

Cosmopolitanism and Citizenship: Kant Against Habermas

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1. Introduction*

Over the last few years there has been a considerable transformation both in social philosophy and in ethics. Formerly social philosophy concentrated on the opposition between the two then prevailing models of society. The social thought of Karl Marx formed an important source of inspiration and a challenge. Much attention was paid to problems of how to understand or to criticize the right to property and the problems of social divisions in society. Alongside the important political changes at the end of the last decade, interest in the thought of Marx has declined. Reflection on Marx's thought is no longer a priority for most theorists. Much more attention is now paid to reflection on the conception of a liberal society, its fundamentals and its origins. Among other things this has resulted in a re-evaluation of authors whose social and political thought had long been considered as not being of much importance. A striking example in this respect is the social and political thought of Immanuel Kant. Nowadays Kant's philosophy is highly esteemed not only because of his *Critique of Pure Reason* and his ethical writings, but also because of his social thinking. Kant is now considered to be among the classics of liberal thought, on a par with John Locke or Thomas Hobbes.

A testimony to this shift in the importance attributed to Kant's political philosophy can be found in the development of the work of one of the contemporary leading philosophers in Germany, Jürgen Habermas. Although Kant was not absent from Habermas' older works, it is clear that in them the thinking of Marx and Hegel played a much more important role. In his early days Habermas considered it his task to develop Marx's ideas within the setting of modern industrial society.¹ However, his most recent work, *Faktizität und Geltung*², in which Habermas develops his own Philosophy of Right, is largely inspired by Kant. The influence of Marx is almost absent. This certainly does not come as a surprise. It is the logical consequence of the ethical theory developed earlier by Habermas and Karl-Otto Apel. This ethical theory, known under the name of 'Diskursethik', is clearly inspired by Kant's ethical formalism.

In general, then, it might seem that Kant's influence is greater now than ever before. This, however, is not the case. In contrast to the trend in social philosophy, in the field of ethics there has been a decline in the importance attributed to liberal ethics like Kant's. This decline is the result of the efforts of

the so-called 'communitarian' authors, who place much emphasis on the moral value of the community. Morality is not discovered, so they argue, from an abstract, impartial point of view like Rawls' original position, for example, or from the Kantian procedure of checking maxims for their universal validity. Morality is learned from, in and through the way of life of a particular community. Individuals, they continue, are able to sustain their morality only through such a community and its institutionalized ties. In place of a liberal morality Alasdair MacIntyre defends a morality of patriotism.³

It is clear that the issue of what moral value should be attributed to existing political communities has far-reaching consequences. It determines whether or not the political leadership of a community has the right and the duty to defend the communal morality. It also has its effect on how to evaluate the relations of that community with the outside world. One might expect that the more value is attributed to communal life the less willingness would exist to admit newcomers to that society. People who care about the integrity of their nation will consider migration a serious problem, whereas people with less patriotic feeling will enjoy the prospect of an open cosmopolitan world-society.

This paper contributes to this debate by focusing on one of its central issues: the question of how citizenship should be distributed in our modern world. Would it be morally preferable to disconnect citizenship from nationality, to leave behind the world as divided into separate nation-states, and try to develop a cosmopolitan constitution with equal citizenship for all members of the human race? Or would such a world be undesirable because it would dissolve all differences between communities? I will concentrate mainly on two authors. First of all I will briefly sketch Kant's theory of international relations in order to clarify his concept of cosmopolitan right and citizenship. Then I will analyse Habermas' views on this issue. I will concentrate mainly on one of the appendices added as a preliminary study to *Faktizität und Geltung*. This appendix is called 'Staatsbürgerschaft und nationale Identität' and has been previously published both in German and in English.⁴ But I will also refer to other writings by Habermas, e.g. his recent interpretation of Kant's famous 1795 treatise *Zum ewigen Frieden* (Perpetual Peace).⁵ These analyses will make clear an important difference between the views of Kant and Habermas. On the issue of cosmopolitanism Habermas is, most certainly, not faithful to Kant's heritage. Finally I will return to Kant's writings and examine his grounds for rejecting cosmopolitan citizenship.

2. Kant on cosmopolitanism

At first sight it might seem an anachronism to investigate Kant's writings on the subject of citizenship and migration. Such problems seem related to the existence of nation-states which were hardly to be found in his days. Kant nevertheless developed a theory of international relations, e.g. in *Zum ewigen*

Frieden. This small treatise can be taken as a starting point for an examination of Kant's views on citizenship. Briefly I will introduce Kant's rules setting out how states should behave towards each other. This will enable me to draw attention to an often neglected aspect of Kant's views.

Crucial in Kant's peace-proposal is the requirement that states should be governed in a republican manner. This type of government is characterized by the division of the legislative and the executive powers of the state, by representation and respect for the fundamental right of freedom of the citizens of that state. In order to create a permanent peace, republican states should consent, as a general rule of international behaviour, to consider each other as autonomous entities and respect each other's political sovereignty and territorial integrity.

From this general rule of international behaviour the following more explicit ones can be deduced. First, if states are to respect each other's autonomy, the possibility of war as a means to settle international conflicts is excluded. However, the possibility of tensions and conflicts cannot be excluded a priori, therefore the ruling out of war as a legitimate means of settling international conflicts implies the establishment of another means to resolve these problems. Kant hesitated for a long time about the specific character of an international body. In early formulations he stressed the need to attribute some kind of law-giving capacity to this body, together with the power to implement its decisions, so that it would function as a world-republic. But on later occasions he warns against the risks states would run by approving international ties which are too strong. This international body might develop into some kind of 'universal monarchy', which would completely neglect the autonomy of the participating states. In *Zum ewigen Frieden* Kant finally pleads for a federal association between states. An indissoluble association between states in a world-republic is not considered necessary. Through a federation of states or a congress which has a voluntary character, the idea of international law can gradually be realized.⁶ Kant clearly does not support the elimination of the differences between nation-states in a world-republic. This conclusion is confirmed by the other two explicit rules that Kant deduces from the general respect he requires from states. Both can be found in *Zum ewigen Frieden*.

The second rule might be considered a corollary of the first one, and adds to the prohibition of war that of intervention. Nevertheless it has an important implication, insofar as this prohibition can be found in two of the so-called 'preliminary articles' of *Zum ewigen Frieden*, in which the negative conditions for peace are formulated. These can be considered as preconditions, whose fulfilment is necessary in order to establish a lasting peace according to the 'definitive articles' of republicanism and federalism. The second preliminary article states this: 'No independently existing state, whether it be large or small, may be acquired by another state by inheritance, exchange, purchase or gift.' The reason for this prohibition is the fact that a state is not a possession of the ruler, but a moral person and therefore it cannot be disposed of without consent.⁷ The protection of political life within a state is also expressed in the

fifth preliminary article: 'No state shall forcibly interfere in the constitution and the government of another state'.⁸

It is very remarkable that Kant formulates the prohibition of intervention in the preliminary articles, which can only mean that this prohibition has a universal validity in the following sense: it protects all states against intervention, not only the republican ones. As a precondition the prohibition of intervention protects not only the integrity of governments that deserve moral support due to their republican structure. The integrity of the opposite of republican government, so-called despotic government, is also defended by this prohibition. Apparently, an answer to the question whether or not a state meets the moral requirements of republicanism is not at the same time an answer to the question of whether this state deserves to be respected by its neighbours. Kant even denies the legitimacy of what we now call humanitarian intervention. Kant's denial is based on several reasons. One of them is the analogy with domestic criminal law. Imagine that a free person violates moral duty by not developing his own talents. In this case he most certainly is a bad example to others, but he is not harming them. Therefore they do not have the right to punish him. Only if his behaviour harms other persons, e.g. by violating contracts, is there a right to punish him. Analogously, a scandalous situation within a particular state, e.g. the violation of human rights, does not violate the rights of other states. They do not have the right to interfere. They should look at the situation in the other state only as a warning not to create the same kind of lawlessness in their own territories.⁹ The application of criminal justice is not legitimized in case of harm done to one's self, in either the domestic, or in the international realm. A state deserves punishment only when it harms other states.

The second reason, which is related to the first, is paternalism.¹⁰ States do not have the right or the obligation to interfere in the internal affairs of another state, not even when they have the best intentions of imposing a republican government. Like J. S. Mill, Kant argues that a nation has the right to establish a government of its own and that it cannot be forced to be a free one.¹¹ The third reason is the following: if the legitimacy of intervention were accepted, the independence of all states would be insecure. According to Kant, only one legitimate ground for the use of military force against a state remains. When the evil behaviour of a particular state threatens the integrity or sovereignty of another state, all states as well as that particular one have the right to unite against the first state in order to prevent intrusions on sovereignty. To tolerate such behaviour on the part of a state would in the long run destroy the possibility of a lasting peace.¹²

The third rule of international behaviour can be deduced from the third definitive article of *Zum ewigen Frieden*, concerning what Kant calls 'cosmopolitan right'. The interpretation offered here is that this article too must be understood as an application of the general principle that political communities deserve respect. It emphasizes that such respect should be paid not only by states in the prohibition of war and intervention, but by individuals as well. Kant's cosmopolitan right asserts the obligation of individuals with regard to existing

political communities and the obligation of political communities with regard to strangers. Thereby, this confirms the picture of the international law we have found so far. According to Kant, the international realm should consist of a plurality of independent political communities. If Kant had adopted the possibility of a world-government, the problems of citizens and strangers would not have occurred. All human beings would have been considered as members. It is therefore obvious that this cosmopolitan right could arise in Kant's writings only after he had dropped the possibility of such a world-government.¹³

This cosmopolitan article is famous on account of the criticism of colonialism¹⁴ it contains. In order to understand this criticism, a closer look is necessary. The negative approach is remarkable: 'cosmopolitan right should be limited to conditions of universal hospitality'.¹⁵ The basis for this restrictive statement is found in the distinction that Kant makes between 'the right of a guest' (*Gastrecht*) and 'the right of visit' (*Besuchsrecht*). Cosmopolitan right entails the latter but not the former. Thus, on the basis of cosmopolitan right every human being has the right not to be treated with hostility when he comes voluntarily or accidentally to the territory of other political communities. This human being has the right to attempt to enter into peaceful relations with the native inhabitants. However, cosmopolitan right does not grant him the right to be a guest of this community and stay as long as he pleases. According to Kant, such permission would require a particular convention or agreement between the foreigner and the community. The acceptance of this foreigner would be an act of benevolence on the part of the community.¹⁶ Thus there is a clear distinction in Kant's *Philosophy of Right* between citizens who belong to a specific territorium, their fatherland, by birth, that is without having to perform any special legal act on the one hand, and foreigners who can only become citizens through such an act.¹⁷ Cosmopolitan right does not entitle foreigners to residency or citizenship whenever, or wherever, they want it. On the contrary: a community, according to Kant, has the right to turn down his request to settle, and to expel the foreigner from its territory. This right to expel a foreigner does not have unlimited validity; he can be turned away, if it is done without causing his death.¹⁸ Nowadays this restriction is known as the principle of *non-refoulement* and is considered as one of the key principles of refugee-law.

Since this cosmopolitan right formulates the principles of a just relation between what might be called native and foreign persons, this principle can be violated in two ways.¹⁹ First of all there is the lack of respect with regard to foreigners: political communities, or their members, refuse to offer them the appropriate respect and treat them with hostility. Kant's examples are: enslavement, plundering stranded seafarers or people lost in the desert. To permit this kind of behaviour would destroy the possibility of peaceful relations between all individuals and nations throughout the world. To this Kant immediately adds that the natural right of hospitality, that is the right of strangers, does not go beyond the conditions needed for them to attempt to enter into friendly relations with the native population. Thereby he alludes to

the second violation of cosmopolitan right, which he obviously regarded in his contemporary setting as the more striking one.

The lack of appropriate respect shown by foreigners for the life of the native population is, according to Kant, more obvious than the converse failing. Some of the so-called civilized states of the European continent have shown a considerable lack of respect for the foreign communities they have visited. Their abuse consists in the unjustified use of cosmopolitan right. They extend the right of not being treated with hostility as a right to reside, meaning: to conquer foreign territories and to dominate indigenous peoples.²⁰ According to Kant, this interpretation is built on an erroneous argument which runs as follows: 'The founding of colonies is allowed, for otherwise large parts of land would remain almost uninhabited and the few people living there would lack a rightful condition.' However, all such supposedly good intentions cannot wash away the strain of injustice from the means used thereby.²¹ Contrary to this common European practice, Kant strongly defends the indigenous people's right as first possessors of their territories, even if they are shepherds and hunters, who depend on large areas of waste land. Kant defends the moral right of some of these peoples to protect themselves against violent intrusion of Europeans. He characterizes the efforts of China and Japan to keep the Europeans at a distance not as prudent, but as wise. This is important since the concept of wisdom refers to morality.

To summarize: the conception of cosmopolitan right is introduced because the requirements of republicanism and federalism are not a sufficient basis on which to define completely the just relation between human beings. They may formulate just relations between citizen and citizen and between state and state, but there is also the need to define the just relations between citizens on the one hand and states on the other.²² For this reason a notion of cosmopolitan right is introduced. It is based on the simple fact that the earth belongs to all human beings and that it is at the same time a globe. Therefore individuals cannot be dispersed over an infinite area, so they have to tolerate each other's company. No one originally has any greater right than anyone else to occupy a particular portion of the earth.²³ Therefore individuals of all nationalities must be able to establish friendly relations with each other, without claiming a right to residence or to membership. Both unfriendly treatment and claims to dominion over foreign territory are violations of the cosmopolitan right.

According to Kant, cosmopolitan right certainly does not imply a natural right to migrate. Recently some authors, Carens among them, have argued that a global interpretation of Rawls' *A Theory of Justice* would result in adding such migration right to the basic rights and liberties which constitute Rawls' first principle of justice. Their argument is as follows: Let's agree with Rawls that principles of justice can be reached only from a moral, impartial point of view. Such a position can be attained only by hypothetically placing ourselves behind a veil of ignorance, which excludes knowledge of such contingencies as our place in society, our class position or social status, etc.²⁴ But, these authors ask, isn't Rawls' description of the impartial position inadequate if nationality and

membership are not equally counted as contingencies to be hidden behind this veil of ignorance? If the moral point of view had included these contingencies, the right to migrate would most certainly have been counted among the basic rights and liberties. Like freedom of religion it might prove essential to one's life plan.²⁵ From the examination of Kant's cosmopolitan right, it is apparent that Kant would not agree with such an extended interpretation of cosmopolitanism. According to Kant it remains the sovereign right of states to decide whether or not foreigners are accepted as its members. It guarantees to foreigners and foreign communities only the right of respect. Every state has the duty to allow individuals to visit its territory.²⁶ On this issue Kant does not agree with this liberal notion of freedom of migration. Instead he agrees with Walzer's communitarian position, which holds that admission and exclusion are at the core of communal independence and self-determination, and that states are simply free to take strangers in, or not.²⁷ By emphasizing the respect that every nation deserves, Kant defends the right of every nation to its own identity. Cosmopolitan right does not exclude national identity or patriotism. Rather the opposite: the plurality of nation states is a necessary condition of there being cosmopolitan right.

3. Habermas on citizenship

In *Faktizität und Geltung* many important problems in the philosophy of right are discussed, among them the problem of how to relate the concept of democracy to that of human rights. However, it is remarkable that hardly any mention is made of international law. Although Habermas often refers to Kant, he does not discuss problems relating to the existence of a plurality of states. Now it can be asked whether this dimension is lacking in Habermas' theoretical writing by chance, or whether it results from his concept of law itself. Is this dimension a gap to be filled easily by another 'Nachwort', or 'Reply to my critics'? Or does the absence of this dimension imply a more basic problem? It is my conjecture that this absence results from the concept of popular sovereignty Habermas uses. This conjecture is based on the analysis of the writings in which Habermas addresses problems such as those discussed already. My analysis concentrates mainly on 'Citizenship and National Identity', published as an appendix to *Faktizität und Geltung*. This essay might indicate why a discussion of international law is absent.

At the end of this appendix Habermas concludes:

Only democratic citizenship can prepare the way for a condition of world citizenship which does not close itself off within particularistic biases The arrival of world citizenship is no longer merely a phantom, though we are still far from achieving it. State citizenship and world citizenship form a continuum which already shows itself, at least, in outline form.²⁸

This is the appropriate conclusion of an article whose central theme is both the sociological reality of the separation of citizenship and national identity and the moral need to do so.

The first part of Habermas' article introduces this theme by analysing the past and the future of the nation-state and showing that the concept has two different meanings. On the one hand, a nation is taken as a community of people of the same descent, and on the other a nation is seen as a community of politically organized people and as a voluntary association within a territory.²⁹ The concept may refer to a pre-political unity with a certain 'ontological density'. It then indicates a particular historical community wherein a human being enters by descent, by which he is educated and within which he develops his identity. The nation, so to speak, precedes its individual members. The nation as a community of members can be compared to a family, which is separate from other families. On this conception, belonging to a nation is belonging to such a family. It is not a matter of choice, a voluntary act; it is a kind of destiny, which makes the individual belong to a particular nation with its own past, practices and project.³⁰ This understanding of the nation can be called romantic, and it always implies a plurality of nations.

The concept of a nation may also refer to what Renan calls a daily plebiscite, where nation has no ontological density. Whether or not one is a member of a nation then depends on whether or not one accepts the social agreement by which the nation is founded. In this case the nation does not choose its members by descent, but the membership of a nation is obtained by the voluntary act of accepting the agreement on which the nation is based. It could be called the revolutionary concept of nation. Just as the meaning of nation in the first sense is symbolized by the notion of descent, in the second sense it is symbolized by the notion of a contract.³¹ The opposition is that between the natural and the artificial character of the nation.

According to Habermas, the ideas of democracy, self-determination and popular sovereignty could come into existence only within the framework of the nation in the first sense. There is no conceptual connection, however, between this latter notion and the notion of democracy. The concept of democracy can and must transcend its origins in the romantic nation and connect itself with the second, revolutionary, concept of nation. In the eyes of Habermas the existence of democracy is not limited to the existence of national communities of descent. The reason for this is twofold. First, it is argued time and again that the nation-state is not what it takes itself to be: a natural community of descent. With authors such as Gellner and Anderson, Habermas points out that the nation is a specifically modern phenomenon of cultural and political integration. The romantic notion itself if, so to speak, not natural at all, but the artificial product of politicians and schoolmasters.³²

Second, and most important, there is the meaning of the concept of democracy itself,³³ since it implies that the sovereign power in a political community rests in *the people*. Its meaning is popular sovereignty. Now, Habermas argues, it may be true that from a historical point of view the concept

of popular sovereignty developed as the reversal of royal sovereignty and was therefore established within the boundaries of the historical nation-state. However, the basic notion involved is the transformation of authoritarian power into self-legislated power. The concept of democratic self-legislation cannot, therefore, be restricted by the sociological and historical contingencies of the romantic nation.³⁴ To restrict the notion of democracy to the romantic concept of a nation would be to undermine the claim to autonomy. The process by which a nation legislated democratically would not be fully free, it would be limited by the destiny and the project of the nation. The sovereignty of the people as legislator would be contradicted by the destiny of the people as a community of descent.

There can be no other conclusion: the concept of democracy is incompatible with the nation as a pre-political unity. Democracy destroys this concept and can be conjoined only with the revolutionary concept of nation. In a democracy citizenship means being a member of a self-governing body. In a democratic state citizens do not acquire their identity from some common ethnic or cultural properties, nor from some shared understandings, but from exercising their democratic right of participation in the law-giving process. The true understanding of democracy breaks down the tension built into the democratic nation-state, between the universalism of an egalitarian legal community on the one hand, and the particularism of a cultural community joined by origin and fate on the other.³⁵ After the simultaneous development of nationalism as loyalty to a particular community and of democracy as a formal procedure, the latter must now abandon the former. The initial fusion of democracy with nationalism functioned only as a catalyst. Now democracy has to free itself from the vehicle that served its emergence. Briefly, in the now obsolete historical figure of the nation-state, the idea that *ethnos* and *demos* are intertwined is suggested to us. We notice in our modern multicultural society the tension between the *ethnos* and *demos*, which can be solved by giving 'priority to a cosmopolitical understanding of the nation as a nation of citizens over against an ethnocentric interpretation of the nation as a prepolitical entity.'³⁶

According to Habermas the general will created through the process of democratic procedures cannot be identified with some substantive, 'ontological' collective will. In a true democracy the general will derives its universality and identity not from a historical homogeneity, but is exclusively the result of democratic procedures. Popular sovereignty, properly understood, does not refer to any historical nation, to any 'Volk' or 'populus'; it refers to a procedure.³⁷ This is what Habermas calls: 'Volkssouveränität als Verfahren'.³⁸ In a democracy the community of citizens is constituted by their willingness to accept these formal rules. Patriotism in such a democracy does not, therefore, entail loyalty to a specific substantial community, but has the sole meaning of being loyal to the democratic procedures of the constitution. This loyalty is called constitutional patriotism (Verfassungs-patriotismus).³⁹ Democratic citizenship does not require that its members be rooted in a national identity, but only that they accept democratic procedures.

This must, of course, affect the question of aliens and membership. If we undo the link between citizenship and national identity, the question of whether or not someone's application for residency or membership must be granted can no longer be answered by searching for national affinities between the applicant and the members of the state. Whether or not a common national descent or familiarity exists between the applicant and the members is of no importance. A democratic community is not a homogeneous one. Therefore democratic nation-states⁴⁰ have no special obligations towards 'co-nationals' who live outside the boundaries of the nation-state and apply for membership. In Habermas' view democratic membership should exclude, for example, the legal notion of the so-called 'German by Status' (Statusdeutschen) according to Article 116 of the German Basic Law. Because of their belonging to the German nation ('Volk') these 'Germans by Status' should, according to the law, be privileged when applying for citizenship in the German state. According to Habermas this is inconsistent. The dissociation of citizenship and national identity does not admit ethnic-cultural properties but only procedural ones to be decisive in the question of admission to citizenship. Habermas concludes that 'the democratic right of self-determination includes, . . . the right to preserve one's own *political* culture, (. . . but it does) not include the self-assertion of a privileged *cultural* life form'.⁴¹ Those who apply for membership have to accept the political culture of their new fatherland, but they cannot be asked to give up what they consider their cultural, so to speak 'national', identity. Aliens can become citizens by accepting that in our states only procedural rules generate legitimacy. If aliens accept that, then we the members in return have to accept a new cultural life form within our multicultural, procedural, republic.

The political consequence is evident. Habermas pleads for a generous liberal immigration policy, and this brings him very close to Carens' position. He quotes Carens with approval: 'In the original position (. . .) one would insist that the right to migrate be included in the system of basic liberties for the same reason one would insist that the right to religious freedom would be included: it might prove essential to one's plan of life.'⁴² This acceptance of migration as a basic right does not imply that its validity is unconditional and that it can be exercised under all circumstances. However, the acceptance of the right to migrate as a basic right means that it can be limited only by competing viewpoints, that is when it conflicts with other basic rights.⁴³ Cultural aspects like descent, language, religion and economic factors may not be taken into consideration when deciding on admission to citizenship.

We can now draw a general conclusion. The dissociation of citizenship and national identity consistently results in the rejection of any particularistic, national criterion for admission to citizenship. According to Habermas, all applicants for citizenship are equally strange to us. We are obliged to admit all these aliens, provided that they accept our democratic political culture. The reason for this is simple. In the end there is no 'our' democratic culture, since it is based on universalistic procedural rules and universal human rights.⁴⁴ Popular sovereignty is only a procedure that excludes any kind of reference to a

concrete historical 'populus'. It does not refer to a 'we' in opposition to a 'they'. Therefore Habermas' conception of popular sovereignty excludes the existence of a plurality of sovereign states. The plurality of states existing today must be seen as the provisional way in which the idea of a self-determining community has taken concrete shape. The only reason why states exist within specific boundaries is history. From a moral point of view, Habermas argues that the territorial and social boundaries of these states are radically contingent. It is our moral obligation to abandon the nation-state and to aim at an abstract kind of legally mediated solidarity.⁴⁵ Habermas' concept of democracy implies the abolition of all historical, empirical contingencies and the establishment of a world-republic.⁴⁶ His plea for a European citizenship⁴⁷ must be regarded as an intermediary step towards world citizenship,⁴⁸ where the ultimate disconnection between citizenship and national identity is attained.

In evaluating Kant's formulation of the ideal of a perpetual peace two centuries ago, Habermas concludes that there is a significant historical distance between Kant's and today's world. According to Habermas, Kant could not transcend the horizon of the 'classic-modern' world of sovereign states. Therefore any perspective of a real cosmopolitan constitution which would no longer respect their sovereignty seemed inconceivable to Kant. In our day, Habermas continues, the contradictions in Kant's proposal are evident and they force us to reformulate this ideal. In Habermas' reformulation cosmopolitan right no longer has the restricted meaning of formulating the rightful relations between states and strangers, but aims at establishing a direct membership of all individual human beings in 'the association of free and equal world citizens', without the mediation of the states to which they originally belonged. According to Habermas, in our day we witness the abolition of 'Inter-national Right' and the emergence of 'Cosmopolitan Right' in its stead.⁴⁹

With regard to this conclusion two questions might be raised. First, one might ask whether my interpretation of Habermas' view on immigration is too narrow. In his 'Citizenship and National Identity' Habermas discusses in depth the efforts of communitarian authors to defend the moral value of specific communities. Second, we must raise the question of whether Kant's defence of a cosmopolis of nations is based exclusively on his limited historical perspective on sovereign states. Are there valid grounds on which to defend the plurality of nations? The next two sections will be devoted to these questions.

4. Interpreting the communitarians

In order to answer the first question we return to the first part of Habermas' 'Citizenship and National Identity', in which he seeks to integrate the communitarian approach to citizenship within his own reconstruction of the nation-state. This approach, so he argues, correctly emphasizes the need to embed the legally institutionalized role of the citizen in the context of a political

culture. It seems impossible to impose institutions of constitutional freedom on a population, if this population is not accustomed to political freedom and is not well-versed in adopting the 'we-perspective of active self-determination'. Democratic citizenship depends on the 'forthcomingness of a kindred background of motives and beliefs' that cannot be enforced legally.⁵⁰ What does this mean? Does the democratic rule of self-determination require an already established 'we'? Can it in the end be adopted only by a homogeneous community? Would this mean that Habermas' reconstruction of the concept of a nation is wrong and that a conceptual connection between a particular community and democracy exists? Certainly not. Habermas considers the communitarian point not to be strong enough to require a rejection of the thesis that democracy is related to the romantic nation only on contingent, historical grounds. According to Habermas the communitarian argument boils down to the statement that democracy needs to be anchored in the political culture of a country. Multicultural societies like those in Switzerland and in the United States show that the political culture in which democratic constitutional principles are to be embedded do not require a common ethnic or cultural origin at all.⁵¹ So no contradiction exists between the plea for constitutional patriotism and the moral value attributed by communitarians to particular communities. Democratic citizenship does not require a specific national identity, but rather, and exclusively, the integration of all citizens in the overlapping consensus of a common political culture. Habermas' conclusion is therefore not affected by the communitarian defence of particularities and patriotisms. The democratic heritage can be saved only by transcending the limits of particular nation-states and by aiming towards world government.

The same strategy of transforming a communitarian argument into a universalistic one is found in the third part of 'Citizenship and National Identity'. After his approval of Carens' idea to integrate the right to migrate into the system of basic liberties, Habermas considers the communitarian arguments against such a universalistic approach to membership of political communities. Walzer rejects the merely functionalist significance that would be attributed to political communities if the decision on membership were no longer the sovereign right of communities, but that of individuals with their basic right to migrate. Such a right would destroy the specific character of political communities. If one considers the differences between 'life forms' in political communities to be valuable, such communities must have the right to reject applicants for membership if they do not fit into its specific way of life. Affinity of the applicant with the procedural rules of democracy is then not sufficient to grant him citizenship; he also has to show affinity with the 'life form' of the community of which he wants to become a member. In the communitarian understanding of membership the question whether or not a stranger can become a member also requires the investigation of his cultural 'passport'.⁵² Van Gunsteren writes: 'The prospective citizen must be capable and willing to be a member of this particular historical community, its past and future, its form of life . . .'⁵³

According to Habermas, this communitarian argument can be understood in two different ways. If it is understood in a particularistic sense, it would imply the rejection of the right to migrate as a basic liberty. But one can uphold this basic right by understanding the communitarian argument in a universalistic sense. Suppose that the political community, to which the application for membership is addressed, is constituted by universalistic constitutional principles. In such a case no specific cultural requirement can be asked for. In order to become a member, the stranger has to show only his loyalty to the democratic constitution. He has to convince the members only that by being a constitutional patriot he is already one of them.

This 'universalistic' understanding of the communitarian approach completely misses the point. Communitarians argue that constitutional patriotism does not exist. In their view the idea that communities are constituted exclusively by democratic principles without any particularistic cultural biases would mean that they are not communities at all.⁵⁴ On the contrary; liberal democratic communities also have their specific shared understandings, even if they share among them similarities in their constitutions. In this sense even a democratic political community is not constituted by its 'legal constitution'. Patriotism cannot be reduced to loyalty to this legal constitution only, but implies loyalty to the cultural, ethnic and linguistic elements that also give this specific community its identity. All this implies that citizens have special obligations towards co-nationals who are not members of the state and that we have to distinguish between general obligations that we owe to all other human beings, and special obligations towards co-patriots. Such specific obligations are generated by our common membership, very much in the same way in which special obligations are generated by belonging to the same family, or by being friends, or colleagues. The communitarian challenge makes us aware of the moral importance of local loyalties. Because Habermas neglects these contingent facts, his cosmopolitanism might be called 'schwärmerisch'. This brings us to the second question mentioned: what about Kant's position? How good is his defence of a cosmopolis of the home-lands? Or is his position simply biased by the contingencies of his historical perspective?

5. Kant and the separation of nations

Like Habermas, Kant emphasizes the moral obligation to establish legal relations with all humans, not with our co-nationals only. His requirement is that one must leave the state of nature in which everyone follows his own judgement, unite oneself with all others (with whom one cannot avoid interacting) and subject oneself to public lawful external coercion.⁵⁵ It is not permitted to exclude any human being from this legal constitution, since our earth is a globe where human beings cannot disperse themselves indefinitely. But, as we have seen, the establishment of legal relations with all others does not imply equal legal

relations with all of them. With the people of my nation I have to establish a republican constitution; as a member of such a republic I have the duty to dedicate myself to the realization of a federation of free states; finally I have the obligation to treat aliens and foreign communities with respect. Kant's *ius cosmopoliticum*⁵⁶ includes decisions on admission and exclusion and the distinction between citizens and aliens. In this world patriotism is not ruled out.⁵⁷

We have touched briefly on Kant's reasons for arguing that the moral obligation to establish a legal constitution among all human beings ought to result in a layered model. Let us look at these reasons more carefully.⁵⁸ In the beginning of the second definitive article of *Zum ewigen Frieden* Kant rejects the world-republic as being contradictory: if a number of nations were to form one state, it would constitute a single nation and it would cease to be an 'international' state. Since the concept of international right entails the existence of separate states, international right cannot force the states to enter into a world-republic. This is a strange argument. It is logically valid, but one asks immediately: why does Kant attach so much value to international right as such? If the establishment of the 'highest political good' of lasting peace⁵⁹ between all human beings on this earth can be reached only by establishing a world-republic, why would we have to consider the historical plurality of political communities as a counter-argument to such cosmopolitical government?⁶⁰ Kant's argument at the end of the second definitive article is also not very convincing. He argues that the concept of a world-republic is true 'in *thesi*', but not 'in *hypothesi*', since it does not fit in with the will of the states.⁶¹ In Kant's ethical writings doubts about whether a human being can fully act out of reverence for the moral law are not regarded as an argument to soften its severity. Why would the situation be different when the moral actors are states instead of individuals? Perhaps the pragmatic argument of the unlikelihood of the establishment of a world-republic is important for Kant. But could Kant consistently attribute moral value to this argument?

If Kant wishes to provide us with a serious argument, it must be of another kind. He has to make plausible the intrinsic value of the existence of particular nations. Between the two previously mentioned, quite unconvincing arguments, Kant mentions a third one: 'while natural right allows us to say of men living in the lawless condition that they ought to abandon it, the right of nations does not allow us to say the same of states. For as states, they have already a lawful internal constitution, and have thus outgrown the coercive right of others to subject them to a wider legal constitution in accordance with their conception of right.'⁶² Here a difference is indicated between the situation of individuals in a lawless condition, and that of states between which the same condition obtains. Contrary to the establishment of domestic law, the establishment of international law already starts with legal communities. While individuals lose only their lawless freedom by leaving the state of nature, states run a risk when seeking to leave the lawless condition obtaining between them. If they choose inappropriate means to escape from the state of war between them, they might end up altogether losing their internal lawful condition. Choosing the fusion of the

separate nations in a world republic would most likely result in a 'universal monarchy', which means despotism. World republic cannot imply equal respect for all the different nations, but the emergence of one nation seeking to dominate all the others. For dominating the whole world is the natural desire of every nation. Fortunately, Kant concludes, this desire is in vain. Laws progressively lose their impact as the government increases its range, and the despotism to which the world republic would inevitably lead will finally end in anarchy. We may conclude that the intrinsic value of the existence of nations is the prevention of despotism.

Yet now a further question can be raised: why would a world republic inevitably result in despotism? Kant is not very explicit on this, but his answer would probably look like this: a world republic can theoretically be created only by negating the differences between nations. Yet in the long run these differences are too strong to be annihilated. Therefore in a world republic it is not true universality which prevails, but the particularity of one nation which presents itself as universality. The pretence of one nation to represent the true interests of mankind will be frustrated by Nature itself. According to Kant, the intermingling of nations in a world republic is prevented by two means, namely linguistic and religious differences.⁶³ These differences between nations cannot be overcome by legal arrangements on a world scale.

Kant's reference to the teleological design of Nature is the ultimate reason for defending a federation of nations instead of a world republic. That nations must be kept separated, is repeated in the 'Anthropology from a pragmatological point of view'. The chapter dedicated to the description of the most important nations ('Völker') in Europe ends with a warning against efforts to erase the differences between them: a mixture of nations (by extensive conquests) which gradually extinguishes their characters is not beneficial to the human race.⁶⁴ Kant is aware of the risk involved in accepting these differences: they may certainly occasion mutual hatred between nations and provide pretexts for war. But rather than world government neglecting all differences and ending in the extinction of freedom, a federal peace is created and guaranteed by an equilibrium of forces and a most vigorous rivalry.⁶⁵ In *Zum ewigen Frieden*, Kant aims at excluding war as a means of settling international conflicts, but not at the exclusion of conflicts themselves. The establishment of a federation will not annihilate competition between nations, but it will enable them to settle their disputes in a civil way using legal proceedings.⁶⁶

This picture of a peaceful system of nevertheless conflicting nations is deeply rooted in Kant's philosophy as a whole.⁶⁷ In his early philosophy of nature, Kant conceptualizes matter as a dynamic entity held together by two conflicting forces, namely those of attraction and repulsion. The structure of human society is not much different: nature has endowed the human race with antagonism in order to develop its capacities. By this Kant denotes the so-called unsocial sociability. The tendency of men to come together in society is coupled with a continual resistance to it. This resistance always threatens to break society up.⁶⁸ In *Zum ewigen Frieden*, there is much emphasis on this unsocial aspect of human

nature. War itself, Kant writes, does not require any particular kind of motivation, for it seems to be ingrained in human nature.⁶⁹ All efforts to establish a world republic with equal membership for all humans would fail to acknowledge the unsocial element of human nature. Despotism can be the only result.⁷⁰ However, the centrifugal forces of human nature can be repressed for only a short period of time. Despotism will collapse and end in anarchism. A 'realistic' ideal of international law does not aim at world-republic, but at antagonism regulated by principles of external freedom.⁷¹

Now some may argue that Kant's plea for a limited cosmopolitanism is based 'only' on an Aristotelian metaphysical conception of (human) nature. Is this view still relevant in the era of post-metaphysical thinking? I would say that it is. For Kant's message is only written in a metaphysical code, but refers to very common knowledge. The communitarian authors, rightly, point out that in order to develop one's identity a human being needs a particular family, a particular language and a particular culture. Only within such particular frames do human beings learn ethical and moral rules. Accepting this does not necessarily lead to the exclusion of other particularities or to the denial of universality.⁷² Human beings can go beyond their native language, native culture and native nation by travelling or migrating to other nations. The sometimes justified fear that this 'transcending' movement will not take place, and that people will seclude themselves in their own particular nation, should not seduce us into denying the significance of particularities, as Habermas did. Without the acknowledgement of natural contingencies, practical knowledge will be based on rational conceptions exclusively and become a rigid ideology. The most famous example of it can be found in Plato's Constitution. In his political philosophy Kant tried to remain faithful to the heritage of the Platonic ideal.⁷³ At the same time he tried to avoid its rigidity by rejecting the despotic boundaries of a world republic and advocating instead a cosmopolis of homelands.⁷⁴

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NOTES

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¹ See for instance his classic article 'Technik und Wissenschaft als Ideologie', in Habermas (1968), 48–103.

² Habermas (1992a).

³ MacIntyre (1984).

⁴ In Habermas (1992a), 632–660; the translation appeared in Habermas (1992b).

⁵ Habermas (1995a); Kant, *ZeF*, 341–386; Reiss, 93–130.

⁶ Kant, *MdS*, R, 350–1; Gregor, 156. In § 5 I will discuss the arguments Kant provides to defend this position.

⁷ Also: Kant, MdS, R, 223; Gregor, 50.

⁸ Kant, ZeF, 344, 346; Reiss, 94, 96. This principle of non-intervention is still one of the key principles of international law, see e.g. the first article of the two Human Rights Conventions of the United Nations.

⁹ Kant, ZeF, 346; Reiss, 96. The question of whether or not to agree with Kant's view is not at issue here.

¹⁰ Contrary to Kersting (1991), 82, I hold that Kant's position resembles the position of Walzer (1980), 209–229; Habermas is much less reluctant to accept the legitimacy of humanitarian intervention: cf. Habermas (1995), 307.

¹¹ Remember the historical setting of Kant's prohibition of intervention: the monarchistic states wanted to restore legitimate order in revolutionary France. Kant refers to the French Revolution when he writes that it is the right of every people to give itself the civil constitution that it sees fit, without interference from other powers, Kant, SdF, 85; Reiss, 182.

¹² Kant, MdS, R, 349 (§ 61); Gregor, 156. According to Kant, the principle of non-intervention does not, therefore, exclude the concept of an unjust enemy.

¹³ Gerhardt (1995), 106.

¹⁴ Kant, MdS, R, 266, 353 (§§ 15, 62); Gregor, 86–7, 159.

¹⁵ Kant, ZeF, 357; Reiss, 105.

¹⁶ Kant, ZeF, 357; Reiss, 105.

¹⁷ Kant, MdS, R, 337 (§ 50); Gregor, 146.

¹⁸ Kant, ZeF, 358; Reiss, 105–6.

¹⁹ Apart from a violation of the principle of *non-refoulement*.

²⁰ Kant, ZeF, 358; Reiss, 106.

²¹ Kant, MdS, R, 353, 266 (§§ 62, 15); Gregor, 159, 86–7.

²² This is formulated very clearly in Kant, MdS, R, 343–4 (§ 53); Gregor, 150.

²³ Kant, ZeF, 385; Reiss, 106. This argument has been influential. It is used by Arendt (1992), 279, in her formulation of the verdict against Eichmann.

²⁴ Rawls (1971), 12.

²⁵ Carens (1987), 255–262. Recently Rawls (1993) himself has written a more modest interpretation of international law. See also Hoffman (1995).

²⁶ Unless, of course, it is clear that foreigners will abuse this right of a guest, as in the case of China and Japan.

²⁷ Walzer (1983), 61–2.

²⁸ Habermas (1992a), 659–60; (1992b) 17–18. The beginning of the English translation does not fully do justice to the original: 'Allein eine demokratische Staatsbürgerschaft, die sich nicht particularistisch abschließt, kann . . . '.

²⁹ Habermas (1992a), 635: 'Abstammungsgemeinschaft und Staatsvolk'; (1992b), 3; also Habermas (1995b), 179, 182.

³⁰ The concept of nation conceived as a 'project' is introduced by MacIntyre (1984), 13.

³¹ The same opposition can be found in e.g. Finkelkraut (1987).

³² Habermas (1992a), 634–5; (1992b), 3; Gellner (1983); Anderson (1983).

³³ Habermas (1992a), 636–7; (1992b), 3–4. Instead of democracy Habermas sometimes uses the concept of republicanism. In this discussion I ignore this concept, because it relates primarily to the issue of human rights. Habermas distinguishes the liberal and the republican interpretations of these rights. Whereas the liberal version considers human rights to be given in one way or other before the process of democracy, the republican interpretation emphasizes the process of active participation. Habermas' efforts are directed at bridging the distinction between these two approaches, in Habermas

(1992a), Abschnitt 3: Zur Rekonstruktion des Rechts(1): Das System der Rechte, 109–165, esp. 129–35; 153–5; 161–3. Habermas' thesis of the 'Gleichursprünglichkeit' (155) of human rights and democracy is not convincing. See also Habermas (1994). In this discussion I prefer to concentrate on the concept of democracy, because here it evokes better the concept of self-legislation on which Habermas' argument turns.

³⁴ Habermas (1992a), 637; (1992b), 4.

³⁵ Habermas (1995c), 31. See also Habermas (1995a), 297; Habermas (1995b), 179.

³⁶ Habermas (1995c), 31.

³⁷ Habermas (1992a), 638; (1992b), 4.

³⁸ 'Volkssouveränität als Verfahren', in Habermas (1992a), 600–631.

³⁹ Habermas (1992a) 642; (1992b), 6.

⁴⁰ According to Habermas, this expression would probably constitute a contradiction in terms.

⁴¹ Habermas (1992a), 659; (1992b), 17.

⁴² Habermas (1992a), 656; (1992b), 16; Carens (1987), 258.

⁴³ This is the result of bringing the right to migrate under Rawls' first principle of justice, which has priority over the second one, the difference principle: Rawls (1971), 61. Incorrectly, therefore, Habermas considers the economic reproduction of society as a 'competing viewpoint', Habermas (1992a), 657; (1992b), 16.

⁴⁴ Habermas (1995a), 310: the validity of human rights transcends any national legal order. Therefore human rights require a cosmopolitan one.

⁴⁵ Habermas (1995c), 32.

⁴⁶ Or 'a cosmopolitan democracy', Habermas (1995a), 308.

⁴⁷ Habermas (1992a), 649–51; (1992b), 11–12; (1995c), 36.

⁴⁸ This global attitude is criticized by Höffe (1995), 262.

⁴⁹ Habermas (1995a), 297, 304, 302.

⁵⁰ Habermas (1992a), 641–2; (1992b), 6–7; also: 'Volkssouveränität als Verfahren', in Habermas (1992a), 626–7.

⁵¹ Habermas (1992a), 642; (1992b), 7.

⁵² According to Walzer (1983), 50–1, this sovereign right of communities to decide on membership is not unlimited. Among other restrictions the principle of asylum is mentioned.

⁵³ Van Gunsteren (1988), 736. Quoted in Habermas (1992a), 658; (1992b), 17.

⁵⁴ According to the communitarian approach a universalistic community would be an inconsistency. This is suggested by MacIntyre (1984), 18–19.

⁵⁵ Kant, MdS, R, 312 (§ 44); Gregor, 124.

⁵⁶ Kant, ZeF, 349n.; Reiss, 99n.

⁵⁷ The distinction between despotism and republicanism (in Kant, ZeF, 352; Reiss, 101) is preceded by the distinction between despotism and patriotism. In despotism the entire freedom of the subject is suspended. Therefore it makes a patriotic attitude impossible, because nobody is able to regard the commonwealth as a maternal womb or the fatherland as a treasured pledge (Kant, TuP, 291; Reiss, 74); See also: Riedel (1993), 6, 12–13.

⁵⁸ In more detail these grounds and their validity are discussed in Mertens (1995), 307–310.

⁵⁹ Kant, MdS, R, 355; Gregor, 161.

⁶⁰ Gerhardt (1995), 95.

⁶¹ Kant, ZeF, 354, 357; Reiss, 102, 105.

⁶² Kant, ZeF, 355–6; Reiss, 104.

- ⁶³ Kant, ZeF, 367; 113–14.
⁶⁴ Kant, Anthr, 320; M. J. Gregor, 182. See also Laberge (1995), 166–7.
⁶⁵ Kant, ZeF, 367; Reiss, 114.
⁶⁶ Kant, MdS, R, 351 (§ 61); Gregor, 157.
⁶⁷ Brandt (1995), 141; Laberge (1995), 160.
⁶⁸ Kant, Idee, 20; Reiss, 44.
⁶⁹ Kant, ZeF, 365; Reiss, 111.
⁷⁰ Kant, ZeF, 367; Reiss, 113.
⁷¹ Kant, MdS, R, 347 (§ 57); Gregor, 153.
⁷² This is clearly pointed out by Höffe (1995), 264–5.
⁷³ Kant, KrV, A 316, B 372–3; Kant, SdF, 91; Reiss, 187.
⁷⁴ Riedel (1993), 17.

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- ZeF = Zum ewigen Frieden, in AA Band VIII, 341–386.
MdS, R = Die Metaphysik der Sitten, Rechtslehre, in AA Band VI, 203–372.
TuP = Über den Gemeinspruch: Das mag in der Theorie richtig sein, taugt aber nicht für die Praxis, in AA Band VIII, 273–324.
SdF = Der Streit der Fakultäten, in AA Band VII, 1–116.
Anthr = Anthropologie in pragmatischer Hinsicht, in AA Band VII, 117–333.
Idee = Idee zu einer allgemeinen Geschichte in weltbürgerlicher Absicht, in AA Band VIII, 15–31.
KrV = Kritik der reinen Vernunft (page references as usual: 'A' referring to the first and 'B' to the second edition).
Gregor = I. Kant, *The Metaphysics of Morals* (ed. M. J. Gregor). Cambridge: Cambridge University Press 1991.
M. J. Gregor = I. Kant: *Anthropology from a pragmatic point of view* (tr. M. J. Gregor). The Hague: Nijhoff 1974.
Reiss = *Kant's Political Writings* (ed. H. Reiss), Cambridge: Cambridge University Press 1970, 1991.

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