

## NON-STATE PEOPLES AND COSMOPOLITAN EXIT FROM THE STATE OF NATURE

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### INTRODUCTION

Due to its breadth, Kant's legal-political philosophy generates surprising tensions. The one I address in this paper arises between his sketchy account of non-state peoples, his duty to exit the state of nature, and his cosmopolitanism.

Non-state peoples cannot be subjects of international law, which accordingly affords them no protection against external interference. They might also lack the dynamic of private law at the basis of the duty of state entrance. *Prima facie*, this compels Kant to allow that their lands be appropriated and that they be forced out of the state of nature. But this conclusion seems at odds with his cosmopolitanism, particularly its anti-imperialistic commitments: non-state peoples are protected against annexation, under cosmopolitan law.

The guiding questions of this paper will be: do non-state peoples have a duty to exit the state of nature? And, if so, may they be forced to do so by outside parties? My answer, in a nutshell, will be that non-state peoples have an inter-group duty to exit the state of nature; and that this holds for a non-state people regardless of whether it also has an intra-group duty of state entrance, which remains unenforceable by outside parties.

The paper also takes up a challenge raised recently by Katrin Flikschuh (2017a). Questioning the universality of practices, conventions, and concepts of property, contracts, and statehood, Flikschuh invites Kantians not to take them for granted, as if they were part of a globally shared and context-insensitive cultural framework. I address this point by offering a construal of non-state peoples' inter-group duty to exit the state of nature as a cosmopolitan duty to interact peacefully even in the absence of a shared culture. Under this construal, the duty denies a right to impose a culture on other groups, *but also* a right to isolate indefinitely from the outside world.

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In the first section, I provide context for the two guiding questions. I present a typical textual starting point for their discussion (§1.1), a passage where Kant comments on the encounter between a nomadic people and settlers (RL, AA 6: 353);<sup>2</sup> and introduce some basic elements of Kant's cosmopolitan law (§ 1.2), namely, the distinction between states and peoples (§ 1.2.1), and the notion of *commercium* (§ 1.2.2). Then, I give a quick overview of the nomads-settlers encounter from the perspective of private law, from which the settlers would seem authorised to take control of the nomads' lands and to force them to exit the state of nature (§ 1.2.3). In the second section, I briefly introduce (§ 2.1) and comment on (§ 2.2) some ways Kantians have addressed the tension epitomised by the encounter. In the third section, I first discuss three ambiguities whose bearing on its analysis is underappreciated. These concern the scope (§ 3.1), the ground (§ 3.2), and the *relata* (§ 3.3) of Kant's duty to exit the state of nature. Then, I problematise the most promising extant justification for the normative constraints on the settlers' conduct; and introduce a preliminary element of my account of the encounter, regarding the constitution of non-state peoples as legal-political actors (§ 3.4). In the final section, I present my analysis of the encounter (§ 4.1): nomads have an inter-group duty to exit the state of nature, which holds independently of whether individuals in the nomadic society also have an intra-group duty of state entrance. Then, I characterise the nomads' duty as a cosmopolitan duty to exit the state of nature (§ 4.2). I present two versions of it, leaving open the question of their mutual compatibility. The first is the traditional inter-state duty to exit the state of nature, but broadened so as to include non-state peoples (§ 4.2.1). The second is a duty to interact peacefully even in the absence of a shared culture (§ 4.2.2). The latter duty enables cultural contamination, which, I suggest, is Kant's middle way between cultural imperialism and cultural quarantine (§ 4.3).

## 1. THE QUESTIONS IN CONTEXT

### 1.1. THE GUIDING QUESTIONS

The following passage from Kant's *Doctrine of Right* exemplifies the tension mentioned in the introduction:

in newly discovered lands, may a nation undertake to *settle* (*accolatus*) and take possession in the neighbourhood of a people that has already settled in the region, even without its consent? If the settlement is made so far from where that people resides that there is no encroachment on anyone's use of his land, the right to settle is not open to doubt. But if these people are shepherds or hunters [...] who depend for their sustenance on great open regions, this settlement may not take place by force but only by contract, and indeed by a contract that does not take advantage of the ignorance of those inhabitants with respect to ceding their lands. This is true despite the fact that sufficient specious reasons to justify the use of force are available: that it is to the world's advantage, partly because these crude peoples will become civilised [...] and partly because one's own country will be cleaned of corrupt men [...] But all these supposedly good intentions cannot wash away the stain of injustice in the means used for them. Someone may reply that such scruples about using force in the beginning, in order to establish a lawful condition, might well mean that the whole Earth would still be in a lawless condition; but this consideration can no more annul that condition of right than can the pretext of revolutionaries within a state, that when constitutions are bad it is up to the people to reshape them by force and to be unjust once and for all so that afterwards they can establish justice all the more securely and make it flourish. (RL, AA 6: 353)

The passage raises many questions.<sup>3</sup> For example, why does a people's consent matter to others settling *in its proximity*? Should the fact that either society is non-sedentary affect lack of encroachment as criterion for a right to settle? If Kant thinks that the use of force is permissible to establish a lawful condition, why does he deny it in this case, and why does he draw an analogy with revolutions? Lastly, why wouldn't the principle 'let the buyer beware' hold with regard to the contract that he suggests as an alternative to force?

This paper will be guided by only two main questions: do non-state peoples have a duty to exit the state of nature? And, if so, may they be forced to do so by outside actors? To begin with, it is necessary to provide some context to the 'nomads passage', as I shall call it.<sup>4</sup>

## 1.2. COSMOPOLITAN LAW AND THE NOMADS-SETTLERS ENCOUNTER

The nomads passage appears in the section on "cosmopolitan right" (RL, AA 6: 352), the third section of public right in the *Doctrine of Right*.<sup>5</sup>

Private right presents the juridical principles of interaction among individuals in the state of nature (RL, AA 6: 242). The latter is a condition in which each individual has a "right to do what seems right and good to [one], and not to be dependent upon another's opinion on this" (RL, AA 6: 312, emphasis removed), and in which, as a result, individuals' rights are uncertain. Public right provides the solution to this problem, and it comes in three sections.<sup>6</sup>

The first, the "right of a state" (RL, AA 6: 311), delineates the structure and the prerogatives of the state. The second, the "right of nations" (RL, AA 6: 343), deals with relations between states, from international conflict to rightful international institutional arrangements. The content of the third section, cosmopolitan right, is harder to pinpoint. For present purposes, we can focus on Kant's claim that it "has to do with the possible union of all nations with a view to certain universal laws for their possible commerce" (RL, AA 6: 352). This quote contains two elements that helps us to clarify what cosmopolitan right is about.

### 1.2.1. STATES AND PEOPLES

The first element is "nations", or "peoples" (*Völker*).<sup>7</sup> Kant adopts the traditional title "right of nations [*Völkerrecht*]" for the *second* section of public right, dealing with the *a priori* principles of what we, today, call international law. However, he adds that this has to do with "the right of *states* in relation to one another [*Das Recht der Staaten in Verhältniß zu einander*]", where states are considered as "moral person[s]", and should actually be called "the right of states [*das Staatenrecht*]" (RL, AA 6: 343). Although Kant's use of terms is not particularly consistent,<sup>8</sup> this suggests that the status of non-state peoples and their relations with each other and with states are not regulated by the principles of the 'right of states', but rather fall under cosmopolitan law (Niesen 2007: 94).

The second element to note in the quote above is "commerce". In the same page of the nomads passage, Kant characterises cosmopolitan relations as follows:

all nations stand *originally* in a community of land, though not of *juridical* community of possession (*communio*) and so of use of it, or of property in it; instead they stand in a community of possible physical *interaction* (*commercium*), that is, in a thoroughgoing relation of each to all the others of *offering to engage in commerce* with any other, and each has a right to make this attempt without the other being authorised to behave toward it as an enemy because it has made this attempt. (RL, AA 6: 352, tr. altered)

In order to understand this we need to take a closer look at Kant's notion of *commercium* and at its relation with original community of land.

### 1.2.2. COMMERCIIUM

The terms that 'commerce' translates, *Verkehr* and *Wechselwirkung*, are ambiguous. In a narrower sense they refer to trade, market-based interaction. But they can also mean interaction in a broader sense: social intercourse, being in company, cultural exchange.<sup>9</sup> This is important because it shows that Kant's conception of commerce cannot be reduced to the former (Muthu 2009: 195).

In the last indented quote, Kant contrasts *commercium* (Latin for 'commerce') with another form of community (*Gemeinschaft*), *communio* (Latin for 'communion'). The terms have theoretical background. In the first *Critique*, Kant writes

The word community [*Gemeinschaft*] [...] can mean the same as *communio* or as *commercium*. We here employ it in the latter sense, as meaning a dynamic community, without which even locational community (*communio spatii* [community, communion, or sharing of space - WP]) could never be cognised empirically. (KrV, A 213/B 260)

In this context, community in its dynamic sense—*commercium*, "reciprocal influence" (KrV, A 214/B 261)—is necessary to apprehend simultaneity in space, and so community in the sense of *communio spatii*: it is through *commercium* that "appearances, insofar as they stand outside one another and yet in connection, make up a composite" (KrV, A 215/B 261-262).<sup>10</sup>

Kant's philosophy of Right connects *communio* and *commercium* to individuals' and peoples' relation to the earth's land. According to Kant, each human being has an original right to exist somewhere.<sup>11</sup> With some simplification, this follows from the original right to "Freedom (independence from being constrained by another's choice), insofar as it can coexist with the freedom of every other in accordance with a universal law" (RL, AA 6: 237), and the earth's bounded surface (ZeF, AA 8: 358; RL, AA 6: 262, 352). Given that each has a right not to be subject to arbitrary exercises of power, and that we cannot disperse indefinitely, one is wronged if one is denied a place to exist.

Kant distinguishes original possession of the earth's land from "chosen" (voluntary), "acquired" possession, speaking of human beings as in "*original* possession in common" of the earth (RL, AA 6: 262). This "practical rational concept" (RL, AA 6: 262) of "disjunctive-common possession of all places on Earth" (RL/Vor, AA 23: 320), supersedes the "empirical" Grotian idea of a "*primitive* possession in common" of the earth (RL, AA 6: 262, emphasises

altered). As Arthur Ripstein puts it, “Kant rejects the idea of collective ownership of the Earth in favour of the idea that prior to appropriation, the Earth is occupied disjunctively, but unowned” (2009: 291 n. 37).

In this argument, which appears in the section of private law of the *Doctrine of Right*, original possession in common by individuals is introduced in order to make original acquisition of land possible (RL, AA 6: 262). In the section on cosmopolitan law, instead, Kant’s focus is on *peoples*. There, he denies that peoples originally are in a “community of possession (*communio*)”: rather, peoples’ original community of land means that they are in *commercium*, namely, in possible interaction (RL, AA 6: 352). Still, clearly relations of *commercium* must be thought of as holding also among individuals.<sup>12</sup>

Cosmopolitan law regulates relations of *commercium*. Its central element is a right to attempt to engage in commerce without being treated “as an enemy” simply for doing so (RL, AA 6: 352). In *Perpetual Peace*, Kant speaks of a right “to present oneself for society”, or to “seek commerce”, without being treated “with hostility” (ZcF, AA 8: 358).

### 1.2.3. THE NOMADS-SETTLERS ENCOUNTER WITHIN THE BOUNDARIES OF MERE PRIVATE LAW

After this rough outline of cosmopolitan law, we must consider what would follow from mere principles of private law in the nomads-settlers encounter. The worrying limits of this perspective explain why Kant refuses to adopt it *simpliciter* in that case.<sup>13</sup> In Peter Niesen’s words, “from the internal dynamics [of] private law [...] a settler’s claim to presumptively unowned territory entails a right to invoke an army to set up a state” (2007: 94). To see why this is the case, we must consider Kant’s property argument in the section on private law, and how it leads to the duty of state entrance.<sup>14</sup>

According to Kant, acquiring an object imposes an obligation on everyone else to refrain from using it without one’s consent.<sup>15</sup> A first appropriation modifies the normative landscape asymmetrically: others are bound by one to more than they bind one. On the one hand, this is incompatible with the requirement of equality captured by the original right to freedom (RL, AA 6: 237-238; § 1.2.2), which calls into question the validity of one’s acquisition. On the other hand, banning acquisition of objects altogether for this reason would amount to a failure of Reason to extend its principles to a sphere of potential application: property would be impossible.

Kant’s way out of this impasse is the introduction of a “permissive law” (RL, AA 6: 247) that provisionally authorises unilateral acquisition prospectively, “in anticipation of and preparation for the civil condition” (RL, AA 6: 257). The idea is that one’s unilateral imposition of obligations on others also imposes an acknowledgment of reciprocity on one.<sup>16</sup> Since these obligations must be enforceable—we are dealing with coercive rights (§3.2)—they can be reconciled with the equal freedom of each only under “a collective general (common) and powerful will” (RL, AA 6: 256), which alone is entitled to enforce individuals’ rights vis-à-vis each other and to adjudicate possible conflicts. From this, it follows that individuals have a duty of state entrance (RL, AA 6: 255-256).

This sketch of Kant's argument suffices to understand what is problematic with considering the nomads-settlers encounter merely under principles of private law. According to these alone, settlers would be authorised to claim the lands they reached as theirs, and to force anyone who were to contest their claim to exit the state of nature with them. In the nomads passage Kant clearly intends to block this conclusion. The next section presents (§ 2.1) and critically discusses (§ 2.2) some accounts of how exactly he does so.

## 2. THE NOMADS-SETTLERS ENCOUNTER

### 2.1. THE DEBATE

According to Niesen, “if from within a non-state people there does not arise the dynamic of introduction of a private law order [...] then it must not be induced from abroad” (2007: 95). Kant's permissive law applies in the “intra-state situation of original acquisition”, but not in the case of “unowned territory beyond the borders of one's state” (ibid.). This is why settlers cannot appropriate the territory they seek to possess.

Anna Stiliz criticises Niesen's assumption that, for Kant, nomads do not raise property claims, concluding that non-state peoples have a duty of state entrance. But, she adds, they may not be forced out of the state of nature by outside parties, because the interaction at issue in cases like the nomads-settlers encounter is *avoidable* and has a *voluntary* origin—it is “initiated not by ‘nature’ or ‘chance’, but rather ‘by will’” (2014: 207; see n. 3). Where interaction is avoidable, “I am not necessarily subject to [the will of others], and so I am not authorised to force them into a civil condition. Instead, I can [and ought to] preserve my independence simply by leaving their vicinity” (ibid.).

Flikschuh's approach is particular in that it considers the possibility that a people be alien to the concept of statehood, and to the conventions of acquired rights leading up to it. On this basis, she objects to Stiliz's argument that nomads have a duty of state entrance because they raise property claims over the lands they inhabit (2017a: 53). On Flikschuh's account, nomads are exempted from the duty of state entrance altogether, precisely because they do not raise such claims. This conclusion goes beyond the mere claim that third parties cannot force nomads into political association.<sup>17</sup> Indeed, Flikschuh sees the question of whether nomads raise property claims as *irrelevant* to how settlers should comport toward them (2017a: 60). With Martin Ajei, she elaborates on the suggestion that it is the settlers' membership to a state that, by itself, imposes normative constraints on their behaviour outside its boundaries (2014: 235).

The remarks in the next subsection aims to make room for an alternative interpretation of the nomads-settlers encounter, which I develop in the subsequent two sections.

### § 2.2. CRITICAL DISCUSSION

Niesen employs the boundaries of the state to limit the scope of application of the permissive law. But, the state is supposed to *follow* from the dynamic enabled by the permissive

law. It cannot *both* appear in the justification of territorial limits to the application of the permissive law *and* arise as the result of it.

A similar problem arises for Stilz's reference to avoidability and voluntariness. The question is why, unlike cross-boundary interaction, interaction among individuals within states, and within non-state societies (presumably, leading to state entrance) is unavoidable and involuntary.<sup>18</sup>

According to Flikschuh, it is ultimately the settlers' membership to their state that constrains their behaviour. But what is this constraint based on exactly? One might answer that by virtue of being citizens of a state they already have a place to exist, as well as some land which they own as a matter of acquired right. But, this once again raises the worry about relying on the boundaries of the state which results from the dynamic of appropriation under the permissive law. Moreover, the constraint at issue should apply also to individuals who are *not* citizens of a state. What about individuals who do not "sail under the protection of a designated public flag" (Ajei and Flikschuh 2014: 235)? What about non-state peoples themselves?<sup>19</sup>

It is difficult to justify the constraints that Kant places on the settlers. This section did not aim to establish that the accounts examined cannot be made to work, but only to legitimise looking for alternatives. In the next section, I present three underappreciated ambiguities in Kant that are relevant to the analysis of the nomads-settlers encounter (§ 3.1-3). The first regards the *scope* of the duty to exit the state of nature (§ 3.1), and reveals an *a priori* and an empirical strand in Kant's reasoning about matters of Right.<sup>20</sup> The second concerns the ground of this duty (§ 3.2). The third rests on the distinction between intra- and inter-group relations of Right, which generates the possibility of an intra-group and an inter-group duty to exit the state of nature (§ 3.3). In the last subsection, I return to the most promising extant justification of constraints on the settlers' conduct, and introduce a preliminary element of my own account, regarding the constitution of a non-state people as a legal-political actor (§ 3.4).

### 3. A LOOK AT KANT'S AMBIGUITIES, TOWARD AN ALTERNATIVE READING OF THE ENCOUNTER

#### 3.1. LOCAL AND GLOBAL EXEUNDA? A PRIORI AND EMPIRICAL STRANDS IN KANT'S THOUGHT

In one sense, one's rights claims exclude *everyone else*: for example, one's property right generates an obligation on everyone else to refrain from using a certain object without one's consent (§ 1.2.3). In the same way, the set of those with whom one might engage in *commercium* includes everyone else. At least potentially, then, both rights' validity—their 'exclusionary' reach, so to speak—and *commercium* extend so as to cover the entire Earth.

At the same time, it is hard to deny that one's rights claims are directed first and foremost against those whom one reasonably expects to be more likely to contest them (i.e. the individuals against whom one is in more immediate need of assurance for one's rights). In the same way, the sphere of one's *commercium* includes in the first instance those others who are in one's proximity.

The possibility of such *global* and *local* perspectives on the two grounds for the duty to exit the state of nature (§ 3.2) is due, I believe, to the simultaneous presence of a more *a priori* and a more *empirical* strand in Kant's reasoning about matters of Right.

For example, from an *a priori* perspective, state entrance is insufficient for the full realisation of Right: rights are not secure until “[the original] contract extends to the entire human race” (RL, AA 6: 266; see also RL, AA 6: 311), and *commercium* extends over the entire globe. It is the empirical strand that underlies the necessity of introducing states as legal-political actors in addition to individual moral persons (§ 3.3). Strictly speaking, that there be a plurality of such intermediate entities is a merely contingent matter, and their introduction only makes sense on the basis of empirical factors like geographical proximity (RL, AA 6: 265, 269), language, and religion (ZcF, AA 8: 367). Indeed, following merely the *a priori* line of reasoning, one might even conclude that each individual on Earth has a duty to enter *directly* some *non-mediated* institutional arrangements directly, with *all* other individuals, regardless of location (e.g. a world state that did not comprise sub-states, as it were).<sup>21</sup>

### 3.2. TWO GROUNDS FOR THE EXEUNDUM: RIGHTS CONFLICTS AND COMMERCIIUM

In the last subsection I mentioned two grounds for the duty to exit the state of nature. This is Kant's second ambiguity.

My earlier summary of his argument for the duty of state entrance revolved around inter-individual conflicts over property rights (§ 1.2.3). As Kant himself summarises it: “[a subject must] be permitted to constrain everyone else *with whom he comes into conflict about whether an external object is his or another's* to enter along with him into a civil constitution” (RL, AA 6: 256, emphasis added).

However, some passages appeal simply to the idea of *commercium*, in its broad sense (§ 1.2.2), as that which makes exiting the state of nature necessary. Often, Kant speaks simply of individuals being unable to avoid “mutually affecting one another” (TP, AA 8: 289), or “living side by side with all others” (RL, AA 6: 307). This suggests that there is a sense in which individuals must exit the state of nature that is not prompted by the possibility of rights conflicts.<sup>22</sup>

Other passages strike me simply as ambiguous, mentioning both rights conflicts and mere interaction with others:

(If you cannot help *associating with others*), enter into a society with them *in which each can keep what is his* [...] (RL, AA 6: 237, emphases altered)

[We must assume as possible a] right to constrain everyone *with whom we could have any dealings* to enter with us into a constitution *in which external objects can be secured as mine or yours*. (RL, AA 6: 256-257, emphases altered)

Before moving on, it is important to note that the potential conflicts leading to the necessity of (in the first instance) state entrance involve *coercion*, whereas *commercium* does not. The *Doctrine of Right* is supposed to be concerned only with coercive, *strict* right, so much

so that Kant claims that “right and authorisation to use coercion [...] mean one and the same thing” (RL, AA 6: 232). However, the notion of a right decoupled from coercion does appear in that work, although it does not sit easily within it. The example relevant for us is the right at the centre of cosmopolitan law: one has a right to attempt interaction, not to force others to interact (Flikschuh 2017a: 60; Niesen 95; § 1.2.2).<sup>23</sup> This difference concerning coercion between the two grounds for exiting the state of nature will become relevant when I introduce a cosmopolitan duty to exit the state of nature (§4.2).

To summarise this section so far: the ground for exiting the state of nature is ambiguous between rights conflicts and *commercium*, and either dynamic can be seen as holding locally or globally. The last ambiguity in Kant’s thought I focus on concerns the *relata* of the duty to exit the state of nature.

### 3.3. WHO EXITS WITH WHOM? INTER- AND INTRA-GROUP EXEUNDA

Relations of Right can hold between individuals and between groups.<sup>24</sup> The distinction might appear straightforward. However, whereas it is relatively easy to identify the *relata* of inter-individual relations, things are less clear when it comes to the *relata* of inter-group relations.

The reason is that, with some simplification, for Kant being a natural person (roughly, an individual member of the species *homo sapiens*) is sufficient for being a moral person. Hence, setting aside complicated cases (e.g. children), it is comparatively easy to identify what populates the domain of inter-individual legal interaction. However, natural personhood is *not* necessary for moral personhood. A prime example of this is the state (§ 1.2.1).

In order for a multitude of individuals to count as a state, it must give itself a constitution *qua* state, which requires some “juridical act [*rechtlichen Act*]” (RL, AA 6: 237, tr. altered). Not only is it odd, then, that Kant speaks of states as being “by nature” in a state of nature (RL, AA 6: 344), given that such a condition holds between non-original, ‘artificial’ entities, as it were. Kant intellectualises the origin of states (RL, AA 6: 343; see Padgen 2014: 20f): by defining the state merely as a moral person, he severs its connection with its empirical basis. Peoples as groups seem to disappear from the picture.<sup>25</sup> This leaves the status of non-state peoples unaccounted for. On what grounds is a non-state people to be recognised as a legal-political actor?

Before addressing this question, let us connect the present distinction between *relata* of relations of Right with the duty to exit the state of nature. Together, the two generate a distinction between an intra-group (i.e. inter-individual) and an inter-group version of such a duty, where the former coincides with the duty of state entrance (at least adopting an empirical perspective; § 3.1). The two duties, intra- and inter-group, are implicitly present in Kant’s texts, and are sometimes hinted at in the literature. Making the distinction explicit helps to address the nomads-settlers encounter, as the next section shows.<sup>26</sup>

### 3.4. VOLUNTARINESS, STATE MEMBERSHIP, AND ESTABLISHING GROUPS AS RELATA

Kant distinguishes encounters by “nature [or] chance” and encounters initiated by “will” (RL, AA 6: 266; see n. 3; § 2). The distinction between ‘nature or chance’ and ‘will’ appears also when he discusses original disjunctive possession of the earth and appropriation of a specific piece of land: whereas the latter is voluntary, “all human beings [originally] have a right to be wherever nature or chance (apart from their will) has placed them” (RL, AA 6: 262; § 1.2.2).

Now, on the basis of the disambiguation between local and global perspectives (§ 3.1), ‘nature or chance’ can be seen as putting human beings either in the specific territory they occupy, or simply on the earth.<sup>27</sup> In the latter sense, prior to appropriation there seems to be no non-empirical connection between human beings and the specific territories that they happen to occupy. From a global, more *a priori* perspective the distinction between avoidable and unavoidable interaction seems to collapse. And yet, the nomads passage does attest to Kant’s intention to grant a substantive normative connection between peoples and the specific territories they happen to inhabit. I return to this shortly (§ 4.1).

For now, the question is why, other things being equal, interaction in geographical proximity should count as avoidable, whereas it should not if the *relata* are distant from each other. None of the attempts I considered (§ 2) strikes me as addressing the question satisfactorily. A further worry worth mentioning in this context regards readings like Stilz’s, for which it is the voluntary origin of interaction that generates normative constraints on inter-group encounters, and Flikschuh’s, for which it either party’s membership to a state. Presumably, the constraints applying to the nomads-settlers encounter, which is initiated voluntarily by the settlers (who are citizens of a state), must apply also to encounters by chance, as well as to encounters between groups with no ties to states. Stilz’s and Flikschuh’s accounts cannot capture these cases.<sup>28</sup>

An alternative account is available, which downplays the significance of avoidability and state membership. This builds on Ripstein’s suggestion that “from the outside, any multitude of human beings must be assumed to be in a rightful condition” (2014: 149). An *assumption* of this kind does the job that we need, as it is sufficient to generate the relevant constraints (it does block the settlers’ claims).<sup>29</sup> The account is not only more economic, as it is based on a simple assumption; it is also more encompassing, in that it extends the constraints to encounters by chance (unlike Stilz’s), and between non-state groups (unlike Flikschuh’s).

However, on Ripstein’s own assumption, inter-group interaction between states and non-state peoples, or between non-state peoples, becomes virtually indistinguishable from interaction between states. This is in tension with the fact that Kant assigns the former, which involves non-state peoples, to *cosmopolitan* law. Adopting a weaker version of the assumption goes some way to mitigating this worry. This version requires a given multitude of individuals to be in a condition that is only functionally analogous to a rightful condition, only for purposes of inter-group interaction, and which is not to be equated with the full-blown Kantian state.

This weaker version also has the virtue of accommodating worries of the kind raised by Flikschuh, concerning the possibility of contextual variation in practices, conventions, and concepts (see Introduction). In the weaker version, the parties involved need not share any

of these. This allows us to remain neutral on the internal dynamics and constitution of the multitude that is externally assumed to be a legal-political actor.

In the next section, I build on the resources presented so far to introduce my analysis of the nomads-settlers encounter, according to which nomads have a duty to exit the state of nature independently of whether they also have a duty of state entrance (§ 4.1). Then, I characterise the former as a cosmopolitan duty to exit the state of nature (§ 4.2), of which I offer two versions (§ 4.2.1-2).

## 4. BACK TO THE GUIDING QUESTIONS

### 4.1. THE NOMADS' DUTY

In my analysis, nomads have a duty to exit the state of nature regardless of whether they also have a duty of state entrance. More precisely: nomads have an *inter*-group, *non-coercive* duty to exit the state of nature, and this holds independently of whether individual nomads within the group also have an *intra*-group, *coercive* duty of state entrance.<sup>30</sup> In this subsection I dwell on some formal features of the nomads' duty, in the next one on its content, that is, on what exactly it is a duty to do.

Firstly, the nomads' duty to exit the state of nature is an *inter*-group duty (§ 3.3). It is a duty that they have *qua* group, in the first instance towards the settlers (also taken as a group). Secondly, neither the nomads' duty nor the corresponding right of the settlers is *coercive* (§ 3.2): nobody can externally force the nomads to comply with it. Thirdly, and crucially, that nomads *qua* group have such an *inter*-group, *non-coercive* duty to exit the state of nature does not necessarily mean that they, as individuals, also have an *intra*-group, *coercive* duty to exit the state of nature, namely, a duty of state entrance (§ 3.3). Whether individuals within a non-state people are under an obligation to form a state depends on whether they engage in the dynamic of private law generating it (§ 1.2.3). It is certainly possible that they do not (e.g. if they do not have property conventions).<sup>31</sup>

To put it succinctly: the absence of a duty of state entrance does not by itself imply the absence of an *inter*-group duty to exit the state of nature. This claim rests upon the idea that external parties must assume that a multitude of people counts as *relatum* for purposes of *inter*-group interaction (§ 3.4).

Before turning to the content of the nomads' duty, I must address a worry. This regards my earlier claim that whether individual nomads have a duty of state entrance depends on whether they raise claims of acquired rights against each other. On the basis of the previous section (§ 3.2), one might wonder whether the duty could not be based simply on the fact that individual nomads are in *commercium*. To address this point we must look back to original community of land, which will then lead me to discuss the cosmopolitan nature of the nomads' duty.

Earlier (§ 1.2.2) I mentioned a difference between original community of land among *individuals* and among *peoples*.<sup>32</sup> The two passages I considered (RL 6: 262 and RL, AA 6: 352) belong, respectively, to the section on private and cosmopolitan law. In the former, Kant

ascribes to individuals precisely the “original possession in common (*communio possessionis originaria*)” (RL, AA 6: 262, emphases altered) that he denies to peoples in the latter. According to the section on cosmopolitan law, that is, peoples are “*originally* in a community of land”, but not in the sense of a “community of possession (*communio*)”, but rather in “a community of possible physical interaction (*commercium*)” (RL AA 6: 352, emphases altered). Individuals and peoples do not seem to stand in the same original relation with land. To this it might be added that, whereas in the section of private law original common possession is introduced to account for the possibility of original acquisition of land, in the section on cosmopolitan law original community of land seems to ground inter-group relations of *commercium* (§ 1.2.2).

All this points toward a specifically inter-group sense of *commercium*.<sup>33</sup> If this conjecture is plausible, it gives some support to the idea that *commercium* is by itself insufficient to ground the intra-group duty to exit the state of nature (which must be based on the dynamic of rights conflicts between individuals instead), and that it is reserved as the ground for the inter-group duty to exit the state of nature.<sup>34</sup>

#### 4.2. A COSMOPOLITAN (DUTY TO EXIT THE) STATE OF NATURE?

In the section on cosmopolitan law, Kant speaks of a possible union of all *peoples* which can be thought of independently of *states* (§ 1.2; Höffe 2016: 16). The last subsection introduced an inter-group, non-coercive duty to exit the state of nature, which is independent from a duty of state entrance. This presupposes a specific state of nature to which the former duty is the solution. This subsection develops the duty and the corresponding state of nature as belonging to cosmopolitan law. Before doing so, two preliminaries are necessary.

Firstly, the cosmopolitan duty to exit the state of nature is not meant to exhaust the content of cosmopolitan relations. After all, these hold “among individuals, and between individuals and peoples, and between peoples, whether or not those peoples have set up a state” (Niesen 2007: 98). Secondly, such a duty and the related state of nature are not to be equated with their inter-state counterparts. Ideally, under the present account, each of the three levels of public right (§ 1.2) should be seen as providing a solution to a unique version of the state of nature.<sup>35</sup>

At a first glance, the specifically *cosmopolitan* duty to exit the state of nature duty will be (i) an inter-group duty, which (ii) need not make reference to *states*; and (iii) which applies even in cases where one of the parties involved is under no intra-group (inter-individual) duty to exit the state of nature (or where satisfaction of the latter takes a form other than state entrance, if this is at all possible). However, two versions of the duty can be distinguished.

The first is modelled on the inter-state duty to exit the state of nature, but is broadened so as to include non-state peoples. The other stems from the type of concerns raised by Flikschuh about the possibility of lack of shared practices, conventions, and concepts between parties (§ 2.1).

The distinction can be illustrated by introducing two possible readings of the problem posed by the contract at issue in the nomads passage (§ 1.1). There, Kant insists that the contract offered by the settlers should not take advantage of the nomads' ignorance. Textually speaking, the ignorance at issue seems to concern *what it is* that the nomads are giving up and in exchange for what (their ignorance "with respect to ceding their lands"; RL 6: 353), but it is also possible that Kant takes them to be ignorant "of contractual property transfers" (Flikschuh 2017a: 53). Textual matters aside, it is certainly *possible* that a people is ignorant in the latter sense, a possibility which Kantians must address. When it comes to exiting the state of nature, the two problems—very roughly, fraud and lack of shared culture—must be dealt with separately. I do so in the next two subsections.

#### 4.2.1. THE BROADENED INTER-STATE VERSION

In the nomads-settlers encounter there is no higher authority which could adjudicate and enforce a solution in the face of an allegation of fraud. One might want to rest content with a non-coercive duty of the settlers not to exploit the nomads' ignorance of the terms of the contract, but I cannot find a compelling reason for doing so that is compatible with Kant's theory.<sup>36</sup> It is more plausible, I believe, to see the contractual interaction as anticipating and calling for an inter-group analogue of state entrance (§ 1.2.3)—more precisely, for an international exit from the state of nature that includes non-state peoples.

The difference between inter-state and specifically cosmopolitan duty to exit the state of nature would be that the latter is also valid for actors such as non-state peoples. In fact, depending on one's orientation regarding legal-political arrangements among states, one might prefer simply to qualify the traditional inter-state duty, instead of introducing an additional one.<sup>37</sup> Doing so would still leave us with the second version of the cosmopolitan duty to exit the state of nature, to which I turn now.

#### 4.2.2. THE CROSS-CULTURAL VERSION

At the beginning of the paper, I said that I would take up Flikschuh's challenge of considering the possibility of cultural context-sensitivity in addressing the nomads-settlers encounter. I do so in this subsection and the next.

Flikschuh characterises the nomads-settlers encounter as "a seemingly insurmountable clash of cultural practices and conventions" (2017b: 353-354). Assuming that the parties are ignorant of each other's ways (§ 4.2), the contract offered by the settlers can be seen as

a model for cautious, peaceful, attempted interaction between strangers who each acknowledge their ignorance of the other's ways but who seek to come to some mutual understanding with one another nonetheless. (Flikschuh 2017a: 60)

The core of the second version of the cosmopolitan duty to exit the state of nature is a requirement for peaceful interaction in the absence of mutual understanding. That peace

functions as norm of interaction means that hostility must be replaced by *commercium* in the broad sense (§ 1.2.2).<sup>38</sup> The negation of this state of nature—a cosmopolitan civil condition, as it were—would be a situation in which actual interaction is possible. This means, in the first instance, that those who attempt interaction have a right to do so, even in the face of cultural differences.

Crucially, this right is non-coercive. The idea is that *commercium* in its broad sense, even in the absence of a shared culture, can be *neither* imposed *nor* refused. In our encounter, the settlers have a duty not to impose, the nomads a duty not to refuse. While the settlers cannot force their conventions on the nomads, the nomads cannot refuse to interact with the settlers indefinitely.<sup>39</sup> To illustrate this delicate point, the next subsection suggests that the nomads passage epitomises Kant’s attempt to find a balance between two extremes.

### 4.3. KANT AGAINST IMPERIALISM AND QUARANTINE: COSMOPOLITAN CONTAMINATION

Nomads are under no duty to accept the contract offered by settlers, or even to consider it in the substance of its terms. However, this should not be confused with a right to refuse to interact altogether, indefinitely. Flikschuh seems to waver between the two, for example when she writes:

although the visitor can hope, indeed expect, the host to take up the offer of *contact*, where the latter rejects it, the visitor can only try again another day (Flikschuh 2017a: 60, emphasis added)

My point is that nomads do *not* have a right against the settlers that these do not attempt interaction.<sup>40</sup> In this regard, Jeremy Waldron writes:

Kant’s position is that the mere fact that a group [...] from one culture wants to *make contact* with [a group] of another culture is not to be regarded in itself as an affront. No doubt such contacts will compromise the identity and purity of one or both of the cultures (that is what contact—commerce, intercourse, conversation—*is*). But that in itself is not to be regarded as a ground for hostility or concern. To put it the other way round: if Kant had regarded the identity and integrity of particular cultures as something to be preserved, something whose preservation was basic to this area of right, then he would have presented the background right to visit in quite a different light, hedging it round with all sorts of restrictions, not only of consent, but of something like *cultural quarantine* (2006: 91, emphases added)

As Flikschuh herself writes, the “progressive juridification of human relations is inescapable” (2017b: 356). I agree with her that such a juridification need not proceed along a fixed, unique path—for example, one based strictly on (Kantian) property, contract, and state practices, conventions, and concepts. Yet, if *some* juridification of human relations *is* inescapable, then nomads may not adopt endless isolation from the outside world as their principle.<sup>41</sup>

## 5. CONCLUSION

Non-state peoples are not necessarily subject to the duty of state entrance. When a non-state people is, the duty cannot be enforced by outsiders. This does not mean that non-state peoples do not have a duty to exit the state of nature. Minimally, they have a (non-coercive) duty to accept the possibility of cultural contamination.

The protection against interference which cosmopolitan law affords to non-state peoples independently of their internal constitution remains difficult to square with the whole of Kant's system. This is a difficulty which Kant himself might have perceived. He decried using the absence of a state or of the dynamic of private law to justify the subjugation of stateless societies. This suggests that he might have been aware that his own theory could provide the basis for such pretexts and rationalisations.

Further work is needed to address Kant's ambiguities surrounding the notion of state of nature, and to construe it in a coherent way across private and public right. But this is a task for another time.<sup>42</sup>

**ABSTRACT:** Non-state peoples cannot be subjects of Kant's international law, which accordingly affords them no protection against external interference. They might also lack the dynamic of private law at the basis of the duty of state entrance. *Prima facie*, this compels Kant to allow that their lands be appropriated and that they be forced out of the state of nature. But this conclusion is at odds with his cosmopolitanism, particularly its anti-imperialistic commitments: non-state peoples are protected against annexation, under Kant's cosmopolitan law. The paper makes three contributions to the debate on this tension. Firstly, it disambiguates scope, ground, and *relata* of the duty to exit the state of nature. Secondly, it argues that non-state peoples have an inter-group duty to exit the state of nature; and that this holds for a non-state people regardless of whether it also has an intra-group duty of state entrance, which remains unenforceable by outside parties. Finally, it offers a construal of the former duty as a cosmopolitan duty to interact peacefully even in the absence of a shared culture.

**KEYWORDS:** Kant; State of Nature; Cosmopolitanism; Non-State Peoples.

**RESUMO:** Os povos não estatais não podem ser sujeitos ao direito internacional de Kant, o que, por conseguinte, não lhes oferece nenhuma proteção contra interferências externas. Por outro lado, eles podem também estar desprovidos da dinâmica do direito privado que está na base do dever de entrada no Estado. *Prima facie*, isto obriga Kant a permitir que suas terras sejam apropriadas e que eles sejam forçados a sair do estado de natureza. Mas esta conclusão está em desacordo com o cosmopolitismo kantiano, particularmente com seus compromissos anti-imperialistas: os povos não-estatais são protegidos contra a anexação, sob a lei cosmopolita de Kant. O artigo faz três contribuições para o debate sobre esta tensão. Em primeiro lugar, desambigua o escopo, o fundamento e os *relata* do dever de sair do estado de natureza. Em segundo lugar, argumenta-se que os povos não estatais têm o dever intergrupual de sair do estado de natureza; e que isto se aplica a um povo não estatal, independentemente de este ter também um dever intragrupal de entrada no Estado, que permanece inaplicável por parte das partes externas. Finalmente, o ensaio oferece uma concepção do antigo dever como um dever cosmopolita de interagir pacificamente, mesmo na ausência de uma cultura compartilhada.

**PALAVRAS-CHAVE:** Kant; Estado da Natureza; Cosmopolitanismo; Povos não-estatais.

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## NOTAS / NOTES

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2 When citing Kant, references are to volume and page number in the *Akademie-Ausgabe*, except for the first *Critique*, for which I use the customary A/B system. All works by Kant are quoted from the Cambridge Edition of the Works of Immanuel Kant (eds. P. Guyer and A. Wood), except for the first *Critique*, for which I use the Hackett edition (tr. W. Pluhar). I use the following title abbreviations: IaG = Idea for a Universal History with a Cosmopolitan Purpose (*Idee zu einer allgemeinen Geschichte in weltbürgerlicher Absicht*); KrV = Critique of Pure Reason (*Kritik der reinen Vernunft*); Ref = Kant's Notes and Fragments (*Reflexion*); RL = Metaphysical First Principles of the Doctrine of Right (*Metaphysische Anfangsgründe der Rechtslehre*); RL/Vor = Preliminary Works to the *Doctrine of Right* (*Vorarbeiten zur Rechtslehre*); TP = On the Common Saying: That may be Correct in Theory, but it is of no use in Practice (*Über den Gemeinspruch: Das mag in der Theorie richtig sein, taugt aber nicht für die Praxis*); ZeF = Toward Perpetual Peace. A Philosophical Sketch (*Zum ewigen Frieden. Ein philosophischer Entwurf*).

3 The same ideas can be found in an earlier passage in the *Doctrine of Right*: "it can still be asked whether, when neither nature nor chance but just our own will brings us into the neighbourhood of a people that holds out no reciprocal prospect of a civil union, we should not be authorised, in order to establish a civil union with them and bring these human beings (savages) into a rightful condition [...] to found colonies, by force if need be, or (which is not much better) by fraudulent purchase of their land, and so become owners of their land, making use of our superiority without regard for their first possession [...] it is easy to see through this veil of injustice [...] which would sanction any means to good ends. Such a way of acquiring land is therefore to be repudiated" (RL, AA 6: 266 tr. altered). See § 3.4.

4 In using 'nomads' I follow Flikschuh (2017a: 41 n. 6). Some alternatives would be non-agricultural, non-sedentary (or even pastoral, or hunting) people (or society).

5 *Recht*, defined as "the sum of the conditions under which the choice of one can be united with the choice of another in accordance with a universal law of freedom" (RL, AA 6: 230), can be rendered as both *law* and *right* (when necessary, I use 'Right', to avoid confusion with rights of individuals).

6 See §1.2.3. Different readings of the state of nature include, to name a few, Byrd and Hruschka 2010; Flikschuh 2000; Ripstein 2009; Waldron 1996.

7 On *Völker* here, see Niesen (2007: 97 n. 13). I use 'nations' and 'peoples' as functional equivalents, and distinguish both from 'states'. By the former I mean, roughly, a multitude of individuals living in the same territory and sharing certain cultural or ethnic traits, or customs.

8 That is, he does not reserve 'state' for the right of states and 'nations'/'peoples' for cosmopolitan right. The boundaries between these two spheres of public right are themselves unclear, and possibly undergo shifts between, for example, *Perpetual Peace* and the *Doctrine of Right*. See ZeF, AA 8: 439n, 357; RL, AA 6: 311. See also § 4.2.

9 For slightly different takes on the distinction, see Niesen (2007: 92); and Muthu (2009: 98 n. 20; 194-195).

10 See Milstein (2010: 122-123). It is plausible to think that such a priority of *commercium* carries over in the domain of Right, but I do not develop this line of thought.

11 Original or natural, innate, meaning: which is had independently of any juridical act (RL, AA 6: 237). For a discussion of how the right to be somewhere fits uneasily in Kant's dichotomy between innate and acquired right, see Huber 2017a, § 2. On the right to be somewhere, see also §3.4 and §4.1.

12 I return to the difference between original community of land among individuals and among peoples in §4.1. For a discussion of original common possession of the earth in Grotius and in Kant, see Huber, 2017b.

13 Historically, Kant's development of cosmopolitan law can be seen as tied to his critical attitude toward colonialism. For various contributions on this relation, see Ypi and Flikschuh 2014.

14 For simplicity's sake, here I restrict the discussion to property rights. Later I will speak of *acquired* rights more generally, of which property rights are a subset.

15 For present purposes, it is worth pointing out that, for Kant, "First acquisition of a thing can be only acquisition of land" (RL, AA 6: 262).

16 On this delicate point, see Flikschuh (2000: 142).

17 Sankar Muthu's reading combines element of Flikschuh's and Stilz's. Muthu argues that Kant exempts nomadic societies from state entrance because, unlike in agrarian societies, "subgroups of nomadic individuals can choose to *escape* troublesome social relations by creating new societies" (2014: 75-76). One worry with this is that while it may be comparatively harder to escape an agrarian society, it is not impossible. Tying the duty of state entrance to how easy it would be to escape a society risks making exit from *any* society permissible, regardless of whether there is a state, which conflicts with the coercive nature of the duty of state entrance. (Note that, as a duty of state entrance, the duty to exit the state of nature involves entering *and* remaining in a state; RL, AA 6: 307; see Byrd and Hruschka 2010: 182. This need not mean that there are two separate duties; Newhouse (2013: 91f). Of course, a citizen may emigrate, but she must be authorised to do so; RL, AA 6: 337-338). Muthu's anthropological/empirical proviso to the duty of state entrance raises a tension similar to that raised by Kant's claim that the state of nature *can* involve societal intercourse (RL 6:306). On this tension, see § 3.1-2.

18 Flikschuh overstates Stilz's inability to establish the settlers' obligation of abstention without assigning property rights to the nomads in their lands. Stilz can do so by appealing to the settlers' voluntarily seeking an avoidable interaction (although her account remains somewhat ambiguous; see Stilz 2014: 211). As a textual matter, I am unpersuaded by Flikschuh's claim that Kant clearly does not attribute property rights to nomads (2017a: 53, 58), but I leave this question open.

19 I develop this into a worry for both Flikschuh and Stilz in § 3.4.

20 I sometimes use *a priori* and empirical as if they admitted of degrees (similarly, see Patrone 2014). This is somewhat odd, but it tracks the general difficulty in determining how *a priori* the *Doctrine of Right* is (see next footnote). I am grateful to an anonymous reviewer for suggesting using '*a priori*'.

21 This seems to be Anacharsis Cloots's view. For discussion, see Kleingeld 2011, Ch. 2. ——— I have articulated the *a priori* empirical strands in terms of *local* and *global* perspectives because Kant himself limits the reach of his theory of Right to Earth. Arguably, this is an underappreciated failure on his part to push the more *a priori* strand further (particularly given that he entertains the possibility of the existence of other types of rational finite beings; for a discussion that takes into account space exploration, see Oliver 2015, Ch. 2). This is not to deny that he sometimes speaks of dynamics of Right also in extremely *a priori* terms (e.g. RL, AA 6: 232-233).

22 Flikschuh distinguishes an argument for exiting the state of nature based on rights conflicts and one from mere "unavoidable co-existence" (2017b: 361f).

23 Here I simplify for the sake of contrast. The role of coercion in cosmopolitan law remains difficult to account for. See § 4. Other examples of non-coercive rights are "freedom of the pen" (TP, AA 8: 303-304; RL, AA 6: 319) and "equity" (RL, AA 6: 234-235).

24 To simplify, I exclude interaction between individuals and groups.

25 Under this respect, his approach is usually contrasted with Herder's, which separates nations and states. It is beyond the scope of this paper to explore this comparison.

26 My two guiding questions (§ 1.1) rest on the distinction. See also Stilz (2014); another example in the literature is Flikschuh (2017a: 63; 2017b: 356). As to Kant himself, most passages in the last subsection involve the intra-group duty. His discussions of inter-state relations, instead, typically involve inter-group relations, but he is acutely aware of the complexity generated by the state's relation to its citizens, which affects inter-state relations too (e.g. RL, AA 6: 344).

27 Jakob Huber rightly notes the ambiguity between "a general right to just any, or to some particular place that, through 'nature or chance', I happen to occupy" (2017a: 24). See § 4.1; n. 34.

28 Although, admittedly, the conditions they set may be sufficient to generate the constraints in cases like the nomads-settlers encounter. It might be worth recalling that the negative work in this paper is only aimed at making room for an alternative.

29 For reasons of space, I must set aside the possibility of 'humanitarian intervention' (see Ripstein 2014: 165. n. 14).

30 But see n. 36 on coercion and the compatibility between the two versions of the inter-group duty to exit the state of nature.

31 I leave this open as a textual matter concerning the nomads passage (see n. 18). Even if one did take it to suggest that nomads possess the lands they inhabit, it could still be that this is collective ownership. Kant alludes to this idea when writing: “can anyone have a thing as his own on land no part of which belongs to someone? Yes, as in Mongolia where, since all the land belongs to the people, the use of it belongs to each individual, so that anyone can leave his pack lying on it or recover possession of his horse if it runs away, since it is his” (RL, AA 6: 265). The connection between collective ownership of land and what seems to be private ownership of movable objects (‘his pack’, ‘his horse’) remains to be explored, and so does the question whether the combination entails a duty of state entrance.

32 As far as I am aware, this difference is rarely discussed. Motohide Saji identifies community of interaction (*commercium*) with “cosmopolitan society” and community of possession (*communio*) with “the state”, but with no argument (2009: 136).

33 Although this cannot mean that individuals are not in relations of *commercium*. Cosmopolitan law as such includes relations other than group-to-group (see § 1.2.2; § 4.2).

34 This could also substantiate the difference between the two senses of a right to exist somewhere (§ 3.4; n. 27): whereas individuals have a right to exist somewhere, as in ‘one place or another’, peoples have a right to a specific somewhere to exist (which, the argument would go, holds independently of property claims).

35 The plausibility of a specifically cosmopolitan state of nature, particularly in its first version (§ 4.2.1), depends on what institutional arrangements one thinks satisfy the duty to exit the inter-state state of nature (n. 37). The boundaries between international and cosmopolitan law are not always clear in Kant (n. 8), although admittedly he does not mention a cosmopolitan state of nature. One point in favour of my proposal is that he thinks that rights remain provisional until the requirements of *all* three levels of public Right are met (RL, AA 6: 311; § 1.2).

36 Ajei and Flikschuh characterise cosmopolitan law as “a sphere of public law without an omnilateral rights enforcing authority” (2014: 235; § 2). This leaves open the issue of the validity of inter-group contracts without a *super partes* coercive assurance. A solution to this problem might draw on Niesen’s argument that states may rightfully regulate and limit *commercium* as trade, but not in the broader sense of communicative interaction (at least, not on the same grounds) (2007: 99; see TP, AA 8: 358f; § 1.2.2). Building on this, one might say that the legitimacy of coercion by cosmopolitan institutions (whatever these look like exactly) depends on the kind of interaction at issue. A problem for Niesen’s proposal is that it is unclear is required also to guarantee *commercium* in the broad sense (see Niesen 2007: 93). The next subsection suggests that it is not. This *does* raise a worry of compatibility between the two versions of the cosmopolitan duty I present here (as the first is coercive, the second is not), *but* the worry is shared with more traditional accounts, in the form of the incompatibility between the duty to exit the inter-state state of nature and cosmopolitan law.

37 According to Muthu, Kant leaves it open whether a world political association is to include only *states* or also non-state peoples (2014: 91 n. 18). Things are complicated by the interpretation of exit from the inter-state state of nature (see e.g. Kleingeld, 2004; Byrd and Hruschka 2008). See n. 35.

38 Kant considers war and *commercium* incompatible (ZeF, AA 8: 368). Suma Rajiva (2017: 390) offers some remarks in this direction based on the theoretical background to the notion of *commercium* (see § 1.2.2).

39 This does *not* mean that the nomads must accept the settlers’ contractual offer. It is closer to Niesen’s duty *to listen* (2007, 93). ——— One might object that, for Kant, *commercium* in the broad sense is merely a by-product of *commercium* in the narrow sense. This reading seems to be involved in arguments to the effect that Kant’s sole concern at the inter-state level is to introduce trade regulations (e.g. Byrd and Hruschka 2008; see also Vanhaute 2014). Here, I assume that the kind of concerns introduced by Flikschuh constitute independent reasons to consider *commercium* in the broad sense in its own right. See also n. 36.

40 It is ultimately unclear to me whether this is Flikschuh’s considered view (see 2017a: 67-68). Still, the clarification occasioned by the last quote remains important.

41 This conception of cultural contamination strikes me as being separable from a teleological philosophy of history of the sort that led Kant to claim that “our part of the world [...] will probably someday give laws to all the others” (IaG, AA 8: 29). ——— For present purposes, my agreement with Waldron is limited to the spirit of the characterisation of cosmopolitanism I quoted. I set aside the details of his interpretation, and especially his use of it to criticise contemporary identity politics. Focusing on the latter, Timothy Waligore has objected to Waldron that “[the] right *to offer* commerce should not become a right *to commerce*” (2009: 30; also *contra* Tully 1995). It strikes me that this objection does not apply to my idea of cosmopolitan cultural contamination. I agree with Waligore that past interaction can lead to justified and legitimate mistrust. At the same time, from the perspective of an analysis of the nomads-settlers encounter, it could also be said that the contamination *begins with the offer*. These complex matters would deserve a separate discussion.

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