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Kant's Nomads: Encountering Strangers¹

Los nómadas de Kant: encontrando extraños

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Abstract

There is a tendency within the literature to decry Kant as either a proto-imperialist or as a proto-democrat in relation to his views on distant strangers. I here take an alternative view, arguing that Kant's cosmopolitan morality is considerably more context-sensitive than is often assumed. More specifically, I argue that Kant's encounter with American nomads on the final pages of his Doctrine of Right reflects a nuanced reading of European settlers' requisite comportment towards them: Kant neither endorses a universal duty of state entrance nor does he place nomads beyond all possible moral engagement with European settlers.

Keywords

nomads, property, reflexive/recursive justification, state-entrance, strangers

I.

¹ Early versions of this article were presented at Kant conferences at the University of Keele (2014), the University of Leuven (2015), the University of Sussex (2015) and Memorial University (2016). I would like to thank participants at all of these events for their questions and suggestions for improvement. Particular thanks on both counts go to Lucy Allais, Sorin Baiasu, Karin de Boer, and Joel Madore.

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Kant's cosmopolitanism has been variously interpreted as an apology for Enlightenment cultural and political imperialism,² as a searing critique of early European colonialism,³ as anticipating transnational political movements and developments such as the post-WWII emergence of the European Union,⁴ and as underwriting a morally charged liberal interventionism whose endpoint is the coercive creation of a world order of liberal states.⁵ The plausibility of attributing to Kant's writings such a diverse range of mutually inconsistent positions may seem doubtful. Then again, it is the fate of historically influential thinkers and their works to remain subject to perennial interpretive contestation. That this should be so is a function of interpreters' own shifting interests as much as it is due to obscurities, ambivalences and inconsistencies in those works themselves. I do not believe that we can ever get down to what a historical thinker *really* meant when he said this or wrote that in the context in which he said or wrote it.⁶ This is not to say that we should not take an interest in and inform ourselves about the relevant historical contexts. Nor is it to deny that we should read the relevant texts closely – indeed, painstakingly – and that we should strive for greatest possible systematic consistency and plausibility. Far too much of what currently passes for 'Kantianism' is based on no more than superficial and indeed second-hand acquaintance with Kant's works.⁷ Still, not even the historically most informed or the textually most accomplished Kant scholar can in the end avoid reading Kant's works through his or her own eyes. In fact, this is how it should be if Kant, the historical thinker, is to resonate with us in our own times. The fault lies not in the fact that we interpret Kant's works from the perspective of our own concerns but in our failure to be mindful of this fact.

² See, for example, Stuart Elden and Eduardo Mendieta (eds.) *Reading Kant's Geography* (New York: SUNY 2011); Thomas McCarthy, *Race, Empire, and the Idea of Human Development* (Cambridge: Cambridge University Press 2009); James Tully, *Public Philosophy in a New Key, Volume II: Imperialism and Civic Freedom* (Cambridge: Cambridge University Press 2008).

³ See, for example, Sankar Muthu, *Enlightenment Against Empire* (Princeton: Princeton University Press 2003), Pauline Kleingeld, *Kant and Cosmopolitanism. The Philosophical Ideal of World Citizenship* (Cambridge: Cambridge University Press 2012).

⁴ Jürgen Habermas, 'Kant's Idea of Perpetual Peace with the Benefit of 200 Years' Hindsight' in James Bohman and Matthias Lutz-Bachmann (eds.), *Perpetual Peace: Essays on Kant's Cosmopolitan Ideal* (Cambridge, MA: MIT Press, 1997), 113-53.

⁵ See, for example, Arthur Isak Applbaum, 'Forcing a people to be free', *Philosophy and Public Affairs* 35 (2007), 359-400; Laura Valentini, 'Human Rights, Freedom, and Political Authority', *Political Theory* 40 (2012), 573-601.

⁶ See Allen Wood, 'What Dead Philosophers Mean' *Unsettling Obligations. Essays on Reason, Reality, and the Ethics of Belief* (Stanford: CSLI Publications 2002), 213-44.

⁷ O'Neill, 'Kant's Justice and Kantian Justice' in her *Bounds of Justice* (Cambridge: Cambridge University Press 2002), 65-80.

My concern in this article is with Kant's ability to countenance deep and permanent differences in culture, practices, beliefs. This concern arises against what strikes me as an increasingly belligerent interpretive approach that associates Kant's cosmopolitanism with forms of liberal internationalism that range from overly insistent human rights advocacy, to arguments in behalf of a duty to establish specifically liberal forms of governance, to calls for the coercive imposition of liberal regimes in non-liberal contexts. This trend towards liberal belligerence may itself be an outgrowth of disappointed hopes for a more peaceful cosmopolitanism that envisaged the gradual spread of cosmopolitan principles by way of reasoned self-enlightenment – a position also standardly associated with Kant.⁸ The oblique shift from peaceful spread to coercively imposed liberal universalism is one instance of an insufficiently reflexive interpretive stance. It is not the only one – witness the mentioned readings that claim to find in Kant's writings conclusive and incontrovertible evidence of his philosophical racism and his political and cultural imperialism.

The first thing I want to suggest is that Kant's actual position, so far as we can determine it at all, was likely a good deal more ambivalent than either of these overly self-assured interpretive trends suggest. The Enlightenment period itself was hardly either unambiguously 'good' or unambiguously 'bad'.⁹ Nor does it make much sense to ascribe to individual thinkers caught up within that period – as we are in ours – either an unambiguously racist or imperialist or an unambiguously unblemished moral and political record. Though a trenchant critic of Kant, David Harvey's final assessment is judicious, that his racism, sexism and proclivities towards cultural superiority notwithstanding, Kant retained an unusually lively and indeed searching interest in all things human throughout his philosophical career, including an interest in the culturally unfamiliar.¹⁰

The second thing I want to suggest is that, given Kant's permanent interest in foreign peoples and cultures, it is at least likely that his thoughts on these matters matured

⁸ This holds especially for his earlier political teleology. For explorations, see the various contributions in Amelie Oksenberg Rorty and James Schmidt (eds.), *Kant's Idea for a Universal History with a Cosmopolitan Aim. A Critical Guide* (Cambridge: Cambridge University Press 2009).

⁹ Cf. Russel Berman, *Enlightenment of Empire? Colonial Discourse in German Culture* (University of Nebraska Press, 1998).

¹⁰ David Harvey, *Cosmopolitanism and the Geographies of Freedom* (New York: Columbia University Press 2009), 17-36.

over time. As Pauline Kleingeld has shown in some detail, the Kant of *Perpetual Peace* and the *Doctrine of Right* no longer held quite the same views as the Kant of 'On Feelings of the Beautiful and the Sublime' or the Kant of the two essays on human races.¹¹ It is highly plausible that the mature Kant, who had been around for a while, would have developed a much more circumspect attitude towards the exploits of European explorers and voyagers whose missions to foreign shores took an increasingly sinister turn. One needn't go so far as Kleingeld herself does when she concludes that Kant transformed himself from an inconsistent universalist into a consistent egalitarian who envisaged a global society of peoples all governed by the same principles of right and justice. That conclusion may present its own difficulties with regard to the possibility of acknowledging and accommodating cultural differences. On that score, at least, an attitude of permanent reflexive openness may be more appropriate.¹²

In what follows, I shall argue that such an attitude of reflexive openness may be at work in the final pages of Kant's *Doctrine of Right* – his most complete work in political philosophy. In the brief section on 'Cosmopolitan Right' Kant there comments on European settlers' encounters with nomads¹³ – he most likely has in mind Europeans' encounters with American Indians in particular. Kant's remarks on the morally appropriate form of such encounters put into question the universal validity of his tortuously argued position earlier on in the same text, according to which all have a coercively enforceable duty of state entrance. While early sections of the *Doctrine of Right* – those relating to Kant's property argument – leave the reader in no doubt that the duty of state entrance is both unconditionally valid and coercively enforceable, the final section on cosmopolitan right unambiguously denies European settlers' right to compel non-sedentary peoples – nomads – into a civil, i.e. settled, condition.

¹¹ Pauline Kleingeld, 'Kant's Second Thoughts of Race', *The Philosophical Quarterly* 57 (2007), 573-92. Contrast Robert Bernasconi, 'Kant's Third Thoughts on Race' in Elden and Mendieta, op. cit., *Kant's Geography*, 291-318

¹² Cf. Karl Ameriks, *Kant and the Fate of Autonomy. Problems in the Appropriation of the Critical Philosophy* (Cambridge: Cambridge University Press 2000), 37-80.

¹³ I speak of 'nomads' rather than the currently politically correct term, 'stateless peoples' because I believe that the passage in question specifically addresses itself to settlers encounter of nomads – i.e. non-sedentary pastoral peoples such as 'the Hottentots, the Tungusi, and most of the American nations'. By contrast, not all non-state peoples are necessarily nomadic peoples. Besides, I find nothing derogatory about the term itself – at any rate, I here intend its meaning to be purely descriptive, i.e. referring to a non-sedentary way of life and culture.

The passage in question, which I shall cite in full below, has attracted much recent attention. Some interpreters note Kant's general anti-colonial stance in that passage; others point to its apparent inconsistency with Kant's earlier affirmation of an enforceable duty of state entrance.¹⁴ The broad consensus is that even if Kant can consistently deny Europeans' right to compel nomads into a civil condition with one another, it is not so clear that he can consistently deny such a duty on the part of nomads themselves. I shall propose that he can deny this – indeed, that he must. Given Kant's derivation of the duty of state entrance from the act of acquisition, and given his view of nomads as pastoralists who raise no private property claims to any particular portion of the lands they use, Kant cannot ascribe to them a duty of state entrance. So on my account, the Kantian duty of state entrance is less than universal in scope: its incurrence depends on a prior act of acquisition the commission of which is itself contingent.

The proposed interpretation faces systematic difficulties: how can a duty that is valid a priori be less than universal in scope? I admit that this may be a formidable objection to my proposed interpretation.¹⁵ If I am inclined to bite the bullet, this is because not doing so yields an even larger difficulty – that of getting the nomads to understand that they have valid reasons for state entry. I take Kant's philosophical thinking in general to proceed from a first-personal experiential standpoint. Kant's mind-dependent transcendental method of justification typically regresses from a first-personally affirmed experiential premise to its mind-dependent possibility conditions.¹⁶ Distinctive about this strategy, at least for present purposes, is its reliance on subjects' own reflexive insight into the non-experiential presuppositions of experiences they in fact have. Kantian justification is addressed to those, and only those, whose own experiences are relevantly at issue.¹⁷ By the same token, the first-personal stance renders Kant's method incapable of delivering reasons for belief or action that are mind-independently valid, hence third-personally assignable. In the case at hand, so long as the first-personally affirmed premise, 'I raise

¹⁴ See, for example, Peter Niesen, 'Colonialism and Hospitality', *Politics and Ethics Review* 3 (2007), 90-108.

¹⁵ Alternatively, it may not: the duty may simply be restricted in scope. Cf. Onora O'Neill, *Towards Justice and Virtue. A Constructive Account of Practical Reasoning* (Cambridge: Cambridge University Press, 1996), 91-121.

¹⁶ Cf. Karl Ameriks, 'Kant's Transcendental Deduction as a Regressive Argument', *Kant-Studien* 69 (1978), 273-85.

¹⁷ On the first-personal justificatory standpoint of Kant's moral philosophy, see also David Velleman, 'The Voice of Conscience', *Proceedings of the Aristotelian Society* 99 (1999), 57-76.

property claims against others', fails to resonate with nomadic experience, no amount of philosophical huffing and puffing will yield a mind-independently valid duty of state entrance for nomads. The corollary is that the duty of state entrance, while unconditionally valid for those for whom it is a duty, is not therefore a duty for everyone. And this may mean that Kantian universality claims will have to be rethought. I shall not engage in such rethinking here – I shall be content to show that Kant has the resources to acknowledge and to accommodate deep cultural differences in ways of life and forms of political association. In what follows I shall argue, first, that given Kant's general strategy of justification, he cannot hold nomads to be under a duty to enter into the civil condition with one another. Second, given that the passage under consideration occurs in the section on cosmopolitan right, nor can Kant hold nomads to be under a duty to enter into the civil condition with the settlers. Nomads are duty-bound to establish a civil condition neither among themselves nor with the settlers. This raises the question as to how settlers and nomads are to accommodate each other's cultural differences under conditions of unavoidable physical co-existence – an issue I shall address in the concluding section, in which I shall also return briefly to the issue of adequate interpretation.

II.

It is by now widely acknowledged that Kant derives the duty of state entrance from the act of acquisition.¹⁸ The precise details of Kant's argument to this effect vary across different interpretive reconstructions. A dominant current reading derives the act of acquisition – one's taking into one's exclusive possession an object of one's choice – from a third-personally attributed innate right of each to freedom of choice and action.¹⁹ On this account, a person's act of unilateral acquisition is itself justified with reference to each person's independently valid freedom right: acts of acquisition are simply *prima facie* justified exercises of the independently valid right to freedom of choice and action. The chief difficulty is then said to lie in the fact of *uncoordinated* individual acquisition. If each has an innate right to freedom of choice and action, and if each therefore also has a *prima*

¹⁸ For detailed analysis, see Katrin Flikschuh, *Kant and Modern Political Philosophy* (Cambridge: Cambridge University Press 2000), 113-43.

¹⁹ See, most prominently, Louis-Phillippe Hodgson, 'Kant on the Right to Freedom: A Defense', *Ethics* 120 (2010), 791-819.

facie justified right to exercise that freedom by taking into his possession external objects of his choice, the choice of one will conflict with the possible choices of others. Uncoordinated property acquisition will issue in mutually irresolvable conflict and therefore requires the introduction of an impartial public authority with the powers to adjudicate between conflicting property claims. In short, the duty of state entrance results from the incompatibility, in the absence of a system of public laws, of *prima facie* acts justified acts of individual acquisition.

Elsewhere, I have criticized this reading of Kant's property argument on the grounds that it begs the question as to source of the affirmed innate right: the reading helps itself to an unwarranted assertion of innate right that is difficult to square with transcendental idealism's explicit general rejection of foundationalist premises.²⁰ I shall not rehearse my criticisms here; suffice it to say that, from the interpretive perspective as outlined, it is indeed difficult to make sense of the nomadic passage at the end of the *Doctrine of Right*. If each person simply *has* an innate right to freedom of choice and action, then, on the interpretation as outlined, each person therefore also has a coercible duty of state entrance. And yet, when it comes to nomads, Kant rejects arguments in favour of nomads' rightful compulsion into the civil condition. Here is what he says:

The question arises: 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 the people are sheperds or hunters (like the Hottentots, the Tungusi, or most of the American Indian nations) 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

²⁰ See Katrin Flikschuh, *What is Orientation in Global Thinking? A Kantian Inquiry* (Cambridge: Cambridge University Press, October 2017 in press).

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 civilized, and partly because one's own country will be cleaned of corrupt human beings, and they or their descendants will, it is hoped, become better in another part of the world (such as New Holland). 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 the 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. (6: 353)

This passage follows Kant's brief reiteration – as earlier in *Perpetual Peace* – of the restriction of 'cosmopolitan right' to a hospitality right. Kant's proposed hospitality right assigns visitors a non-coercible right to *offer* to engage in commerce with the host nation. This offer may by rights be rejected, though not violently so. Where the offer of commerce is rejected by the potential host nation, the visitor may not resort to the coercive imposition of proposed terms of contact. In *Perpetual Peace*, Kant's non-coercible version of natural law's coercively enforceable hospitality right is discussed with reference to China and Japan – established states (or empires) of whom Kant says that they were justified in closing their borders to further trade, given Europeans' aggressive comportments towards them. (Cf. 8:359) The *Doctrine of Right* reiterates this non-coercible hospitality right but does so now in relation to *nomadic* peoples rather than trading nations. Kant thus appears to be extending relations of cosmopolitan right from established states to non-state peoples. Various commentators have seen in this extension an effort on Kant's part to afford non-state peoples the protection of cosmopolitan law.²¹ Such a protective move nonetheless treats stateless peoples as non-agents in relation to cosmopolitan right. Yet the above cited

²¹ Cf. Niesen, 'Colonialism and Hospitality', op. cit.

passage clearly rejects the idea of European settlers' as taking a paternalistic attitude towards the nomads. The passage spells out *constraints* of the hospitality right as they apply to European settlers. Especially noteworthy is Kant's insistence on settlers' comportment towards nomads as their juridical equals, not as juridical minors: he demands that settlers interact contractually with the nomads. Oddly, settlers should interact contractually with nomads in ways that do not take advantage of nomads' likely ignorance of such contractual arrangements. The oddity of Kant's position here is worth emphasizing. Japan and China, merely in virtue of being recognized as trading nations, can be presumed to be familiar with the terms of international trade and politics. Reciprocal interaction is unproblematic in principle given that familiarity with relevant contractual terms can be assumed. In the case at hand, however, Kant demands the unilateral extension, on the part of European settlers, of strictly reciprocal forms of interaction with the nomads whilst also cautioning about nomads' likely unfamiliarity with those terms.

We may ask why European settlers should be mindful of nomadic unfamiliarity with contractual transactions. The likely answer is that, in the above passage, Kant assumes nomads' unfamiliarity with private property regimes. Kant speaks of nomads as *using* the land for their sustenance. Use rights do not imply property rights. Again, Kant speaks of the 'great open regions' which nomadic life depends upon. In other words, these lands are not fenced in or parceled out – they appear to be used by all yet owned by none. The only point at which, in the above passage, Kant does imply that the nomads own the land is when he speaks of them as 'ceding their lands' by contractual agreement. Yet this is also when he invokes nomads' likely *ignorance* of what it is they are ceding. If the nomads do think of themselves as owning the land, the Europeans can acquire it rightfully only by means of a contractual transfer. If the nomads do not think of themselves as owning their lands, it is not theirs to give away in the first place. Yet from the fact that the nomads do not think of themselves as owning the land it does not follow that the Europeans' are free to acquire it: from the nomadic point of view, 'property rights' may be an empty category – there may be no such thing as 'acquisition of land'.

The situation now looks intractable. From the European perspective, the settlers can rightfully acquire the lands from the nomads only by means of a contractual agreement to that effect. From the (presumed) nomadic perspective, the land is not acquirable in

principle, which is why nomads are reasonably ignorant of contractual transactions of this sort. There clearly is here a seemingly insurmountable clash of cultural practices and conventions. At this point the temptation to dismiss the juridical validity of the other party's local practices becomes strong: insofar as nomads do not practice property regimes, they are evidently barbarians who must be civilized, for example. Moreover, settlers are in any case better placed to make good use of the lands – by not letting it go to waste but rather ensuring value-added.²² Kant dismisses these reasons as 'specious'; indeed, he goes on to point out that any attempt to compel nomads into the civil condition under the pretext of civilizing them is akin to revolutionaries' appeal to justice in the very act of committing what Kant regards as an injustice of the grossest kind. The message is clear: the unjust compulsion of nomads into the civil condition can never provide the basis of just relations between settlers and nomads.

One may agree with Kant that the compulsion of nomads into the civil condition for the purpose of depriving them of 'their' lands is unjust. But what about the compulsion of nomads into the civil condition 'for its own sake' or 'for the sake of right itself'? In his concern to forestall settlers' specious reasoning in behalf of illegitimate compulsion, is Kant not losing sight of his own earlier argument in support of rightful compulsion? Europeans' compulsion of nomads may be unjust so long as the underlying motive is private enrichment. But take away the underlying motive – take away the intended land grab – is the mere fact of unavoidable coexistence itself not sufficient reason for nomadic compulsion into the civil condition with the Europeans? There are plenty of passages in earlier portions of the text which suggest precisely that. Take the most prominent among them:

From private right in the state of nature there proceeds the postulate of public right: when you cannot avoid living side by side with all others, you ought to leave the state of nature and proceed with them into a rightful condition, that is, a condition of distributive justice [which is the civil condition, K.F]. (6:307)

²² These are clearly Lockean arguments in favour of European appropriation.

Kant goes on to add that one is ‘authorized to use coercion’ in this regard and indeed that those who fail to act on their duty to proceed into the civil condition with each other ‘do wrong in the highest degree by willing to be and to remain in a condition that is not rightful’ (307/8). This injunction, and the repeated reminders regarding the coercibility of rights relations throughout the text, make a nonsense of Kant’s pious scruples in the nomadic passage. Indeed, they make a nonsense of the suggestion, in that passage, that co-existence is in principle avoidable at all. Recall, Kant begins the passage by noting that where settlements are made ‘far from where [already settled peoples] reside’, they are non-problematic, implying that co-existence is avoidable. But considered from the perspective of ‘thoroughgoing’ rights relations, human co-existence is clearly not avoidable. To the contrary, the ‘spherical surface of the earth’ (6:262) has *ensured* that all places on the earth are connected, such that human co-existence and with it the progressive juridification of human relations is inescapable. How can Kant square his insistence upon ineluctable juridification of all human relations on earth with his apparent rejection of settlers’ rightful compulsion of nomads into the civil condition?

At this point, one may object that there is in fact no problem here. After all, the passage under consideration does in fact only rule out nomadic compulsion for ulterior reasons. Where the settlers are genuinely concerned to establish relations of right between themselves and the nomads, the latter can rightfully be compelled to enter into a civil condition with the settlers. However, I do not believe this response to offer a plausible dissolution of the puzzle of nomadic exemption from the duty of state entrance. There are two systematic reasons why, even abstracting from settlers’ ulterior motives, Kant *cannot* endorse as rightful the compulsion of nomads into a civil condition. First, settlers and nomads do not encounter one another as in a state of nature, from which it follows that nomads are under no duty to enter into a civil condition with the settlers. I shall consider this point in section IV. Second, nomads raise no property claims against each other, from which it follows that they have no duty to enter into the civil condition with each other. I turn to this consideration in the next section.

III.

Earlier, I sketched what I called the currently standard interpretation of Kant's property-based argument in behalf of a duty of state entrance. According to that standard interpretation, Kant affirms an innate right to freedom of choice and action of each from which he then derives, first, a *prima facie* justified claim to acquisition of external objects of choice and, second, an ensuing duty of state entrance. On this account, each has a duty of state entrance in virtue of having an innate right to freedom. The advantage of this reading is that the third-personal assignment to each of an equal freedom right secures a universal duty of state entrance for all. Nomads have a duty of state entrance on the strength of having an innate right to freedom. It follows that nomads do wrong 'in the highest degree' by remaining in a condition of 'wild and lawless freedom' (6: 307/8); they can legitimately be compelled into the civil condition on grounds of their third-personally valid duty to do so.

I said that the third-personal assignment to each of a right to freedom runs counter to Kant's general rejection of philosophical foundationalism. However, the standard reading also ignores several systematic considerations specific to the *Doctrine of Right*. Most significantly, it ignores Kant's systematic distinction between innate and acquired right as two separate if related forms of private right; it ignores his express exclusion of innate right from the vindication of public right; and it ignores his appeal, in the context of acquired right, to the rather complicated formulation of a justificatory 'postulate' conceived as a *lex permissiva*, or permissive law. In short, the standard reading presents a grossly simplified version of Kant's actual property argument. Again, however, given considerations of space and interpretive focus here, I shall not rehearse the details of Kant's property argument.²³

I want, rather, to offer a summary reconstruction of some of the argument's central elements, bearing in mind that my chief concern here is to show why Kant *cannot* claim nomads to be under a duty of state entrance. More specifically, while the duty of state entrance is indeed immediately consequent upon a relevant *act* of acquisition, the argument in behalf of such a duty proceeds from a first-personal regress from a relevant experiential

²³ For more detailed analyses, see Flikschuh, *Kant and Modern Political Philosophy*, op. cit., and Flikschuh, *What is Orientation?* op. cit.

premise to its mind-dependent possibility condition. This means that the duty of state entrance can be a reason of action only for those who do in fact commit the relevant acts of acquisition.

The general form of a Kantian regress from subjectively affirmed experiential premises to their mind-dependent possibility conditions is well known. In the *Critique of Pure Reason*, Kant regresses from a subject's affirmed experience of objects outside of her to the categories of the understanding as the mind-dependent conditions of the possibility of such experiences. The claim is not that the categories of the understanding are mind-independently 'true'; rather, the claim is that anyone who affirms that she has experience of objects outside of her must accept the argument in behalf of the categories as a necessary condition of the possibility of that experience.²⁴ I believe that in *Groundwork*, Kant's vindication of the possibility of morality has a similar structure at least in bare outline. Here, too, Kant's regresses from our ordinary experience of the concept of duty as an unconditionally valid demand of practical reason to the idea of our freedom as a necessary condition of the possibility of such moral experience. Again, we cannot know that we are free – the claim is only that insofar as we do have the relevant experiences of moral obligation we cannot but think of ourselves as free.

Importantly, on the suggested understanding of Kant's general strategy of philosophical vindication, the regress always takes the form of showing the subject *herself* what she must accept as valid *for her* given what she is committed to *already*.²⁵ It is in this specific sense that I want Kant's first-personal strategy of regressive justification to be understood: the strategy proceeds from self-ascribed experiences to their reflexively acknowledged, mind-dependent possibility conditions. The contrast with foundationalist justification is clear: while the latter departs from the third personal ascriptions to arrive at objectively valid conclusions, the first-personal strategy cannot ascribe to the subject experiences she does not in fact have.

Now I want to say that, in the *Doctrine of Right* too, Kant once more pursues a first-personal, regressive line of justification in relation to the acquisition of property. He proceeds from the fact that subjects raise property claims against each other to the concept

²⁴ Cf. Ameriks, 'Kant's Regressive Argument', op. cit.

²⁵ Velleman, 'Voice of Conscience', op. cit.

of intelligible possession as the mind-dependent possibility condition of rightful acquisition. Since intelligible possession is in turn practically possible only in the civil condition, state entrance turns out to be a necessary condition of rightful possession. In short, the regress is from the subject's unilateral act acquisition to the pure practical concept of intelligible possession as the act's mind-dependent possibility condition and from there to the duty of state entrance as the only condition in which intelligible possession is practically possible. Admittedly, this is a condensed summary of a contentious interpretive analysis.²⁶ I can here do no more than give some pointers to the proposed interpretation's textual and systematic plausibility.

First, with regard to my claim that Kant's property argument begins from subjects' first-personal experience of the property claims they raise against others. Nowhere in the relevant chapters of the *Doctrine of Right* do we find an explicit statement to this effect. Nor does Kant formulate a relevant first-personal experiential premise, of the form, 'I am aware that I raise property claims against others', or 'I am conscious of my unilateral act of acquisition'. The argument nonetheless clearly does assume readers' familiarity with property laws and conventions. The opening paragraph of the relevant chapter launches into a discussion of what it is to have an object as one's own without feeling the need to explicate the very idea of property. Kant simply states what we take to be the meaning of saying of an object that it is 'mine'. He then proceeds to reject a naïve if intuitive understanding of the rightfulness of possession in terms of one's physically holding an object. Rightful possession, he says, is not physical possession of an object. To the contrary, rightful possession is 'possession of an object without holding it'. This latter he terms 'intelligible possession' (6:245).

Kant's starting point from our ordinary understanding of possession shows that he is not interested in asking whether property rights are possible; he instead is interested in the typically Kantian question as to how such rights are possible. The regressive strategy is clearly in play here – just as the starting point of the first *Critique* is our actual experience of objects outside of it, and that of *Groundwork* is our actual experience of the concept of duty in us, so the *Doctrine of Right* start from the legal reality, for us, of functioning property right regimes.

²⁶ But see Flikschuh, *What is Orientation?*

Kant says that rightful possession does not consist in physical possession of an object – i.e., in the actual holding of an object of one’s choice. Rather, one possesses an object when one can put it down, no matter where, and still claim it as one’s own. This is the crucial critical move of the property argument. While we may naively assume that possession consists in physical ownership of a given object, we will agree, on reflection, that this book, say, remains mine even when I place it on the desk over there and walk out of the room – if it is indeed ‘mine’, then I will expect it still to be there, untouched, when I return an hour later. Kant has in effect taken us on a regress from my naïve holding of an object as physically mine to the concept of intelligible possession as the a priori necessary condition of the possibility of *rightful* possession. But how is possession *without* holding the object possible?

Kant characterizes ‘intelligible possession’ as a ‘synthetic proposition a priori of rights’ (6: 249); intelligible possession thus function as a ‘third term’ that establishes a non-contingent connection between myself and the object. Only if the practical reality of this particular non-sensible connective can be established can property claims be shown to be rightful. Unsurprisingly, therefore, the concept of intelligible possession is cast as the object of a ‘deduction’. (6:249) I shall not here consider the details of the ensuing highly obscure (and possibly missing) deduction of the concept of intelligible possession – as noted, my concern here is simply to indicate that the general structure of the argument in the *Doctrine of Right* follows the contours of a typical Kantian reflexive regress. Possession of an object depends on the possibility of intelligible possession. Intelligible possession – possession of an object without holding it – refers to others’ acknowledgement of a given object as mine: the reason why I can claim as ‘mine’ that book which I left unattended on the desk for an hour is that I count on others’ acknowledgement of it as mine. Rightful possession thus specifies a three-way relationship between myself and others with regard to the object of my choice. But how is rightful possession possible, or, otherwise put, what are the conditions under which it is possible for others to acknowledge a given object as mine?

Establishing the practical possibility of intelligible possession turns out to be fraught with difficulties. On the one hand, any act of acquisition on my part is a claim raised against others to the effect that this object is now mine. That very claim places them

under an obligation henceforth to refrain from further use of the object without my consent. So property claims in fact amount to the unilateral imposition by one of new obligations on others. The basic difficulty consists in the fact that I lack the authority to obligate others in this way: in exercising my capacity for choice I simultaneously restrict others' capacity to exercise their choice with regard to the object. I do so merely by declaring the object to be mine. And yet I lack the moral authority to limit others' power of choice in this way. Others equally raise similar such claims against me, and they equally lack the moral authority to obligate me in the way needed for their property claims against me to be binding upon me. It turns out then, that the reciprocal affirmation, against one another, of mutually excluding property claims cannot bind any of us. While intelligible possession depends on others' acknowledged obligation to refrain from use of another's object, 'a unilateral will cannot serve as a coercive law for everyone with regard to possession that is external and therefore contingent' (6:256). The requisite authority can only come from a kind of will with the capacity to bind everyone equally – what Kant calls a 'collective general and powerful will', and which he equates with the public will realizable only through entrance into the civil condition.

In sum, the argument proceeds from my acquisition of a given object as mine, to my reflexive acknowledgement of intelligible possession as the necessary albeit non-sensible condition of the rightfulness of my claim, to the duty of state entrance as the only condition under which intelligible possession is practically realizable. The important point to be emphasized here is the manner in which the argument tracks the reflexive reasoning of the property holder herself, showing her what her act presupposes (intelligible possession) and what, therefore, is morally required of her (entrance into the civil condition). Yet the argument could not get off the ground but for the subject's initial act of acquisition: the justificatory regress can have meaning only for one who actually commits the relevant act. It has no practical relevance for nomads, who fail to raise property claims against each other. Given the general form of his property argument, Kant *cannot* hold nomads do be under a duty of state entrance. Nor does he hold them to be under such a duty.

IV.

One may object that while Kant's property argument gives us one reason for state entrance, the fact of unavoidable co-existence gives us another. Return to the nomadic passage. We saw that Kant rejects as specious European settlers' arguments in favour of compelling nomads into the civil condition. The passage leaves it open as to whether settlers envisage compelling nomads into the state with one another or also with the settlers themselves. I have just argued that Kant's property argument gives nomads no reason to enter into the civil condition with one another. Nor, therefore, can others rightfully compel them to enter into such a condition on those grounds. And yet, nomads and settlers encounter one another unavoidably. They can perhaps avoid each other's company for some limited span of time – using or settling on lands non-adjacent to each other. But eventually, population pressures will ensure unavoidable co-existence – Kant's well-known political teleology expressly counts on such naturally pressures ensuring that rights relations will be established 'even against individuals' wills' (8: 360). Why, then, can the settlers not simply have recourse to the argument from unavoidable co-existence in order to compel nomads into the civil condition with them, the settlers?

Earlier on, I mentioned that settlers and nomads do not encounter one another in a state of nature. If they did, relations of private right might apply to them such that settlers and nomads might find themselves duty-bound to enter into a civil condition with one another. Yet the passage under consideration occurs in the section on cosmopolitan right, which is a form of public right predicated on the existence of states (the civil condition). This implies that at least one party in the encounter finds itself in a civil condition already. From what Kant says about the nomads we can infer that neither he nor the European settlers believe the nomads to be in a civil condition with one another. By elimination, it must be the settlers who already are members of an established civil condition. And indeed, settlers are emissaries who sail forth from an already established state – the mother country – in order to establish settler colonies under the suzerainty of the mother country.²⁷ This means that when the settlers encounter the nomads, they stand in relations of public right, not of private right, towards the nomads. From this perspective, the issue of nomads' internal political organization should be wholly irrelevant so far as the settlers are

²⁷ On Kant's conception of colonialism in general, see especially Anthony Pagden, 'The Law of Continuity: Conquest and Settlement within the Limits of Kant's International Right' in Katrin Flikschuh and Lea Ypi (eds.), *Kant and Colonialism* (Oxford: Oxford University Press 2014), 19-42.

concerned. The settlers, who sail under the flag of the mother country whose protection they claim, have obligations of cosmopolitan right towards the nomads in virtue of their own membership in an already established civil condition.²⁸ Kant is unambiguous about this:

The concepts of the right of a state and of a right of nations lead inevitably to the idea of *a right for all nations (ius gentium)* or *cosmopolitan right (ius cosmopoliticum)*. If the principle of outer freedom limited by law is lacking in any of these three possible forms of rightful condition, the framework of all the others is unavoidably undermined and must finally collapse. (6:311)

In acting inhospitably towards the nomads – in forcing themselves upon them or in compelling them into forms of political organization not of the nomads' own making – the settlers bring the mother country into juridical disrepute; indeed, Kant intimates that settlers endanger the entire 'framework' of public rights relations. It is worth emphasizing the radical nature of Kant's position here: if you are a settler – meaning, a colonist – you may settle on lands that do not encroach upon the uses which indigenous populations make of these lands. Where contact does become unavoidable, it is essentially the indigenous populations who determine terms of use and, possibly, transfers of lands. For while settlers can rightfully acquire land only by way of contractual transfer, where indigenous populations are ignorant of contractual arrangements, having no conception of 'ceding' lands at all, there indigenous conventions must be respected.

One may push this point: one may ask whether terms of engagement do not change once we stop talking about the particular case of settlers-cum-colonists. What about refugees, say, or other stateless persons and groups who wash up on foreign shores? One may even consider instances in which original settlers – migrants from some mother country – disavow their former civic allegiances, declaring themselves no longer members of that now distant civil condition. Former settlers and nomads may then find themselves

²⁸ For more detailed analysis along these lines, see Martin Ajei and Katrin Flikschuh, 'Colonial Mentality: Kant's Hospitality Right Then and Now' in Flikschuh and Ypi (eds.), *Kant and Colonialism*, op. cit., 221-50.

in relations of private right. If property conflicts ensue, the duty of state entrance arguably becomes relevant. For Kant, the most immediate precedent, historically, would have been North America – yet, although Kant evidently knew of the American declaration of independence and indeed supported it, he says nothing about its implications for settler / nomad relations. From the perspective of the nomadic passage here examined, it seems to me that Kant should have condemned as unjust former colonists’ formation of a new civil condition that expressly *excluded* co-existing indigenous populations.

V.

I said at the outset of this article that my immediate interest in the nomadic passage of the *Doctrine of Right* was sparked by recent interpretive trends that appeal to a Kantian coercible duty of state entrance to shore up independent arguments in behalf of the imposition of liberal regimes upon non-liberal peoples. Often, these arguments are advanced under the banner of a claimed freedom right for all: it is because all have a right to freedom that all can be coerced into the civil condition. Often, the appeal to Kant in relation to these sort of arguments is tangential: proponents of these readings often have little intrinsic interest in Kant’s philosophical thinking; they rather help themselves to snippets of textual evidence in order to shore up positions which they are committed to quite independently of anything Kant does or doesn’t argue. I conceded, of course, that no interpreter or scholar can claim to be free of a perspectival interest in the text – none of us can reasonably claim to be able to discern what Kant ‘really’ meant: Kant himself arguably included.²⁹ So interpretations of philosophical texts, whether historical or contemporary, are always at the same time new philosophical arguments and perspectives. But this clearly cannot mean that anything therefore goes: it cannot mean that one should not *for that very reason* strive for the greatest possible systematic cohesion and attention to the texts.

It is clear that the reading I have here offered is motivated in part by text-external considerations. I might therefore not unjustly be accused in turn of what I charge others with. Systematic considerations do then become rather important. I have here offered two such considerations in support of the plausibility of my suggested reading: first, I have reconstructed Kant’s property argument along the lines of the regressive justificatory

²⁹ Cf. Wood, ‘What Dead Philosophers Mean’, op. cit.

strategy generally associated with his transcendental philosophy; second, I have been guided in my interpretation by the text-internal distinction between private right and public right. The first consideration shows that Kant cannot attribute a duty of state entrance to nomads; the second shows that the issue of state entrance cannot strictly arise at all in the context of cosmopolitan right. Now, all this shows is that the proposed reading is systematically plausible – it hardly shows that this is what Kant himself thought or intended. As to the latter, we can only guess, but then I am in any case not sure whether it really matters what Kant *himself* ‘really’ thought or intended.

Still, and even accepting the systematic plausibility of the proposed interpretation (or at least accepting that it is not implausible, systematically), one might justifiably be left feeling rather unsettled by it. The implication of the proposed reading is of an irresolvable cultural stand-off between settlers and nomads: for the settlers the land should be acquirable at least in principle, whereas for the nomads it simply isn't. How does one resolve a conflict as intractable as this, where the position of one party is diametrically opposed to that of the other? What is perhaps particularly unsettling here – and this may tell against the proposed reading – is Kant's apparent unconcern to resolve it. The proposed reading has in effect left us on a cliff-hanger: according to it, the *Doctrine of Right* concludes with an admonishment to enter into contractual arrangements with those whose likely unfamiliarity with such arrangements we should nonetheless be mindful of. What sort of advice is this?

In the passage in question Kant tells us more about how the dispute cannot be resolved than he does advise on how one might resolve it. Settlers cannot compel nomads into the civil condition, nor can they deprive them of ‘their’ lands under the pretext of civilizing them. The admonishment, to settlers, to interact contractually with the nomads is clear indication of Kant's belief that the latter must be treated as juridical equals – the relationship must develop on strictly reciprocal terms. Yet Kant says nothing about the likely, or even the possible, outcome of prospective efforts at reciprocity. He does of course counsel the ‘offer’ of trade and the ‘attempt’ to engage in commerce – but these remarks remain rather vague and open-ended: who knows whether the nomads will accept the offers and what will happen even if they do?

I believe that Kant cannot say what the nomads will or will not do or say. Only the nomads themselves can tell us. Kant has reached the end of his road. If my interpretive suggestion is plausible, that the *Doctrine of Right* adopts the first-personal reflexive standpoint typical of Kant's transcendental philosophy in general, then at the point at which we encounter nomads – people who are culturally alien to us – that encounter must in a certain sense put all our previous assumptions and certainties into question. For if we do proceed, as we must, from within the horizon of our own experiential condition, then when we encounter people whose experiential horizons differ, our inquiry may have to start afresh. When we encounter nomads, everything we thought we knew about ourselves is once more up in the air. We may then have two options: we can either dogmatically insist that they are wrong and we are right – we can, as it were, deny the validity of their experiential horizon. Alternatively, we might treat the encounter as an opportunity to expand our own horizon: up until the point of the encounter we thought we could be confident that everyone has a duty of state entrance, but now we find we have to think again. Whichever of these options Kant himself may have taken, I believe that his reflexive method of philosophical thinking counsels adoption of the latter – the option of ‘thinking again’, in the light of new experience, about what we took to be for more or less certain and beyond reasonable doubt. So while in one sense, the nomadic passage does mean that the *Doctrine of Right* has reached the end of its road – it cannot get the nomads into the civil condition for us – in another sense the passage affords a new beginning in that it invites us to try to make contact with peoples about whose thoughts and ways we know as yet nothing and to offer to engage into commerce with them in the sense of the term intended by Kant, namely to engage in mutual conversation.

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