

## What Kant might have said about immigration: an alternative view.<sup>1</sup>

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I

In her contribution to this symposium, Karoline Reinhardt makes two main claims about Kant's position on immigration. The first is that it cuts across the familiar debate between those who argue that borders should be open to everyone and those who maintain that states have the right to control immigration flows. As she says, this puts him into 'productive disharmony' with the main positions in that debate. The second is that if we follow through the implications of Kant's Cosmopolitan Right, we will nevertheless see that it justifies an expansive interpretation of the 1951 Refugee Convention, such that states are obliged to admit all those who would otherwise face a threat of serious harm, whether to body or mind, no matter how many of them there are. This has obvious practical implications for democratic states in Europe and elsewhere that are currently having to cope with large inward flows of migrants. So it is certainly worth examining what Kant had to say about immigration, or more accurately what he might have said had the question been put to him. I will argue that Kant's political philosophy points us in a rather different direction, in particular towards the need to maintain the integrity of legitimate states, and their rights of self-determination. This in turn will yield a more restrictive position on immigration than Reinhardt proposes. However I will end by suggesting that we can find in Kant the basis for an agreement between states on a mechanism for handling large-scale migration movements, inspired by his remarks about the need to create a 'congress of states' whose aim is to preserve perpetual peace.

We need to begin by reminding ourselves about why Kant had nothing to say directly about the state's right to control immigration. The reason is simple: immigration in the sense that we now understand it did not exist in Kant's time. Of course people did travel across state borders, singly or in groups, and sometimes settled where they landed, and so we would now say that they had immigrated. But immigration for us means something quite specific;

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<sup>1</sup> An earlier version of this article was presented to the International Conference on Cosmopolitanism, Borders and Migration, University of Molise, Campobasso, 23-24 September 2021. I should like to thank Roberta Picardi for arranging this event, Karoline Reinhardt for allowing me to consult her presentation in advance, and the audience members for their comments. Special thanks to Katrin Flikschuh for her advice on an earlier draft of the article.

it is not just another word for cross-border movement. It is a state-regulated practice whereby states control their borders (not always with complete success, admittedly) and through public policy determine who is permitted to settle and on what terms. Immigration, in other words, is a matter of entry visas, vetting of asylum-seekers, conditions for becoming a citizen and so forth.<sup>2</sup> At the time Kant wrote, none of this was in place. States did indeed attempt to control freedom of movement, though generally they were more interested in regulating *internal* freedom of movement, and also in preventing their subjects from exiting. So they often required travellers to carry passports which they might be required to show at a border, and also to the local police when arriving to stay in a town overnight.<sup>3</sup> But unlike modern states, they made no attempt to set immigration quotas or introduce points systems for selecting immigrants. They didn't in other words have immigration *policies*, and therefore there was no reason for philosophers to debate what form those policies should take.

We should also pay attention to another respect in which Kant's political world was different from ours. The states of his time, even when they were liberal, were pre-democratic. The franchise was generally restricted to property-owners or those who could show that they had an equivalent social status. According to Kant this was also how things should be. He divided the state's citizens into two classes, active citizens who had voting rights and passive citizens who didn't – he described the latter rather patronisingly as «mere underlings (Handlanger) of the commonwealth».<sup>4</sup> This is again important if we are thinking about immigration. Contemporary liberals all assume that long-term immigrants must be put on the path to full citizenship. There is debate about how long this should take, or what kind of tests must be passed in order to acquire citizen status, but everyone agrees that it is morally and politically unacceptable for migrants to be present in society as mere underlings. This means that when thinking about large-scale immigration, we have also to think about its

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<sup>2</sup> This point is spelt out at length in C. KUKATHAS, *Immigration and Freedom*, Princeton, Princeton University Press, 2021, esp. chs. 2-3.

<sup>3</sup> I rely here on the detailed description in J. TORPEY, *The Invention of the Passport. Surveillance, Citizenship and the State*, Cambridge, Cambridge University Press, 2000, chs. 1-3.

<sup>4</sup> I. KANT, *The Metaphysics of Morals*, ed. M. Gregor, Cambridge, Cambridge University Press, 1996, p. 92. This division was not rigid, since Kant specified that everyone must have the freedom to 'work his way up' from passive to active status. Nevertheless he went to some trouble to explain its rationale.

politically transformative character – about how it may change both the cultural complexion and the political make-up of the citizen body. For Kant, by contrast, no such problem need arise, since he is willing for the state to include a majority of passive citizens who lack voting rights (all women, for example). Whether and under what conditions immigrants would qualify for the franchise would be a matter for the existing elected legislature to decide.

These are the reasons why, like other philosophers of the time, Kant never felt the need to say more than a few passing words about immigration (he remarks at one point that rulers must recognize their subjects' right to emigrate, while themselves having the right to encourage immigration despite popular resistance<sup>5</sup>, but says nothing further to justify these claims). So if we are going to try to establish what he might have said if asked, we have to proceed carefully. We have to extrapolate from things that he did say in quite different contexts to see whether we can extract a coherent position relevant to immigration as we understand it today. It may turn out, as Reinhardt has suggested, that so reconstructed he cannot be fitted neatly into the debates we are currently having.

## II

Reinhardt argues that, while there is nothing in Kant to suggest that he would have favoured fully open borders, his account of Cosmopolitan Right can be developed in such a way as to impose a quite demanding duty on states to accept those we would now call refugees. Her focus is on the passage in *Perpetual Peace* in which Kant asserts that a stranger arriving on someone else's territory must not be treated with hostility, and cannot be turned away if this would lead to his 'Untergang' – implying that he must be allowed to stay until he can leave in safety.<sup>6</sup> There is some debate about the context in which Kant introduced this right to 'hospitality', as he terms it. He seems to have been preoccupied with the issue of foreign trading companies which must be allowed to offer their wares to the local inhabitants, but had no right to remain permanently unless invited to do so. Meckstroth has argued that the underlying aim was to prevent refusing contact with traders being used as a pretext for war.<sup>7</sup> The stranger that Kant had in mind, then, was not someone we would today call a

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<sup>5</sup> KANT, *The Metaphysics of Morals*, p. 110.

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I. KANT, *Perpetual Peace: a Philosophical Sketch* in *Kant's Political Writings*, ed. H. Reiss, Cambridge, Cambridge University Press, 1971, pp. 105-6.

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refugee – a person fleeing from persecution. Nevertheless it is legitimate to ask what Kant's stated position on permitting and refusing entry would imply in such a case.

As Reinhardt emphasizes, much hangs here on how one understands 'Untergang', the fate from which a person must be protected by being allowed to stay. She wants to extend it beyond death and physical injury so as to cover the moral or psychological harm that a person would likely suffer if forced to return to a state in which they were subject to persecution. This allows her to recruit Kant as someone who anticipated the Refugee Convention's idea of *refoulement*, meaning returning someone to a country where he or she faces a threat of persecution, since at least certain kinds of persecution can be seen as attacks on moral personality. In English translations of Kant, 'Untergang' is usually rendered simply as 'death' or 'destruction',<sup>8</sup> and its most common use when applied to persons – 'drowning' – inevitably calls to mind the shipwrecked sailor who must be allowed to repair his boat before putting back out to sea.<sup>9</sup> There is no direct evidence that the fuller sense of moral personality that Kant develops elsewhere is what he had in mind when thinking of the threatened 'Untergang' that would make it obligatory to take a stranger in. So it remains an open question at this stage whether Reinhardt's proposed extension remains faithful to Kant's intention or not.<sup>10</sup> Later I shall draw attention to other elements of Kant's political thought that would give him reason to adopt a relatively narrow view of the circumstances in which rescue from danger was obligatory.

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C. MECKSTROTH, *Hospitality, or Kant's Critique of Cosmopolitanism and Human Rights*, «Political Theory», XLVI, 2018, p. 537-59.

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See, respectively, Reiss who uses 'death' in KANT, *Perpetual Peace*, p. 106 and Gregor who uses 'destroying him' in I. KANT, *Practical Philosophy*, ed. M. Gregor, Cambridge, Cambridge University Press, 1996, p. 329.

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As Reinhardt points out, it would be irrational on Kant's part to confine the duty of hospitality to visitors who had arrived by sea (and therefore might be in danger of shipwreck if turned away). On the other hand, the cases to which the idea of hospitality is applied all involve long-distance sea travel by citizens of European states, and this may have influenced his choice of expression.

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The more restrictive interpretation of Kant is defended by, among others, J. P. MESSINA, *Resistance at the Border. Kantian Political Theory and the Refugee Crisis*, «Journal of Applied Philosophy», XXXVIII, 2021, pp. 702-718 – see esp. f.n. 43. Messina acknowledges that Kantians today may appeal to other elements in his thinking to support a wider reading of the scope of the non-*refoulement* principle.

A second move that Reinhardt makes is to point out that the duty not to turn people away if this would lead to their 'Untergang' applies to each person who arrives on the territory, and so on her reading it must also apply to the mass movement of refugees. It would not be permissible to turn away the  $n$ th person because of the costs of harbouring the previous  $n - 1$ , she argues. Now once again this is a matter of speculation, since Kant himself only refers to the case of a single person. However we can perhaps learn something from his general comments about the rights of strangers, or more specifically about the limits of these rights. He says first that the stranger cannot claim the right of a guest to be entertained – in other words the person who has arrived must fend for himself in terms of getting food, shelter and so forth, unless his hosts charitably offer these resources. Then he can only settle permanently with the consent of the members of the host state.<sup>11</sup> So here there is a rather clear contrast with the way we think today about our obligations to refugees. We think that they are owed protection of a long list of human rights, including rights such as those to housing and health care that may be quite expensive to fulfil. We also think that they are entitled to stay for a period of years, even in many cases indefinitely. So although it would certainly be possible for someone to develop Kant's idea of Cosmopolitan Right so that it entails quite extensive obligations to refugees even if they arrive *en masse*, it's much harder to show that this is what Kant himself would have been willing to accept.<sup>12</sup>

I also want to raise the question whether the duty we are considering here – the duty to offer a safe haven to a vulnerable stranger – is best understood as a legal, rather than a moral, duty, as Reinhardt has proposed. Kant does of course include it in an exposition of Cosmopolitan *Right*, but this is 'ius cosmopoliticum' and 'ius' is not the same as 'lex'; Kant is a legal positivist – law presupposes an enforcing sovereign.<sup>13</sup> A legal duty can only exist, then, when there is an authority that has defined its scope and is able to compel its performance. Who is supposed to enforce cosmopolitan right, given that Kant appears to

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KANT, *Perpetual Peace*, p. 106; c.f. KANT, *The Metaphysics of Morals*, pp. 121-2.

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As I have noted, Kant's thinking about entry to a foreign territory was coloured by the colonial context in which he was writing. Might he then have regarded refugees and other disadvantaged immigrants more benignly than European colonizers intent on imposing themselves on the local inhabitants? Perhaps: but a doctrine of right – what it is permissible to do, and what it is obligatory to do – cannot bend to accommodate the better or worse intentions of different groups of settlers.

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See J. WALDRON, *Kant's Legal Positivism*, «Harvard Law Review», CIX, 1996, pp. 1535-66.

have ruled out world government as potentially despotic?<sup>14</sup> Alternatively, is it possible to imagine the duty in question being recognized as part of what Kant calls ‘the right of nations’ and we would call international law? Again that seems unlikely, first because the league of nations that Kant envisages as drawing up the rules that are meant to ensure international peace is explicitly said to «involve no sovereign authority», and second because it is understood as an alliance of independent states that agree not to meddle in one another’s internal affairs.<sup>15</sup> So how any given state decides to handle the arrival of foreigners on its soil is, legally speaking, up to that state. It follows that the duty of hospitality must be treated as a moral duty, *unless* the host state itself decides to formalize it by conferring legal rights on the stranger. A comparison might be drawn here with the general duty of rescue, which only becomes a legal duty for citizens as a result of positive legislation: some states currently impose such a duty, others don’t.<sup>16</sup> So if we were to try to apply Kant’s duty of hospitality to our current circumstances, we would conclude that it is certainly permissible to extend welfare state rights to recently-arrived immigrants by legislation, but not something that is required.

### III

Kant’s moral cosmopolitanism is clearly very different from the moral cosmopolitanism in wide circulation today, which in effect tells us to treat foreigners no differently from compatriots – that it is morally arbitrary for people to be relatively advantaged just because of their social or political membership. But you might still regard this simply as a failure on Kant’s part to think through the implications of his view that all of humanity must be treated

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Admittedly there is some disagreement about this. Although in *Perpetual Peace*, Kant’s hostility to the creation of a universal state seems unequivocal, in other writings – *The Metaphysics of Morals* and *Theory and Practice*, for example – he speaks favourably of a ‘universal union of states’ and ‘a cosmopolitan constitution’ without clarifying what kind of political arrangement he has in mind. For a short discussion, see K. FLIKSCHUH, *Kant and Modern Political Philosophy*, Cambridge, Cambridge University Press, 2000, pp.183-6, and for a longer one P. KLEINGELD, *Approaching Perpetual Peace: Kant’s Defence of a League of States and his Ideal of a World Federation*, «European Journal of Philosophy», XII, 2004, pp. 304-325.

<sup>15</sup>

KANT, *The Metaphysics of Morals*, p.115.

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See D. MILLER, *The Nature and Limits of the Duty of Rescue*, «Journal of Moral Philosophy», XVII, 2020, pp. 320-341.

with respect, as ends in themselves. So I want now to suggest that Kant's brief remarks about Cosmopolitan Right have to be read in conjunction with his much more expansive thoughts about the integrity of states. In *The Metaphysics of Morals*, Cosmopolitan Right is only given a page and a half in a discussion of Public Right that takes up a full 35 pages. Public Right gives an analysis of the constitution of a republican state and its relations to its citizens. As we know, Kant believed that there was a moral imperative to join with others who lived in close proximity to create such a state. But regardless of how the state was originally formed – whether by mutual consent or by force – once established it has the right to maintain itself in existence in the face of outsiders who wish to annexe or dismember it. This is what I mean by Kant's belief in the integrity of states.

There are several places in his writing at which this belief emerges. One is where Kant is objecting to the European practice whereby monarchs were able to acquire new territories by marriage. In response, Kant lays down as the second preliminary article of perpetual peace that «no independently existing state, whether it be large or small, may be acquired by another state by inheritance, exchange, purchase or gift».<sup>17</sup> And in support of that principle he says that «a state, unlike the ground on which it is based, is not a possession (*patrimonium*). It is a society of men, which no-one other than itself can command or dispose of. Like a tree, it has its own roots, and to graft it on to another state as if it were a shoot is to terminate its existence as a moral personality and make it into a commodity». Elsewhere Kant asks the following question: «If a smaller state, by its geographical situation, constitutes a gap in the territory of a larger state, and this larger state requires the intrusive territory for its own preservation, is not the larger state justified in subjugating the smaller one and in annexing its territory?». Kant's reply is that to do so would be «an injustice of very great magnitude».<sup>18</sup>

So here we see that Kant places great weight on the autonomy of existing states, notwithstanding his insistence that they are morally required to join together with others in a league to prevent future wars. Each state has a moral personality that has to be respected. It cannot rightly be annexed, or traded away in a deal hatched by monarchs. The question is, why does he think this? For Kant, after all, the purpose of the state is to

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<sup>17</sup> KANT, *Perpetual Peace*, p. 94.

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KANT, *Perpetual Peace*, p.128.

transform what would otherwise be a condition of mutual violence between human beings into a 'rightful condition' where their interactions are governed by law. But if that was the whole story, why would it matter so much if a state were annexed or transferred, so long as that function was still performed under the new arrangement? It seems that Kant's conception of the state is not merely instrumental: it is more than just a means for putting people into a rightful condition. Once established, it also has a distinct moral personality.

A major difficulty here is making sense of the vocabulary that Kant employs. He speaks of states, but he also speaks of nations and peoples. Here then we need to ask: is a nation, or a people, simply a collective term for the human beings who share allegiance to the same state? Or does it suggest that they are united by a bond of a different kind, as well as by their political allegiance? Kant is somewhat unclear about this. He says that «as natives of a country, those who constitute a nation can be looked upon analogously to descendants of the same *ancestors* (*congeniti*), even though they are not. Yet in an intellectual sense and from the perspective of rights, since they are born of the same mother (the republic) they constitute as it were one family (*gens, natio*)...».<sup>19</sup> So here he shifts from a conception of nationality as a people formed by (imagined) common descent to one in which being united under a single political authority is all that is needed to make a mass of individual people into a nation. Of course in many cases these two conceptions will be extensionally equivalent. But what if they are not? Consider, for example, cases in which states are divided up by external force, as Germany was in 1945. On one conception, Germany continued to exist as a single nation despite the split, whereas on the other there were now two nations, defined by the territorial boundaries of the FRG and DDR respectively.

There is certainly evidence that Kant saw nationality, or peoplehood, as involving more than just membership of the same state. When explaining why there is, in fact, little likelihood of a world state emerging, he points to linguistic and religious differences as reasons why nations want to remain separate from each other rather than intermingling – so here he seems to understand nations as groups with their own distinct cultures, at least as regards language and religion. I don't for a moment want to suggest that Kant had the same strongly cultural idea of nationality as, say, Herder, but I do want to claim that he regarded

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KANT, *The Metaphysics of Morals*, p. 114.

the boundaries of states' territories as more than merely arbitrary lines drawn on the map. They were not arbitrary insofar as they demarcated peoples with distinctive characteristics such as these.<sup>20</sup> This belief also plays a part in the highly critical view of European colonialism that he took in his later writings. Kant focuses his attention on the brutal means used to subordinate native peoples by the colonizers, which he rightly condemns. But in so doing he has to explain why the use of force cannot be justified as a way of establishing a lawful condition in place of the 'wild lawless freedom' they have hitherto enjoyed – a problem given that in other cases Kant makes it clear that the use of force to establish a rightful condition, or what we might call the rule of law, is perfectly permissible, indeed may even be required. His response, though not spelt out in any detail, is that it must be left to the people themselves to undertake this transition.<sup>21</sup> But again this only makes sense if we assume that they are already a distinct people, despite not yet being organized into a state, so that the colonizers would be wronging them by forcing them into a lawful condition on the colonizers' terms.

I have been trying to spell out what Kant meant when he described the state as having a moral personality. On my interpretation this is not merely a matter of the political form of the state, important though that is to Kant, but also of the character of the people it governs. A Kantian state is what today we would call a nation-state, whose citizens have a right that their political institutions should not be changed against their collective will. How does this affect what he might have said about immigration? As I have pointed out, we have no direct evidence about this, since Kant wasn't in a position to confront the phenomenon of immigration as Europeans experience it today. But suppose that he had been: how would he have responded?

The immigration that matters for this thought experiment is large scale immigration involving people who are culturally and/or ethnically and/or racially different from the

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Note that such a view can remain neutral on the source of this cultural distinctiveness – whether it predates the creation of the state, or comes about as a result of the state's own nation-building policies. So long as a state's jurisdictional boundaries enclose a population whose public culture is different from those of its neighbours, those boundaries cannot be dismissed as arbitrary. The mere fact that the past might have been different does not by itself undermine the legitimacy of the current state.

<sup>21</sup>

See KANT, *The Metaphysics of Morals*, p. 122.

members of the society they are entering. Immigration of that kind is socially and politically transformative.<sup>22</sup> I intend this as an observation, not a judgement: depending on your point of view you might regard the changes that immigration brings as a gain or a loss. The societies that have experienced mass immigration have become multicultural, to a greater or lesser extent. This is not to say that beforehand they were culturally homogenous – clearly there were already internal cultural differences between social classes, between generations, and so forth. But the multiculturalism that immigration produces is more challenging, I believe, because it raises bigger questions about the identity of the whole society. It also creates new political challenges; the incomers may have different education and health care needs from the majority and also different cultural requirements and aspirations. For us, contemporaries, justice will then require that necessary accommodations should be made and priorities shifted; the law will have to recognize the special rights of those who belong to religious minorities to exemptions from standard work requirements, such as uniforms, for example. When the state provides public goods such as cultural festivals, art museums and so forth, it will have to ensure that a fair share of resources goes to those who represent the new minority cultures.

It is difficult to know what Kant would have made of this. As we have seen, he would not have assumed that all immigrants were entitled to become active citizens, and so he would not have anticipated that there would be political pressure to make these cultural accommodations. Moreover, his conception of public right is such that it appears to leave no room for culturally-based claims. For Kant a rightful condition obtains when each member of the society enjoys equal freedom in a formal sense. Although this allows him to justify anti-poverty measures to prevent people becoming dependent on the choices of others, being free does not depend on a person's ability to satisfy their subjective preferences, or what today we would call their conception of the good.<sup>23</sup> So a Kantian state is, so to speak, culture-blind at the level of the individual. If immigrants arrive with cultural

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I have developed this argument more fully in D. MILLER, *Controlling Immigration in the Name of Self-Determination*, in *Sovereignty as Value*, ed. A.S. Campos and S. Cadilha, London, Rowman and Littlefield, 2020, pp. 167-182.

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For an analysis of Kant's grounds for supporting redistribution to avoid poverty, see A. RIPSTEIN, *Force and Freedom. Kant's Legal and Political Philosophy*, Cambridge, MA, Harvard University Press, 2009, ch. 9.

values different from the majority, they will have to pursue those values in private, and cannot expect the state to make any adjustments to make it easier for them to succeed.

It appears, therefore, that a Kantian state under pressure to accept large numbers of immigrants faces a trilemma. There are three options, none of which seems particularly attractive. The first is to close its borders to all but a few of those seeking admission, thereby safeguarding its integrity. However – and here we return to the issue of how widely or narrowly we should understand the threat of ‘Untergang’ which in Kant’s view requires us not to turn a person away – this will be morally problematic if many of those who are trying to get in will be severely harmed by exclusion. The second option is to open the border more widely, but to preserve the form of the state by granting the incomers few rights: admitting them only for a limited period, not granting them citizenship, and refusing to make cultural accommodations to assist them – in other words treating them as what Kant would call ‘underlings’. This is also morally problematic: the character of the state is actually transformed in reality (and for the worse) if it harbours a mass of people who have no proper status, as we can see by looking, for example, at the case of the US today, with its huge underclass of illegal immigrants. The third option is to admit all of the immigrants and then change the state’s ground rules in such a way that they are able to become equal citizens with claims for cultural recognition.

This option, however, would require the consent of the existing body of citizens, precisely because it constitutes a significant change to the terms on which they had associated with one another up to now. Kant uses the metaphor of the original contract to express this idea.<sup>24</sup> He doesn’t think that the founding of the state must have involved an actual contract signed in historical time, but he does think that the state’s current form should be understood as having been contractually agreed to, which also explains his sharp criticism of acts of resistance that aim to change its constitution. The problem with option 3, then, is that unless general will of the citizen body, expressed through its representatives, is to accept the political transformation that mass immigration would involve, it would be illegitimate. Although we cannot categorically rule out the possibility that such an agreement would be reached, the evidence we have about public opinion in liberal

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<sup>24</sup> See KANT, *The Metaphysics of Morals*, pp. 92-3.

democracies today suggests that this is highly unlikely. There seems therefore to be no way out of the trilemma that is both morally acceptable and politically legitimate.

#### IV

What I have been suggesting is that Kant's statements about Cosmopolitan Right, which Reinhardt has used to throw light on what he might have said about immigration, have to be read in conjunction with the more fully-developed political theory that occupies a large part of *The Metaphysics of Morals*. That theory is in several respects quite conservative even by the standards of Kant's own day. Now Kant denied that morality and politics, in the sense of political right, could come into conflict. Equally important, however, he regarded politics as a free-standing subject whose principles could be deduced without reference to morality. Notoriously he suggested that «the problem of setting up a state can be solved even by a nation of devils (so long as they possess understanding)».<sup>25</sup> So we cannot assume that if, contrary to Kant's own assumption, a practical conflict between politics and morality did appear, Kant would have resolved it in favour of morality, or what appeared to be morality. He wouldn't, in other words, have subordinated politics to morality, revising his account of political right so that it fell into line with his moral cosmopolitanism.

If we extend Kant's moral cosmopolitanism in the way that Reinhardt has proposed, so that it entails potentially very demanding duties to admit immigrants even when numbers are large, then as I have tried to show that this would pose a problem for the integrity of the state, one of the pillars of Kant's political theory. So we have a clash between morals and politics of the sort that Kant denied could arise if both were correctly understood. We could avoid it by favouring the narrow reading of the duty of hospitality, on which it requires that the stranger be admitted only when she faces an immediate risk of death or serious injury, and further qualifying it by saying that it ceases to apply if the stranger's presence, alongside others, threatens the integrity of the state. This would preserve consistency, but it might seem too harsh for present-day moral sensibilities, which are more accurately captured by the Refugee Convention that tells us that we cannot refuse asylum to anyone who would otherwise face a threat of persecution in their home state. So how can we

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KANT, *Perpetual Peace*, p. 112.

square the circle, remaining true to the spirit of Kant's political philosophy while also interpreting his moral cosmopolitanism in this more generous way?

We can only do so, I believe, by taking another leaf out of Kant's book, namely his discussion of 'The Right of Nations', where he argues that states have a duty to join together in an association whose purpose is to end all wars. In *Perpetual Peace* Kant calls this association a federation, but that term is misleading insofar as it suggests the formation of a federal state such as Canada, which is certainly not what Kant had in mind. And indeed in *The Metaphysics of Morals* he prefers to describe the association as a *congress* understood as «a voluntary coalition of different states which can be *dissolved* at any time, not a federation». <sup>26</sup> My Kant-inspired proposal, then, is that the regulation of immigration flows should be added to preserving peace as one of the aims of such an association, which initially at least is most likely to develop on a regional rather than global scale. The effect of this is to make the protection of refugees, in particular, into a collective task shared between a number of states, which would agree among themselves as how the task was to be divided up, covering both the process of vetting asylum applications and housing those who qualified to receive it. However membership of any such scheme would also remain voluntary, meaning that any member-state would retain the right to opt out if its citizens felt that it was being asked to carry a burden that was excessive. What does it mean to say that burden is excessive in such a case? We are likely to think first about the financial costs of integrating large numbers of immigrants, whereas if we are following Kant's lead the key question is whether the influx of strangers is such as to threaten the integrity of the state without the consent of citizens – in other words it would require rewriting the social contract without first obtaining evidence that the bulk of the citizen body was willing to accept the rewriting.

Under this interpretation of Kantian moral cosmopolitanism, the duty of hospitality, in circumstances of mass migration, becomes the duty to enter into an association of states to regulate migration, to negotiate in good faith within the association, and then to carry out what has been decided – say to process and/or resettle a certain number of refugees – subject to the condition that membership of the association remains voluntary, with states

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KANT, *The Metaphysics of Morals*, p. 120.

able to withdraw if unreasonable demands are placed on them. The threat of withdrawal can be misused, I acknowledge, but what we are considering here is the moral duty, which includes the duty not to use such a threat unless the demands being made on the state are indeed unreasonable.

So whereas Reinhardt ends her analysis by asserting that there is a virtually unlimited obligation, on the part of any one state, not to turn away refugees – unless it faces a San Marino-type situation where they cannot all be fitted in physically – my view is that the obligation is limited to the obligation to join and play one's part in such an association, and if other states are unwilling to comply, to make a conscientious attempt to carry out the task that would have been assigned had the association existed. If the general will of the citizens is to accept refugees in larger numbers than this, after having considered the likely consequences, then all well and good. But this agreement must be obtained through democratic deliberation, not presupposed.