Aravind Ganesh, *Rightful Relations with Distant Strangers: Kant, the EU, and the Wider World*. Oxford: Hart Publishing, 2021. xxxiv + 255 pages. ISBN: 9781509941315. GBP 70.

Most readers of this review will generally know Immanuel Kant for one or both of the following two reasons: firstly, for being a nigh unreadable philosopher who happily constructs sentences that run to a length of an entire page; secondly, for having proposed a "proto-EU" of sorts in the late eighteenth century. The first of these, this reviewer readily acknowledges, is true; the second less so. Immanuel Kant's version of international organization is far different from the EU as it is today. Despite this, his writings have formed a fruitful basis for both legal and non-legal studies. Much of this literature takes a "Kantian" approach by primarily basing ideas on Kant's moral and political philosophy, such as the *Groundwork of the Metaphysics of Morals* or *Toward Perpetual Peace*. Ganesh's book, based on his doctoral dissertation defended at the VU Amsterdam in 2019, differs from this by grounding its normative claims explicitly in Kant's legal philosophy set out in the *Doctrine of Right* (1797), and in private law.

The book opens with a discussion on the EU's unilateral exercise of extraterritorial regulatory authority, as seen particularly in the ECJ's application of Article 3(5) TEU in *Air Transport Association* (C-366/10, 2011). In that case, the ECJ upheld the legality of the Emissions Trading Directive, holding that the EU was competent to regulate the emissions both inside and outside of EU airspace of any aircraft that happens to be present in the EU. This holding was based on the EU's stated near-unlimited power to create rules that apply to conduct outside its territory. Ganesh argues convincingly that this is the ECJ's equivalent of the PCIJ's *Lotus* judgment (1927), holding that it was permitted for Turkey to proscribe conduct on the high seas if the subject entered a Turkish port.

Ganesh then introduces a distinction that will be important for much of his discussion of jurisdiction, namely that between power and authority. Following Joseph Raz, *power* is the exercise of some form of factual power over someone, whereas *authority* involves making a legal claim. In *Air Transport*, the EU purported to exercise authority over non-EU aircraft: it directly regulated their conduct even outside the EU, and thus made a legal claim against those aircraft. He contrasts this with the *Shrimp/Turtle* case, in which the United States prohibited the import of shrimp caught using certain types of nets that were a threat to endangered turtles. This was no claim of authority – the US did not attempt to regulate the fishing itself – but the exercise of power, as the conduct at issue was only affected indirectly.

Chapter 3 is devoted to a discussion of what Ganesh calls the "missionary principle": the idea that some States (or other entities like the EU) are better placed than others to tackle certain pressing global issues and should therefore take the lead. This principle is often invoked in the context of "global public goods", of which the best example is climate change, which was at issue in *Air Transport*. Ganesh begs to differ: States are not "sovereign trustees of humanity" *à la* Benvenisti, and they do not have jurisdiction simply because they are better placed to provide certain goods. That idea has certainly become popular in the EU in recent years, but for Ganesh it is more akin to regulatory imperialism, in which the EU extends its jurisdiction over non-subjects and across its borders in the name of the common good.

All this conversation skilfully leads Ganesh to a discussion of Immanuel Kant's legal philosophy, which is his primary theoretical instrument. Central to Kant's philosophy of law, and grounded in his moral philosophy, is the idea of "freedom as independence": humans must be regarded as moral subjects, who can be held responsible for their actions. From this it follows, for example, that the very idea of slavery is morally and legally incoherent: a human being cannot be thought of as "property" in any way and cannot be bought or sold – neither by a "master" nor, importantly, by themselves: humans do not "own" their body or personality, and consequentially personality rights are inalienable (pp. 90–91).

Going all the way back to Roman law, Ganesh distinguishes between two types of wrongful activity: for the one, damage is required for it to be wrongful, whereas for the other, the activity is per se wrongful, regardless of whether there is any damage (pp. 86–88). An action that infringes upon another's personality rights is thus wrongful even if it does not cause any measurable damage: it is wrongful because it violates another's freedom, in the Kantian sense of freedom-as-independence. This applies to States, too: for Ganesh, a State does not "own" its territory but rather "is" its territory – as he succinctly puts it further on in the book, "sovereign States are not real estate conglomerates" (p. 181). Although he supports this with references to Kant and various international legal sources, his most effective illustration is an episode which this reviewer had not thought of as particularly Kantian until he read this book: then-president Donald Trump's offer to purchase Greenland from Denmark in 2019 was rejected with the remark that "the time when you buy and sell other countries and populations is over" (pp. 108–109). This construction of the State as a "moral person" under international law means that an infringement upon a State's rights is always in the form of a "wrong" rather than a "harm", and thus does not require any actual damage.

In Chapter 5, Ganesh argues that States may take unilateral action to provide public goods, but only subject to certain conditions: only if "the extraterritorial conduct complained of is of a type that tends to threaten the regulator's *domestic* rightful condition" and is "legitimate only if *necessary* for accomplishing the State's sole public purpose of securing the equal freedom of its subjects" (p. 145). Any dispute must also fall under the jurisdiction of a court as a neutral "third party" adjudicating who is right. The ECJ, of course, refuses to submit itself to any form of external judicial control, a classic example of "EU exceptionalism", as termed by Isiksel. Applying the distinction between "harms" and "wrongs" developed in previous chapters to international environmental law, he argues that transboundary pollution constitutes a harm rather than a wrong; quantifiable damage is not required for it to be wrongful, because pollution interferes with the State's "personality rights".

Chapter 6 brings together several lines of argument developed throughout the previous chapters. Ganesh claims that the EU (or any State, for that matter) only owes human rights obligations to "distant strangers" insofar as it makes a claim of *authority* over them, and not when it simply exercises power over them. To do so, he develops a critique of "moral" or "status-based" theories of human rights (e.g., those developed by Tasioulas and Besson) that see human rights as something inherent in every human being and argues that, in a Kantian theory, human rights are more properly conceived of as relational rights that can only exist within an institutional context. This will surely strike many readers as counter-intuitive, objectionable, or both: surely human rights are rights that we enjoy *as humans*, and not merely as members of a political community such as a State. Within the Kantian context, however, I think Ganesh is correct: human rights *as rights* are best conceived of as regulating the relations

between individuals and the rest of the community, guaranteeing that no-one is subjected to the will of another against his choice. If human rights were pre-political and pre-legal, there would be human rights in a "state of nature" where there is no State or other political order but only free individuals – and although life in that state of nature may be "solitary, poor, nasty, brutish, and short" (according to Hobbes), it seems somewhat absurd to speak of "human rights" that would be violated in such a state of nature.

Ganesh proceeds to his central claim on extraterritorial human rights jurisdiction: that "the fundamental criterion for meeting the threshold of human rights jurisdiction is a claim of authority over a person, rather than some function of 'power' such as an ability to advance welfare or to control territory" (p. 167). Relying on the ECtHR's judgment in *Al-Skeini* and the case law preceding it (especially the much-maligned *Banković* decision), he attempts to support his argument that human rights jurisdiction is intrinsically connected to claims of authority, rather than for example the exercise of effective control or the capability of fulfilling human rights claims. To occupy a territory is to claim authority over it and thus to exercise jurisdiction, including the human rights obligations that come with it. As we saw above, the EU claims authority over "distant strangers" when exercising extraterritorial jurisdiction – and thus, it is bound to respect fundamental rights obligations when doing so. On the other hand, when a policy simply has an extraterritorial effect without asserting jurisdiction (as was the case in *Shrimp/Turtle*), no claims of authority are involved, and the EU is not under an obligation to respect any affected human rights.

The final substantive chapter deals with the most prominent example of human rights claims of "distant strangers" of the EU. What matters for Ganesh is whether the EU makes a claim of authority over the Sahrawis, and thus whether it owes them human rights obligations. He finds that this is indeed the case, and that because of Morocco's status as the occupying power in the Western Sahara, the EU-Morocco Association Agreement creates a direct legal effect on the Sahrawis – meaning in turn that the EU is obliged to offer them a way of vindicating their rights and creating accountability by allowing them to challenge the measures.

This book is not an easy read: Ganesh moves between international law, Kantian legal philosophy, and private law theory. This may leave the reader somewhat lost trying to follow the connections between the various fields and concepts that are presented, trying to keep track of the arguments and how they relate to each other. His heavy reliance on modern private law, particularly from the common law world, does not make this much clearer. The way in which Ganesh sketches how international and EU law often more or less neatly fit into the Kantian scheme leaves one wondering which argument is being used to support which here: is he arguing that the law as it stands is inspired by Kant's legal philosophy, or that it *should* use Kant as its basis but fails to do so? It often seems to be both: the law is simultaneously Kantian and not Kantian enough. The reliance on two lines of argumentation – one based on abstract principles, the other on concrete practice – that sometimes contradict, sometimes support each other, reminded this reviewer of Koskenniemi's "apology/utopia" distinction, a classic of international legal argument.

Ganesh has managed to deliver a highly original account of both jurisdiction in international and EU law, and of Kantian legal philosophy. His book offers an insightful theorization of the EU and its role in the world – and at the same time an often harsh (but all too justified) critique of the ways in which that role is given shape. He helpfully illustrates many of the more abstract and theoretical concepts developed in the book – the distinction between power and authority, between harms and wrongs, or the importance of a "rightful condition" in Kantian legal philosophy – through some very enlightening examples.

The book also comes at a time when talk of the EU's external action has become increasingly focused on the unilateral exercise of "power", not always with much consideration of the wishes of the rest of the world. High Representative Borrell Fontelles' speech of 10 October 2022, in which he compared the rest of the world to an uncivilized "jungle" threatening the idyllic "garden" that is the EU, is perhaps the most striking example, but certainly not the only one. Ganesh's book cautions us not to be too enthusiastic in exercising this new-found EU universalism: the language of benevolent and selfless intervention easily turns into that of

empire. Kant already pointed this out in *Doctrine of Right*, where he explicitly rejected the often-invoked justification of the "civilizing mission" of colonialism as a "stain of injustice": it is wrong for one State to legally "rule" over another without its consent, even if that may lead to some material benefit – the ends do not justify the means. Though Borrell may think that "we have been too much Kantian and not enough Hobbesian", quite the opposite is the case: the EU could use a bit more Kantianism, if only it knew what it means to be Kantian.

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Book notices

F. Jesús Carrera Hernández (Ed.), *The Economic Policy of the European Union in the Context of the COVID-19 Crisis*. Cizur Menor: Thomson Reuters Arzandi, 2021. 285 pages. ISBN: 9788413915685. EUR 46.31.

This publication discusses different economic policy instruments adopted in order to combat the consequences of the COVID-19 pandemic. It appears this collective format was put together relatively quickly which reflects in the formatting and presentation.

Gorden Schröder, *Europol als Akteur in der Sicherheitsarchitektur der EU: Europäisierungseffekte für die Bekämpfung der Schweren und Organisierten Kriminalität in Deutschland*. Baden-Baden: Nomos, 2022. 379 pages. ISBN: 9783848784134. EUR 79.

This book investigates the effects of a growing influence of the Union in the area of police and security in the fight against organized crime by portraying the development of Europol as well as its activities. It entails a case study conducted in Germany and is more of a governance and security analysis than a legal study.