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APPEALS TO AN ETHICS OF HOSPITALITY FOR ASYLUM SEEKERS AND REFUGEES have been a prominent feature of philosophical and political discourse since at least Jacques Derrida's 1996 speech on cosmopolitan rights for asylum seekers, refugees, and immigrants to the International Parliament of Writers in Strasbourg, later published as the essay "On Cosmopolitanism." My purpose in this essay is not to offer another plea for an ethics of hospitality, nor simply to reject it, but to explore the ambivalences, limits, and possibilities of such an ethics. In particular, I am concerned with making three claims. The first is that there is a significant disjuncture between an ethics of hospitality and a politics of hospitality expressed as cosmopolitan right. The second, which I make in the second and third sections of this paper, is that a cosmopolitan right of hospitality does not, and cannot, fully capture our obligations to refugees. The third claim is that while Derrida's reflections on hospitality remain salient to thinking through this topic, it is crucial, for understanding the contemporary salience of an ethics of hospitality, to address how such an ethics is modulated and transformed by the discourse of moral equality and human dignity.

HOSPITALITY AS ETHOS AND HOSPITALITY AS RIGHT

In "On Cosmopolitanism," Derrida advances the following thought:

"To cultivate an ethic of hospitality"—is such an expression not tautologous? Despite all the tensions or contradictions which distinguish it, and despite all the perversions

that can befall it, one cannot speak of cultivating an ethic of hospitality. Hospitality is culture itself and not simply one ethic amongst others. Insofar as it has to do with the ethos, that is, the residence, one's home, the familiar place of dwelling, inasmuch as it is a manner of being there, the manner in which we relate to ourselves and to others, to others as our own or as foreigners, ethics is hospitality; ethics is so thoroughly coextensive with the experience of hospitality. (2001, 16–17)

Although perhaps given slightly hyperbolic expression, the basic thought announced here—namely, that a core dimension of ethics concerns the ethos of one's home not only in relation to those who belong to it (one's kin in the private realm, one's compatriots in the public realm), but also to those who do not: the stranger, the foreigner, the alien—is a productive one. It is, moreover, one that can encompass both the household and the political community insofar as each remains cast in terms of relations between individuals or between individuals and a collective that partake of a common *ethos*. Let me elucidate.

The ethics of hospitality expressed at an interpersonal level involves an attitude towards the other. It is not merely a matter of observing a moral code, of respecting the rights and duties of the relationship, but also of standing to the other in a way that expresses one's acknowledgement of them through a form of ethical care and attentiveness to them (e.g., their needs) as the singular individuals that they are. Such an ethos can also be given expression at a communal level such that the members of the political community have an obligation to their city or tribe or nation to exhibit this attitude of ethical care and attentiveness to someone who is a guest in or of the political community, although the nature and extent of this obligation may be modulated according to whether they are an exile or refugee, a merchant or trader, a diplomat or authorized representative of another polity. It is, we might say, in the first case a matter of

the honor of the (head of) household and in the second case a matter of the honor of the political community that the guest be treated with the appropriate form of hospitality. Such an ethics of hospitality can be found, as Derrida's identification of ethics with hospitality intimates, across the history of many (perhaps all?) cultures in varied forms, and while the grounds on which hospitality was granted may be diverse both within and across different cultures, hospitality in one conditioned form or another is a pervasive human phenomenon.

These preliminary remarks might be taken to lend support to the thought that an ethics of hospitality is well suited to serve as a basis for a cosmopolitan reflection on our obligations to asylum seekers and refugees. However, such an inference would be too quick, for reasons that reflection on Immanuel Kant's discussion of cosmopolitan right can help to bring out. I do not want yet to go into the details of Kant's account with respect to the precise meaning and scope of cosmopolitan right, as I will take this up in the next section; rather I want to draw attention to two related points concerning Kant's development of the concept of cosmopolitanism.

The first is that Kant's development of the concept of cosmopolitanism in delineating the idea of cosmopolitan right marks a significant break with the prior ethical use of the concept (Ypi 2011). The emergence of the concept of cosmopolitanism is in relation to attitudes exhibited by *kosmopolites*, individuals such as Socrates and Diogenes of Sinope. As Ypi notes, this cosmopolitan attitude could take positive or negative forms. In the positive (Socratic) form it combines a general commitment to the equality of all human beings as thinking, judging beings with a particular commitment to one's own polity. In the negative (Cynic) form, the claim to be "a citizen of the world" is a refusal of the claims of particular attachments—to family, friends, city—to generate binding obligations. The reemergence of the discourse of cosmopolitanism in the Enlightenment also saw the repetition of its positive and negative forms. The positive form was exhibited by Leibniz:

Leibniz was among the first to refer implicitly to the Greek “positive” understanding of cosmopolitanism. “Justice,” he claimed, is the virtue guiding affection to all human beings; the Greeks call it “*philanthropy*”; it is “a charity of the sage who follows the decrees (*dictata*) of wisdom and the dictates of reason.” The exercise of justice should be considered unbound to national conventions and particular political circumstances because, he clarified, “as long as something of consequence can be done, I am indifferent to whether it is done in Germany or France, I only wish the good of the human race.” (Ypi 2011, 13)

The contrasting negative form, exemplified in Louis-Charles Fougeret de Monbron’s autobiography *Le Cosmopolite, ou Le Citoyen du Monde*, “narrates how the writer travelled everywhere without being committed to anyone because everything was indifferent to him” (Ypi 2011, 13). In this form, to be a citizen of the world is to be a citizen of nowhere. As in the ancient world, cosmopolitanism—in either positive or negative form—was identified in individualistic terms as an ethical attitude towards one’s fellow human beings.

It is this individualist ethical sense of cosmopolitanism that Kant’s work—most explicitly in his essays “Idea for a Universal History with a Cosmopolitan Purpose” and “Perpetual Peace”—aims to transcend in shifting the main register of cosmopolitanism to an order of right in the context of an international system of states. Thus, having held an understanding of cosmopolitanism in terms of philanthropy in his early reflections on the topic, in “Perpetual Peace” “he seems to have abandoned this individualistic conception of cosmopolitanism and argues, in striking contrast to Leibniz, that cosmopolitanism ‘is not a question of philanthropy but of right’” (Ypi 2011, 27).

The second point to which I want to draw attention is that this transformation is bound up with the emergence of the concept of the state as a fictional person distinct from both ruler (sovereign) and ruled (people) that Kant inherits from Thomas Hobbes and Jean-

Jacques Rousseau and that had significantly shaped the thinking of Samuel Pufendorf and Emer de Vattel (Skinner 2011). For this view of the state as a *persona ficta*, as Hobbes puts it:

When the members of a multitude covenant to institute a sovereign, they assign him the fullest possible powers to act for the common good. But the sovereign upon whom these powers are conferred is merely “personating” the state: whatever actions he performs in his official capacity are always attributed to the state and count as actions of the state. It is therefore the person of the state who must be regarded as the true possessor of sovereignty. If we ask who makes the laws and enforces obedience, Hobbes’s answer is that these are the powers of the state. “The Commonwealth only, praescribes, and commandeth the observation of those rules, which we call Law,” so that “the name of the person Commanding” is *Persona Civitatis*, the person of the state. (Skinner 2011, 37)

It is an important feature of the state so conceived that its sovereignty is expressed through law and that the obligations that fall on those who have authorized the sovereign to represent the person of the state pertain solely to the order of juridical right, and the same point applies to obligations between states expressed, for example, in treaty relations. Whereas the obligations of citizens of a polis or tribe or nation to its guests may be ethical in the sense of requiring that they exhibit an *ethos* in their conduct to the guest on pain of dishonoring themselves and their polity, neither the obligations of the subject or citizens of a sovereign state nor the obligations of sovereign states can be so characterized. Kant’s transformation of the *concept* of cosmopolitanism into a question of right is thus intrinsically related to his shifting of the *site* of cosmopolitanism to that of relations between states and potential sources of conflict between them. That cosmopolitan right will take the form of a law and right of hospitality does not

thereby entail that this right represents an expression of the ethics of hospitality exhibited by, for example, the ancient Greeks any more than the category of cosmopolitan right is an expression of the ethical conception of cosmopolitanism exhibited by, for example, Leibniz. Kant's transformation of the form of the concept of cosmopolitanism also entails a transformation of the form of the concept of hospitality.

We will return to the question of Kant's argument concerning the nature of cosmopolitan right as a law and right of hospitality in the next section; the point of these preliminary notes has been to propose that there is a significant disjuncture between hospitality as *ethos* and hospitality as *right*. One way that difference can be registered is in terms of a distinction between the letter and the spirit of obligations of hospitality. Within the understanding of hospitality as *ethos*, it is entirely intelligible to comment of a host's relationship to a guest that although the host punctiliously discharged their obligations, they were a bad host because of the spirit in which they did so. No such complaint can be advanced within the understanding of hospitality as *right*; the guest has not been wronged insofar as their rights have been observed.

ON COSMOPOLITAN RIGHT AND ITS LIMITS

That Kant's innovation in giving expression to the category of cosmopolitan right has salience for reflection on contemporary obligations to asylum seekers and refugees is a widely endorsed view. But exactly what are the character and implications of Kant's argument is a subject of much greater controversy. Fortunately for us, however, the purposes of this essay do not require that we attempt to settle the disputes of Kant scholarship in order to make the argument with which I am concerned, namely, that the cosmopolitan right of hospitality is not adequate as a response to the claims of asylum seekers and refugees. This is not to say that it is irrelevant; on the contrary, Kant's argument can, I will argue, be seen as underpinning a core element of any just refugee regime, that is, the principle of non-refoulement as a preemptory norm of international law that imposes a strict duty

on states not to return asylum seekers and refugees to territories in which their basic human rights are at risk. It is to say, however, that a refugee regime requires more than this if it is to be just—and that this requires the transcendence of the right to temporary sojourn, to be a guest hosted by a state, and hence of the framing of obligations in terms of hospitality.

To advance this argument, I consider three different readings of Kant's arguments concerning cosmopolitan right. The first, offered by Christopher Meckstroth, proposes a narrow reading in which cosmopolitan right is solely concerned with ruling out various grounds that have been used to justify war. The second, advanced by Pauline Kleingeld, argues that Kant's account also provides grounds for positive rights on the part of those driven by chance and necessity onto the land or territory of another people. The third, proposed by Peter Niesen, diagnoses an *aporia* in Kant's articulation of cosmopolitan right and considers how his argument might be developed to address this internal tension and to speak to our contemporary context. I argue that none of these readings of Kant's argument provides an adequate account of what is owed to asylum seekers and refugees.

We can preface the discussion of the three readings of Kant with a quick sketch of the overall structure of the form of his argument. For Kant, there is but one *innate* (natural) right to which human beings are entitled, namely, the right to freedom conceived as independence from being constrained by another's choice. This is a natural right because it expresses the idea of the equality of human beings in its negative form: no one has a natural right to be the master of another, to set their purposes or determine their ends. A rightful political order must thus be one in which the securing of this natural right is possible. Following Hobbes, Kant argues that this rules out remaining in a state of nature. The possibility of securing this innate right requires the construction of a civil association since human beings in a state of nature are in a condition in which none of the rights that compose the necessary conditions of this natural right (most directly rights of person and property) can be secured.

The possibility of fully realizing the innate right, however, confronts two further sets of problems raised by this transition to the sovereign state. First, in order that this sovereign power not have the ability to predate on the subjects of the state or that some members of the civil state not be able to subordinate other members of the polity, all subjects must be citizens; the state must have a republican constitution that secures rights of their person and of their property from the possibility of both public and private sources of threat to their freedom. Second, these states may be situated in an international state of nature. This raises two potential problems for the possibility of a rightful order of states (i.e., one that secures the possibility of the innate right). The first concerns disputes between persons as citizens of different states. The second concerns disputes between states. Hence, the possibility of securing the innate right of human beings from each of these threats requires the instituting of, respectively, international private law and international public law. For such law to be authoritative, states should enter into a political structure that secures the rightful exercise of international law such as a confederation of republican states.

This is not yet sufficient, however, to resolve fully the problem posed by Hobbes's logic to the possibility of securing the innate right to independence, because a further potential source of conflict concerns the potential demands of individuals conceived as members of the human community to take up residence outside their own state or to engage in trade outside that state, an issue raised particularly forcefully in relation to places and peoples where no state is taken to exist. This was a central issue for Kant's predecessors and contemporaries that arose vividly and urgently in relation to the encounter between European states and what they conceived as the "non-state" peoples of the New World. It is in this context that Kant introduces the category of cosmopolitan right to complete his account of the conditions necessary for the possibility of securing the one innate right of human beings. With this background in place, let us turn to the diverse readings of Kant's argument.

Meckstroth's narrow reading argues that Kant's cosmopolitan right of hospitality does not express a freestanding positive claim but rather serves to rule out justifications for war against those that the traditional reading of *ius gentium* (the law of nations) allowed to be designated "enemies." "Hospitality," in Kant's understanding of it as the form of cosmopolitan right, marked out the right to not be treated as an enemy simply by virtue of arriving on foreign shores, whether voluntarily as, for example, a merchant seeking to make offers of trade or through chance and necessity as, for example, a shipwrecked sailor or the company of a ship seeking refuge from a storm. On this reading, Kant is drawing on Vattel to criticize those early pioneers of the modern theory of *ius gentium* such as Francisco de Vitoria and Hugo Grotius, who justified colonial wars in pursuit of commerce, "while regrounding the right, in sharp contrast to Vattel, as a solution to Hobbes's problem of how to escape the state of nature" (Meckstroth 2018, 539). Notice that one further reason that this argument matters for our current purposes is that Kant's rejection of the arguments of Vitoria and Grotius is a rejection of an argument that is framed in terms of "a sacred right of hospitality" that "entitles Europeans to vindicate their right [to trade] by force" (550). The core purpose of cosmopolitan right was thus, first, to establish the right of merchants and sailors not to be treated as enemies for being on the land to which a non-state people had a provisional right (e.g., Native American land) or the territory of a state (e.g., China), and, second, the right of a non-state people or a state not to be treated as an enemy for refusing the offer of trade by merchants or for refusing to allow shipwrecked or storm-sheltering sailors rights to remain in residence once the threat of perishing is past. On this reading, then, Kant's essential move with the introduction of the category of cosmopolitan right was to "rule out appeals to further *ius gentium* rights—such as the familiar ones to aid in necessity or protection from one's prince, to pass armies through others' territory, or particularly to demand freedom of trade—any of which would threaten to reignite the sort of *ius controversum* his entire strategy was deigned to escape" (544). Noth-

ing that could not be justified in terms of being necessary to the resolution of the Hobbesian state of nature problem would be retained from the traditional *ius gentium* corpus.

The salience of cosmopolitan right for asylum seekers and refugees is thus to establish a duty on the part of those on whose land or territory persons find themselves as a matter of chance and necessity to not treat the other as an enemy or to reject their presence if this would threaten them with perishing. This duty would logically entail the further requirement of not preventing such persons from gaining access to the basic goods required to protect themselves from perishing in ways that are compatible with not infringing on the rights of others (so, for example, fishing in the sea or purchasing provisions). At its most expansive, this amounts in contemporary terms to a basis for a principle of non-refoulement that applies to the “first safe countries” reached by asylum seekers who are otherwise at serious risk of perishing.

Against this narrow reading, interpreters such as Kleingeld have argued for a wider view. Where Kleingeld differs from Meckstroth is in seeing Kant’s appeal to the idea of the original common ownership of the earth as playing a significant role in the grounding of cosmopolitan right. This idea as an Idea of Reason (rather than as a historical idea about the human past as it had been in Grotius) emerges from the conjunction of the innate right of freedom with the fact that human beings are corporeal entities who inhabit the finite spherical surface of the earth and who thereby cannot occupy the same space at the same time and whose actions are liable to interact in ways that potentially affect their freedom. As she comments:

In his introduction of the idea of the original community of the earth, Kant discusses the “right to be there where nature or chance (without [one’s] will) has placed [one].” In the unpublished draft for the Doctrine of Right, he elaborates on the presuppositions of the argument, writing that being in some place is necessary for the very existence of

human beings, and thus, that people have an innate right to be on the soil on which they are placed through no choice of their own. This is so because denying them this right would mean denying them their very existence and their freedom. In other words, humans have a right to freedom, freedom requires existence, and human existence requires a place on the globe; therefore, one has a right to be where one cannot help being and not to be sent away if this would lead to one's "demise." (Kleingeld 2011, 84)

This establishes a right of the asylum seeker and the refugee to temporary sojourn in a safe country, but Kleingeld develops this argument further in two respects. First, she indicates that those who would be in danger of perishing if refused physical access to this land or territory are entitled to have their survival needs met. Thus, she argues that the letting-not-perish condition is more substantive than Meckstroth appears to acknowledge, where this takes, for example, the form of permitting our shipwrecked sailors from using resources of the private property on which they find themselves to serve their survival needs (84–85). Second, she argues that there are reasonable Kantian grounds for construing the scope of Kant's "perishing" condition quite broadly:

First, with regard to the range of cases to which cosmopolitan right applies, Kant's term "demise" could be interpreted more broadly than as referring to death only. It could conceivably also include incapacitating physical or psychological harm, and then the range of cases to which it applies would be much greater. Second, the certainty of the ensuing death need not be absolute for there to be a right to safe haven. To refer back to Kant's own example, there is no absolute certainty that sailors seeking refuge in a foreign harbor would indeed perish in the storm. In other words, the range of applicable cases need not be read in the most restrictive manner. (78)

This more expansive reading of the implications of Kant on cosmopolitan right would see Kant as grounding a right to refuge that is comprised of a duty of non-refoulement on the receiving state with respect to those for whom it is the state into which chance and necessity have impelled them (but not for those who have engaged in secondary migration from such a state where their safety was assured), a right to meet their subsistence needs (or to have their subsistence needs met) while the relevant threat persists, and a wider construal of the “perishing” condition to encompass those who have a reasonable fear that they would otherwise be subject to serious physical or psychological harm.

Let us now turn to the final interpretation that I will consider. This interpretation, proposed by Niesen, argues that Kant’s account of cosmopolitan right is aporetic. Like Kleingeld, Niesen does not disagree with Meckstroth that Kant’s argument intentionally counters the colonial uses of *ius gentium*. Rather Niesen draws attention to, first, a source of tension in Kant’s argument and, second, a distinction that has been overlooked in the literature on Kant’s cosmopolitan right and might provide a way forward for Kantians seeking to apply Kant’s thinking to contemporary refugee issues.

The source of tension is that Kant draws on the idea found in Grotius of original common ownership of the earth that has two functions. The first is “distributive and exclusive” and “serves to license private acquisition of some parts of the earth—territory”; the second is “collective and inclusive” and “forbids the private acquisition of others—the seaways” (Niesen 2021, 2). Developing a historical reconstruction of Kant’s appropriation of Grotius’s reflections on original common ownership, Niesen argues that the two uses of this concept (now reconceived as Idea of Reason rather than as a historical category) in Kant’s development of the category of cosmopolitan right point in different directions: “Kant’s first motive is that everybody has to be able to be somewhere, rightfully. His second motive is that every person is entitled to voluntaristically strike up contact with everyone else” (12). The first motive yields the argument that, given that the

earth has been divided up into territories, “the shipwrecked sailor ... will find herself always already on someone else’s ground” (15). This grounds a duty not to let the sailor perish because their presence on the other’s territory is a product of “the contingency of having arrived somewhere” and where their being at this place is integral to securing their life from a threat to it. Cosmopolitan right here serves to ensure that they have a right to presence on this territory until the threat subsides. By contrast, the second motive “supports a concern for communication among strangers” (17) such as the ability of merchants to travel to another country to offer trade or, for that matter, the ability of a person to apply for residence or membership in a new state. However, as Niesen points out, the communicative right does not itself require physical “in person” presence, nor does the refusal of the communicative offer as such wrong the person making the offer. Consequently, he concludes:

Kant’s cosmopolitan right cannot be understood other than as leading to aporias for our contemporary questions results from the decoupling of the two elements that go into the justification of protected sojourn ... Kant ties a mute humanitarian right to be present, however involuntarily, which has no plausible interface to a right to have one’s application to community considered, to a non-humanitarian, thus easy to reject, right to application that flows from the desire for free universal interaction and contact. (20)

How might this problem be addressed?

Here Niesen turns to what he takes to be an overlooked distinction in the literature on Kant and cosmopolitan right:

While the distinction between a state of nature among states and a condition of law (“rightful condition”) is routinely used for explanatory purposes, and while commen-

tators agree that the difference between provisional and peremptory law must be heeded for intra-state and international law, no such duality has been explored for cosmopolitan right. While authors agree that Kant only sketches ... the “conditions of possibility of a public peace” and moves on from the state of nature to public international law, there is no awareness that cosmopolitan right likewise stands in need of transcending its origins in natural law, towards an omnilaterally consented and positivized legal condition. (2021, 2)

Taking up this thought, he argues that developing Kant’s account of cosmopolitan right can draw the different elements of this account to ground the functional necessity of a man-made infrastructure required to fulfil cosmopolitan right (so, for example, it might ground a right of safe passage for refugees). Yet even then, as Niesen acknowledges, the duality of the grounds of cosmopolitan right in Kant gives rise to a duality in relation to the foreigner:

Is it the protection of strangers as helpless and vulnerable objects of fate or the elements, or do we value and respect their communicative autonomy when seeking cooperation, residence or inclusion?... These two readings overlap only the single case in which deportation is ruled out where a danger to perish exists—since it does not matter whether such hospitality is claimed voluntarily or involuntarily. (27)

The aporetic reading of Kant on cosmopolitan right thus brings us face to face with the fundamental tension in that account.

The salience of these diverse readings of Kant is that they illustrate the limitations and tensions that attend the relevance of his account of cosmopolitan right for contemporary debates concerning justice for refugees. While Kant’s account can ground the right of

non-refoulement and might be developed to ground an argument for the provision of basic humanitarian needs or even a right to safe passage, it does not provide a basis for grounding more expansive rights in the hosting state that move us out of the domain of hospitality and into that of social or political membership. Yet this is, I submit, what justice to refugees requires.

JUSTICE, MEMBERSHIP, AND REFUGEES

We should begin by acknowledging that a duality that is related to what Niesen identifies in Kant can also be seen in two contrasting modern pictures of refugees: the humanitarian and the political. The *humanitarian* picture identifies refugees as forcibly displaced persons who have typically crossed an international border, that is, people who have compelling reason to flee, or not return to, their home state on the grounds of the threat this would pose to their basic needs. This picture of refugees and our relationship to them “pervades the public imagination and academic literature”:

The term “refugee” connotes people fleeing war, famine, and failed states. They are portrayed as victims waiting in camps until they can return or be resettled. These are the “neediest” of the needy such that “a refugee’s plight appears morally tantamount to that of a baby who has been left on one’s doorstep in the dead of winter.” Characterizations like this represent what has been called a “humanitarian” conception of refugees where a “foreigner’s need for protection—regardless of whether that need results from persecution, civil war, famine, extreme poverty, or some other cause—grounds a claim for asylum. The more serious and urgent is the need for protection, the stronger is that claim.” (Cherem 2016, 185)

A clear example of this picture is provided in Alexander Betts and Paul Collier’s recent book *Refuge: Transforming a Broken Refugee System*. The

authors argue that “Syrians forced to flee their homes by violence” are ethically analogous to a “drowning child” and “we have an unambiguous duty of rescue towards them” (Betts and Collier 2017, 99). By contrast, the *political* picture argues for the distinctiveness of refugees compared to other forced migrants:

Refugees are special because persecution is a special harm. Refugees “are targeted for harm in a manner that repudiates their claim to political membership”; their “rights go unprotected because they are unrecognized” rather than for other reasons.... Refugees are distinctive because their country of origin has effectively repudiated their membership and the protection it affords. The status on which almost all their other rights hinge is gone. (Cherem 2016, 191)

This picture draws a sharp distinction between refugees and (what Michael Walzer calls) “necessitous strangers”:

Both are distinct from [voluntary] immigrants. Necessitous strangers are “destitute and hungry” people fleeing generalized catastrophes. Their needs can be met “by yielding territory” or “exporting wealth” while withholding membership. Yet refugees are “victims of ... persecution” whose “need is for membership itself, a non-exportable good.” (Cherem 2016, 191)

Whereas “necessitous strangers” require humanitarian aid, refugees require asylum. The *humanitarian* and *political* pictures of refugeehood thus diverge in their responses to the question of who should be entitled to refugee status; so, for example, from the humanitarian perspective there is no essential moral difference between people fleeing persecution and those fleeing famine, nor between those fleeing across international borders and those forcibly displaced within

their state of nationality; whereas from the political perspective, only persons outside the state and threatened by persecutions should be entitled to refugeehood. More than this, these two pictures also shape distinct understandings of what obligations are owed to persons with that status that, in turn, have significant implications for how such obligations should be shared and the nature of the grant of refugee status as an expressive act (Owen 2020). However, as Joseph Carens (2013), Gillian Brock (2020), and I (Owen 2020) have argued, we can move beyond this opposition by recognizing that the refugee regime can be seen as a legitimacy repair mechanism for the international states. As Carens nicely puts it:

The modern state system organizes the world so that all of the inhabited land is divided up among (putatively) sovereign states who possess exclusive authority over what goes on within the territories they govern, including the right to control and limit entry to their territories. Almost all human beings are assigned to one, and normally only one, of these states at birth.... Even if being assigned to a particular sovereign state works well for most people, it clearly does not work well for refugees. Their state has failed them, either deliberately or through its incapacity. Because the state system assigns people to states, states collectively have a responsibility to help those for whom this assignment is disastrous. The duty to admit refugees can thus be seen as an obligation that emerges from the responsibility to make some provision to correct for the foreseeable failures of a social institution. Every social institution will generate problems of one sort or another, but one of the responsibilities we have in constructing an institution is to anticipate the ways in which it might fail and to build in solutions for those failures. If people flee from the state of their birth (or citizenship) because it fails to provide them with a place where they can live safely, then

other states have a duty to provide a safe haven. Thus, we can see that states have a duty to admit refugees that derives from their own claim to exercise power legitimately in a world divided into states. (2013, 196)

Refugees, it is argued, are people for whom the international community must stand *in loco civitatis*, that is, as substitutes for their own state (Owen 2016). What this relationship demands, it is proposed, can vary according to whether refugees require *asylum*, *sanctuary*, or *refuge* (Owen 2019, 2020). The first is exemplified by the case of people who have reasonable grounds to fear persecution by their home state (or by non-state actors from which their state is unwilling to offer protection). Such persons are wrongfully made de facto stateless, and the appropriate form of reparation in a world of states in which one's political standing is conditional on state membership is membership in a new state. The second is illustrated by people fleeing generalized violence and the breakdown of civil order. Such groups require the protection against the threats to one's basic security, liberty, and welfare that would normally be the function of citizenship to secure, and, hence, the appropriate form of reparation is social membership (in the form of a range of civic rights) and reasonable conditions of access to citizenship in the state of sanctuary. The third is exemplified by people fleeing because of specific non-blameworthy failures of protection by a functioning state, such as an earthquake, who, if the relevant protection can be reasonably rapidly restored, require humanitarian protection for the period until return is viable. Of these, only the last might be adequately conceptualized in terms of hospitality.

These reflections on what is owed to refugees as a matter of justice highlight two points. The first is that it is unsurprising that Kant's account does not give adequate articulation to what justice demands to refugees, because the logical form of Kant's account as a response to the Hobbesian challenge is to articulate the conditions that necessarily secure a rightful global order in which the innate right

of freedom is fully enjoyed by all human beings. Hence, the logical form of Kant's account rules out precisely what Carens highlights as central to reflection on obligations to refugees, namely, "the responsibility to make some provision to correct for the foreseeable failures of a social institution" (2013, 196), and does so because the nature of Kant's task is to establish the conditions required for human freedom, not to consider what to do when those conditions are not obtained because of institutional failure. The second, and consequent, point is that because Kant does not consider the ways in which the pivotal institution of citizenship (as effective membership of a state) in a world of states may break down and hence the kinds of responses (e.g., asylum, sanctuary, and refuge) required to redress these failures, it is unsurprising that his account of cosmopolitan right is, in respect to refugees, limited to cases of natural threats that align with the category of temporary refuge. To engage seriously with what justice to refugees requires entails a form of theorizing in which we build acknowledgement of plausible forms of institutional failure and the mechanisms to redress them into our reflective activity. The limitations of Kant's cosmopolitan right to hospitality illustrate the dangers of failing to take our reflection far enough. The alternative approach adopted by Carens, Brock, and Owen aims to dissolve the aporia of humanitarian versus political pictures of refugees, whereas even Nielsen's constructive reading of Kant, while it points to the need for development of positive cosmopolitan law, is only exhortatory and normatively less determinate.

TRANSCENDING HOSPITALITY

Let us return to Derrida's reflections on hospitality. In a move characteristic of his later work, Derrida attempts to offer an account of what Simon Critchley and Richard Kearney call "the logical structure behind the image of cosmopolitanism" (2001, ix). As they note in the case of cosmopolitanism, Derrida posits that:

on the one hand, there is an unconditional hospitality which should offer the right of refuge to all immigrants and newcomers. But on the other hand, hospitality has to be conditional: there has to be some limitation on rights of residence. All the political difficulty of immigration consists in negotiating between these two imperatives. (x)

In framing the issue of cosmopolitanism and “immigrants and newcomers” in this way, Derrida is working with an ethical understanding of hospitality. Indeed, commenting on Derrida’s discussion, the anthropologist Andrew Shryock finds himself wondering why Derrida sounded like a Bedouin and draws attention to the ways in which Derrida’s language—with its invocation of “welcome, trespass, sacrifice, risk, substitution, lack of calculation, harboring the nameless guest, giving hospitality without reciprocity in mind, as the unexpected act, surprising and selfless, that transcends politics and overcomes the law”—reproduces the thematics and logics of Bedouin reflection on hospitality (2008, 409). What might such an ethics of hospitality mean politically?

Commenting on Kant’s essay “Perpetual Peace,” Derrida remarks (1999, 70):

Such a concept of peace implies, therefore, universal hospitality; that is, all the nation-states should guarantee hospitality to the foreigner who comes, but only under certain conditions: first, being a citizen of another nation-state or country, he must behave peaceably in our country; second, he is not granted the right to stay, but only the right to visit. Kant has a number of sharp distinctions about this. I would call this “conditional hospitality,” and I would oppose it to what I call “unconditional” or “pure” hospitality, which is without conditions and which does not seek to identify the newcomer, even if he is not a citizen.

The first concern that one might have about Derrida's appeal to the idea of "unconditional" hospitality is that it does not distinguish between a hospitality without limits that remains within the register of host-guest (even when the relation is inverted or reversed) and a hospitality that transcends itself by moving from the register of host-guest to that of common membership of a polity. The second concern is what ethical force the idea of unconditional hospitality is intended to have, given that it encompasses "the risk of the other coming and destroying the place, initiating a revolution, stealing everything, or killing everyone" (Derrida 1999, 71). To be sure, Derrida is not recommending unconditional hospitality; on the contrary, he is clear that all hospitality must be conditional. Rather he seems to have in mind the thought that the role of the idea of pure hospitality is to maintain a relation to existing practices of hospitality as practices that can always be renegotiated.

To see the salience of this stance but also draw out its problems, it may be helpful to turn to the kind of proposals that Derrida refers to at the start of his speech:

The name "cities of refuge" appears to be inscribed in gold letters at the very heart of the constitution of the International Parliament of Writers. Ever since our first meeting, we have been calling for the opening of such refuge cities across the world. That, in effect, very much resembles a new cosmopolitics.... We would ask these new cities of refuge to reorient the politics of the state. We would ask them to transform and reform the modalities of membership by which the city (*cit *) belongs to the state. (2001, 4)

In concluding his reflections to the International Parliament of Writers, Derrida returns to the idea of "cities of refuge" and remarks:

Our experience of cities of refuge then will not only be that which cannot wait, but something which calls for an urgent response, a just response, more just in any case than

the existing law. An immediate response to crime, to violence, and to persecution. I also imagine the experience of cities of refuge as giving rise to a place (*lieu*) for reflection—for reflection on the questions of asylum and hospitality—and for a new order of law and a democracy to come to be put to the test (*expérimentation*). Being on the threshold of these cities, of these new cities that would be something other than “new cities,” a certain idea of cosmopolitanism, *an other*, has not yet arrived, perhaps. (2001, 23)

We may see in these two passages the idea that has been given specific practical expression in the International Cities of Refuge Network with respect to writers and artists and more general expression in the Sanctuary movement, most obviously in the Cities of Sanctuary with which the movement began but also in the expansion of this movement to schools, universities, galleries, and libraries of sanctuary. These movements may be seen as prefigurative enactments of “another international law, another border politics, another humanitarian politics, indeed a humanitarian commitment that effectively operates beyond the interests of Nation-States” (Derrida 1999, 101). In both cases, Cities of Refuge and Cities of Sanctuary do operate within the terms of an ethics of hospitality, but it is one that is modulated by the commitment to human dignity expressed in the idea of human rights—and the significance of this fact for our concerns can be drawn out by noting a distinction and dynamic that indicate both why an ethics of hospitality matters and how such an ethics is transformed by its incorporation of an orientation to the idea of human dignity.

The distinction is between what Michael Rosen (2012) calls “respect as observance” and “respect as respectfulness.” The former denotes observing (and not undermining) your rights: I recognize the dignity *of* your person by not breaching these rights or undermining your ability to exercise them. The second refers to an attitude with which I interact with you: I acknowledge the dignity *in* your person by engaging respectfully with you. The dynamic is that failing to sustain the latter leads easily to the undermining of the former:

One of the features that have characterised many of the most violent and destructive acts of the twentieth century has been the humiliation and symbolic degradation of their victims.... It seems to be a fact about human nature that human beings are able more easily to engage in the most violent behaviour towards one another if at the same time they expressively deny the humanity of their victims. (Rosen 2012, 97)

“Respect as observance” is expressed in legal rights and duties such as the cosmopolitan right to universal hospitality, the duty of non-refoulement, and the rights of refugees. But sustaining public commitment to these rights requires sustaining “respect as respectfulness” or, put more generally, a commitment to the dignity of the other. The importance of the International Cities of Refuge and Sanctuary movements beyond the order of rights is that their orientation to the ground of human rights is one of sustaining this ethical attitude of what we may call “hospitality as respectfulness.”

The introduction of dignity and respect into an ethics of hospitality thus alters the character of such an ethics in a significant way by picturing the relationship between host and guest in terms of a more basic second personal relation of moral equality between individuals entitled to make claims on each other in virtue of their common standing. Consequently, unconditional hospitality is no longer to be identified with hospitality without limits in the form that Derrida supposes in which one must be prepared to risk surrendering one’s home (1999, 70); rather, unconditional hospitality is then expressed as a respectfulness without limits towards the other as a moral equal, a commitment to uphold their humanity, the dignity in their person.

There are then, I suggest, two ways in which we need to move beyond Derrida’s articulation of the concept of hospitality in relation to cosmopolitanism. The first concerns its failure to acknowledge the possibility of transcending the order of hospitality into the order of political membership. The second addresses its failure to acknowledge that the form of an ethics of hospitality is structured by

the wider ethical context within which it is situated—for example, a hierarchical ethics of honor or moral order of human equality. As the examples of Cities of Refuge and Cities of Sanctuary exemplify, a contemporary ethics of hospitality is to be modulated through a commitment to the moral equality of human beings and oriented to sustaining the rights of refugees, including their rights to membership of the state of asylum.

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