

## HENRY GEORGE AND COSMOPOLITAN LAW

### (1) INTRODUCTION

The First Supplement to Kant's short essay *Towards Perpetual Peace: A Philosophical Sketch* (1795) contains a guarantee for a thoroughgoing, if not necessarily friendly, community, of all nations on earth.<sup>1</sup> And who, we might ask, is to be the guarantor of this halcyonic condition? Kant's counter-intuitive answer is nature, or rather, nature in its providential march towards the final end of the human race. How is this possible? Is not the "natural" state of society, "perpetual war, for perpetual peace" as Gore Vidal has recently summed up matters? Kant, in *Idea for a Universal History from a Cosmopolitan Point of View*, defines all wars

as so many attempts (not in the intention of man, but in the intention of Nature) to establish new relations among states and through the destruction or at least the dismemberment of all of them to create new political bodies, which, again, either internally or externally, cannot maintain themselves and which must thus suffer like revolutions; until finally, through the best possible civic constitution and common agreement and legislation in external affairs, a state is created which, like a civic commonwealth, can maintain itself automatically.<sup>2</sup>

War points to a teleology, it is not an end in itself, but at the present stage of human history and culture it is the indispensable means to further human development.<sup>3</sup> Human conflict is part and parcel of the philosophy of history.

Kant, like Henry George a hundred years later, is unequivocal - war is the greatest source of evil that oppresses civilized nations. The never-ceasing, ever-increasing preparations for war are as burdensome as war itself. Neo-leftist politics of the 1960s and 1970s talked of "the permanent war economy." The perpetual fear of war shapes and distorts the contours of civilization. Periods of relative calm have at times prevailed. In retrospect they appear always

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<sup>1</sup> Kant, Immanuel, *On History*, Lewis White Beck, ed., (Indianapolis, Bobbs-Merrill, 1957), "Perpetual Peace: A Philosophical Sketch," pp. 85-135. See also, *The Metaphysics of Morals*, tr. Mary Gregor (Cambridge, Cambridge University Press, 1996), "The Doctrine of Right," para 62, p.121 on "Cosmopolitan Right."

<sup>2</sup> *Ibid.*, p. 19.

<sup>3</sup> *Ibid.*, "Conjectural Beginning of Human History," p. 67.

conditional, always a soon to be undone armistice. Each peace is negotiated in the hope of it being without end. Politics, history, nature, human nature again supercede and the lasting peace is soon forgotten.

The March, 1795 signing of the Treaty of Basel by Prussia and revolutionary France was the particular occasion for Kant's philosophical sketch for a cosmopolitan law and a philosophy of history, which would encompass all of humanity, far overreaching the more modest pan-European confederative proposals of the Abbé de Saint-Pierre in the *Projet de Paix Perpétuelle* in the middle Enlightenment.<sup>4</sup> The Treaty of Basel, wherein France got all the territory west of the Rhine, and Prussia the right to partition Poland in cahoots with Russia and Austria, was precisely the form of strategic treaty-making, the occasional insertion of an armistice into a condition of unrelenting conflict, that Kant declared utterly illegitimate. The First Preliminary Article of *Perpetual Peace* did not take form in a historical vacuum.

Nature has ends which human reason can make its duty. Therein lies the design of a perpetual peace. The "cunning of nature" here foreshadows Hegel's "cunning of reason" It is, however, a curious and tantalizing providentialism for there is not only an apparent exclusion of human reason as the sole instrument of salvation from the greatest of evils, but also a hard condemnation of any acceptance of the status quo; the numbed pathologies and heteronomies of the "political moralists," as Kant likes to style them - the intractable war mongerers, posturers realists and operational men of letters. Transcendental peace in Kant, the putative harmony of morality and politics, is based on a two-world, yet reconcilable, metaphysic of natural providentialism and the leavening of cosmopolitan law in the progress of humanity.

Freedom, unparticularized and absolute, is a transcendental idea. It is the animating source of the moral law. Unconditionality buttresses freedom as an organizing totality. It underwrites irrevocable guarantees and perpetuities. It is the guide, the transcendental choirmaster, for the exercise of the will in public (civil) law, the law of nations and the law of world citizenship. Individuals and nations have rights, but they are to be transcended, not supplanted, in cosmopolitan law and world citizenship.

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<sup>4</sup> Cooper, Sandi E., ed., *Peace Projects of the Eighteenth Century* (New York, Garland Publishing, 1974), Abbé de Saint Pierre, "A Shorter Project for Perpetual Peace," pp. 2-61.

## Theses

- (A) The principal thesis of this essay is that any theory for the justification of war, as *jus ad bellum*, *jus in bello* and recently as the *jus post bellum*, is necessarily a conditional political construct which must be complemented by a theory of transcendental peace.<sup>5</sup> Just war theory is now more than ever formalizable only as a loose and indefinite system of positivistic rules for entering into and engaging in indiscriminate violence in the most humane and civilized manner possible. It is justifiable, not internally and politically, but only in reference to transcendental public laws, which have force.
- (B) The second principal thesis of this essay is the proposition that the antidote for war, the greatest negation of civilization or progressive association, can be found in Henry George's view of natural law as a basis for cosmopolitan law.

Kant was cognizant of unjust enemies. They are illiberal states, groups and individuals who violate the categorical imperative.<sup>6</sup> Responding to their unjustness has a legitimate set of justifications in relation to the rights of individuals and nations. The prescriptions for nations and relations among nations which emanate explicitly or implicitly from illiberal societies and individuals are neither prescriptive nor universalizable and cannot be accepted as overriding.

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<sup>5</sup> The rights of states consist in the right to go to war, rights in war and the right *after* war, i.e. everlasting peace or the right to constrain each other to leave the condition of war, *The Metaphysics of Morals*, para. 53, p.114. For rights after war, such as exchange of prisoners, amnesties, preservation of civil freedoms and order, see para. 58, pp.117-118. The *jus post bellum* is hardly original to Michael Walzer, see *New York Times*, "Justice After War," Peter Steinfels, September 7, 2004 and Michael Walzer, *Arguing About War* (New Haven, Yale University Press, 2004). Closure, legitimacy and the moral obligations of reconstruction are all central to the *jus post bellum*, but they cannot be separated from the moral justifications for going to war in the first place and likewise must avoid being in any way punitive, which is self-contradictory.

<sup>6</sup> Kant defines the "unjust enemy" as an "enemy whose publicly expressed will (whether by word or deed) reveals a maxim by which, if it were made a universal rule, any condition of peace among nations would be impossible and, instead, a state of nature would be perpetuated." *supra*, *The Metaphysics of Morals*, para. 60, p. 119. A state of nature is a state devoid of justice (it need not necessarily be a state of injustice), where there is no competent judge to render a verdict with rightful force, para. 44, p. 90.

There is some empirical and historical validity to the “democratic peace thesis” that democratic states do not generally go to war with each other. The transcendentalism that is ultimately at the basis of Kant’s cosmopolitan law among all nations is the same transcendentalism that undermined hereditary monarchy and enabled the spread of the ideals of republican constitutionalism in the eighteenth century. The rule of law, fundamental freedoms, equality, expanding and intensifying transnational co-operation and global fraternity are the principal threads of the republican constitution, which is the original basis of all civil constitutions.<sup>7</sup>

Many of the afore-mentioned cosmopolitan themes of the Enlightenment found their way into the natural law theory of Henry George, the now obscure and little read American social philosopher of the nineteenth century, whose *Progress and Poverty* (1879) had a profound global influence in the heyday of the Golden Age of Victorian imperialism. Nature *per se* for George is not conflictual. It is perverted “social maladjustments” which distort and betray the harmonic, almost Stoically cosmological relationship, we have with nature. Cosmopolitan law exists on that first horizon between nature and artificial human institutions or the world of positivistic law. George’s theory of transcendental peace is embryonic, but if his philosophy is read expansively one can see that his prescriptions for economic justice equally imply a leavening of the vicious cycles of perpetual war for perpetual peace. Transcendental peace is a commons, war its tragedy and a cosmopolitan philosophy of economics the mechanism for its attainment and preservation.<sup>8</sup>

## (2) NATURAL PROVIDENTIALISM, PHILOSOPHY OF HISTORY AND GLOBALIZATION

There are three naturally occurring historical tendencies that Kant identified as advancing the peace agenda:

(A) the spread of the republican form of government;

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<sup>7</sup> Kant, *On History, supra*, “Perpetual Peace,” p. 94.

<sup>8</sup> A peace commons is usually narrowly conceptualized in contemporary literature. For example, a global commons in space is thought of as its non-weaponization and not in commercial terms of paying rent to a global resource agency for orbital parking spots.

- (B) the spread of commercial exchange, trade and information;
- (C) the spread of the civic public sphere.

All three tendencies have either not happened, or have had internally negative counter-developments that have thwarted or reversed the peace agenda.<sup>9</sup> Does this mean that the guarantee for perpetual peace that Kant thought buried in the great artist nature is a chimera? Not at all, according to Kant. Political principles directed toward perpetual peace must serve for continual approximation to perpetual peace.<sup>10</sup> There are duties in politics and history which propel us out of the state of nature and into a lawful condition.

(A) Republicanism

Democratically constituted states generally tend to lose their aggressive character out of self-interest. The democratic peace position bases the elimination of war on the proliferation republican constitutionalism.<sup>11</sup> Ideologies, chauvinisms and resource theft do often overcome democratic nation states and give rise to international conflict. Some of these propensities may be relieved by Kant's preliminary conditions, but it is clear that simply enshrining democratic principles as such is not enough.

At the same time, it is also clear that democratic states cannot go to war on the basis of principles that are self-contradictory. Many may believe that the recent invasion of Iraq is yet another resource war, illegitimately promulgated by a superior, albeit, democratic military power, that hornswoggled its population into believing that Saddam Hussein was an imminent threat and whose government needs perpetual fear and war to maintain its vice-grip on power. Even if this is true, and it certainly seems plausible, nonetheless democratic conditions must be allowed to

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<sup>9</sup> The inherent dialectical quality of these tendencies, to which Kant was not wholly sensitive, is discussed by Jürgen Habermas, "Kant's Idea of Perpetual Peace, with the Benefit of Two Hundred Years' Hindsight," in *Perpetual Peace: Essays on Kant's Cosmopolitan Ideal*, James Bohman and Matthias Lutz-Bachmann, eds., (Cambridge, Mass., MIT Press, 1997), pp. 120-126.

<sup>10</sup> *The Metaphysics of Morals, op. cit.*, para. 61, p.119.

<sup>11</sup> *Vide*, Benjamin Solomon, "Kant's Perpetual Peace: A New Look at this Centuries-Old Quest," *The Online Journal Of Peace and Conflict Resolution* 5.1 Summer: 106-126 (2003), pp.107-109.

develop in Iraq, new obligations beyond mere subjection of the Iraqi people have been created internationally, and a simple relapse into the state of nature in that part of the world, though it is possible, cannot be seen as an option by the world community.

(B) Globalization

Globalization, given its vanguard in the form of transnational corporations (China now even described as Walmart with an army), seems to be exclusively commercial, exploitative and economically deterministic. In Kant's day capitalistic industrialization had not reached the virulence or the vigor of the nineteenth century and George's evocative portrayals of mass pauperization and human degradation. Large-scale disenfranchisement economically of whole populations and countries had not taken root. Environmental degradation, the endangering of cultural and linguistic diversity, the dehumanization of *homo faber*, the traumas of class conflict were the dark side of what, at the time, might have been seen to be a bright future of peaceful relations infinitely secured in trade relations of mutual gain. A utopian and progressive economic co-operativism envisaged by George. A not directly intentional but nonetheless publicly operating mechanism that may be transforming positive international into universal cosmopolitan law is one of the more prophetic insights of *Perpetual Peace*. Indeed Kant seemed to conceptualize universal cosmopolitan law in solely commercial terms.<sup>12</sup>

Of course, globalization is not onesidedly commercial. Ideas, knowledge, common purposes and cultural enlightenment do accompany the raw economics of international trade. It remains to be seen, however, if the Internet-superstate of the twenty-first century advances or thwarts the independence of individuals and free states.

(C) Transcendental Publicity

Kant had faith in the marketplace of ideas, in public criticism and in the role of

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<sup>12</sup> *Supra*, *The Metaphysics of Morals*, p. 121.

philosophers as advisors to legislators, as public teachers of the law, as the articulate voices of the basic principles of society, of rights and duties. He did not see philosophers as kings or vice versa, but it would not be good for them to disappear altogether.

That kings should philosophize or philosophers become kings is not to be expected. Nor is it to be wished, since the possession of power inevitably corrupts the untrammelled judgment of reason. But kings or kinglike peoples which rule themselves under laws of quality should not suffer the class of philosophers to disappear or to be silent, but should let them speak openly. This is indispensable to the enlightenment of the business of government, and, since the class of philosophers is by nature incapable of plotting and lobbying, it is above suspicion of being made up of propagandists.<sup>13</sup>

The continual widening of reasoned argument, social intelligence and insight was a hallmark of the Enlightenment. For Kant, a cosmopolitan public, increasingly sophisticated in its reflective capacities, is the *sine qua non* of the public use of reason.

There are two transcendental principles of public law in Appendix II of *Perpetual Peace*:

- (i) All actions relating to the right of other men are unjust if their maxim is not consistent with publicity;
- (ii) All maxims which *stand in need* of publicity in order not to fail their end, agree with politics and right combined.<sup>14</sup>

The first principle is *a priori* and negative. It recognizes what is not just to others. It makes rebellion, for example, illegitimate in throwing off the yoke of a tyrant. In all cases it highlights the antinomy between politics and morality. All maxims of political expediency when fully publicized are self-defeating and non-universalizable. This maxim is an eliminative test for all acts of political expediency, both domestic and international. Since the principle is simply negative - if it cannot bear publicity, it is unjust, the converse is not necessarily the case - if it bears publicity, it is just. A recent case of a superior state publicly announcing its intentions comes to mind.

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<sup>13</sup> *Perpetual Peace*, p.116.

<sup>14</sup> *Ibid.*, pp.129 and 134.

The second principle is *a priori* and positive.<sup>15</sup> It is based on the rightful and universal association of individuals and states. In these associations various agents and actors must publicize their proposed actions in order to attain their ends, i.e. ends which can only be attained by their co-operative means. These are not federations, which have constitutions and cannot be dissolved, but a “congress of states.”<sup>16</sup> Any politics that does not aim to establish harmony is but a sophism. The harmony of politics with morality is only possible in a congress of states. Philosophy publishes its maxims and elaborates *a priori* the principle of right. The secretive politics of duplicity, deception and the wanton promotion of self-interest is thereby eliminated.

This realm of public discourse has now become incomprehensively more polycentric and diffuse. Intellectuals have often betrayed their principles, language has become fluidly debased, abused and instrumentalized. The monopolized mass media trumpets war more often than it subjects politicians to critical analysis. Truth has become politicized and power corrupted to the point of thinking it can create reality.<sup>17</sup> Conflict fosters more the interests of the media than the peace agenda.

Kant put great stock in his transcendental formulae of public right that covers both the juridical and ethical spheres.<sup>18</sup> In a curious dialectical turn we have now statutized in principle the notion, in various freedom of information acts, that all government information is inherently protected (secret), subject to dissemination according to the principles of provisional politics. The onus is more on the public to extract the information, often through litigious means, than on the government to justify its non-disclosure. For Kant a harmony between morality and politics is only to be achieved through the transcendental concept of public right.

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<sup>15</sup> Habermas mistakenly concludes that Kant was “satisfied with a purely negative conception of peace,” Bohman and Lutz-Bachmann, *op. cit.*, p.133.

<sup>16</sup> *The Metaphysics of Morals, op cit.*, para. 61, p.120.

<sup>17</sup> *Vide*, Mark Danner, “The Secret Way to War,” *The New York Review of Books*, Vol, LII, No.10, June 9, 2005, pp. 70-74.

<sup>18</sup> *Ibid.*, pp. 129-135.



### (3) COSMOPOLITAN LAW

If progress towards peaceful co-existence was raised by Kant as a historical possibility, then two hundred years of carnage would seem to put us again in the unfortunate position of Hegel's dictum that the only thing we learn from history is that we do not learn anything from history. Can historical progress, or in other words the brute historicity of human existence, be anchored in a transcendental principle of rightful co-existence among all citizens of the world? The anchoring of that principle in the transcendental idea of freedom, the original fountain of all law and human rights, is mediated through sovereign states. The primary tension in the Kantian conception of transcendental peace is the intermediation of the nation-state, or the seemingly necessary application of cosmopolitan law via the jurisdictional constraints of pluralistic sovereign entities.

#### (A) What Kant's Text Says

The text of *Perpetual Peace* is deceptively simple and panoramic. It contains two sections. The first is a set of preliminary articles. These are broad prescriptions for war prevention and involve specifics, such as disarmament and the shedding of colonial dependencies - antidotes which were in the air at the time.<sup>19</sup>

#### The Articles for Universal Peace

The Preliminary Articles are:

1. No treaty of peace shall be held valid in which there is tacitly reserved matter for a future war.
2. No independent states, large or small, shall come under the dominion of another state by inheritance, exchange, purchase or donation.
3. Standing armies (miles perpetuus) shall in time be totally abolished.
4. National debts shall not be contracted with a view to the external friction of states.

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<sup>19</sup> For example, see Jeremy Bentham's "A Plan for Universal and Perpetual Peace," in *Peace Projects of the Eighteenth Century*, *op. cit.*, p.11.

5. No state shall by force interfere with the constitution or government of another state.
6. No state shall, during war, permit such acts of hostility which would make mutual confidence in the subsequent peace impossible: such are the employment of assassins, poisoners, breach of capitulation and incitement to treason in the opposing state.

A peace must not be confused with the expediency of a truce. A temporary armistice merely continues the state of nature among nations and does nothing to advance the cause of statecraft or the higher political good.

A state is not a piece of property as such. The state is inviolable and the original contract under which its people come together must be maintained in tact.

The incremental abolition of standing armies is a necessary precondition for peace. This is not to be confused with voluntary and periodic military exercises which are necessary for the regular security of a state. Kant also objects to the violations of individuals when they are used as instruments and machines in mercenary armies.<sup>20</sup>

The widespread use of credit systems and money powers to purchase arms and support standing armies must be done away with.

The fifth preliminary article declares that there is no authority in law to interfere in the internal affairs of another nation. Some states are, however, anarchic, i.e. the state has dissolved and thus there can be no interference in its constitution.

The sixth article covers the endless array of dishonorable stratagems that undermine the spirit of peace. The dehumanization and demonization of the enemy should be forbidden. This is especially relevant with respect to *jus post bellum* doctrine.

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<sup>20</sup> In a recent decision the Supreme Court of Costa Rica ruled that the Costa Rican government had violated the spirit of the nation's constitution and international law when it supported the U.S.-led coalition's pre-emptive strike on Iraq. Costa Rica has a constitutional ban on having a standing army and is committed to a doctrine of "unarmed neutrality." The Court took the unusual step of ordering the government to strike Costa Rica from the U.S. list of willing allies in Iraq. *English Herald Tribune/Asahi*, September 15, 2004.

The second section encompasses three definitive articles, which systematically cover the domains of civil law, the law of nations and the law of world citizenship. Kant treats the domains separately, but there are obvious interrelations. Cosmopolitan law must be anchored in a domestic republicanism. Nevertheless, there are significant conceptual tensions between the definitive articles.

The Definitive Articles are:

1. The civil constitution of every state should be republican.
2. The law of nations shall be founded on a federation of free states.
3. The law of world citizenship shall be limited to conditions of universal hospitality.

The text is followed by two supplements, which formulate the guarantee of perpetual peace and a secret request that the principles of philosophers be given a hearing in the deliberations of law-makers. The latter is for us a curious addendum that must be viewed wholly within the context of Kant's time.

Appendix I articulates the dichotomy between morality and politics, while the second Appendix seeks to overcome this historically viperous opposition in the two transcendental principles of public law that were previously discussed.

#### (B) Politics Versus Morality - The Non-Adversarial World Citizen

The *jus cosmopolitanum*, or the law of world citizenship, requires some form of institutional basis if it is to be something more than a utopian ideal. Therein lies the fundamental conflict between the *homo noumenon* of the world citizen and the life of that citizen within the diverse particular politics and juridical vicissitudes of a sovereign nation-state. The Kantian project is clearly a loose association of republics that would nonetheless evolve far beyond the current structure of the United Nations. It is also clearly a model of world order and the development of cosmopolitan right that stands in contrast to a superpower-dominated hegemony.

This neo-Kantian cosmopolitan system would be a federation with a constitution, inviolable and indissoluble. It would not be Kant's voluntary and temporary congress of states, which perennially strives to propel international relations out of the state of nature.

If Kant substitutes a striving for perpetual peace in place of a "world republic," then it should not be equally said that his concept of peace is wholly negative.<sup>21</sup> The state of peace is a direct duty - the supreme moral legislating authority absolutely condemns war as a legal recourse.<sup>22</sup> It is therefore ultimately sourced in reason as a transcendental and regulative idea. If concentrated clusters of global hegemony are to give way to the spread of cosmopolitan right, then the self-contradictions in the exercise of hegemonic power by constitutional democracies must be tirelessly pursued. Loose, confederal associations of independent states may not be enough to restrain the tendency of superpower hegemonies to lapse and relapse into a state of nature among nations.

Is the transcendental publicity of world citizens enough to put limitations on military power and the preparations for war? Kant, himself, was wary of a constitutionalized world republic, a "soulless despotism." A top down, hierarchical, non-democratic world government is not the ideal institutionalization of cosmopolitan right. Kant's answer is to be found in the concept of "universal hospitality" in the third definitive article. This is not a question of global philanthropy, but of global right. All men have a "right to associate."<sup>23</sup> This right arises from the common possession of the earth. The planet is finite and humanity cannot be infinitely dispersed. We must therefore tolerate the presence of each other. As Kant puts it: "Originally, no one had more right than another to a particular part of the earth."<sup>24</sup> Like Rousseau before him, Kant saw in the original covenant

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<sup>21</sup> The passage that is usually cited in *Perpetual Peace* to support the negative substitute interpretation is:

If all is not to be lost, there can be, then, in the place of the positive idea of a world republic, only the negative surrogate of an alliance which averts war, endures, spreads, and holds back the stream of those hostile passions which fear the law, though such an alliance is in constant peril of their breaking loose again

pp. 101-102. *Vide*, James Bohman, "The Public Spheres of the World Citizen," in Bohman and Lutz-Bachmann, *op. cit.* p.180.

<sup>22</sup> *Perpetual Peace*, p.100.

<sup>23</sup> *Ibid.*, p.103.

<sup>24</sup> *Id.*

the simple and unconditional articles of association among all human beings that must replace the authority of nature and the horrific dispensations of force with the rule of law and the concept of right.<sup>25</sup>

Cosmopolitan right, and the possibility of the harmonization of the philosophy of history and politics with practical reason and morality, therefore flows out of a transcendental public right to certain commonalities and co-operative principles that in turn make possible cosmopolitan communities. It is only in the doctrine of universal hospitality that perpetual peace can take root and flourish. Kant states the doctrine in these embryonic terms;

Since the narrower or wider community of the peoples of the earth has developed so far that a violation of rights in one place is felt throughout the world, the idea of a law of world citizenship is no high-flown or exaggerated notion. It is a supplement to the unwritten code of the civil and international law, indispensable for the maintenance of the public human rights and hence also of perpetual peace. One cannot flatter oneself into believing one can approach this peace except under the conditions outlined here.<sup>26</sup>

For Henry George any philosophy that “counts on selfishness as the master motive of human action” is shortsighted.<sup>27</sup> The cosmopolitan law of George is founded on natural and imprescriptible rights, such as life, liberty, equality, property, security, resistance to oppression, etc., not on a subjective state, or on a supposedly universal psychological orientation or on a theory of value arising from marginal utility. George subscribed to the view stated in the French Declaration of Rights of Man and Citizens (1789) that civil distinctions are only founded in public utility, but these distinctions must conform to a suprahuman law. Cosmopolitan law is therefore a part of the Enlightenment project. It is,

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<sup>25</sup> Rousseau states in *Paix Perpétuelle*:

If there is any means of getting rid of these dangerous contradictions, it can be only by a confederative form of government, which, uniting nations by bonds similar to those which unite individuals, submits them all equally to the authority of the laws. Such a government, moreover, appears to be preferable to all others in that it comprehends at one and the same time the advantage of both large and small states, that it becomes formidable abroad by reason of its power. That its laws are rigorously enforced, and that it is the only possible way of restraining equally subject, rulers and foreigners.

Cooper. ed., *op. cit.*, p.7.

<sup>26</sup> *Ibid.*, p.105.

<sup>27</sup> Henry George, *Progress and Poverty* (New York, Robert Schalkenbach Foundation, 1987) , p. 462.

however, a project that requires completion in a sophisticated theory of economic justice. In other words equality of political and civil rights, granted by the institutions of positive law, must now be complemented by equal rights to the bounty of nature or equal rights to opportunity. This theory only found its systematic expression a hundred years later in the philosophy of Henry George.

(C) Henry George's Advancement of the Kantian Cosmopolitan Project

The once transnationally influential, American social and economic philosopher named Henry George, in such works as *Progress and Poverty* (1879), *Social Problems* (1884), *Protection or Free Trade* (1886) and *The Science of Political Economy* (1897) sought to unite the cosmopolitan (universal and normative) rights underlying a thoroughgoing theory of property rights and economic justice with the entitlements of individuals and sovereign states (pluralistic and historical) in order to remove the root causes of war and reduce vast economic disparities between individuals, groups and nations. George had an expansive view of history and even though he embraced the progressive optimism of the Enlightenment he nonetheless sees a remorseless dialectic in the rise and decline of civilizations.<sup>28</sup> Absolute political and legal rights are not enough. The cosmopolitan law demands a further check on the ever present tendency to growth in inequality through a universal guarantee of access to the plenitude of nature. This, for George, is the only possible mechanism available to forestall the decline of our, and any, civilization.<sup>29</sup>

It is no accident that the last word in *Progress and Poverty* is "peace" in the sentence "It is

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<sup>28</sup> *Progress and Poverty*, Bk. X, chap. 4, "How Modern Civilization May Decline," pp. 527-543. George does not use the term ubiquitous philosophical term "dialectic," but refers to "internal resistances, or counter forces," p. 513.

<sup>29</sup> George states:

What has destroyed every previous civilization has been the tendency to the unequal distribution of wealth and power. This same tendency, operating with increasing force, is observable in our civilization today, showing itself in every progressive community, and with greater intensity the more progress the community. Wages and interest tend constantly to fall, rent to rise, the rich to become very much richer, the poor to become more helpless and hopeless, and the middle class to be swept away.

*Progress and Poverty*, p. 528.

the reign of the Prince of Peace.” It can be argued that the Conclusion, “The Problem of Individual Life” which follows is a postscript. It begins with “My task is done” and addresses the problem of the life of the individual within the context of the social state. *Progress and Poverty* is a treatise on the possibility of the attainment of a higher social state. The two, of course, cannot be separated, but it is important to keep them conceptually distinct. Just as peace or a just society is the teleology of social advance, so immortality is the end of individual life. Transcendentals of this sort became deeply suspect in much of twentieth century thought, especially in the pragmatic, linguistic and analytical philosophies of North America. In the putatively neutral and amoral reflections of neo-classical economics, in its lifeless abstractions, one finds yet another example of the flight from the trans-natural and the trans-historical. This is one of the primary reasons for George’s eclipse in modern times.

George rejects unequivocally a view of civilization as an evolution or the progressive powers and capacities of human beings.<sup>30</sup> He has a static view of human nature. Progress for him is not to be found in the improvement of human nature but in the constitution of society.<sup>31</sup> Again it must be noted that it is the transcendental side of George’s philosophy that leads him to condemn the idea of the perfectibility of the human race. Equally he takes it as an obvious empirical and historical fact that such perfectibility does not exist. Recognition of political, legal and the more fundamental cosmopolitan rights assists human progress but such recognition in itself does not guarantee social advance. The law of progress is association in equality.<sup>32</sup> Civilization cannot progress solely on the basis of recognition, as necessary as that may be, but only through co-operation.<sup>33</sup> Co-operation and association are inherently positive and cosmopolitan. In other

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<sup>30</sup> *Progress and Poverty*, pp. 478 *et seq.*

<sup>31</sup> *Ibid.*, p. 562.

<sup>32</sup> *Ibid.*, p. 508.

<sup>33</sup> *Ibid.*, p. 524. George declares:

Civilization is co-operation. Union and liberty are its factors. The great extension of association - not alone in the growth of larger and denser communities, but in the increase of commerce and the manifold exchanges which knit each community together and link them with other though widely separated communities; the growth of international and municipal law; the advances in security of property and of person, in individual liberty and towards democratic government- advances, in short, towards the recognition of the equal rights to life, liberty, and the pursuit of happiness - it is these that make our modern civilization so much greater, so

words they can only be advanced through the recognition in cosmopolitan law of underlying imprescriptible rights.

War, by definition, negates association.<sup>34</sup> Conquest can promote association if it secures internal peace, which is obviously not always the case. Commerce builds “up interests which are opposed to warfare.”<sup>35</sup> If war is counter-associative, then it is transparent that the collective power of society is wholly dependent upon an integral effort which is distinguishable from the totality of individual efforts and powers. Inequality is necessarily a function of the maldistribution of wealth and power. This maldistribution is the source of conflict and war.

One area that can be profitably explored in the necessary reconciliation of a communitarian (particularistic) and cosmopolitan (universalistic) ordering principle for the stabilization of relations between sovereign states is in the dual recognition of the inalienable rights of communities to the wealth and well-being generated by those communities concomitant with the retention by individuals, or world citizens, of the wealth procured through their own labor. Both illiberal and putatively egalitarian democracies violate these principles systematically.

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much higher, than any that has gone before.

For a comprehensive treatment of the concept of recognition in post-Kantian German philosophy, see, Robert R. Williams, *Hegel's Ethics of Recognition* (Los Angeles, University of California Press, 1997).

<sup>34</sup> *Progress and Poverty*, p. 511.

<sup>35</sup> *Ibid.*, p. 512.



George's project needs to be complemented with a more developed theory of international order and co-operation, but in a sense it completes in the historical spheres of economics, sociology, public finance and governmental structure that the Enlightenment projects of perpetual peace had initiated. And it completes the connection between globalization, cosmopolitan law and unimpeded commercial exchange that began in the Enlightenment, got filtered through the classical German philosophies of Kant and Hegel, found expression in Marx and is still reflected on today as the most basic undercurrent in human development.<sup>36</sup> The fact that the Enlightenment project of a transcendental and everlasting peace has not been united with the Georgist project of conflict resolution through a law-governed distribution of property rights among individuals, national and international communities shows that we have a long way to go in the development of Kant's concepts of publicity, communicative freedom and the co-operative exchange of knowledge.

Kant preserved cultural diversity at the level of the sovereign nation-state. This political unit has in many instances become much more unstable in twentieth century history. The doctrine of transcendental publicity contains practical moral principles for the recognition of the diversity of nation-states as well as transcultural rights and duties which advance universal hospitality. Through communicative freedom, cosmopolitan right and universal hospitality "the human race can gradually be brought closer and closer to a constitution establishing world citizenship."<sup>37</sup> This may require more hybrid juridical systems than are now generally acceptable at the political level in many countries, especially in the West. The tension between localized adversarial systems of positive law and more non-adversarial forms of mediation and arbitration, especially where sovereignty issues are perceived to be paramount, will be a primary test for the advancement of cosmopolitan law in the decades to come.

Kant had in mind wars of conquest, colonization and the outright plunder of foreign lands by European powers. But inhospitality can be subtle and covert. Violations of the natural law through the privatization of community-created wealth and the legalized theft of individual earnings and effort are equally forms of inhospitable plunder, not based on indiscriminate violence, but

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<sup>36</sup> *Vide*, John Gray's review, entitled "The World is Round," of Thomas Friedman's *The World is Flat*, in *The New York Review of Books*, Vol. LII, No. 13, August 11, 2005, pp. 13-15. Gray is critical of Friedman's thesis and his technological determinism.

<sup>37</sup> *Ibid.*, p.103.

which have the pernicious effect of being invisible and incremental degradations of the human condition and biosphere in which we live. It is not an accident that transnational issues, such as environmentalism, the rights of world citizens, the migration of peoples and resource depletion are at the forefront of the informal and global public development of cosmopolitan right and of interconnective and hopefully hospitable communities. Such developments, over time, cannot be solely premised on uniform, but limited, bilateral or multilateral international agreements. Positive and provisional forms of dispute resolution and arbitration must eventually be replaced by a systematic cosmopolitanism that unites the natural teleology of human history and politics with the moral imperatives of rightful action and duty.

It can be plausibly argued that a quasi-constitutional, transnational organization which codifies the vision of cosmopolitan law found in Kant and George would be a distinct possibility for the same reasons that George himself understood his proposed sovereign remedy to be eminently doable because they utilize, for the most part, systems of public revenue generation that are already in place. The plenary powers to tax and issue public debt is understood to be a fundamental right of all nation states.<sup>38</sup> If however the cosmopolitan law of all nations decreed that the power to tax must be restricted as far as is feasible to the collection of various forms of economic rent, then this would provide a natural curb on the waste and demoralization that accompanies the constant preparation for war.<sup>39</sup>

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<sup>38</sup> See the discussion of the relation between the power of taxation, debt-issuance and war in *Social Problems* (New York, Robert Schalkenbach Foundation, 1981), pp.164-166.

<sup>39</sup> *Ibid.*, p. 166. George, like Kant, sees the preparation for war to be as burdensome as war itself.

In many senses the capacities of states are as static as the powers and capacities of individuals. Positive law will always be to some degree jurisdictionally and culturally relative. Cosmopolitan law provides a trans-jurisdictional context for all relative institutional law. It promotes exchange, association, integration and co-operation among all nations, not only in terms of the trade in goods and services but in the sharing of knowledge, intellectual property, innovation and culture. Whatever positivistic agreements are put in place among nations which break up these infinite forms of peaceable assembly necessarily create obstacles to the advance of civilization. For George only correct thought can lead to right action.<sup>40</sup> This is why the propagation of ideas, the dispersion of the philosophical disposition, the undergirding of world-citizenship with the awakening of individual thought is the great task of modernity. A critical self-enlightenment is an inescapable element of social amelioration.

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<sup>40</sup> *Ibid.*, p. 242.