smugglers prey on the desperation of the asylum seekers as a means to their own material end and often to the detriment of the asylum seeker. While it is can be difficult for governments to determine the difference between the two in practical terms, there are clear theoretical differences with regards to the original right to a place on Earth.

Let's return to Kant's own example of hospitality involving a shipwrecked mariner. The sailor embarked on a journey (free action) and (through chance or irresistible physical force) became stuck in another state, requiring hospitality. This would also apply to the case of a fleeing refugee, as the threat of death or persecution would qualify as irresistible force.[28] A refugee may *choose* to leave their state, but it not as *a free or voluntary action*.[29] This emphasis on free action is highlighted even more in the unpublished draft of *Perpetual Peace*:

> Whoever is *involuntarily* caused to end up there [viz., with another people]… cannot be chased away from the beach or the oasis where he saved himself and sent back into imminent danger, nor can he be captured; instead, he must be able to stay there until there is a favourable opportunity to leave (23:173).

Katrin Flikschuh raised a parallel argument to illustrate this right to original possession using the example of the squatter (a person who *unlawfully* occupies an uninhabited building or unused land) (Flikschuh, 2000, pp 156). A squatter

[28] 'Innate equality, that is, independence from being bound by others to more than one can in turn bind them; hence a human being's quality of being his own master (*sui iuris*), as well as being a human being *beyond reproach (iusti)*, since before he performs any act affecting rights he has done no wrong to anyone (6:237).'

[29] One could argue that a refugee has a right to be *somewhere* but does not necessarily have a claim upon a *particular* stretch of land. In other words, a refugee has a right to flee their home state but not a right to claim right of residence in another country. The vagueness of a 'right to someplace' is undoubtedly an issue with Kant's law of hospitality, but the distribution of refugees will be discussed later in this thesis.

does not rent or own the land on which they reside and can therefore be moved from the land without any notice. Squatters are, therefore, susceptible to the choices of others and thereby denied their right to a place on the Earth (Flikschuh, 2000, pp 156). Without Kant's right to a place on Earth, Flikschuh writes that we would all be 'in the situation of a squatter who gets pushed from place to place (Flikschuh, 2000, pp 156). A place on Earth is something which one acquires, not through an act of will, but through 'a blameless acquisition' (Flikschuh, 2000, pp 156):

> In doing so, no one has *derived* their place on the earth from what was someone else's: each person's acquisition of a place on the earth is original in virtue of the fact that it is *they* who occupy it (Flikschuh, 2000, pp 157).

Flikschuh offers her example of the squatter to highlight the importance of an individual's right to a place on earth, an idea central to my own construction of a refugee right. That being said, Flikschuh's squatter case sheds limited light on refugee right. The squatter is not necessarily bereft of an alternative place to be, as would be the case for the refugee if their refugee status is not recognised. In the case of the refugee, the individual has nowhere from which they can express their right to freedom. If the refugee had to leave their own land due to fear of death, to send them back would lead to their death. Whereas a squatter need not have their right to freedom directly restricted. Some young people engage in squatting because they have chosen to opt out of society and social welfare or to make a political point. There is no fear of death should a squatter be moved on from a property. In other words, a squatter is being denied *particular* possession of the Earth, whereas a refugee is being denied *someplace* on Earth.

The fact that a refugee does not have a right to permanent residency allows for further connections between the law of hospitality and the disjunctive right to a place on Earth. As earlier noted, the disjunctive right is merely a 'right to some place' (Byrd and Hruschka, 2011, 128-129). Similarly, the right to hospitality is also not a right to permanent habitation. For 'a right to make settlement on the land of another nation (*ius incolatus*); for this, a special contract is required (8:358)'. While Kant does not go into detail about the nature of this 'special contract', it is important for two reasons. The first is that it shows a colonial power

must make a treaty with an indigenous people, highlighting Kant's opposition to the colonialism of the time. The second is that this special contract raises the question of how it would apply to refugees (and immigration as a whole). For instance, for a refugee to receive the right to permanent residency, would they have to learn their new country's language, find work, obey the laws and so on? Aside from following the law, there is nothing in Kant's discussion that provides an answer to these questions; though one could assume that it would be at the discretion of the state concerned. However, it is important to acknowledge that the law of hospitality *doesn't* forbid permanent residency for refugees or visitors, it merely states that permanent residency is not a *right* and it would be at the discretion of the states themselves to agree to this.

In sum, Kant's law of hospitality and concept of the original right to possession of the Earth are linked. This enables us to see how refugee right may arise from the right to external freedom. Original right to possession of the Earth's surface, according to 'nature or chance', provides grounds for what Flikschuh termed a 'blameless acquisition'. This notion of a blameless acquisition correlates directly with the plight of the refugee. The refugee is compelled to flee their state, through threat of destruction or harm, and takes shelter in another state. When they flee then they have no place on earth and are therefore not able to express their right to innate freedom. Kleingeld summarised this succinctly with the following quote, 'humans have a right to freedom, freedom requires existence, and human existence requires a place on the globe; therefore, one has a right to be where one cannot help being and not to be sent away if this would lead to one's demise (Kleingeld, 2012, pp 254).'

3. Refugee Right and the Principle of Right

So far, a Kantian refugee right has been shown to have a basis in the law of hospitality and flows from the universal and reciprocal right of humans to a place on the Earth. The law of hospitality includes a principle of non-refoulement, a right that protects an individual from being forced to leave a country should it result in the individual's death (flowing from the right of humans to a place on Earth). That

being said, there are potential issues with how the principle of non-refoulement[30] would mesh with Kant's right to private property.

Kant's universal principle of right is as follows:

> 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 (6:230).

On the surface, this would appear to trigger a tension between right to property and refugee right when one remembers that the right to intelligible possession entails the following:

> A person can say they possess (or have) a field even though its location is distant from where they are insofar as they have it under their will and control to use as they see fit so long as it's not in a way that conflicts with the law of outer freedom. Thus, others cannot come along and impose their own will on the field (6:252).

Prima facie, one could argue that a refugee right would be inconsistent with this universal principle of right. For instance, the shipwrecked individual who has a right to the land on which he was thrust by chance would conflict with the individual's right who rightfully owns the land. With this objection in mind, it ought to be recalled that to own an object is to be wronged if someone were to disturb the use of that object (Kleingeld, 2012, pp 256). Thus, as the shipwrecked crew are granted the use of the land on which they have landed, it appears to be an infringement upon the landowner.

Nevertheless, Kleingeld considers that an answer to this conundrum can be found in the similarity between the state and the 'universal state of humans' (cosmopolitan right) (Kleingeld, 2012, pp 258). In *Perpetual Peace*, Kant describes the relation between individuals and states as:

> One based on cosmopolitan right, to the extent that individuals and states, who are related externally by the mutual exertion of influence on each other, are to be regarded as citizens of a universal state of humankind (*ius cosmopoliticum*). This classification is not arbitrary but necessary with respect to the idea of perpetual peace. (8:349).

[30] the order that no one shall expel or return ("*refouler")* a refugee against his or her will, in any manner whatsoever, to a territory where they fear threat to life or freedom

Again, in the *Doctrine of Right*, Kant makes use of the term 'the right of citizens of the world' as owners of cosmopolitan rights[31] to further support the existence of this universal society of humans (6:353). Kleingeld writes that, as the cosmopolitan right regulates interactions between states and 'foreign individuals', they are addressed as world citizens (in the universal state of humans) as opposed to citizens of a particular state (Kleingeld, 2012, pp 258). This is analogous to Kant's ideal of the Kingdom of Ends, 'a systematic union of different rational beings through common laws (4:433).' A subsequent formulation of the categorical imperative requires that humans 'act in accordance with the maxims of a member giving universal laws for a merely possible kingdom of ends' (4:439). Korsgaard emphasises that the Kingdom of Ends is an ideal notion:

> '[The Kingdom of Ends is a] Republic of all rational beings…in which freedom is perfectly realised, for its citizens are free both in the sense that they have made their own laws and in the sense that the laws they have made are the laws of freedom – the juridical laws of external freedom and the ethical laws of internal freedom' (Korsgaard, 2004, pp 23).

The juridical laws of external freedom considered in the context of cosmopolitan right exist independently of a connection to a state. That is all humans have an equal right to external freedom (not being subject to the choice of another) under cosmopolitan right. This notion is further supported by Kant's famous quote in *Perpetual Peace* that 'the community of the nations of the earth has now gone so far that a violation of right on *one* place of the earth is felt in *all* (8:360)'. A refugee (or foreign traveller) would not be subsumed under a form of a united will in the context of a juridical state (as they possess no citizenship rights in a foreign state), but their treatment must be consistent with their right to humanity in their own person (as a citizen of the universal society of humans), and this contains within it the right to be wherever chance has placed them, their right to possession of a place on the earth's surface (the innate right to freedom) (Ripstein, 2010, pp 298):

> Only if you have nowhere else to go does the state's right to restrict your entry make you subject to the choice of another. So the officials have to let you stay, simply in your capacity as a citizen of the world (Ripstein, 2010, pp 298).

[31] Cosmopolitan right shall be limited to conditions of universal *hospitality.*

Therefore, Kant's cosmopolitan law provides a justification for an obligation states have to *temporarily* allow their land to be used to preserve the life of fellow world-citizens (in the universal state of human beings). Byrd and Hruschka tie this right to the right to non-damaging use of property that was a part of the natural law theory of Grotius and Pufendorf (Byrd and Hruschka, 2011, pp 206). According to Pufendorf, non-damaging use of property, such as drinking water from a river that flows over a property owner's land, is a right that remains from the '*primaeval community*' long after ownership rights were established (Byrd and Hruschka, 2011, pp 206). The notion of "non-damaging use" also echoes Kant's requirement that a visitor to a foreign country behave 'peaceably, this implies acting in a manner that does not cause harm to the citizens of the host country or wrongfully undermine their rights. While Achenwall rejected 'non-damaging' use of property[32], Byrd and Hruschka believe that Kant returned to Grotius and Pufendorf's arguments. Kant's assertion that humans are all part of a 'universal state of human beings' taken together with the law of hospitality and the right to visit seem to be proof that Kant had turned away from Achenwall's rejection of non-damaging use of property, returning to the work off Grotius and Pufendorf.

4. A Modest Concept of Refugee Right

So far, this chapter has aimed to create a Kantian foundation upon which a discussion on refugee right can begin to take shape. We have presented the idea that there is an implicit right to a 'place to be' in Kant's philosophical framework, and that this also applies to refugees. However, it must be admitted that the account presented so far is modest in scope, particularly in light of the more modern, wide scope of refugee right articulated by the United Nations. The account of Kantian 'refugee right' given here is simply that those who are unable to return to their home state have a right to shelter until they are able to return (although permanent residency is not ruled out). If a Kantian refugee right can only offer a 'place to be', it falls short in terms of state obligations proposed under

[32] Achenwall believes that even non-damaging use of land, even drinking water from a stream or cutting through foreign territory, is impermissible without the consent of the people that own the land (Byrd and Hruschka, 2011, pp 206).

the current United Nations specifications on refugee rights. Under the UN's account, a state is obligated to give refugees identity papers, education, healthcare, and food rations. On the Kantian level, there are no definite obligations apart from shelter until the refugee is able to return, unless the state wishes to bestow a right to reside.

The Kantian account does not offer a permanent settlement as a *right* incorporated in refugee right per se. Kant explicitly stated that the law of hospitality protects the right of temporary sojourn only and *not of a permanent habitation*:

> It is not the right of a guest (*Gastrecht*) that the stranger has a claim to (which would require a special, charitable contract stipulating that he be made a member of the household for a certain period of time), but rather a right to visit, to which all human beings have a claim, to present oneself to society by virtue of the right of common possession of the surface of the earth (8:358).

It is clear that in Kant's law of hospitality there is no 'right to citizenship or settlement (Doyle, 2012, pp 26)'. A contract of beneficence (*Wohltätiger Vertrag)* would be necessary in order for a foreigner to become a fellow citizen and this would be agreed between the individual and the sovereign. Citizenship of another state is not a right, but instead requires that which goes beyond 'what is owed to the other morally and what he is entitled to legally (Benhabib, 2004, pp 27-28)'. It is not within the scope of hospitality to guarantee a *universal right* to *permanently* reside anywhere on Earth, but to lay down a groundwork for mutual, rightful interaction from which contracts such as permanent residency may be deliberated by public reason (Cavallar, 2015, pp 63).

That being said, while permanent residency and citizenship are not matters of right, there could be room for rights of healthcare and nourishment, as well as non-discrimination as part of Kantian refugee right per se. The content of such a refugee right will be further examined in the following subsections, considering in turn justifications for possible forms of entitlements to social welfare and non-discrimination in immigration access for refugees.

4.1 Healthcare and Education

During Kant's time, there was no 'right to healthcare' *per se* and so Kant did not explicitly attribute such a right, even to citizens. Therefore, rather than projecting modern notions backward by arguing for a Kantian right to healthcare per se, this section will apply fundamental Kantian principles to a modern-day society in which these institutions already exist in order to determine what access a refugee may have to *existing welfare systems*.

While Kant makes no explicit statement that hospitality affords the traveller a right to access healthcare and food, there is reason to believe that *hospitality implicitly includes these rights*. Arguably, there would be an obligation on behalf of the state to permit access to necessary healthcare *for the same reason* they are obligated to give shelter. A state cannot send a refugee away if it would result in their death. Sending an individual away, should it lead to their death, would be a violation of their original right to a place on Earth. While in Kant's time, this right to hospitality may have simply included a bed to sleep in and a hot meal, in modern times, it raises questions of what institutions of state refugees have a right to use. It could be argued that the overarching goal of hospitality, to maintain the life of a traveller, entails (when applied today) the right to basic care in the healthcare system.[33] The implicit nature of the claim comes from the fact that the right to access a state's healthcare is deduced from *the same right of hospitality* - the obligation on behalf of the state to maintain a visitor's existence and not violate their innate right to external freedom.

The suggestion that immigrants or refugees have a right to use a state's health system remains a controversial claim. If a state has a public health system, then this system is funded by citizens as taxpayers. Thus, while it is free at the point of use (in the case of health systems such as the NHS), citizens contribute to their own healthcare via taxes. A new arrival to a country, however, has not paid into this system.[34] While Kant did not discuss the use of a health system by

[33] For emergencies and important procedures, naturally. Anything that would be considered medically non-urgent or elective would be beyond the scope of hospitality.
[34] Health tourism is the term that is commonly used to describe the use of the NHS by foreign visitors and was a driving force behind many when voting for Brexit.

immigrants, he did advocate for institutions to support the poor and abandoned members of a state. Examining his deliberations on this will help us formulate a possible parallel argument for refugee entitlements. Kant was clear that a state does not only possess negative duties of right enforcement (i.e., preventing crime and punishing those who violate right), but also a positive duty of right to facilitate the growth of citizens on a civic level (foster autonomy and independence). An example of these positive duties is the right of the state 'to impose taxes on the people for its own preservation… [and] the sustenance of those who are unable to provide for even their most necessary natural needs (6:326).' Kant therefore believed there should be some redistribution towards the poorer members of society. This redistribution however was not done with the aim of making those citizens happy, but rather with the intention of furthering their capacities for expression of their fundamental external freedom and autonomy (Wood, 2008, pp 194). Kant's position, then, is that a state ought to introduce institutions that foster and protect both the *lives and autonomy of its own citizens*:

> To the supreme commander there belong indirectly, that is, insofar as he has taken over the duty of the people, the right to impose taxes on the people for its own preservation, such as taxes to support organisations providing for the *poor*, *foundling homes,* and *church organisations*, usually called charitable or pious institutions.
>
> The general will of the people has united itself into a society which is to maintain itself perpetually; and for this end it has submitted itself to the internal authority of the state in order to maintain those members of the society who are unable (*die es selbst nicht vermögen*) to maintain themselves. For reasons of state the government is therefore authorised to constrain the wealthy to provide the means of sustenance to those unable to provide for even their most necessary natural needs. The wealthy have acquired an obligation to the commonwealth, since they owe their existence to an act of submitting to its protection and care, which they need in order to live; on this obligation the state now bases its right to contribute what is theirs to maintaining their fellow citizens (6:326).

We can see from the above extended quotation that Kant was adamant that states are obligated to provide for their *citizens* in need of help to sustain

themselves.[35] This is not a matter of virtue or an imperfect duty of benevolence. Rather, the obligation is firmly based in the domain of *Recht*. If someone is dependent upon the wills of others, then they are not autonomous (Ripstein, 2010, pp 15). The need for a state to support the poor rather than provide charity is that, in the civil condition, an individual being dependent upon another would be inconsistent with a shared, united will (Ripstein, 2010, pp 48).[36] The united will is intended to exist in order to create laws by which citizens are able to *govern themselves*. They could not as free rational beings agree to a scenario in which an individual is permanently dependent on the choice of another.

Kant is not advocating paternalism which leads to permanent dependency. The provision of welfare is intended to be a temporary and strategic intervention in a broadly liberal project. Welfare is not grounded in maintaining or increasing citizens' happiness or peddling an unrealistic standard of equality (Wood, 2008, 194). State intervention is not paternalistic because it isn't enacted in order to make citizens happy *directly*. Rather, intervention is intended to foster and protect citizens' autonomy and existence (Wood, 2008, pp 194-195). Of course, it would be disingenuous to assert that welfare could not, on a base level at least, lead to a recipient's happiness increasing, but this is merely a side effect of the main end, which is to allow or free up their ability to act as autonomous beings.[37]

An obvious critical response at this point is that while Kant's justification of economic and social support based on freedom and the principle of right may be persuasive, it is *intended to apply only for those citizens of a juridical state*. After all, as Ripstein points out: it is the shared, united will that makes such institutions possible (a united will that foreigners are not part of). Additionally, there is also the economic argument – the idea that the NHS, for example, isn't 'free' because it is paid for by taxes and it should be used by the taxpaying British public.

[35] The notion that the preservation of society is the aim here is certainly interesting. This raises questions that could have implications on immigration laws, forbidding the inclusion of foreign elements into a society that might damage the society as a whole.
[36] The difference between the support of the state and charity is that, essentially, state support is grounded in right whereas charity is an imperfect duty.
[37] One could argue that providing a right to work and allowing/ actively helping refugees find employment is also critical in advancing the autonomy of those receiving government assistance and English language classes. Though this will be explored in more detail later in this section.

The above make important points, but the main question that needs to be answered is whether or not it would be *outside the realm of hospitality* to allow non-citizens use of these services (at least temporarily). A right to hospitality would be vacuous if only sanctuary were provided, without food, healthcare, or education. For instance, using Kant's own example of the stranded seafarer, if a ship crashes onto a beach and the only survivor has a badly broken leg and infected wound, it would be insulting to only offer them a place on a beach to lie down and catch their breath. There is also a passage in the *Doctrine of Right* that could lend support to the notion that states should offer help to those who haven't yet contributed to the state:

> As for maintaining those children abandoned because of poverty or shame, or indeed murdered because of this, the state has a right to charge the people with the duty of not knowingly letting them die, even though they are an unwelcome addition to the population (6:326).

The important line here is 'unwelcome addition to the population'. In her translation, Mary Gregor specifies that when Kant refers to 'the population', this can also relate to 'the wealth or resources of a state *(staatsvermögen)*', meaning that those abandoned children appear to be mere economic burdens upon the nation. With these notions of supporting certain members of the population regardless of economic burden in mind, Kleingeld suggests that the aim of the republic is to establish a condition of right (see first chapter) and that 'costs (financial or otherwise) only become a relevant concern once they become so high that the republic cannot function well (Kleingeld, 2012, pp 243)'.[38] We can gather from this that a state is supposed to maintain *human life regardless of the cost upon the state*. Naturally, one could argue that Kant was discussing the support of 'unwanted' future citizens (orphans or homeless children) who have the potential to become active citizens of the state in the future. While becoming an active citizen includes paying tax and, in a sense, paying back the 'debt' to society, Kant is clear that the 'only qualification for being a citizen is being fit to vote' (6:314).[39] Regardless of whether or not they're wanted or unwanted citizens,

[38] Naturally, it will be a contentious matter as to when this point is reached.
[39] Kant goes into great detail in describing that only those who are 'independent' ought to be fit to vote. Here, Kant makes a distinction between active and passive citizen that largely depends upon whether or not that individual is 'under the discretion of protection of other individuals'. It also ought to be noted that, on Kant's view, women were passive citizens solely because of

Kant still sees them as being inherently part of 'the people' and that public right extends to all who are part of the people. While it is certainly true to say that unwanted citizens of the state still remain citizens of the state, this notion that a state must maintain human life regardless of the cost upon the state ought not to be seen as exclusive to citizens, as the law of hospitality has shown - the law of hospitality forbids a state from participating in, either indirectly or directly, the death of a foreigner if that foreigner behaves peaceably. Additionally, it is also worth the mentioning here that many refugees will seek and gain permanent residency and will be grateful to work, pay taxes and contribute to the maintenance of the state. As a result, they are potential or future citizens of the state.

With regard to specific use of state institutions, it is also important to acknowledge that Kant unambiguously criticises the English for not opening their institutions for foreigners in his *Anthropology From a Pragmatic View*:

> For his compatriots the Englishman establishes great benevolent institutions, unheard of among other peoples. – But if a foreigner for whom fate has driven ashore on his soil falls into dire need, he can die on a dung hill because he is not an Englishman. - That is, not a man (7:314-315).

The above mention of 'benevolent institutions' and a foreigner 'driven ashore' by fate certainly connect hospitality to a state's resources such as healthcare. What Kant was suggesting in the above passage, then, is that the English were not recognising foreigners as human beings, more specifically, were not recognising the cosmopolitan right of endangered foreigners or their inherent value as humans and ends in themselves – 'because he is not an Englishman… that is, not a man.' Kleingeld read this the above passage as a critique, by Kant, on the English for not accepting refugees (Kleingeld, 2012, pp 339). While this could be seen as overstatement, it is clear that Kant disapproves of English institutions being forbidden from those non-English citizens who fall upon the British shore and desperately require help. If Kant's statement on the English is viewed through the lens of the cosmopolitan right, we can garner a similar reading.

---

their sex; so, when Kant said that 'anyone can work his way up from the passive condition to an active one', the 'his' certainly stands out.

To summarise, the account of refugee right that has been constructed in this chapter is tightly wound to the protection of life that comes from the original right to a place on Earth, via the innate right to freedom.[40] The law of hospitality is drawn from the innate right to freedom based in our humanity, that is a person must have a place on Earth upon which they can express their rights in pursuit of autonomous ends-setting and cooperative constructive relations and activities with fellows. Not only is a place on Earth necessary for freedom, but so also is food and healthcare (one's place on Earth will be very brief indeed without the support of food and healthcare). It is noteworthy that Kant has criticised the English for constructing grand institutions for their citizens but refusing foreigners at risk the right to use them. The law of hospitality then, coupled with Kant's criticism of the English for refusing to extend institutional care to foreigners, shows that there is a Kantian argument for providing the basic needs of survival, such as healthcare and nourishment, to refugees.

As with healthcare, Kant did not discuss foreigners having access to another state's education systems. However, a similar argument to the above could be made that refugees ought to have access to education, whether it be English (local) language classes, work and skills based training, or standard education for children. Allowing refugees access to education is not only important as it helps to foster the autonomy and independence[41] of individuals, but also for the cosmopolitan aim of humanity:

> Man is the only creature that must be educated, because there is in him immense possibility which is not yet developed, and a grand destiny, which is not yet attained (*9:441*).

It will not be the focus of this section to argue that Kant believed in free education as a right, rather, I will argue that there is support for refugees being able to access their host state's education systems as part of the cosmopolitan right. The first suggestion of this in Kant is that, when discussing education, Kant makes

[40] There could be some grey areas here, for instance, if a refugee will be staying in a state indefinitely it would severely impact their future if they were given no education.
[41] 'The property of the will by which it is a law to itself (independently of any property of the objects of volition)' (4:440).

frequent references to the 'human race' and its end goal, rather than a specific people or state:

> Our only hope is that each generation, provided with the knowledge of the foregoing one, is able, more and more, to bring about an education which shall develop man's natural gifts in their due proportion and relation to their end, and thus advance the whole human race toward its destiny (9:441-442).

This idea is, again, repeated by Kant with his suggestion 'that children ought to be educated not for the present, but for a possible improved condition of man in the future' (Röseler, 1948, pp 281). Consequently, allowing access to existing education institutions would allow refugees to learn, in order to build their own life in a foreign country.

Nevertheless, questions may arise concerning the fairness to citizens of granting refugees access to the host country's education provisions. As with health services, refugees have not paid into the system with taxes, and (in some situations) would be, to use Kant's terminology, an 'unwelcome addition to the population'. This raises the question, then, *why* should state's allow refugees to use education systems, aside from the more abstract notions of moral improvement?

Educating refugees would be in the interest of states. Not only will offering children and refugees education help to foster their autonomy, but it will also make them less reliant on state support to facilitate their autonomy. It would benefit the state in the long run by allowing more people to enter the workforce, support the economy (in turn paying taxes that will support themselves and the citizens of that country), and undertake and act out civic duties. Additionally, allowing for refugee children to enter state education will improve the chances that these children will integrate into the host state's society. Kant himself had issues with parents teaching their children so as to encourage conformity rather than critical thinking[42], but these issues are far more relevant to the refugee

[42] "Parents usually educate their children merely in a manner that, however bad the world may be, they may adapt themselves to its present condition. But, they ought to give them an education so much better than this, that a better condition of things may be thereby brought about in the future (9:448)"

scenario. If states do not offer to adequately educate newly arrived refugees, this will increase the likelihood of division between social groups, as foreign children would remain under parental cultural influence. Social division would (at least temporarily) increase the burden on the government and taxpayer in the future. However, it is worth highlighting that what sounds good in theory is difficult to implement in practice. A recent survey in Australia has shown that, despite being given 500 hours of free English lessons, a large number of humanitarian refugees still have little to no English proficiency.[43] This is clearly an issue that ought to be addressed by governments moving forward and it is important to highlight, just because something hasn't worked in practice doesn't mean that it doesn't work in theory. Kant was also known for utilising this response, having wrote that just because a theory is a struggle to apply in practice does not mean we should not 'put trust in the theory of what the relationship between men and state ought to be according to the principle of right (8:276).'

4.2 Non-Discrimination

Another important aspect of the UN's delineation of refugee right is the idea of non-discrimination. This right forbids states from treating refugees differently because of their race, religion, sex, sexuality, and so on. Much like healthcare, this is an important feature to have in any refugee right. A refugee right that allowed *arbitrary exclusion* based on morally irrelevant factors would be flawed. This is the worry of Seyla Benhabib, who argued that the Kantian notion of common possession of the earth does little to elucidate the cosmopolitan right, leaving a vague account of refugee protections. Benhabib maintains that the duty to accept refugees is an imperfect duty, as it is conditional, but these conditions are vague (Benhabib, 2004, pp 31). If a refugee right is conditional, and these conditions are vague, then this could mean states can refuse to accept refugees for a variety of different factors, some of which may not be justified. For instance, could a state turn away refugees if they are altering cultural norms of the host

[43] SBS News. 2020. *'We Must Do Better': Government Plans Overhaul Of English Language Courses For Refugees*. [online] Available at: <https://www.sbs.com.au/news/we-must-do-better-government-plans-overhaul-of-english-language-courses-for-refugees> [Accessed 7 May 2020].

states?[44] Or if admitting large numbers would damage the quality of life of citizens?

While it is true that there is little guidance on grounds for exclusion of immigrants for the good of the state, it was earlier shown that Kant's law of hospitality does not justify *arbitrary* exclusions (i.e., racial or xenophobic). There is a difference between legitimate and illegitimate reasons for forbidding entry into a state. It would be illegitimate to exclude travellers based on merely arbitrary characteristics. For instance, discriminatory laws that forbid entry to foreigners based on their skin colour would infringe upon their rights to establish contact and present themselves (Kleingeld, 1998, pp 77). If people are to be rejected *a priori,* regardless of the content of their character or what they have to offer, the cosmopolitan law is infringed (Kleingeld, 1998, pp 77). For example, a policy that forbids entry based on skin colour would be illegitimate, whereas a policy that forbids entry to people trading illegal drugs would not. For instance, when Kant supported the exclusions of certain Europeans from China and Japan, he was not supporting it arbitrarily or supporting it solely because China and Japan had a right to control their border. Rather, Kant supported it *because of the actions of certain European countries.* While it *could* be difficult to draw the line between legitimate and illegitimate in *practical* terms, the theoretical lines do show that Kant did not believe that *any* breed of rejection will be sufficient (Kleingeld, 1998, pp 77).

While there are limitations with a Kantian account of refugee right, as Kant's refugee right does not in itself match the UN's account in terms of education or a right to permanent habitation, the Kantian account still fundamentally meets the principles of non-refoulment and respects the right of the refugee to a place on Earth. Additionally, there is also a cause to believe that the basic needs of refugees will be met while they are recipients of hospitality. These basic needs not only include existential needs such as healthcare and nourishment, but also needs that foster autonomy, such as education.

[44] This 'altering' could range from an influence on local eating habits to demanding public swimming pools be gender segregated, although this applies to immigration as a whole and not just refugees.

5. Derrida's Objection

So far, I have attempted to construct a concept of refugee right that I argue is inferable from Kant's law of hospitality and concomitant to humanity's innate right to freedom. This concept of refugee right is thus implicit, rather than explicit, in Kant's moral-political philosophy. The innate right to freedom, incurring a right to be some place on Earth, on the basis original possession of the Earth's surface, combined with the law of hospitality, could be viewed as aligning with UN conventions on refugees, vis-à-vis the right to seek asylum and the principle of non-refoulment. I have furthermore suggested Kant's principle in public right according to which the state is obligated to support those vulnerable in the community who are unable to meet basic needs, could be extended under the umbrella of cosmopolitan right to refugees and asylum-seekers. Kant emphasises that he is not advocating paternalism; rather the aim is to provide conditions within which individual autonomy may be expanded. That being said, despite the fact that the refugee right presented so far has been shown to give refugees and asylum seekers a right to reside, use healthcare, receive food, and education in order to nurture their autonomy as well as protect their life; this account of refugee right is also modest in comparison to the modern UN account, as it does not offer a *right* to residency. Kant was clear that the 'stranger cannot claim the right of a guest to be permanent, for this would require a special friendly agreement whereby he might become a member of the native household' (8:358).

This division between a right to visit and a right to reside has led to criticism among several critics. With Jacques Derrida being the most prominent scholar to criticise Kant for the cosmopolitan right's failure to provide a right to permanent residency for asylum seekers I will address his criticism here

Derrida, who is firmly rooted in the continental tradition, used asylum seekers and refugees to illustrate the limits of Kant's law of hospitality.[45] Derrida's first critique states that as Kant's universal law of hospitality does not include the right to permanent residency, it undermines the 'universality of the concept (Brown, 2010, pp 310)'. In other words:

[45] Due to Derrida's continental tradition, I will be indebted to Brown in gaining a clear understanding of Derrida.

> … [Derrida] locates a double or contradictory imperative that [lies within] the concept of cosmopolitanism: on the one hand, there is an unconditional hospitality which should offer the rights of refuge to all immigrants and newcomers. But on the other hand, hospitality has to be conditional: there has to be some limit on the right to residence (Brown, 2010, pp 310).

Derrida begins his critique of Kant's hospitality by claiming that, at first, Kant seems to 'extend the cosmopolitan law to encompass universal hospitality without limit. Such is the condition of perpetual peace between all men (Derrida, 2010, pp 311).' However, Derrida then highlights an issue with the universality of this cosmopolitism as Kant 'excluded hospitality as a right of residence; [and as such] he limits it to the right of visitation.' This leads Derrida to criticise Kant's law of hospitality on two accounts. Firstly, that Kant's requirement that right of residency be conditional upon a contract 'that could only be the object of a particular treaty between states' makes hospitality dependent upon treaties between states, which Derrida then suggests would lead to xenophobic and discriminatory restrictions on immigrants. The second criticism from Derrida is that this restrictive right of residency grants too much power to the state, allowing the state to police and control the realms of hospitality. Derrida then suggests that these two issues make Kant's cosmopolitan right untenable.

For Derrida, the fact that a state has control over the conditionality of hospitality leads to 'distinctions' between peoples and an 'othering' of one people to another and that this is 'contrary to the spirit of cosmopolitan universality' (Brown, 2010, pp 312). More specifically, Derrida is concerned that the lack of a right to permanent residence would give the state the right to turn away an asylum seeker or refugee (Critchley and Kearney, 2001, pp 25-26). According to Brown's interpretation of Derrida's argument, this would:

> violate the egalitarian conception of equal human worth as individual moral beings and repudiates the idea of a political realm without borders, 'where nothing human is alien' and where we should 'measure the boundaries of our nation by the sun' (Brown, 2010, pp 312).

In order to respond to this, our focus will turn towards a nuance in the distinction between hospitality and the right to reside. A response to Derrida's objection is to re-highlight the two main features of the cosmopolitan right in Kant:

1. A right to resort by communal possession of the earth's surface.
2. A right of the visited against the visitor for the visitor to behave peaceably.

In his criticism of Kant's cosmopolitan right, Derrida overlooks the second feature listed above, one of the founding principles of the cosmopolitan right – the protection of the visited state. While Derrida is correct in reading Kant's hospitality through the lens of a state offering protection to a visitor from another state, Derrida also fails to read the wider context of Kant's law of hospitality. The period in which Kant was writing is important as it was one of imperialism and colonisation, with the Spanish, British, and Ottoman Empires all expanding across the globe:

> The principles underlying the supposed lawfulness of appropriating newly discovered and purportedly barbaric or irreligious lands, as goods belonging to no one, without the consent of the inhabitants and even subjugating them as well, are absolutely contrary to cosmopolitan right (23:174).

Consequently, and as was shown earlier, the cosmopolitan right was constructed with the purpose of protecting cultures from the paternalistic influence of colonialist nations.

The clearest practical example of this limitation of the right to permanent visitation was Kant's support for the policy of China and Japan to limit western travellers as visitors only, rather than permanent residents (Brown, 2010, pp 314). Their justification for their isolationist policy came from the inhospitable, or unpeaceable, behaviour of the 'commercial states' as Kant called them. A description of Kant's objections to colonialist behaviour can be seen in the following:

> The inhospitable conduct of the civilised states of our containment, especially the commercial states, the injustices which they display in *visiting* foreign countries and peoples (which in their case is the same as *conquering* them) seems appallingly great (8:358-9).

Thus, the accusation that Kant is perpetuating an isolationist nationalism in placing limiting conditions on foreigners in states would be misguided, as the

limited conditions are intended to defend those home states from outside, paternalistic interferences (Cavallar, 2002, pp 360). As Charles Covell notes, the cosmopolitan right requires that 'the freedom of the individual is limited in such a way as to secure the freedom of all.' (Covell, 1998, pp 49). The restrictions that Kant *does* agree with are born from *reasoned* justifications, rather than *arbitrary prejudice*. Additionally, the main purpose of Kantian hospitality is to provide a foundation for 'mutual ethical exchange' rather than the 'full and thoroughgoing sense of cosmopolitan justice' that Derrida was hoping for. Kant, after laying down the groundwork for mutual interaction between peoples, then leaves a space for public reason to deliberate further contracts, such as a permanent residence. It is because of this that Brown suggests that Derrida overstated or expected too much from Kantian hospitality (Brown, 2010, pp 316).

Derrida's second issue, that states would have a right to reject legitimate asylum seekers on a whim, is also unfounded. As this chapter has shown, Kant was clear in his law of hospitality that a state must not turn away a visitor if doing so would result in that visitor's death (8:358). Naturally, one could respond to this that Kant's law of hospitality is *still* restrictive towards asylum seekers, as not every asylum seeker is fleeing their home nation for existential threats of death; some flee due to religious persecution and threats of imprisonment or torture, to name but a few. If a Kantian refugee right would only allow those who flee from threats of death to receive sanctuary, then it would be a very restrictive form of refugee right indeed. That being said, Derrida's concerns that the law of hospitality would not allow for a stringent protection for asylum seekers are not as evident as first might appear. In fact, Kant allows for a broad range of grounds for protection, other than threats of death, including property damage, bodily harm, or slavery. Pauline Kleingeld has argued that the limits of Kant's hospitality should not be reduced to existential threats on an individual's life, as the term *Untergang* (destruction) is broad enough to include mental or physical harm, such as torture or fear of torture (Kleingeld, 1998, pp 77). Additionally, acts of torture or threat of torture would count as what Kant called 'inhospitable conduct' (actions that could lead to bodily harm or damage of property). Kant gave as examples of inhospitable conduct 'enslaving seafarers', 'plundering of property', or 'slavery to repay debts'. This broader interpretation of the concept of facing 'destruction' as

grounds for protection of a fleeing asylum seeker pushes Kantian hospitality closer to the United Nations refugee convention, which also prohibits refoulment if mental or physical harm will come to the individual.

Derrida's concern that the law of hospitality fails to allow for right to permanent residency has been shown to be overstated. As has been shown in this chapter, there is no universal right to permanent residency. If there was, this would leave Kant open to justifications of colonialism. While the law of hospitality explicitly forbids expulsion if doing so would lead to the individual's death, Kant's use of the term *untergang* allows for a broad range of inhospitable conduct. As such, this section showed that Derrida was expecting too much from Kant's hospitality in criticising it for its lack of a right to permanent residency, while the scholar also misunderstood Kant's use of the term *untergang* in his later criticism.

Conclusion

This chapter opened by exploring the cosmopolitan right and law of hospitality in Kant's published work. The aim of this chapter was to show how the original right to a place on Earth is connected to the law of hospitality, which in turn grants visitors grounds for protection in foreign countries. This law of hospitality guarantees a principle of non-refoulement, forbidding a state from sending away a visitor if doing so would result in their death or 'destruction', a concept that can be more broadly understood. The position of this thesis, then, is that the law of hospitality acts as a foundation for refugee right and is connected to the original right to freedom via the original right to a place on Earth. Rather than finding a strict refugee right in Kant, the interpretation suggested in this chapter is that every human has a right to a place on Earth, and this also applies to refugees. This original right to a place on Earth is universal, reciprocal and connected to the innate right to external freedom, since any person could find themselves in the position of the refugee if circumstances changed. However, we saw that Kantian refugee right goes further than merely granting a right to a place to be. It was found that while the Kantian account is not as broad as the UN's modern concept of refugee right, it still allows for access to healthcare, food, education, and protections against arbitrary discrimination.

I then went on to discuss anticipated objections to both Kant's law of hospitality and the refugee right as presented in this chapter, grappling with Derrida's objection that there was an internal contradiction in Kant's concept of cosmopolitan right. Nevertheless, the need remains to look more closely at how a Kantian concept of refugee right could be implemented internationally. Regardless of the content of a right, it seems academic to have a right without any means of enforcing it. Or is Benhabib correct in concluding that only imperfect duties, not in principle enforceable externally, are entailed by the account of refugee right implicit in Kant? Henceforth the focus of this thesis will shift towards the issue of implementation of Kantian refugee rights internationally.

Chapter Three: The Question of Enforcement in an International Context

The purpose of this thesis so far has been to articulate an implicit account of refugee right found within Kant's broader philosophy. The 'refugee right' in question is, essentially, the right to common possession of the Earth's surface which is possessed universally by all by virtue of their humanity. The refugee aspect simply combines the law of hospitality more explicitly to the original right to a place on Earth, highlighting the importance of a place on Earth to practical expression of the innate right to external freedom. This Kantian account of refugee right guarantees those eligible a right to non-refoulement, healthcare, food, and education. That being said, there remain issues with regard to real world implementation of this right that ought to be considered. For instance, would a state have a right to coerce another state into accepting refugees? One recent notable real-world example has been the case of Hungary. The central European nation has been clear and explicit in asserting that they will not accept refugees against their will, even going so far as to construct a fence along certain borders. This begs the question of whether it would be permissible for other states (or the European Union) to coerce Hungary into accepting refugees. Answering this question in general terms requires an exploration of Kant's notions of an international juridical state. In what follows I briefly reintroduce Kant's treatment of coercion in the domestic civil state, in order to frame the discussion of coercion internationally. This will lead us into a discussion of Kant's view of the *state of nature between states* that exists prior to any supranational civil juridical 'state of states' before examining the specific forms of international juridical state Kant considers. The focus of this chapter will be on the initial question of whether or not individual states can be coerced into the formation and structure of an international civil condition, leaving the further discussion on whether or not law, once an international civil condition is established, can be coercible internationally for the fourth and final chapter of the thesis.

1. The Right of Coercion in the Juridical State

The first chapter of this thesis focussed on the fundamentals of Kant's *Doctrine of Right.* This included a discussion on freedom and how, via various acquired rights and postulates of reason, Kant established an obligation for individuals to

form a juridical state. In order to help understand the need for coercion on the international level, and to introduce a framing device, this section will recap the discussion of the first chapter in order to briefly explain the importance of distributive justice.

The first chapter stated the universal principle of right as the following:

> 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 (6:230).

This principle limits the freedom of the individual so that it accords with the freedom of others. That being said, it would be false to suggest that hindering freedom is always wrong, as coercion plays an important role in Kant's philosophy. If a free action is hindering the freedom of others in accordance with universal laws, then coercion used in opposition to this is consistent with freedom in accordance with universal laws (6:231). Therefore, according to the principle of contradiction, *right* contains a permission to coerce others if *right* is infringed. It is reciprocal coercion, as Kant calls it, that makes the 'presentation of that concept [of right] possible (6:233)'.

Despite the fact that coercion is permitted, and rights do exist, they will only exist provisionally without the presence of a juridical state with the power and authority to distribute justice. Consequently, we have the *same* rights compared to that which can be conceived in the state of nature, the only difference being that these rights have been made public and secured by the *united will of the people* and the state. Accordingly, individuals must progress into the civil condition via the postulate of public law:

> When you cannot avoid living side by side with others you ought to leave the state of nature and proceed with them into the rightful condition, that is, a condition of distributive justice[46] (6:307).

The state is a representation of the united will of the citizenry and, according to Kant, allows the people to '[govern] *themselves* through their *own* legislation, and

[46] Distributive justice here referring to the power the sovereign or government has to enforce right coercively among its citizens.

the state enacts and enforces this (Byrd, 1995, pp 176)'. In other words, the united will of the people *is* the state, and it is the united will of the people that generates the existence of sovereignty. For, a state is a collection of people and therefore it is the *united will of the people that is sovereign*.

Distributive justice, then, allows a central legislative institution to complement and extend the constraints of natural law. Kant's idea of public law in the juridical state, then, flows from his concept of private law in the state of nature. Private law is the idea that 'everyone follows his own judgement.' The juridical state, on the other hand, is a state of public law; particularly, a state in which those private rights in the state of nature have been codified and are now legally coercible.

Kant's juridical state requires three different public institutions (legislative, executive, judicial), each dealing with a different arm of the state. The legislative branch sets the laws and is made up of citizens, the executive, or sovereign is the government and enforces the united will of the people, and the judicial branch settles disputes of right with finality.

The aforementioned three types of public institutions are attained through human-made public institutions, meaning they serve and are available to, everyone (Williams, 1983, pp 171). The three institutions are necessary conditions for the creation of a juridical state; Kant states that public justice is the formal principle of the possibility of a juridical state. This means that for a juridical state to be made possible, public justice must exist in its three institutions. All of these institutions must exist or else the *juridical state* is not attainable.

The conclusions of this thesis so far raise important questions about how we will approach coercibility in international law. The two that will be most important will be the following:

- Is there a state of nature internationally that states are obligated to leave for an international civil condition of some kind, in the same way societies are obligated to leave the state of nature to enter a national civil condition?
- If so, after leaving the international state of nature, what form will this international juridical state take?

With these two questions in mind, this chapter will now turn from the domestic state to the international situation in order to determine if there is any real-world application to the Kantian refugee right constructed across Chapters One and Two.

2. State of Nature Between States

If we are to find support in Kant for some level of international coercion among states comparable to justified coercion within the juridical state, we must first, again, begin with the state of nature. This condition has so far described a state of affairs in which there are no conclusive rights between individuals. In other words, there is no power according to which rights or fundamental freedoms can be enforced and protected. Which is why Kant argued that individuals must unite under a shared will and submit before distributive justice in order to bring about a civil condition. The pre-existing state of nature is thus viewed as the antithesis of the juridical state. But now the question has international implications: can we speak of a state of nature existing between nation states?

In the *Doctrine of Right,* Kant envisages an analogous state of nature existing between states.[47] Firstly, Kant asserted that 'states, considered in external relation to one another, are (like lawless savages) by nature in a non-rightful condition (6:344).' This non-rightful condition is analogous to the state of nature between individuals prior to entering the civil condition. The main difference between the two states of nature is simply one of scale. The condition among states, as opposed to simply being a 'state of nature', is also a '*condition* of war

[47] Philosopher Chiara Bottici has raised an interpretive issue with the type of argument provided here. Bottici asserts that 'we should read [reference to the domestic and international states of nature in Kant] as rhetorical devices aimed at persuading rulers to apply those principles in their policymaking (Bottici, 2009, pp 64)'. According to Bottici, the purpose of the analogy between individuals and states is to 'formulate the problem' that exists in international politics (Bottici, 2009, pp 64)'. In other words, Kant uses the domestic state of nature as a rhetorical device to highlight the fact that states are also in a state of nature, without supposing this condition is analogous or identical to the state of nature at the domestic level. Bottici asserts that the two states of nature are disanalogous because states are not under a strict obligation to leave the state of nature, whereas individuals are so obligated (Bottici, 2009, pp 65). Associate Professor of International Relations at the University of Nottingham, Ben Holland, however, rejects Bottici's argument as 'overdrawn' (Holland, 2016, pp 608). He suggests that, while we must be careful of overextending Kant's analogy, Kant *does describe* features that both 'states of nature' have in common and it is 'surely more than a rhetorical device' (Holland, 2017, pp 608).

(of the right of the stronger) (6:344)'. That being said, it is in Kant's discussion of the 'condition of war' that we see the first reference to the international state of nature by name:

> In the state of nature among states, the *right to go to war* (to engage in hostilities) is the way in which a state is permitted to prosecute its right against another state, namely by its own *force*, when it believes it has been wronged by the other state; for this cannot be done in the state of nature by a lawsuit (6:344).

In the state of nature among states, the only way in which a state can secure a right against another state is by war, as these rights are not conclusively secured due to the fact that there is no independent adjudicator with the power to resolve disputes of right between two parties (Cavallar, 2002, pp 340). The state is, therefore, permitted to defend its rights if it has been wronged by another state. Going to war is the only way a state could do this, as lawsuits or courts do not exist in the state of nature. There are parallels here to how, in the state of nature between individuals, one is permitted to enforce their ownership rights through force:

> Hence the state of peace must be established. For refraining from hostilities does not guarantee a state of peace, and when one neighbour does not guarantee the peace of the other (which can occur only in a juridical condition), the other neighbour who called upon the first to do so can treat him as an enemy (8:317).

Only by leaving the state of nature and submitting before coercive laws can distributive justice be enforced, and rights protected, in a way that protects ongoing peace and security (Byrd and Hruschka, 2011, pp 69).

Hence, there is a state of nature that can exist between states which is a non-rightful condition, and also a condition of war (6:344). This state of nature can be compared to the state of nature between persons, as both lack any conclusive rights and require the assertion of force in order to protect rights, rather submitting to coercive law. In addition to Kant's references to the un-rightful condition among states as a state of nature, Kant also claims that states are obligated to leave this state of nature, as are individuals. That being said, while the domestic state of nature is in this fundamental respect analogous to the international state of nature, it doesn't necessarily follow that both have the same *manner* of exit. The question now, then, becomes what form will an international civil condition take?

3. The Three Forms of International State

The previous section explored Kant's postulation of a real state of nature existing between states, showing that as individuals are compelled to leave the domestic state of nature, states are likewise compelled to leave the international state of nature. That discussion ended however, with the question of the form a juridical state between states would properly take. Therefore, this section will explore the three forms of international civil condition Kant discussed in *On the Common Saying* (1793)*, Perpetual Peace* (1795)*,* and the *Doctrine of Right* (1797).

The three forms of international relations were first discussed together in *The Second Definitive Article of Perpetual Peace.* Kant's goal with this work was to describe a structure through which states can reach a condition of peace, a world in which war has been rendered extinct (Habermas, 1997, pp 113). Kant, writing at a time of instability and frequent conflict, saw war as the harbinger of violence and devastation, as well as the cause of the plundering of lands, horrific debts and, regarding the victims of war, subjugation, loss of liberty and foreign dictatorship (Habermas, 1997, pp 114). War not only causes horrific wrongs but, due to its nature, war also leads to land theft, deceit, and murder. These harms are not just unintended side-effects. War explicitly relies on them in order to progress (win the war) (8:346). While it will not be probed in depth here, Kant also listed ways in which wars *ought* to be fought, if they must be fought. These include the prohibition of warfare that includes spying, the making of a false peace that would lead to a later war, and assassination (8:346-7) (6:347).

This need to contain how a war is fought is important, as Kant believes the ends of such a war defines the conditions of peace (Habermas, 1997, pp 116). Specific peace treaties may bring the end of specific wars, but Kant recognises a need for a peace among all peoples to put 'an end to war forever' and the evils it brings. The *only* way in which this can be done is to unite *all* states under a civil condition, and so Kant had to find a solution to the conceptual challenge of how this international order should be structured. Kant's idea of perpetual peace, then, is not simply the absence of war. Rather, it is a condition brought about by contract and agreements between states that will render war and the moral decline associated with war, murder, theft, and devastation, impossible.

3.1 – Universal Monarchy

The first possible form of international institution Kant discusses is that of a *universal monarchy*, first mentioned in *On the Common Saying* (8:311). This condition is described as a global state in which there is 'one cosmopolitan constitution under a single head (8:311).' This position is best described as a global state, for it possesses one sovereign and encompasses all people of the world as citizens (Byrd and Hruschka, 2011, pp 197-198). When considering the idea of a world state, one could be excused for thinking of this as John Lennon's description of a 'utopia' in *Imagine* (1971) – a state in which 'differences' are put aside and we view Japan in the same way that we view Queensland.[48] Kant, however, raised both conceptual and practical issues with such a model in *Perpetual Peace*:

> For the term *state* implies the relation of one who rules to those who obey – that is to say, of lawgiver to the subject of people: and many nations in one state would constitute only one nation, which contradicts our hypothesis, since here we have to consider the right of one nation against another, insofar as they are so many states and are not to be fused into one. (PP 8:354).

This passage highlights a self-contradiction in relation to international law within the concept of the world state, for international law is meant to be the law of nations in their relation *to other nations.* If all nation states were to dissolve into one nation state then there would be no law in relation to other nations as there are no other nations (8:311) (Byrd and Hruschka, 2008, pp 630).[49] So, on a fundamental view, the very existence of a world state cancels out the need for international law. Consequently, if the *universal monarchy* would come into being, there would be no need for a refugee right. In fact, it would be questionable as to whether one could even frame the concept of a refugee in a condition of *universal monarchy*. There may be issues over sharing or resources that could lead to population shifts, but this wouldn't correspond to the refugee phenomenon as we know it today.

[48] The areas of land that they currently govern, of course, for if a universal state was to be implemented there would be no states.

[49] On an even more worrying note, it would also end international sporting competitions such as the FIFA World Cup, the Ashes, and the Olympics.

The aforementioned problem is not the only reason Kant rejected the model of the world state. Kant also highlighted the impractical size of such a world state. Kant saw it as a 'law of nature' that just laws cannot be maintained by a single state extending over the whole Earth, as even just states lapse into anarchy and despotism when they reach critical mass (Guyer, 2000, pp 417):

> For with the increased domain of the regime the laws progressively lose their impact, and a soulless despotism, after rooting out the seeds of goodness, finally lapses into anarchy (8:367).

Paul Guyer speculates that Kant had the fall of the Roman Empire in mind when envisaging the limitations of a world state (Guyer, 2000, pp 417). In addition to the foregoing conceptual issues, there are practical difficulties in implementing a form of universal monarchy. If this 'super-state' were to literally encompass the world, it would not be able to account for the existing long-established differences and diversity between peoples. The idea here is that, while it is *possible* for states to dissolve into a universal state, it is not possible for all peoples of the world to dissolve into a *single people*. The peoples will inevitably wish to remain as distinct entities. An adoption of *universal monarchy* would thus end up steamrolling cultural diversity with a constitution in which "all freedom and with it (which it entails) all virtue, taste and scholarship must disappear" (Byrd and Hruschka, 2011, pp 198). A universal monarchy form of government is not practically ideal for another reason. Not only would the ever-growing conglomeration of states likely involve suppression of cultural diversity and identities, but the attempted suppression may also give rise to cultural-ethnic tensions, such as prevailed in the former state of Yugoslavia. An internally conflicted universal monarchy would resort to more suppression, rather than reasonable resolution, of disputes (Byrd and Hruschka, 2011, pp 198). The world state, then, is rejected by Kant for both conceptual and practical reasons.

When you are using 'universal monarchy' as a name it may be best to put in italics. When used as description no need to. Same for other models.

3.2- Association of States

The second model of international relations Kant considers is the *association of states* (sometimes referred to as the state of states). This model requires states

to join together in a 'juridical state of a federation according to commonly agreed upon international law (8:311).' This international law would be based upon 'public laws combined with coercive force'. Every state must subject itself to these laws 'according to the analogy of a civil or state law for individuals (8:312).' In *Perpetual Peace*, Kant would go on to say:

> In accordance with reason there is only one way that states in relation to each other can leave the lawless condition, which involves nothing but war; it is that, like individual human beings, they give up their savage (lawless) freedom, accommodate themselves to public coercive laws, and so form an (always growing) state of nation states (*civitas gentium*) that would finally encompass all the nations of the earth (8:357).

Kant saw this form of relations as *ideally* instantiating the best position states could adopt in order to achieve perpetual peace. This can be seen from the fact Kant described it as the 'only way in accordance with reason' for states to leave the state of nature (Byrd and Hruschka, 2011, pp 199). This *association of states* is a model in which states submit themselves to coercive laws *in order to protect their rights as a state*. This would make it analogous to the juridical state on the domestic level, as it would be a condition of distributive justice in which coercive force is used to enforce right and protect freedoms.

The introduction of this second model of international relation is sometimes conflated with the *universal monarchy* and so a more explicit separation is in order. The world state qua *universal monarchy* is a cosmopolitan constitution united under 'one head', meaning that there is *one world government,* forming a global state, that sets laws and legislation (van Hooft, 2009, pp 121-122). In the *universal monarchy*, all nations are combined into one cosmopolitan order. However, in the *association of states* each member state retains its own unique identity. In other words, the state of states qua *association of states* is a union that brings states together into a civil condition under some kind of international law without sacrificing the sovereignty of those states or bringing them under a single, one-world government. Unfortunately, Kant does not provide detail on how this international law would be arrived at or distributed. In the *Doctrine of Right*, Kant links the state of states (*association of states*) to the domestic concept of the civil union (Byrd and Hruschka, 2008, pp 633). It is this link to the concept of

a civil union that further illustrates that states ought to be under the protection of a juridical law. So, the state of states (*association of states*) is a union that brings states together into a civil condition without bringing those states under a centralised international government with executive powers.

The association of states model would allow states to bring their grievances to an arbiter who can then distribute justice and settle disputes of right with a finality that would avoid conflict (Cavallar, 2002, pp 345-346).[50] That being said, Kant did not give a clear account of what this arbitration process would look like or how the coercive law in this form would be enforced (van Hooft, 2009, pp 146). On the domestic level, we have the police force who enforce the law and keep the peace, however Kant did not give any indication as to how international rights under an association of states would be enforced (Guyer, 2000, pp 412-13). van Hooft points out that an international police force would need to be under the command of some kind of supra-national institution, but the principles of international law cannot be founded on war or threat of violence, for this would equal 'might is right' (van Hooft, 2009, pp 146). Therefore, van Hooft proposes that the best that could be hoped for is a unilateral agreement among states for the use of arms to be voluntarily surrendered (van Hooft, 2009, pp 146). There is reason to believe that this is a position Kant would have agreed with, as there is discussion within Perpetual Peace for the abolition of all standing armies over time, not only because Kant saw armies as being a means rather than an end, but also because:

> … they incessantly menace other states by their readiness to appear at all times prepared for war; they incite them to compete with each other in the number of armed men, and there is no limit to this … the cost of peace finally becomes more oppressive than that of a short war, and consequently a standing army is itself a cause of offensive war … (8:345).

From this we can gather that a standing army is opposed to the concept of perpetual peace as it would be seen as a threat. In such a state of states, it would be imagined that states would have already disbanded their armies and therefore an international police force would hinder perpetual peace.

[50] Questions could be asked over who would be chosen to be an arbiter in this situation, but this lies beyond the scope of this thesis.

3.3 – League of Nations

Finally, the third model Kant discusses is the *league of nations* (sometimes referred to as the *league of states*). His conception of the *league of nations*, unlike the *association of states*, does not require states to submit themselves before coercive laws from a supranational source:

> Hence, instead of the positive idea of a world-republic, if all is not to be lost, only the negative substitute for it, a federation averting war, maintaining its ground and ever extending over the world may stop the current of this tendency to war and shrinking from the control of law (8:357).

This league, then, has no sovereign authority in itself. It exists as a mere grouping of states that can be renounced by a member state at any time and must therefore be renewed from time to time (6:344). The league simply exists in order to secure freedom for itself and its allies and because of this is a mere surrogate for perpetual peace (Bohman, 1997, pp 180). That is to say, the state will *not itself achieve perpetual peace*, as there are no laws between nations, however the existence of such a league would at least create a system in which *a peace* may exist. The purpose of the *league of nations*, which Kant describes as necessary, is 'not in order to meddle in one another's internal dissensions but to protect from attacks from without (6:344)'. The notion of 'protecting from attacks from without' could lead one to compare the league of nations with modern defensive alliances such as NATO, the former Warsaw Pact, or ANZUS. While the defensive alliance aspect of the *league of nations* is important, it would be overdrawn to suggest that the *league of nations* is purely a defensive alliance akin to NATO. The *league of nations* was conceived by Kant to be a surrogate for peace and bring states closer together; whereas modern defensive alliances, such as NATO, require member states to commit to defence spending in their budgets, a policy that arguably breaks Kant's preliminary articles for Perpetual Peace.[51] Kant's concept

[51] Specifically, the third article, 'Standing armies (*miles perpetuus*) shall gradually be abolished entirely.' Kant goes on to say here, 'For they continually threaten other states with war by their willingness to appear equipped for it at all times. They prompt other states to outclass each other in the number of those armed for battle, a number that knows no limits. And since the costs associated with maintaining peace will in this way become more oppressive than a brief war, these armies themselves become the cause of offensive wars, carried out in order to diminish this burden (8:345).'

of the *league of nations* is better than having nothing at all and ought to be formed in order create a negative substitute for a juridical state that could stave war in the short term and, hopefully, prepare nations for the creation of a civil constitution such as the state of nation states (Bohman, 1997, pp 180).

4. The Association of States or the League of Nations?

The foregoing discussion showed that Kant had three different possibilities in mind when describing how states can leave the international state of nature. While the first possibility, the *universal monarchy*, (where the concept of refugees would in effect disappear), was dismissed by Kant, the remaining two were not rejected outright. This section will aim to swiftly tie up which supranational structure Kant preferred, before moving discussion on in Chapter Four to consider the extent to which right, in relation to refugees in particular, might be enforceable within this structure.

While Kant did indeed describe the *association of states* as being the 'only way in accordance with reason' that states can leave the state of nature, there are a few potential worries that pushed Kant towards choosing the *league of nations* as the most *realistic* method of international relations. One passage in which Kant appears to show his favour for the creation of a league over the creation of an association is as follows:

> As concerns the relations among states, according to reason there can be no other way for them to emerge from the lawless condition, which contains only war, than for them to relinquish …their wild (lawless) freedom, and to accustom themselves to public, binding laws, … form a (continually expanding) state of peoples (*civitas gentium*), which would ultimately comprise all of the peoples on earth. But they do not want this at all, according to their conception of the right of peoples (thus rejecting *in hypothesi* what is right *in thesi*); therefore, instead of the positive idea of a world republic (if not everything is to be lost) only the negative surrogate of a lasting and continually expanding league [*Bund*] that averts war can halt the stream of law-shunning and hostile inclination, but with a constant threat of its breaking out . . . (8:357)

As established earlier, leaving the state of nature is an obligation of reason and it is no different for states. The above passage mentions specifically that reason demands, as it does for individuals, for states to leave the state of nature and

give up their external sovereignty in order to subject themselves to coercive international law (6:344).

It is commonly held among Kantian scholars that Kant argued that the *association of states* is a good idea in theory, but impractical in reality (Kleingeld, 2004, pp 306). One notable scholar is Kevin Dodson, who claimed that Kant is making a very 'un-Kantian' move:

> This argument, however, explicitly accepts the subordination of considerations of justice to empirical judgments of what is realistic in the near future . . . In putting forth this argument, Kant succumbs to the very same weakness that he so often warns us against—leaving us with only a 'surrogate' arrangement so that something can be salvaged' (Dodson, 1993, pp 7).

Michael Doyle also believes that Kant 'favours a mutual non-aggression pact' as per the *league of nations* and rejects the *universal monarchy* and *association of states* as they will either be impossible or, in the case of the *universal monarchy*, tyrannical (Doyle, 2012, pp 26). The practical impossibility of establishing the *association of states* is a present theme across Kant's discussion of supranational institutions. Its improbability is referred to by Kant in the following passage:

> Because for too large an extension of such a state of nations over broad stretches of land, governing it and thus protecting each member of it must in the final analysis be impossible. A number of such states of nations, however, would in turn lead to a state of war, making *perpetual* peace (the final goal of all international law) admittedly an unrealisable idea (6:350).

From the above, we can gather that Kant has a number of practical concerns with the *association of states*. He worries about the extent to which the internal business of each state ought to be subject to laws from a supranational body, as well as how effectively this body could *actually govern*. Additionally, Kant is also concerned by the possibility of competing associations of states. For instance, if there was a western and an eastern alliance, this could lead to rivalries which impede the evolution of perpetual peace. We can see from this, then, that pragmatism is one of the main driving forces behind Kant's decision to support the *league of nations* over the *association of states*. This pragmaticism relates

specifically to how each state should progress into the ideal of the republic. This transition period will work at different speeds and in different ways depending upon the empirical realities confronting the state at any point in time. That being said, Kant *does not disregard the principles of the association of states*. Instead, we can begin to view the *association of states* in a similar vein to the 'state in the ideal' as discussed earlier in the first chapter. The *association of states* represents an ideal that states are supposed to aim for, regardless of whether achieving it is actually possible:

> The political principles, however, that aim toward it [perpetual peace], namely, to enter into such unions of states which serve to continually *approximate* it [perpetual peace], are not [unattainable] (6:350).

Rather than being a realistic option, the association of states is instead a corollary to the ideal constitution on the domestic level.

Yet questions remain. If the state of states (*association of states*) is an unachievable aim and the *universal monarchy* ruled out, practically speaking leaving only the *league of states*, how are states supposed *justifiably to leave the state of nature*? If public law is required to leave the state of nature, the *league of states* cannot provide this. Hence one could question whether or not states that have formed a *league of states* have really left the state of nature, since there is no coercive force of public law existing between the states underlying and justifying the transition.

Perhaps the answer to this conundrum is found in Kant's underlying commitment to the notion of progress. While it is true that a *league of states* will not provide fully conclusive rights among states, we ought to understand that Kant believed that forming a *league of states* is a sign of vital moral progress 'beyond the state of nature among states, even though it is not enough to make rights hold conclusively (Bernstein, 2008, pp 80).' While it is inferior to the association of states in the sense that rights will not be conclusive, it is certainly preferable to the state of nature.

We can see this belief clearly in the *Doctrine of Right*, in which Kant explained his ideas with a new term, the 'congress of states' (6:351). Kant draws clear

parallels between the 'congress of states' and the *league of nations* in *Perpetual Peace*:

> By a congress is here understood only a voluntary [*willkürliche*] coalition of different states which can be *dissolved* at any time, not a federation (like that of the American states) which is based on a constitution and can therefore not be dissolved. – Only by such a congress can the idea of a public right of nations be realised, one to be established for deciding their disputes in a civil way as if by a lawsuit, rather than in a barbaric way (the way of savages), namely by war (6:351).

While Kant refers to the league as the congress of states here, it is clear that this is still the league of states due to Kant's specification that there is no constitution among states (no codified, enforceable laws between the states). The league of states will allow states another avenue by which they can settle differences, namely, by lawsuit or arbitration. As Bernstein remarks, Kant believes that any form of state is better than the state of nature[52]; controversially, Kant even suggested that a despotic state is a sign of moral progress beyond the state of nature (Bernstein, 2008, pp 81). Kant's prohibition against revolution is a sign of this, as he did not want states to 'throw the baby out with the bath water' and return to a state of nature just because a state has devolved into despotism.

It is clear, from Kant's advocacy of the *league of states* in both *Perpetual Peace* and *the Doctrine of Right* (known as the 'congress of states' here), that Kant does not believe that states can *only* offer a guarantee of peace in an *association of states*, the *league of states* can also serve this purpose. Consequently, we can gather that a league of states, regardless of the lack of coercive force among member states, is a better option than remaining in a state of nature.

Kant's *ideal* method of international government, then, is the state of states qua *association of states*. This is the institution that 'reason dictates' states should bind together to form. It is distinct from the idea of the world government, as there is no over-arching, centralised government. It is also preferable to the *league of*

[52] Although this will not include barbaric or anarchic regimes as both are considered to be forms of the state of nature (Byrd and Hruschka, 2011, pp 91).

states, as this can only achieve a surrogate of perpetual peace. That being said, while achieving an *association of states* may not be possible it is not a reason to ignore the political principles that approximate it. With this in mind, the *league of nations* is preferable to the state of nature and states should certainly form a *league of nations*.[53] Despite lacking coercive laws, the *league of nations* can bring states closer together, bringing them closer to the condition of perpetual peace. The remaining issue then is that of how rights are to be enforced among member states of either the I or the *league of nations*. If an *association of states* is realised, how will right be enforced? If a *league of nations* is realised, how will law be enforced in an institution with no means to do so?

Conclusion

The purpose of this chapter was to introduce possible supra-national organisations or institutions considered by Kant that might provide contexts in which the refugee right described in the prior chapter may be enforced internationally. This chapter opened with a brief recap of the obligation of individuals to form a juridical state and leave the state of nature. It then accepted the existence of an international state of nature applying to states themselves, and an obligation of states to leave it for a state of states. Finally, I explored the possible forms an international juridical state might take, examining the three different models Kant proposed. Both the *association of states* and the *league of states* appeared to provide grounds and scope for some kind of international law. The task now will be to investigate whether and to what degree such institutions would afford scope to enforcing refugee right internationally.

[53] It is unclear whether or not Kant imagines a single league that continues to expand as nations grow more enlightened, or whether multiple leagues will spring up. The former would be consistent with Kant's belief of perpetual peace, however, with several leagues being likely to drive war. An example of this from history would be the Triple Alliance and the Triple Entente, with the alliance system ultimately helping to trigger World War One.

Chapter Four: Law and Coercion in an International Juridical State

The prior two chapters of this thesis focussed on constructing a clear account of refugee right in principle from Kant's wider political writings. This concept of refugee right was found to be consistent with external freedom and the principle of right, being drawn from both the law of hospitality and the original right to possession of the Earth's surface. Following the second chapter, the focus of the thesis shifted in order to understand how a refugee right could be implemented internationally, in a similar manner to how rights are implemented domestically. If there is no clear and principled account of implementation, then even the most basic right to non-refoulement would be rendered merely academic. One of the central ideas in Kant's philosophy is the idea of the state of nature and how individuals are obligated to leave this state to form a juridical state. Chapter Three examined the idea of the juridical state and, in a further effort to see how a refugee right could be enforced internationally, examined whether Kant had also written about a juridical state succeeding a state of nature in the international sphere. In Chapter Three, we found that Kant did indeed write about an 'international state of nature' that should be abandoned for the sake of an international juridical state, but questions nevertheless remain over how a refugee right could be enforced *between* states. The aim of the present chapter will be to address these remaining questions. The chapter begins by explaining why it is difficult to find principled grounds for the enforceability of international law in Kant. However, further exploration of Kant's bigger picture raises the possibility that implementation of refugee right in the real world would be linked to moral progress and ideas of self-enforcement, rather than dependent on externally applied coercion, at the level of international relations.

1. The Kantian State and Problems With Inter-State Coercion

This section will be divided into two subsections to highlight the two clearest elements of a state according to Kant, viz., that a state is the result of a united will, and that a state is considered sovereign.

Examining the above elements will help elucidate the difficulty in conceiving an association of states) that enforces an international law between juridical states

within the association, showing why there is a difference between coercion of individuals in a juridical nation-state and coercion of states in an association of states.

1.1 – The United Will

Chapter One of this thesis elucidated Kant's account of an individual's obligation to leave the state of nature. In the state of nature, humans possess rights without any means to enforce those rights, bar their own strength. People are, therefore, obligated by reason to submit themselves before public coercive laws, according to the postulate of public right and enter into a civil condition:

> From private right in the state of nature there proceeds the postulate of public right: When you cannot avoid living side by side with others you ought to leave the state of nature and proceed with them into the rightful condition, that is, a condition of distributive justice (6:307).

The shift from a state of nature in which rights are provisional, to a juridical state in which rights are conclusive secures a moral agent's choice to make it compatible with everyone's outer freedom and introduces a means by which those rights can be enforced (a condition of distributive justice). Consequently, the state is a representation of the united will of the citizenry and, according to Kant, allows the people to '[govern] *themselves* through their *own* legislation, and the state enacts and enforces this law (if it does not contradict *a priori* law or natural laws of freedom) (Byrd, 1995, pp 176)'. In other words, this allows us to interpret the united will of the people in such a way that the united will of the people *is* the state, and it is the united will of the people that generates the existence of sovereignty. For, a state is a collection of people and therefore it is the *united will of the people that is sovereign*. An examination of Kant's terminology will also help support this viewpoint.

Kant frequently uses the German '*Völkerstaat*' in relation to the *association of states*, despite *Volk* being accurately translated as 'people' (Kleingeld, 2004, pp 305). Kant, it seems, uses the term 'people' to refer to a group of individuals united under common law to forma juridical state. This reading is further confirmed by the passage at the beginning of *Perpetual Peace* where Kant notes

that he is discussing 'peoples as states' (8:344). Hence as Kleingeld warns that when reading Kant, one should keep in mind that Kant saw the political state as being the self-organisation of individuals and did not regard the right of states as independent from the rights of individuals (Kleingeld, 2004, pp 309). This is reflected clearly in the following extract from Kant's *Doctrine of Right*:

> A *state (civitas)* is a union of a multitude of human beings under laws of right. Insofar as these are a priori necessary as laws, that is, insofar as they follow of themselves from concepts of external right as such (are not statutory), its form is the form of a state as such, that is, of *the state in idea,* as it ought to be in accordance with pure principles of right. This idea serves as a norm *(norma)* for every actual union into a commonwealth (hence serves as a norm for its internal constitution) (6:313).

So, under the state in the idea the united will in intrinsically connected to the state.[54] Kant clearly affirms that a state is simply 'a union of a multitude of human beings under the laws of right'. It is also worth noting that the United States of America was founded upon this very belief. In his 2018 book *Identity*, Francis Fukuyama claims that 'the constitution says clearly that the people are sovereign and that the legitimate government flows from their will. But it does not define who the people are, or on what basis individuals are to be included in the national community (Fukuyama, 2018, pp 206).'[55] Thus for Kant sovereignty is a consequence of the united will of the people and is therefore dependent upon the existence of that united will.

1.2 Sovereignty and Equality of States

State sovereignty means that all states are equal according to international right. As Byrd observed, Kant does not hold that a state can obtain 'moral value greater than its components, or that it deserves respect or that it is conceived in a holistic way (Byrd, 1995, pp 180)'. The state humbly exists as a vessel through which right can be protected and enforced. The prior section showed that it is the *people that give the state its moral status,* and other states must respect this value. On these grounds there is no justification for some states forcing other states to join or form an association or league of states.

---

[54] As discussed in Chapter One

[55] It is also interesting to note that Kant was an early supporter of the American governmental system.

The reason Kant gives for why states can't be coerced into a supranational organisation (and why states must respect the constitutions of other states) is that states have an internal constitution. Kant describes juridical states as having 'outgrown' coercion by others, meaning that law is present within the state after a people have united under a common will:

> Since, as states, they already have a rightful constitution internally and hence have outgrown the constraint of others to bring them under a more extended law-governed constitution in accordance with their concepts of right (8:355-56).

The above shows that, while the domestic sphere allows for individuals to coerce each other into joining a civil condition, this does not hold on the international level as there is already an internal constitution. If a state is a juridical state, there is already a rule of law. If that same state in an international condition comes under new juridical laws its people have not legislated themselves, the situation these citizens now find themselves in may *not* normatively be better than the one that already existed in their state. It might be worse. (Kleingeld, 2004, pp 310). For Kant, sovereignty must be juridical:

> What holds in accordance with natural right for human beings in a lawless condition, [that] 'they ought to leave this condition', cannot hold for states in accordance with the right of nations (since, as states, they already have a rightful constitution internally and have hence outgrown the constraint of others to bring them under a more extended law-governed constitution in accordance with their concepts of right) (8:355-356).

As Flikschuh observes: given 'their moral status, states ought to submit under a supra-state public authority', but due to 'the grounds of their moral status they cannot do so, but must treat themselves and one another as juridically sovereign agents (Flikschuh, 2010, pp 481).'

Besides the issue of non-coercibility of states into greater unions, other issues arise in regard to how an *association of states* (however it may come to exist) may enforce its laws on member states.[56] Katrin Flikschuh raises a conceptual

[56] Kant didn't explain how an association of states would enforce its laws upon its member states, so the nature of the enforcing body is mysterious. One could assume that it would be

problem with international coercion in order to elucidate the problems of law enforcement within the *association of states*. As explained above, a state is sovereign because its existence (as a state) flows from the united will of its people. Consequently, the state exists in order to protect, enforce, and distribute the will of its citizens. In the international sphere, however, there is no justification for coercing states into larger unions. Kleingeld helps to highlight the difference between domestic and international coercion more clearly in the following passage:

> When individuals leave the state of nature to submit to laws of a common state, the state they form may not be perfect, but it will be better, normatively speaking, than the state of nature that they left behind because before its creation there was no rule of law at all (Kleingeld, 2004, pp 308).

The protection from outside interference and the equality of all states leads to a dilemma in how an international right could be enforced by an *association of states*. As Flikschuh writes:

> [Kant] designates states as supreme enforcers of Right domestically, yet he also thinks of states as bearers of juridical obligations internationally. If Right in general is inherently coercive then states, in honouring their juridical obligations, should submit under a supra-state juridical authority internationally. Yet if states are themselves supreme enforcers of Right, they cannot be juridically compelled—the application of Right against them cannot be coercive. This is Kant's sovereignty dilemma (Flikschuh, 2010, pp 471).

Every state must have a relationship of legislating body and obeying subject. More specifically, in the juridical state the legislator is also the *legislated*, as the citizen agrees to the laws that they will follow. However, as Flikschuh suggests, the concept of a state being subject to external laws would be contradictory: 'the concept of state is made to occupy the position of superior and inferior, ruler and ruled, simultaneously (Flikschuh, 2010, pp 479)'. As opposed to individuals, a state's possession of 'sovereign authority' is essential to the moral personality of a state. Flikschuh argues that, 'the juridical compulsion of states would compromise their moral personality' (Flikschuh, 2010, pp 480). Their moral status

---

some supra-state authority akin to the United Nations' Peace Force, but the remainder of this section will simply imply it is the association of states (as a legal entity) enforcing public law.

compels them to treat each other as juridically sovereign agents. It is for this reason that Kant cannot support an association of states with the power to enforce law between its member states and instead settles on a non-coercive *league of nations*. This non-coercive *league of nations* would open up channels for states to communicate and (hopefully) find a peaceful solution to their conflicts, though without the finality in judgement of an association of states under the power of public law.

Nevertheless, the prohibition on coercion (whether it be between states already in an *association of states* or between states into creating an *association of states*) is not a prohibition against self-defence of states. Kant does write about 'injuries against states' and explains in significant detail when states are permitted to use force against another state. Rather, this prohibition against coercion is focussed on constitutional change, i.e., on one state imposing its law upon another state. In the Chapter Three I explained how the citizen of juridical state is both the legislator and the legislated, meaning that a citizen subjects themselves to laws that they have agreed to follow. However, a state coercing another on the basis of laws not legislated by nor consented to by its citizens would violate that state's united 'self-legislative' will. In addition, permitting coercion runs the risk of unwilling republics being forced into a despotic or barbaric *association of states*[57]. Or the reverse, where a republican and 'just' state of states forces despotic states to join their organisation unwillingly – treating them paternalistically[58] (Bernstein, 2008, pp 77). Either way, both of these situations are violations of the rights of nations and individuals.

This section so far has shown that for Kant states cannot be coerced by other states due to a state's internal constitution. In other words, a state that already has an internal constitution from the united common will of its subjects cannot be compelled into following another state's will. This means that an enforceable

[57] For instance, if the Allies lost to the Axis Powers, we may have had a Third Reich-esque state of states across Europe. Or, perhaps more historically, the Soviet Bloc was arguably an example of a barbaric/totalitarian 'state of states'. The Soviet Union suppressed resistance movements and independence movements for decades, denying the people of Romania/Poland/ East Germany and so on, the chance to unite and form a constitution.
[58] Kant spoke of this in his section on Cosmopolitan Right in *Perpetual Peace*, most notably as a critique of imperialism.

refugee right, a law that permits another state or an international organisation (EU/UN) to coerce a state to accept a certain number of refugees against that state's will would be a violation of the right of nations. A state exists *because* its people have united into a common will, entailing sovereignty.[59] If a state is coerced by another state (whether this be into forming an association of states or by this association after its formation), then this would be a violation of the right of a people to self-legislate.

The lack of an ability to enforce right would be problematic for aspirations for real world implementation of refugee right. According to the conclusions of Chapter Three:

- One state cannot force its laws onto another state in the sphere of international relations.
- A supranational organisation cannot impose top-down laws on member states, for this would violate the right of a people to self-legislate.

An attempt by a supra-state of states to either force states into its union or force its laws onto another state within the union would be clearly a violation of every right of nations detailed in both *Perpetual Peace* and *the Doctrine of Right*.

If a supranational organisation cannot enforce law upon its member states, what then would be the value or purpose of such an international institution? It seems a state of nature between member states would still exist and refugee right would remain merely 'provisional' because ultimately unenforceable. Possessing a right is useless if others can simply ignore it. The *league of nations* as defined by Kant does not possess any coercive power, and it seems that even the ideal *association of states* would have trouble implementing a refugee right without violating the united will of state citizens. That being said, there remains still one avenue provided by Kant's philosophy that allows for some kind of realisation of refugee right on an international stage.

[59] As explained in Chapter One, a united common will does not mean that citizens are in agreement upon every law and so on and so forth. The common will is simply the legislating power of the majority of citizens, the power by which laws are created for and by the people of a state.

2. Moral Progress

So far, I have attempted to elucidate the difficulties involved in regard to enforcement of refugee right between member states of the *association of states*. The key difficulty arises from the fact that states have 'outgrown' coercion due to their internal constitution, preventing any form of interference from foreign entities on their internal constitution. Additionally, a central issue with the notion that states will agree to follow rules on the basis that others do the same, is that international treaties and rules are constantly being abandoned and changed. Therefore, the remainder of this chapter and final discussion of the thesis will shift from consideration of coercion to the idea that implementation of refugee rights may be best guaranteed in the context of moral progress.

States are not static, political blocks that persist throughout history; for instance, treaties signed in 1987 between superpowers may be torn up thirty-two years later.[60] On the other hand, a Prime Minister may promise membership of some kind of international alliance only to lose an election to a politician who campaigned on a contrary mandate. In more Kantian terms, an agreement by a state to follow Rule *X* without any form of coercion would appear to be similar to two thieves in the state of nature, promising not to steal from each other. While coercion will not be able to ensure international law, perhaps moral progress will, ultimately, have greater effect. While my argument here will undoubtedly be optimistic with its descriptions of human moral progress and its impact on states, optimism is a present theme across Kant's political philosophy and its importance to the realisation or approximation of *Perpetual Peace* ought not be ignored. This section will therefore highlight Kant's notions of enlightenment and moral progress of the individual, showing how the development of individuals is important in realising the conditions of perpetual peace globally. More specifically, the remainder of this chapter will argue that, rather than there being a supranational and enforceable refugee right, any form of refugee right will have to be self-enforcing within the state (as a direct result of moral progress).

[60] BBC News. (2019). *US pulls out of nuclear treaty with Russia*. [online] Available at: https://www.bbc.com/news/world-us-canada-49198565 [Accessed 20 Sep. 2019].

In order to explain the role of moral progress in securing perpetual peace, we need to remember that Kant's public right is tripartite. This means that all three pillars of public right must be fulfilled before perpetual peace can be achieved.[61] For Kant, if we are to approximate perpetual peace, we ought to pursue all pillars of public right:

> If the principle of outer freedom limited by laws is lacking in any one of these three possible forms of rightful condition, the framework of all the others is unavoidably undermined and must finally collapse (6:311).

While the above quote could be taken to the extreme in suggesting that rights can only be made conclusive in a condition of perpetual peace, I believe that we can use it to highlight the *importance of all pillars working together*. As Doyle observes:

> Not one of these constitutional, international or cosmopolitan sources is alone sufficient, but together (and only where together) they plausibly connect the characteristics of liberal polities and economies with sustained liberal peace (Doyle, 2012, pp 88).

Further, there was no implied chronological order to the public right. For instance, a despotic state may be permitted to join a *league of nations* or trade with juridical states (Bernstein, 2008, pp 81).[62] The importance of the domestic and cosmopolitan rights to moral progress will be explored in two subsections; the first focussing on the importance of the republican state to perpetual peace and the second focussing on cosmopolitan right.

2.1 – Domestic Right

The importance of Kant's juridical state to his ideals of perpetual peace cannot be overstated. While the juridical state is an important feature in Kant's notion of public right, as shown in Chapter One, it is also a vital aspect of perpetual peace on the global stage. The importance of the juridical state stretches far wider than

[61] The three pillars are: the republican state, international law, and cosmopolitan law.

[62] The question of barbaric states, however, would be more contentious. While one could argue that 'keeping your enemies closer' could be a valid policy here, we ought to remember that the barbaric state is one in which a juridical state is impossible to come about naturally. In other words, a despotic state may eventually evolve into a republic; whereas a barbaric state will require some element of resistance or revolution. A condition of trade (supporting the regime), could prolong the barbaric rule – prolonging the existence of a state whose maxim is contrary to perpetual peace. However, on the other hand, those barbaric regimes often run their nation in such a way that their subjects are poverty stricken and starving. Consequently, one could argue that refusing to trade or give aid to these nations would only harm its citizens.

simply enforcing and protecting the freedom of its citizens. In *Perpetual Peace*, Kant's First Definitive Article for Perpetual Peace requires 'every state to be republican', showing that Kant saw republicanism, or the juridical state, as being a vital step toward eternal, perpetual peace (8:349-50). The clearest reason for this from Kant is that he saw a juridical state as being less likely to go to war than a despotic nation. Kant's reasoning was that, as the citizens must be in favour of war for it to be justified, juridical states are less likely to go to war than a despotic state:

> If, as is inevitably the case under this constitution, the consent of the citizens is required to decide whether or not war is to be declared, it is very natural that they will have great hesitation in embarking on so dangerous an enterprise. For this means calling down on themselves all the miseries of war (8:351).

The above quote reveals far more about Kant's juridical state than its likelihood of peaceful foreign policy. Kant's explanation of why a juridical state is less likely to go to war also highlights the fact that the executive cannot introduce a new law without imposing it on themselves. Without presupposing that the British political system would be a Kantian republic, Philip Pettit explains this succinctly with his example of the British Parliament, 'Members of the British Parliament fall under the laws they pass for Britain… and so the British Parliament cannot impose a tax on the people of Britain without imposing it on themselves' (Pettit, 1997, pp 175)[63]. This notion of 'one rule for all' also applies for law breaking. The citizens of a Kantian juridical state have the power to restrain their leaders and control the direction their country will take. For instance, the judiciary has the power to remove an executive if it is determined that they abused their position or broke the law (6:313). This fits into Philip Pettit's exploration of the 'empire of law' that governments 'should be forced to act always in a principled, law-like way. They should be permitted to act only under the authority of law, and only in a way that accords with the requirements of the law' (Pettit, 1997, pp 175). In addition to separating the powers of government and allowing for checks and balances to power, the juridical state guarantees individuals freedom, equality, and

[63] It is important to keep in mind that Kant probably has the Ancient Greek notions of democratic government in mind here. Byrd and Hruschka believe that Kant would probably see 'our notion' of a democratic government as an 'elected aristocracy' (Byrd and Hruschka, 2011, pp 179).

‘dependence of all on a single common legislation (as subjects)’ (6:311-318). As explained at length in Chapter One, Kant’s juridical state is one that places external freedom at its centre, distributing justice according to right equally across all citizens. With this in mind, Kant writes that a juridical state’s constitution draws citizens in via their naturalistic impulses and selfish desires:

> Hence reason can use the mechanism of nature, in the form of selfish inclinations, which by their nature oppose one another even externally, as a means to make room for reason’s own end, legal regulation, and to thereby promote and secure, insofar as it is within the power of the state to do so, both internal and external peace (8:367).

So, while the main aim of the juridical state is to enforce right, Kant believes that enforcing these rights will eventually lead to a *love* for law, developing a moral disposition among the citizens, as Kant said in Perpetual Peace:

> [civil law in accordance with the freedom and equality of the individual] actually facilitates the development of the moral disposition to a direct respect for the law by placing a barrier against the outbreak of unlawful inclinations (8:350).

Therefore, Kant also believes that juridical states foster the moral development of individuals, allowing citizens to become more enlightened by protecting, enforcing, and combining ‘moral autonomy, individualism, and social order’ (Doyle, 2012, pp 26). The notion of enlightenment was very important to Kant, with Kant himself being one of the most important figures of the Enlightenment period. As with his moral philosophy, Kant’s notion of enlightenment was strongly tied to the concept of reason. In his essay *‘An Answer to the Question: What is Enlightenment?’*, Kant argues that an enlightened individual is one who thinks for oneself (Rauscher, 2017). Kant even went on to describe enlightenment as the ‘maxim of always thinking for oneself (8:146)’. This notion of enlightenment was tied closely to that of free speech, with Kant suggesting that citizens should question orders from superiors using their reason. It is for this reason that Kant argues free speech (freedom of the pen) is ‘the sole palladium’ in how citizens are able to stake claim to rights (8:304). With this in mind, Peters writes that a juridical state allows individuals to ‘pursue his or her own type of happiness most freely and could develop his or her own rational gifts (Peters, 1993, pp 126)’.

Kant was clear in the role of the juridical state in fostering enlightenment and moral progress among its citizens:

> In the same way, we cannot expect their moral attitudes to produce a good political constitution; on the contrary, it is only through the latter that the people can be expected to attain a good level of moral culture (8:366).

Doyle neatly summarises Kant's beliefs around the necessity of the juridical state (republic) and its importance to liberal peace on the global stage:

> As republics emerge (the first source) and as culture progresses, an understanding of the legitimate rights of all citizens and of all republics comes into play; and this, now that caution characterizes policy, sets up the moral foundations for the liberal peace (Doyle, 2012, pp 28).

Therefore, in keeping with Kant's idea that all three pillars of public right must be in in order before we can achieve perpetual peace and 'provide a framework within which moral progress is possible (Hurrell, 1990, pp 198)'. Kant gave a description what he means by moral progress within this context in the following passage:

> Now, moral-practical Reason within us pronounces the following irresistible veto: There shall be no war . . . Thus it is no longer a question of whether perpetual peace is really possible or not, or whether we are not perhaps mistaken in our theoretical judgement if we assume that it is. On the contrary, we must simply act as if it could come about (which is perhaps impossible), and turn our efforts towards establishing that constitution which seems most suitable for this purpose (6:354).

The significance behind Kant's foregoing quote is not to describe *how* war could be rendered extinct, rather, it is focussed on the changing attitudes of peoples and their impact on political leadership (Peters, 1993, pp 126). An increase in juridical states will lead to an increase in moral enlightenment of citizens and fewer wars. It's important to highlight here that moral enlightenment is *driven* by people, the existence of the juridical state takes moral enlightenment to the next level; protecting the rights of individuals by law and allowing moral development to continue. The idea here is that, as a people grow more enlightened so does their state – this is moral progress. The moral progress is driven by people, with the juridical state acting as a necessary catalyst in the progression of

enlightenment and moral progress among citizens with its liberal laws.[64] The moral evolution of individuals allows a juridical state to change with its citizens, meaning that as a people become more enlightened so does a state. As juridical states spread across the globe, the capacity for freedom and the moral development of individuals will also expand (Doyle, 2012, pp 49). More Juridical states would free up the possibility of increased, more productive state interaction and a wider adoption of the cosmopolitan law, including foreign policy and issues relating to refugee right. Education, free speech, and the marketplace of ideas are crucial to achieving widespread acceptance, not only of the plight of refugees, but a global injustice as a whole. In this context, through education and enlightenment, the 'people' of a state may come to understand refugees as fellow citizens in the 'society of humans' as opposed to the 'other'. As a result, the changing attitudes of people would lead to less resistance to refugee intake which, in turn, would be reflected in that state's government policies.

A wider adoption of the cosmopolitan law would also have a profound effect on wider discussions of refugee right. For instance, there would be fewer refugees within this utopian society, perhaps eventually rendering the idea of 'refugee rights' redundant. The reason for this is that, as most refugee crises are caused by war between states (World War Two, Vietnam), civil war (Syria), or state persecution (Nazi Germany and its treatment of the Jews), perpetual peace will solve all of these problems by eliminating war and spreading stable, liberal juridical states across the globe.

Kant was clear in his writings that a '*league of nations*' would help resolve international disputes and facilitate interactions between states, allowing for nations to resolve their disputes through other methods than violence and war. It is through this *league of nations* that Kant's cosmopolitan right, and law of hospitality, becomes more possible. That being said, the question of refugee rights would be important even in a global state of perpetual peace. After all, war

[64] It's worth mentioning here that Kant was writing during the age of enlightenment, a time in which science, technology, and philosophy were advancing at a stellar rate. It's unclear whether, if Kant was writing today during the age of 'fake news', 'alternative facts', and echo chambers on social media, he would hold a similar view.

isn't the only cause of refugees; natural disasters (and eventually climate change) can also contribute to refugee exoduses.

2.2 – Cosmopolitan Right

In addition to the role Kant afforded the juridical state in fostering moral development, he also emphasised the importance and purpose of 'the cosmopolitan right' in establishing of a state of perpetual peace. The cosmopolitan right, we have seen, is intended to enforce laws of hospitality and trade. The general idea behind the notion of cosmopolitan right is that it will help bring about a condition of perpetual peace by bringing *peoples* together, rather than nations. This appeal to trade helps to draw states together by introducing an element of self-interest to peace. In other words, the cosmopolitan right 'adds material incentives to moral commitments (Doyle, 2012, pp 28).' While the domestic right facilitates moral development at home, the cosmopolitan right is intended to foster this attitude change on a global scale. This right allows peoples to interact, exchange ideas, stories, and share cultural customs, showing how enlightenment and education can help bring states closer together. Crucially to this thesis, the cosmopolitan right also contains the law of hospitality, so realising a cosmopolitan right between states is vital if states are to adhere to the form of refugee right described in Chapter Two.

Hurrell describes the cosmopolitan right as the process 'by which individuals become increasingly able to see themselves as part of a global community of mankind, a universal cosmopolitan existence (Hurrell, 1990, pp 198)'. Hurrell writes that 'whilst obligations to the nation state would not (nor should not) disappear, the range of moral obligation could expand beyond the state and that individuals could develop a growing sense of moral interdependence (Hurrell, 1990, pp 198)'. Kant, presenting a classical liberal argument, assumes that the economic benefits of peace will help to facilitate a period without war from which peoples could work closely and 'lead toward a general agreement on the principles for peace and understanding':

> For the spirit of commerce sooner or later takes hold of every people, and it cannot exist side by side with war . . . Thus states find themselves compelled to

> promote the noble cause of peace, though not exactly from motives of morality (8:358).[65]

According to Bernstein, 'Kant conjectures that human inclinations can lead states toward peace. Sooner or later, he says, the spirit of commerce 'takes hold of every nation (Bernstein, 2008, pp 79)'. In other words, the magnetic force that money provides 'may well be the most reliable of all the powers (means) subordinate to that of a state' that could 'promote honourable peace and, whenever war threatens to break out anywhere in the world, to prevent it by mediation, just as if they were in a permanent league for this purpose (Bernstein, 2008, pp 79).'[66] In Chapter Three, we explored *the universal monarchy, the state of states (association of states),* and the *league of nations*. Unlike the *state of states*, the *league of nations* had no coercive power, simply relying on state cooperation to help foster peace. As I showed in Chapter Three, the *league of nations* was criticised by some Kantian scholars, including Byrd and Hruschka, for its lack of coercive power. However, a *league of nations* that builds up and relies on moral progress and cooperation to attain a condition of peace will favour and find success via the carrot rather than the stick. For instance, the EU started as a trading block in the 1950s, then known as the European Coal and Steel Community, before slowly expanding and introducing more guidelines for its members, including the European Court of Human Rights.[67] The EU can serve as an example for how the trading incentive of nations can help bring about an international right that can add layers of 'cosmopolitan right' among member states over time, including a refugee right. While the spirit of commerce may draw states in out of self-interest, the triumvirate of public right is also intended to foster a natural evolution toward peace on an individual *moral level*. In other words, it is

[65] As I write this, there is a 'trade-war' between the USA and China, the concept of which may have shocked Kant. Although, a trade war is evidently preferable to a 'classic' war.

[66] 'Correspondingly, international law highlights the importance of Kantian publicity. Domestically, publicity helps ensure that the officials of republics act according to the principles they profess to hold just and according to the interests of the electors they claim to represent. Internationally, free speech and the effective communication of accurate conceptions of the political life of foreign peoples is essential to establish and preserve the understanding on which the guarantee of respect depends. In short, domestically just republics, which rest on consent, presume foreign republics to be also consensual, just, and therefore deserving of accommodation. The experience of cooperation helps engender further cooperative behaviour when the consequences of state policy are unclear but (potentially) mutually beneficial (Doyle, 2012, pp 28).'

[67] This is not to suggest that the EU is what Kant had in mind with his league of nations, there are several issues with the EU that would not be considered Kantian.

to foster a *will* for peace that will eventually spread across the globe. This means that, in this idealised and enlightened state, it will be the *will of the people that is self-enforcing*. The consequences for the *league of nations* and agreements between states would be that these states would *want* to follow rules rather than being forced to do so. In such ideal circumstances, states would not need to be coerced into following international or cosmopolitan right. Rather, they would willingly choose to cooperate with international and cosmopolitan right, as well as with the law of hospitality and its entailing refugee right.

Disagreements would still occur between states, regardless of how enlightened they may be, but an 'arbitration procedure' between states, such as the one provided by the league of nations, would be sufficient, according to Bernstein. This procedure would allow for international disputes, including refugee crises, to be decided 'in a civil way, as if by lawsuit' (Bernstein, 2008, pp 83; 6:351). On this view, states would make clear and 'explicit commitments to each other' that they will abide by certain agreements, including non-aggression, mutual disarmament, and of course, handling humanitarian crises including refugee exoduses. Bernstein proposes that states would endorse a treaty, potentially containing the preliminary articles for perpetual peace stated by Kant and agree to follow this treaty on the guarantee that other signatory states would also agree to do so (Bernstein, 2008, pp 83). The signatory states may sign up to the treaty from either self-interest or practical reason/ morality, but either way the result would be one of peace. This would lay the groundwork for more progressive policies in the future, including a refugee right/ law of hospitality. As Hurrell neatly states, 'by focussing on the need and possibility of progress of both individuals and states, Kant can envisage a situation in which states will be able to cooperate in a way which was previously impossible (Hurrell, 1990, pp 199)'.

3. Self-Enforcing Refugee Right and the Veil of Vagueness

One of the main concerns about an unenforceable refugee right is the idea that states will not act during refugee crises because there is no direct order for them to do so. In other words, even if there is an expectation within a *league of nations* that states will help control and distribute refugees during a refugee crisis, some

states may take a back seat, expecting other states in the league to handle the situation without law-like coercion to enforce action.

This is the worry of both Seyla Behabib and Howard Williams, who both believe that a state's duties to foreigners and foreign states operate behind a 'veil of vagueness' (Benhabib, 2004, pp 31). This comes from the fact that, while states may accept that there is a *general duty to act*, they may not believe it applies to them (Altman, 2017, pp 190). Refugee right may be a right that a claimant possesses but is unable to have enforced as no specific agent has a duty to enforce that right (O'Neill, 2000, pp 53). However, this veil of vagueness concern is not necessarily an argument that the concept of Kant's notions of moral progress/league of nations ought to be abandoned or that they would be useless in improving refugee right across the globe. The promises of moral progress, as outlined in the prior sections, have the potential to solve Benhabib and Williams' worry of the veil of vagueness.

If international crises are to occur, they may be resolved effectively through an international arbitration system. Similarly, if a humanitarian crisis is to give rise to an exodus of refugees, the distribution of refugees is more likely to be handled effectively if states work together within a *league of nations* that provides an avenue of information, communication, and perhaps even monetary or infrastructure assistance. In other words, moral progress and the *league of nations* may allow states to effectively distribute the weight of refugee right (or other forms of international right) and remove the 'veil of vagueness'.

With regard to the specific application of refugee right, we have recently seen several EU states accept an arrangement that will redistribute refugees fairly across the fourteen signatory states.[68] In a recent *Guardian* article entitled '*EU countries agree plan to handle migrants and refugees',* it is revealed that six states did not agree to the new policy.[69] This is an example of moral progress

[68] www.theguardian.com/world/2019/jul/23/eu-countries-agree-plan-to-handle-migrants-and-refugees

[69] One of those states was Italy, one of the nations that bore the brunt of the 2016 refugee crisis due its proximity to North Africa.

(and a 'quasi' league of nations) allows states to interact with one another and, despite absence of coercive force, introduce a measure that would fit neatly within the cosmopolitan right. The introduction to this thesis posed the question: 'if a humanitarian crisis causes an exodus of refugees and a nearby *juridical state* refuses to give them hospitality, how could a refugee's cosmopolitan right be enforced?' The first thing that should be acknowledged now is that, in a Kantian framework, it would be impermissible to force one of those six European states to accept refugees if doing so would violate the united will (majority will) of the state's people. Even if this veil of vagueness is removed, it ought to be remembered that 'perfect protection' as Byrd and Hruschka describe it, cannot be found in any state (Byrd and Hruschka, 2011, pp 202). Even in a juridical state, crime will be committed, but we should not consider a 'perfection or bust' policy and return to the state of nature because of this inability to guarantee no crime. Likewise, even if war may break out between states or some states may refuse to accept a certain number of refugees, humanity should not give up on its goal of achieving a condition of peace or refugee right. As Kant stated, even if perpetual peace is an unachievable idea, we should still aim to follow those principles that direct us toward it:

> The political principles, however, that aim toward it [perpetual peace], namely to enter into such unions of states which serve to continually *approximate* it [perpetual peace], are not [unattainable] (6:350).

As with the domestic state, even if the perfect constitution is unattainable[70], the state should aim to get as close to this constitution as possible.

> We have the duty to continue to try to establish the conditions in which rights can hold conclusively, even though they will always hold less than conclusively in some respects or to some degree (Bernstein, 2008, pp 80).

Similarly, states have a duty to try and get as close to the ideals of perpetual peace as possible, as stated more poetically in *On the Common Saying*:

> This progress may at times be interrupted but never broken off… history may well give rise to endless doubts about my hopes, and if these doubts could be proved, they might persuade me to desist from an apparently futile task. But so long as

[70] As shown in Chapter One, the State in the Ideal is unattainable yet states should still work to get as close as possible to this ideal.

> they do not have the force of certainty, I cannot exchange my duty (as a *liquidum*) for a rule of expediency which says that I ought not to attempt the impractical (i.e., the *illiquidum*), since it is purely hypothetical (8:308-309).

In other words, although perpetual peace may be impossible, we should still make this our end and replicate its ideals as closely as possible (Bernstein, 2008, pp 60; Byrd and Hruschka, 2011, pp 203). The right of individuals to a place on Earth can be respected by states in the non-coercive *league of nations* that Kant favoured as a pragmatic alternative to the *association of states*. While it would not offer the conclusive guarantees of the *association of states*, the *league of nations* is still preferable to the state of nature and does offer some avenues by which states could utilise to implement certain codes of conduct, such as original right to a place on Earth (refugee right), non-aggression, sanctions, and so on. Therefore, while this chapter began with the idea of implementing a coercive right (analogous to the domestic state) among states that could enforce refugee right, it has come to the conclusion that such coercion would not be justifiable or possible among juridical states within Kant's political framework. Rather, full implementation of refugee right will be based in the will of the people and would be self-enforcing in the context of moral progress.

The notions of moral progress and self-enforcement explored in this chapter are admittedly idealistic and optimistic. Moral progress depends upon a global community growing together over time, rather than apart. Moral progress depends upon states growing gradually more republican, rather than leaning to totalitarianism. Finally, moral progress also depends upon world leaders listening to the demands of their educated and reflective citizens. While there are clear issues that one could raise with the optimistic account of moral progress presented here, issues that would require another thesis to sufficiently grapple with, the optimism of moral progress combined with the pragmatic account of the league of nations captures Kant's own struggles between optimism and pessimism, as well as the idealistic and the pragmatic. Further, highlighting the importance of the both the moral individual and the republic places the possibility of perpetual peace firmly in humanity's own hands. In a time of globalisation and unelected officials in charge of international organisations, restating the

importance of individual states to perpetual peace and moral progress is important.

Summing Up

This chapter highlighted the conceptual issues with enforcing a refugee right internationally according to Kantian principles. Due to the internal constitutions of states, those nations have 'outgrown' coercion. If coercion cannot be implemented internationally, the inevitable conclusion appeared to be that refugee right is not enforceable and, qua 'right', is rendered merely academic. Not wishing to rest with this conclusion, I set out to investigate how an international juridical state could implement laws with a degree of finality that would be analogous to the courts of the juridical state. While international coercion in a similar manner to domestic coercion would be a violation of the right of nations, Kant envisages an international body that does not rely on coercion – the *league of nations*. This body relies on states working together and resolving their disputes through methods other than violence. With this in mind, I explored Kant's notions of moral progress, showing how the growth of juridical states across the globe brings states closer together as they interact, trade, and, hopefully, form a league of nations. Kant's notion of moral progress was highlighted as a possible solution and vital pathway to the implementation of refugee rights in the absence of inter-state coercion. Kant is clear that there exists an interactive relationship between juridical states' development to republicanism and facilitation of moral progress of individuals, who in turn demand higher moral performance from their governments in relation to the issues of their day. Rather than relying on coercion in a similar manner to the domestic juridical state, this chapter argued that it will be the self-enforcing will of the people that will ensure international law such as refugee right is respected. Ensuring that international law is respected in such a way could also reduce the number of refugees being created across the world as well.

Conclusion

This thesis was born from a personal moral response to the plight of international refugees in recent years, juxtaposed with Kant's assertion in the law of hospitality that 'a foreigner [must not] be treated with hostility because he has arrived on the land of another.' According to Kant the state to which the foreigner appeals can only turn him away if this can be done without destroying him, …long as he behaves peaceably where he is, he cannot be treated with hostility (8:357-359).' Kant's position initially seemed to make a position on refugee right clear and plausible. However, consideration of how a refugee right could be implemented or enforced in the modern global community while adhering to Kantian principles raised many questions. We first had to decide what the content and scope of a refugee right drawn from Kant's philosophy might be, since he never discussed the matter explicitly himself. For instance, does Kant's refugee right only allow for a place to stay or are there more 'modern' refugee entitlements associated with it? The second question to be answered was, if a state were to refuse to accept a number of refugees, would another state be able to coerce them into doing so?

Starting with his work in the Doctrine of Right, I explored the foundations of Kant's understanding of external freedom and its importance to right and the juridical state. It was here that Kant first justified the use of coercion, showing that coercion is justified via the principle of contradiction, 'If a free action is hindering the freedom of others in accordance with universal laws, then coercion used in opposition to this is consistent with freedom in accordance with universal laws (6:231)'. This first chapter acted as the foundation for the entire thesis, setting up a Kantian framework according to which the remainder of the thesis would have to follow.

With this Kantian framework set up, I then unpacked the contents of Kant's refugee right. By connecting the law of hospitality and Kant's principle of non-refoulement to the original right of possession of the Earth, I was able to ground a Kantian refugee right explicitly into protection of freedom. Following this, I argued that a Kantian refugee right could also offer protection beyond non-

refoulement, with access to healthcare and education amongst the entitlements that could be justified under a Kantian refugee right.

With the refugee right scaffolding in place, I examined how a refugee right could be implemented across the globe. While the initial aim of this thesis was to see a refugee right implemented in a similar manner to rights in the domestic state, the implementation of refugee right across the globe was found to be far more complex than how a right or law could be established domestically. In the Kantian juridical state, the citizens legislate, and an executive enforces (with coercion) these laws. However, internationally, there are questions over who or what this executive would be and how such laws could be introduced. Kant's own suggestions of the coercive state of states and the non-coercive league of nations divide Kantian scholars, with some suggesting that Kant favoured the former and others the latter. After examining this debate, I found that a refugee right would not be able to be coercively enforced internationally, as it would violate state sovereignty and a citizens' rights to set their own laws.

While this thesis initially began with the belief that a refugee right would be a coercible law among states, careful examination of Kant's philosophy found that this would not be possible without violating both citizen and state rights. Despite this, Kant's own notions of moral progress and enlightenment offer a path upon which refugee right can be agreed upon by states. This moral progress is undoubtedly optimistic and relies on citizens and states to *want* to follow certain rules, rather than being forced to follow those rules.

Bibliography

- Achenwall, G., (2011). *Ius Naturalis : Iuris Naturalis Pars Posterior Complectens Ius Familiae, Ius Publicum Et Ius Gentium*. Charleston: Nabu Press.
- Allison, H. (2010). *Kant's Theory of Freedom*. Cambridge: Cambridge Univ. Pr.
- Altman, M., 2014. *The Palgrave handbook of German idealism*. New York: Palgrave Macmillan.
- Altman, M. (2017). The Limits of Kant's Cosmopolitanism: Theory, Practice, and the Crisis in Syria. *Kantian Review*, 22(02), pp.179-204.
- Anderson-Gold, S. (2011). Cosmopolitan Right: State and System in Kant's Political Theory. In: S. Baiasu, S. Pihlström and H. Williams, ed., *Politics and Metaphysics in Kant*, 1st ed. Cardiff: University of Wales Press, pp.235-249.
- Ang, Jennifer Mei Sze (2015) 'Kant and the Responsibility to Protect'. International Journal of Applied Philosophy, 29, 37–51.
- Archibudi, D. (1995). Immanuel Kant, Cosmopolitan Law and Peace. *European Journal of International Relations*, 1(4), pp.429-456.
- Bagnoli, Carla (2006) 'Humanitarian Intervention as a Perfect Duty: A Kantian Argument'. In Terry Nardin and Melissa S. Williams (eds), Humanitarian Intervention (New York: New York University Press, 2006), pp. 117–48.
- Bayefsky, R. (2013). Dignity, Honour, and Human Rights. *Political Theory*, 41(6), pp.809-837.
- BBC News. (2019). *US pulls out of nuclear treaty with Russia*. [online] Available at: https://www.bbc.com/news/world-us-canada-49198565 [Accessed 20 Sep. 2019].
- Benhabib, S (2004) The Rights of Others: Aliens, Residents, and Citizens. Cambridge: Cambridge University Press.
- Bernstein, A. (2008). Kant on Rights and Coercion in International Law: Implications for Humanitarian Military Intervention. *Jahrbuch Für Recht Und Ethik / Annual Review of Law and Ethics, 16*, 57-99.
- Bernstein, A., (2014). The Rights of States, the Rule of Law, and Coercion: Reflections on Pauline Kleingeld's Kant and Cosmopolitanism. *Kantian Review*, 19(2), pp.233-249.
- Bielefeldt, H., (1997). Autonomy and Republicanism. *Political Theory*, 25(4), pp.524-558.
- Bohman, J. (1997). The Public Spheres of the World Citizen. In: J. Bohman and M. Lutz-Bachmann, ed., *Perpetual Peace*, 1st ed. Cambridge, Massachusetts: The MIT Press, pp.179-200.

- Bottici, C., (2009). *Men and States*. Basingstoke [England]: Palgrave Macmillan.
- Brown, G. (2010). The Laws of Hospitality, Asylum Seekers and Cosmopolitan Right. *European Journal of Political Theory*, 9(3), pp.308-327.
- Brown, G. (2013). The European Union and Kant's idea of cosmopolitan right: Why the EU is not cosmopolitan. *European Journal of International Relations*, 20(3), pp.671-693.
- Byrd, S., (1995). The State as a Moral Person. *Proceedings of the Eighth International Kant Congress*, 1(1), pp.171-189.
- Byrd, B. and Hruschka, J. (2008). From the State of Nature to the Juridical State of States. *Law and Philosophy*, 27(6), pp.599-641.
- Byrd, B. and Hruschka, J. (2011). *Kant's Doctrine of Right*. Cambridge: Cambridge University Press.
- Cavallar, G. (2002). *The rights of strangers*. Aldershot: Ashgate Publishing Limited.
- Cavallar, G. (2013). Sources of Kant's Cosmopolitanism: Basedow, Rousseau, and Cosmopolitan Education. *Studies in Philosophy and Education*, 33(4), pp.369-389.
- Cavallar, G., 2015. *Kant's Embedded Cosmopolitanism*. Boston: De Gruyter.
- Caygill, H., 1995. *A Kant Dictionary*. [Oxford, UK]: Blackwell Publishers.
- Covell, C. (1998) *Kant and the Law of Peace: A Study in the Philosophy of International Law and International Relations*, p. 49. New York: Palgrave.
- Davis, K., (1992). Kant's Different "Publics" and the Justice of Publicity. *Kant-Studien*, 83(2).
- Denis, L., (2012). *Kant's Metaphysics of morals*. Cambridge: Cambridge University Press.
- Derrida, J. (2000) 'Foreign Question', in *Of Hospitality*, tr. Rachel Bowlby, p. 75. Stanford, CA: Stanford University Press.
- Derrida, J. (2000) *Step of Hospitality: No Hospitality*, p. 75. Stanford, CA: Stanford University Press.
- Dodson, K., (1993) Kant's Perpetual Peace: Universal Civil Society or League of States', Southwest Philosophical Studies, 1-9.
- Donne, J. and Smith, A., (1973). *The Complete English Poems*. London: Penguin.
- Doyle, M., (2012). *Liberal Peace*. Oxon [England]: Routledge.
- Eberl, O., (2019). Kant on Race and Barbarism: Towards a More Complex View on Racism and Anti-Colonialism in Kant. *Kantian Review*, 24(3), pp.385-413.

- Feinberg, J. (1970). *Doing & Deserving*. Princeton, N.J.: Princeton University Press.
- Flikschuh, K. (2000). *Kant and Modern Political Philosophy*. Cambridge: Cambridge Univ. Press.
- Flikschuh, K., (2010). Kant's Sovereignty Dilemma: A Contemporary Analysis. *Journal of Political Philosophy*, 18(4), pp.469-493.
- Flikschuh, K. and Ypi, L., (2015). *Kant and Colonialism*. Oxford: Oxford University Press.
- Formosa, P., (2008). "All Politics Must Bend Its Knee Before Right". *Social Theory and Practice*, 34(2), pp.157-181.
- Formosa. P. (2014) *Politics and Teleology in Kant*. Eds. Paul Formosa, Avery Goldman, and Tatiana Patrone, University of Wales Press.
- Franceschet, A., (2010). Kant, International Law, and the Problem of Humanitarian Intervention. *Journal of International Political Theory*, 6(1), pp.1-22.
- Friedrich, C. (1947). The Ideology of the United Nations Charter and the Philosophy of Peace of Immanuel Kant 1795-1945. *The Journal of Politics*, 9(1), pp.10-30.
- Fukuyama, F. (2018). *Identity*. 1st ed. [S.l.]: Profile Books LTD.
- Geismann, G., (1996). Kant On Eternal Peace. *Politisches Denken Jahrbuch 1995/96*, pp.165-177.
- Goldsmith and Krasner. (2003). The Limits of Idealism. *Daedalus* 132, no.1. pp. 58.
- Gregor, M. (1963). *Laws of Freedom*. Oxford: Blackwell.
- Gregor, M., (1988). Kant's Theory of Property. *The Review of Metaphysics*, 41(4), pp.757-787.
- Guyer, P., (2000). *Kant on freedom, Law, and Happiness*. Cambridge: Cambridge University Press.
- Guyer, P., (2016). Kant's Politics of Freedom. *Ratio Juris*, 29(3), pp.427-432.
- Habermas, J. (1997). Kant's Idea of Perpetual Peace, with the Benefit of Two Hundred Years'
- Hoffe O (2006) *Kant's Cosmopolitan Theory of Law and Peace*. Cambridge: Cambridge University Press.
- Holland, B., (2016). The Perpetual Peace Puzzle. *Philosophy & Social Criticism*, 43(6), pp.599-620.

- Huber, J. (2016). Theorising from the Global Standpoint: Kant and Grotius on Original Common Possession of the Earth. *European Journal of Philosophy*, 25(2), pp.231-249.
- Human Rights Watch. (2019). *Saudi Arabia: Rights Abuses Under Scrutiny*. [online] Available at: https://www.hrw.org/news/2018/11/15/saudi-arabia-rights-abuses-under-scrutiny [Accessed 17 Feb. 2019].
- Hurrell, A.,(1990). Kant and the Kantian Paradigm in International Relations. *Review of International Studies*, 16(3), pp.183-205.
- Ion, D. (2012). *Kant and International Relations Theory*. Taylor and Francis.
- Kant, I., Gregor, M., Timmermann, J. and Korsgaard, C., (2012). *Groundwork of the Metaphysics of Morals*. Cambridge: Cambridge University Press.
- Kant, I., Gregor, M. and Sullivan, R. (2009). *The Metaphysics of Morals*. New York: Cambridge University Press.
- Kant, I. Guyer, P., (2010). *Notes and Fragments*. Cambridge: Cambridge University Press.
- Kant, I., Guyer, P. Wood, A., (2009). *The Critique of Pure Reason*. Cambridge: Cambridge University Press.
- Kant, I., Gregor, M. and Wood, A. (1996). *Practical Philosophy* (*Toward Perpetual Peace*). Cambridge: Cambridge University Press, pp.311-352.
- Kant, I. Heath, P., 2008. *Lectures on Ethics*. Cambridge: Cambridge Univ. Press.
- Kant, I., Rauscher, F. Westphal, K., (2016). *Kant*. Cambridge: Cambridge University Press.
- Kant, I., Walford, D. Meerbote, R., (2009). *Theoretical philosophy, 1755-1770*. Cambridge: Cambridge University Press.
- Kant, I. Wood, A., (2006). *Religion and Rational Theology*. Cambridge: Cambridge Univ. Press.
- Kant, I., Zöller, G. Louden, R., (2007). *Anthropology, History, and Education*. Cambridge, UK: Cambridge University Press.
- Kleingeld, Pauline (1998) 'Kant's Cosmopolitan Law: World Citizenship for a Global Order'. Kantian Review, 2, 72–90.
- Kleingeld, P. (2004). Approaching Perpetual Peace: Kant's Defence of a League of States and his Ideal of a World Federation. *European Journal of Philosophy*, 12(3), pp.304-325.
- Kleingeld, P. (2012). *Kant and Cosmopolitanism*. Cambridge: Cambridge University Press.

- Knowles, A., (2017). Hospitality's Downfall: Kant, Cosmopolitanism, and Refugees. *The Journal of Speculative Philosophy*, 31(3), p.347.
- Korsgaard, C., (2004). *Creating the Kingdom of Ends*. Cambridge: Cambridge University Press.
- La Caze, M. (2007). At the Intersection: Kant, Derrida, and the Relation between Ethics and Politics. *Political Theory*, 35(6), pp.781-805.
- Laurence, B., 2018. Kant on Strict Right. *Philosophers' Imprint*, 18(4), pp.1-22.
- Locke, J. (1690/1998) Two Treatises of Government, ed. Laslett P, 3rd edn. Cambridge University Press, Cambridge
- Malliks, R. (2014). 'Kantian courts: On the legitimacy of International Human Rights Courts.' In Kantian Theory and Human Rights, eds. Andreas Follesdal and Reidar Maliks.
- Mertens, Thomas (2007) 'Kant's Cosmopolitan Values and Supreme Emergencies'. Journal of Social Philosophy, 38, 222–41.
- Moran, K., (2012). *Community and progress in Kant's moral philosophy*. Washington, D.C.: Catholic University of America Press.
- Mulholland, L. (1987). Kant on War and International Justice. *Kant-Studien*, 78(1-4).
- Murray, D. (2017). *The Strange Death of Europe*. Bloomsbury Continuum.
- Ohchr.org. (2019). *OHCHR | Protocol against the Smuggling of Migrants*. [online] Available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/TransnationalOrganizedCrime.aspx> [Accessed 29 May 2019].
- O'Neill, O., (2000). *Bounds of Justice*. New York: Cambridge University Press.
- O'Neill, O. (2013). Kantian Approaches to Some Famine Problems. In: R. Shafer-Landau, ed., *Ethical theory: an anthology*, 2nd ed. Chinchester: Wiley, pp.553-564.
- Orend, B. (1999). Kant's Just War Theory. *Journal of the History of Philosophy*, 37(2), pp.323-353.
- Peters, C., (1993). *Kant's Philosophy of Hope*. New York: P. Lang.
- Pettit, P., (1997). *Republicanism*. Oxford: Clarendon Press.
- Pogge, T., (1988). Kant's Theory of Justice. *Kant-Studien*, 79(1-4).
- Potter, N. (1994). "Kant on Obligation and Motivation in Law and Ethics." *Jahrbuch Für Recht Und Ethik / Annual Review of Law and Ethics* 2: 95-111
- Pufendorf, S.,Rachelii, S., (2013). *De jure naturae et gentium dissertationes*. Washington: Gale, Making Of Modern La.

- Rainbolt, G. (2000). Perfect and Imperfect Obligations. *Philosophical Studies: An International Journal for Philosophy in the Analytic Tradition*, 98(3), pp.233-256.
- Rauscher, Frederick, "Kant's Social and Political Philosophy", *The Stanford Encyclopedia of Philosophy* (Spring 2017 Edition), Edward N. Zalta (ed.), URL = <https://plato.stanford.edu/archives/spr2017/entries/kant-social-political/>.
- Refugees, U., (2021). *Convention and Protocol Relating to the Status of Refugees*. [online] UNHCR. Available at: <http://www.unhcr.org/en-au/3b66c2aa10> [Accessed 7 November 2017].
- Ripstein, A. (2010). *Force and Freedom*. Cambridge: Harvard University Press.
- Roff, H. (2013) Global Justice, Kant and the Responsibility to Protect: A Provisional Duty. London: Routledge.
- Rohlf, Michael, "Immanuel Kant", *The Stanford Encyclopedia of Philosophy* (Summer 2018 Edition), Edward N. Zalta (ed.), URL = <https://plato.stanford.edu/archives/sum2018/entries/kant/>.
- Röseler, R., (1948). Principles of Kant's Educational Theory. *Monatshefte*, 40(5), pp.279-289.
- SBS News. 2020. *'We Must Do Better': Government Plans Overhaul Of English Language Courses For Refugees*. [online] Available at: <https://www.sbs.com.au/news/we-must-do-better-government-plans-overhaul-of-english-language-courses-for-refugees> [Accessed 7 May 2020].
- Scruton, R. (2005) 'National Interest and International Law'. In Thomas Cushman (ed.), A Matter of Principle: Humanitarian Arguments for War in Iraq (Berkeley, CA: University of California Press, 2005), pp. 95–105.
- Sensen, O., (2013). *Kant on Moral Autonomy*. Cambridge [England]: Cambridge University Press.
- Tan, KC. (2006). The Duty to Protect. In Terry Nardin and Melissa S. Williams (eds), Humanitarian Intervention (New York: New York University Press, 2006), pp. 84–116.
- Tesón, F. (2005). *Humanitarian Intervention*. Ardsley: Transnational.
- the Guardian. (2021). *EU countries agree plan to handle migrants and refugees*. [online] Available at: <https://www.theguardian.com/world/2019/jul/23/eu-countries-agree-plan-to-handle-migrants-and-refugees> [Accessed 28 February 2021].
- Van Der Linden, H. (1995). *Kant, the Duty to Promote International Peace, and Political Intervention*. In Robinson, *proceedings*, vol.2/1, pp. 71-9.
- Van Hooft, S., (2009). *Cosmopolitanism*. Hoboken: Taylor and Francis.

- Varden, H. (2011). Duties, Perfect and Imperfect. *Encyclopedia of Global Justice*, pp.280-281.
- Walzer, M. (1980). The Moral Standing of States. *Philosophy and Public Affairs*, 9. 211.
- Walzer, M. (2000). *Just and Unjust Wars: A Moral Argument with Historical illustrations*, 3rd ed. (New York: Basic Books).
- Williams, H. (1983). *Kant's Political Philosophy.* New York: St Martin's Press.
- Williams, H. (1993). *Kant's Political Philosophy.* (Oxford, Basil Blackwell).
- Williams, H. (2012). *Kant and the End of War*. Basingstoke: Palgrave Macmillan.
- Wood, A., (1999). *Kant's Ethical Thought*. New York: Cambridge University Press.
- Wood, A. (2008). *Kantian Ethics*. Cambridge [etc.]: Cambridge University Press.
- Wood, A. (2014). The Moral Politician. *The Free Development of Each*, pp.90-118.