
Review

Kant's grounded cosmopolitanism: original common possession and the right to visit

Jakob Huber

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In this excellent, thought-provoking volume, Jakob Huber expounds Kant's (2006) concept of Cosmopolitan Right from the premise that human beings 'affect and constrain one another with their choices by virtue of sharing the limited space of the earth's spherical surface' (p. 3). According to Huber, this account differs from two dominant trends in the scholarship: the first interpreting Cosmopolitan Right as an ideal universal moral community of all human beings who, through their shared humanity, constitute a transcendental kingdom of ends; the second as an ideal *practical* community of 'world citizens' sharing membership in a global institutional order. I believe he provides a full answer to the first but not the second.

The germ of Huber's argument lies in Kant's statement in the *Doctrine of Right* (DoR) that human beings have a right 'to be wherever nature or chance (apart from their will) has placed them', i.e. the right of Original Common Possession (DoR 6:262). After appearing in Private Right, Original Common Possession resurfaces in the terse section on Cosmopolitan Right at the end of the DoR, where Kant introduces 'an enigmatic right to roam around the earth's surface and attempt contact with distant strangers in order to offer all kinds of cultural, intellectual, economic [and] political exchange' (p. 5).

Both stasis and motion combine in Huber's scripting of Original Common Possession as a 'Right to be Somewhere' (p. 16). The core claim of Chapter 1 is that this right cannot be accommodated under either 'Innate' (belonging 'to everyone by nature, independently of any act that would establish a right') or 'Acquired' Right ('such an act is required') (DoR 6:237). 'Innateness' is suggested because coming into the world is not something we *do* but that is *done* to us. 'Acquiredness' because the location is adventitious – it could have been here, there, or yet another place still. Because Kant is emphatic that there are just two categories, a 'Right to be Somewhere' would indeed be a huge theoretical problem.

To me, however, Kant's formulation sounds not like a right to be *somewhere*, but a right to be *where you are*, i.e. not to situate yourself somewhere on earth, but



that others not push you off the spot you cannot help but be. If so, ‘the place on the earth’s surface we currently occupy’ is not ‘an object outside of us’ (p. 37), whose acquisition must be explained, but something as inseparable from you as your shadow, and therefore ‘innate’. Because human beings are ‘beyond reproach’ – they do not have to justify their mere existence (DoR 6:238) – ‘earth dwellership’ alone cannot give rise to ‘justificatory responsibility towards those with whom we share the [Earth’s] finite space’ (p. 22). The ‘Right to be Somewhere’ therefore does not seem part of Kant’s authentic apparatus: although mentioned in the drafts (p. 16 note 6, citing DDoR 23:320) it is absent from the published DoR.

A special virtue of the book is its focus on Kant’s anti-colonialism. Huber wisely advises against foisting our context upon Kant by reading *Cosmopolitan Right* against the backdrop of contemporary issues like refugee rights and global mobility (pp. 101–102). He also shows convincingly that Kant didn’t just stop talking about the inferiority of non-White races, but must genuinely have rejected such views, because otherwise, his depiction of colonialism as a juridical wrong becomes incoherent. ‘Rights relations’, Huber observes, ‘are reciprocal relations among a plurality of agents who can affect one another with their respective capacities for choice ... The participants in such a relation must regard each other as constitutively equal in a juridical respect’ (p. 76).

This builds upon Chapter 3 (‘The Right to Visit (I)’), where Huber brilliantly critiques Anna Stilz’s (2014) account of property and the state. Whereas she conceives original acquisition as an exercise where human beings ‘provisionally’ acquire external objects and subsequently legitimise those acquisitions by subjecting themselves to a public authority over historical time, Huber instead depicts this as a justificatory exercise, where individuals can rationally exclude others from external objects of choice on condition of attorning to omnilateral authority (p. 79). He then turns to Arthur Ripstein, who argues that even if non-state peoples lack a rightful condition, outsiders are nevertheless required to treat them as if they do; because simply as visitors they lack the standing to judge, let alone make arrangements for, non-state communities (2014, p. 165). Huber is more sympathetic here, but ultimately objects to it because by ‘understanding the wrong of colonialism as a kind of performative contradiction, i.e. as a violation of norms the perpetrator has bound herself to by using rights language in a particular way, we have not really made sense of it in juridical terms’ (p. 89).

Against Stilz’s and Ripstein’s ‘rationalist’ accounts, Huber advocates a ‘contextualist’ one where non-state persons’ lack of a rightful condition is both an empirical fact and normatively irrelevant (p. 84). For Huber, Westerners and non-state peoples derive juridical rights and obligations directly from ‘their membership in the disjunctive community of original common possession’ (p. 91). The webs of *Cosmopolitan* relations can be discerned by ‘regress to a global standpoint’ available to us from our ‘reflexive awareness of shared earth dwellership, grounded in the simple fact that [we] cannot but claim a place on



earth for [our]selves' (p. 92). Space precludes an explanation of why this move contradicts Kant's conviction that human beings in the State of Nature can only do '*what seems right and good*' in their own eyes (DoR 6:312).

I should now identify the fundamental difference in textual interpretation separating Huber and me. Cosmopolitan Right does indeed emerge from the right of Original Common Possession – the question is *whose*? Huber presumes the relevant bearers are human beings, which leads him to refashion it (problematically) as a Right to be Somewhere. It also compels him to criticise 'standard readings' of Original Common Possession as unable to accommodate the mobility aspect of Cosmopolitan Right (p. 99). This is true but not a problem, because the relevant persons are not humans but *nations*.

Kant pointedly describes Cosmopolitan Right as 'the possible union of all nations' (DoR 6:352). *Pace* Huber, Cosmopolitan Rights are – in the default case – rights of 'propertied citizens' with membership in some nation. I cannot travel the world except on a ship or aeroplane bearing the flag of some state or without a passport issued by a state. The exceptional case where the Original Common Possession of human beings becomes relevant is if they lack any State citizenship. Refugees do not travel the seas by dint of some pre-institutional right; they are *forced* to do so. They must therefore be granted asylum in the receiving nation because turning them away would bring about their destruction.

Huber's objections to 'institutional' interpretations are the apparent lack of institutions and non-coercibility of Cosmopolitan Right. He correctly argues that Cosmopolitan Right does not licence 'the widespread tendency in global thinking to focus on overarching supranational collectivities, constitutions and government (i.e. on ways of transcending the modern state)' (p. 164), and he also supplies an entirely valid argument why states cannot be subject to internal or external coercion without undermining their 'essential function [of] guarantee[ing] and enforc[ing] rights relations that could not exist otherwise' (p. 116). As such, Stilz and Ripstein seem incapable of distinguishing between 'two kinds of juridical obligations: a property-mediated (coercible!) obligation to enter the state that we have toward our fellow citizens...and a (noncoercible!) obligation to limit ourselves to hospitable offers for interaction that we have toward distant strangers' (pp. 76–77), particularly non-state peoples, who cannot be forced into an international rightful condition. Accordingly, Huber concludes that Cosmopolitan Right must refer to some more 'direct link' that is not property-mediated (p. 77).

Again, I agree but the relevant link is not between humans but nations. Recall that the acquisition of property is what grounds state coercion. Another reason why the Right of Nations and Cosmopolitan Right are unenforceable is that states as public persons do not own their territories – or indeed *anything* – as property. Coercion is unwarranted in the Right of Nations or Cosmopolitan Right because property relations obtain in neither. The original community of land that nations stand in is not a rightful community of possession (*communio*), so they have neither



use of nor property in land (DoR 6:352). Territories are no more ‘external’ to nations than the ground beneath your feet is to you. There is therefore no international omnilateral authority analogous to domestic legislatures, but only a judicial power for settling personal disputes ‘as if by a lawsuit, rather than... by war’ (DoR 6:351). None of this, however, means that the Right of Nations and Cosmopolitan Right are not property-mediated: both categories arise from human beings postulating into existence public institutions, because otherwise they are in the impossible position of being simultaneously required to have, and unable to acquire, property.

Make no mistake: these critical remarks aside, Huber provides an impressive account of rightful ‘comportment’ to distant strangers. Above all, amidst what sometimes seems like a deluge of fad-chasing writing, he reassures us that ‘serious and thorough engagement with a historical text [might] prove helpful... when it comes to orientation with regard to our very own philosophical whereabouts’ (p. 161).

References

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