# REVIEW ESSAY

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*Kant's Cosmopolitan Theory of Law and Peace*, Otfried Höffe, tr. Alexandra Newton (New York: Cambridge University Press, 2006), xviii + 253 pages

Upon reading the title of Höffe's book, one might reasonably expect that the book mainly concerns Kant's theory of international justice. This, however, is not the case. Only part 3, or the last third of the book, is primarily focused on Kant's conception of perpetual peace. The first part of the book, entitled "Morals," gives a general interpretation of aspects of Kant's moral philosophy and compares the relative merits of Kant and Aristotle's practical philosophies. For example, in this part Höffe refutes the 'communitarian' neo-Aristotelian reading of Aristotle and defends the claim that Aristotle defended a 'universalistic' ethics. This part concludes that Kant has a superior account of the faculty of judgement than does Aristotle. In the second part of the book, Höffe engages some general issues dealt with in Kant's "Doctrine of Right". For example, in this part Höffe discusses the distinction between the sphere of virtue and the sphere of justice, as well as the state's right to provide for the poor. Finally, in part 3, Höffe engages Kant's theory of international justice directly. So, readers will probably have a more accurate set of expectations of the book if they expect it to be a selection of essays on Kant's practical philosophy. Moreover, this book is probably the most interesting to those who already have a fairly good knowledge of Kant's philosophy in general and Kant' practical philosophy in particular. The text does not provide much guidance to those rather unfamiliar with Kant's texts. Instead Höffe offers interpretative suggestions to important and controversial topics in Kant studies, but these contributions typically presuppose a fairly solid textual and systematic understanding of the issues at stake. Nevertheless, for readers already familiar with Kant, reading Höffe's book is a rewarding experience. It covers an impressive amount of ground, displays great command of Kant's philosophy and takes on many of the core topics in Kant's scholarship in an engaging and innovative manner.

One topic that interpreters of Kant's practical philosophy must deal with is the issue of how to distinguish conceptually between the sphere of justice and the sphere of virtue (or ethics understood as private morality). These two spheres respectively correspond to the two constitutive parts of *The Meta-*

*physics of Morals*, namely, the "Doctrine of Right" and the "Doctrine of Virtue". Explaining the way in which justice and virtue fit together into one theory of moral philosophy (broadly construed) is, therefore, naturally at the centre of Kant's agenda in his introduction to *The Metaphysics of Morals*. And, it is aspects of this description that Höffe—and others—find mind boggling. In particular, it is difficult to establish what Kant means when he says that "[t]he doctrine of right and the doctrine of virtue are… distinguished not so much by their different duties as by the difference in their lawgiving… Ethical lawgiving… is that which *cannot* be external… [but] only internal… For what is distinctive about ethical lawgiving is that one is to perform actions just because they are duties" (6: 220). One of Kant's examples of lawgiving that can only be internal, or ethical lawgiving, is benevolence.

The problem with this statement of Kant's, according to Höffe, is that it is both in conflict with things Kant says elsewhere in his ethical writings and does not fit common sense. To start, Höffe argues that if Kant really means to limit ethical lawgiving to actions done from duty, then his argument here ends up conflicting with his other writings on ethics, such as in the *Groundwork* (4: 398) and his reflection 6, 764 where Kant distinguishes "ethical legality from ethical morality" (88). More specifically, in these places, Höffe argues, Kant seems to argue that imperfect duties such as beneficence can be performed both in conformity with duty ('ethical legality') and from duty ('ethical morality'). In addition, Höffe continues, if ethical lawgiving is limited in this way, then the resulting view is in conflict with "real moral experience of beneficence that follows from motives merely in conformity with duty and not invariably from duty" (89). So, if Kant limits ethical lawgiving to actions from duty, then he allegedly contradicts both himself and our commonsense moral experience.

Before drawing this conclusion, Höffe suggests we should search for a more careful and charitable reading of Kant, and when we do, we realize that the problems arise from conflating Kant's concept of 'benevolence' with that of 'beneficence'. In particular, beneficence refers to the action of making other persons' well-being an end, and so "[a]cts of bene*ficence* can result not merely from duty but also from other motives" (89f). In contrast, benevolence refers to the moral motivation with which beneficence must be performed in order to be, exactly, an action of benevolence—and he refers the readers to (6: 452) for textual support. On Höffe's reading, therefore, "ethical lawgiving is not already satisfied by action in conformity with duty such as beneficence… It extends to the underlying will itself, to benevolence… [and] ethical morality. But

if one regards the actions alone, one may also ascertain ethical legality" (90). The better reading of Kant, therefore, maintains, according to Höffe, that Kant *de facto* omits a distinction between ethical morality and ethical legality in the "Introduction to the *Metaphysics of Morals,*" but argues that such a distinction "is nevertheless congruent with the concepts introduced" (90).

I am sceptical about this reading of Kant for several reasons. On my view, the root of the problem with Höffe's interpretation concerns his assumption that virtuous actions such as beneficence simply involve acting on certain maxims ('actions alone'). In the example of someone taking another person's happiness as her end (or acting on the maxim of taking someone else's happiness as one's end), Höffe interprets this action as one of beneficence, whereas this action when performed from a moral motivation is benevolence. I believe this must be incorrect. To start, Kant describes beneficence as an active form of benevolence (6: 452), where he talks about his duty to "love every human being as myself." Kant argues: "But it is quite obvious that what is meant here is not merely benevolence in *wishes*, which is, strictly speaking, only taking delight in the well-being of every other and does not require me to contribute to it… what is meant is, rather, active, practical benevolence (beneficence), making the well-being and happiness of others my *end.*" So, benevolence concerns what we wish for others, whereas beneficence concerns what we *do* for them. Moreover, in both cases, the moral motivation is what makes these actions (acting on these maxims) into benevolence and beneficence (respectively). This is why, on my view, Kant emphasizes that beneficence is not simply the action of promoting "according to one's means the happiness of others in need," but it is to do this "without hoping for something in return," that is, to do it out of duty or because it is the right thing to do (6: 453). This is also, I think, why Kant does not say that we can perform an action of beneficence (an imperfect moral duty) in conformity with or out of duty, as Höffe says (89ff), but always speaks of performing an *action* either in conformity with or out of duty. Moreover, I believe this is why, ultimately, Kant argues that duties of virtues cannot be coerced because they require internal lawgiving. No one can force another to make duty his motivation for acting and so one person can never coerce or even threaten another person to perform a duty of virtue.

I also believe that my reading fits better with common sense than does Höffe's reading. If any action that involves taking on someone's else's well-being as one's own end is beneficence, as Höffe claims, then even people who do such actions due to threats (such as Robin Hood's rich victims when they are threatened into 'helping' the poor) or because they want the social esteem,

are acting beneficently. But, surely, we would not say that? These people do take the well-being of the poor as their end, but they are not acting beneficently in so doing. They are doing it because they are scared (threatened with coercion) or because it is in their self-interest, respectively understood. To put the point differently, these people are hoping for something in return for their help—the threat to go away or to obtain social esteem. Finally, note that on this reading we can make sense of Kant's distinction between 'ethical legality' and 'ethical morality' in reflection 6,764. On the conception presented here, the 'ethical legality' of an action simply refers to the action of making other persons' well-being one's own end ('the action alone'), but when this action is not done from duty it is not an action of beneficence. Hence, on this reading of Kant's texts, Kant is both consistent with commonsense and his other texts on practical philosophy when in the "Introduction to the *Metaphysics of Morals*" he argues that ethical lawgiving is limited to actions from duty.

When interpreting Kant's philosophy of right, two major issues must be addressed, namely, Kant's account of 'provisional' justice in the state of nature ('private right') and his account of 'conclusive' justice in civil society ('public right'). Greatly simplified, we need an interpretation of why Kant argues that justice is impossible in the state of nature and an interpretation of what it means to establish public authority. Concerning the first issue, an assurance argument features prominently (127, 192, 197) in Höffe's interpretation, though he appears to appeal to more ideal indeterminacy arguments in several places (10, 15, 99f, 179). A major difficulty arising when interpreting Höffe's text concerns establishing whether he interprets these arguments as, ultimately, prudential responses to the inconveniences of the state of nature or as ideal arguments. A prudential argument here entails attributing to Kant a conception that is structurally similar to that of Hobbes or Locke. On this interpretation, defended by Kant interpreters such as Howard Williams and Onora O'Neill, Kant argues that the need for civil society or a public authority ultimately arise as a prudential or moral response to the fact that human beings are imperfectly moral or what Kant refers to as the "warped wood" of human nature. Because human beings often act immorally and irrationally, it is wise to enter civil society or establish a legal order that regulates our interactions. In contrast, on a more ideal argument, such as defended by Katrin Flikschuh and Arthur Ripstein, Kant's argument is seen as more Rousseauian in nature, meaning that civil society is not seen as a remedy for the inconveniences of the state of nature, but as something constitutive of just interactions, even under ideal circumstances. Even if we were perfect in our moral intentions and

knowledge, this view argues, we would still establish civil society because just interaction is only possible within civil society or staying in the state of nature is necessarily to engage in wrongdoing.

Though much of what he says can be seen as supporting either view, where he explicitly addresses the question, Höffe seems to affirm a prudential reading in the sense that Kant's account is motivated by the need for giving a moral and prudential response to the inconveniences of the state of nature. Höffe argues, "Since a legal state order can exist only to the extent that and for the very reason that morality does not everywhere rule mankind, the legal order is at once separated from morality and yet is a moral extension of an order determined by morality" (92). Here, Höffe argues that if morality everywhere ruled mankind, we would not need a state. The problem is, though, that morality does not have such a good grip on humankind and the morally good, prudential response to this fact is to establish the legal state or civil society. Moreover, to the extent that Höffe's considered view affirms this moral, yet prudential reading, I do not see that he does or can justify it. For example, to justify it seems to require Höffe to show that the innate right to freedom is consistent with being forced to act in accordance with such moral-prudential commands. This would involve arguing that virtuous individuals can be rightly coerced to enter civil society. The problem, though, is that if Höffe is right in arguing that individuals can in principle interact rightfully in the state of nature, virtuous individuals do not do anything in refusing to enter civil society, and forcing them to enter would be to wrong them. Höffe, as noted, does not provide such an argument, and, indeed, on my view, it seems like an impossible argument to make within Kant's account. This is why, I take it, Kant does not and cannot affirm such a view.

The final critical remark on Höffe's book concerns his conception of the world state or the structure of public authority in the international sphere. Concerning Kant's public right argument in general, Höffe argues that the nation state has rights that go beyond the rights of individuals. For example, he argues that the state has a right and duty to guarantee poverty relief because members of society "originally guaranteed each other" a right to subsistence (110). In addition, though Höffe does not explain why (but refers his readers on this point to his *Demokratie im Zeitalter der Globalisierung*, Munich, 2002), he also affirms the state's rights to "political and cultural self-determination" amongst others (194). The main difference between the nation state and the world state, in turn, concerns exactly the fact that the nation "states have [these] additional responsibilities to fulfil [, whereas]… the world

republic is assigned only a narrow range of powers; it is a minimal world state (MWS)… a watchman state" (194). The only qualification to this statement, Höffe continues, concerns the fact that "additional powers and responsibilities of the… [world] state may be derived from the cosmopolitan right discussed in the third definitive article" (194). Höffe does not remind us of the content of this third definitive article—again a feature of how this book is written for Kant enthusiasts. Though many of us know that this article concerns the alleged "cosmopolitan right to hospitality," we expect to be given some indication both of why Höffe thinks that Kant includes such an article and also of how it must be seen as affecting our final conception of the world republic's rights and responsibilities. Unfortunately, Höffe does not provide such an account.

Instead, Höffe continues by arguing that Kant evaluates four different possibilities with regard to this concept of the world state, namely, "an ultraminimal world state (UMWS)… the federation of peoples, a federal and minimal world state (MWS), and universal monarchy as a homogeneous world state (HWS)" (199). Though Höffe does not explicitly say so, it is reasonable to assume that he borrows the notions of 'ultraminimal' (UMWS) and 'minimal' world state (MWS) from Nozick's *Anarchy, State and Utopia*. On Höffe's interpretation of these terms, the main distinction between the UMWS and the MWS state concerns the fact that only the latter assumes "responsibility to protect the individual states and safeguard their right to self-determination" (203). Moreover, the main distinction between a "federation of peoples" and the UMWS/MWS seems to be that only the latter two have a monopoly on coercion in the international sphere (195). Nonetheless, since the UMWS/MWS only has a monopoly on coercion in the *international* sphere, it is not a "universal monarchy."

My problem with this argument is that even if we agree with Höffe's conclusion that a federal world state is necessary and that its powers are not identical to those of nation states, I do not see that Höffe provides us with an argument to accept that it must be a minimal state of the kind he discusses. I take it that the main reason yielding this conclusion is that the world federal state is required only to solve the problem of assurance. Even if we both accept this and ignore problems that may arise from considerations of hospitality, I do not see that Kant does or must accept that public right in the international sphere is limited to this concern. Höffe considers certain aspects of Kant's account of public right in the national case, most notably Kant's account of the state's duty to provide guarantee of poverty relief, but he never explains why

there is no corresponding argument in the international sphere. Though I am broadly sympathetic to this conclusion, I do not see that Höffe provides an argument supporting it. Furthermore, and more importantly, one of the central arguments in Kant's account of public right in the national case concerns his account of the state's responsibilities with regard to economic and financial systems it puts into place. To put the point more generally, why should we accept Höffe's libertarian conclusion that all the international public authority should do with regard to international trade is to enforce contracts? On my view, Kant does not accept this conclusion in his account of national public right and I do not see why we should accept this claim without argumentation in the international sphere.

As is customary in review essays, I have focused my attention on a few critical questions to some of Höffe's more substantive claims. Obviously this should not be seen as detracting from my appreciation of the book. On the contrary, the above comments evidence the great enjoyment I received from reading it. It is a welcome, valuable and stimulating contribution to the ongoing discussion surrounding Kant's practical philosophy in general and his philosophy of right in particular.

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