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Kant's Anti-Colonialism Based on the Limited Scope of the Individual Right to Hospitality

Abstract: Kant's position on the colonial question has mostly been discussed by referring to his conceptions of relationships between collective groupings (states, nations, 'races', peoples). The text argues that his strong anti-colonial stance rather stems from his normative framework – developed in the second half of the 1790s – of a limited scope of the right to hospitality that an individual is intitled to enjoy upon arrival on a foreign territory.

Keywords: Kant, colonialism, anti-colonialism, cosmopolitanism, trade, asylum, visit

Kantov antikolonializem osnovan na omejenem obsegu posameznikove pravice do gostoljubja

Izvleček: O Kantovem stališču do kolonialnega vprašanja so večinoma razpravljali s sklicevanjem na njegove koncepcije odnosov med kolektivnimi združenji (državami, narodi, »rasami«, ljudstvi). Prispevek argumentira, da njegova močna protikolonialna drža prej izhaja iz njegovega normativnega okvira – razvitega v drugi polovici 1790-ih – omejenega obsega pravice do gostoljubja, ki jo ima posameznik ob prihodu na tuje ozemlje.

Ključne besede: Kant, kolonializem, antikolonializem, kozmopolitizem, trgovina, azil, obisk

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Kant's position on the colonial question has been the subject of debate. While virtually all interpretations agree that it changed perceptibly during the 1790s as the result of a maturing of his thinking (Williams 2014), they differ as to the breadth and depth of the anti-colonial stance adopted, and above all as to its basis. For instance, Inés Valdez suggests that Kant's leading concern at the time of writing was the negative effect of European expansionism and intra-European rivalry over colonial possessions on the possibility of peace in Europe (Valdez 2017; 2019, 23–55). Vicky Spencer argues that it rather stems from Kant's philosophical coupling of nation and state (Spencer 2015), while Pauline Kleingeld believes that his criticism of colonialism is closely related to his changing views on race and racial hierarchy (Kleinfeld 2014). Arthur Ripstein's interpretation refers to Kant's philosophy casting objections to colonialism in purely juridical terms, focusing on the ways in which it is contrary to requirements of right under his conception of international law (Ripstein 2014).

In this essay I will try to demonstrate that Immanuel Kant's strong anti-colonialism is not, or at least not entirely, a matter of a conception that relates exclusively to collective groupings (state, nation, 'race', people, ...), but rather stems from his conception of hospitality towards the individual that he developed from the mid-1790s onwards.

I. The Individual Right to Hospitality as Antidote to Colonization

According to his biographer Karl Vorländer, it was with his close friend Joseph Green that Immanuel Kant had rather heavy disputes about European colonialism, in their town of residence, Königsberg in Prussia (which is today's Kaliningrad in Russia), especially at the time of the English-American war of 1776–1783 that

led to the independence of the thirteen American colonies from King George III: Kant passionately defended the decolonization, while the Englishman Green strongly opposed it (Vorländer 1911, 61–62). It is therefore not surprising that the question of colonialism is at the very heart of Kant's cosmopolitan law *stricto sensu*, elaborated in the second half of the 1790's in the third Definitive Article of *Perpetual Peace* and §62 of *Metaphysics of Morals*. While the first Definitive Article of *Perpetual Peace* and §51 of the *Doctrine of Law* refer to the constitutional design of the state, emphasizing that it should be republican in order to trigger a peaceful foreign policy and attitude towards conflict (the axiom of the so-called 'Democratic Peace'), §§53–61 of the *Doctrine of Law* and the second Definitive Article of *Perpetual Peace* lay out normative foundations for relations between states, which include just war principles as well as the ultimate aim of a worldwide *foedus pacificum*. Significantly, the topic of colonialism comes into the picture in §62 of the *Doctrine of Law* and the third Definitive Article of *Perpetual Peace*, which are both devoted to cosmopolitan law, i.e., the relations between domestic *individuals* and foreign peoples [*Völker*] and their members.

The reason why Kant perceives colonization through the lens of connections between individuals and peoples, not states, seems rather obvious: since, by definition, colonies are not independent states, Kant employs the concept of people. We should, indeed, not forget that the international system of the second half of the eighteenth century was limited to a few, mostly European states, because most geographical areas of the world were either not yet 'discovered' by the Europeans (inner Africa or parts of Oceania) or else colonized by them. The scope of the second Definitive Article remains hence confined mainly to the relations among European states. Kant understood that the colonial question could not

be handled by setting it within the classical interstate framework or any other theoretical construction referring only to collective groupings. Consequently, the *ius cosmopoliticum* becomes a construction based on individuals and peoples.

As far as modern sovereign states are concerned he develops a complete theory of *foedus pacificum* in *Perpetual Peace* and a theory of just war in *Metaphysics of Morals*: the republican form of government may eventually spread to the entirety of Europe and North America, and later hopefully to the rest of the world. Until it reaches a worldwide extension war will remain, either between non-republican states outside the *foedus pacificum* or between one or several republican states and one or several non-republican countries. For this reason a theory of war is absolutely required as a complement to his peace teleology. Kant adopts the tradition of just war theory to assess ethically the justice of each war.

These theories of progressive pacification and of just war – theories I have detailed elsewhere (Giesen 1999) – apply exclusively to the relations between states. Kant does not recognize the existing political structures of colonized peoples – which he obviously did not much know about – as states in the modern sense, as he believes that what he calls ‘the savages [*die Wilden*], because of the lawless freedom they have chosen, [...] make up nations [*Völker-schaften*], but not states’ (Kant 1797, §53). Indeed, the philosopher (wrongly) assumes that these ‘savages’ have voluntarily decided not to give up their boundless individual freedom and, thus, to leave their state of nature (*Naturzustand*) in order to enter into a social contract (Kant 1797, §47) which is the foundation act of the state. They remain lawless nations and tribes. Analyzed with the knowledge we have today, such a hierarchization of the peoples of the world is obviously problematic. Surprisingly, Kant builds from it nevertheless a strong anti-colonial stance by underlying

that the interactions between modern (European) states and the 'lawless tribes' call for a different approach than the one outlined in the second Definitive Article of *Perpetual Peace*. Kant's starting point is a single individual – or a few individuals – arriving at a foreign people's territorial border (*Volk*). According to him, a people is, from the point of view of ethics, always sovereign, even if in positive law and in power politics, the modern state has not (yet) been created. He writes: 'Nature wisely separates peoples, which the will of any state [...] would be to unite by ruse and violence' (Kant 1795, 2nd Supplement: 3). In addition, his idea of the ultimate (ethical) sovereignty being embedded in the people, not in the state, is demonstrated by the fact that the issue is discussed in the first paragraph of the *Doctrine of Law* and in the last Definitive Article of *Perpetual Peace*, both explicitly presented as the final achievements of the two works. For Kant, state sovereignty merely derives from the original sovereignty of the people (Giesen 2018).

Since the earth is a '*globus terraqueus*' that cannot be extended in space, no people has *a priori* more rights than any other to live on any given part of the planet's surface. As there is a 'community of the [earth's] land' (*Gemeinschaft des Bodens*) which, according to Kant, is not a *communio* (community of possession), each people has to respect the others' sovereignty over their lands (Kant 1797, §62). Colonization beginning historically with the 'discovery' of new territories by European peoples – for instance, New Holland (today's Australia) discovered by Thomas Cook during Kant's lifetime – the first step is to clarify whether such a first contact initiated by one or a few *individuals* of one (generally European) people is morally acceptable. The problem is certainly not innocuous, as demonstrated even nowadays by several tribes of the Amazon basin in South America or of the Andaman islands in the Indian ocean, which refuse *any* contact with the so-called civilization.

Kant assumed that it should be legitimate to initiate such a first contact: it is 'the right of a stranger not to be treated as an enemy when he arrives in the land of another [people]' (Kant 1795, 3rd Definitive Article).

However, once the contact is established *between individuals* – as members of different peoples – the situation shifts to another dimension: after they offered their sociability, the individuals can be sent away and further contact can be refused, except if this would lead to their 'fall' (*Untergang*). Kant introduces here the case for political and religious refugees: visitors should be enabled to enjoy the right to stay at least as long as they are still threatened in their home country, subject to the condition that they behave peacefully. In other words, hospitality towards the individual does not guarantee the right to be a permanent guest in all circumstances (*Gastrecht*). In addition to political or religious asylum, it is strictly limited to two other special cases: first, the right of an individual not to be treated perfidiously upon arrival, allowing him or her to *try* to offer his or her sociability (which can thus be refused!); second, the right to trade goods. It definitely is a typical liberal bias of his time: commerce is always beneficial. Kant claims even in the Third Definitive Article: 'In this way distant parts of the world can come into peaceable relations with each other, and these are finally publicly established by law. Thus the human race can gradually be brought closer and closer to a constitution establishing world citizenship.'

For all individual situations that do not fit with the three fundamental, but strictly limited, rights to hospitality (visits, asylum, trade), Kant requires a 'special beneficent agreement' (*besonderer wohlthätiger Vertrag*) which has to be arranged between two *equal* parties, defining the precise conditions of residency (*ius incolatus*) (Kant 1797, §62). In the absence of such an agreement the residency of an individual foreigner is, morally speaking, not ac-

ceptable. It becomes an injustice toward the local people if a *state* organizes the massive *accolatus* of its individual citizens on the territory of a foreign people without the consent of the latter. Kant strongly criticizes the colonizing practices of European states of his time: he underlines almost with rage 'the inhospitable actions of the civilized and especially of the commercial states of our part of the world. The injustice which they show to lands and peoples they visit (which is equivalent to conquering them) is carried by them to terrifying lengths.' (Kant 1797, 3rd Definitive Article) The judgment is rather obvious: colonization is a violent abuse of the three individual rights to hospitality, and is therefore a grave infringement. Kant clearly takes the side of the oppressed, colonized peoples against the European imperialists. However, unlike the few philosophers who took an anti-colonial stance before him (Las Casas, Vitoria, etc.) he does it on the ultimate ground of a concept of hospitality towards the individual.

II. Empirical exemplifications used by Kant

At this point of Kant's argumentation several empirical examples come into the picture. In addition to denouncing the 'most cruel slavery' taking place in the Caribbean, Kant almost flies into verbal rage when he evokes the many colonial injustices as a consequence of the European 'discovery' of 'lands without owners, for they counted the inhabitants as nothing' (Kant 1795, 3rd Definitive Article). In particular, the case of East India (Hindustan) strikes him as a flagrant offense to hospitality granted to individual Europeans: 'under the pretense of establishing economic undertakings, they brought in foreign soldiers and used them to oppress the natives, excited widespread wars among the various states, spread famine, rebellion, perfidy, and the whole litany of evils which afflict mankind.' (Kant 1795, 3rd Definitive Article)

Kant seemed very well informed about the fact that after the collapse of the Mogul empire several French and English trading posts were established on the East Indian coast in the early nineteenth century (Pondichéry, Yauaoun, Karikai, and Chandernagore by France, and Madras and Calcutta by England), either by the *Compagnie française des Indes orientales*, founded by Colbert, or by the British East India Company. They were to become rival colonial territories (in addition to Dutch occupied Ceylon). Both European countries, France and England, were striving for predominance on the Indian subcontinent, and finally heavily clashed in a major war in 1757. With the victory on the battlefield of Plassey near Calcutta, Great Britain gained over France the exclusivity of colonial rule in East India. France kept only the trading post in Pondichéry (Marshall 1988, chapter 3). The war was entirely imported from Europe, and the Indian population suffered a lot from it, as Kant correctly points out. He was on the side neither of the British nor of the French, but instead indirectly supported the Indian peoples, notably the Maratha Confederacy.

Kant's anger against European colonialism, perceived as being opposed to a liberal world system based on free and peaceful trade among individuals, is not less present when he examines the situation in China and Japan. Both seem to him nations and states. Thus, the Second Definitive Article applies, but also the Third, as far as the individual right to visit is concerned. He observes that both countries already had some experiences with European colonial powers and were able to draw inferences from these which can be generalized for all colonial politics:

China and Japan (Nippon), who have had experience with such [individual] guests, have wisely refused them entry, the former permitting their approach to their shores but not their entry, while the

latter permit this approach to only one European people, the Dutch, but treat them like prisoners, not allowing them any communication with the inhabitants. (Kant 1795, 3rd Definitive Article).

In *Metaphysics of Morals*, Kant also mentions the special case of New Holland (Australia), recently discovered and used as a deportation camp for prisoners expelled from England. Kant states that even the good intention to purify the home country of bad individuals does not justify the injustice of employing colonial means to achieve it through 'exporting' these individuals (Kant 1797, §62).

He deliberately uses the concept of individual guest to refer to the European presence in China and Japan. The Portuguese were the first Europeans to arrive in Canton (Guangzhou), establishing a monopoly on the external trade out of its harbor by 1511. In 1535, Portuguese traders were allowed to anchor ships in nearby Macau's harbor and were granted the right to carry out trading activities, though not to stay onshore. Not until 1557 did the Portuguese establish a permanent settlement in Macau. China retained sovereignty and Chinese residents were subject to Chinese law, but the territory was under Portuguese administration. In 1582 a land lease contract was signed, and annual rent was paid.

Despite Chinese efforts to keep European traders and citizens within the area of Macau, European trade spread in the sixteenth century throughout China and threatened virtually to take over the country (just as in India). The so-called 'Canton System' finally limited the number of ports where individual European traders could do business in China. It also prohibited any direct trading between European merchants and Chinese civilians. Instead, the Europeans, generally employees of the major trading companies, had to commerce with an association of Chinese merchants known as the *Co-hong*. The European presence was restricted to the harbor of Canton

during the trading season, but the foreign traders were permitted to remain on Chinese soil at Macau in the off-season (Dermigny 1964).

Kant seems to have known this situation perfectly and taken it as a model for his normative theory of cosmopolitan hospitality towards the individual, as well as the special case of Dejima (Dutch: Deshima) under the isolationist *sakoku* ('closed country') policy during the Edo period in Japan. The artificial island Dejima, constructed in 1634 following the orders of shogun Iemitsu, originally accommodated Portuguese merchants. Four years later the Portuguese and other Catholic nations were expelled from Japan, but not the Dutch *Vereenigde Oostindische Compagnie* (VOC). However, the shogunate ordered the Dutch to transfer all its trading operations to Dejima in 1641. From then on, only the Chinese and the Dutch could trade with Japan. It is noteworthy that Dejima was an artificial island, and hence not part of Japan proper. Thus, the individual foreigners were kept at distance from the soil of Japan. Dejima was a very small island, 120 by 75 meters, linked to the mainland by a small, guarded bridge. The trade monopoly with Japan was very profitable for the VOC, initially yielding profits of 50% or more. After its bankruptcy in 1795 (the year Kant published *Perpetual Peace*), the Dutch government took over the settlement. For two hundred years, the Dutch merchants were not allowed to enter Japanese territory, and Japanese citizens were likewise banned from entering Dejima (Boxer 1968).

While for the philosopher of Königsberg Macau and Dejima remained a model to preserve both the local peoples' sovereignty and the Portuguese and Dutch right to trade and to offer their sociability to the Chinese and Japanese, Dutch imperialism in Formosa (Taiwan) was the counter-example of a mutually beneficial agreement between the intruders and the local people. The period of Dutch colonial government on Formosa lasted from

1624 to 1662. The VOC established a base on Formosa in order to trade with China and Japan, and to block as much as possible Portuguese and Spanish trade and colonial activities in East Asia. Indeed, at the beginning of the seventeenth century the forces of Catholic Spain and Portugal were in opposition to those of Protestant Holland and England, often resulting in open warfare in their colonial possessions. The Dutch first tried to trade with China in 1601, but were rejected by the Chinese authorities, who were already trading with the Portuguese in Macau. They then built Fort Zeelandia, a fortress on Formosa. On the Southern coast of the Formosa island more and more villages came under Dutch colonial domination, mainly through military action. However, the north of the island was since 1626 under Spanish control. In 1642, the Dutch sent an expedition of soldiers and aboriginal warriors there in ships, managing to drive out the small Spanish contingent from Formosa. From then on the Governor, the head of the colonial government, was enabled to legislate, to collect taxes, to wage war or to declare peace on behalf of the VOC, and thus by extension of the Dutch state (Chiu 2008). In 1661, a naval fleet of 1000 Chinese warships attacked Formosa in order to oust the Dutch from Fort Zeelandia. Following a nine-month siege, the Dutch were defeated and the colonial system brought to an end.

Macau and Dejima were the two positive empirical examples, Formosa and Hindustan the two negative ones, that Kant *explicitly* refers to when devising, in 1795, in the Third Definitive Article of *Perpetual Peace* his cosmopolitan law based on the right to hospitality. It is true, however, that after Kant's death in 1804 the whole situation completely changed, notably with the first opium war and the British occupation of Hong Kong in 1841, transforming the complex relationships between the Europeans and Asians into a colonial nightmare.

III. Kant's Universalism and the Massive Abuse of Individual Rights

Presumably, the abuse of hospitality in East India and Formosa by the French, British, and Dutch, contrary to its respect at Macau and Dejima by the Portuguese and the Dutch, led Kant to distinguish between the three *individual* rights to hospitality (visits, asylum, trade) and colonial behaviour which is intolerable. The latter must be strongly opposed on the ground of the deliberately very limited scope of these individual rights to hospitality. Kant believed that colonialism is such a strong and state organized abuse that he felt even obliged to add in the Third Definitive Article of *Perpetual Peace*: '[...] 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*' (my emphasis). This often quoted sentence about the world community and the violation of rights in another part of the world, very much highlighted nowadays in all discussions about international public opinion and the universality of human rights, hence stems directly from Kant's empirical analysis of European colonialism. It takes the form of a justification: *because* a world community of peoples exists, a serious violation of rights by one people or state is an attack against all other peoples and as such must be denounced and countered by them.

Kant goes even one step further by stating that the idea of cosmopolitan law '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.' (Kant 1795, 3rd Definitive Article) He makes clear that the colonial abuse of the individual right to hospitality is considered to be a violation of universal human rights, these being themselves a precondition of perpetual peace. No durable peace can be established without

respecting basic human rights. Colonialism is a major obstacle to perpetual peace.

At this point one issue remains. Is this form of universalism not a naturalistic fallacy? Does Kant not deduce the universal norm from a fact (i.e., from the existence of an international public opinion)? The answer to this question is actually easy to provide: Kant certainly distinguishes between, on the one hand the *universality* of the human rights norm, based on the categorical imperative, and on the other the fact-driven possible *universality* of the feeling of its violation. Were the latter not to exist, for instance because of an insufficient world-wide communication system, the human rights violation itself would nevertheless still subsist; it would just not be known elsewhere. Therefore, the very existence of the world community of peoples through means of communication is a mere *additional* and factual precondition for the establishment of perpetual peace. Kant himself characterizes it as a 'complement'. To him it is a moral duty to denounce colonialism as an extreme abuse of the individual right to hospitality in very special circumstances (visit, trade, asylum) – whenever and wherever it may happen in the world.

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