# Towards a Critical Politics of Hospitality? Cosmopolitanism in and beyond Kant

*¿Hacia una política crítica de la hospitalidad? Cosmopolitismo en y más allá de Kant*

*Julie Saada*

*SciencesPo Paris, France*

*julie.saada@sciencespo.fr*

**Abstract**: Kant's theory of cosmopolitanism transforms the ethical requirement of hospitality into a condition for realizing any right. Because a community of possible interaction, i.e., commerce (*commercium*), and the mutual recognition of freedoms are at the basis of any political association, as they are on a larger scale of any coexistence of political communities, they constitute the primary relationship on which the duty of hospitality is based. Therefore, the Kantian theory of cosmopolitanism is a theory of the institutionalization of hospitality. Nevertheless, while the institutionalization of moral requirements generally implies a loss of their critical force, Kant offers a legal theory of hospitality that reinforces its critical and political dimension. Beyond Kant, hospitality can be developed as justifying contestation from citizens against any policy pursued by their governments when the latter contravenes the principle of reciprocity through practices of domination both at the domestic and international levels. Linked to a sense of justice on a global scale, hospitality opens a reflection on the obligations and responsibilities that members of society have when their rulers pursue imperial agendas. Kant's cosmopolitanism can thus be developed as a critical cosmopolitanism or a critical politics of hospitality.

**Keywords:** asylum, colonialism, cosmopolitanism, critique, hospitality, Kant.

**Resumen:** La teoría de Kant del cosmopolitismo transforma el requerimiento ético de la hospitalidad en una condición para la realización de cualquier derecho. Puesto que una comunidad de interacción posible, i.e., el comercio (*commercium*) y el mutuo reconocimiento de libertades están en la base de cualquier asociación política –justo como lo están, a mayor escala, en la base de la coexistencia de cualesquiera comunidades políticas–, ellas constituyen la relación primaria sobre la que se basa el deber de hospitalidad. Por consiguiente, la teoría kantiana del cosmopolitismo es una teoría de la institucionalización de la hospitalidad. Sin embargo, en tanto que la institucionalización de requerimientos morales en general implica una pérdida de su fuerza

crítica, Kant ofrece una teoría jurídica de la hospitalidad que refuerza las dimensiones crítica y política de esta. Más allá de Kant, la hospitalidad puede desarrollarse como una justificación de la confrontación pública, de parte de la ciudadanía, contra cualquier política pública favorecida por sus gobiernos que contravenga el principio de reciprocidad mediante prácticas de dominación, tanto a nivel doméstico como internacional. Vinculada con un sentido de justicia a escala global, la hospitalidad allana una reflexión acerca de las obligaciones y responsabilidades que tienen los miembros de la sociedad cuando sus gobernantes persiguen agendas imperialistas. El cosmopolitismo de Kant puede entonces desarrollarse en tanto que cosmopolitismo crítico o política crítica de la hospitalidad.

**Palabras clave:** asilo, colonialismo, cosmopolitismo, crítica, hospitalidad, Kant.


The aggression of Ukraine in February 2022 triggered a political and humanitarian crisis in which many civilians had to flee the violence enacted by the Russian army. While several million Ukrainians have been welcomed into the European Union so far, Europe and other countries have been experiencing a refugee crisis for several years, better described as a *crisis of hospitality* that takes many forms. The crisis of hospitality is, firstly, a *legal* crisis. In Europe, domestic legal provisions were introduced, and international agreements were reached[1] to circumvent other legal norms imposing international obligations of hospitality to which the European states once subscribed. Such conflicting provisions enabled those states to legally violate international law. Yet the crisis of hospitality is also a *political* one. Many Europeans perceive migrants as foreigners that Europe cannot welcome under various pretexts: populist governments invoke the need to protect 'national identity,' the threat of 'invasion,' the risk of terrorism, or use such rhetoric for electoral reasons. Outside of Europe, where most refugees are located, situations that were supposed to be transitory have become permanent and excluded many refugees from the community of citizens, denying them any 'right to have rights' (Arendt 1968, 177). By having let the Mediterranean become a cemetery, European governments have turned borders into unprecedented places of power. Paradoxically, this took place in times of exceptionally high mobility of goods and people. Though there have been significant migratory flows in the past, their politicization today is at an all-time high. Finally, the crisis of hospitality is an *ethical* one. Because the moral world goes beyond politics (Walzer 1985, 20), unconditional ethical demands placed upon politics often refer to unwritten laws and convey a critique of politics itself (Derrida, 2021, 121, 183). In France – from the 1990s onwards, when Etienne Balibar and Jacques Derrida called for civil disobedience[2] and a policy of hospitality, to the Constitutional Council's invalidation of the 'crime of hospitality' in the name of the principle of brotherhood –,[3] as in other countries, the call for hospitality appears in the public sphere as a critical resource, through a call for solidarity to support a more hospitable policy protecting migrants' rights. However, the translation of ethical requirements into public policies and legislation is always partial – often considering conflicting interests and possible compromises that formulate conditions to welcome foreigners – depriving those same moral demands from their critical and

contesting power.

How can we think of hospitality as an ethical requirement while articulating it with the political and legal conditions for its realization? Is the vocation of hospitality to be institutionalized – to translate ethics into politics – or, conversely, to formulate an unlimited demand to criticize public policies and legislation on the reception of foreigners? In short, what does it mean to institutionalize hospitality? I contend that Kant provides a unique way to think of the transformation of hospitality into a legal concept without losing the critical power it has as an ethical one. Based on commerce, i.e., the original community of possible physical interaction and the original possession in common, hospitality conveys a set of rights (to visit, settle, and find refuge) which cannot be abolished by the state once created without contravening the conditions that made it possible. In other words, hospitality stems from commerce and is intimately linked to the conditions of possibility of the state – hospitality achieves original commerce by institutionalizing it through the state and the relations it has with foreigners – while becoming a condition for realizing any right, i.e., domestic, international, and cosmopolitan right.

I start with the ambivalences that seem to characterize Kant's concept of hospitality and its contemporary interpretations (I). I will then argue that Kant transforms the ethical requirement of hospitality into a condition for realizing any right. Because exchanges, interactions, i.e., commerce (*commercium*), and the mutual recognition of freedoms are at the basis of any political association, as they are on a larger scale of any coexistence of political communities, they constitute the primary relationship on which the duty of hospitality is based. Commerce thus reframes the articulation between the right to property and the set of rights included in the right to hospitality (II). I hold that when paired with a critique of imperialism, the right to hospitality becomes a critical concept. While institutionalizing moral requirements generally entails a loss in their critical force, Kant offers the prospect of a legal theory of hospitality that strengthens its critical and political dimension (III). Finally, I show that hospitality can be developed *beyond Kant* as justifying critiques from citizens against policies adopted by their governments when the latter contravene the principle of reciprocity through practices of domination both at the domestic and international levels. Linked to a global sense of justice, hospitality opens a reflection on citizens' obligations and responsibilities when governments pursue imperial agendas. In this sense, Kant's cosmopolitanism can be conceived as providing a critical cosmopolitanism or a critical politics of hospitality.

## I. Openness and closure: Kant's ambivalent concept of hospitality

Kant has radically transformed the concept of hospitality by defining it as a legal concept, inscribing it in the principles of cosmopolitan law, and making hospitality the unique article of that law. However, his theory has been understood in very different ways. While some interpretations focus on Kant's theoretical or political contextualism

to understand his new cosmopolitanism (Kleingeld 1999), others stress the influence of British liberal economists on his promotion of peace through trade, whether at the individual or state level (Cavallar 2002, 264-273). Other views emphasize the spread of Kantian cosmopolitan norms through the creation of international organizations and the development of human rights that ought to govern relations among individuals in a global civil society, stressing the role hospitality can play in the humane treatment of refugees (Benhabib 2006, 20). Cosmopolitan law is also interpreted as resulting from the achievement of the rule of law within and across borders (Habermas 1997) or from a concept of global citizenship within a cosmopolitan democracy. And beyond the debate on innate or acquired rights based on Kant's conception of external freedom (Kleingeld 1998, Flikschuh 2000, 144-178), some interpreters highlight the constitutional dimension of his cosmopolitanism (Gregor 1988, 82) or understand the latter in ethical and universal terms, as the expression of the love of mankind (Nussbaum 1993).

In contrast, other readings challenge Kant's universalist views from different perspectives. Deflationary interpretations underline the way Kant strictly limits hospitality so that it can no longer serve as a pretext for wars, thus enabling long-lasting peace and reconstructing the authority of law in a context of competing claims regarding its sources (Meckstroth 2018). Kant's cosmopolitanism is therefore interpreted as being mainly an innovation in the law of war and a third way between just war and eighteen century traditional war theories– a conception that is based on the preservation of the state's rightful condition, and the right to independence (Ripstein 2009). Therefore, peace becomes a principle both constitutive and regulative of the international order (Ripstein 2021, 213-56). Others highlight that Kant's provisional cosmopolitan right is to be completed via a process of institutionalization and lawmaking (Niesen 2022). Or they underline the paradoxical nature of Kant's concept of peace: supposedly overcoming war as the practice of might making right, while simultaneously requiring us to accept that might makes right (Forst 2021). Kant's universalist views are also challenged by analyses focusing on contextual rules concerning persecuted communities (such as Protestants and Jews) and the special status they were granted (Colliot-Thélène 2011, 115-122). Other works stress on Kant's racist statements, incompatible with his broader normative universalism and moral cosmopolitanism (Chukwudi Eze 1997, Bernasconi 2001, Mills 2005). Others provide various explanations for these tensions between Eurocentric and cosmopolitan accounts (Kleingeld 2012, 92-123) or emphasize Kant's support for European colonialism (Niesen 2007, Tully 2008). Discussions concentrate on whether such colonial views would characterize *only* his earlier views (Kleingeld 2014), originate from his conception of knowledge in general (Mignolo 2011), or more specifically from his views on rules of war (Ripstein 2014) or a lack of

interest in global injustice (Valdez 2019).

These interpretations of Kantian cosmopolitanism range from an idealized vision that sees cosmopolitanism achieved today through human rights to a radical critique that unmasks racism and imperialism hidden beneath the seemingly universalist discourse. While they often target Kant less than current cosmopolitan theories, whether Kantian or not, it is worth noticing how Kant reframes the problem of cosmopolitanism, allowing us to extrapolate new perspectives from and beyond his views.

Kant's theory can indeed be interpreted in various ways because it seems very ambivalent: it supports the welcoming of foreigners but places severe restrictions to it, i.e., promoting both openness and closure. Openness characterizes cosmopolitan law as individuals and states are to be regarded 'as citizens of a universal state of humankind (*ius cosmopoliticum*)' (TPP, 8: 356). In *Idea for a Universal History from a Cosmopolitan Perspective* (1784), this universality referred to the development of the original capacities of the human species (IUH, 8: 28), to be accomplished through a world state or a union of states under the law with a single force (IUH, 8: 24). In *Toward Perpetual Peace* (1795), the focus was on how such universality had to be realized through a league of states that is a federation of free states or republics. Only a republican constitution can protect the freedom and equality of citizens before the law, since a world state would be a 'soulless despotism' (TPP, 8: 367). The 'universal state of humanity' is thus realized through a plurality of sovereign states. Their common subjection to cosmopolitan law intends to achieve a true peace, which is different from a treaty or a truce, and which, to be true, must be perpetual – at least as a requirement of practical reason regardless of its achievability (MM, 6: 354). To 'end all war forever' (TTP, 8: 358) thus requires a cosmopolitan law (*Weltbürgerrecht*) distinct from international law as it exists, insofar as the latter constitutes a law of war rather than a law of peace, and integrating the law of nations (*Volkerrecht*) aiming at peace as well as domestic law.

Cosmopolitan law is what the different types of law must strive for to fulfill their purpose, which is peace (Rostbøll 2020). Its principle of openness also derives from the original relations that characterize humanity: commerce (*Verkehr*), understood as any form of interaction, travel, migration, or intellectual exchange. Because cosmopolitan law relies on commerce, it is encapsulated in one element: the 'conditions of universal *hospitality*,' which 'means the right of a foreigner not to be treated with hostility because he has arrived on the land of another,' and the right not to be turned away if this causes his death. The principle of openness that characterizes cosmopolitan law thus stems from its reliance on the possible interactions between all human beings and entails a

duty to welcome others (hospitality). It is all the more important that cosmopolitan law, based on peace, unites law by integrating international and domestic law.

However, cosmopolitan law also implies closure. Hospitality does not entail any 'right to be a guest,' i.e., a right to settle, which requires a 'special beneficent pact (...) making him a member of the household for a certain time'. It is not the embryo of a 'right to belong' (Benhabib 2006, 134-143), nor a right to citizenship. Even the right to visit requires that the stranger behaves 'peaceably where he is' and is limited 'to the conditions which make it possible to *seek* commerce with the old inhabitants' (TPP, 8: 358). It defines a principle of cooperation between states in the framework of federalism without denying what divides them – their separate existences as sovereignties. It does not go beyond international law centered on the principle of sovereignty. It limits hospitality to the right to refuge (without specifying its modalities) and the right to visit. In other terms, openness is strictly correlated to a principle of closure.

## II. Hospitality as a legal concept: right of property and right to visit

These ambivalent principles of openness and closure stem from Kant's profound transformation of the concept of hospitality. Two elements radically modify the idea of "international space" when placed in a cosmopolitan perspective centered on hospitality: the latter now has a legal meaning, and it becomes what accomplishes cosmopolitan law, because stemming from the commerce that underpins all relationships (domestic and international alike)

Turned into a legal concept, hospitality ceases to be a moral virtue. Here, the Kantian perspective breaks with the Christian tradition of the ethics of peace, which extends from Augustine and his heavenly city to the beginnings of modernity via Erasmus or the utopian thought of Thomas More. The Kantian concept of peace is not intended to realize either a biblical commandment or a Christian duty – a form of charity or benevolence – that should be imposed on the political practice of princes. On the contrary, peace is derived from Kant's legal theory and becomes an entirely legal concept: peace through law based on practical reason. The right to hospitality is not based on the adoption of ends, as in morality, but on the external sphere of freedom, as in law. Cosmopolitan law 'is not a philanthropic (ethical) principle but a principle *having to do with rights*' (MM, 6: 352) aimed at defining the conditions for the realization of a whole, a peaceful political community of all the peoples of the Earth capable of entering into relations with each other.

Moreover, hospitality becomes a legal issue and the only form of the relationship with the stranger that can justify borders, identifying their grounds and conditions of legitimacy. Kant identifies the theory of property as the foundation of states, accounting for both their separation and their necessary coexistence. The property-mediated nature of cosmopolitan right and its spatial aspect are justified through the idea of common ownership, which is closely related to the privatization of territory. Kant articulates domestic law and the law of nations with the idea of cosmopolitan law[4] because 'the Earth's surface is not unlimited but closed,' so that they 'lead inevitably to the idea of *a right for a state of nations (ius gentium) or cosmopolitan right (ius cosmopoliticum)*' (MM, 6: 311). The roundness of the Earth (MM, 6: 352; TTP, 8: 358) that Kant mentions underlines the necessary cohabitation of humans as they cannot scatter themselves across it, and therefore, the right that anyone possesses to use 'the earth's surface, which belongs to the human race in common' (TPP, 8: 358), is a spatial expression of the idea of an 'original possession in common' (MM, 6: 251), which is distinct from a fictive primitive community. The latter is fiction because it could exist only as an institution, i.e., by a contract by which each person renounces his private property or exclusive right to use a good or land to transform it into common property. Therefore, it is contradictory as the idea of a primitive community refers to possession in common without a contract. More broadly, land cannot be acquired by contract because 'primitive' refers to a situation prior to any act establishing a right. Nevertheless, private property can have a legal basis if it results from an act of freedom or consent by which everyone renounces to make private use of a piece of land or a good and recognizes another person as the owner of that land or good.

Land cannot either be free by nature or open to anyone's use since no one could then renounce possession in order to recognize another person as being rightfully entitled to make exclusive use of it. Moreover, the land would be in possession of all those, joined together, who forbid one another's use of it, which is impossible without a contract. Furthermore, a primitive possession would be a relation to things (land) – a situation that cannot exist since rightful property is defined as a relation between persons. Original common possession appears, therefore, as the conclusion of the argument (Huber 2016, 238): one needs to admit an original community of land because it is the condition of possibility of rightful private property. Kant emphasizes that 'a collective possession' or a 'primitive community' must first have been 'instituted and ar[i]se from a contract by which everyone gave up private possessions' (MM, 6: 251). Incidentally, he challenges the Lockean idea of an appropriation of land by labor (MM, 6: 265). In other words, as the original common property is the condition of possibility of any pri-

vate property, it must be admitted as an a priori practical principle (MM, 6: 252). This principle is required because of the earth's spherical surface or the non-infinite world in which humans find themselves (MM, 6: 262). However, this does not mean that the principle derives from the empirical fact of the roundness of the earth (this would be tantamount to deducing an ought from an is): the practical, rational concept of the common original property contains a priori the principle from which rightful private property can be founded.

The natural condition of human beings also entails that they are located by chance or nature in a place, which constitutes them as the original owners of the land. This condition encompasses what Kant calls a 'community of possible physical interaction (*commercium*),' that is to say, 'a thoroughgoing relation of each to all the others of offering to engage in commerce with any other.' Each 'has a right to make this attempt without the other being authorized to behave toward it as an enemy' (MM, 6: 352). Because property fundamentally implies relations between persons, original common property as a condition of possibility of all private property means the fundamental possibility of being in relationship with others.

The separation of yours and mine or the exclusive use of a good by a person implies the possibility of being in relation with others, since private property relies on mutual recognition. It therefore relies on commerce, understood as the original condition of a limited space that involves the capacity to enter into relations with each other. In other words, the link between the right to visit and the common original ownership of the land stems from an original relationship that is a rightful one. Because ownership is a form of mutual recognition that authorizes someone to have exclusive use of a good, it presupposes a prior relationship, exchange, commerce, which implies common possession of the land. If there was originally an individual monopoly of land, or conversely, a lack of common possession of the land, ownership could not be a rightful relationship. Alternatively, it would be based on the fact of the monopolization, on the act of the 'first person who, having enclosed a plot of ground, thought of saying this is mine' (Rousseau 2012, 112). Then it would be limited to a fact without grounding any legal relationship. In the total absence of ownership, individual ownership could not arise since no reciprocal recognition in the exclusive use of a good would be possible. Therefore, Kant needs to presuppose the original community of the land to ground individual or private property as resulting from an agreement, a reciprocal recognition, and commerce between individuals. If property is defined as a person's right over a land or good, it is because rights stem from reciprocal recognition between persons. Property

binds persons before it relates to land or goods because it rightfully exists as an act of freedom (MM, 6: 230).

Kant transposes the reasoning concerning the ownership of land by persons to ownership states possess on their territory (Chauvier 1996, 115). As Niesen (2017) points out, this transposition corresponds to the conversion of private and provisional or defective status that characterizes the state of nature to a peremptory or conclusive one under a legal-political system. This conversion is also made by states when they convert the natural and provisional possession of their territory into rightful and conclusive ownership: the international state of nature is thus transformed into a rightful condition, achieving the original commerce through public cosmopolitan right.

Kant indeed holds that all peoples are originally in a community of land, which is to be understood as a community of possible interaction (Cavallar 2002, 364). The roundness of the Earth involves a "community of possible physical interaction" (MM 6: 352), i.e., the idea that commerce precedes the establishment of territories within borders. Commerce is, therefore, the condition of the possibility for private appropriation under private and provisional law, whether it concerns individuals or states in the state of nature: it is the condition of the division of *meum* and *tuum* between individuals as well as the territorial division between states or states territorial appropriation – under the legal condition of their reciprocal recognition.

However, the right deriving from commerce cannot be abolished without removing the condition of the possibility of territorial divisions in their legal form. As a right of commerce, cosmopolitan right is not only a right that must be aimed at by domestic and international positive law. Because it is the condition of possibility for the institution of states and borders, it is already present in domestic and international law considered peremptory laws. The latter can only develop rationally if they comply with the conditions of possibility that made them exist: the cosmopolitan right that precedes them, the original condition that forms the condition of possibility of their very existence.

Hospitality is thus taking on a new legal meaning. It is understood as the unconditional right to visit (under the sole condition of reciprocity according to which the stranger must not behave like an enemy), the right to attempt to communicate across borders, that involves the right to offer one's products for trade or to offer oneself for community or membership ("present oneself for society," 8: 358) – in contrast with the right to settle. It offers a way of conceiving borders and the institution of sovereignty

that is quite different from that developed in social contract theories, in which the relationship with the stranger derives from the existence of state sovereignty. This is a reversal of our common political perspective. We generally think of law, especially in social contract theories, as an agreement between individuals who decide to establish a state. Therefore, in social contract theories, the question of the relations with aliens only comes into play subsequently, once we have thought about the internal organization of states. This perspective can be found in Kant's philosophy. Because our claims in the state of nature lack determinacy and assurance and remain provisional as long as they are unilaterally imposed (Ripstein 2009, 23-4), they need that private and provisional law to become public and mandatory law under a legal-political system (Niesen 2017, 99). In other words, unilateral, provisional, and therefore unstable property appropriation has to be overcome by establishing a legal-institutional condition, which also converts provisional state's rights into peremptory rights in a state of peace (MM, 6:350). One achieved through a cosmopolitan order.

Kant nevertheless introduces a new perspective. The institution of states, the division of territories, and the institution of borders can only be achieved by recognizing our primary relations in the form of interactions, exchanges, i.e., commerce. Political institutions exist only because original relations require the reciprocal recognition of freedoms in the legal institution of borders and states. Kant thus thinks of the welcoming of strangers, in the form of the right to visit, as the legal prerequisite without which territorial sovereignties and their borders could not legally exist. Such is the ground of cosmopolitan right: commerce forms the condition of the possibility of an agreement of freedoms. Because we inevitably meet each other, we must peacefully organize the relations between political entities. For relations to be peaceful, peoples must rightfully and mutually recognize each other. Commerce is the condition for the creation of states. Therefore, once established, states cannot refuse commerce, i.e., interaction with foreigners and hospitality – as communicating with one another is 'a natural calling of humanity' (TP, 8: 305). Openness precedes and conditions closure, which cannot abolish its own condition of possibility, commerce, that grounds the right to visit and to refuge. This is Kant's major transformation of hospitality: he juridicizes it so that domestic and international law derive from cosmopolitan law and its main article, hospitality, and its principle of openness.

### III. The end of hospitality: against imperialism

Kant devotes several paragraphs to criticizing the self-interested uses of hospitality by the great international powers. In doing so, he offers a concept of hospitality that opens up a critique of domination. Because it includes a principle of reciprocity, hospitality can be developed, beyond Kant, as a principle that citizens can invoke to critique their government when it contravenes the principle of hospitality understood as a principle of non-domination. This is what I call Kant's critical politics of hospitality.

Indeed, while many theses on hospitality justify it as a moral duty to welcome foreigners, Kant defines a duty to limit the welcome one may be tempted to demand when visiting others. The historical context is decisive because it leads Kant to a powerful condemnation of conquest in the name of trade and colonization. The 'civilized, especially commercial, states in our part of the world' were engaged in 'inhospitable behavior' when they exercised their right to visit foreign peoples, a behavior that consisted of conquering territories and peoples. They considered the land free and 'counted the inhabitants as nothing' (TPP, 8: 358). Military troops were sent to India in the name of a just cause to protect the right to trade, but they imposed oppression upon the native inhabitants, 'wars, famine, rebellion, treachery, and the whole litany of troubles that oppress the human race' (TPP, 8: 359).

Kant is sharply critical of the use of violence by trading companies and how they contributed to slavery to exploit sugar cane, especially in the Caribbean, 'that place of the cruelest and most calculated slavery' (TPP, 8: 359). He also denounces trade development when used as a pretext to prepare sailors for new European wars while referring to countries that have limited such interactions, like China and Japan, and have banned any association with their native inhabitants. Contrary to a long tradition that includes hospitality in the law of nations, Kant makes it a cosmopolitan principle by attempting to see through the eyes of others, foreigners, and the native inhabitants of a territory that would receive European visitors. This point of view was new not so much in philosophy – one need only think of Montesquieu's *Persian Letters* (1721) – as it was in the history of the law of nations.

Indeed, hospitality was an argument in favor of colonization for a long time. Vitoria bases his law of nations on the idea of a community formed by the whole world (*totius orbis*) in which peoples – even non-Christians, such as the American Indians – enjoy equal rights, an *imperium,* and a *dominium* over their territory while prohibiting the war of conquest and the war for proselytism. Thus, the Spaniards do not have the right to wage war against and colonize them. However, since their right to hospitality[5] is vio-

lated while they 'do not harm to the barbarians' (Vitoria 1991, 278), they possess a just title of war against them. Vitoria also justifies war, conquest, and colonization of the New World to force the American Indians to respect natural law, make them coincide with their human essence, and attain full sovereignty.[6]

The natural law tradition later developed hospitality in the law of nations to support free trade and proselytism. For Grotius, seas must remain free spaces because of the innate possession in common. The rights to travel, trade, and right of passage are based on the claim that God wanted all peoples to specialize and help each other 'for mutual benefactions,' which require trade, exchange, circulation, visit, and the right to hospitality. These rights pertain equally to all peoples, implying that their violation gives those aggrieved a right to enforce their rights by force.

Grotius can thus establish that seas constitute a common dominion and that the forced Dutch incursions into the Iberian trade empire are rightful (Cavallar 2002, 148-151) – hospitality justifying thus trade competition and nascent capitalism. Gentili holds that the natural right of passage, of using harbors, of taking provisions, or of engaging in trade and commerce, if infringed upon, constitute just reasons for making war because 'free trade' is 'a basic right, and the right to engage in commerce pertains equally to all peoples' (Gentili 1964, 86-90) even if it requires the consent of the peoples being visited. Suárez argues that humanitarian intervention should not be a pretext for seizing goods or lands, even if inhabited by non-Christians. Nevertheless, missionaries cannot be denied the right to settle, i.e., the right to hospitality, while Pagans can be forced to welcome them (Suárez 2015, 853-856). This makes hospitality a unilateral right possessed by Europeans and enforceable on foreign territories and an argument for Christianizing the pagans.

Inflecting the natural law tradition, Pufendorf defines a right for any political community to refuse hospitality when visitors arrive as enemies and thieves (Pufendorf 1994, 258) while transforming hospitality into a moral duty. Based on natural sociability, hospitality involves the right to visit, settle, and find refuge. But as imperfect duty, hospitality cannot be enforced. Denying the right to hospitality is only immoral, except when hospitality is a pretext for conquest or colonization. Pufendorf subordinates the right to communication and hospitality to the sovereignty's right, i.e., to the right of property that grounds the right of a sovereign over a territory. If Kant, like Pufendorf, refuses that hospitality can be used for conquest by limiting the duty of hospitality, he nevertheless puts communication first, making hospitality a matter of right and the ground for developing a global civil order (Baker 2011, 1423).

It should be now clear how the Kantian thesis challenges conquest and colonization in the name of the right to hospitality. With Kant, the right to hospitality implies the freedom to not welcome because hospitality must no longer constitute a justification for domination, whether it is in the name of the Christianization of the pagans, free trade or even in the name of the *prima occupatio*. Indeed, Kant also denies the claims to first acquisition by colonizers within states and non-state groups. This position is sometimes related to the idea that non-state peoples had provisional rights over their territories when colonizing nations wrongly claimed their own provisional rights over the same territories (Stilz 2014, 204). It is also related to the use of *prima occupatio* rule by colonizing nation to claim provisional property rights over territories in which non-state peoples had not introduced private property (Niesen 2007, 98). Nevertheless, while Kant's critique of conquest was greeted with enthusiasm well beyond Germany (Belissa 2006, 390-397), his critique of colonization was not shared by all Enlightenment philosophers. This is evidence of Kant's original and radical conception of hospitality.

Of course, Kant was not the first to criticize conquest. Rather, his critique fits the great change that took place between 1780 and 1830 among French and British liberals (Pitts 2005). The French *Lumières* criticized slavery and fought for emancipation through rights. The French military conquest and political colonization of the Caribbean were indeed criticized as racist and unjust, also based on the idea that civilization and progress could not be violently imposed from the outside.

Abbé Raynal argued in his *Histoire philosophique et politique* (1772-80) that the only valid argument in favor of the Spanish conquest of the New World was to have enabled the American Indians to participate in world trade. He celebrated the latter but condemned European colonial practices (Cavallar 2002, 257). His work includes contributions from several Enlightenment philosophers, including Diderot, who already distinguished between the right to visit and the right to be a guest (Diderot 1992, 178, 186). Benjamin Constant argued both that the conquest was illegitimate, and that the politics of aggression corrupts the liberal societies that adhere to it, as the government – even a liberal one – must lie to its citizens to justify its non-liberal enterprises (Constant 1988). English and Scottish liberals developed a Moral Sense Philosophy whose international consequences included the defense of the rights of indigenous peoples in the colonies, the critique of colonists and slave-owners, and the principle of self-government for peoples. In the name of free trade, John Stuart Mill used utilitarian moral thought to criticize colonial administration and its financial costs. A similar critique can also be found in Adam Smith, Jeremy Bentham, and Edmund Burke.

Nevertheless, many of these thinkers were ambivalent towards imperialism. Condorcet developed an ideology of the civilizing mission of the enlightened European countries and formulated a very influential theory of progress based upon a conception of the linear development of humanity. The development of Mercantilism, Physiocracy, and Liberalism led to advocacy for the development of foreign corporations. For instance, Condorcet and Turgot thought of humanity as a homogenous historical subject (Turgot 1973, 41, 64), seemingly defending a principle of universal equality while arguing Europe was more advanced than the rest of the world and should conquer it to spread civilization (Condorcet 2004): liberal arguments justified expansion in the name of Enlightenment (Lilti 2019).

The idea of moral and intellectual progress that the Europeans had the vocation to cultivate exerted a strong influence on Comte, Saint-Simon, and, indirectly, on John Stuart Mill. Moreover, the separation of arguments against slavery from those supporting colonization testifies to the ambivalences at the core of liberal doctrines. While the slave trade and slavery were abolished in Europe, their persistence in Africa became an argument favoring colonial conquest as part of the white man's burden (Mill 1977, 224). The European perception of race emphasized the differences between humans rather than the similarities proclaimed by the Enlightenment (Wheeler 2000, Schaub & Sebastiani 2021).

Conversely, like Kant, some thinkers criticized very vigorously conquest and domination but, unlike him, rejected cosmopolitanism. Rousseau, for example, criticized the law of nations as being limited to a law of war and, more broadly, as a means of justifying conquest and domination (Rousseau 2008, 70). Nevertheless, the ideas of perpetual peace and law binding states (Rousseau 2012, 164-165) were contradictory because of the very existence of states. They excluded any cosmopolitan union because to unite with a few individuals is to become 'an enemy of the humankind' (Rousseau 2012, 88) while a friendship of peoples cannot counterbalance war as humanity forms an indefinite whole whose size excludes any form of social affection. There can be no supra-state political order because peoples cannot unite in any superior general will. The general will, which binds citizens to the state, is general in relation to the members of society, but it is particular vis-à-vis other states so that states are structurally opposed to each other on what makes up their own lives. The very essence of the political community excludes the existence of any supra-political community governed by laws and the existence of a universal law binding the states once created.

Therefore, we can see the specificity and originality of Kant's conception of hospitality, which forms the core of his theory of cosmopolitanism. Unlike the natural law, utilitarian, and mercantilist philosophers, Kant refuses to justify conquest on the pretext of punishing violations of natural law (Vitoria, Suarez), infringements of the freedom of trade (Grotius), or the development of the new international economy (Montesquieu, Hume, Smith). While, like Hume and Smith, he does emphasize the role of self-interest in the development of societies and the teleological interpretation of history (IUH, 8: 28), his concept of hospitality, with its right to establish relations and to visit, is not derived from self-interest – nor is it derived from natural law, thus marking the end of an era (Cavallar 2002, 368). Like Rousseau, he criticizes commercial society as not forming a moral whole and questions the idea that advances in culture and civilization will lead to moral progress.

Because Kant defines hospitality as both fundamental to political communities and a tool for contesting domination, his conception also opens up new perspectives – from and beyond what he wrote on the subject. As he conceptualizes hospitality more radically than any other author before him, he enables us to derive a radical and critical politics of hospitality from his views.

## IV. Beyond Kant. Critical politics of hospitality

Kant's conception resolves a paradox that affects the general notion of hospitality. I call it the paradox of equality and inequality. Indeed, hospitality is based on conflicting assumptions. On the one hand, it is based on the equality of human beings, who all have an equal right to vital goods and fundamental rights. Hospitality means welcoming the foreigner, the vulnerable, the one without goods or rights. On the other hand, it implies inequality: the host has rights that the guest has not; he also has the power not to welcome, close borders, and expel foreigners. Typically, the one who receives sets the conditions, while the one who is received becomes a second-class member of the political community. Hospitality implies, therefore, a relationship of power that carries the possibility of domination: the welcomed one depends on the will of the host. Hospitality thus relies paradoxically on both equality and inequality.

This paradox appears in how Kant distinguishes the right to visit from the right to settle. Foreigners have the unconditional right to visit, i.e., "entering into relations with

each other" as long as they act peacefully. Still, they don't have the right to settle down, which requires a special beneficent pact. This paradox also finds a legal formulation through the opposition of the right to property and to communication, both inherent to the right to hospitality. Hospitality presupposes a right to property over land with the power to open or not frontiers, goods, and spaces reserved for the exclusive use of their owner, i.e., closure (Derrida 2000, 73, 106). However, hospitality also involves openness, the right to communicate, and, as a counterpart, a moral or legal obligation to welcome others, i.e., the obligation to allow them to enjoy goods or land. Thus, the right of property and communication are constitutive and mutually exclusive of the right of hospitality.

However, by grounding the possibility of political communities and their separation on original commerce and the mutual recognition of freedoms, Kant supports a founding principle of equality inherent to this original and unsurpassable commerce, unless it would ruin the very condition of possibility of political entities or states. He thus overcomes the paradox of equality and inequality in favor of the principle of equality. The legal expression of this paradox, which I fleshed out in the paradox of the right to property and closure, finds a specific solution in Kant. Because commerce and communication are the conditions of possibility of private property, including when it develops in the form of the property of a territory by a sovereign, the contradiction between the right to property and the right to communication disappears in favor of the latter, i.e., by limiting the property right – contrary to the solution adopted by Pufendorf. Hospitality can, therefore, be understood as a right whose function is to limit property rights and the consequences that could be drawn from Kant's doctrine of private law, or from natural law theories before Kant when they were used as a justification for war (Meckstroth 2018, 552) or colonial occupation (Niesen 2007, 105) – an idea that is reinforced by the restriction of hospitality to the right to visit, excluding the right to settle.

The general notion of hospitality also involves a paradoxical relation to institution and institutionalization – which I name the paradox of institutionalization. Hospitality is a matter of universal ethics since it results from our common belonging to humanity and thus entails a principle of impartial openness to one's neighbor in general, based on equal consideration regardless of race, nationality, or religion. It is also a private virtue, depending on the host's choice and practice. However, hospitality needs

legal provisions and political institutions that guarantee rights and their effectiveness; otherwise, it risks being ineffective: like charity, benevolence, or donation, it would depend on the arbitrary will of the host, while justice implies reciprocity, equality, and non-dependence. While hospitality is a private virtue, it nevertheless requires a common and institutionalized world. Nonetheless, the transition from ethics to politics is challenging. When the foreigner presents himself at a border, his situation is translated into legal categories that condition the granting or not of specific rights according to legislation, procedures, hearings at asylum courts, or examination of documents by the institutions in charge of migrants' requests. By defining conditions, institutions necessarily restrict reception. This is the contradiction between the law of 'unconditional hospitality, offered a priori to all newcomers whomever they may be, and 'the conditional laws of a right to hospitality, without which the unconditional Law of hospitality would be in danger of remaining a pious and irresponsible desire' (Derrida 2001, 23). Hospitality refers to universal ethics that can be achieved only when the former is institutionalized through policies and legislation.

Yet, by deriving hospitality from commerce, which also conditions the very existence of states, Kant provides the theoretical conditions for an institutionalized realization of hospitality: because states, like hospitality, rely on commerce, they cannot contravene hospitality without contravening the conditions of their own existence. Nor must the practical implementation of hospitality by specific legislation contravene the principles it relies upon, which amounts to conceiving it as an unconditional right for refugees, and as an extensive conditional right to visit, which cannot be refused unless the foreigner behaves as an enemy – even though the right to settle remains subordinate to the will of the sovereign.

Kant is not very specific about the restrictions that should be imposed when foreigners present themselves at the border, i.e., when the right to commerce risks morphing into imperialist practice or, to the opposite, what we must do in a refugee crisis. However, Kantian cosmopolitanism goes beyond the conceptualization of the changes in international law regarding the status of persons (Kleingeld 1998, 86). Indeed, his theory of hospitality contains critical potential since it criticizes domination and reveals the internal dynamics whose impetus must lead to social transformations at both internal and international levels. By contesting the classical uses of hospitality, by grounding it in an original community and limiting it by a principle of reciprocity, Kant not only makes borders – and with them the separation of humanity into different political communities, the limits of state property or territory – dependent on the relations

that pre-exist in the form of commerce; he also protects hospitality from the imperial uses that had been made of it beforehand. Moreover, he establishes the right to refuge on a substantial basis and not on the arbitrary will of a sovereign. Because refuge is an unconditional right directly originating in the original community which forms the condition of possibility for the very existence of states, the latter cannot refuse hospitality when the life of the one requesting it is threatened.

The right to refuge also means that the stranger has rights that, when not respected in his country, must be respected where he seeks asylum. Therefore, we do not have the right to treat him as a person without legal rights: hospitality is neither charity nor benevolence, but a legal obligation that is the counterpart of the foreigner's rights as an autonomous person. Furthermore, because we have a rightful relationship with the person seeking asylum, we cannot impose conditions that would make him dependent on our will. The relationship of non-domination that hospitality entails both at the domestic and international level also stems from the idea that hospitality is to become 'a necessary supplement to the unwritten code of constitutional and international right, for public human right in general, and hence for perpetual peace' (TPP, 8: 360). Because Kant understands autonomy in a radical and revolutionary way (Schneewind 1998), he can deduce a relationship of non-domination that would be at the heart of a constitutionally conceived public international law. In this way, domestic and international law are realized by integrating and developing these cosmopolitan principles of international law while linking them to a political conception of non-domination (Boudou 2017, 212-222).

Moreover, we can understand Kant's anti-colonialism as the affirmation of a duty of transnational solidarity (Giesen 2004), which we already experience since 'the violation of right at any *one* place on the earth is felt in *all* places' (TPP, 8: 360). Because nobody can remain immune from the effects of the other's actions, especially their destructive effects, the original relationship that binds people together has the effect of making people feel a shared sense of injustice, i.e., a shared sense of indignation or rejection of injustice at a global scale. Kant also argues that cosmopolitanism is linked to a form of publicity since what happens in one place is known elsewhere. In this way, cosmopolitanism is inseparable from the constitution of a publicized global space, i.e., it 'means publicizing the public space' (Derrida 1997, 56).

Furthermore, while the unconditional duty of transnational solidarity stemming from cosmopolitan law implies that states are subject to duties of hospitality insofar as they arise from this original commerce, this duty also concerns the citizens themselves

since the political communities to which they belong derive from commerce. Beyond Kant, this duty can be understood in a distributive way: the social contract makes citizens the ultimate guarantors of states' compliance with their duties. As members of the sovereign in a republic, they thus bear responsibility for the state's actions, including its duty of hospitality. This forward-looking responsibility of citizens is all the more important given that the original relationship - interactions, commerce - concerns both individuals and states. Cosmopolitan law constructs the duty of hospitality as imposing itself on relations between states and individuals. In sum, because it emerges from the original commerce shared by individuals and states, hospitality implies duties that concern states and, within them, the relations citizens entertain with foreigners through their own state and the laws or public policies the latter adopts.

While feeling great admiration for the ideals of the French Revolution and considering the enthusiasm it generated as a moment of moral progress, Kant never called for civil disobedience (TP, 8: 299), and saw any right to resist as self-contradictory (MM, 6:320). While this apparent inconsistency can be related to a theory of moral virtue in the context of moral chaos (Korsgaard 1997), we can deduce, *beyond* Kant, the idea that citizens bear the collective and political responsibility to challenge the decisions of their governments when they pursue imperial objectives in other countries or refuse to accept those who present themselves at the borders and whose lives are in danger. Moreover, the sense of justice – or the transnational perception of injustice due to the development of original commerce – reinforces a conception of hospitality as a critical concept: because equality and commerce are paramount, citizens have a duty, i.e., a responsibility, to challenge their government when the latter engages in practices of domination.

The transformative potential of the right to hospitality lies in the global nature of the possible objects of citizen indignation. This sense of injustice can indeed be experienced against our governments when they violate the unconditional right to refuge or treat foreigners as enemies, denying them the right to visit or asylum. Thus, Kant's concept of hospitality opens up, beyond his theory, a conception of the political in which citizens are responsible for criticizing their government when it violates the global sense of justice that goes along with the new global public sphere. Based on the respect of the right to hospitality as grounded on the original and still fundamental commerce, political legitimacy can be redefined both at the domestic and the international level as a critical concept that allows citizens to monitor how states and governments exercise their authority. To a certain extent, it enables us to think of the democratization of political structures and institutions as well as what separates them: borders.

## V. Conclusion

As Niesen (2017) points out, we cannot confidently assume to know what Kant would have said about the current refugee crisis. However, from a broader perspective, Kant made cosmopolitanism the prototype of a regulative ideal of reason, which should allow us to measure the practical achievements of humankind in history (Balibar 2012, 294) and to incorporate the dimension of historical and restorative justice (Niesen 2014; 2017). Moreover, the ways he conceives of hospitality provide much more powerful critical tools than just a comparison between present and past ideals. Kant establishes a cosmopolitan matrix that goes beyond his theory (Brown 2009, 47).

As a critique of domination at the international level – with regard to imperial projects and colonization – as well as in the domestic sphere, as a recognition of the rights of those seeking asylum or the right to enter into relationships, Kantian cosmopolitanism is a legal theory that opens up political issues: the autonomy of individuals also entails the political responsibility to challenge the abuses of a government that would deny this autonomy either to their peoples or to those who come seeking refuge. This makes Kant's views radical: his cosmopolitanism is critical because it proposes an 'account of social and political reality that seeks to identify transformational possibilities within the present.' Because critical theory gives 'expression to a moral vision of the future possibilities of society as deriving from a process of social transformation driven forward by its internal dynamics' (Delanty 2012, 38-39), hospitality based on commerce can be understood as opening future possibilities of democratizing both domestic and international politics and globalizing the public sphere in the sense of a global civil society characterized by a shared sense of justice.

It also manifests the transformative nature of cosmopolitanism, making Kant's cosmopolitan theory a critical theory. While the institutionalization of hospitality seems both necessary and difficult to implement, Kantian cosmopolitanism has erected hospitality in a novel and radical way. Grounding on original commerce, through both the institution of states and the duty of hospitality, Kant makes cosmopolitanism the very principle of right, legalizes hospitality, and attaches a critical potentiality it or, in other words, he develops a critical politics of hospitality.

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## Notas

1  Such as the agreements with Turkey in 2016 and Libya in 2017, among others.

2  'Appel des 17' (October 1997) made by several intellectuals asking the French government 'to restore the sense of hospitality that has deserted the spirit of too many of the French people.'

3  QPC 2018-717/718 07/06/2018, https://www.conseil-constitutionnel.fr/decision/2018/2018717_718QPC.htm

4  The three forms of law are interdependent because if the principle of limiting freedom from outside through laws were to fail in one of them, then the other two forms of law would be unfounded and would collapse.

5  This right entails rights of natural partnership and communication, travel, trade, dwell in the territories visited, use common property, residence and citizenship, and the illegitimacy of the right to expel without any just cause.

6  Anghie analyzes this logic as a 'dynamic of difference' (Anghie, 2004).