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## Kantian Theory of Human Rights: a Skeptical Appraisal<sup>1</sup>

My paper shall focus on one of Kant's political theses more discussed nowadays, i.e. the appraisal of the sacred rights of humanity as an allegedly foreshadow of the current discourses on human rights. Bearing this goal in mind, first I will take into account the skeptical view that scholars as Onora O'Neill and Katrin Flikschuh have addressed to the claim that Kant might have argued for human rights as a moral tenet able to guide his political theory, highlighting that at most this kind of rights fulfills the function of a transcendent idea, intended to orientate collective judgment regarding the conduct of the ruler. Second I will consider some recent accounts seeking to assign a political scope to human rights in Kant's political theory, highlighting on the consequences entailed by cosmopolitan right and common possession of the earth. Finally I will attempt to sketch a short account of the value that Kant acknowledges to humanity as species and in each human being, so that it might be distinguished from the usual theoretical basis assigned to human rights. All in all, the main aim of my paper will be to display the reasons that in my view hinder Kant to argue for a coercive theory of human rights, concluding the purport of demurring the anachronistic view often adopted by most Kant-inspired theory of human rights.

I will move from a general consideration of the theoretical entanglement noticeable in the usual account of this thinker in global justice scholarship.<sup>2</sup> In

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<sup>2</sup> Regarding this issue I completely share the remark of G. Cavallar: *Kant's Embedded Cosmopolitanism. History, Philosophy and Education for World Citizens*. Berlin/Boston: De Gruyter, 2015, p. 165: «Even if Kant is usually the key reference point of the new cosmopolitanism, it often remains unclear what exactly Kant's contribution is or what he stands for. There are frequent references to "the Kantian

my view, this tendency is not enough to confirm that Kantian point of view acts as a solid basis for most current cosmopolitan theories. Yet it should be rather acknowledged that Kant's thinking has inspired different groups aiming at furnishing a sound basis to human rights and some of their claims unwittingly mislead the central guidelines of their source of inspiration. Even though accepting this point, it should be nonetheless admitted that —as Georg Cavallar highlights in a recent book:

Kant does not argue for an international system that discriminates against non-republican or illiberal states since he subscribes to the principle of political self-determination. He asserts non-intervention as a basic norm of international law, as he postulates that states establishing rightful conditions should be considered juridical persons.<sup>3</sup>

I suggest to understand the just mentioned boundaries, which Katrin Flikschuh rightly considered the ground of «Kant's sovereignty dilemma», as the empowerment of singles states and the simultaneous weakening of the political agency of international federations, a sharp limitation that would radically curtail the attempts to update Kant's cosmopolitanism to the challenges of our time. If one would first consider the consequences entailed by Kant's defense of statist legitimacy, she will easily grasp that there is no conceptual place in this thought to file the agency of international political institutions, able to coerce «illiberal» states to protect and take care of their own citizens.<sup>4</sup> Put differently, the political control of the states appears always as an internal issue, while the very existence of republican constitutions should inspire the outside to improve the republican atmosphere with the emergence of more rightful states. Every public rightful agency thus begins with the crop up of a rightful state. Yet, once this occurrence appears, the duty to enter into a rightful state could not demand a second fulfillment, joining to a federative union. From this basis, some states are expected to inspire the political ripeness of other peoples, without any hope to save them from the destructive effects of their current barbarism.<sup>5</sup> This would

perspective», «the Kantian legacy», «the Kantian tradition» or cosmopolitanism «in a Kantian sense», yet there is no consensus what these exactly entail».

<sup>3</sup> G. Cavallar: *Kant's Embedded Cosmopolitanism. History, Philosophy and Education for World Citizens*, Berlin/Boston: De Gruyter, 2015, p. 174.

<sup>4</sup> This appraisal clearly diverges from the interpretation given by Alyssa Bernstein to most Kant's political writings focusing on international relations. See also J. Tasioulas: Taking Rights out of Human Rights. In: *Ethics* 120, 2010, pp. 647-678.

<sup>5</sup> See the following insightful remark of Sangiovanni on this point A. Sangiovanni: Why there Cannot be a Truly Kantian Theory of Human Rights. In: R. Cruft/S.Matthew liao/M. Renzo (eds.), *Philosophical Foundations of Human Rights*, Oxford U.P., 2015, p. 679: «[I]nnate right and its corollaries cannot provide the basis for a regionally authoritative human rights instrument. At most, if we want

dissolve one of the most often invoked goals of current theories of human rights, i.e. the right to legitimately intervene in other countries when emergency situations urge to take such measures.

### 1. Kant's transcendent view of human rights

Most of Kant's remarks about the cosmopolitan standpoint that states reciprocally address to their public conduct looks like pretty conservative, i.e. reasonable political judgment is not entitled to modify political autonomy.<sup>6</sup> Moreover, Kant tries to make of a call to imitation an apparently flaw, but also a sound thread for spreading the effects of republicanism in the world. In *Perpetual Peace* he hints to the young French Republic as a «focal point» for shaping a federative union with other states, following a cosmological metaphor of heavenly constellations for boosting the progress of Enlightenment in human history. Kant's excerpt focuses on the fact that the existence of a republican instance as the French Republic shall become a pattern of imitation for other states, which will establish alliances with the main goal of removing war:

The practicability (objective reality) of this idea of a *federalism* that should gradually extend over all states and so lead to perpetual peace can be shown. For if good fortune should ordain that a powerful and enlightened people can form itself into a republic (which by its nature must be inclined to perpetual peace), this would provide a focal point of federative union for other states, to attach themselves to it and so to secure a condition of freedom of states conformably with the idea of the right of nations; and by further alliances of this kind, it would gradually extend further and further.<sup>7</sup>

I consider Kant's recourse to a mimetic tendency a telling trace of the difficulties to find in his cosmopolitan right a firm foundation of political duties destined to protect individual agency around the world. Kant's plain condemnation of any resistance to the public power in a state will strengthen this appraisal, which could be only a consistent statement in the case the statist political order were viewed —as I claim— as the only legitimate framework to develop political

to remain within the Kantian framework, we might envisage an international body that provides merely advisory opinions. Such a body could issue recommendations to states on how to improve their protection of innate right (and the reciprocal system of equal freedom such right mandates), but it could not impose genuine obligations or demand enforcement of its judgments *in any form*. This is a far cry from the kinds of human rights that contemporary advocates and practitioners see themselves as fighting for».

<sup>6</sup> See, for instance, the fifth preliminary article for perpetual peace (8: 346).

<sup>7</sup> PP, 8: 356

agency.<sup>8</sup> Thus the constitution of political authority deprives individual agents to take part in a regular assessment intended to test the republican spirit of the ruler and consequently resistance to the highest authority will be judged as a conduct contrary to the law. All in Kant's argument is constructed to point out that power destroys itself if it does not respect the internal consistency of political community<sup>9</sup>, which unlike to what happens in a society derives from a clear subordination between the ruler and the citizens. According to my reading of Kant's appeal to the fact that injustice arisen in one place of the earth will be felt in all of them<sup>10</sup>, the point stressed by this well known excerpt were not the foundation of an international political union, called to shelter all human dwellers of the earth. On the contrary, my view is that states would be the political space where the violation of right could be felt and so punished. Kant does consider that the republican rightful state will bring about its own world community, but the element enhancing the federation will not be external to the civil union of each people. Furthermore, the cosmopolitan community remains for Kant based on the furtherance of statist political agency, what confirms that ideal community works in Kant's writings more as a goal than as a political agency above states. Yet, Kant's theory of the rightful state entails a regulative federative scope helpful to strengthen the peaceful conditions in the world. I share with Flikschuh the impression that nothing in Kant's *Doctrine of Right* requires to ground specific human rights, which nonetheless would not entail the exclusion of every ideal construction of principles similar at least to what we nowadays understand as human rights.<sup>11</sup> In fact, Kant's usual appeal to the rights of humanity as a sacred

<sup>8</sup> DR, 6: 320: «The reason a people has a duty to put up with even what is held to be an unbearable abuse of supreme authority is that its resistance to the highest legislation can never be regarded as other than contrary to law, and indeed as abolishing the entire legal constitution. For a people to be authorized to resist, there would have to be a public law permitting it to resist, that is, the highest legislation would have to contain a provision that it is not the highest and that makes the people, as subject, by one and the same judgment sovereign over him to whom it is subject».

<sup>9</sup> Cfr. Ch. Meckstroth: *Could Kant Support Human Rights? Kant's Arguments and Their Contemporary Relevance*, APSA Annual Meeting Paper, 2013, p. 37. <[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2301504](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2301504)> [accessed on 13.05.16]: «[E]ven in the domestic case, empirical judgments are required among potential competing claimants to sovereignty over a given territory and given citizens. Kant, however, never provides a principled account of how such judgments might be defended or who has the right to make them in cases of political conflict».

<sup>10</sup> PP, 8: 360.

<sup>11</sup> K. Flikschuh: *Human Rights in Kantian Mode: A Sketch*, In: R. Cruft/S. Matthew liao/M. Renzo (eds.), *Philosophical Foundations of Human Rights*, Oxford U.P., 2015, pp. 665-666: «I would say that nothing that is affirmed in the *Doctrine of Right* objectively requires recourse to the concept of human rights as necessary ground of positive law's practical vindication. In this, the concept of human rights is unlike that of innate right, which is indispensable, on my reading, to the moral justifiability of persons' substantive property claims. On the other hand, I concede that there is also nothing in the *Doctrine of Right* that precludes conceiving the idea of human rights as a transcendent

issue reminds the ruler that he is charged with a high commitment, which he ought to regard as a task granted by God:

Far from making the ruler of a country arrogant, they would rather have to humble him in his soul if he is intelligent (as must be assumed) and make him reflect that he has taken on an office too great for a human being - namely the most sacred office that God has on earth, that of trustee of *the right of human beings* - and that he must always be concerned about having in some way offended against this "apple of God's eye".<sup>12</sup>

This excerpt helps Kant to distinguish between a republican and a democratic constitution, where the last lacks of means for representation. Kant openly sympathizes with the concept of representation since it simultaneously burdens and controls the ruler with an early theological sense of responsibility. This theological remainder characterizes Kant's theory of political authority, what might give an account of the systematic reconstruction of the transcendent function that God, Providence or Fortune fulfill in Kant's political writings. Anyway this step will not lead the scholar to mine undiscovered treasures able to put Kant in dialogue with current concerns of human rights theorist. Against such a expectation I would suggest to take into account the following points: a) Kant's theory of rightful state does not bring about a conflict of legitimacy, but a complementarity between statist and federative authority; b) the appeal to the rights of human beings crop up with the point of view of God or Providence and c) there is no trace in this thought of a subjective appraisal of human rights as rights assigned to individual agents above their membership to a state. In my view the second point is the key to rightly understand the other two, since it explains why Kant does not consider human individual agency—but the divine standpoint embodied as Providence and divine Wisdom—as the highest instance when the rights of humanity are at stake. As I will later acknowledge, Kant shows in his theory of right a clear consciousness about the common possession of earth and the requirement to also assign a regulative political meaning to this original fact. However I claim that this consciousness and the derived duty to protect every human life on the earth centrally draw to the existence of states, intended to guarantee the conditions of a civil life to their citizenry. I completely share in this point the following comment of Katrin Flikschuh about the link between

concept relative to the domain of positive law making. In particular, so long as the idea is not treated as supplying the foundational premise to morally legitimate law making, nothing speaks against its possible status as a subjectively necessary reflexive idea that arises from the process of public law making itself».

<sup>12</sup> PP, 8: 353, note.

the material conditions for state sovereignty and the fulfillment of human rights:

I am not aware that most established states typically went about securing of the provision of central public services —sanitation, education, health services etc— on the basis of explicitly articulated human rights commitments. To the contrary, the concern was typically to improve sovereign capacity, i.e. to ensure the effective and legitimate exercise of coercive authority through the assumption, in part, of public responsibility. [...] To the extent, therefore, to which we do acknowledge a link between human rights fulfilment and sovereign competence on the one hand, and between sovereign competence and public goods provision on the other hand, there may be reason to think that the best route to human rights fulfilment may lie in strengthening sovereign competence, especially at the level of public goods provision.<sup>13</sup>

The obstacles that most postcolonial states find to fully exercise their political agency will be especially effective to grasp the issue stressed by Flikschuh. Actually her statements are not intended to justify the corruption of autonomous states in devastated regions of the world. Yet the reminder of material requirements allowing a government, for instance, to control the natural resources and assets of its own territory aims at highlighting the Kantian link between statist authority and political protection. Flikschuh hints to the fact that sovereignty entails an effective capacity to control the resources existing in its own territory. Yet, history conveys us that the control that some governments have over the commodities made with their natural resources or even over their own natural wealth is really small. Kant scholarship should address attention to the feedback that these sovereignty limitations suppose for the application of Kant's theory of the rightful state.

## **2. Kant's notion of common possession of the earth: a political or rational statement?**

Although I argue for a skeptical view of human rights theories based on allegedly Kant's tenets, I disagree with readings that radically deny any possibility to consider that the value of humanity has purport in Kant's political account, as the one recently displayed by Andrea Sangiovanni. My account does not claim a radical breakup between the Formula of Humanity and the Universal Principle

<sup>13</sup> K. Flikschuh: On the Cogency of Human Rights. In: *Jurisprudence* 2/1 (2011), pp. 34-35. See also O. O'Neill: The Dark Side of Human Rights. In: *International Affairs* 81/2 (2005), pp. 427-439. and D. Dorsey: Global Justice and the Limits of Human Rights. In: *Philosophical Quarterly* 55 (2005), pp. 562-581.

of Right.<sup>14</sup> On the contrary, I consider that even the *Doctrine of Right* contains key passages regarding a universal right to move around the world available to each human being, which necessarily takes into account the value of humanity. In this vein, the original common possession that all human beings share with regard to the earth will be essential to understand the systematic function that cosmopolitan right fulfills in the *Doctrine of Right*:

[T]he spherical surface of the earth unites all places on its surface, for if its surface were an unbounded plane, people could be so dispersed on it that they would not come into any community with one another, and community would not then be a necessary result of their existence on the earth – The possession by all human beings on the earth which precedes any acts of theirs that would establish rights (as constituted by nature itself) is an *original possession in common* [...].<sup>15</sup>

The high worth I assign to such remarks lead me to consider especially insightful readings —as the forthcoming accounts of Pinheiro Walla and Huber— focusing on the political scope of Kant's cosmopolitan statements as the one cited above. Kant seems to draw in it to the common possession of the earth as a source of normativity acknowledged to every human being that each state is asked to respect and also as a requirement that arises when human beings voluntarily or not visit other countries and territories. Pinheiro Walla has correctly hinted in my view to the convenience to consider cosmopolitan right as an assertion of the normativity that the *lex iusti* continuously demands in a world dominated by statist authorities:

Although there is a positive development in the transition from the *lex iusti*, through the *lex iuridica*, to the *lex iustitiae distributivae* in the civil condition, the *lex iusti* is not made superfluous in the civil condition, but is still the source of the normativity, and consequently, of the *legitimacy*, of all further developments of right. The need for maintaining the compatibility of the development of right with its a priori normative source is what gives rise to cosmopolitan right. In this sense, cosmopolitan right in Kant's theory has a similar function to the right of necessity in Grotius and imperfect rights and duties in Pufendorf's theory.<sup>16</sup>

<sup>14</sup> A. Sangiovanni: *Why there Cannot be a Truly Kantian Theory of Human Rights*, p. 689: «[I]f Kant's understanding of dignity and the Formula of Humanity are neither necessary nor sufficient for a reconstruction of Kant's theory of Right, then it is not possible to derive a theory of truly Kantian human rights solely on their basis. While someone may reinvent Kant's concept of dignity for other uses, this would take them beyond what a truly Kantian theory can bear».

<sup>15</sup> DR, 6: 262.

<sup>16</sup> A. Pinheiro Walla: *Common Possession of the Earth and Cosmopolitan Right*. In: *Kant-Studien*, 2016, p. 17.

I agree with the idea that the tasks entailed by the *lex iusti* do not disappear once the public authority ruling the distributive justice has already been laid down, but continue to guide the spread of public justice around the world. I also accept the idea that Grotius' and Pufendorf's *ius necessitatis* receives in Kant an immanent reformulation. Pinheiro's reading rightly highlights that the scope of *lex iusti* is for Kant broader than the boundaries of *lex iustitiae distributivae*, so that the second one might be set up although the first still has not been completely fulfilled. In this vein, I shall suggest to understand Kant's draw to the original common possession of human beings on the earth as a pre-political claim that nonetheless each transformation process of a people into a state ought to abide to.<sup>17</sup> I am not quite sure that the Kantian value recognized to this pre-political tenet, which mainly overlaps with the innate right to freedom, ought to be considered as source of a theory of human rights. Consequently I shall not go in this issue so far as scholars as Jakob Huber, who claims for a kind of enlargement of Kant's notion of politics taking into account passages as the one read before:

Kantian conception goes beyond the "political" view in virtue of not reducing the "political" to vertical relations between the ruler and the ruled, but conceiving it more broadly as describing a particular kind of moral relation between all individuals. The account defended is thus two-dimensional: On the one hand, it agrees with orthodox accounts that human rights are horizontal claims against all other individuals. The crucial difference though is that this rights claim already carries within it a political implication, for only under political authority is the consistent exercise of each our capacity for choice and action possible. On the other hand, on a vertical level, (once we are in the political condition) innate right describes a valid claim against political authority to be treated as legal equals and thus constitutes a rational criterion for any legitimate positive law. [...] What Kant grasps – and that makes him a truly republican thinker – is that "political" relations are not merely those between rulers and the ruled. "Political" relations are a particular kind of moral relations we have with all other individuals – namely those, which require coordination and arbitration through public authorities.<sup>18</sup>

I acknowledge that Kant's cosmopolitanism entails a high both metaphysical and political consciousness about the meaning of the fact all human beings share

<sup>17</sup> J. Huber: What Makes Human Rights Political? A Kantian Critique. In: *Zeitschrift für Menschenrechte/ Journal for Human Rights* 2, 2013, p. 138: «When talking of a "proto"-right we should keep in mind that this is *not* the one fundamental right (not itself justifiable), which then justifies all other rights. This would just amount to a kind of moral realism that Kant critical philosophy takes issue with. All we can say is that there simply is a valid claim to having rights».

<sup>18</sup> *Ibid.*, pp. 137, 140.

the same finite space, but I would not affirm from it that this consciousness enlarges our concept of political agency, since earth dwellers might develop it only becoming members of a state. I also share that the proto-right acknowledged to every human being on the earth to find his place on it has not the value of a fundamental right guiding the subsequent list of rights. Far from it, individual acquisition embodies and gives content to the mentioned proto-right, which maintains a regulative function over the public rule of rights.<sup>19</sup> Moreover, Kant's definition of civil union as a hierarchical structure compared to any society as a horizontal scheme should advise us from overvaluing a broad concept of politics. I consider that the fact that cosmopolitan right is not able to coerce any statist action confirms its transcendent and regulative feature in Kant's theory of right. Moreover, the value that the innate right to freedom shows in Kant's theory of right could not be completely covered by public acknowledged private property, but the recourse to an innate right to visit every earth's corner could neither be understood, as it is well known and Kant self points out, as a right to be treated as a guest or even to settle in foreign territories.<sup>20</sup> Taking into account the literacy of Kant's passages about the fact we all belong to a cosmopolitan community, I argue that this «global standpoint» could not deliver a sound concept for an alleged Kant's concept of global politics, since its prompt effect will be to remind all states that they have to abide the universal right to move around the world. Yet cosmopolitan right does not require any withdrawal of the state from its legitimate political boundaries, a claim that nonetheless global justice scholars as Miriam Ronzoni<sup>21</sup> have repeatedly argued. Scholars as Huber argue for a more optimistic sketch of Kant's conception of cosmopolitan community, which

<sup>19</sup> I appreciated the following Pinheiro Walla's remark regarding Flikschuh's account of innate right and acquisition right (A. Pinheiro Walla: *Common Possession of the Earth and Cosmopolitan Right*, p. 19): «[O]ne should not think, as Flikschuh argued, that Kant moved from "the fact of individual acquisition to the idea of original common possession" and thereby "inverted" the natural law sequence from common possession to individual acquisition. This would mean to take the original community to be constituted by empirically given facts. Kant is clear enough that the original community is an *idea of reason* and not a community that was "instituted" (*gestiftete Gemeinschaft*). This failure to realize the rational (i.e., *original*) character of the idea of community of the earth is precisely what Kant takes to be the failure of Grotius' and Pufendorf's "primitive community" (*uranfängliche Gemeinschaft, communio primaeva*). Kant's departure from natural law theory is therefore not in an "inversion" of the sequence of ideas, but in his *redefinition* of central concepts of the natural law in terms of external freedom». I consider Huber (*Theorising from the Global Standpoint: Kant and Grotius on Original Common Possession of the Earth*, *European Journal of Philosophy* 25/1, 2017) a valuable contribution to the discussion about the function Kant's original common possession claim fulfills in the *Doctrine of Right*.

<sup>20</sup> DR, § 62, 6: 353 and PP, 8: 358.

<sup>21</sup> M. Ronzoni: *Global Order: A Case of Background Injustice?* In: *Philosophy and Public Affairs* 37/3, 2009, pp. 229-256.

I regard as groundbreaking, but not completely loyal to the Kantian systematic view of right. Next passage will help me to further clarify this point:

To think of oneself as an earth dweller is to think of oneself as participant in a cosmopolitan community of individuals whose fates are, in an important sense, inevitably bound up with one another but who at the same time have the capacity to critically relate to one another and the contingent institutions, boundaries, and loyalties that separate them. [...] Kant's cosmopolitanism is neither one of noumenal beings united in their shared humanity, nor of actual world citizens sharing a global polity. Instead, it is a cosmopolitanism of earth dwellers: embodied rational agents in direct physical confrontation with other such agents, with which they have to share the globe in common. This is a cosmopolitanism that does not in itself offer effortless institutional guidance for a just world, but rather provides agents with something like a global standpoint from which to think and act.<sup>22</sup>

In my view Kant does not acknowledge any right to permanently remain somewhere on the Earth if it is not accompanied by a state membership. Yet, his theory leaves room for a right of movement that mirrors the original possession of the earth without blurring Kant's statist grammar. As stated before, my impression is that Kant's texts do not offer the outcomes wished by global justice demands and human rights scholarship. Naturally, it will not mean that Kant would have not taken into account the consequences stemming from the spatial community that all human beings embody in the world, but just that this account belongs more to the regulative realm of rational ideas than to the constitutive features of the rightful state. All in all, regulative and transcendent principles are not able in Kant's thought to coerce any action in a world where states keep being the only public authority.

### 3. Conclusion

My account aimed to highlight some difficulties that hinder to promptly consider Kant as an advocate of the value of human rights. I do not pretend yet to argue that the value of humanity does not play any role in this political theory, but just that the rights of humanity are intended to be mostly defended by state authority. Moreover, the fact that Kantian cosmopolitan right hints to a common possession of the earth by all human beings would be a too humble result from the standpoint of public right. In my view, the normativity folded in this reminder of a community

<sup>22</sup> J. Huber: Cosmopolitanism for Earth Dwellers: Kant on the Right to be Somewhere. In: *Kantian Review* 22/1, 2017, p. 24.

hidden by the individual property claims fulfills an essential regulative function for getting single states conscious about the sense of their territorial boundaries. Thus the cosmopolitan feature of the world will continuously remind the rulers that their territory does not mark any definitive boundary on the earth, since the finitude of the planet sketches the ultimate border. Yet Kant does not argue for reviewing political right from the standpoint of earth dwellers, although his writings draw to the fact that state borders have to deal with a wider space, where human beings also circulate and offer to establish commercial relations with other people. I find it essential to distinguish Kant's conception of human dignity from the one claimed by most human rights theorists to point out that Kantian cosmopolitan legitimacy occupies a space among territorial boundaries, which is not expected to build up an international political authority. Thus, cosmopolitan right would not amend Kant's statist standpoint. The point of view of the earth dweller rather burdens the ruler with a sense of responsibility that goes far beyond the territory he has to administrate, as he understands that people could not freely scatter on our planet. Furthermore I claim that Kant takes clearly into account that it might occur that the ruler of a state ought to take care of victims of disasters or to decide how to react to the offers of commercial trade received from foreigners. Put differently, cosmopolitan right conveys the state rulers that they are not alone into the world, so that they will have to behave respectfully with regard to the queries and demands proceeding from human beings that do not belong to their citizenry. Naturally, Kant disagrees with the idea that an international federation might claim its right to rule over human beings not sheltered by any state. He simply does not consider an issue as the current tragedy of refugees as an occurrence that could radically change our vision about the political order. As the demand to respect other human beings should stem from one's own moral law, i.e. from the autonomy of reason, cosmopolitan right should be viewed as a corollary of a political right that aims at progressively covering more regions of the earth. As it is a matter of fact that the state rulers do not abide the universal law to protect all human beings, the feeling of each transgression of human dignity will arise adopting a standpoint that forces me to consider myself as a member of the earth humanity. Yet such standpoint refers to our bodily and finite condition, which urge to ground a sound cosmopolitan right as regulative culmination of the rational doctrine of right and thus of the statist political order. With regard to the issue whether this kind of conclusion might agree with contemporary theories of human rights, let me express my modest skepticism.

## Zhrnutie

### Kantova teória ľudských práv: skeptické zhodnotenie

Tento príspevok analyzuje, či Kantovo tvrdenie o posvätnosti práv ľudí môže byť chápané ako istá predzvesť súčasnej obrany ľudských práv. Najprv vezmem do úvahy skeptické zhodnotenie, ktoré Onora O'Neill a Katrin Flikschuh venovali tvrdeniu, že Kant argumentuje v prospech ľudských práv ako morálnej zásady, ktorá sprevádza jeho politickú teóriu, zdôrazňujúc, že tento druh práv skôr plní funkciu transcendentálnej idey zameranej na nasmerovanie kolektívneho konania, berúc do úvahy konanie panovníka. Následne posúdim niektoré nedávne rozpravy pokúšajúce sa priradiť ľudským práva v Kantovej politickej teórii politický rámec, zdôrazňujúc dôsledky sprevádzané svetoobčianskym právom a spoločným právom na zemský povrch. Nakoniec sa pokúsím načrtnúť krátke objasnenie hodnoty, ktorú Kant priznáva ľudstvu ako druhu a každej ľudskej bytosti, tak, že ju bude možné odlišiť od obvyklých teoretických základov ľudských práv. Hlavným cieľom príspevku bude poukázať na dôvody, ktoré podľa mňa Kantovi bránia argumentovať v prospech donucovacej teórie ľudských práv, končiac usudzovaním o opodstatnenosti popierania anachronického hľadiska, ktoré je často prijímané väčšinou Kantom inšpirovaných teórií ľudských práv.

**Kľúčové slová:** Kant, ľudské práva, právo, sloboda, spoločné vlastníctvo zemského povrchu

## Summary

### Kantian Theory of Human Rights: A Skeptical Appraisal

This paper discusses that Kant's claim of the sacred rights of humanity might be viewed as an allegedly foreshadow of the current defenses of human rights. First I will display the skeptical view that scholars as Onora O'Neill and Katrin Flikschuh have addressed to the claim that Kant might have argued for human rights as a moral tenet able to guide his political theory, highlighting that at most this kind of rights fulfils the function of a transcendent idea, intended to orientate collective judgment regarding the conduct of the ruler. Second I will consider some recent accounts seeking to assign a political scope to human rights in Kant's political theory, highlighting on the consequences entailed by cosmopolitan right and common possession of the earth. Finally I will attempt

to sketch a short account of the value that Kant acknowledges to humanity as species and in each human being, so that it might be distinguished from the usual theoretical basis assigned to human rights. All in all, the main aim of my paper will be to display the reasons that in my view hinder Kant to argue for a coercive theory of human rights, concluding the purport of demurring the anachronistic view often adopted by most Kant-inspired theory of human rights.

**Keywords:** Kant, Human Rights, Right, Freedom, Common Possession of the Earth

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