

Ετερολογίες

Περιοδική Έκδοση Κοινωνικής Θεωρίας και
Έρευνας για το Δίκαιο

Cite This Item:

Vaki, Fotini, «Cosmopolitan Right and the Rights of Others. », *Eterologies. Journal of Social Theory and Research on Law*, issue 3, December 2023, pp. 23-33.

Available at : <http://eterologies.com/2023/12/31/kants-cosmopolitan-right-and-the-rights-of-others/>

Kant's Cosmopolitan Right and the Rights of Others

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ABSTRACT

Kant's understanding of Cosmopolitan Right, elaborated in the Third Article of his essay on "Perpetual Peace" and *The Metaphysics of Morals*, enjoys considerable attention today under the current conditions of the refugee crisis and globalization. Geneva Convention's principle of "non-refoulement" concerning the Status of Refugees mainly relies on Kant's claim that first entry should always be granted to those who are in danger. The paper will focus first on the distinction Kant makes between "the right to be a permanent visitor" and the "temporary right of sojourn." Though the Kantian hospitality "is not a question of philanthropy but of right," yet it is confined to a claim to temporary residency.

Furthermore, Kant's universal right to hospitality is viewed as an imperfect moral duty, i.e., one that imposes no obligation upon us to offer shelter to those who are in danger. Second, the paper will elucidate the dilemmas the Kantian right to hospitality is caught considering the contemporary refugee crisis. Notwithstanding its liberal context, the Kantian Cosmopolitan Right seems to anticipate the tension between a universal morality dictated by the premises of Practical Reason and the legal right of the modern national state to grant full political membership to the "others", refugees, immigrants, etc.

I. Introduction: The Rights and Man and the Citizen: A non-reconcilable difference?

The figures of the refugee, the immigrant, and the "other" incarnate the political community of an era after the nation, marked by the deterritorialization of goods and capitals. The treatment of the "other" tests not only our moral conscience in view of our fellows seeking help but also the very institutions of our democratic polity. The "other" lying half dead on our national

threshold asks not only for food and shelter as a human being belonging to the same with us moral commonwealth; he/she appeals, furthermore, to a substantial and symbolic space of existence and "visibility," formerly guaranteed by the legal order of his/her lost political community.¹ Homeless and stateless, the foreigner becomes, ironically enough, the dialectical reversal of capital's cosmopolitanism. While global capital prospers and conquers the world by emancipating itself from any national and legal yoke, the "foreigner" loses the world. The loss of home and country leads to the loss of rights and becomes, to recall Arendt's pointed term, a loss of worldliness, i.e., the loss of the possibility to belong to and share the world with others. Invisible and superfluous the foreigner is nothing but "animal reaction and fulfillment of functions."²

In the Declarations of the Rights of Man and Citizen the 18th century Revolutions gave rise to, human rights appeared as inalienable and self-evident norms founded on human nature. It was human nature that ensured the universality and equality of the rights of those who did not feel secure to societies in which

rights were bound up with the privileges of the Estates and equality was meant only as equality before God.

While in the 18th century, nature appeared as the sole guarantee of human rights, in the 20th century, after the end of the First World War and the dismemberment of the great Empires, the massive appearance of refugees evinced that human nature was hardly sufficient by itself to make human being a subject of rights. "The conception of human rights," Arendt writes, "based upon the assumed existence of a human being as such, broke down at the very moment when those who professed to believe in it were for the first time confronted with people who had indeed lost all other qualities and specific relationships -except that they were still human. The world found nothing sacred in the abstract nakedness of being human." ³ Thousands of refugees, treated as a "disposable material" bore witness to the fact that one is entitled to rights only as a member of a national state and, therefore, by being something more than a human being. We are not born free and equal. We become free and equal on account of our membership to a political community.

¹ Konstantinos Papageorgiou, *The Refugees and our Duties towards them*, Athens, Polis, 2017, pp. 1920 -in Greek-

² Hannah Arendt, *The Origins of totalitarianism*, San Diego, New York, London, Harcourt Brace Jovanovich, 1979, p. 457.

³ Ibid., p. 299.

The historical distance of two centuries separating him from the 20th century atrocities could not allow Kant commenting on the above contradiction between the rights of man and citizen. However, the relevance of the Kantian account of the Cosmopolitan Right is more than evident in the contemporary conjuncture, which is probably experiencing the greatest refugee crisis. It could also be argued that the Kantian cosmopolitan vision breaks with the Westphalian sovereignty model anticipating a more liberal approach.⁴ While the Westphalian model views sovereignty in terms of the state's absolute supremacy over the subjects and objects of a demarcated territory,⁵ the liberal sovereignty model relates the formal equality of states to a set of common values including -among others- the rule of law and the concomitant respect for human rights and democratic self-determination.⁶

⁴ This point has been mainly developed by Seyla Benhabib in her *The Rights of the Others: Aliens, Residents and Citizens*, Cambridge, Cambridge University Press 2004, p. 42.

⁵ For the Westphalian model, see -inter alia- Stephen Krassner, *Sovereignty: Organized Hypocrisy*, Princeton, Princeton University Press, New Jersey, 1999, p.

II. The right to hospitality: Kant's Cosmopolitan Right.

In his *Perpetual Peace*, Kant proceeds to the following typology of the legal constitutions with respect to the persons who live under them:

" (1) a constitution based on the civil right of individuals within a nation (*ius civitatis*).

(2) a constitution based on the international right of states in their relationships with one another (*ius gentium*).

(3) a constitution based on cosmopolitan right, in so far as individuals and states, coexisting in an external relationship of mutual influences, may be regarded as citizens of a universal state of mankind (*ius cosmopoliticum*)"⁷

Kant's vision in his *Perpetual Peace* is that of a federation in the form of a voluntary coalition of free states each of which should

20-25 and David Held, "Law of States, Law of People," *Legal Theory*, 8: 1-44, p. 4-6).

⁶ S. Benhabib, *The Rights of the Others*, p. 41.

⁷ I. Kant, "Perpetual Peace: A Philosophical Sketch," in *Kant Political Writings*, edited with an introduction and notes by Hans Reiss, translated by H. B. Nisbet, Cambridge, Cambridge University Press, 1992, pp. 98-99.

be governed by the rule of law⁸, maintain its sovereignty⁹ and may, therefore, leave that federation any time it wishes. That federation is taken to be by Kant the sole guarantee of the perpetual peace, interpreted in terms of the indefinite war conflicts resolutions. However, Kant takes a step forward referring to the Cosmopolitan Right he mainly elaborates in the "Metaphysical First Principles of the Doctrine of Right" in the *Metaphysics of Morals*¹⁰ and the *Third Definitive Article of a Perpetual Peace*.¹¹ The Kantian Cosmopolitan Right aims at "the possible union of all nations with a view to certain universal laws for their possible commerce"¹² in virtue of the global surface of the earth.¹³ Kant claims emphatically that the cosmopolitan rights is a right and not a philanthropy.¹⁴ Hospitality, philoxenia, as the

friendly reception of the foreigner refers to, in Kant's words, "the right of a stranger not to be treated with hostility when he arrives on someone else's territory."¹⁵

That hospitality as a legal principle rather than the philanthropy of the good Samaritan parable or the famous Tintoretto's painting depicting the rescuing of a Saracen from a shipwreck by Saint Mark during a sea storm has been integrated into the Geneva Treaty as the "non-refoulement principle".

Yet the recent pictures travelling around the world of boats overcrowded with hopeless and dispossessed who spoke a different language, believed in another God, their skin complexion was darker than ours, and, if not overturned or pushed back on

⁸ According to the first Definitive Article of a Perpetual Peace, "the civil Constitution of Every State shall be Republican." (Ibid., p. 99). The state as the "union of a multitude of human beings under laws of right" (Kant, *The Metaphysics of Morals*, edited by Mary Gregor, introduction by Robert J. Sullivan, Cambridge, Cambridge University Press, 2006, p. 90) is governed by the principles of "lawful freedom" i.e., "the attribute of obeying no other law than that to which he has given his consent" of equality in the sense of isonomy, and finally, "civil independence," that is, "of owing his existence and preservation to his own rights and powers as a member of the commonwealth, not to the choice of another among the people" (Ibid., p. 91).

⁹ According to the second Definitive Article of a Perpetual Peace, "The Rights of Nations shall be based on a Federation of Free States" which should no way be identified with an international state. ("Perpetual Peace," p. 102).

¹⁰ *Metaphysics of Morals*, par. 62, p. 121.

¹¹ "Perpetual Peace", p. 105-108.

¹² *Metaphysics of Morals*, par. 62, p. 121.

¹³ "... Since the earth is a globe, they [people] cannot disperse over an infinite area but must necessarily tolerate one another's company." ("Perpetual Peace", p. 106).

¹⁴ Ibid., p. 105. See also *Metaphysics of Morals*, par. 62, p. 121. He writes: "This rational idea of a peaceful, even if not friendly, thoroughgoing community of all nations on the earth that can come into relations affecting one another is not a philanthropic (ethical) principle but a principle having to do with rights."

¹⁵ "Perpetual Peace," p. 105.

board, they were found in an Eden soon to be transformed into Hell by the hatred of the natives, the hermetically closed borders and the dominant public discourse which criminalized the foreigner evince that not merely as a right but even as a moral duty has hospitality become an unfulfilled promise of history.

The Kantian cosmopolitan right as "the right of citizens of the world to establish community with all and, to this end, to visit all regions of the earth"¹⁶ is confined, however, merely to the right of visit. It is not, Kant himself writes, "a right to make a settlement on the land of another nation (*ius incolatus*); for this a specific contract is required."¹⁷ Kant therefore clearly distinguishes the right to hospitality from that to permanent residence. Unless a traveler's life is at stake, in which case he ought to be treated as a refugee, the host society has the prerogative to refuse to proceed

to that contract and to "turn him away, if this can be done without destroying him."¹⁸

Kant could not surely predict the dramatic impact of denaturalization, depriving homeless and stateless people of citizenship. He could not apparently foresee in the 18th century that the deprivation of nationality, even of the right to settle in a new country, is tantamount to the deprivation of a "place in the world," to recall Arendt's pointed term,¹⁹ and consequently the annihilation of the legal, political, and moral identity of the human person. Behind Kant's meticulous formulation of the cosmopolitan right as the right of visit and commerce - *commercium* - lies his concern to track the institutional and legal provisions of insuring the definite end of wars. One of those consisted in the unhindered operation of the exchange and

¹⁶ *Metaphysics of Morals*, p. 121.

¹⁷ *Ibid.*, p. 121.

¹⁸ *ZeF*, 8: 358.

¹⁹ "The calamity of the rightless is not that they are deprived of life, liberty, and the pursuit of happiness, or of equality before the law and freedom of opinion - formulas which were designed to solve problems *within* given communities - but that they no longer belong to any community whatsoever. Their plight is not that they are not equal before the law, but that no law exists for them; not that they are oppressed but that nobody wants even to oppress them . . . The

fundamental deprivation of human rights is manifested first and above all in the deprivation of a place in the world which makes opinions significant and actions effective. Something much more fundamental than freedom and justice, which are rights of citizens, is at stake when belonging to the community into which one is born is no longer a matter of course and not belonging no longer a matter of choice, or when one is placed in a situation where, unless he commits a crime, his treatment by others does not depend on what he does or does not do. This extremity, and nothing else, is the situation of people deprived of human rights." (Hannah Arendt, *The Origins of Totalitarianism*, p. 296).

commerce in the 18th century emerging market which was gradually being globalized.

The right of visit but not that of the permanent settlement seems to be inspired both by the popular -in Kant's time- view of the trade as the substitute for war and by his unequivocal disapproval of the colonial practices. Kant was likely to hold that the right to permanent settlement would implicitly legitimize colonial practices or the so-called "humanitarian" interventions using as the pretext the "beneficent" mission of civilizing the "savages" or the material progress brought about by making productive thousands of acres abandoned by the indigenous people. As Kant argues, "it is easy to see through this veil of injustice (Jesuitism), which would sanction any means to good ends. Such a way of acquiring land is therefore to be repudiated."²⁰ "But all these supposedly good intentions", he writes, "cannot wash away the stain of injustice in the means used for them."²¹

It would be noteworthy at this point to remind that Kant's flat renunciation of colonialism is presumed by his arguments on land

property he develops in *The Metaphysics of Morals*. Starting from the concept of the "original possession in common"²² Kant claims that all human beings originally, i.e., "prior to any act of choice that establishes a right"²³ possess the land in which are placed by nature or chance. And this is a possession in common, so the Kantian argument goes, because "the spherical surface of the earth unites all the 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 earth."²⁴

Kant also maintains that the right of land property is founded upon the temporal priority of taking possession of it. Though original acquisition in general is considered provisional²⁵ and becomes conclusive only in a civil condition in which not a unilateral will but "the will of all is united for giving law,"²⁶ before the establishment of civil condition but with a view to it, it is a duty to proceed with the principle of external acquisition"²⁷ according to which, "all men are originally in common possession of the land of the entire

²⁰ The Metaphysics of Morals, p. 53.

²¹ Ibid., par. 62, p. 122.

²² Ibid., par. 13, p. 51.

²³ Ibid., par. 13., p. 50.

²⁴ Ibid.

²⁵ Ibid., par. 15, p. 52.

²⁶ Ibid.

²⁷ Ibid. par. 16, p. 54.

earth. . ." ²⁸ Apparently, at this point, Kant is developing a theory of land property in direct opposition to that of J. Locke with the purpose of severely criticizing colonial practices. While for Locke, we come to own an object on which we have labored given that we own our own labor ²⁹, for Kant the reverse holds. Mixing something with my labor does not make it mine; working on land, instead, presupposes that it is already mine. Labor in other words, is not the condition of property but property that of labor. Resorting to the Aristotelian categories of substance and accident, Kant argues that developing and transforming a piece of land is an accident and in no way establishes a right of property of it. "Possession of an accident", Kant writes, "can provide no basis for rightful possession of the substance." ³⁰ Kant's vehement

opposition to the supposedly exploitation of development of desert land as the justifying basis of colonialism is more than obvious. As he himself writes in "Perpetual Peace:"

"America, the negro countries, the Spice Islands, the Cape, etc. were looked upon at the time of their discovery as ownerless territories; for the native inhabitants were counted as nothing. In East India (Hindustan), foreign troops were brought in under the pretext of merely setting up trading posts. This led to oppression of the natives, incitement of the various Indian states to widespread wars, famine, insurrection, treachery and the whole litany of evils which can afflict the human race. . . And all this is the work of powers who make endless ado about their piety, and

²⁸ Ibid.

²⁹ "Though the Earth, and all inferior Creatures be common to all Men, yet every Man has a Property in his own Person. This no Body has any Right to but himself. The Labour of his Body, and the Work of his Hands, we may say, are properly his. Whatsoever then he removes out of the state that Nature hath provided and left it in, he hath mixed his Labour with, and joined to it something that is his own, and thereby makes it his Property. It being by him removed from the common state Nature placed it in, it hath by the labour something annexed to it, that excludes the common right of other Men. For this Labour being the unquestionable Property of the Labourer, no Man but he can have a right to what is once joyned to, at least when there is enough, and as good left in common for others." (*Second Treatise in John Locke, Two Treatises of Government*, ed. Peter Laslett [1689], student edn, Cambridge: Cambridge University Press, 1988] s. 27, 287-8).

³⁰ *Metaphysics of Morals*, par. 17, p. 55. See also par. 15 in which Kant writes: "Moreover, in order to acquire land, is it necessary to develop it (build on it, cultivate it, drain it, and so on)? No. For since these forms (of specification) are only accidents, they make no object of direct possession and can belong to what the subject possesses only insofar as the substance is already recognized as his. When first acquisition is in question, developing land is nothing more than an external sign of taking possession" (Ibid., p. 52). I examine the Kantian arguments on land property in Fotini Vaki, "National State, Postnational Constellations, and Democracy: Kant after Habermas?" in *Giornaly di Filosofia*, 1, April 2021 and Fotini Vaki, "Adam Smith and Immanuel Kant as Critics of Empire: International Trade Companies and Global Commerce versus *Jus Commericii*" in *Adam Smith Review*, 9, edited by Fonna Forman, 2017, p. 9-19.

who wish to be considered as chosen believers while they live on the fruits of iniquity."³¹

Yet the status of the Kantian cosmopolitan right even as the right of visit and hospitality is characterized by an ambiguity enfeebling its force and universality as a legal principle. Though "the idea of a cosmopolitan right" Kant himself claims, "is. . . not fantastic and overstrained"³² he hastens to add in the same sentence that it is an "unwritten code of political and international right."³³ As an unwritten code, universal hospitality seems to relate to an idea of natural law playing the role of the normative criterion assessing positive law or that of a compass orienting institutional and juridical practices such as the Kantian regulative Ideas of Reason rather than a universal law.

In spite of Kant's expressed intentions, the right of visit, the aid to the stranger lying on our threshold seems finally to be conceived of more as a moral duty of Practical Reason than a legal principle laying claim to universal validity and enforcement. In the

Groundwork of the Metaphysics of Morals and in the "Metaphysical First Principle of the Doctrine of Virtue" of the *Metaphysics of Morals*, beneficence is derived both from the formulation of the Categorical Imperative relying on the conformity of an action with a universal law³⁴ as well as that requiring the treatment "of humanity, whether in your own person or in the person of any other, always at the same time as an end, never merely as a means."³⁵ A will that denies its assistance to a fellow being in need would "conflict with itself, since many cases could occur in which one would need the love and sympathy of others and in which, by such a law of nature arisen from his own will, he would rob himself of all hope of the assistance he wishes for himself."³⁶ In addition, since setting ends is a capacity, for Kant, pertaining exclusively to human nature, the end of humanity both in our own person and the person of any other is the hallmark of any rational will.³⁷ Thus, just as our self-perfection and cultivation of our talents and

³¹ "Perpetual Peace," pp. 106-107.

³² Ibid., p. 108

³³ Ibid.

³⁴ According to the famous formulation, "act only in accordance with that maxim through which you can at the same time will that it become a universal law" (Kant, *The Groundwork of the Metaphysics of Morals*, translated and edited

by Mary Gregor with an Introduction by Christine Korsgaard, Cambridge, Cambridge University Press, 4: 441, p. 31).

³⁵ Ibid., 4: 429, p. 38.

³⁶ Ibid., 4: 423, p. 33.

³⁷ *Metaphysics of Morals*, 6: 392, p. 154.

capacities so as to be worthy of humanity are considered to be moral duties similarly we ought to make others our ends as well.³⁸

In conclusion, Kant's cosmopolitan right seems to oscillate between practical reason's categorical imperative to offer a temporary shelter to the stranger and the sovereignty right of the republican state to deprive the latter of his/her permanent residence and inclusion in the political community. In that sense the Kantian ambiguity anticipates the antinomy the 20th century history itself brought out in a tragic way: that between an international legal framework of human rights protection and the right of the national state to decide over who is entitled to be its citizen. The Kantian right of hospitality is in fact located in the border lines of polity³⁹ since it concerns the relation between "we" and "they". It is a right at the frontier between the rights of man and those of the citizen which signifies the paradox, according to Benhabib, of democratic legitimacy,⁴⁰ i.e., the tension between the universality of human rights and the particularity of national identities. If the measure of a democratic polity consists in the ideal of citizen who is at the same time

³⁸ ". . . The reason that it is a duty to be beneficent is this: since our self-love cannot be separated from our need to be loved (helped in case of need) by others as well, we therefore make ourselves an end for others; and the only way this maxim can be binding is through its qualification as a universal law, hence through our will to make others our end as well. The happiness of others is

subject to the law and its author, the duty of aid and inclusion of the "others" in a political community may be insured only if it is decided by the "sovereign people," i.e., the demos of democracy. The translation of the Kantian moral duty of the perfection of oneself in the idiom of right could be the establishment of a democratic polity securing the rights and freedoms of its citizens. Could not then the juridical correlate of the moral duty of philanthropy, the aid to the stranger, the "other" who is homeless and stateless and thus reduced into a "state of nature," be his/her inclusion to a political community? According to Kant, the transition from the state of nature to the rightful condition, i.e., "the relation of human beings among one another that contains the conditions under which alone everyone is able to enjoy his rights"⁴¹ is set as a duty of Reason. In that case, the right to freedom and welfare within the context of a political community should be granted to anyone.

This is the lesson and the relevance of the Kantian cosmopolitan vision.

therefore an end that is also a duty." (Ibid., 6: 393, p. 156).

³⁹ S. Benhabib, *The Rights of Others*, p. 27.

⁴⁰ Ibid., pp. 43-48.

⁴¹ *Metaphysics of Morals*, par. 41, p. 85.

III. The relevance of Kant's cosmopolitan right in light of Arendt's "right to have rights"

The figure of the refugee who has lost all his/her rights becomes the tragic reminder of the inexistence of a place within a state territory for a human being itself calling into question the identification of man with citizen. Though the normative force of the Westphalian model has been weakened both by globalized economy's deterritorialization of goods and capitals as well as the international treaties, the national state has still the jurisdiction over the reception, stay, and naturalization of the foreigners. Suffice it to go to the Universal Declaration of Human Rights, proclaimed by the United Nations General Assembly in 1948 to realize a few antinomies. Article 13, for instance, recognizes the right to freedom of movement across borders only as a right to leave the country but not as a right to enter a country. Though Article 15 recognizes to anyone the "right to a nationality," the Declaration remains silent on states' "obligations to grant entry to immigrants, to uphold the right to asylum, and to permit citizenship to alien residents and denizens."⁴² Thus, even the official documents of the Declarations of human rights seem to

⁴² S. Benhabib, *The Rights of Others*, p. 11.

give evidence to the opposite from that they are called upon to protect: They prove that the "right to have rights" to recall Arendt's famous phrase which is equivalent to the right to have a place in the world via our membership to a political community in which anyone would be judged for his/her actions rather than his/her national, ethnic, religious identity, is granted exclusively by the national state.

We are then confronted with the following paradox: if the inclusion to a political community is the sole condition of the "right to have rights," how would it be possible then for anyone who does not belong to a political community and is therefore "invisible" in the public sphere and doomed to the loss of "worldliness" to lay claim to his/her right to membership? It could be argued that Arendt's "right to have rights" may exceed the above circular argument *-petitio principii-* pointing to a kind of transcendental argument. As Frank Michelman remarks, "the right to have rights" could be viewed in terms of a "meta-right," the very condition of the possibility of acquiring rights by means of our being included in a political community.⁴³ It is therefore a right claimed before the conditions which make it legitimate.

⁴³ Frank Michelman, "Parsing a 'right to have rights,'" *Constellations* 3/2, October 1996, pp. 200-209.

S. Benhabib on the other hand, resorts to Kant's cosmopolitan right to shed light on Arendt's "right to have rights" and to unfold the normative principles of the concept of inclusive citizenship. Benhabib distinguishes between the "right" in singular and the "rights" in plural. The latter imply "a triangular relationship between the person who is entitled to rights, others upon whom this obligation creates a duty, and the protection of this rights claim and its enforcement through some established legal organ, most commonly the state and its apparatus."⁴⁴

The "right" in singular though implies, for Benhabib, the moral claim to be recognized as equals by our fellow beings in virtue of our common human nature.⁴⁵ We have a right to have rights in other words because we are all members of the human species.⁴⁶ The Kantian context of Benhabib's interpretation of Arendt's "right to have rights" is more than evident. Benhabib maintains that "the right to have rights" as the political and juridical translation of "humanity" in the person of anyone as an end in itself is equivalent with the enforcement of inalienable rights insuring the dignity and respect of human person irrespectively of

the citizenship status. In this respect, the right to have rights may be identified with a cosmopolitan theory of justice guaranteeing first and foremost a human's place in a political community, his/her place in the world as his very visibility. In opposition to recent Kantian inspired theories of international justice underlying issues of distribution of resources and rights rather than the question of membership, Benhabib approaches a cosmopolitan theory of justice in terms of just membership. That includes -inter alia- the recognition of the moral claim "of refugees and asylees to first admittance, a regime of porous borders for immigrants; an injunction against denaturalization and the loss of citizenship rights."⁴⁷ The massive refugee flows and the concomitant transformation of metropolises into cradles of multi-culturalism give birth today to the new faces of a deterritorialized citizenship no longer bound with land, history or tradition.⁴⁸ They also make blunt the contradiction between human and civil rights requiring a "post-metaphysical, post-national cosmopolitan solidarity"⁴⁹ guaranteeing universal rights for all in virtue of their humanity alone.

⁴⁴ The Rights of Others, p. 57.

⁴⁵ Seyla Benhabib, *The Reluctant Modernism of Hannah Arendt*, Maryland, Rowman & Littlefield, 2003, p. 185.

⁴⁶ Ibid., p. 46.

⁴⁷ The Rights of Others, p. 3

⁴⁸ Ibid., p. 174.

⁴⁹ Ibid., p. 21.