

CIVIC AND COSMOPOLITAN JUSTICE

by

ONORA O'NEILL



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Onora O'Neill

1 Justice beyond Boundaries

There is, I think, little doubt that we now need an account of justice that stretches beyond boundaries. Many activities, processes and powers have always had effects that reached beyond boundaries of various sorts. Processes such as climate change, activities that may cause harm on a vast scale—such as uses of nuclear or bio-chemical weapons—are no respecters of boundaries; policies for dealing with them also cannot respect boundaries. There are other activities and processes, such as trade and pollution, which do not invariably spread across boundaries, but have done so for many centuries. Yet other activities and processes have recently begun to cross boundaries on an unprecedented scale: they include flows of capital, of information (and misinformation), of technologies and of crime. Yet other activities and processes, such as flows of migrants and asylum seekers, are still more or less regulated by various sorts of boundaries. All of these cross-boundary flows maybe altered and their effects magnified or reduced by adopting one or another policy, hence all raise questions of justice.

It is not obvious how we should now speak of those aspects of justice that are concerned with activities and processes that cross boundaries. Traditionally the term *international justice* has been used, but it has evident infelicities. In the first place, the units whose boundaries may—or may not—be crossed by various activities are seldom nations, and rather more frequently states; few of them are nation-states. However, terms such as *interstatal justice* and *intergovernmental justice* are hardly more apt, since some of the processes and activities of most concern elude or bypass the control of states and governments. An adequate account of justice and boundaries has to take note of the activities powerful non-state actors, ranging from corporations to non-governmental bodies, from criminal networks to UN institutions, whose location and boundaries are often not well-defined. The term *transnational justice* shares some of the deficiencies of the term *inter-*

national justice. On the other hand the popular phrases *global justice* and *cosmopolitan justice* are too easily understood as presupposing that the outcome of a discussion of justice and boundaries must be unitary system of justice for the entire globe, hence as begging contentious questions. I have therefore settled on the deliberately minimal phrase *justice across boundaries* as a starting point. In using this term I assume only that where processes and activities can cross boundaries, reasons would have to be given for thinking that should or should not be permitted to do so.

2 Reason and the Scope of Justice

To many people the very idea that (aspects of) justice might have unrestricted scope seems counterintuitive. They may note that justice has been thought of since antiquity as a political or civic virtue, or insist that “justice is the first virtue of social institutions”,¹ and suspect that uncoupling the link between justice and political units (whatever these may be at a given time) will be incoherent.

I believe that this thought is convincing only if we assume that a system of just states will itself be just. But this claim is implausible. Of course, we can imagine a certain sort of plurality of states which would be just provided that each state was just. For example, a set of just states without mutual influence or effects (imagine that they are located on different continents in a pre-modern world, or on different planets today) would be just. But the system of states in the various forms in which it has existed in recent centuries is not like this. The prospects and powers of states, and the structures they can establish internally, are always shaped by their relations with other states, by the forms of dependence and interdependence and the sorts of threats and risks, opportunities and advantages that each state presents to others. It is uncontroversial that there are relations of power and domination among states, and that interstate relationships can be major sources of injustice. Nobody who reflects on the unhappy history of the twentieth century could think otherwise.

In raising questions about the justice of boundaries I shall not be concerned with the justice or injustice of their location—a venerable and contentious topic in many parts of the world—but with boundaries as an institution. Boundaries do not have the simplicity that their linear representation on maps misleadingly suggests. They are not simply demarcations between all activities and processes occurring in one domain and all activities and processes occurring in an adjacent domain. It would perhaps be more accurate to think of boundaries

as systems of filters, which can be constructed and adjusted in many different ways. Boundaries can range from the 'supernormal' boundaries of former East Germany, which were virtually impervious to capital and people, and permitted only a highly regulated and limited flow of goods and information, to the wholly porous, invisible and often ill-defined demarcations which even today are all that can be found in many frontier regions. In short, boundaries are complex social and political institutions whose form and function can be changed and adjusted without changing their location.² Boundaries, like other institutions, are therefore appropriate matters for challenge and criticism. All questions about location apart, the justice of boundaries, and of changes that might be made in the way they regulate and filter the passage of goods and money, people and information, technologies and ways of life, represents a major challenge for political philosophy.

These preliminary thoughts about boundaries show very little about the appropriate way to address the justice of boundaries in political philosophy. On some views, both traditional and recent, justice beyond boundaries is an important topic, but a theory of justice should nevertheless begin with an account of a just community, society or state, and only then proceed as a second chapter to an account of justice across boundaries. On other views, beginning with an account of justice within boundaries may compromise or even vitiate any subsequent attempt to provide a convincing account of justice beyond boundaries.

These issues might be addressed in many ways. In this lecture I shall try to say something about the starting points that we might choose for an account of justice that can cross boundaries. I shall look briefly at some of the implications of a communitarian starting point, but my main focus will be on two very different conceptions of 'public reason' which might provide starting points for an account of justice. One is used by John Rawls both in *Political Liberalism* (1993) and in *The Law of Peoples* (1999); the other was proposed by Kant in a number of works, but in particular in his later political writings.

Rawls and Kant each advance what may be loosely called a semi-cosmopolitan view of justice: neither endorses a world state, but each thinks that there is more to justice than 'domestic' or 'internal' justice. I shall not however say very much about the specific institutional proposals for international justice Rawls and Kant put forward. There are two reasons for this. The main one is that comparisons between proposals that address such different worlds may mislead. Kant's proposals were in their day a remarkable blend of realism and radical thinking. Writing at time when there were few republican states and no full

democracies, he proposes a league of republican states which acknowledge certain rights not only for their own citizens but for others. By contrast, Rawls's proposals for justice across boundaries are quite conservative. Writing at a time at which the United Nations and its organisations, the world bank and various international courts all exist, he suggests that international justice will require these sorts of institutions. My second reason for saying rather little about the specificities is that much has already been said—by Habermas, by Pogge and by many others.³ But in my view rather little has been said about the respective starting points, so it is to these that I shall turn. For reasons that will become clear, I shall discuss Rawls before Kant.

3 Communitarians and Justice beyond Boundaries

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

Communitarians are not unaware of the possibility that the constitutive norms of communities and traditions may change, indeed be changed by those within a community. They see the categories and values of communities as open to revision in the light of its internal conceptual resources. Hence it would be a mistake to think that communitarian reasoning is inevitably **conservative**. However, I believe that it would not be mistaken to think that reasoning that proceeds within the constraints set by the categories, norms and other resources of a community or tradition must inevitably be **ethnocentric**. Communitarian reasoning is inevitably insiders' reasoning, and takes no account of the categories, the concerns or the views of outsiders. This does not, of course, mean that communitarians can have no view of the proper treatment of outsiders: they might be convinced of the merits of ex-

clusion or of integration, of neglect or of assimilation, or perhaps (more worryingly) of marginalisation, colonisation or extermination. However, they do not think that there could be reasoned dialogue with unassimilated outsiders, with whom neither categories nor norms, nor therefore the means of reasoning, are shared.

Although communitarians take a realistic view of the possibilities for change within any given tradition, I believe that they take an unrealistic view of the boundaries between traditions and communities. Political boundaries form highly variable filters; the cultural boundaries which communitarian reasoning is chiefly concerned with are yet more diverse and malleable. Many people are inward with the categories and norms of a number of traditions; those who are not initially familiar with the thought of some community can often grasp a good deal about others' categories and norms, and therefore about their reasoning. (For evidence consider the amazing spread of the rhetoric of rights). Sense of identity is not invariably anchored in the actual norms and categories of a single community; even where it is, the ways of thought and life of that community may allow understanding of and by a fair range of outsiders. Like the rest of us, communitarians in fact hold that foreigners and other cultural outsiders are persons with whom we can communicate if not perfectly still a great deal, and that trade and translation, travel and collaboration are real possibilities. In my view these everyday assumptions undermine the plausibility of any communitarian conception of practical reason and show that it does not offer a convincing basis for reasoning either about domestic justice or about justice beyond boundaries.

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

4 Rawls on Public Reason

In *Political Liberalism* and in *The Law of Peoples*, which includes a separate essay on 'The Idea of Public Reason', John Rawls explicitly rejects the underlying assumption of the communitarian project:

“pluralism is not seen as a disaster but rather as the natural outcome of human reason under enduring free institutions”.⁴ If this is the case, there will be no way to identify constitutive categories and norms for the very units for which Rawls thinks questions of justice primarily arise. Justice, as he sees it, has its context in a “bounded society”, a perpetually continuing scheme of co-operation which persons enter only by birth and leave only by death, and which is self-sufficient.⁵ Within each bounded society, reasonable persons will not come to complete agreement about ethical matters and may be expected to form differing ‘conceptions of the good’. However, as reasonable they may be expected to accept a form of reciprocity, namely to be “ready to propose principles and standards as fair terms of co-operation and to abide by them willingly, given the assurance that others will likewise do so”.⁶ Reasonable persons are committed to a conception of public reason, and prepared to work out the framework for the public social world they share, to construct the principles of justice by which they will live together despite irresolvable ethical disagreements. Public reason, as Rawls construes it, is “citizens’ reasoning in the public forum about constitutional essentials and basic questions of justice”.⁷ Evidently this conception of public reason as reciprocity between fellow citizens presupposes the constitutive institutions which define fellow citizenship: the bounded society, the constitutional basis of citizenship (liberal rights and democracy in Rawls’s account). This essentially civic conception of public reason is coupled with what we might view as an associative conception of practical reasoning for lesser spheres (Rawls calls this ‘non-public reason’; his thought is close to Kant’s views on ‘private reason’)⁸. In short, although Rawls’s conception of public reason in *Political Liberalism* does not assume the shared culture that communitarian reasoning presupposes, it does presuppose shared political arrangements, including boundaries, liberal democracy, and citizenship. It is a nice question whether the boundaries that are presupposed are—contrary to Rawls’s intentions—in fact state boundaries. On the one hand he claims only to presuppose a ‘bounded society’, on the other hand the assumption that nobody enters except by birth or leaves except by death suggests that the boundaries of such a polity are well policed, that force is exercised, indeed monopolised, within the territory in question. And this is the Weberian definition of a state.

These issues are discussed in more detail in Rawls’s *The Law of Peoples*. Here he argues that issues of justice beyond boundaries are to be approached by considering public reasoning as conducted by peoples. He rejects both the communitarian thought that the basis of reason-

ing is to be culturally defined (a community, a tradition), and the thought that the parties who consider justice beyond boundaries are to be thought of either as individuals or as states.⁹ Liberal peoples are thought of as inhabiting their own territories, and as negotiating standards of international justice (here the term may be apt) with other liberal peoples, as well as with those non-liberal peoples who have what Rawls calls a 'decent hierarchical society'. Rawls believes that the principles that would be mutually accepted will include those of non-aggression, non-intervention except in self defence (and sparingly to end grave violations of human rights).¹⁰ He also thinks that reasonable peoples are likely to agree on some version of the UN organisations, some form of World Bank and some form of global trade agreement.¹¹ Reasonable peoples also, he thinks, have some duty to help heavily burdened societies, so that all have the means of life; but the difference principle is not to be extended internationally.¹² Since the procedures of Rawlsian public reasoning are specified only in very general terms, it is hard to be sure whether or in what conditions there would be mutual agreement on these or other specific arrangements; in particular it is hard to see whether and why reasonable peoples would not agree to a more extended view of duties of richer towards poorer societies.

The conception of the state that Rawls rejects in *The Law of Peoples* is in my view indeed a pretty unpromising basis for any account of justice beyond boundaries. What he rejects is the realist conception of states as "anxiously concerned with their power—their capacity (military, economic, diplomatic)—to influence others and always guided by their basic interests".¹³ However, this has always been an idealised, indeed ideologised conception of the state, and it is certainly not the only option.

In fact, the conception of a 'people' on which Rawls builds his account of justice beyond boundaries is a remarkably state-like conception, based on the protection of territory and self-interest:

Liberal peoples do, however, have their fundamental interests as permitted by their conceptions of right and justice. They seek to protect their territory, to ensure the security and safety of their citizens, and to preserve their free political institutions and the liberties and free culture of their civil society.¹⁴

Evidently Rawls conceives of peoples as politically organised, and as able to appoint representatives¹⁵ through whom they are to reason about justice beyond boundaries. In short, peoples are conceived as

having all the powers capacities and features of states, apart from one very specific feature:

What distinguishes peoples from states – and this is crucial – is that just peoples are fully prepared to grant the very same proper respect and recognition to other peoples as equal.¹⁶

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

Rawls's choice of *peoples* rather than *states* as the agents whose deliberations are basic to justice beyond boundaries is, I think, motivated in large part by the inaccurate assumption that states must be ideal typical structures that fit the realist paradigm. Yet states *as we have actually known* them have always fallen far short of that paradigm.¹⁷ The conception of states and governments as having limited powers, and as observing certain fundamental principles over and above the pursuit of rational self-interest, is part and parcel of the liberal tradition of political philosophy, and central to contemporary international politics. States *as they have really existed and exist* never had and never have unlimited sovereignty, internal or external—although some theorists of sovereignty, some proponents of strategic reasoning, some hawks in powerful states, and some romantic nationalists without powerful states have made grandiose claims. States *as they currently exist* are committed by numerous treaty obligations to a limited conception of sovereignty, and there is nothing contradictory about this commitment, although like other commitments it is sometimes not honoured. Peoples, *as they may once have existed* independently of state structures probably did not have bounded territories; those peoples who have the means to negotiate with other peoples, to keep outsiders out and to make agreements, have them *because* they have state and governmental structures.

It is not hard to see what leads Rawls to this quite distinctive view of the basis for thinking about international justice. Since he has proposed an account of public reason that focuses on the notion of reciprocity among agents, he has to determine who the relevant agents shall be, among whom reciprocity is to be achieved, or not. Since he assumes that the only conception of the state is the realist conception, according to which states act solely from self interest and will not be capable of reciprocity, these agents cannot be states. By default, the reasonable agents who are to carry the burden of international negotiation across boundaries are seen as peoples. Yet in reality the only peoples who have firm boundaries and the capacity to negotiate with outsiders on a sustained and perhaps reasonable basis are those peo-

ples with states. There is something laborious about anchoring an account of reasoning to a conception of territorial agents who may not be well exemplified in our world, and if they were exemplified would acquire the political capacities Rawls imputes to them only through state and governmental structures which his argument rejects.

5 Kant: Public Reason as Non-Derivative

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

Since my presentation of the Law of Peoples is greatly indebted to Kant's idea of *foedus pacificum* and to so much in his thought, I should say the following: at no point are we deducing the principles of right and justice, or decency, or the principles of rationality, from a conception of practical reason in the background. Rather, we are giving content to an idea of practical reason and three of its component parts, the ideas of reasonableness, decency and rationality. The criteria for these three normative ideas are not deduced, but enumerated and characterized in each case. Practical reasoning as such is simply reasoning about what to do, or reasoning about what institutions and policies are reasonable, decent, or rational and why. There is no list of necessary or sufficient conditions for each of these three ideas...¹⁸

As Rawls sees it, Kant's reliance on an account of practical reason has unacceptable metaphysical presuppositions.¹⁹ Kant, by contrast, does seek to derive his account of justice from an account of practical reason. But I do not think that it follows that Kant's conceptions of ethics, of justice and of international justice *must* be derived from transcendental idealism under a strongly metaphysical interpretation. Kant's writings on public reason provide relatively accessible arguments which do not draw on metaphysical assumptions, yet aim to vindicate a specific conception of practical reason: they can be given, indeed they invite, an anti-metaphysical reading.²⁰

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

socially or civilly constituted power and authority which lacks reasoned vindication fails to reason.

This view is explicit in the quite distinctive way that Kant characterises the difference between his conceptions of *public* and *private* uses of reason in various works of the 1780's and 1790's.²¹ Here I shall refer only to two short essays of the 1780's, neglecting other extended discussions of public and private reason.²² In these writings Kant characterises uses of reason that appeal to rationally ungrounded assumptions, such as the civilly constituted authority of Church or state, not as public but as private. In *What is enlightenment?* he speaks of the reasoning of military officers, of pastors of the established Church and of civil servants in carrying out their roles as *private*: these functionaries derive their authority from their civil or public office, and their official communications assume without argument the authority and the edicts of that civil power and the rules of office that it has instituted. Kant states quite explicitly that "the private use of reason is that which one may make of it in a certain civil post or office with which he is entrusted"²³ It follows that the sorts of reasoning exhibited in democratic political debate and in communitarian thought, as well as in the civic reasoning Rawls commends, are all in Kant's view *private*, or at least as *not fully public*, because each appeals to the authority of civilly and socially constituted roles, institutions and practices. Rawlsian peoples are not in fact identifiable independently of the constitutive institutional structures that secure their territories, distinguish citizen from non-citizen, and enable their democratic government, including that part of democratic government which counts as foreign policy: hence Kant would see their reasoning as less than fully public.

Kant himself offers a quite different view of (fully) public reason as intrinsically non-derivative. He contrasts all 'private' uses of reason with "the public use of one's own reason... which someone makes of it *as a scholar* before the entire public of the *world of readers*",²⁴ a scholar "who by his writings speaks to the public in the strict sense, that is, the world".²⁵

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

6 Kant: Public Reason as Freedom without Lawlessness

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

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

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

Clearly Kant thinks that we can say more about the demands of public reason. He never maintains that reasoning has *merely* to be free and non-deferential. He sets out the other requirements of reasoning rather clearly in *What does it mean to orient oneself in thinking?*, which was published quite soon after *What is enlightenment?*. In the second essay he

argues that nothing could deserve to be called reason if it was wholly without structure and discipline, because a minimal condition for any discourse to count as reasoned is that it be *communicable*. Reasons are the sorts of things that we give and receive, accept or refuse. He rejects the idea that reasons could be devised by the arbitrary fiat of individual reasoners:

...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!²⁶

The standards of reason cannot be found in solitary thinking: on the contrary those who seek to reason *must* structure their thought, speech and communication in ways that others *can* follow.

At times Kant uses a fiercely sarcastic rhetoric²⁷ to chastise those who try to purvey the illusion that reasoning could be without all structure or discipline and delude themselves that this 'lawless' freedom will be liberating. He had clear targets in mind, including the fans of religious enthusiasm (*Schwärmerei*) and of exaggerated views of the powers of genius; today his targets might include a fair range of post-modernists, new-agers and deconstructionists. In each case he believes that the opponents of reason fail to see that the unstructured liberation of thought and discourse which they crave will be a disaster:

...if reason will not subject itself to the laws it gives itself, it has to bow under the yoke of laws given by another; for without law, nothing—not even nonsense—can play its game for long. Thus the unavoidable consequence of *declared* lawlessness in thinking (of liberation from the limitations of reason) is that the freedom to think will ultimately be forfeited...²⁸

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

7 Kant: Public Reason as Law-like

If 'lawless' thinking ends not in freedom of thought and communication, but in gibberish and isolation, even in superstition and cognitive disorientation, whose political consequences include vulnerability to tyrants and demagogues, then any activity in human life that can

count as reasoned must be structured. This structure must enable us to distinguish good reasons from poor reasons, to decide which we ought to accept and which we ought to reject. Reasoning whether theoretical or practical will lack authority and normative force if it has no structure by which this distinction can be made. So if anything is to count as more than 'private' reason, in Kant's sense of the term, if there is to be anything that is to count as fully public reason, then it must have a structure which it does not derive from existing institutions and practices. What then can provide the internal, non-derivative discipline or structure of fully public reasoning? Kant's answer is straightforward:

Freedom in thinking signifies the subjection of reason to no laws except *those which it gives itself*; and its opposite is the maxim of a lawless use of reason...²⁹

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

Kant's identification of reason with autonomy is initially startling, despite the fact that the *Groundwork of the Metaphysics of Morals* makes it plain that practical reason is to be identified with autonomy.³⁰ The reason that it is startling is surely that the contemporary conception of autonomy identifies it with independence rather than with reason. Kant, however, never equates autonomy with mere freedom or with independence.³¹ Unlike most recent 'Kantian' writers (and many of their critics), he views autonomy or self legislation as emphasising not *some (rather amazing sort of) self that does the legislating*, but rather *legislation that is not borrowed from others, that is not derivative, that is therefore freely chosen, and yet 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 be only a matter of requiring that any principle we use to structure thought or action be law-like, that it have 'the form of law'. Only those who freely choose principles that have the 'form of law' meet the demands of Kantian autonomy; only they show commitment to public reason. This is why Kant can write:

Now the power to judge autonomously—that is, freely (according to principles of thought in general)—is called reason.³²

Another way of making the same point is to note that Kant identi-

fies public reason with a double modal criterion: with the *requirement* of structuring our discourse in ways in which (we believe) others *can* follow. A general statement of this criterion can be found at the end of *What does it mean to orient oneself in thinking?*, where Kant identifies reasoning with the practice of adopting principles of thinking and acting that have the form of law, which can be adopted by all:

To make use of one's own reason means no more than to ask oneself, whenever one is supposed to assume something, whether one could find it feasible to make the ground or the rule on which one assumes it into a universal principle for the use of reason.³³

We are most of us more familiar with a restricted version of this principle, formulated specifically for the domain of action, which Kant labels 'the supreme principal of practical reason' or 'the Categorical Imperative'. The best known of these more restricted formulations is the Formula of Universal Law version of the Categorical Imperative, whose double modal structure is particularly plain: '*act only in accordance with that maxim through which you can at the same time will that it become a universal law*'.³⁴

8 Kant and Domestic Justice

Where does this account of the vindication of practical reason take Kant's account of justice, and specifically of justice beyond boundaries? I shall first comment briefly of Kant's account of domestic or 'internal' justice. His justification of political institutions does not appeal simply to a version of social contract³⁵ or contractarian thought but to a more abstract *Universal Principle of Justice*. A particularly clear formulation of this principle is given early in the *Doctrine of Right* (the first part of the *Metaphysics of Morals*). It runs:

Any action is *right* if it can coexist with everyone's freedom in accordance with a universal law, or if on its maxim the freedom of choice of each can coexist with everyone's freedom in accordance with a universal law.³⁶

The *Universal Principle of Justice* makes no explicit reference to consent. Its justification lies rather in its relationship to the formulae of the Categorical Imperative, and so to Kant's vindication of practical reason as grounded in the necessary conditions for any possible fully public reasoning. Kant's argument for justice begins simply from the requirement that reason be fully public, in the sense that it never in-

voke arbitrary authority, hence can be followed in thought or adopted in action by all, without presupposing any pre-established agreement, shared ideology or religion or other given source of coordination.

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

Kant thinks that the implementation of this principle in the actual conditions in which we live is not straightforward. We find ourselves living on a spherical and finite globe that brings us into contact with others and competing with them for scarce resources; and we are not reliably altruistic.³⁷ In our world external freedom will therefore be insecure without at least a limited form of coercion, aimed at 'hindering the hindrances of freedom'. In these conditions the *Universal Principle of Justice* can be best implemented by establishing states with republican constitutions, which guarantee freedom within the law at least within a certain territories, although they can do so only by coercive use of a conditional form of state power. Kant justifies state power not as an intrinsic requirement of justice, but as the compromise which we have to make under actual conditions.

A succinct formulation of this compromise is given in Kant's statement of the elements of a *republican constitution*:

A constitution established, first on principles of the *freedom* of the member of a society...second on principles of the *dependence* of all upon a single common legislation...third, on the law of their *equality* (*as citizens of a state*)—the sole constitution ... on which all rightful legislation of a people must be based—is a *republican constitution*.³⁸

Republican justice is evidently not democratic justice, but I do not think it is trivial. Consider how much it rules out. Societies or states which do not secure the rule of law (anarchic or despotic societies) undermine or jeopardise external freedom for some or for all, so base their constitution on a principle which cannot be a principle for all and are unjust. Societies or states which leave some persons above or outside the law (monarchies, dictatorships, states within states, slave states) undermine or jeopardise external freedom for some or for all, so base their constitution on a principle which cannot be a principle for all, so are unjust. Societies or states which do not secure equality of status for all citizens under law (feudalism, caste societies, patriarchal societies) undermine or jeopardise external freedom for some or for all, so base their constitution on a principle which cannot be a principle for all, so are unjust. It may be that Kant's account of domestic justice could be improved by showing that the abolition of gender discrimination and the institution of full democracy are also components of a just constitution.

9 Kant On Justice Beyond Boundaries.

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

The second advantage is a corollary of the first. Because he has offered a vindication of reason, Kant has no need to presuppose any institutional structures in arguing for the basic principles of justice: he can address the agenda of seeing which principles would and which would not be reasonable without begging questions. In Kant's thought human rights, democracy, state power and (some sorts of) boundaries are

The approach has several further advantages. Kant does not ground his account of justice in the realist conception of the state, with its ethically disreputable disregard of the moral standing of some of those with whom we in fact interact across boundaries, and to whose suffering we may contribute. Nor does he argue for a merely abstract cosmopolitanism.³⁹ Nor does he anchor justice in the puzzling conception

of a territorial people who lack a state but police their boundaries tightly.

For Kant an account of a just world—of a form of cosmopolitan justice in which boundaries may not be absent, but must be shown not to inflict injustice—begins with an account of the reasons we have for seeking principles that could be adopted by all. The *Universal Principle of Justice* formulates this requirement specifically for the public domain—the domain in which conflict is least avoidable—and legitimates constitutionally limited forms of state power within bounded territories. However, since there is no antecedent reason for thinking that states must be anything like those about which realists fantasise, the way is left open for considering which sorts of interaction between all agents, including states, are compatible with justice and which are not.

In my view this may provide a better starting point for thinking about justice beyond boundaries than the one Rawls offers, not only because the Kant's strategy of vindication aims deeper, but because it is more realistic and more open. The greater realism lies in the clear acknowledgment that republican states are not in themselves just: they are a compromise we have to make in order to start securing freedom under real world conditions. By the same token the boundaries of these states are not intrinsically just: the particular filters they institutionalise, the inclusions and the exclusions, the domination and the subordination which they secure, may constitute unjust action towards outsiders. If boundaries are a requirement of realism in the conduct of life, their construction and adjustment and the sorts of filters that they institutionalised is a matter of justice.

In the world as we now know it, state boundaries are porous not in all but in many ways: they are for the most part fairly porous to transfers of goods and capital, communications, technologies, and rather less so to cultures and religions. The respects in which they are least porous are to flows of people and of public finance. However, for Kant the status quo is never the end of the story. If we can find more just ways in which to structure boundaries in the world as it actually is, this will be a better implementation of the *Universal Principle of Justice*. In the meantime we should not deceive ourselves by imagining that the power relations between states are exempt from considerations of justice, or that the degree of cosmopolitan justice we have established at the start of the twenty first century is all that might be achieved.

NOTES

1. John Rawls, *A Theory of Justice* Harvard University Press, Cambridge, Mass., 1971, 3; in later writings Rawls has increasingly emphasised the specifically political character of reasoning about justice. References to and quotations from Rawls's writings will use the following abbreviations: *A Theory of Justice: TJ*; *Political Liberalism*, Columbia University Press, New York, 1993: *PL*; *The Law of Peoples*, Harvard University Press, Cambridge, Mass., 1999: *LP*.

2. Compare the boundaries of Europe in 1950 and in 2000: few have changed their location; all have become more porous to more activities and more sorts of people.

3. Jürgen Habermas, 'Kant's Idea of Perpetual Peace, with the Benefit of Two Hundred Year's Hindsight' in James Bohman and Matthias Lutz-Bachmann, eds., *Perpetual Peace: Essays on Kant's Cosmopolitan Ideal*, MIT Press, Cambridge, Mass., 1997, 113-153; Thomas Pogge, 'An Egalitarian Law of Peoples', *Philosophy and Public Affairs*, 23, 1994, 195-224.

4. John Rawls, *PL*, Columbia University Press, New York, 1993, xxiv; cf. 47, 55. 3; *LP* 31-2; 'The Idea of Public Reason' (included in *LP*) 131.

5. This formulation is to be found throughout *TJ*; in later works the emphasis on bounded societies continues, but their liberal democracy and the citizenship of their members are increasingly emphasised; these shifts are corollaries of Rawls's shift to 'political' justification.

6. *PL* 49; see also the note on this page.

7. *PL* 10; cf 212 ff. and *LP* 132-3.

8. For Rawls's views on non-public reasoning see *PL* 213 ff., esp. 220-22 and *LP* 134; for Kant's views on public and private reason, see section 8 below.

9. *PL* 18; *LP* 23-30.

10. *LP* 35.

11. *LP* 38.

12. *LP* 115-119; for contrary views see Charles Beitz, *Political Theory and International Relations*, Princeton University Press, Princeton, 1979 and Thomas Pogge, 'An Egalitarian Law of Peoples', *Philosophy and Public Affairs*, 23, 1994, 195-224.

13. *LP* 28.

14. *LP* 29. Note also the following: "The point of the institution of property is that, unless a definite agent is given responsibility for maintaining an asset...that asset tends to deteriorate. In this case the asset is the people's territory and its capacity to support them in perpetuity; and the agent is the people themselves as politically organised", *LP* 39.

15. *LP* 32, 34.

16. *LP* 35.

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

18. *LP* 86-7

19. For a discussion of some of Rawls's reasons for distancing himself from Kant, and some of the ways in which he arrives at a very weak conception of public reason see Thomas McCarthy, 'A Reasonable Law of Peoples' in James Bohman and Matthias Lutz-Bachmann *Perpetual Peace: Essays on Kant's Cosmopolitan Ideal*, MIT Press, Cambridge, Mass., 1997, 201-217. For further suggestions for an anti-foundationalist reading of Kant's vindication of reason see Onora O'Neill, *Constructions of Reason: Explorations of Kant's Practical Philosophy*, Cambridge University Press, Cambridge, 1989, especially the first two papers, and 'Vindicating Reason' in Paul Guyer, ed., *The Cambridge Companion to Kant*, Cambridge University Press, Cambridge, 1992, 280-308.

20. Kant presents other arguments for the non-derivative character of reason which make no use of the conception of public reason. In various texts he leans more heavily on terms such as *negative self-discipline*, *self-legislation*, *authentic interpretation* and *autonomy*.

21. All references to Kant's works and all quotations are taken from the *Cambridge Edition of the Works of Immanuel Kant*, ed. Paul Guyer and Allen J. Wood, Cambridge University Press, Cambridge. The relevant volumes are *The Critique of Pure Reason*, tr. Paul Guyer and Allen J. Wood, 1998; *Practical Philosophy*, tr. Mary J. Gregor, 1996; *Religion and Rational Theology*, tr. Allen J. Wood and George Givoanni, 1996. The volume and page references are to the Prussian Academy edition; they are included in the margins of the Cambridge edition. The following abbreviations are used: *The Critique of Pure Reason: CPR* (1781); *What is enlightenment?: WE* (1784); *Groundwork of The metaphysic of morals: G* (1785); *The metaphysics of morals: MM* ((1797); *Toward perpetual peace: PP* (1795); *What does it mean to orient oneself in thinking?: WO* (1786); *Religion within the boundaries of mere reason: R* (1793); *The conflict of the faculties: CF* (1798).

22. In particular, I shall say nothing about Kant's discussion of public and private uses of reason in the interpretation of Scripture, which is a major theme of *CF* and discussed using closely related terms in *R*.

23. *WE* 8:37.

24. *WE* 8:37

25. *WE* 8:38

26. *WO* 8:144

27. As those who seek to reason with post-modernists often discover, rhetoric is the only remaining way to engage.

28. *WO* 8:145

29. *WO* 8:145.

30. See especially *G* 4:440.

31. Kant does think that various *specific* forms of independence are important—but they are quite different from Kantian autonomy. A just, republican state is one where independence of action is safeguarded by the fact that nobody is either outside or above the law; active citizens need a degree of economic independence (*Selbstständigkeit*).

32. *CF* 7:27.

33. *WO* 8:146n.

34. *G* 4:421

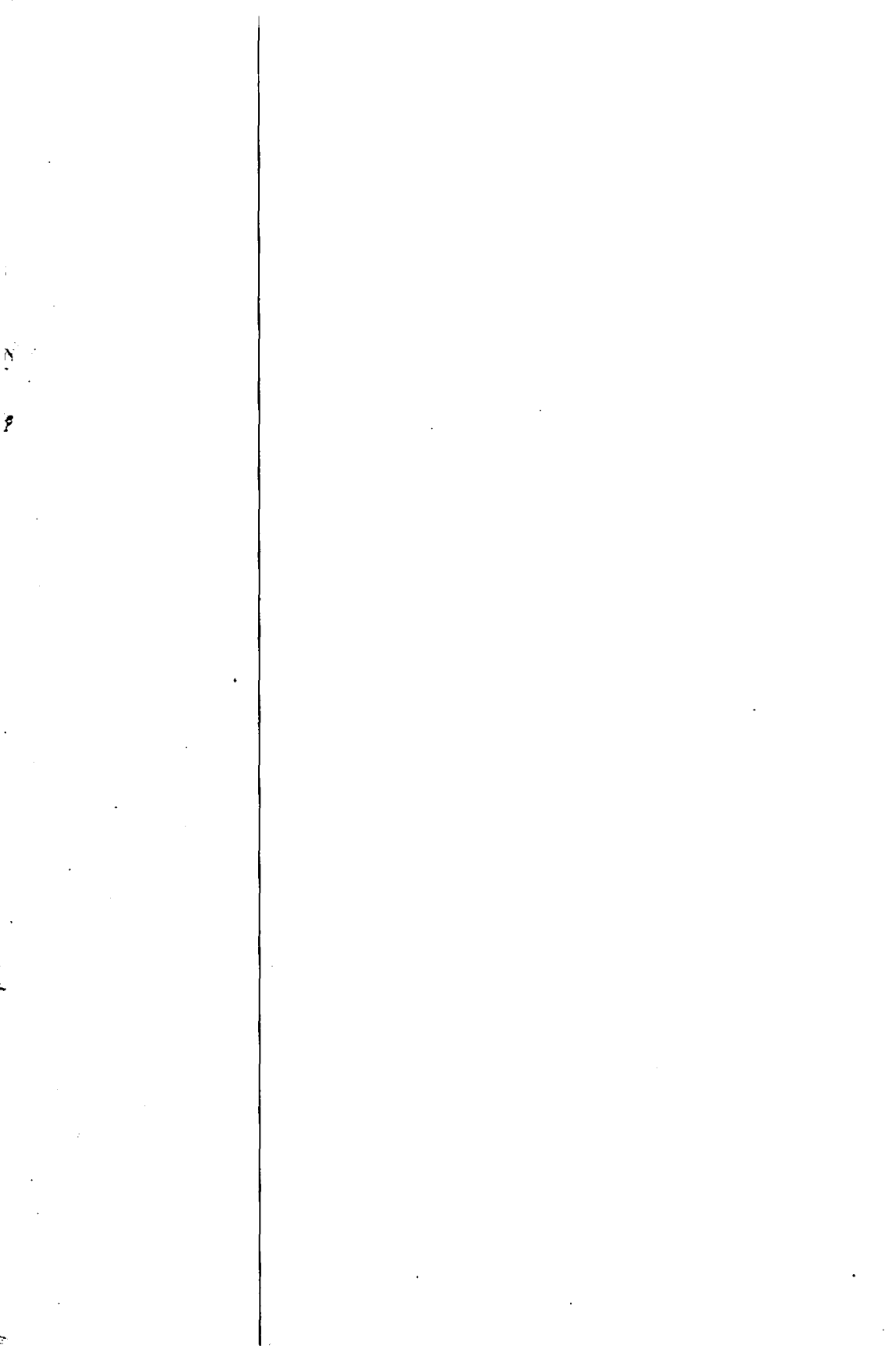
35. For Kant the term 'social contract' refers not to the fundamental principle of political justification, but to a specific step in the derivation of an account of just institutions from the Universal Principle of Justice. Unlike that principle, the idea of the social contract takes cognizance of historically specific conditions, for example of the fact that we live with moderate scarcity and limited altruism yet in mutual proximity. Hence in our world the social contract has to accept state coercion, but can require state structures to take a republican form. See Onora O'Neill, 'Kant and the Social Contract Tradition', in Claude Piché, ed., [Essays in honour of Pierre Laberge: title to be supplied] forthcoming.

36. *MM* 6: 230.

37. For Kant the bounded globe rather than bounded societies are fundamentally significant for justice.

38. *PP* 8:350; cf. *MM* 6:340.

39. Thomas Pogge, 'Cosmopolitanism and Sovereignty', *Ethics*, 103, 1992, 48-75.



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