

Politikos filosofija

KANT'S CRITICISM OF EUROPEAN COLONIALISM: A CONTEMPORARY ACCOUNT OF COSMOPOLITAN RIGHT*

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Abstract. *This paper tackles Kant's juridical arguments for criticizing European colonialist practices, taking into account some recent accounts of this issue given by Kant scholars as Ripstein, Cavallar, Flikschuh, Stilz and Vanhaute. First, I focus on Kant's grounding of cosmopolitan union as a juridical requirement stemming of the systematic character of the rational doctrine of right. Second, I pay attention to Kant's remarks about how the European nations ought to establish commercial relations with other nations in the world and how they should approach non-state people. I draw the conclusion that Kant's juridical-political writings should be consider as a forerunning corpus for furthering an anti-colonialist mind in the European philosophy of Enlightenment.*

Keywords: *Kant, colonialism, non-state people, cosmopolitanism, trade*

The Juridical Approach to Kantian Cosmopolitanism

This paper tackles Kant's juridical arguments for criticizing European colonialist practices, taking into consideration some

recent accounts of this issue given by Kant scholars as Arthur Ripstein, George Cavallar, Katrin Flikschuh, Anna Stilz and Liesbet Vanhaute. First, I focus on Kant's grounding of cosmopolitan union as a juridical requirement stemming of the systematic character of the rational doctrine of right. Second, I pay attention to Kant's remarks about how the European nations ought to establish commercial relations with other nations in the world and how they should approach non-state people. I draw the conclusion that Kant's juridical-political writings should be considered as a forerunning corpus for furthering an

* This article has been written with the support of the following granted research projects: *New Trustcm* (H2015-HUM-3466), funded by the Community of Madrid, *Pensamiento y representación literaria y artística digital ante la crisis de Europa y el Mediterráneo* (PR26/16-6B-3), funded by UCM/Santander, and the UCM 2017 Innovative Teaching Project № 169 *Contrapicados y puntos de fuga. Las otras historias de la historia de la filosofía*. I am grateful for the useful remarks and comments on this paper made by two anonymous reviewers of the journal *Problemos* and the Editor-in-Chief Nijolė Radavičienė.

anti-colonialist mind in the European philosophy of Enlightenment.

One of the first decisions that has to be made when one attempts to analyse Kantian considerations on the configuration of a global cosmopolitan community, involves sufficiently taking into account the fact that it is not a matter of any philanthropic accessory but of a demand derived from the final end of the right itself, which is no other than the establishment of a perpetual, lasting peace amongst peoples (MS, RL, AA 06: 355)¹². Thus, in virtue of this pondered conceptual architectonic, everything would seem to point towards cosmopolitan right being provided with its own legal margin of coercion. This, however, is hindered by more than one obstacle; for this right limits itself to declare as a duty the maintenance in the whole world of the conditions of possibility which enable secure and peaceful circulation of human beings, who may be moved by necessity – a shipwreck, a natural catastrophe, or even war (think of refugees) – or, more often, by the legitimate desire to offer commercial relationships to other peoples, although these relationships

can sometimes remain concealed under the veil of cultural contact. Kant is very clear in this respect: such a right provides no guarantee of becoming a guest of any human group – it is not a *Gastrecht* but a *Besuchsrecht*. This has led some scholars, such as Peter Niesen and Katrin Flikschuh, to talk about the predominantly communicative character of Kantian cosmopolitan right.

Kant's mentions of the encounters between the ambassadors of the European civilization and the non-European peoples, which may or may not have a state, expressly take into account the possibility that the host declines the visitor's offer of having a mercantile, cultural, or even civil contact, which would be impossible without at the same time avowing a noteworthy respect for the autonomy of those peoples which have not yet entered into the republican horizon. Now, the rejection of the visitor's entry into the host's own territory – not with the intention to live in it, but simply to visit it for some time and to become acquainted with it – must be accompanied by a decisive qualification. Kant holds that such a rejection would be acceptable only "if this can be done without destroying him" (ZeF, AA 08: 358), i.e., without destroying the visitor who knocks on a stranger's door, for if the former, due to a hardly foreseeable incident, found himself in danger of dying, the host should admit him until the danger dwindles. We should not deviate our attention from the fact that such a duty, which the visitor may not, due to the absence of a corresponding legal authority, demand, does not originate from any specific coercion contemplated by Kantian cosmopolitan right.

Various works have recently emphasized that the cosmopolitan union of peoples that Kant proposes is grounded on the precedent

¹ All quotations from Kant use the abbreviations published by the *Kant-Forschungsstelle* of the Johannes-Gutenberg Universität in Mainz, followed by the number of the Academy volume to which the text appertains, and the page number, both in Arabic numbers.

² The recently published, well-informed work by G. Cavallar (2015) proposes to redirect our attention, which he takes to be excessively unilateral, to the juridical character of Kant's cosmopolitanism, as well as other modulations of this conception of the human community beyond national borders. Even making sense of the legitimate extension of Kant's considerations on the global community which human beings should aspire to constitute, it seems to us that the pedagogical or even the moral aspects of Kantian thought do not receive sufficient momentum under this interpretation, which, however, does exhibit the formulation of cosmopolitanism as a part of public right, which moreover crowns its systematic structure.

provided by the practice of trade (cf. Vanhaute 2014) – carefully distinguished from its regrettable colonial perversion, a practice consisting in the subjection of the other, and which has as its perverse ideal a universal monarchy that suffocates any appearance of truth, virtue, and beauty (ZeF, AA 08: 367). This association, however, should not come up as a surprise, given that the link between trade and the globalization of the relations amongst peoples was an 18th century *tópos*, as manifested in the works of David Hume or Adam Smith, not to mention less known authors, who are equally relevant in this regard, such as William Robertson (see, e.g., López Sastre 2015).

In the communication that peoples are forced to carry out while attempting to trade Kant finds a magnificent precedent when it comes to entering into *peaceful relations* with other human groups – a story plotted in the heat of agriculture³ and the demand of salt and iron (ZeF, AA 08: 364). But it would make no sense to rely uniquely on such a precedent in order to bring about the republican *forma regiminis*. That would be tantamount to asking the accidents to constitute the substance. And Kant seems to be well

³ Kant notes, along the way in this genetic consideration so close to Rousseau's *Second Discourse*, that of all ways of life that of the hunter is the one that is the most opposed to the establishment of a republic, since through it families become strangers to one another, and are forced to isolate from one another in extensive forests, even becoming "hostile since each needs a great deal of space for acquiring its food and clothing" (ZeF, AA 08: 364-5, footnote). Naturally, there is a progression at play. All this leads Kant to interpret the biblical passage which takes up Moses's prohibition against eating blood (Genesis 9: 4-6) as a dissuasive means against *the hunter's way of life*, which includes the practice of eating raw flesh, a practice so contrary to the emergence of a just and dignified political life. In Kant's thought such parallels between forms of life and customs and, on the other hand, political forms, are constantly drawn.

aware of that. As previously said, a human being always has the right to reject another human being's trading proposal, especially if the former has no motivation for trusting too much in the latter, which also implies that the former is the sole responsible for his or her own actions and omissions in case he or she allows oneself to be convinced by the visitor.

That is not an impediment for the claim that, if a people that lives and stubbornly persists in the state of nature "cannot avoid living side by side" (MS, RL, § 42, AA 06: 307) with another subject or human group, then the latter could legitimately "coerce [the former] either to enter with [the latter] into a condition of being under civil laws or to leave [the latter's] neighbourhood" (ZeF, AA 08: 349, footnote). Kant's texts refer somewhat indeterminately to the historical concretion of those situations in which the passage from the state of nature to the civil state is peremptory, a transit which can take many forms and adopt many modes of social organization. We believe it is helpful to dwell on the causes of such ambiguity. The law is the logical destiny of every coexistence amongst human beings, but, on the other hand, it is not legitimate in Kant's view that a people should become for another people the paternalistic cause of its entering into a political context. Indeed, the interdiction contained in the fifth preliminary article of *Toward Perpetual Peace* refers to a state's possible interferences in another state's affairs, which could be interpreted as opening up the possibility for an alleged duty to paternalistically dominate peoples in the state of nature, for the sake of their urgent subjugation into the civilizing process.⁴ Kant, however, is unequivocal in this respect: the

⁴ This argument is widely used by Waldron (2011) and Applbaum (2007).

colonists' arguments remind only too much of the revolutionaries' impulsive behaviour, especially of their appeal to the use of a minimum of violence for the sake of a *télos* which would be highly beneficial to all parties involved (MS, RL, § 62, AA 06: 353).

In his *Reflections on Anthropology*, Kant discourages states from incurring in the *nationalist nonsense* (*Nationalwahn*) (Refl. 1353, AA 15: 591), which, blindly instinctive, unduly leads to consider one people as superior to others, using the argument that to declare a stranger *hostis*, i.e., treating, as the Greeks did, the stranger as a barbarian with whom no principle and not even the quality of humanity is shared, corrodes the foundations of the republic and promotes hostility, envy, and clash of interests (V-MS/Vigil, AA 27/2: 674), which contravene the republican commitment to the wellbeing of the world we share. Such a hostile disposition towards other peoples goes hand in hand with the colonialist behaviour denounced in *Towards Perpetual Peace* and championed by world powers which brag about being moved by piety and being soldiers of orthodoxy (*Rechtgläubigkeit*), “while they drink wrongfulness like water” (ZeF, AA 08: 359).

Contrary to the allegedly humanitarian arguments with which the defenders of colonialist policies respond to those who denounce them, claiming that the exportation of civilization should rank above the recourse to some violence, Kant holds, as we saw, that such an excuse reminds us too much of the one wielded by the revolutionaries in order to reform the constitution through the use of force, for, according to him, the legitimate respect owed to the juridical condition of uncivilized peoples cannot be annulled. Economic and civiliz-

ing colonialism thus exhibits a “veil of injustice (Jesuitism)” (MS, RL, § 15, AA 06: 266), which would take any means to supposedly honourable ends as good ones.

The lack of hospitality displayed by traders sent to other continents by European powers is caused by the ill-fated combination of politics, economics, and exploitation that Hannah Arendt will portray as the seed of imperialism. The injustice perpetrated by turning a right to visit into a right of conquest legitimizes in Kant's eyes the hostile reaction of countries such as China (in 1757) and Japan (in 1635) towards the incursions of European trading enterprises, the tipping point of a fully-fledged military and cultural invasion, and their hostile reaction towards the ideological colonization carried out by Christian missionaries. Thus, the limitation of *access* (*Zugang*) and the prohibition of *entrance* (*Eingang*) to foreign visitors – according to *ius incolatus* (MS, RL, § 62, AA 06: 353) – are praised as legitimate measures, which aspire to protect the sovereignty of the Asian Empires, which, on the other hand, would surely deserve a harsh criticism when analysed from the perspective of Kantian republicanism. Kant's understanding attitude towards those isolationist measures proclaims that commercial and communicative relations in the globe should be constructed on grounds respectful of the property and sovereignty of each people.⁵ But the worst aspect of colonialism is not just the violence amongst peoples that these practices spread out all over the planet, but the technical bankruptcy of most of the trading societies involved in the ambitious project, which betrays that it was a mere bait designed to subjugate other human beings, and whose

⁵ Cf. Niesen (2007: 104).

dramatic collateral effect was the formation of sailors for navy fleets which nurture the military conflicts in Europe.

Thus, cosmopolitan hospitality acquires, precisely, the shape of an obstacle to such abusive practices, and, for this, it becomes necessary to attend to its connection to the promotion on a global scale of the spreading out of the republican constitutional power. Hospitality does not mean a costly *right to lodging*, but an acceptable *right to visit*, which is based on the assumption that no human being is more entitled than any other to find herself in a particular corner of the world, which in many ways reminds of the sole human right coined by Arendt as *the right to have rights*.⁶ In this manner, Kantian cosmopolitan right escapes the vocabulary of coercion precisely because it is grounded on the previous compliance of one condition, namely, the existence of a sufficiently solid network of republican states.

Colonialism would give way to true juridical progress if the idea, under the pretext of a supposed right to conquest, that distant peoples should become part of the civil union of the occupying force, were abandoned, and if the idea of promoting by means of culture and education that all peoples together comply with the postulate of public right were put in its place.⁷ The duty to develop one's own capacities cannot be paternalistically imposed on any human group, which is completely entitled to make of agriculture, shepherding, or hunting, its

main mode of subsistence, and to adopt either a sedentary or a nomadic way of life, since "the way they want to *live* on their land is up to their own discretion (*res merae facultatis*)" (MS, RL, § 15, AA 06: 266)⁸, that is, it would concern the right, optional for the subject, to do or fail to do something, without any possible coercion. Thus, the civilized peoples would not be morally superior to those considered savages on account of their ways of life, as has been pointed out by Sankar Muthu in opposition to those interpretations that attempt to draw a connection between Kantian cosmopolitanism and a view that legitimizes colonialist imperialism.

Nature's rough ways of inviting peoples to organize themselves and, above all, to utilize technique as a bulwark against natural violence (KU, § 67, AA 05: 379)⁹, have the advantage that they do not raise the suspicion of paternalism. But nothing is specified in them as regards the form of political organization that a people should choose. All that is under discussion at the moment is where does political organization stem from, and why is it indispensable for the survival of peoples? The above passage offers a precious opportunity to point at the natural connection between violence [*Gewalt*] and the origins of civil society that underlies the Kantian postulate of public right, a point in which Kant reveals himself as being entirely in agreement with Rousseau. The history of freedom should not be understood as a continuous ascent, but rather as a modification

⁶ Cf. the decisive articles by Arendt (1949: 754-770) and (1946: 138-141), taken up to a great extent in the better-known pages of *The Origins of Totalitarianism*, Part II, Ch. 9, "The Decline of the Nation-State and the End of the Rights of Man", pp. 269ff. Also cf. the appropriation of these writings by Benhabib (2004).

⁷ Cf. Applebaum (2007: 394) and Muthu (2000: 199s.).

⁸ Cf. TP, AA 08: 282. Emer de Vattel deals with these rights in his *Droit de Gens* and Kant defines them as *adiaphoron* from the moral point of view in MS, RL, AA 06: 223. Cf. the useful comments by Muthu (2014: 80-81).

⁹ Cf. Anth, AA 07: 269.

of the coordinates in which human existence passes by as the result of great chronological leaps, which for instance substitute a period of hardship and discord for one of peace and tranquility (MAM, AA 08: 118). Kant does not understand historical progress as an absolutely straightforward course, which does not mean that he endorses a terrorist conception of history – a conception he decidedly condemns, in spite of the fact that Providence serves him as a constant infrastructure. There are always exceptions, and the sheer “principle of proximity”, as Jeremy Waldron has called it (Waldron 2011), does not justify any sort of acceleration of the process that ends with the arrival of cosmopolitanism on Earth. It suffices to recall the fifth preliminary article of *Toward Perpetual Peace* and its explicit prohibition of a state’s interfering in the constitution and government of another state by use of violence.

In his *Conjectural Beginning of Human History* Kant points out that the Arab Bedouins have managed to flee despotism not on account of their republican consciousness, but because “in a pastoral people, where no one has landed property which they would have to leave behind, every family which does not like it can very easily sever itself from the tribe in order to strengthen another one” (MAM, AA 08: 120)¹⁰. The key to the delay of a people’s entrance into a juridical state lies, therefore, in a people’s capacity to keep itself safe from other peoples in a sufficiently wide territory. It is naturally a transitory situation which, however, still generates its own permissive right. Concerning one particular hunting people – the Olenni-Tunguses – Kant claims

in *Anthropology from a Pragmatic Point of View* that the high esteem that they felt for their own liberty had separated them from other tribes (ApH, AA 07: 269).

Such a remark does not in the least modify Kant’s view on what makes life worth living, also in a communitarian key, as shown in his contempt towards the Robinson Crusoes and the longed for Golden Age of a lawless freedom (MAM, AA 08: 122). He simply prohibits a people to snatch from another one the share in political agency that corresponds to each of them on its route towards the form of a state. According to Kant, this political agency brings with it entire specific rhetoric, which legitimizes the representation of the whole *civitas* as an offspring of the same *alma mater*, namely, the republic, which is considered as a family that generates the same mechanisms of differentiation from other plebeian groups as the ones that were customary in the Roman world. The *Doctrine of Right*’s §53 is fairly eloquent in this respect:

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*), whose members (citizens of the state) are of equally high birth and do not mix with those who may live near them in a state of nature, whom they regard as inferior; the latter (savages), however, for their own part consider themselves superior because of the lawless freedom they have chosen, even though they do not constitute states but only tribes. (MS, RL, § 53, AA 06: 343)¹¹

¹⁰ Cf. Muthu’s comments on the resistance of non-agricultural peoples to civilization through coercion (2014: 76ff).

¹¹ Cf. Lazos’s interesting comments on this passage and on the republic as a “principle of normative self-constitution” in his recent work “Contextos del cosmopolitismo kantiano” (Rodríguez Aramayo and Rivera 2018: 7ff).

It is worth highlighting the way in which the procreation analogy appeals to a paternal image, whereas the republican constitution of a people utilizes a maternal image, which turns citizens into members of the same nation, proud to have freed themselves of the pathologies and injustices which get intensified in the savage liberty. Kant never stops referring to both representations as poetic fictions, although the one which possesses an “intellectual and political” reach, to wit, the second one, has a clear prelacy with respect to the naturalization present in the first one. The poetical dimension of the political, which is precisely what allows the configuration of metaphors, is portrayed by Kant as a symptom of what he calls “the infinite distance between rationalism and empiricism”, as he formulates it in a letter to Beister, the editor of the *Berlinische Monatsschrift*, in April 1794 (Br AA 11: 496-7). As Kant tells us in that same letter, apologists of those who in *Toward Perpetual Peace* are called *political moralists*, such as Rehberg – and Möser could be added to the list – seem in effect to make room in their writings for a prohibition to object anything in their own argumentation, for any attempt to refute them would turn out to be too dangerous: the right is grounded on the existing law, they refuse to evaluate its rationality, and they deem any such enterprise as vain, since the decision in favour of the ruling party has already been made beforehand (Br AA 11: 496-7). They are lawyers who pervert the law – they put the cart before the horse, we are told in *Toward Perpetual Peace* (ZeF, AA 08: 376) – and sacrifice everything to the conservation of their own privileged relation to the powerful, uttering sophistical theses supported merely by the use of force

and by submission to the constituted power, which is always right (ZeF, AA 08: 373-4).

Now, this is still compatible with Kant’s view that a people can, during a certain period of time, keep at bay those physical constrictions that force it to live in proximity with others, i.e., that it can temporarily remain on the fringes of a social group.¹² As we saw, in his *Conjectural Beginning*, he claims that the Bedouins of Arabia were able to flee despotism not on account of their republican consciousness but because as a shepherding people they lacked landed property (MAM, AA 08: 120). The political theory that comes out of transcendental philosophy is therefore attentive to material conditions of historical nature, but it obliges us to subordinate these material conditions to purely formal considerations, such as the ones that draw the distinction between the legitimate and the illegitimate contacts amongst peoples, independently of whether they have reached political maturity.

Thus, those remarks which betray a certain tolerance, though never admiration, to the anarchistic liberty in which some peoples live do not in the least modify Kant’s stance towards what makes the life worth living, also in a communitarian key, as it is expressed in his aforementioned severe judgment on the nostalgia for the Crusoes and on the identification of the existence of non-political peoples with an alleged Golden Age (MAM, AA 08: 122). Those remarks simply forbid a people’s

¹² Cf. TP, AA 08: 289: “That union which is in itself an end (that each *ought to have*) and which is therefore the unconditional and first duty in any external relation of people in general, who cannot help mutually affect one another, is to be found in a society only insofar as it is in the civil condition, that is, constitutes a commonwealth”. Also cf. Muthu’s (2000: 207ff) interesting comments in this regard.

snatching from another one its share in political agency in its route towards becoming a civil society.

Colonialism, Trade, and the Right to Property

The attitude towards non-state peoples that we have been analysing may come up as a surprise in the light of a certain disseminated reading of Kantian republicanism. However, it is, in our view, the logical consequence of the legal structure of formal reciprocity that lies at the heart of Kantian cosmopolitan right.¹³ Traditional hospitality rights, or, if one prefers, the traditional law of peoples, was in fact a dangerous means for the ideological invasion of other peoples, using as an excuse the deficiencies in their modes of organization. Moreover, the public character of cosmopolitan right has rarely been defended. Only by mistake can cosmopolitan right be formulated in terms of the relationship between an individual and a state, and this is manifest in the fact that traders, writers, missionaries, or colonists which arrive to the coasts of other continents assume themselves as ambassadors of a concrete state, and they know that any legitimate contact with other peoples should be based on reciprocity.¹⁴ Arthur Ripstein has pointed out that a considerable part of Kant's critique of colonialist practices is grounded in the demand that traders, missionaries, and other emissaries of the European powers in general, be respectful of the law that should regulate their contact with the so-called *savages*. A passage from the *Doctrine of Right* makes an unequivocal

demand for a juridical behaviour that should be imposed upon distant peoples which unexpectedly enter into contact with one another (MS, RL, § 62, AA 06: 353).¹⁵

Kant's argument does not specify whether the mode of government in those distant peoples separates powers or is in any way more or less similar to the republican mode. Katrin Flikschuh rightly claims that in this kind of arguments Kant is presupposing a certain institutional context, frankly more flexible than the republican institutional framework, which governs the relationship between colonists and indigenous peoples (cf. Flikschuh 2014: 279). Only if the visitor encounters a territory dominated by anarchy would he be entitled to intervene by helping one of the contending parties, although this should never be done with the purpose of annexing the territory to the motherland, but rather in order to support that part of the population which attempts to free itself from the yoke of a sheer force with no law or freedom.

Far from treating the republican mode of government as the only juridical-political form to be taken into account in the doctrine of right, Kant – as Ripstein (cf. his 2014: 165ff), and other scholars such as Katrin Flikschuh, Anna Stilz or Liesbeth Vanhaute point out – at least in the 90's, shows a noteworthy respect towards the political institutions of other peoples, which do not conform to republican standards. What is decisive for their analysis is that there is no political ground of legitimation for the utilization of lies, or for proceeding to an invasion while attempting to reach agreements with other peoples, whether they are civilized or savages. In *Toward Perpetual Peace* Kant enumerates various cases in

¹³ In this approach, we agree with Flikschuh and Ajei (2014: 233ff).

¹⁴ Interesting remarks on this point are to be found in Flikschuh and Ajei (2014).

¹⁵ Cf. Banner (2005) and Vanhaute (2014: 136-139).

which peoples behave in an inhospitable manner towards others. Thus, the fact that the inhabitants of the Barbary Coast rob ships in adjacent seas and enslave stranded seafarers, or that the Arabian Bedouins regard the approach to nomadic tribes as a right to plunder them, are declared to be contrary to natural right (ZeF, AA 08: 358).

Also deserving reproach from the point of view of natural right – a term whose use in Kant would justify a work of its own (cf. Williams 2014) – is the pretext put forward by Great Britain for introducing foreign soldiers into the East Indies, which brought the oppression of the inhabitants as well as “the incitement of the various Indian states to widespread wars, famine, rebellions, treachery, and the whole litany of troubles that oppress the human race” (ZeF, AA 08: 359). The *Doctrine of Right* acknowledges the right of hunting peoples to oppose attempts by other shepherding or farming peoples to change the formers’ form of life, just as a farming people can refuse to let colonists make use of their land. The thesis at the heart of all such considerations is that each people should decide for itself the way in which it wants to establish itself on its land, “as long as it remains within its boundaries” (cf. MS, RL, § 15, AA 06: 266). Finally, a further passage from the *Doctrine of Right* denounces “the veil of injustice” to which colonizing powers usually appeal in order to justify the occupation of a country with the intention of incorporating it into the civilized nations.¹⁶

Kant’s claims evidently highlight the nuances that the existence of non-state peoples introduces into the Kantian doctrine of pub-

lic right. No foreign civil union can coerce a people to enter into a civil condition, and each people is granted the right to the legitimate possession of its land, provisional as this right may appear in the context of juridical argumentation, and in spite of the fact that such a right to property has not been sanctioned by any public authority, according to the demands of the republican state structure. Kant does, in fact, recognize modes of property different from the one specific to the European bourgeois, namely, individual property (MS, RL, § 15, AA 06: 265-6). Appropriation does not require that property be individual, as is shown by the forms of appropriation and utilization of movable things amongst nomad tribes, dedicated to hunting or shepherding. As pointed out in the passage just quoted, peoples which resist the coercion of other peoples, i.e., of those trying to force them to change their forms of life or to abandon their lands, are the legitimate owners of those lands, and could therefore transfer them to a different will only by means of a contract. All this is in agreement with the conception of occupation, as original appropriation, in terms of an original act of the will (MS, RL, § 14, AA 06: 263, cf. also § 6, AA 06: 251). This scheme of appropriation does not merely refer to the history of Europe, but to global history. The so-called savage peoples live under a “lawless freedom” (ZeF, AA 08: 343) and are composed of tribes which do not know the basic institutions of public right, such as tribunals or public administration. Nor do they monopolize coercion, as may be expected from a state.¹⁷ Undoubtedly, taking into account Kant’s view that it

¹⁶ Cf. MS, RL, § 15, AA 06: 266. Also cf. Stilz’s (2014: 201-202) comment on all these passages. On the ideology that accompanies colonialist practices, one may profit from consulting Williams (1992).

¹⁷ Cf. Flikschuh (2014: 275) for an openly critical stance towards Appalbaum’s use of cosmopolitan right as the demand to force unwilling people to enter into a civil state.

is necessary that a public authority declares the provisional property titles of unilateral origin to be preemptory, those indigenous peoples which insist upon not entering into a civil state, simply because they can afford to remain sufficiently distanced from other human groups and at ease in their own space, incur in serious mutual injustice. But under no circumstance would it be justified that a third people paternalistically attempted to oblige them to form a state.¹⁸ Savage peoples seem to have the benefits of a *lex permisiva* to ground their *prior apprehensio* with respect to the visitors' pretensions (MS, RL, § 2, AA 06: 247). In fact, the savage people's claim to physical possession of their land – the advantage of the *beati possidentes* authorized by the juridical postulate of practical reason – works as a presumption of juridical legitimacy, whose final stage would be the constitution of a civil authority¹⁹, but which already in this provisionally valid stage, as a property right, claims that no other people should be granted the right to utilize the possessed thing. This is why Kant claims that “to interfere with the use of a piece of land by the first occupant of it is to wrong him” (MS, RL, § 6, AA 06: 251).

These considerations suggest that Kant had a fairly clear appreciation of the gradual character, from the historical point of view,

¹⁸ We entirely share Stilz's view (2014: 207) on this point.

¹⁹ Cf. MS, RL, § 9, AA 06: 257: “The way to have something external as one's own *in a state of nature* is physical possession which has in its favor the rightful *presumption* that it will be made into rightful possession through being united with the will of all in a public lawgiving, and in anticipation of this holds *comparatively* as rightful possession.” On this text, see Stilz's comment (2014: 218). Pagden recalls that, according to Kant, “every people constitutes a ‘country’ [Land] or *territorium*” (2014: 20).

of mankind's leaving the state of nature in order to enter a rightful civil state: “such [original] acquisition will always remain only provisional unless this [original] contract extends to the entire human race” (MS, RL, § 15, AA 06: 266). This also suggests that the postulate of public right in Kant is not in the least conducive to a legitimation of the invasions promoted by the civilizing enthusiasm, but, quite on the contrary, that mutual adaptation turns out to be the most adequate framework to think about the relations between European envoys and those who will be called “savages”. Flikschuh has openly stated as much, and we agree, in a recent publication, in which she discusses the more or less enthusiastic positions on cosmopolitanism (Flikschuh 2014: 280).

Conclusion

Kant is not as explicit in his theses about non-European cultures, but in spite of that, or, perhaps, precisely because of that, his reflections may have wide theoretical scope and turn out to be fertile. Undoubtedly, Kant's approach focuses much more on the juridical difficulties encountered by the European powers while trying to justify the occupation and annexation of territories in other continents, which leads him to bring to light the rights of non-state peoples with respect to their territories. As underscored by Flikschuh, the most characteristic feature of Kantian juridical cosmopolitanism is its attention to form, i.e., to the mere formality of the contact which should obtain amongst different peoples, independently of their degree of civil maturity. Kant does not take up any of the substantial rights dear to the fathers of the *ius gentium* at the School of Salamanca, in which he sees precisely

a battery of excuses useful to colonialist Jesuitism. In spite of taking the republican model to be the best-balanced system of duties, rights, and guaranties for the citizen, Kant rules out that it could be just to export this political structure by appealing to force, especially if there is no manifest cohabitation which forces peoples to integrate a civil union. The margin available to a people for organizing its own system of laws is evidently wide, just as the realm of *adiaphoron* in a moral sense, when we look into the social autonomy of the different nations. Somehow, Kant seems to content

himself with asking the ambassadors of the Western civilization not to enhance even more the size of their already connatural putrid stain under the pretext of liberating and emancipating allegedly backward peoples from themselves. There are no evaluative judgments about the superiority of agricultural peoples with respect to the hunting ones, as if they were only two different stages in the development of the relationship between the human species and nature. Only an evolution of ways of life and political models, which no human being can afford to turn into a duty for others.

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KANTO EUROPINIO KOLONIZMO KRITIKA: ŠIUOLAIKINĖ KOSMOPOLITINĖS TEISĖS TEORIJA

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Santrauka. Šiame straipsnyje nagrinėjami Immanuelio Kanto juridiniai argumentai prieš Europos kolonijinę praktiką, atsižvelgiant į kai kuriuos pastarojo meto aiškinimus, kuriuos pateikia tokie Kanto tyrinėtojai kaip Arthuras Ripsteinas, George'as Cavallaras, Katrin Flikschuh, Anna Stilz ir Liesbet Vanhaute. Pirma, susitelkiama į Kanto kosmopolitinės sąjungos pagrindimą kaip teisinį reikalavimą, kylantį iš racionalių teisės doktrinos sisteminio pobūdžio. Antra, atkreipiamas dėmesys į Kanto pastabas, kaip Europos tautos turėtų užmegzti komercinius santykius su kitomis pasaulio tautomis ir kaip jos turėtų elgtis su savo valstybės neturinčiomis tautomis. Daroma išvada, kad Kanto teisiniai ir politiniai raštai turėtų būti laikomi antikolonistinės minties Europos Apšvietos filosofijoje pirmtakais.

Pagrindiniai žodžiai: Kantas, kolonizmas, nevalstybiniai žmonės, kosmopolitizmas, prekyba

Iteikta 2018 03 11

Priimta 2018 07 10