

*KANT, LAW, AND WAR*

RADHEESH AMERESEKERE,  
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IN CONVERSATION WITH: ARTHUR RIPSTEIN

Dr. Arthur Ripstein is a Professor of Law and Philosophy at the University of Toronto, and the Howards Q.C. Beck Chair in Law. After receiving a B.A. from the University of Manitoba, he received his M.A. and Ph.D. from the University of Pittsburgh, and an M.S.L. in law from Yale University. He was appointed to Toronto's Department of Philosophy in 1987, promoted to Full Professor in 1996, appointed to the Faculty of Law in 1999, and appointed to the rank of University Professor in 2016. He served as Chair of the Department of Philosophy from 2011 to 2014 and Acting Chair from 2018 to 2019. Interdisciplinary in nature, his work examines everything from legal philosophy to political philosophy to ethics to Kant—and more often than not, the various intersections of these areas. His major works include *Equality, Responsibility, and the Law* (1998), *Freedom and Force* (2009), *Private Wrongs* (2016), *Rules for Wrongdoers* (2021), and *Kant and the Law of War* (2021). Dr. Ripstein was recently awarded the prestigious Killam Prize by the Canada Council for the Arts in 2021. In this interview, we discuss his academic career, his philosophical views, and his most recent work – *Kant and the Law of War*.

**Ameresekere**

You've held quite a broad array of positions at the university—university professor, governing council executive, Convocational speaker—but like many of our readers, you were once an undergraduate and then graduate student. How would you sum up your experience as a student, and in your view, how does it compare to the students you teach?

**Ripstein**

Well, I always tell people, especially graduate students who are just starting to teach, that the student who ends up in graduate school is not the representative student. In my experience as an undergraduate, I would wake up each morning thinking “great, I get to do philosophy today,” but when teaching a large class, you can't count on everyone having quite that attitude. I think there are a number of other differences too, and one that's particularly significant is that, when I was a student, all of my classes were small. I think my biggest philosophy class probably had about 45 people in it, but I had some classes with as few as 3 people in them. So it's just a really different world now. I didn't have TAs or tutorial sections for anything, so it's a very different kind of model of program delivery than when I was younger. And I think the other major difference is that I was a student in a time of rising expectations. Relatively few people went to university compared to the participation rate now, and people who went to university assumed that they were going to have some kind of financially comfortable life ahead of them. I think students today are much more worried about that, and I think that has an effect on the classroom experience; there isn't that much that I can do about that in my teaching other than being attuned to it. And coming back to the earlier point—realizing that I always worked as a student—it's not the same way anymore. When I was a student, you could make enough money with a summer job and working part-time during the school year to graduate without any debt and that's just not the situation for students now.

**Ameresekere**

On the matter of your early career, you taught at Franklin & Marshall College right out of grad school, coming to U of T about a year later. Never having studied here, what drew you to teach here?

**Ripstein**

Well, the academic job market was bad when I went on, and it's bad again now. The effect of a bad job market, of course, is that you apply for lots of positions. But of all of the positions for which I applied, U of T was my first choice because I wanted to live in Canada, rather than the US if it was possible to do so. I also wanted to be at a major graduate program where people are actually advancing philosophy, so that made Toronto the obvious choice. I also knew a few people in the department slightly, but I knew lots of people who lived in Toronto, and so that made it a very attractive option for me, and it certainly was the right decision.

**Ameresekere**

While your career is worth an entire interview in itself, what are some of your prouder achievements? While you were recently awarded the prestigious Killam Prize—congratulations—I'd love to hear about some of the more intimate successes that mean the most to you.

**Ripstein**

Thank you. I'm proud of having been invited to give the Tanner Lectures at Berkeley a few years ago, and being invited to give a keynote at the World Kant Congress in Oslo, also a few years ago. But I think the thing that I'm most proud of is that, about 25 years ago, I became very interested in Kant's legal and political philosophy. At the time, it was a relatively neglected area of Kant scholarship, and a relatively neglected area of political philosophy, even though many people who were interested in Kant's moral philosophy thought it had implications for

the legal and political philosophy. But now it is a position that everyone takes seriously, and I'm very pleased to have had at least some small part to play in getting the topics that I find most interesting more central to philosophical conversations.

**Ameresekere**

A philosopher through and through, let's jump into some of your philosophical interests. A professor in Kantian studies, would you call yourself a Kantian? Or is Kant more of a philosophical foil to your own views?

**Ripstein**

I think everyone else calls me a Kantian, so I suppose that I have to call myself a Kantian—being a Kantian is kind of an ascriptive property of sorts. But as you know, because you took that class from me, Kant is a remarkably systematic philosopher. All of the ideas are supposed to be related to each other and similar forms of arguments recur in very different areas of philosophy, so as a general matter I find myself highly sympathetic to many of Kant's claims in various areas of philosophy. I certainly think that in the main area in which I work—Kant's legal and political philosophy—Kant has the most illuminating way of thinking about the issues, and so I guess that means I'm a Kantian.

**Ameresekere**

There is an implicit opinion among philosophy students that Kant is notoriously difficult to learn, and nearly impossible to master. Beyond the usual, what is your best advice to budding Kantian disciples and critics alike?

**Ripstein**

So this is, I think, one of the striking features of philosophy as an academic discipline that makes it very different, for example, from the natural sciences. You spend much of your time

just talking about old books. And lots of people who have never studied philosophy think “Well, why don’t you just read the book —it’ll say the answer there,” and of course, that doesn’t turn out to be how it works. So with Kant, I think the best ‘way in’ is going to depend on your own philosophical interests, because if you’re interested in epistemology, the place to start with content is going to be different from where you would start if you’re interested in moral philosophy, or if you’re interested in political philosophy, or if you’re interested in aesthetics. Kant has written about all of these things, but there is some tendency to think “Oh well, the *Critique of Pure Reason*, that’s really the foundational text for everything that Kant’s doing.” There’s an important sense in which that’s true, but at the same time, the way to find a way in is to start with the places where Kant is talking about something that you find interesting. Even then, there’s his argumentatively dense style which is sensitive to the particular audience for academic books in Germany of the late eighteenth-century, so there’s a lot of technical vocabulary, there’s a lot of Latin, and there is a lot of felt need to respond to certain kinds of positions, so it’s not an easy thing. The good thing is there’s lots of excellent secondary literature on Kant, and you just work your way through it and you will get the hang of it. The first time I took a course on Kant’s *Critique of Pure Reason*, which was roughly 40 years ago, I found the book really hard going. But it turns out that if you read the same book most years, year in and year out for 40 years, it starts to fit together a little bit more easily. Now that said, that may not be true for everyone. There are still some books in philosophy that I read and I’m just not quite sure what’s going on, but with Kant, I have a sense of how he thinks about a problem. I think his way of framing a problem is the right way to frame a problem, even if I’m not entirely convinced by all of the solutions.

### **Ameresekere**

Despite Kant’s esteem, even his most sympathetic critics have disparaged his theoretical philosophy for an ambitiousness that led to inconsistencies—in particular, in his invocation of the noumena and phenomena. However, some critics like Philip Mainländer, have praised Kant’s boldness nonetheless. How do you make sense of these complexities?

**Ripstein**

So I don't think that he's inconsistent in invoking both the noumena and phenomena. Now obviously, this is among the most contested areas of Kant's theoretical philosophy and, indeed, it shows up in his practical philosophy. Nonetheless, I think that it's also misleading to describe it as bold because there's a way in which the point of the distinction between noumena and phenomena is to articulate the idea of the limits of our thought—but the idea of a limit requires that there be something that is, as it were, beyond that limit. And so, in order to do that, Kant uses the concept of a noumenon. The noumenon also has a very important practical use in Kant's philosophy, in that it lets us understand the ways in which certain familiar types of reasoning could be possible at all. A favourite example of mine: If I owe you \$100, I owe them to you not empirically, but noumenally; that is, you have my giving you \$100 before I have given you that \$100. What does that mean? The answer is, we need a non-empirical way of keeping track of things in order to make sense of the way in which we think of people as standing under obligations. Nobody thinks that because we use the concept of the noumenon—that is, the concept of the non-empirical in order to do that—that we're talking about anything that's spooky or mysterious. Nor does anyone think that we are talking about something that is somehow a separate world running perfectly in parallel. What exactly we're doing when we do that, well, that's a philosophically contested question, though the contrast between the empirical and the normative is a familiar and fundamental contrast. But if we're going to apply the normative to the empirical, and say that things are different than they ought to be, then we need some way of conceiving of how things ought to be that's not constrained by the actual course of experience. That is the starting point for thinking about the noumena.

**Ameresekere**

The criticisms of Kant's views don't end with his transcendental idealism, and often bleed into his ethics. Whether the over-demandingness of perfect duties, a perceived unawareness

of human weakness and folly, or the metaphysical obscurity of freedom, the system has its objectors. Is Kant being made obsolete in modern ethics?

### **Ripstein**

Well, it's interesting that you put the point in terms of human weakness and folly, because both 'weakness' and 'folly' are actually contrasting concepts. They contrast, of course, with 'strength' and 'fidelity'. Both of those are ideal concepts—concepts that we develop and understand in terms of some idea—a certain rule. And Kant is fully aware of human weakness and folly in the *Groundwork to the Metaphysics of Morals*, which is certainly Kant's most widely read work on practical philosophy. He says that people constantly find themselves not doing what morality demands of them, and that's just human weakness and folly. He thinks that the question of how morality is possible is made interesting by the fact that we are not perfect beings that always do what the moral law commands of us. We're rather weak and fallible people. So the question is, how do we understand what's distinctively moral about morality—that is, the way in which it makes demands on us. And it's entirely appropriate to say we should be understanding and perhaps forgiving of human weakness and folly, but it's quite another thing to say that human weakness and folly are the realizations of the demands of morality. Then there's the question, "How are we to live our lives in light of this?" and the answer has to be the Kantian answer, that is, that morality is still a law for us. It tells us what to do. Of course, if we don't do it, then there's a question of what we should do about our own failing and what others may rightfully do about our failure to do it. But those are all moral questions about what we ought to do, not about what in our weakness and folly we are inclined to do.

### **Ameresekere**

While Kant, despite said criticisms, is hailed as a revolutionary metaphysician and a rigorous ethicist, your work looks at a sometimes unheeded dimension of Kant: his political and legal



philosophy. Your newest book, *Kant and the Law of War*, develops Kant's view that 'national defence is the only legitimate ground of going to war.' Surely, this view was not without its historical objectors —who are Kant's biggest opponents here?

### Ripstein

When Kant wrote in the eighteenth-century and said that national defence was the only ground of war, his view was held by no one other than him. The history of philosophical thinking about war begins in the ancient world with Cicero and Augustine, and then gets developed into what is often described as the 'just war theory' in detail by Aquinas. It then really reaches its medieval height during the so-called second scholasticism, with the School of Salamanca. They regarded war as a kind of enforcement action. They thought that the point of war was to punish wrongdoing or to recover a remedy, if someone has wronged you in the past. They all talked about defensive war, but they regarded it as a kind of derivative case, most strikingly in Francisco Suárez—who, in my view, is probably the greatest of the Salamanca scholastics. He more or less said that, well, since you're allowed to go to war to recover something wrongfully taken from you, you're thus entitled to engage in defensive war. And so, where the idea of a remedial war is basic, the idea of a defensive war is derivative. So that's one kind of tradition in thinking about war. It works with a legal metaphor as war as the execution of a judgment—it's what happens after a trial. Starting in the early seventeenth century, however, with the Dutch legal thinker Hugo Grotius, a different way of thinking about war developed; his view has sometimes been described not as the 'just war tradition', but as the 'regular war tradition'. It is the view that war is the equivalent of the trial. Pufendorf describes going to war as submitting a dispute to the dice of Mars, where Mars is the Roman god of war. The basic thought is, if you and I have a dispute in a civil condition, what do we do? We go before a judge. But what if two sovereigns have a disagreement? Well, sovereigns don't have any superior—that's what makes them sovereigns. And so, of course, they can try and work out their disagreement, but if they fail to work out their disagreement on terms

acceptable to both of them, then they can resolve it in some other way. They could send champions to fight it out, or alternatively, they could choose an arbitrator. But of course, if you're not happy with what the champions or arbitrator decided, and you're a sovereign who's subject to no further authority, the natural thing to do is resolve the conflict through the use of force. In 18th-century Germany, this reached the point where many wars were actually resolved through 'pitched battles', where both sides would line up at an agreed time, and they would have a bunch of soldiers shoot each other. Then they would count the dead bodies at the end and that was that, or one side would leave. So for this picture, there's a way in which the legal metaphor for war is that war is like the trial itself. Grotius said that you have grounds for going to war wherever, as if there was a court available, you would have a course of action to go to trial. Now the Kantian view rejects both of these metaphors, and it rejects them because the basic point of being in a rightful condition is that it has shared public procedures for dispute resolution and the execution of judgments. Outside of a rightful condition, no one is entitled to exact a remedy. No one is entitled to punish. And no one is entitled to force another to participate in the resolution of a dispute. Kant sums this up by characterizing war as the condition in which 'force decides.' But if that's what war is, then war is not only diametrically opposed to peace, but it is fundamentally inconsistent with rightful relations between human beings, as a result of which the only appropriate response is to prohibit it. But that means that the only ground of going to war is preventing war—that is, national defence.

### **Ameresekere**

You touch on Kant's distinction between how affairs governed-by-force and governed-by-words correspond with barbarism and peace respectively. While these views are primarily derived from *Perpetual Peace*, are these views somehow underpinned by other considerations in Kant's moral philosophy?

**Ripstein**

The distinction between peace and barbarism, or rather peace and force I suppose, is in some sense the organizing distinction of all of Kant's legal and political philosophy. The distinction is connected in all kinds of systematic ways to the rest of the critical philosophy, but it is, in other ways, significantly independent of much of the moral philosophy. The reason it is independent of the moral philosophy is that, although Kant of talks about universality and so on, and talks about the idea of freedom under law as a moral idea as *well* as a legal and political idea, the basic thought underlying his political philosophy is that we need to join together into actual empirical legal institutions. And one way of seeing the difference is that, as you and I interact as private persons, any interaction we have is supposed to be consensual, but what we're worried about is not whether we *could* agree to it, but *actually* whether we agree to it. By contrast, in much of Kant's moral philosophy, there's a lot of talk about what you *could* will to be a universal law; it's not about what you have actually agreed to, it's merely about what you *could* agree to. The "Doctrine of Right" is organized around this idea of interacting free beings, neither of whom is subject to the choice of any other one—if of course you have that kind of picture of a system of equal freedom. This, in turn, will then generate a requirement of a system of public law and that's what generates the distinction between war and peace. So there's no direct route from something like the categorical imperative as one studies in the *Groundwork* to the idea of perpetual peace.

**Ameresekere**

A humanitarian lesson many of us can take from Kant's work and your synthesis of it is that war is always a disastrous affair for most involved. At the risk of asking a leading question, do you think philosophers have an acute responsibility to engage with the moral catastrophe of war, and seriously advocate for perpetual peace?

**Ripstein**

I'm always nervous about talking about the obligations of philosophers, because of course as a philosopher, your fundamental obligation, which may conflict with other demands on your attention of various kinds, is to think things through. And of course in human life, there are times when thinking things through was not the most urgent thing to do. I think that the Kantian case for peace is overwhelming, and that the morally catastrophic nature of war is abundantly clear. At the same time, I'm not sure that you really need to be a philosopher to figure that out. One way of making the point is pointing to the fact that Kant has a distinctive philosophical theory of what's wrong with war, and by looking at war you get insight into each of the ways in which war can go wrong. It's interesting because of course it can go wrong in further ways, but one of the striking features of war is that pretty much everything is wrong with it. The wrongfulness of war is not a great test case for determining whose moral or political theory is most compelling. Any moral or political theory that does not say that war is a moral catastrophe seems to be just completely removed from ordinary moral and legal thought.

**Ameresekere**

On the matter of law, you hold positions both in the Department of Philosophy and the Faculty of Law. Does your work at the Faculty of Law deviate significantly from your work at the Department of Philosophy?

**Ripstein**

There is more overlap than some might think, and much less overlap than others might think. There's a certain picture of practical philosophy that I think is a holdover from Utilitarianism, according to which philosophy is supposed to tell us what is valuable, and then we just have technical questions about how to achieve it which we send over to the law. That's not how either works. I don't think that philosophy actually gives complete answers to every moral

question. I think that in many cases, the content of morality is underdetermined and actually requires that it be made determinant through law. In the middle of the twentieth century, there was a famous debate in legal philosophy between H.L.A. Hart and Lon Fuller. At one point in the debate, Fuller said that he was not really sure what Hart meant by the word 'morality', but said he'll give an example of a moral principle. "Don't steal other people's property". Now next question: "What is property?" The only philosophically respectable answer is "Ask a lawyer". We philosophers can give an abstract characterization of it, but we need positive law to give it effect as moral ideas. Now, when I teach at the law school I normally teach tort law, and because that's a doctrinal area of law, I spend all of my time going through the cases. I stayed relatively close to the ground—that is, I look at how the judges actually analyze the cases. The reason that I do that is partly that law is a professional degree, and it is part of my professional responsibility to enable my students to know their way around the legal materials. But the other reason that I do it is that both law and philosophy are disciplines that are heavily textual—you need to read things carefully. And they depend heavily on reasoned argument. So in those ways, they're quite similar. When I teach a philosophy course and I'm discussing somebody's work, I explain the work in the most sympathetic way that I can, even if I think it is completely wrong. In law, there may be a case that I think is legally wrongly decided, or there may even be a case that I think could be correctly decided yet morally troubling, but I take it that my job is to explain the reasoning in it to my students. So in those ways, it's quite similar. But then in this other way, it's quite different, because of course in philosophy, at least, officially, there is no authority, whereas in law every claim you make you establish by appealing to some authority in the legal sources.

### **Ameresekere**

It must be interesting to balance abstract philosophical ideas with the practice of law. Speaking of which, pop culture often pokes fun at lawyers for having to 'bend the truth' or tell 'white lies'—do you find that the reality of legal pragmatism clashes with, say, Kant's relentless prohibition on lying?

**Ripstein**

At a number of points, especially in his logic lectures, Kant lashes out at what he calls the ‘pettifogging lawyer’—that is, the person who’s constantly trying to create illusions, rather than clarity. But I think a lot of the bad reputation in popular culture that lawyers have derives from a misunderstanding of the purposes of a criminal trial. Much of the bad reputation, though by no means all of it, turns on images in popular culture of overly vigorous defenses of people who are plainly guilty. And this picture of the criminal trial against which this takes place is one in which the point of the trial is to get to the truth. And so, then, anyone who is aiding a plainly guilty person’s defence is seen as standing in the way of getting to the truth. But in our system of laws, the point of a criminal trial is not to get to the truth; the point of a criminal trial is to figure out whether the Crown has made its case. And this may seem like a dry and technical difference, but here’s where it’s morally important. Criminal punishment is the most severe thing that the state can do to one of its members. And it can only do that provided that it has established its justification for doing so; in particular, it can only establish a justification for doing so, against the background of the presumption of innocence. But that means that when a defence lawyer defends someone who has been accused of a serious crime, that lawyer’s job is to convince the judge or jury that the Crown has not made its case. That’s a matter of doing one’s part in this process of seeing to it that someone gets a fair trial. There is a law of evidence in Canada as in other countries, and there are certain kinds of things that are not admissible even if they might be true, say if they were illegally obtained and so on. The point of that is that before punishing someone, the Crown needs to establish that person’s guilt beyond a reasonable doubt. And the person who has been accused does not do wrong by poking holes in the Crown’s argument. Now, I certainly don’t mean to say that there are no unethical lawyers. There are unethical lawyers who plead their clients guilty when they actually have a reasonable chance of a successful defence. There are unethical lawyers who make motions in bad faith. But the point is that the activity of defending someone who has been accused of a serious crime is not an inherently dishonest or dishonorable activity.

**Ameresekere**

Thanks for entertaining that. On a more serious note, law often applies philosophy to our states and societies. As an expert on both law and philosophy, what would you say is the biggest challenge that the new generation of thinkers, jurists, and philosophers face?

**Ripstein**

Well, so I take it you mean one serious *intellectual* challenge, because, obviously, given the pandemic and the prospect of war in Europe, the intellectual challenges look less pressing. But I think the general intellectual challenge that everyone starting a career in law or philosophy—or pretty much anything—faces is how to work hard at something that always requires striking some kind of balance between what’s interesting and what’s important. Sometimes the most interesting cases or issues in these disciplines are not that important. One of the luxuries that someone like me as a professor has is that I can work on things just because they’re interesting. In the practice of law, sometimes you can’t really keep working on something in good faith just because it’s interesting, because you’re acting for someone else—you’re acting for your client—and it might be in your client’s interest to compromise on something even though it would be really interesting to get to the bottom of it. And that’s a hard challenge, but compared to the rest of the challenges of contemporary life is, it is a relatively comfortable one.

**Ameresekere**

You often joke that true philosophers have ‘sayings’ or ‘phrases.’ Can you leave our readers with one of yours?

**Ripstein**

Well, first I need to tell my story about this. Many years ago, I had a colleague who was sitting on an airplane, and the person sitting beside him asked him what he did. He said, “I’m a

philosopher.” And the person beside him said, “Oh, really? What are some of your sayings?” and with a perfectly straight face, he said, “Oh, you wouldn’t have heard of most of them, but ever heard ‘A stitch in time saves nine?’ That’s one of mine.” And so while philosophers of course don’t really have sayings, I sometimes like oracular-sounding pseudo-sayings. One of my favourites is “The secret to public speaking is the same as the secret to climbing a ladder... don’t look down.”