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Herausgegeben von

B. Sharon Byrd
Joachim Hruschka
Jan C. Joerden



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Themenschwerpunkte:

I. Kants Friedensschrift – Kant's Peace Project
mitherausgegeben von Ib Martin Jarvad

II. Kompensation – Compensation
mitherausgegeben von Melissa Lane



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Vorwort

Die Aufsätze über Kants Friedensvision in Teil I. des vorliegenden Bandes sind eine Auswahl der Vorträge, die im Rahmen der im August 2006 an der Carlsberg Akademie (Kopenhagen) veranstalteten Konferenz *Kant's Vision of Peace in his Zum Ewigen Frieden* gehalten wurden. Die Konferenz war Teil der Aktivitäten des *Network on Ethics and Justice in the Community of Nations* am Fachbereich Philosophie und Wissenschaftssoziologie der Universität Roskilde unter Leitung von Professor Dr. scient. *Ib Martin Jarvad*, Ph.D., der gleichzeitig Mitherausgeber des Teils I. des vorliegenden Bandes ist. Die Konferenz wurde von dem staatlichen dänischen Forschungsrat für Kultur und Kommunikation (*Forskingsrådet for Kultur og Kommunikation*) großzügig unterstützt. An der praktischen Durchführung der Konferenz hat *Silas Herrebye* hilfreich mitgewirkt, die anschließende Bearbeitung der Aufsätze hat *Fatima Sabir* übernommen.

Teil II. dieses Bandes mit dem Schwerpunktthema Kompensation wird von Dr. *Melissa Lane*, Senior Lecturer an der geschichtswissenschaftlichen Fakultät der Universität Cambridge, mitherausgegeben und ging aus einem Projekt des von der Rockefeller-Stiftung getragenen *Common Security Forum* zum Thema Partnerschaft und Sicherheit (2004–2009) hervor. Ein Teil dieses Projekts wandte sich schwerpunktmäßig privaten Akteuren und dem Problem der Legitimität zu. In diesem Kontext entstand das Konzept der Kompensation als eines Anzeichens für die Veränderung von Grenzen zwischen dem öffentlichen und dem privaten Bereich – zwischen Staaten und Unternehmen sowie zwischen Staaten und Individuen. Dieser Gedanke wurde während einer Tagung am *Centre for History and Economics* am King's College Cambridge näher untersucht, die Vorträge und Teilnehmer mit historischer, politiktheoretischer und juristischer Perspektive zusammenbrachte. Alle Teilnehmer an dieser Tagung haben Aufsätze für den vorliegenden Band eingereicht; *Catriona McKinnon* hat an der seinerzeitigen Tagung nicht teilgenommen, wurde aber wegen der Gemeinsamkeiten zwischen ihrer Arbeit und dem Konzept des Teils II. dieses Bandes im Nachhinein eingeladen, einen Beitrag zu verfassen. Die hier veröffentlichten Aufsätze zeichnen sich aus durch eine Verzahnung verschiedener Sichtweisen zur Frage der Verschiebung von Grenzen und den Erwartungen an Kompensation, insbesondere in Bezug auf die Erwartung staatlicher Kompensation, die mit dem Aufkommen der zur Zeit der Veröffentlichung präsenten Kreditklemme und der globalen Finanzkrise zu einer immer drängenden Frage geworden ist.

Für ihre Mitwirkung bei der Herstellung der Druckvorlagen ist den Mitarbeiterinnen und Mitarbeitern des Lehrstuhls für Strafrecht und Rechtsphilosophie

an der Europa-Universität Viadrina Frankfurt (Oder) *Camilla Klich, Anja Köhler, Susen Pönitzsch, Carola Uhlig, Johannes Bochmann* und *Jonathan Lang* zu danken. *Carola Uhlig* danken wir zudem für die Erstellung der Register. Last, but not least gebührt *Lars Hartmann* (Berlin) Dank für die umsichtige Betreuung der Drucklegung im Verlag Duncker & Humblot.

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Dort sind auch weitere Informationen, insbesondere die englische und deutsche Zusammenfassung der Artikel und Bestellinformationen zum Jahrbuch erhältlich.

Die Herausgeber

Preface

The papers on Kant's vision of peace in Part I. of this volume are a selection of the papers presented at the Conference *Kant's Vision of Peace in his Zum Ewigen Frieden* that was held at Carlsberg Academy, Copenhagen August 2006. The Conference was a part of the activities of the *Network on Ethics and Justice in the Community of Nations* at the Section for Philosophy and Science Studies, Roskilde University, led by associate professor Dr. scient *Ib Martin Jarvad*, Ph.D., who is also co-editor of Part I. of this volume. The Conference was generously supported by the Danish State Research Council for Culture and Communication. *Silas Harrebye* assisted with the practical arrangement of the Conference and *Fatima Sabir* took care of the subsequent editing of the papers.

Part II. of this volume, focusing on 'compensation' and co-edited by Dr. *Melissa Lane*, Senior Lecturer at the Faculty of History, University of Cambridge, grew out of a Common Security Forum project on Partnership and Security (2004–09), funded by the Rockefeller Foundation. Part of this project focused on private actors and legitimacy, and it was in this context that the notion of compensation as indicative of changing boundaries between public and private – states and companies, states and individuals – was born. It was explored in a meeting held by the Centre for History and Economics at King's College, Cambridge in September 2006, which brought together papers and participants from the perspectives of history, political theory, and law. All of the presenters at that meeting submitted papers for this volume; *Catriona McKinnon* was not present at the original meeting but was invited to submit subsequently on the basis of the fit between her work and the purpose of Part II. of this volume. The papers published here represent an original interlocking of perspectives on the question of the shifting boundaries and expectations of compensation, especially in relation to the expectation of state compensation, which has become an urgent question with the advent of the credit crunch and global financial crisis being experienced at the time of publication.

Our gratitude also goes to *Camilla Klich*, *Anja Köhler*, *Susen Pönitzsch*, *Carola Uhlig*, *Johannes Bochmann* and *Jonathan Lang*, members of the Chair for Criminal Law and Legal Philosophy at the European University Viadrina Frankfurt (Oder) for their support in preparing the manuscripts for publication. We also appreciate *Carola Uhlig's* contribution in preparing the indices. Last, but not least, we would like to thank *Lars Hartmann* at Duncker & Humblot (Berlin) for his comprehensive assistance in printing the volume.

We would also like to draw the readers' attention to our website:

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where they will find further information on the *Annual Review of Law and Ethics*, including English and German summaries of the articles it contains and purchasing procedures.

The Editors

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I. Kants Friedensschrift – Kant's Peace Project

Kant, Rawls, and Cosmopolitanism: *Toward Perpetual Peace and The Law of Peoples*

Alyssa R. Bernstein

Immanuel Kant is widely recognized as one of the greatest philosophers of international relations. John Rawls is widely regarded as one of the greatest Kantian political philosophers of the twentieth century. Rawls, in his work *The Law of Peoples* (henceforth “LP”),¹ brought up to date in certain important respects Kant’s plan for bringing the world closer to a condition of perpetual peace. Some Kant scholars have praised Rawls’s LP, while others have criticized it. James Bohman and Matthias Lutz-Bachmann have written that it provides “perhaps the best Kantian response” to the problems of illiberal societies, pluralism, and toleration.² Thomas Mertens has suggested that Rawls should have “felt free” to sketch a “more revolutionary view” of international relations than he did, given the world’s pressing problems, which include extreme poverty, increasing inequality, and a deteriorating natural environment; more specifically, Mertens has written that if Rawls had made a “more daring” proposal, like Thomas Pogge’s cosmopolitan conception of global justice, he would have been “more faithful to the Kantian approach.”³ I largely agree with the assessment by Bohman and Lutz-Bachmann, and

¹ *John Rawls, The Law of Peoples*, Cambridge (Mass.): Harvard University Press, 1999.

² *James Bohman/Matthias Lutz-Bachmann*, “Introduction”, in: James Bohman/Matthias Lutz-Bachmann, eds.: *Perpetual Peace: Essays on Kant’s Cosmopolitan Ideal*, Cambridge (Mass.): M.I.T. Press, 1997, p. 16. Here Bohman and Lutz-Bachmann refer to Rawls’s essay, “The Law of Peoples”, in: Stephen Shute/Susan Hurley, eds.: *On Human Rights: The Oxford Amnesty Lectures 1993*, New York: Basic Books, 1993.

³ *Thomas Mertens*, “From ‘Perpetual Peace’ to ‘The Law of Peoples’: Kant, Habermas and Rawls on International Relations”, in: *Kantian Review*, Volume 6, 2002, pp. 78 and 84 n. 75. It is not perfectly clear what Mertens means by “the Kantian approach.” He states that proponents of statist and globalist positions both “claim to be the genuine Kantian one;” then notes that Kant made a peace proposal that was “bold” in his own time; then suggests that the globalists’ “more daring proposals” are “more faithful to the Kantian approach.” (Ibid., p. 78). See also *Mertens’s* slightly revised discussion of Rawls’s *Law of Peoples* in “International or Global Justice? Evaluating the Cosmopolitan Approach”, in: Andreas Follesdal/Thomas Pogge, eds.: *Real World Justice: Grounds, Principles, Human Rights and Social Institutions*, Dordrecht: Springer, 2005, pp. 93–96. In this essay Mertens acknowledges that although “Pogge’s moral argumentation is strongly influenced by and indebted to the moral philosophies of Kant and Rawls,” it “also departs profoundly from the positions they take;” and that Pogge proposes “a quite revolutionary and utopian rejection of the ‘statist’ approach defended by Kant and Rawls.” (Ibid., p. 86).

disagree with Mertens's view that Pogge's cosmopolitan position is more Kantian (or "more faithful to the Kantian approach") than is Rawls's LP. However, fully clarifying and defending my positions on these questions requires more than a single article,⁴ so here I undertake only some necessary steps toward accomplishing those tasks.

I contend that Rawls's LP may be understood as revising and further developing some of the arguments Kant presents in *Toward Perpetual Peace* (henceforth "TPP"). I do not claim that Rawls worked out LP by modifying Kant's arguments: I think so, but I do not have the evidence necessary for supporting such a claim, and I am not primarily interested in addressing that question of intellectual history. What I contend is that three questions that are of pressing interest in our own historical period, when addressed to Kant's political philosophy, reveal respects in which his view is unclear or otherwise unsatisfactory. The three questions are the following: (1) What are the basic human rights that may permissibly be secured by international uses of coercive force? (2) Is humanitarian military intervention always morally impermissible, and if not, what kind of moral justification for it could be acceptable to states pursuing a peaceful and just global order? (3) Given the fact of reasonable pluralism, what principles can form the basis of a peaceful and just global order? Rawls's LP, when read in light of these considerations, can be seen to provide valuable clarifications, revisions, and developments of Kant's philosophy.

As regards human rights, Rawls's LP is motivated by the aim of securing basic rights through law for all natural persons, i.e., human individuals as distinct from collective agents; so is Kant's political philosophy. Like Kant, Rawls holds that political principles are enforceable moral principles, and that political principles determine enforceable rights of persons. However, unlike Kant, Rawls specifies a list of human rights which must be respected by every political society, as a condition of its being entitled to the rights of sovereignty, political autonomy and freedom from international intervention. Thus Rawls specifies grounds for permissible non-defensive international uses of coercive force, including humanitarian military intervention, in response to violations of human rights. While Kant's political philosophy does not absolutely prohibit such actions, Kant does not clearly specify grounds for them.⁵ Further modifying Kant's view, Rawls introduces the ideas of reasonable

⁴ I have published five articles on Rawls's Law of Peoples, three of which I cite later on: *Alyssa R. Bernstein*, "Democratization as an Aim of Intervention: Rawls's Law of Peoples on Just War, Human Rights, and Toleration", *ARSP (Archiv für Rechts- und Sozialphilosophie)*, Beiheft 95, 2004, pp. 23–35; *Bernstein*, "A Human Right to Democracy? Legitimacy and Intervention", in: Rex Martin/David Reidy, eds.: *Rawls's Law of Peoples: A Realistic Utopia?*, Oxford: Blackwell, 2006, pp. 278–298; *Bernstein*, "Justifying Universal Human Rights via Rawlsian Public Reason", *ARSP*, Beiheft 108, 2007, pp. 90–103. Also I have published an article on Kant's political philosophy, which I cite later on: *Bernstein*, "Kant on Rights and Coercion in International Law: Implications for Humanitarian Military Intervention", *Jahrbuch für Recht und Ethik/Annual Review of Law and Ethics*, Volume 16, 2008, pp. 57–100.

⁵ I provide support for these claims in *Bernstein*, "Kant on Rights and Coercion in International Law", *ibid.*, which I summarize below.

pluralism, overlapping consensus, and public reason, and argues that given the fact of reasonable pluralism, a peaceful and just global order must be based on the principles of a reasonable law of peoples, which can be the focus of an overlapping consensus and thus can be justified by public reason. I explain these ideas below.

Rawls largely agrees with Kant's three definitive articles of perpetual peace. He modifies the second, which holds that the right of nations must be based on a federalism of free states: Rawls holds that international law should be based on a reasonable law of peoples constituting the foundation charter of a Society of well-ordered Peoples. Rawls agrees with Kant in referring to all independent states that freely cooperate in establishing and maintaining a law-governed international association as "free states," whether or not they have ideal republican governments. Unlike Kant, however, Rawls states the principles to be followed by the member states, thus giving content to the foundation charter.

Rawls argues for the principles of LP using normative political conceptions of persons, individual and collective. Rawls's normative term "a people" corresponds to Kant's normative term "a state." Seeing this is necessary for correctly understanding LP and its relation to TPP. Thomas Pogge, like other critics of LP, misunderstands the meaning of Rawls's term "a people" and the role it plays in LP. He mistakenly claims that LP regards peoples, as distinct from individual (natural) persons, as the ultimate and sole units of moral concern.⁶ If this were true, LP would be a fundamentally un-Kantian conception. However, it is false; although LP constitutes part of Rawls' political liberalism, it is also a Kantian conception, as I explain below.

My interpretation of Rawls's term "a people" constitutes a response also to a criticism of LP recently made by Catherine Audard:

[T]he notion of a 'people' is so ill defined and problematic that we have no clarification concerning the relation between states and peoples, in particular the distribution of power between minority peoples and majority governments in non-liberal but decent societies. This is a major flaw, which is responsible for Rawls's failure to secure enough protection for vulnerable individuals and minority peoples. At the same time, being the 'master argument', it plays such a central role and has to contribute so much in Rawls's theory that we might begin worrying about the soundness of the whole project.⁷

Here I offer some support for my view that the project is sound.

By studying TPP and LP in light of each other, one gains insights into both. Elsewhere⁸ I have presented the resulting interpretation of TPP, which I summarize

⁶ *Thomas Pogge*, "Do Rawls's Two Theories of Justice Fit Together?", in: Rex Martin / David Reidy, eds.: *Rawls's Law of Peoples: A Realistic Utopia?*, Oxford: Blackwell, 2006, p. 211; *Thomas Pogge*, "Cosmopolitanism", in: Robert E. Goodin / Philip Pettit / Thomas Pogge, eds.: *A Companion to Contemporary Political Philosophy*, second edition, Volume 1, Oxford: Blackwell, 2007, p. 317.

⁷ *Catherine Audard*, John Rawls, Stocksfield: Acumen, 2007, p. 243.

⁸ *Bernstein*, "Kant on Rights and Coercion in International Law", op. cit. fn. 4.