

Kant and Rawls on Rights and International Relations

by

Faseeha Sheriff

Thesis submitted to the School of Graduate Studies

in partial fulfillment of the requirements for the degree of

Masters of Arts

Department of Philosophy

Memorial University of Newfoundland

May, 2014

St. John's

Newfoundland

Kant and Rawls on Rights and International Relations

ABSTRACT

The Kantian doctrine of rights is a conception of equality of human beings which in a sense is pre-moral, and expressed in the concept of a person. For Kant, “Recht” is that free action whose maxim can coexist with the freedom of everyone according to a universal law. A distinguishing feature of the Kantian doctrine of rights is that rights are correlative to coercible duties. To determine if it is possible for Kant’s ethical position to provide an adequate theory of right, a thorough critical examination of his position and its consequences will be engaged. This will involve showing how Kant derives each part of his theory from the former in order to put forth a coherent doctrine of rights that can be extended to international realms. The thesis is laid out as follows. The first two chapters present the development of the Kantian system of rights. Subsequently, chapter three discusses the Kantian principles of justice being put into practice, and shows his derivation of the right of nations. The latter part of chapter three discusses the Kantian account of justice beyond borders, to regulate relations between societies both domestically and internationally. Lastly, chapter four presents the Rawlsian system of rights, and of develops a framework for international relations while highlighting its pitfalls. An attempt is made to show that Kant’s notion of right is defensible as it offers a greater degree of moral authority and political potency as a framework for international relations grounded in the unrestricted workings of practical reason and is superior to Rawls’ attempt to construct such a framework as it relies on abstract hypothetical conditions. Within the Kantian system, it is the workings of practical reason that allows rational persons to recognize the need to resurrect

institutions that protect equality and autonomy universally. When reason is not fully subjected to public, it runs the risk of forwarding improper ideas that may ultimately undermine the freedom of others. However, within the Rawlsian system, subjects of justice are merely capable of acting autonomously, rather than acting autonomously for the sake of justice in itself.

ACKNOWLEDGEMENTS

I am indebted to Professor Peter Trnka, my supervisor, for his assistance and support in preparation of this thesis. I am also grateful for the support of other Faculty members, family and friends.

TABLE OF CONTENTS

ABSTRACT	I
PREFACE	IV
INTRODUCTION	1
1. KANTIAN RIGHTS THEORY	
A. Giving Laws to Ourselves	7
B. The Role of Agreement	10
C. The Innate Right of Humanity	12
2. DEVELOPMENT OF THE KANTIAN THEORY	
A. The Universal Principle of Rights	17
B. Rights and ‘The Idea of Representational Constitutional Government’	20
C. The State and Constitutional Rights	23
3. KANTIAN THEORY AND PRACTICE	
A. Kant and the Right of Nations	28
B. Kant, Reason and Justice Beyond Borders	32
4. RAWLSIAN THEORY OF JUSTICE	
A. A Reconstruction of Theory of Justice	37
B. Rawlsian Theory in Practice-Principle of Toleration	44
C. The Scope of Justice for Rawls beyond Borders	45
CONCLUSION	53
BIBLIOGRAPHY	57

PREFACE

Many writers have relied upon a Kantian basis for their system of rights. Kant provides an intellectual bedrock upon which the notion of rights and justice can be understood. The main subject of this thesis is what Kant calls “Recht”, and how it is related to the concept of rights and natural law. Within this thesis, an attempt has been made to outline the central themes within the Kantian system of rights. Kant determines the set of rights a person has by means of the criterion for right actions (categorical imperative). The categorical imperative determines the rightness of acts by whether you could let everyone do the same. The first formulation of the categorical imperative states “Act only according to that maxim whereby you can at the same time will that it should become a universal law” (Metaphysics of Morals, 230). That is, each individual agent regards itself as determining, by its decision to act in a certain way that everyone will always act according to the same general rule in the future. The second formulation of the categorical imperative states, “Act in such a way that you treat humanity, whether in your own person or in any other person, always at the same time as an end, never merely as a means” (Metaphysics of Morals, 230). Finally, the third formulation of the categorical imperative combines the first two formulations and is as follows, “All maxims as proceeding from our own [hypothetical] making of law ought to harmonise with a possible kingdom of ends” (Metaphysics of Morals, 230). Thus, this formulation states that morality consists of doing one’s duty to treat people, including yourself, as an end, never only as a means to an end. To treat other people as an end is to respect people as rational moral agents who also have their own goals, projects and other life pursuits; to recognize their humanity.

Through the course of this discussion, only, the first formulation of the categorical imperative will be consistently employed. Kant maintained that this expression of moral law provides a concrete, practical method for evaluating human actions of distinct varieties.

Following this, I go onto examine how Kant derives each part within his system of rights from the former, and how the Kantian system is mutually consistent within the various parts of the system. The various fundamental blocks of the Kantian system are critically examined: The Concept of Agreement, The Concept of an End, The Innate Right of Humanity, The Universal Principle of Rights and The Idea of Giving Laws to Ourselves. Lastly, the Kantian framework for international relations is presented alongside an account of John Rawls' theory of justice and his framework for international relations.

For the purposes of this thesis, I have relied on various translations that best capture all of Kant's political writings relevant to flush out his notion of right and his framework for international relations. The aim of this thesis is to draw readers' attention to the continued relevance of Kant's notion of right as a framework for international relations is defensible as it offers a greater degree of moral authority as a framework for international relations grounded in the unrestricted workings of practical reason and is superior to Rawls' attempt to construct such a framework on abstract hypothetical conditions.

In spite of similar objectives, Rawls' duty of assistance based on the value of toleration fails to do justice to any core liberal values, and simply comes off as an account lacking moral authority. Whereas Kantian cosmopolitan distributive theory serves as a morally rich account, as

Kant grounds political duties within the unrestricted workings of practical reason. Kantian account possesses moral authority as it grounds political duties within the unrestricted workings of practical reason. It is due to practical reason; rational persons recognize the need to resurrect institutions that protect equality and autonomy universally. When reason is not fully subjected to public, it can forward improper ideas that may undermine the freedom of others. In the absence of such a universal principle of right, there are no constraints imposed upon the external freedom of finite rational creatures situated in inescapable proximity to others. Ultimately, it is practical reason that enables persons to recognize the need to resurrect institutions that protect equality and autonomy universally. Only by means of practical reason it would follow that all individuals would have the means to attain their respective ends to realize their freedoms.

INTRODUCTION

Kant's treatment of rights produces a non-teleological constitutive structure within which it is possible for claims of rights to be possible. According to Kant, we can compare the kind of interpersonal relations involved in claims about rights to moral rules only if these rules are formal and function as part of an a priori structure. In the state of nature, human beings must already be related to one another through interpersonal laws. There must be a legal context which contains a priori rules to properly understand and resolve conflicts concerning rights when they arise.

So what does Kant mean by the term, "Recht"? And how does this relate to the concept of rights and natural law? Kant draws some important distinctions. At least three senses of the term are at play in *The Metaphysics of Morals*, between "Recht," "das Recht," and "ein Recht". Kant writes in "The Doctrine of Right"

"Recht" (iustum) is that free action whose maxim can coexist with the freedom of everyone according to a universal law.—"Das Recht" (scientia) is the system of law according to which what is "Recht" or "Unrecht" is determined. "Ein Recht" (of which someone can have several) is a capacity of the will to bind others rightfully." (Kant, *The Metaphysics of Morals*, 262)

The term "Recht" for Kant takes on two characterizations. On one hand, "it refers to actions that a person may perform because they can coexist with the freedom of others according to a universal law" (Kant, *The Metaphysics of Morals*, 262). But, "Recht" also refers to rights to specific objects (property and contractual obligations). In this sense, "Recht" means the capacity to obligate another with regard to some object of one's will. By means of these two characterizations, Kant is drawing a distinction between innate and acquired rights. Lastly, "Recht" also refers to the systematic totality of laws used to determine the previous characterizations.

The central feature found within the concept of a right is the capacity to obligate others. This essentially means that all rights are correlative to duties which persons can be compelled to perform. Within, *The Metaphysics of Morals*, Kant speaks to the association of “Recht” with the obligation and title to coerce:

“The possessor of [a moral right] is conceived as having a moral justification for limiting the freedom of another...simply because in the circumstances a certain distribution of human freedom will be maintained if he by his choice is allowed to determine how that other shall act” (Kant, *The Metaphysics of Morals*, 237).

For instance, in the case of murder, everyone has a claim-right that no one can be murdered. Murder is considered as not only a crime against a particular individual but against the whole community. Kant regards rights as including the title to coerce, which means that when a person exercises a power to obligate another, he may also through rightful means use force to ensure fulfillment of the obligation (Kant, *The Metaphysics of Morals*, 232). The very title to coerce allows individuals to control an area of life (freedom) such that he is able to live as an individual responsible only to himself. And further, due to the title to coerce, one person need not depend on the arbitrary will (conscience of another) for the performance of a duty.

A fundamental feature of right for Kant, as shown above, is that rights are correlative to coercible duties. Kant’s conception of right refers to a corresponding obligation. Thus, the bearer of the right can rightfully (through relevant legal means) compel performance of the correlative duty. In the “Doctrine of Rights,” Kant writes:

“We know our freedom ...from which all moral laws and therefore, also, all rights as well as duties proceed ...only through the moral imperative which is a proposition commanding duties” (Kant, *The Metaphysics of Morals*, 231)

Kant maintains that a person has a right to something if, and only if, someone else has a corresponding moral duty, which would be right for others to compel him to perform. In order to

determine which rights a person has, it is necessary to determine such duties. Kant establishes what rights persons have by the criterion for right actions (categorical imperative). The categorical imperative determines the rightness of acts by whether you could let everyone do the same. The categorical imperative states, "Act only according to that maxim whereby you can at the same time will that it should become a universal law" (Kant, *The Metaphysics of Morals*, 230). The other formulations of the categorical imperative include, "Act in such a way that you treat humanity, whether in your own person or in any other person, always at the same time as an end, never merely as a means" and "All maxims as proceeding from our own [hypothetical] making of law ought to harmonise with a possible kingdom of ends" (Kant, *The Metaphysics of Morals*, 230). Each individual agent regards itself as determining, by its decision to act in a certain way that everyone will always act according to the same general rule in the future. Kant maintained that this expression of moral law provides a concrete, practical method for evaluating human actions of distinct varieties. Using the criterion of rightness of actions, we determine those wrong actions which it would be right to coerce others to refrain from engaging. From this, we further deduce those duties to which rights correspond. In order to determine duties corresponding to rights, Kant provides a test which may also be used to rights. The test goes as follows: "A person has a right to something if and only if, his having it or doing it is a condition under which the will of one person can be united together with the will of another in accordance with a universal law of freedom" (Kant, *The Metaphysics of Morals*, 230). Kant's aim is not only to provide an analysis of what a theory of right ought to look like, but also provide an account of why it is morally right for persons to relate to one another through rights. The categorical imperative allows persons to determine the rightness of actions, allowing the realization of the

notion of rights for all persons. For the purposes of this thesis, the first formulation of the categorical imperative will be consistently applied throughout the discussion.

Within the present thesis, I attempt to determine if the Kantian ethical position provides an adequate theory of rights. For a theory of rights to be considered adequate, it needs to establish a core set of individual rights (movement, speech, pursuit of happiness). It must also permit discussion on the matters of distributive justice (how benefits are to be rightfully distributed within the limits set by personal rights) and lastly, shows how political organization and political obligation are justified. To do this, I will show why there must be rights at all, and present the analytic structure and consequences of this position. Then, I will show how Kant develops his system of rights on the foundation of a person, where the person takes on dual roles: one, as person in relation to others, and, two, as giver of law for the collective whole. Subsequently, I will discuss how Kant develops his system of innate, constitutional and international rights. I believe that the Kantian treatment of rights is capable of providing a foundation for a theory of personal rights, property, political obligation, and the rights of nations. Finally, I will present an attempt by a contemporary thinker; John Rawls to develop his system of rights in relation to questions of international justice and on this basis compare Kant and Rawls. In doing so, I will show that the Kantian notion of right is defensible as a framework for international relations as it is grounded in the unrestricted workings of practical reason and is superior to Rawls' attempt to construct such a framework. With the Rawlsian system, the subjects of justice are merely capable of acting autonomously, rather than being compelled by practical reason to resurrect institutions that realize the freedom of all persons universally, and therefore, lacks moral authority and political potency as the Kantian system.

More specifically, the thesis is laid out as follows: Chapter One outlines the fundamental building blocks of the Kantian system of rights. To this end, Chapter One addresses the notion of a rightful condition, the role of agreement, the innate right of humanity and lastly, the concept of ends. Chapter Two addresses the relation between happiness, freedom and rights. And it further develops the Kantian system of rights by addressing the idea of representational constitutional government and the idea of a social contract, and its importance within the whole system. Chapter Three discusses how Kant derives his notion of rights of nations on the basis of rightful conditions that are universalizable. The second part of Chapter Three presents Kant's derivation for his account of justice beyond borders from the law of practical reason. Chapter Four examines how the Rawlsian theory of justice is put into practice within international contexts. Within this chapter, the principle of toleration and duty of assistance is addressed, as these form the fundamental part of the Rawlsian framework for international relations. These four chapters together form the important stages in the progression of the argument that Kant's notion of right is defensible as a framework for international relations. The Kantian account possesses a greater degree of moral authority, since it is grounded within the unrestricted workings of practical reason when compared to Rawls' attempt to construct such a framework (with which it seems to have an affinity). Within the Rawlsian framework, the subject of justice as a "public system of rule defining a scheme of activities that lead men to act together so as to produce a greater sum of benefits and assigns to each certain recognized claims to a share in the proceeds" (Rawls, 74). Rawls strives to emulate Kantian form of moral constructivism that dictates moral propositions are right or justified when they are the product of an appropriately designed decision procedure. However, Rawls' account is distinguished from Kant by the central role that such a theory assigns to decision procedure that constitutes procedural interpretation of Kant's ideas regarding

moral reasoning and autonomy. Rawls' argues that the role assigned to such a procedure is reflective of Kant's view that the substance of morality is not fixed by any independent existing order or values. But, rather the substance is best understood as constructed by free and equal people under fair conditions. This is in contrast to Kant, where the subject of justice comprises of agents as persons who reason about action and autonomy. This begs many questions about if Rawls can rightfully presuppose that people are capable of acting autonomously. Or, if they are just acting for the sake of autonomy, can this take the form of a universal maxim adoptable by all, or is it merely driven by personal inclinations? It is important to distinguish Kantian constructivism from the substantive accounts of justice that Rawls develops in *A Theory of Justice and Political Liberalism*, although Rawls's constructivism works from many of the same assumptions that ground his substantive political theory, Kantian constructivism provides an account of the structure of moral reasoning that is independent of both justice as fairness and political liberalism. Rather than providing or supplementing an account of a substantive moral or political conception, Kantian constructivism develops an approach to assessing the reasonableness of moral judgements. This approach can be employed to even evaluate substantive moral conceptions. Therefore, the Kantian approach possesses greater moral authority and political potency to truly be binding universally, and realize the freedoms of all persons.

1. KANT'S THEORY OF RIGHTS

A. Giving Laws to Ourselves

People leave the state of nature and proceed with others into what Kant calls the rightful condition simply by being subject to laws. Kant proposed that the state is formed to protect freedom. Kant argued that in a pre-state society, any sufficiently strong person can coerce others into doing whatever the coercer wants. There is no true right to property or freedom or anything else, because there is no one who can protect them. Surely, a person can do exactly as he wants to do, but no one could legitimately defend him against those who oppress him. His rights, therefore, do not exist. The state, however, can enforce a monopoly on coercion, and legitimately protect the oppressed against the oppressors. Thus, Kant argued, the good of society is to preserve freedom.

Within ‘The Theory of Right’, Kant introduces the idea of a Public Right. Kant defines Public Right as

“the sum total of those laws which require to be made universally public in order to produce a state of right. It is therefore a system of laws for a people, i.e. an aggregate of human beings, or for an aggregate of peoples. Since these individuals or peoples must influence one another, they need to live in a state of right under a unifying will: that is, they require a constitution in order to enjoy their rights” (Kant, ‘The Doctrine of Right’, 255).

For Kant, the condition in which individual members are related to each other in this way is said to be a civil one. The state comes to be when such a union is created by the common interest of everyone living in a state of right. In essence, Kant conceives of a state as a union of an aggregate of individuals under rightful laws. This brings to life the “idea of the original contract”.

The Kantian formulation of the “idea of the original contract: the act by which people forms itself into a state is the original contract. Properly speaking, the original contract is only the idea of this act, in terms of which alone we can think of the legitimacy of the state. In accordance with the original contract, everyone (*omnes et singuli*) within a people gives up his external freedom in order to take it up immediately as a member of the commonwealth, that is, of the people considered as a state (*universi*). And one cannot say: the human being in a state has

sacrificed a part of his innate outer freedom for the sake of an end, but rather, he has relinquished entirely his wild, lawless freedom in order to find his freedom as such undiminished, in a dependence upon laws, that is, in a rightful condition, since this dependence arises from his own lawgiving will” (Kant, *Ibid*, 199).

The rightful condition for Kant is one where people as a collective body unite to rule themselves. Kant discusses the concept of legislative power that arises with the united will of people within *The Metaphysics of Morals* as follows:

“The legislative power can belong only to the united will of the people. For since all right is supposed to emanate from this power, the laws it gives must be absolutely incapable of doing anyone an injustice. Now if someone makes dispositions for another person, it is always possible that he may thereby do him an injustice, although this is never possible in the case of decisions he makes for himself. Thus only the unanimous and combined will of everyone whereby each decides the same for all and all decide the same for each—in other words, the general united will of the people—can legislate” (Kant, *The Metaphysics of Morals*, 238).

The united will of the people justifies the legislative power as the laws that arise from this power have been agreed upon by all people. The Kantian concept of an ideal case is one where people collectively unite to rule themselves. However, in reality no actual state can hope to be fully congruent with this idea because it is both abstract and normative. It would be difficult to find empirical instances. Kant treats the ideal case as a normative concept that is entirely a priori (knowledge or justification is independent of experience). This means that if a normative requirement fails to apply to what actually happens shows that something has gone wrong in the world. If we take the concept of virtue, the fact that no human being has managed to meet all the requirements of virtue may be grounds for disappointment, not for revising the concept of virtue. The ideal case is regulative. Similarly, Kant attributes to principles of right the same priority over actual conduct as other normative concepts. The fact that people often violate the rights of others does not mean that the concept of rights is in need of revision. The ideal case serves as a standard because it consistently organizes the use of power to guarantee everyone’s

freedom under law. In keeping with this, institutions and their officials have a duty of right to act in conformity with every human being's right to freedom.

When members of such a society unite to form a state for the purpose of legislating they are known as citizens. These citizens are entitled to three rightful attributes in *The Metaphysics of Morals*; Kant presents them as follows:

“firstly, lawful freedom to obey no law other than that to which he has given consent; secondly, civil inequality in recognising no-one among the people as superior to himself, unless it be someone whom he is just as morally entitled to bind by law as the other is to bind to him; and thirdly, the attribute of civil independence which allows him to owe his existence and sustenance not to the arbitrary will of anyone else among the people, but purely to his own rights and powers as a member of the commonwealth” (Kant, *Ibid*, 240).

Within the newly formed state, no citizen is obligated to follow any law other than that to which he has freely consented. Further, no man is superior to another such that he possesses the power to coerce arbitrarily another to bind to his will. Every man as a member of the commonwealth is entitled to his own civil independence, and his existence is not due to the arbitrary will of another.

However, if such a state makes laws inconsistent with the idea of original contract it is defective because it creates a condition that is not rightful. There are two ways that laws can be defective from the standpoint of the idea of original contract. First, particular laws can be inconsistent with each person's innate right to independence. Second, the form in which laws are given can be defective. A system may have excellent laws but if it is not self-imposed, then it would still be defective. In the face of these possible defects, the state has a duty to improve itself. The first problem generates a duty to improve itself. And the second problem generates a duty on the part of the state to improve its form of lawgiving. Both these duties are internal duties of the state. The state can only improve its laws by means that are consistent with the

universal principle of right. The state may not make laws that people could not impose on itself. Essentially, when one person makes an arrangement for another, the first cannot be entitled to make an arrangement to which the other would not consent.

B. The Role of Agreement

Kant introduces the idea of agreement as it is necessary to explain how political authority can be consistent with the rights of those subject to it. Kant conceives of people as the authors of the laws that bind them, which acts as both a basis to, and limits, state power. The principle that no person can be subject to another person's choice allows each person to be his or her master, that is, to have no other master. By means of this, each person's right generates a basic constraint on the way in which the state may act. The application of rights is unconditional because rights are not tools for securing a certain result. Kant is not attempting to constrain the conduct of others such that it advances certain interests. This sort of application of rights would be considered conditional as it attempts to bring about a certain desired result. But rights are not conditional as "they have their root in the innate right of humanity: freedom of expression, and the presumption of innocence, as well as the more general right not to be subjected to the private purposes of another" (Ripstein, 218). It is the systematic realization of those rights that provides the only morally justifiable basis for the state to make, enforce or apply law.

Consider the following example: "The German Constitutional Court addressed the question whether the constitution could authorize the minister of the interior to order a hijacked plane to be shot down if it was in danger of being used as a missile against a populated area" (Ripstein, 221). The court held that such a law would conflict with the right of passengers on the plane to human dignity. The passengers cannot be used to save other people in the building.

Although the court considered the possibility that the people in the plane would consent to being killed in such a circumstance (given that their death was certain), the court decided that the state was not entitled to make such a decision. The mere fact that it would have been sensible for them to consent does not mean they would have consented. Their right to human dignity means that citizens cannot be compelled to go along with the Ministry of the Interior. The state is not allowed to use its citizens in such a manner to prevent a crime from happening. The German Constitutional Court's reasoning sits well with the Kantian thought that the state's obligation to uphold the rightful condition and protect its citizens is unconditional (Ripstein, 222). People can only submit themselves to laws consistent with their innate right of humanity. As a consequence of this, the numbers cannot matter. For instance, if a state cannot order a person to stand in the path of a bullet that endangers an innocent person, it also cannot order a person to stand in a path of a bullet that endangers many people.

C. The Innate Right of Humanity

Kant identifies the innate right of humanity as the right to be your own master. In addition to this, it further implies the right that no other person can be your master. Kant makes the innate right of humanity his basis for any further rights. All other rights that each person has against others are derived from this right. The same right also limits the state's interference exclusively to public purposes (i.e. to preserve a system of equal freedom). This essentially means that the state's power may not be used to subject one private person to the choice of another. All of this requires a system of equal freedom under law to be set in place. The various dimensions of the Kantian conception of self-mastery within a system of equal freedom in accord with universal law will be explored below.

For Kant, the system of equal freedom is not a matter of people having equal amounts of some benefit but rather of the respective independence of persons from each other. Within a system of equal freedom, each person is free to use his or her powers to set his or her purposes, and no one is allowed to compel others to use their powers to advance or accommodate any other person's purposes. At the

“level of innate right, your right to freedom protects your purposiveness--your capacity to choose the ends you will use your means to pursue--against the choices of others, but not against your own poor choices of the inadequacy of your means to your aspirations. You remain independent if nobody else gets to tell you what purposes to pursue with your means; each of us is independent if neither of us gets to tell the other what purposes to pursue” (Ripstein, 34).

For Kant, the right to independence finds its basis in the distinctive aspect of your status as a person in relation to other persons. You are entitled to set your own rational purposes and cannot be required to act as an instrument for anyone else's purposes. You are a sovereign not because you get to decide about the things that matter to you but because nobody gets to tell you what purposes to pursue. This holds true even if your choices fail to align with your aspirations. (Kant, 'The Doctrine of Right', 256). This Kantian notion of the right to independence is always an entitlement within a system of reciprocal limits of freedom so as Kant states, “The protection of independence and the prohibition of one person deciding what purposes another will pursue stand in a relation of equivalence, rather than one of a means to an end. As a result, the constraint the system of equal freedom places on conduct is unconditional” (Kant, *Ibid*, 256). This principle of mutual restriction applies unconditionally under law as it is not a means of achieving some other end.

The quality of being your own master has its starting point in your right to your own person. This Kant considers as innate; it does not need any affirmative act to establish it. Kant says the following in relation to the only innate right:

“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 being by virtue of his humanity” (Kant, *The Metaphysics of Morals*, 238).

The universal principle of right demands that each person exercise his or her choices in ways that are consistent with the freedom of all others exercising their choices, by means of their innate right to freedom only restricted by universal law. To determine whether a maxim can be willed to become a universal law for the relation of one person’s freedom, to another, it is necessary and sufficient to determine whether, first, if “everyone can perform the action contained in the maxim, and, second, if a person can consistently will the action and will that everyone else performs a similar action, and influence him in the same way that he influences others by that action” (Kant, *Ibid*, 262). However, if the performance of action cannot coexist with everyone’s freedom according to a universal law, there is a duty not to perform it. A common example to elucidate a person being used as a mere thing is the slave example. The slave’s problem is that he is subject to his master’s choice. Only the master gets to decide what to do with the slave. Here, the slave lacks the freedom to set his/her own ends and is merely a means for ends set by someone else. In this scenario, the slave’s right to equal freedom, that is, the right of no person to be, the master of another, is negated. When the criterion to determine sufficiency is applied, it is clear that such action cannot coexist with everyone’s freedom according to universal law, thus, there is a duty to omit any such action.

The idea of being your own master has an equivalence relation to the idea of equality. It is important to note though that the Kantian idea of equality does not require that people be treated the same way in respect to welfare or resources, only that no person is the master of another (Kant, *The Metaphysics of Morals*, 237). The right to be your own master generates an “internal duty of rightful honor which consists in asserting one’s worth as a human being in relation to others, a duty expressed by saying do not make yourself into a mere means for others but be at the same time an end for them” (Kant, *Ibid*, 237). The duty of rightful honor is relational in nature as there are limits on the exercise of a person’s freedom that are imposed by the universal principle of right. The right to be your own master also generates what Kant calls an internal duty of rightful honor. Though you are free to enter into binding arrangements (as every person is entitled to set their own purposes), when these arrangements are inconsistent with the humanity of your own person, your duty of rightful honor says no such arrangements can be binding. This also means that no person can enforce a claim of right against you that presupposes that you acted contrary to rightful honor. From the standpoint of a private right, rightful honor prevents persons from entering into arrangements that are inconsistent with humanity in their own person. Taken from the standpoint of public right, rightful honor prevents officials from making arrangements on your behalf. Further, rightful honor provides the link between private right and public right and, in turn, imposes a duty to leave the state of nature, where everyone is subject to the choice of others. By private right, Kant is referring to property rights, and rights in relation to others based on contract and status. For Kant, the innate right to freedom over your own body must be extended to things outside you. This requires a postulate that a free person may take control of an external object in rightful pursuit of an end. The right to a piece of property is basically the right to use it as a means (Kant, *Ibid*, 237). Ownership has a

“mine or yours” structure, where mine necessarily excludes others from the use of that thing. For Kant, the "mine or yours" structure of the right to things requires a public or omnilateral authorization that cannot be found in a state of nature but becomes possible only in a condition of right or law-governed civil society, involving an authority empowered to act in the name of all. Essentially, a public right refers to those conditions in which public institutions guarantee rights to all (Kant, *Ibid*, 237).

The Kantian account does not aspire to isolate people from the effects of other people’s choices. Such an independence from all effects of the actions of others violates Kant’s basic idea of equal freedom. For instance, you do me no wrong, if you offer a product similar to mine at a better price, even if that means I lose customers. I still remain independent to do as I see fit. All that a system of equal freedom requires is that no one uses his own person in way that will deprive another of his/hers own personhood. As Kant states concerning ends: “Since no one can have an end without himself making the object of his will his end, then having any end is an act of freedom by the agent, not an effect of nature” (*Ibid* 237). For Kant, a person has an end in a very different way from which a thing has an end. A thing has an end such that some function is set for it to which it is made to serve as a means. In the case of a person, a person has an end only when he/she sets the end. An end is a person’s end when through a conscious act of free choice the person adopts an object as an end. Given that a particular end is a person’s end only if it is adopted through free will, it is analytically impossible for anyone to compel another to have an end. I can be compelled by another to actions which are means to an end, but never to have an end. An end is a person’s own end if and only if it is chosen by free will. Since it is analytically impossible to compel another to adopt an end, then it is also analytically impossible to compel

another to perform a duty to adopt an end. Hence, the act that a duty requires can only be freely performed.

1. THE DEVELOPMENT OF KANT'S THEORY

A. The Universal Principle of Rights

The ultimate aim of the Kantian system is to create a political system where each person can attain their own happiness in their own way. To ensure the existence of such a state of affairs, we must ensure that legal arrangements are in place to best ensure the freedom of all individuals. Within the Kantian political system, to ensure that rights of all individuals are recognized and realized, individuals must submit to laws.

Kant characterizes rights as conditions under which the will of one person can be united with the will of the others in accordance with a universal law of freedom. This principle in no way makes any reference to teleological considerations in the determination of rights. In other words, this is a formal principle. Kant discerns the principle of rights by an analysis of the concept of obligation. In all relations of rights, there are at least two persons involved: the person with the duty and the person with the power to determine that the first be coerced to perform the duty. Both these functions can only be performed by beings to whom actions can be imputed. In this relation, duties and titles are determined by universal laws. Essentially, for Kant, the concept of right is an idea of reason that represents the interrelation of persons in one concept. By means of the fact that persons are rational, the idea of rights comes to life through union of reciprocity and the coercion necessary to implement reciprocity. Kant insists that human beings can only be subject to coercive laws that are confined to governing, not personal morality or private happiness (Kant, 'The Doctrine of Right', 199). For Kant, we are only free in so far as we submit to the laws legally exercised on the basis of public law (that we have agreed to). Laws are often thought to be coercive, but this need not necessarily be the case. An example to illustrate this point would be laws that dictate the speed limit in a given area. For instance, if there is a low

speed limit imposed in a certain neighbourhood, this law may be coercive to a given individual only if he wishes to drive at high speeds. However, if he enjoys driving at low speeds, this law may not be coercive in the slightest. In this case, driving at high speeds would be endangering others as a means to your ends, which in this case, would be reckless driving. Thus, such a maxim could never be universalized; therefore, the person has a duty to obey speed limits.

The purpose of the above example was to illustrate the simple point that laws are necessary to maintain order. It is imperative that every fellow legislator respect the rights of his subjects. The legislative power, viewed as rational principle, can only belong to the united will of the people. For Kant, it is only the united will of all the people- in so far as each of them determines the same thing about all, and all determine the same thing about each- that has the power of enacting a public, state and law. Thus the members of a civil society unite for the purpose of legislation, thereby constituting a state, where the members are called its citizens.

Within civil society, the citizens are guaranteed three judicial attributes that inseparably belong to them by right. These include: first, constitutional freedom, which is the right of every citizen to have to obey no other law than that to which he has given consent; second, civil equality, which is the right of the citizen to recognize no one as superior among people in relation to himself; and finally, political independence, the right to owe his existence and continuance in society not to the arbitrary will of another, but to his own rights and powers as a member of the commonwealth, which cannot be represented by any other than himself (Kant, 'The Doctrine of Right', 199). In uniting and obeying the laws jointly agreed upon, citizens recognize that this best secures their individual interests. Only if every self-legislator has this understanding, can freedom and security be extended to all. If every individual understands that it is in their best interests to be bound by the law, rather than taking the law in their own hands,

then this prevents large scale violence and promotes general security. Within the Kantian system, the laws are in place to better promote the interests and uphold the rights of all free (independent) individuals.

Given that freedom is one of the core principles within the Kantian political philosophy of “Right”, we must ensure that all men are considered equal in front of the law. The law must be representative of the views of various individuals within a civil society; this requires that each citizen must have the right to participate in the government. Every individual must freely voice his opinion on various matters concerning their state of affairs in a civil society. In a state of nature, the war of all against all prevails, but in a state where men live under law it is different. As Kant states, “Men are free, equal and self-dependent. This statement is derived from the idea of freedom. For if all individuals are free, they must necessarily be equally so; for the freedom of all individuals is absolute and can only universally and equally restricted by law” (Kant, ‘Perpetual Peace’, 25). For Kant, in a properly organized state, individuals find security and justice. Like Hobbes, Kant believes that in the state of nature, individuals find themselves in a state of war of all against all. So, this gives rise, as Reiss writes,

“To a will that binds everyone equally...i.e. a collective universal will that alone can give security to each and all. Consequently, everyone has to restrict his freedom so as to make possible the establishment of such a supreme power and to avoid collisions with the freedom of others. Kant, following the tradition of his age uses the social contract to explain the existence of a state governing a people by a system of civil law. For Kant, however, the social contract must not be considered a historical fact. On this point, he [Kant] is quite unambiguous. Any such conception would be fraught with peril; for it is likely to encourage disobedience of, or even active rebellion against, the prevailing law. The social contract must therefore be seen as a practical Idea of reason. It is a practical Idea of reason in so far as it can be applied to the world of practical affairs or to experience, i.e. the state which ought to be established in accordance with the principles of right. The social contract is thus a criterion for political judgment, but it should not lead us to go into historical reasons for the purpose of drawing practical conclusions” (Reiss, 28).

For Kant, to realize our individual freedoms, the ultimate end we should strive for, is to establish a civil constitution. The Idea of the social contract brings to light the necessity of a civil constitution. As Reiss presents Kant's view on the intricate connection between the need for the social contract and civil constitution, "the Idea of the social contract also implies the necessity of a civil constitution. While it is necessary and obligatory, as he believes, to establish a civil constitution, it is also the greatest practical problem for mankind to attain this end; for only in a civil society, universally administering right according to law, can freedom exist" (Reiss 28). By means of our ability to reason, we recognize that freedom can best be realized within a social contract that governs people by a system of civil law.

B. Rights and 'The Idea of a Representational Constitutional Government'

Kant's political contribution to the notion of right needs to be understood in relation to his idea of a representative constitutional government, a fundamental aspect of his account of rights. As Thomas Mertens presents Kantian conception of a republican constitution:

"a political society ought to be conceptualized as a social contract, because moral reason obliges every legislator to frame his laws in such a way that they could be the result of the united will of a whole nation. Every subject of a political community must be regarded as an autonomous co-legislator whose consent is required in order to legitimize the laws of the nation. Such a republican constitution is, according to Kant, at the same time the most important condition for a lasting peace. In such a constitution the decision whether or not to declare war requires the consent of the citizens. And since war is contrary to their self-interest, the citizens will hesitate to embark on such an enterprise" (Mertens, 673).

Kant wanted to provide a philosophical vindication of representative constitutional government, "a vindication which would guarantee respect for the political rights of all citizens" (Kant, 'Perpetual Peace', 4). Presumably, all citizens would encompass men, women and in turn any lifestyles they would choose for themselves freely, so long as it did not undermine others'

freedoms. Kant's aim in providing a foundation for a representative constitutional government was to secure conditions of freedom where the idea of a right is realized.

To fully appreciate the origins of a secular natural order where rights of the individuals take centre stage, it is necessary to read Kant's political thoughts within the context of the eighteenth century. During this time, the French and American revolutions were influenced by the various ideas of the Enlightenment. This revolutionary period was characteristic of a growth of self-awareness of the power of man's mind to subject himself and the world to rational analysis. The significance of the revolution to Kant's political thought becomes apparent through the following passage by Reiss,

“If it is correct to infer this link between Kant's philosophy and the ideas of the two major eighteenth-century revolutions, the significance of Kant's political thoughts becomes clear; for the American and French revolutions constituted an open break with the political past. An appeal was made to a secular natural order and to the political rights of individuals for the purpose of initiating large-scale political action. The revolutions, of course, arose from political social and economic situations in America and France, but the beliefs of the revolutionaries were not intended as a smoke-screen designed to mislead the public. They depended on a political philosophy in which a belief in the right of the individual would be guaranteed” (Reiss 4).

During the time of the French and American revolutions, the political problem that Kant and other prominent philosophers concerned themselves with was how to turn a state of war into a state of order and peace. Kant's primary concern was how to go about safeguarding an individual's status as a rational independent being within the bounds of a civil state. To bring about this peaceful world order where an individual's status as a rational independent being can be safeguarded, Kant recognized the need to establish principles that can meet the demands of justice. Any coherent political order, for Kant, had to be based on maxims that can be formulated into universal laws; only these could hope to meet the demands of justice and realize a just and lasting order. According to the criterion that maxims must meet in order to hold as universal

laws, it is necessary and sufficient to determine whether, first, if “everyone can perform the action contained in the maxim, and, second, if a person can consistently will the action and will that everyone else performs a similar action, and influence him in the same way that he influences others by that action” (Kant, *The Metaphysics of Morals*, 230).

For Kant, “Right is to be found only in the external relations which are the proper business of politics” (Kant, ‘Perpetual Peace’, 21). External relations arise because we have possessions, ‘an external mine and thine’ as Kant refers to it (Kant, *Ibid*, 21). These relations must be placed under rules. Just like Hobbes, for Kant, politics belongs to the sphere of human experience, where man’s will can be coerced by another will (all actions are ultimately reduced to will). When coercion is exercised according to a universal principle, it is law. And legality is the decisive principle within the domain of politics. In turn, any moral decision of the inner man must find its outward expression in legality (through actions that conform with law). However, we can never fully be certain about another person’s inner life; this is not the task of politics or that of legislation (to influence in any way another person’s thought). Every individual is free to indulge in their own thoughts, and further, by means of this freedom, is able to desire various things in the world. This subsequently gives rise to the hypothetical right to acquire anything in the world of nature. All individuals have the right to acquire possessions and expressing their freedom could lead to collisions between them. In order to avoid such collisions between freedoms, the freedom of each individual has to be regulated in a universally binding manner such that the pursuit of their respective ends does not interfere with the freedom of others. By means of his theory of rights, Kant is attempting to reconcile the free action of one individual with the freedom of others. In accordance with this idea, Kant formulates the universal law: “Every action which by itself or by its maxim enables freedom of each individual’s will to

coexist with the freedom of everyone else in accordance with a universal law is right” (Kant, ‘Perpetual Peace’, 23).

C. The State and Constitutional Rights

Within a civil society, rights are negative in nature. Here, right is a restriction of each individual’s freedom so that it harmonizes with the freedom of everyone else. As Kant puts it,

“All rights consist solely in the restriction of the freedom of others, with the qualification that their freedom can co-exist with my freedom within the terms of the general law; and public right in a commonwealth is simply a state of affairs regulated by a real legislation which conforms to this principle and is backed up by power, and under which a whole people live as subjects in a lawful state. This is what we call a civil state, and it is characterized by equality in the effects and counter-effects of freely willed actions which limit one another in accordance with the general law of freedom” (Kant, *Ibid*, 76).

By limiting one and another, and willingly accepting restrictions imposed on us, we realize our equality within a civil state. Under such a civil state, the birthright of each individual is absolutely equal, in so far as the individual only submits to those coercive laws such that his freedom harmonizes with that of others. In a commonwealth such as this, no member can have a hereditary privilege against his fellow subjects (Kant, *Ibid*, 76). Putting this in terms of rights, his fellow subjects have no advantage over him. As a member of the commonwealth, every citizen is a co-legislator. But to be a self-legislator requires freedom, equality and unity of the will of all members. In order for this unity to come about, all members must freely and independently unite and form the will of the people. This united will of the people is called the “original contract”. However, an entire group of people cannot be expected to reach unanimity; one can only hope for a majority of vote. A fundamental part of the contract that must be accepted is that majority decisions must be accepted.

For a civil state to be considered lawful, it needs to be based on a priori principles. For Kant, right is the restriction of each individual's freedom such that it harmonises with the freedom of everyone else (such that it is possible within the terms of a general law). And it is the public right which is the distinctive quality of external laws that makes this harmony possible. A civil constitution is constituted of free men who are subject to coercive laws, while they retain their freedom within the general union with their fellows. The civil constitution is the requirement of pure reason, which legislates a priori (knowledge or justification is independent of experience), regardless of empirical needs. Thus the civil state is a product of pure rational principle whose justification is not dependent on experience. Such a civil state is based on the following a priori principles:

1. "The freedom of every member of a society as a human being;
2. The equality of each with all the others as a subject;
3. The independence of each member of a commonwealth as a citizen" (Kant, Ibid, 74).

These principles represent pure practical reason and, only in accordance with these can a lawful civil state be established. Within *The Critique of Practical Reason*, Kant presents freedom as only one of all the ideas of speculative reason of which we know the possibility a priori (without, however, understanding it), because it is the condition of the moral law which we know. Kant's moral theory is deontological in nature; moral worth is an intrinsic feature of human actions, determined by formal rules of conduct. So, moral obligation rests solely on duty, without requiring any reference to practical consequences that dutiful actions may have.

The principles arrived upon for the civil state has moral worth as they are determined by formal rules. More specifically, the first principle can be expressed as follows, “No-one can compel me to be happy in accordance with his conception of the welfare of others, for each may seek happiness in whatever way he sees fit, so long as he does not infringe upon the freedom of everyone else within the workable general law- i.e. he must accord to others the same right he enjoys himself” (Kant, *Ibid*, 74). The freedom of every member in a society as a human being is realized in a patriotic government, not a paternal one. In a paternal government, every member of society is treated as an immature child who is unable to distinguish between what is truly useful or harmful to them; they are obliged, therefore, to follow passively and rely on the judgment of the head of the state.

Although an individual recognizes the need to comply with laws, he is often misled within a civil society by his self-seeking animal inclinations, and often exempts himself from the law. This raises the need for a master within a civil society, who will force man to obey a universally valid will under which everyone can be free. In contrast to a paternal government, where despotism prevails, a patriotic state is one where everyone in the state regards the “commonwealth as a maternal womb from which he himself sprang and which he must leave to his descendents as a treasured pledge” (Kant, *Ibid*, 74). Under such a system, each member is responsible to protect the rights of the commonwealth by means of the laws of the general will, rather than submitting it to his personal use at his own absolute pleasure (realizing freedom as a condition of moral law). Every member of the commonwealth is entitled to the right of freedom so long as each is capable of possessing rights. Kant says the following about a patriotic attitude: “Each regards himself as authorised to protect the rights of the commonwealth by laws of the general will, but not to submit it to his personal use at his own absolute pleasure. This right of

freedom belongs to each member of the commonwealth as a human being, in so far as each is a being capable of possessing rights” (Kant, *Ibid*, 74).

The second principle is the equality of each with all others as subjects. The uniform equality of subjects within the state is perfectly consistent with inequality in attributes and possession, whether they are mental or physical. In spite of any mental or physical differences, all subjects within the state are considered equal in front of the law. The equality of the members with all others in a civil state is not based on equality of possessions or physical or mental equality with respect to others. That is, no one can coerce another by any means other “than through the public law and its executor, the head of the state, while everyone else can resist others in the same way and to the same degree” (Kant, *Ibid*, 75). Since all members within the state are equal, no individual can coerce another through any means other than the proper channels of law when necessary. In addition, no member of a civil society can renounce all his rights by means of a contract such that he only has duties, not rights. The very act of making a social contract only works under the assumption that I have certain rights.

When individuals willingly become part of the social contract they consent to the idea of equality of all men within the state. Every individual within a state is entitled to reach any degree of rank through his talent, industry and good fortune and his fellow subjects may not stand in the way. Given that all individuals are considered equal as subject before law, “no fellow subject may stand in his way by hereditary prerogatives or privileges of rank and thereby hold him and his descendants back indefinitely” (Kant, *Ibid*, 75). Individuals willingly enter into a civil constitution by means of a social contract as reason prescribes one to do so in an attempt to secure principles of equality, security and justice while escaping distress and violence.

To conclude this chapter, Kant's treatment of the state is aimed at developing the claim that interpersonal human relations must be accomplished by law, and this can only be governed within a political community. Within this constitution, Kant preserves the innate right to freedom, as this forms the basis of the preconstitutional rights which supply laws for any rightful constitution. Here, the idea of social contract supplies the idea of a general will uniting individuals. Such a rightful constitution possesses all the fundamental elements to be extended across boundaries such that they provide a comprehensive doctrine of rights, allowing all individuals to escape states of distress and violence.

2. KANT'S THEORY AND PRACTICE

A. Kant and the Right of Nations

Kant recognizes that proper institutions must be in place to give rise to the rightful condition. In recognition of this, the Kantian project puts forth philosophical principles on which a just and lasting order could be established. Within “The Doctrine of Right”, Kant remarks, “irresistible veto: there is no war either between human beings or between states” (Kant, ‘The Doctrine of Right’, 354). For Kant, the contrast between right and violence is equivalent to peace and war. Further, Kant treats the case of human beings and states as parallel. Much like human beings organize themselves within a civil state bound by laws, states too should organize within a republic to avoid violence among neighboring states.

Kant opens his discussion of states with the claim that they are naturally in a “nonrightful condition” (Kant, *Ibid*, 354). The state of non-rightful condition is a condition of war where each can only do what seems good and right to it. According to Kant, to remain in such a condition is to commit a wrong in the highest degree. Much like individuals, nations should exit from the original state of nature and organize themselves in accordance with the idea of the original contract. From this it might mistakenly be assumed that Kant is in favor of some sort of a transnational superstate. However, within “The Doctrine of Right”, Kant explicitly argues that world state would extend too far over vast regimes, and governing it would be impossible. Kant’s reasoning for rejecting a superstate goes back to the idea of the rightful condition. Kant favors a pacific league or a permanent congress of states as opposed to a world state (Kant, *Ibid*, 354). A permanent congress of states can be renounced by its members, and republican states do not go to war with each other. The only time a state is entitled to use defensive force is when it is faced with an aggressor. The use of defensive force must be subjected to objective standards:

can such force be reasonably used by all parties in a dispute when necessary? No state has the right to engage in acts of aggression against one another. Each state only has the right to defend itself. That being said, in 'Perpetual Peace', Kant recognizes that war sometimes does arise between nations. In such a scenario, there must be some sort of a court system that extends over the congress of states to resolve conflicts when they arise.

The distinctive nature of the state is an important piece within the Kantian System of Rights. Though Kant draws parallels between the state and private persons, there are also some crucial differences to note. The first difference is that states do not have external objects of choice. Individuals can form a desire to acquire things, and then pursue those things bound by universalizable principles. However, states do not have the ability to do so. Further, the state does not acquire its territory; rather, its territory is just a spatial manifestation of the state (Kant in Ripstein, 228). Much like a person, a state is always in possession of its body. Anyone who enters a state without authorization is committing a wrong. This is analogous to battery in persons. Each state's right against other states is purely defensive; this right is essential for the state to continue to be in the rightful condition, where it is the master of its own territory. The public nature of the state restricts the purposes for which it can act while sustaining its own character within the rightful condition. Unlike a person, a state is not allowed to set and pursue its own private ends but rather it can only pursue public ones. Due to this restriction, the state could never have grounds for going to war except in the case of its own self defense (Kant, 'The Doctrine of Right', 346). When faced with indeterminacy of the right to self-defence, Kant calls for a solution somewhat analogous to a civil condition. The permanent congress of states should establish a procedure in keeping with the ideals of public right for deciding disputes in a civil way. This includes using lawsuits to resolve disputes about boundaries rather than the way of

savages, namely by war. When states are in a rightful condition, the plurality of states are able to realize the condition of public right.

Within *Groundwork of the Metaphysic of Morals*: “The task of establishing a universal and permanent peaceful life is not only a part of the theory of law within the framework of pure reason, but per se an absolute and ultimate goal. To achieve this goal, a state must become the community of a large number of people, living provided with legislative guarantees of their property rights secured by a common constitution. The supremacy of this constitution... must be derived a priori from the considerations for achievement of the absolute ideal in the most just and fair organization of people’s life under the aegis of public law” (Kant, *The Metaphysics of Morals*, 55). Kant argues that moral-practical reason within us utters this irresistible veto: “There shall be no war” (Kant, ‘The Doctrine of Right’, 354). The use of force by any state to compel another is to engage in war. Clearly, such a use of force violates the rights of nations, thus elimination of war becomes the task of international law. Ultimately, Kant is striving to put forth conditions for perpetual peace. For Kant, peace simply means the end of all hostilities. In this case, essentially to realize conditions of perpetual peace, there needs to be an end to all hostilities. The only way perpetual peace becomes possible is if states relate to one another through laws that determine rights. If states conform to the principles of right, then continued coexistence will result in a state of peace. Thus, perpetual peace only becomes achievable through conformity to international law. The only reasonable solution to achieving peace is through the states’ universal adherence to law. It is not enough to secure peace internally within the states. It is further necessary that conditions of peace are secured externally, to ensure potential conflicts don’t arise with neighbours. Further, Kant suggests that if in any relation of persons, a principle circumscribing external freedom through laws is missing; the structure will

unavoidably collapse (Kant, 'The Doctrine of Right', 354). And the cause of this collapse will be war that the conflict produces. Given that moral and practical reason dictates that war must be avoided, we have a moral obligation to achieve peace, which can only be achieved by submitting to a civil condition where conflicts are resolved by means of laws rather than brute arbitrary force. Kant calls for all states to submit to a general will which includes the appropriate political institutions in place to determine, enforce and apply laws.

In the interest of avoiding war, all states must voluntarily submit to the rule of law within the federation of republics to resolve disputes. Kant claims that republicanism must replace despotism within individual states. Any state remaining despotic will always in principle be in a state of war. The first definitive structure for realizing conditions of peace is ensuring that the civil constitution of each state shall be republican. Within a republic, there are significant practical difficulties involved in declaring war. In times of war, it is the people who suffer the most due to the costs associated with war and rebuilding after the war: with this knowledge, people would be extremely cautious when consenting to war. However, in a state run by a despot, people would not be consulted even though they would be most affected. The despot does not stand to suffer much personally even if his side loses, thus he has less prudential reasons to avoid war. Rather, within a republic (where the general will rules), people can trust the authorities to adhere to law when it comes to international relations. Furthermore, Kant contends that there can be no rule of law and no peace unless states can be trusted to commit themselves to law without there being an international executive force to ensure obedience to laws through force (Kant, *Ibid*, 355). The only way states can be trusted to commit to the laws is if their internal constitution is republican in nature. So, if every state willingly agrees to become

part of a world federation in an attempt to avoid war, this would put us in a better position to secure perpetual peace.

B. Kant, Reason and Justice Beyond Borders

Kant begins his discussion for justice with the requirement that reasoned thought and action must adhere to principles that could be fully public. Within his essay from *What Does it Mean to Orient Oneself in Thinking*, Kant argues that nothing could deserve to be called reason if it were wholly without structure and discipline. For Kant, the minimal condition for any discourse to count as reasoned is that it be communicable, and that it is followable by all whom it is intended to reach. Kant's favoured image of public reason is scholarly communication with the world at large. For Kant, in the absence of a structure there will be no communication and prior to in turn, no reasoning. Reasons are those sorts of things that we can give to others, refuse or receive from others. Kant asks the following question, "how much and how correctly would we think if we did not think as it were in community with others to whom we communicate our thoughts, and who communicate theirs with us?" (Kant in O'Neill, 48). According to Onora O'Neill's interpretation of Kant, the standards of reason cannot be found in solitary thinking, but, rather, for Kant, those who seek to reason must structure their thought and speech in ways others can follow. Within solitary thinking, ideas are not subjected to public reason and so are not open to refutation by others. Kant rejects the idea that reasons could be devised by the arbitrary fiat of individual reasoners (O'Neill, 54). Kant often fiercely chastises those who think reason could be without any structure. Furthermore, unstructured reason will not lead to liberation of thought but rather to a disaster.

Given that “lawless thinking ends not in freedom of thinking or communication but gibberish and isolation, even in superstition and cognitive disorientation, whose political consequences include vulnerability to tyrants and demagogues, then any activity in human life that can count as reasoned must be structured” (O’Neill, 55). It is imperative that public reason possess structure: this allows us to determine which claims to accept and which to reject. However, this begs the question: What forms the structure of public reason? Kant answers in a straightforward manner: “Freedom in thinking signifies the subjection of reason to no laws except those, which it gives itself; and its opposite is the maxim of a lawless use of reason” (Kant, *The Metaphysics of Morals*, 145). Thus, public uses of reason must have law like structure rather than lawless structure. Reason has this structure when we give it to others, receive or refuse to receive from others (O’Neill, 54). However, for Kant, one cannot derive their law like structure from external sources; instead, must be freely chosen. The discipline of reason is that of self-legislation or autonomy. By means of this, Kant, identifies practical reasoning with autonomy. The contemporary understanding of autonomy identifies it with mere freedom and independence rather than reason. More specifically, autonomy is considered on an individual basis, and it is generally associated with the capacity to be one’s own person (for instance, choosing how to live one’s life based on their own reasons and not of the product of external forces). This could mean choosing to go to medical school out of your own free volition. Kant views

“autonomy or self-legislation as emphasizing not some (rather amazing sort of) self that does the legislating, but rather legislation that is not borrowed from unvindicated sources, that is not derivative, that is both freely chosen and has the form of law. Non-derivative 'legislation' cannot require us to adopt the actual laws or rules of some institution or authority; it can therefore only require that any principle we use to structure thought or action be law-like, that it have the form of law” (O’Neill, 56).

Kant identifies reasoning with the practice of adopting principles of thinking and acting that have the form of law, which can be adopted by all: “To make use of one’s own reason means no more than to ask oneself, whenever one is supposed to assume something, whether one could find it feasible to make the ground or the rule on which one assumes it into a universal principle for the use of reason” (Kant, Ibid, 56).

The only principles that can form laws are those that are chosen freely, only those can hope to meet the demands of Kantian autonomy, such that they are universalizable, and shows a commitment to Kantian notions of public reason (based on his conception of practical reason). Rather than presuming that something is reasonable because it is liked or even accepted, Kant puts forth “modal conditions” that all discourse (pertaining to justice) must meet in order to be fully public, thus, fully reasoned. Modal conditions are necessary inseparable properties all discourse must meet. It is public reason that makes it feasible to think from the standpoint of everyone else (the maxim of enlarged thought). This allows persons to see one’s own initial judgment from the standpoint of others, listening to what all others judge and communicate. Kantian faith in communication (public reason or publicity) allows rational persons to mutually agree upon a set of rules and principles that are universalizable (Kant, Ibid, 56). Once publicity is acknowledged, individuals can progress towards the ideal state, such as a republicanism or world government. An adequate application of Kant’s project perpetual peace aims to indiscriminately facilitate the access of individuals, political groups, and state to the public sphere. It is important to note that the Kantian notion of justice is not grounded in the concept of the state. Any approach of justice that is grounded in the concept of a state shows blatant disregard for the moral standing of others. By others, Kant is referring to those on the far side of borders who are affected by our economic and foreign policies. This Kantian idea can be derived from his

humanity principle, which states that humanity either in ourselves or others should not be treated as a means but as an end. Since war is in direct violation of such a principle, human actions are subjected to the moral law, including the maxim that there shall be no war in political practice. However, this can only be put into political practice if there is a system of representation of the general will as in the case of republics. This will result in a republican pacifism across states boundaries. Within, *The Metaphysics of Morals*, Kant argues that republican constitution is created in such a way that it avoids war by its very nature. Ultimately, Kant is envisioning a world where cosmopolitan just principles are realistically institutionalized. And this does not call for a world without borders. It calls for a world where further institutional structures that support international justice across states can be instantiated. This is necessary for cosmopolitan justice to be realized in the fullest sense (Kant, *The Metaphysics of Morals*, 145). In such a world, justice within republican states would be complimented by structures that support international justice and the idea of cosmopolitan right. The notion of just republican states, international justice and cosmopolitan right are grounded in principles that can be universalized and adopted by all. In order to realize universal principles of justice, these laws must be instituted through a plurality of bounded republican states that are linked by their joint commitment to international justice and cosmopolitan right. For Kant, republican states are not ideally just. However, this is a compromise we have to make in order to secure freedom in real world conditions. Further, this also means that boundaries are not invariably just; the inclusion and exclusions they secure may be unjust actions towards outsiders. In recognition of the fact that the construction of boundaries is somewhat arbitrary, the Kantian notion of justice does not preclude the possibility of other institutions beyond the state to institutionalize justice (Kant, *The Metaphysics of Morals*, 145).

Within the Kantian picture, states are the primary vehicles of justice; however, some of the other institutions that may contribute to justice include churches and non-governmental organizations, where states are weak. Kant recognizes that sometimes these institutions could contribute to injustices as well. However, he envisions a state of affairs where new institutions arise to better secure justice between and within states such that Universal Principle of Justice is better realized.

To conclude this chapter, much like individuals, for Kant, states need to move into the rightful condition as moral practical reason dictates the irresistible veto, “There shall be no war” (Kant, ‘The Doctrine of Right’, 354). Thus, Kant is attempting to put forth necessary conditions to realize perpetual peace, which essentially means an end to all hostilities. And the only reasonable solution is for states to make sure their international constitution is republican in nature and conforms to international law (such that all states universally adhere to law). For Kant, the only principles that can form law are those that can meet the demands of autonomy, show a commitment to public reason and are universalizable. To extend justice beyond borders, all discourse pertaining to justice must meet be fully public. Thus, the Kantian account of justice beyond borders is grounded in the working of pure practical reasons such that principles of justice can publicly be reasoned giving rise to universalizable international laws. In the following chapters, a critical examination of how Kant’s theory holds moral authority and political potency compared to other contemporary accounts, such as that of Rawls, will be seen below.

3. RAWL'S THEORY OF JUSTICE

A. A Reconstruction of A Theory of Justice

Within the following chapter, the Rawlsian theory of justice will be examined. However, prior to a more detailed examination of Rawls' theory of justice, it is important to note the similar aspirations and differences between the Kantian and Rawlsian theory of justice.

Kant's theory of justice was significantly influenced by the ideas of the French and American revolutions. The revolutions marked a break with the political past, where Christian theology still played a key part in shaping revolutionary thinking in the West. An appeal was now made for a secular order and the political rights of the individual took centre stage, which initiated large scale political action. Within Kantian theory we get the seemingly-paradoxical space between the claim, on the one hand, that individuals have a duty to achieve their own self-legislational autonomy and, on the other hand, that the state is absolutely sovereign. This is vital to Kantian practice of democracy: that a democratic polity ought self-consciously to contain and continually to re-instantiate the duality between political authority and the civic culture.

Traditionally liberalism is conceived as a theory about the state and about the people's relation to the state. The function of the state is to have an essential internal institutional structure, which enables it to carry out the people's will, in whatever way this is conceived. This prevents it from becoming tyrannical. Within the liberal system, the people are thought to have duties (that are legally binding) toward the state and possess rights of non-interference secured against it. In this way, the liberal theory sets limits and duties for its citizens.

Kant, by contrast, has only the most minimal theories of the state and of the relation between populace and state. Kant does not prescribe specific institutional arrangements that any state ought to reflect in order to be regarded as legitimate. For Kant, the state by virtue of its

existence is legitimate and deserving of respect. Unlike the liberal conception, people have no prior or natural rights against the state. The Kantian theory begins with the state. Within *The Metaphysics of Morals*, Kant makes it clear that only by being absorbed into the polity subject to legal authority that one's natural rights become fully determinate. Ultimately, natural rights are discovered a priori by means of practical reason in its political employment, only determinate in the rightful condition. Practical reason dictates the transition to a civic constitution, where rights can be determinate. Thus, it is in the interest of the subjects to form a civic constitution as this is as much as in avoiding violence as making private rights determinate under the formal dictate of the universal law of right (Kant, 'The Doctrine of Right', 352)

In light of the French and American revolutions, the Kantian project concerned itself with the problems of human freedom. Further, Kant attempted to provide philosophical principles on which a just and lasting internal order and world peace could be based. Much like Kant, the Rawlsian project attempts to bring the world closer to conditions of perpetual peace. Further Rawls' *The Law of Peoples* attempts to sketch out a response to the problems of illiberal societies, pluralism and toleration that were becoming increasingly prevalent in the twentieth century. Rawls' principle of equal basic liberties aims to generalize the principle of religious toleration. And the Rawlsian theory of justice is in part a response to the problem of political legitimacy despite religious conflict. Here the Rawlsian theory of justice will be critically examined, illuminating its shortcomings: it relies on abstract hypothetical conditions rather than with unlike; the Kantian system, which builds around the prior state of the nature and is grounded in the unrestricted workings of practical reason.

The Rawlsian theory aims to develop principles that can be used to assess the basic structure of society, more specifically, the way in which the major social institutions distribute

fundamental rights and duties (Rawls, *A Theory of Justice*, 7). Rawls is concerned with instantiating the appropriate institutions that align with his theory of justice, as these institutions profoundly affect man from the very beginning. The initial structure that man is born into consists of various social positions. The social position that man is born into affects their social expectations of their life that remains to be determined. Such expectations are also determined in part by their economic and political circumstances. Rawls elaborates:

“In this way the institutions of society favor certain starting places over others. These are especially deep inequalities. Not only are they pervasive, but they affect men’s initial chances in life....It is these inequalities, presumably inevitable in the basic structure of any society, to which principles of social justice must in the first instance apply” (Rawls, *A Theory of Justice*, 7).

In recognition of the fact that these inequalities are somewhat arbitrary, Rawls attempts to construct just principles that all people within a society can jointly agree on. To this end, Rawls conceives of the idea of the “original position”. The original position is an imaginary meeting where, “those who engage in social cooperation choose together, in one joint act, the principles which are to assign basic rights and duties and to determine the division of social benefit” (Rawls, *A Theory of Justice*, 11). For Rawls, such a meeting and the people who choose are merely hypothetical. These people are making their choices not in a primitive state of nature but rather in a carefully designed hypothetical situation. By means of such a situation, Rawls is trying to set up a fair procedure so that any principles agreed upon will be just. Further, Rawls is of the view that when the hypothetical contractees begin to reason within appropriate constraints, then the principles they select will be justifiable principles of justice. The most important constraint concerns knowledge available to the hypothetical contractees. They are aware that they are choosing principles for a society where they must live together in conditions of moderate scarcity. They also realize that though they may have somewhat similar needs and

interests, each of them has their own rational life plan. This means that they each have different ends and purposes, which could result in conflicting claims in regard to the natural and social resources available. In addition, Rawls is willing to permit his “contractees access to certain general laws and facts about human society: they understand political affairs and the principles of economic theory; they know the basis of social organization and the laws of human psychology” (Rawls, *A Theory of Justice*, 137). However, in regard to themselves, the hypothetical contractees know virtually nothing. When choosing the principles of justice, Rawls requires that the hypothetical contractees choose from behind the “veil of ignorance”. Behind the veil of ignorance, no one is allowed any information about his natural talents, abilities, tastes and preferences, position in society, or particulars about his own rational life plan. The veil of ignorance ensures that hypothetical contractees make an objective and impartial choice by depriving the choosers of information that can be considered arbitrary from a moral point of view. Since none of the contractees know how the various principles will affect their situation, they will have to evaluate solely based on general considerations. This begs the question, if people know nothing about their plans and desires; on what basis can they make any choices at all? Rawls answers this question by introducing the idea of primary social goods. For Rawls, primary goods are those resources that every rational man is presumed to need and want. As Rawls suggests “with more of these goods men can generally be assured of greater success in carrying out their intentions and in advancing their ends, whatever these ends may be” (Rawls, *A Theory of Justice*, 92). These primary social goods consist of rights, liberties, opportunities, wealth, income and self-respect (person’s sense of value). Of these primary social goods, Rawls considers self-respect to be the most important, without it, he believes our plans will seem worthless.

The contractees are mutually disinterested when they meet each other. Each contractee strives to maximize the bundles of primary social goods for himself. The goal is to choose principles that give rise to a stable society based on reasonable principles. To arrive upon these reasonable principles, Rawls constructs a formal model of rationally self-interested individuals engaged in a bargaining game (Rawls, *A Theory of Justice*, 93). This bargaining game is a non-zero sum game, where the aim is for players to arrive at unanimous agreement on a set of principles that will henceforth serve as the criteria for evaluating institutions and practices. The game will consist of a series of proposals made by each player for consideration by the rest, and the play terminates when there is unanimous agreement on a single set of principles. Within the game, the players are assumed to be rationally self-interested. However, they are also assumed to operate under an additional constraint, where once agreement has been reached upon a set of principles chosen on the basis of a calculation of self-interest, those principles will be abided by in all future cases, even when it is not in one's own self-interest to do so. Rawls speaks to this in "Justice as Fairness": "having a morality is analogous to having made a firm commitment in advance; for one must acknowledge the principles of morality even when to one's disadvantage" (Rawls, 'Justice as Fairness', 164). Suppose an unequal distribution results, in that case, Rawls finds this scenario acceptable so long as the redistribution of that surplus can make everyone better off under a pattern of equality. The Rawlsian system allows for such inequalities as long as it works to everyone's benefit. Within the Rawlsian system, the subject determines the laws as there is no prior institutional context. But to will such a context is to will away what Kant calls lawless freedom. In such cases subjects are acting on their own notions of justice, which essentially, for Kant, is just another way of describing the state of nature.

In recognition of some of the consequences of his theory, within Justice as fairness, Rawls stresses that no individual should accept any unequal distribution that pushes some roles below the equality baseline in order to raise others above it. This gives rise to Rawls' two principles that all players will agree to:

“First, each person participating in a practice, or affected by it, has an equal right to the most extensive liberty compatible with a like liberty for all. Second, social and economic inequalities are to be arranged so that they are both (a) to the greatest benefit of the least advantaged and (b) attached to positions open to all under conditions of fair equality of opportunity” (Rawls, *A Theory of Justice*, 60).

For Rawls, “social and economic inequalities are arbitrary unless it is reasonable to expect that they will work out for everyone's advantage, and provided the positions and offices to which they attach, or from which they may be gained, are open to all” (Rawls, *A Theory of Justice*, 61).

The first principle refers to liberty rather than wealth, or income, or rewards. By means of the first clause, Rawls is suggesting that the output (or earnings) of a practice is to be distributed equally, unless some pattern of unequal distribution can be worked out for everyone's benefit. And the second principle defines what sorts of inequalities are permissible. Rawls appears to present the second principle as grounds on which the presumption (of equal distribution) can be set aside. The basic liberties protected by the first principle are what Rawls calls the liberties of citizenship, which include freedom of speech and assembly, liberty of conscience and freedom of thought, freedom of the person along with prior right to hold property, and freedom from arbitrary arrest and seizure. However, these do not include economic liberties such as freedom to own property in the means of production, freedom of contract, or the right to inherit or to leave one's possessions to persons of one's choice (Rawls, *A Theory of Justice*, 61). Suppose a society adopted these two principles, how would they be applied when a dispute arose? The first principle is assigned priority because Rawls assumes that below a certain level of wealth it is

impossible to exercise one's liberties effectively. Any inequalities of wealth and authority must be arranged in ways consistent with equal liberties required by the first principle.

Rawls' first principle requires a constitution granting all citizens an equal right in determining the outcome of the process that establishes the laws that they have agreed to comply with. The authority to determine social policies rests with the legislature, which is elected by the public for a fixed term, and is accountable to them. During elections, each person's vote should hold the same weight in determining the outcome of the elections. Rawls believes that equal political liberty is the best guarantee of just and efficient legislation. And further, equal freedoms required by the theory "strengthen men's sense of their own worth, enlarge their intellectual and moral sensibilities, and lay the basis for a sense of duty and obligation upon which stability of just institutions depends" (Rawls, *The Law of Peoples*, 58). However, Rawls does not want to argue that these liberties are absolute. Rather, Rawls believes that the original contractees would be willing to recognize two sorts of limitations on their freedoms as permitted within a just society. The first limitation suggests that basic liberties can be restricted when necessary to strengthen the total system of liberty shared by all. To determine when a restriction is acceptable, Rawls asks the following question; will a representative citizen consider this as a gain for his freedom on the balance? For instance, at times, it is justifiable to impose certain limits on speech, in the absence of all limitations (there would be no way to maintain some form of order) fruitful discussion would never be possible. The second limitation suggests that liberties may be limited in societies that have not yet reached the level of wealth at which they can be effectively exercised. Under these circumstances, such restrictions will be justifiable (Rawls, *Ibid*, 58). This is in light of the fact that the long run benefits may be great enough to transform a less fortunate society into one where equal liberties could be enjoyed. Rawls' theory

only permits infringements upon rights when necessary to either protect the whole system of basic liberties or increase the probability of effective exercise of those liberties in the future.

B. Rawlsian Theory in Practice- Principle of Toleration

So how do the Rawlsian principles shape relations between societies? Within *The Law of Peoples*, Rawls develops the idea of toleration among peoples, as the guide to proper international relations. When Rawls speaks of the principle of toleration, he is not referring to toleration among individuals, but rather to a world-society composed of different peoples. For Rawls, the main task in extending *The Law of Peoples* to non-liberal people is to specify how far liberal peoples are to tolerate non liberal peoples. According to Rawls, “toleration of non-liberal peoples means not only to omit exercising political sanctions- military, economic, or diplomatic- to make people change its ways”, but it also means “to recognize these non-liberal societies as equal participating members in good standing of the Society of Peoples, with certain rights and obligations” (Rawls, *The Law of Peoples*, 59). It appears toleration of peoples means non-intervention and respect. Why is toleration important in the relations between liberal and non-liberal (decent peoples)? Rawls points out that even in liberal societies, “there are reasonable and expected differences of peoples from one another, with their distinctive institutions and languages, religions and cultures, as well as their different histories, variously situated as they are in different regions and territories of the world and experiencing different events” (Rawls, *Ibid*, 54-55). This diversity is even greater between liberal and non-liberal peoples. In recognition of the fact that non liberal peoples are also decent peoples within world society who are moral agents, they should also be entitled to due respect and toleration. The self-respect of people shouldn't be violated without good reason. If we fail to extend the proper due respect to non-liberal peoples, this could lead to negative consequences. For instance,

“if liberal peoples require that all societies be liberal and subject those that are not to politically enforced sanctions, then decent non-liberal peoples- if there are such-will be denied due measure of respect by liberal peoples. This lack of respect may wound the self-respect of decent non liberal peoples as peoples, and may lead to great bitterness and resentment” (Rawls, *Ibid*, 61).

Even non-liberal peoples are decent peoples who have the ability of moral learning; therefore significant room should be preserved for them to determine themselves. Within *A Theory of Justice*, Rawls addresses the toleration of non-liberal societies, as this will encourage mutual trust and confidence among various societies. For Rawls, decent peoples will gradually learn that the laws prescribed within the law of peoples are advantageous for them.

C. The Scope of Justice for Rawls beyond Borders

Within *A Theory of Justice*, Rawls refrained from extending his theory of justice as fairness to international problems. In his later essay, “*The Law of Peoples*”, Rawls’ attempts to work out an alternative approach to international extension of justice as fairness, however, this account falls short as an account of international justice as fairness.

Ultimately the Rawlsian project concerns itself with how the content of *The Law of Peoples* might be developed out of a liberal idea of justice similar to, but more generally out of a liberal idea of justice as fairness. Rawls also puts forth a set of principles that liberal representatives would choose to govern associations with other types of societies. These principles forms the content of the basis upon which liberal and non-liberal people may agree upon principles of fair coexistence. For Rawls, such normative principles act as a guide for liberal foreign policy but do not form a cosmopolitan justice in and by themselves. For instance, below I will explore some of the internal shortcomings of the Rawlsian account when perceived as a theory of international relations. Rawl’s account of international relations begins with the following question: what sorts of obligations do liberal societies (well ordered) have towards

burdened societies, if any? According to *The Laws of Peoples*, well ordered societies only have an obligation to help burdened societies meet basic needs (Rawls, *The Laws of Peoples*, 57). Here, Rawls is denying the applicability of the distributive principles of justice to global circumstances. Rawls justifies this denial by drawing a distinction between kinds of social cooperation entered by liberal societies and those adopted by independent peoples. In the first case, people freely embrace some sort of a liberal doctrine to determine the proper distribution of the burdens and benefits of social cooperation. In the latter case, Rawls claims that the people have not adopted distinctively liberal principles to govern their relations. Furthermore, according to Rawls, one's birth into a non-liberal society need not be morally arbitrary and therefore demanding justification, or still less rectification. For Rawls, people are fairly self-sufficient and independent, so in the absence of liberal principles, there is no need for distributive principles to regulate social and economic inequalities (since other societies have not adopted liberal principles they are not owed anything from liberal societies, individuals in other societies are capable of attaining their own ends, thus, they shouldn't be forced to accept any implications set by a liberal society).

For Rawls, distributive principles are “procedural rules inherent in ideal theory that apply continuously without an end to regulate and justify domestic inequalities, as in the case of the difference principle, for instance, by mandating that the greater benefits received by the better endowed individuals work to improve the expectations of society's least advantaged members” (Rawls, *A Theory of Justice*, 15). Rawlsian duty of assistance has more modest goals which only include aiding burdened societies: to the extent they meet their basic needs and realize basic principles of justice. The duty of assistance helps promote a worthwhile life for all its citizens. It is important to note that Rawl's duty of assistance needs to be understood in the context of non-

ideal theory, which is only concerned with transitional justice. Basically, the goal of transitional justice is to highlight how to move from an unjust status quo to an ideal social order where all societies come to accept and follow *The Law of Peoples*. Well-ordered peoples have a duty to assist burdened societies in establishing (just) institutions as part of the project of transition, a project we should engage in by the natural duty of justice. For Rawls, global distributive principles have the goals of attaining basic decent institutions, securing human rights and meeting basic needs are covered by the duty of assistance. Anything beyond this is not demanded by justice.

The questions remains, why do any liberal states have any obligation on the basis of duty of assistance? Surely, it is not derived from a wider obligation that well-ordered people must protect a full range of liberal rights no matter where the individual resides. Even if we could derive such a duty, it would deny respect for decent peoples' distinctive conceptions of justice. In recognition of this, Rawls offers alternative reasons to help burdened societies. Rawls appeals to the advantages of helping burdened societies and bringing them into "society of well-ordered peoples" as he calls it. Rawls contemplates the notion that by helping the burdened societies; we would discourage bellicose behavior. Though an argument could be made in the case of outlaws, this analogy seems inappropriate in the case of burdened societies. In the case of burdened societies, due to their lack of resources, they would be unable to indulge in belligerent behaviour against liberal societies. Although it may be in the interest of liberal states to help burdened societies for the sake of strategic self-interest, a compelling argument for such action remains to be seen.

Given the failure of the previous argument in support of duty of assistance, Rawls offers an alternative. Rawls attempts to anchor duty of assistance within the principle of toleration. He

derives the duty of assistance from the political values implicit in the public culture of an international society of peoples. Rawls forwards this argument by suggesting that political liberalism' criterion of reciprocity obliges liberal states to help burdened states meet their basic needs so that they can negotiate the terms of their association. If burdened societies' needs were unmet, then any willingness to embrace terms of cooperation offered by liberal people could be dismissed as desperate, in turn as coerced acts. By honoring the duty of assistance, we make free consent possible. Rawls speaks to this within the context of domestic justice when he says, "genuine reciprocity demands that parties proposing terms of association need to reasonably believe that others can agree to them as free and equal citizens, and not as dominated or manipulated, or under the pressure of an inferior political or social position" (Rawls, *A Theory of Justice*, 57). Although, it is very appealing in theory, this alternative is burdened with problems as well. Once we establish a just society of peoples, it is not hard to imagine that representatives of burdened societies would request larger transfers than those allocated by the duty of assistance. It is a well-known fact that for burdened societies to narrow the gap between themselves and liberal nations, they will need substantial and sustained aid to allow them to enter into agreements as somewhat free and equal partners. It is unclear where we would draw the line.

On one hand, Rawls is attempting to provide aid to burdened societies to help them attain elementary justice to join the ranks of well-ordered people. On the other hand, we are holding these people responsible for the choices made by unaccountable elites. Surely, members of burdened states cannot be considered free by any means. And such a treatment cannot be considered fair. Although, in the case of liberal justice in domestic societies, Rawls insists on three things- the fair value of political liberties, fair equality of opportunity and assurances that inequalities benefit all persons, and especially the least advantaged- none of these are even

mentioned within *The Law of Peoples*, either among or within nations. Ultimately, *The Law of Peoples* sheds little clarity on what sorts of institutions or background rules are required by the Rawlsian account. For Rawls, *The Law of Peoples* fails to do justice to any core liberal values, and simply comes off as an account lacking moral authority.

Given that Rawls' intentions was not to put forth the content of International law, the criticism that this account is inadequate is less relevant. However, the more serious criticism that's holds is that Rawlsian account of tolerance undercuts accepted international human rights. For Rawls, the primary delivery vehicle for justice remains with the states. By arguing for the inclusion of decent hierarchical states within the international legal system as legitimate, Rawls makes two key assumptions. First, hierarchical states are legitimate because at some level they represent and respond to the preferences of their citizens. And second, while such societies are not built on liberal principles, their principles are nevertheless rational. To argue that hierarchical and communal regimes are both reasonable and legitimate seems to be fundamentally inconsistent with key principles of liberal justice.

Construed as a theory of international law, perhaps, the criticism that the Rawlsian account is most susceptible to is that normative contemporary international law has moved beyond statism. Although Rawls seeks to distance his concept of peoples from what are traditionally known as states, however, *The Law of Peoples* put forth principles among international actors, essentially aggregates of individuals, in a sense functionally peoples and states are identical. But the question remains, does recognizing the normative priority of individual also entail asserting the universal validity of liberalism. The Rawlsian project attempts to tackle the problem of incommensurable universalist views, however, based on the principle of

rationality as an Kantian would argue, it is possible to demonstrate the invalidity of all universalist concepts, except those of Kantian in nature.

In contrast, the Kantian cosmopolitan distributive theory appears to be a much better alternative compared to the Rawlsian duty of assistance based on the value of toleration. So why do Kantian global distributive principles fare better? The Kantian account possesses moral authority as it grounds political duties within the unrestricted workings of practical reason. Due to practical reason, rational persons recognize the need to resurrect institutions that protect equality and autonomy universally. However, when reason is not fully subjected to public scrutiny it can undermine the freedom of others. The universal principle of right specifies the constraints imposed upon the external freedom of finite rational creatures situated in inescapable proximity to others. As Kant says in *The Metaphysics of Morals* "Any action is right if it can coexist with everyone's freedom in accordance with 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" (Kant, *The Metaphysics of Morals*, 230). The universal principle of right solely focuses on the legality and judicially rightful character of the actions. Further, the universal principle of right, along with the concept of intelligible possession based on practical reason, gives rise to an additional postulate that persons have the right to unilaterally claim external goods, but only on condition that they acknowledge a reciprocal and inescapable duty to act in ways permitting others to acquire so as well. For Kant, persons have a duty to act towards others so that what is external (usable) could become someone's property. The permissive law of practical reason mandates the institutionalization of public right governing possession domestically and globally. The duty of assistance based on the principle of toleration only gives rise to narrow set of duties. And the permissive law of practical reason gives rise to wider obligations that strive to secure

conditions fostering rightful appropriation. These obligations include renouncing interfering with others' rightful appropriation and eliminating things that could hinder the realization of everyone's freedom. Essentially, for Kant republican states have duties to remedy not only those hindrances to individuals' freedom posed by third party invasions, but also those caused due to disadvantageous political, social, and economic circumstances. In *The Metaphysics of Morals*, Kant prescribes: "impose taxes to support organizations providing for the poor, redistributing money from the wealthy to support children abandoned because of poverty or shame" (Kant, *The Metaphysics of Morals*, 326). Unlike Rawls, Kant's duty across borders is based on practical reason by means of the fact that all persons inhabit the earth involuntarily; this forms the original community, in which practical reason dictates that freedom and basic liberties should be extended to all individuals in accordance with universalizable law. Further, he even suggests enacting laws allowing any person without the "personal resources requisite to independence to work his way up from this passive condition to an active one" (Kant, *The Metaphysics of Morals*, 315).

Kant speaks of an original community that encompasses all persons as an idea of practical reason. The original community, for Kant, is a union of persons who find themselves, simply by virtue of their involuntary appearance on earth, inescapably in common possession of all. Kant elaborates: "Original possession in common is, rather, a practical rational concept which contains a priori the principle in accordance with which alone people can use a place on the earth in accordance with principles of right" (Kant, *Ibid*, 262). As Shaw writes, according to Kant, to put this idea into practice,

"all persons need to enter into a civil society, gradually extend public relations of right to all persons and peoples throughout the world; and finally to organize their relations in ways providing other persons opportunities to achieve self-sufficiency by means of their

rightful appropriation, and failing this, in extremis, directly to provide for others' basic needs" (Shaw, 235).

This appears to be representative of Kant's views, as by means practical reason it would follow that all individuals should have the means to attain their respective ends to realize their freedoms. In the absence of such a state of affairs, it is necessary to help facilitate conditions whereby freedom can be fully realized, and conditions of perpetual peace can be secured for all involved.

CONCLUSION

Rawls attempts to put forth principles of justice that satisfy utilitarianism's concerns for the greatest number without neglecting the individual. To this end, Rawls' theory of justice is constructed around the idea of the kind of a civil society a reasonable man would choose to live in? The Rawlsian model however quickly encounters problems when individuals have to obey commands when they go against his interests? The Rawlsian model is based on a contract where every man gives adherence to civil society only on the condition that he is guaranteed certain minimal rights. For Rawls, such a contract sets goals, and limits of the civil society, prescribes to duties for the rulers and motivates the citizens' adherence as well as defines their legitimate claims. Within the Rawlsian system, there is no institutional context, to determine natural rights such that they can be universalized, ultimately risking collapse into what Kant calls "lawless freedom" or another way of describing the state of nature (as we have various subjects acting on their basis of their notions of justice).

Rawls' model for a theory of justice was shaped to accommodate for sensibilities that have emerged from utilitarianism and the dissatisfactions associated with it, I argue it lacks the moral infrastructure that the Kantian system has to offer. Rawls' two fundamental principles from the original position are: firstly, that each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others, secondly, all goods are to be equally distributed (if unequally distributed, this unequal distribution must be agreed to be to the advantage of all as measured by the desires of the least advantaged member of society). In a sense, those that are advantaged can only use their advantages within an egalitarian society, where they have persuaded the disadvantaged that whatever inequalities exist, they are to their

advantage. Rawls' somewhat unique contribution is to incorporate the maxim of contemporary social welfare into the fundamental principles of justice.

Within the Kantian account, the subject of justice consists of agents as persons who reason about action and autonomy. Autonomy is a necessary precondition for exercising rights. For Kant, a will which acts on the practical law is a will which is acting on the idea of the form of law, an idea of reason which has nothing to do with the senses. The moral will is independent of the world of the senses, the world where it might be constrained by one's contingent desires. The will is therefore fundamentally free. The only appropriate rule whose content does not restrict the freedom of will is the categorical imperative. To follow the practical law is to be autonomous, whereas to follow any of the other types of contingent laws (hypothetical imperatives) is to be heteronomous and therefore un-free. Ultimately, moral law expresses the positive content of freedom. The Rawlsian account presupposes autonomy when he claims each agent has a share in the proceeds of society. But is the action an expression of a rational maxim that is universal adoptable by all or merely driven by preference and inclinations. Unlike the state of nature that Kant relies on for his theory of justice, Rawls relies on abstract hypothetical conditions to arrive upon his two principles. Within the state of nature, we are presented with "a picture of man as he is really is, divested of convention, accident and illusion, a picture grounded on and consistent with the new science of nature" (Bloom, 651). For Kant, man's primary natural concern is to preserve himself. In recognition of this, man enters the contract of society because his life is threatened and he fears losing it. The fear that man feels is not an abstraction, an imagination, but rather an experience that compels man to not only adhere to the civil society but to preserve it. In contrast to this, within the original position, there is nothing that corresponds to any man's real experience as the fear of death disappears. The Rawlsian system provides little

motive for man to join the civil society, let alone accept its rules. For instance, when the veil of ignorance falls away, depending on one's position in the society, the motive for compliance also somewhat falls away. However, when man leaves the state of nature, the passions found there remain with him. Unlike Kant, whose theory of justice took its bearings from a negative pole, man's desire to avoid death, Rawls bases his theory on the positive goal of happiness. Rawls seems to be working from the assumption that some sort of distribution of primary goods would best affect happiness. However, this can be easily disputed given people have vastly different visions of what is necessary for happiness. Surely, the focus should lie elsewhere. Within the Kantian system, the principles of freedom, equality and civil independence take centre stage, as these allow citizens to realize their own version of happiness. And Kant concludes that the proper application of the principle of right within a republican constitution would better promote happiness than any other. Within a republican constitution, there is a basis for trust and security, essential for happiness. Such a republican constitution ensures that people don't suffer unjustly.

Clearly, it can be challenging to employ the Rawlsian principles even within a domestic context. However, does the Rawlsian account provide a useful framework for international relations? The answer is No. Within *'The Law of Peoples'*, Rawls argues that well-ordered peoples only have an obligation to help burdened societies satisfy their members' basic needs. By doing so, Rawls is denying the applicability of global distributive principles, more specifically, his own difference principle. Rawls justifies his denial on the basis of the fact that burdened societies have not adopted those liberal principles. Based on this, surely well-ordered societies do not have any obligation to protect the rights of those that reside in burdened societies. As such, Rawls would be denying respect for decent peoples' distinctive conceptions of justice. However Rawls recognizes that we will need to maintain relations with other societies, even

those that are not liberal. To maintain rightful associations, Rawls argues that genuine reciprocity demands that parties proposing terms of association need to reasonably believe that others can agree to them as free and equal citizens, and not as dominated or manipulated, or under the pressure of an inferior political or social position (Rawls, *A Theory of Justice*, 60). But this argument also runs into problems; as it is ambiguous as to how far well-ordered (liberal) societies ought to go to ensure people within burdened societies can be considered free and equal.

Kantian cosmopolitan distributive theory appears to be a more solid alternative that possesses greater moral authority and political potency as it grounds political duties within the unrestricted workings of practical reason. The Kantian original community that encompasses all persons is an idea of practical reason. Man finds himself inescapably in common possession with others; in order for man to preserve himself, he must act in accordance with principles of right. To fully realize this idea, Kant calls for a civil society, where public relations of rights are extended to all people across the world, so that their relations can be better organized to achieve self-sufficiency by means of rightful appropriation. And, when necessary, redistribution of resources is justifiable within the Kantian system if required for the preservation of mankind.

Bibliography

- Amdur, Robert. "Rawls' Theory of Justice: Domestic and International Perspectives of Justice: A Critical Examination of the Principal Doctrines in a Theory of Justice by John Rawls," in *World Politics*, Vol. 29, No. 3 (Apr., 1977), Pp. 438-461.
- Arendt, Hannah. "Decline Of The Nation State-End Of Rights of Man," in *The Origins of Totalitarianism* edited by Samantha Power. Pp. 291-302. Chicago: Knopf Doubleday Publishing Group, 2004.
- Bloom, Allan. "Justice: John Rawls Vs. The Tradition of Political Philosophy," in *The American Political Science Review*, Vol. 69, No. 2 (Jun., 1975), Pp. 648-662.
- Bourke, John. "Kant's Doctrine of Perpetual Peace," in *The Journal of Philosophy*, Vol. 17, No. 68 (Nov., 1942), Pp. 324-333.
- Curran, Eleanor. "Hobbes's Theory of Rights: A Modern Interest Theory," in *The Journal of Ethics*, Vol. 6, No. 1 (2002), pp. 63-86.
- Garcia, Frank. J. "Review of The Law of Peoples," in Harvard University Press, 1999. Pp. 659-677.
- Gurian, Waldemar. "Perpetual Peace? Critical Remarks on Mortimer J. Adler's Book," in *The Review of Politics*, Vol. 6, No. 2 (Apr., 1944), pp. 228-238.
- Hess, Gregory et al. "War and Democracy," in *The Journal of Political Economy*, Vol. 109, No. 4 (Aug., 2001), pp. 776-810.
- Hobbes, Thomas. Leviathan. London: Penguin, 1988. Pp 9-717.
- Huntley, Wade. L. "Kant's Third Image: Systemic Sources of the Liberal Peace," in *The International Studies Quarterly*, Vol. 40, No. 1 (Mar., 1996), Pp. 45-76.
- Ingram, David. "Between Political Liberalism and Post national Cosmopolitanism: Toward an Alternative Theory of Human Rights," in *Political Theory*, Vol. 31, No. 3 (Jun., 2003), Pp. 359-391.
- International Development Research Centre, International Commission on Intervention And State Sovereignty on The Responsibility to Protect, (December 2001. Pp. 1-91). Henceforth ICSIS.
- Kant, Immanuel. Perpetual Peace: A Philosophical Sketch. Hackett Publishing, 2003.
- _____. Political Writings, Cambridge University Press, 1991. Pp. 1-279.

- _____. The Metaphysics of Morals, Ed. and trans. W. Hastie. Pp. 1-20.
- _____. The Metaphysics of Morals, Ed. and trans. Mary Gregor. Cambridge and New York: Cambridge University Press. Pp. 1-77.
- Li Murray, Tania. Beyond the State and Failed Schemes. in *American Anthropologist*, New Series, Vol. 107, No. 3 (Sep., 2005), Pp. 383-394.
- Macpherson, C. B. Democratic Theory. Clarendon Press. Oxford. 1973. Pp. 3-195.
- _____. The Political Theory Of Possessive Individualism. Oxford University Press. 1954. Pp. 1-293.
- Maletz, Donald. "History in Hegel's 'Philosophy of Right,'" in *The Review of Politics*, Vol. 45, No. 2 (1983), Pp. 209-233.
- Mulholland, Leslie. A. Kant's System of Rights. Columbia University Press, 1990. Pp. 1-403.
- O'Neill, Onora. "Bounded and Cosmopolitan Justice" in *Review of International Studies*, Vol. 26, How Might We Live? Global Ethics in a New Century (Dec., 2000), Pp. 45-60.
- Owen, Judd. J. "The Tolerant Leviathan: Hobbes and the Paradox of Liberalism," in *The Polity*, Vol. 37, No. 1, Fashion for Democracy (Jan., 2005), Pp. 130-148.
- Rawls, John, "Justice as Fairness," *Philosophical Review* (April 1958), 67 (2): 164-194.
- _____. "Kantian Constructivism in Moral Theory," in *The Journal of Philosophy*, Vol. 77, No. 9 (Sep. 9, 1980), Pp. 515-572.
- _____. "Political Liberalism: Reply to Habermas." *Journal of Philosophy* (March 1995), 92 (3):132-180.
- _____. The Law of Peoples, *Critical Inquiry* (Fall 1993), 20 (1): Pp. 36-68.
- _____. A Theory of Justice. Cambridge, Massachusetts: Belknap Press of Harvard University Press, 1971, Pp 1-192.
- Reiss, Hans ed. Kant's Political Writings. Cambridge Studies in *The History and Theory of Politics*, pp. 1-125.
- Reiter, Dan, "Does Peace Nurture Democracy?" in *The Journal of Politics*, Vol. 63, No. 3 (Aug., 2001), Pp. 935-948.
- Ripstein, Arthur, Force and Freedom. Harvard University Press, 2009. Pp. 1-416.
- Russett, Bruce et al, "Democratic International Governmental Organizations Promote Peace," in

The International Organization, Vol. 60, No. 4 (Autumn, 2006), Pp. 969-1000.

Shaw, Brian, "Rawls, Kant's Doctrine of Right and Global Distributive Justice" in
The Journal of Politics, Vol. 67, No. 1 (Feb., 2005), Pp. 220-249.

Smith, Steven. "What Is Right in Hegel's Philosophy of Right?" in *The American Political
Science Review*, Vol. 83, No. 1 (Mar., 1989), Pp. 3-18.

Wolff, P. Robert. Understanding Rawls. Princeton University Press, 1977. Pp. 3-112.