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“Immanuel Kant and The Right to Permanent Residence.”

Seyla Benhabib’s reformulation of Habermasian discourse ethics in ways that give an account of how and why incontestable cosmopolitan norms can be created and implemented in a proceduralist democratic manner, compatible with the mandates of deliberative democracy, marks a pivotal moment in both cosmopolitan theory and what Benhabib herself terms, the paradoxes of deliberative democracy. It marks a pivotal moment because the justification for such norms stands above the consent of the will of a people. They are, as Benhabib states, intrinsically morally legitimate. Simultaneously and, perhaps, paradoxically, the norms can never be applied without first being inserted in the dialogical public sphere where the reasons for their moral intrinsic value must be explained in a reciprocal manner with those who may doubt their veracity and call into question their universal intrinsic value.

Benhabib’s project, in effect her cosmopolitanism, is devoted to finding a method of justifying and hopefully convincing those who may see otherwise. By appealing to two distinct but inter-related concepts, **Jurisgenerative politics** and **democratic iterations**, Benhabib demonstrates how cosmopolitan norms can both challenge citizenship norms and identity claims that frame the ways in which community, membership and belonging are viewed. **Jurisgenerative politics** is a concept that subsumes a proceduralist corollary, namely **multiple juridical processes**. This process, undoubtedly one of continued moral and political re-socialization of those within a demos, is generated and validated by dissenting voices within a culture; voices that ought to be included in the participatory

dialogue of norm creations even when they belong to those who, in the words of Kant, are not citizens or legal residents of the state but, rather, its mere auxiliaries. It is in this spirit that Benhabib hopes to correct a divide that has prevented those peripheral others from being full participants in the state and in participating in the laws that shape their destiny.

Benhabib uses a number of compelling political dilemmas in Europe to flesh out her proceduralist agenda. One such case is the *L'affaire du foulard* (the scarf affair) involving Muslim women's battle to retain their religious identity in the face of strong views on the part of the French citizens and state actors about what constitutes French identity. Such women, Benhabib states, use the concept of iteration to re-conceptualize Frenchness. Muslim French of non-European descent are French. Therefore they release the concept from its monopolistic ownership by the European French.

Benhabib's Jurisgenerative politics and her deployment of the concept democratic iterations allow her to argue for why countries have a prima- facie moral obligation to endorse and fulfill first-admittance rights for refugees and asylum seekers but not for immigrants into their borders.¹ The Kantian cosmopolitan right of admittance for refugees stands above the will of the people—at least theoretically; the rights of immigrants do not. Benhabib goes way beyond Kant in that she is not content as he was to leave the cosmopolitan right to visitation at just that level—temporary sojourn, so long as visitors did not harbor hostility or pose threats to the state. She wants to claim that asylees and refugees have a right to permanent residency while immigrants do not.

I will argue for two strong points of view in this paper. The first is that Benhabib's position is compromised in two ways. The first is that her distinction between

refugees and immigrants does not support the conclusions she wants to draw from it. Refugee cosmopolitan right presupposes some appeal to their extreme existential plight in a way that differs markedly from that of immigrants. I will argue that this is too often false. Benhabib's Kantian defense of the right to emigration is compromised because her distinction between immigrants and refugees for the purpose of arguing for the primacy of the rights to asylum in the case of the latter creates a cleavage that is both empirically untenable and theoretically problematic. The presumed circumstantial plight of refugees does not always, and frequently fails to, be more grave than those of immigrants. Since this is part of what grounds her view that states have a *prima facie* obligation to grant permanent residency to refugees but not immigrant hopefuls, I submit that this any failure to demonstrate strong empirical support for this view should give us pause for asserting the moral primacy of one group over another vis-à-vis right of entry and permanent residency.

The second way in which her distinction is theoretically compromised is that it establishes an unfair division among persons of this earth that, on a Kantian reading, is deeply problematic. In formulating fair and just criteria for determining how best to strategically implement rights of persons, we ought not to create conceptual distinctions that both fail philosophical meaning tests and fail moral criteria tests of justice and fairness. This artificial divide is best corrected by seeking more universal circumstantial plights than any person could find himself facing and thus serves as a fairer basis for making a moral rather than political right for permanent residency. Nevertheless I respect Benhabib's fruitful attempt to respond to the disaggregation of citizenship taking place in Europe in the twenty-first century.

My second goal is to argue that the right to permanent residency is a plausible candidacy for a human right. The extant literature on human right is fraught with seemingly irreconcilable tensions over how to secure a foundationalist grounding for human right, how to defend those rights seen as human rights but are, nevertheless, not necessarily applicable to all human beings such as the right to a paid holiday.² Nevertheless, my attempt to secure a foundation for permanent residency as a human rights candidate is itself an awareness that although human rights are taken to be incontestable—they require no higher defense than the ostensive identification of the moral nature of persons—a philosophical justification for any new human rights contender requires a good argument.

In building on Benhabib's analysis of the historical antecedent of today's disaggregated citizenship, a form of citizenship that is made possible by a radical extrapolation and extension of Kant's notion of cosmopolitan right, I hope to build a stronger case for permanent residency as a human right. More specifically, I will reconstruct both Kant's notion of the right to temporary sojourn and Benhabib's interpretation of it. This interpretation of Kant's defense of the right of foreigners to visitation so long as they harbor no hostilities and pose no threat to the peace of their host countries is crucial in understanding the move from a right to visitation to a right Kant never defended: the right to permanent residency and eventual citizenship as a human right. An investigation of Kant's arguments, I will argue, can endorse this radical move that has been consistent with the extension of rights and privileges forged in the crucibles of political liberalism in the last two-hundred and fifty years.

I will defend the right to permanent residency by working within the moral and political infrastructures Kant himself provided. Given Kant's moral egalitarianism, that is, his view that the moral law extends to all persons, I will argue the following. Those who wish to defend a right to permanent residency on Kantian grounds will have to do so by appealing to Kant's idea of nature's purposiveness—its ultimate telos for all persons. This ultimate and final telos sees the transformation of all persons from natural creatures to moral creatures. The form of government or the political milieu best suited for this accomplishment is unequivocally for Kant, a Constitutional Republic. For reasons that will be made clearer, Kant thought such a government with its upholding of freedom allowed the individual to develop his moral capabilities to the point where the achievement of full-fledged legal and moral personality via moral autonomy which involves the free exercise of one's reason, completed the ultimate goal of nature's purposive design. The right to permanent residency can be made on the following grounds. Any person systematically deprived of the freedom to develop and full-fledged moral and legal personality is being unfairly treated as if nature intended for her something other than the development of those capabilities which complete and or aid the transformation from natural to moral creature. Since on Kantian grounds no one has the right to arbitrarily or systemically deprive another of this right, one can legitimately make the appeal to reside in a country in which one is given the political freedom to complete moral development. That is, the conditions to live in a place that both aids the cultivation of the capabilities, and leaves one free from unfair interference by others in the cultivation of the capabilities and faculties that aid the accomplishment of full-fledged legal and moral personality.

Benhabib and other thinkers seem to take the disaggregation of European citizenry as a starting point for permanent residency for those seeking entrance to a country outside that of their birth without in some sense justifying the Kantian move from a philosophical perspective. Kant's appeal to the intrinsic dignity of all, his injunction that persons not be treated as means to others' ends but as ends in themselves, his moral egalitarianism (that is, his non-discriminatory appeal to the admittance of all persons into the domain of the ethical where each becomes a unit of moral concern) is the full consequence of his moral philosophy.

Benhabib's cosmopolitanism continues the tradition's attempt to widen what I would call the domain of the ethical. This domain includes, but is not limited to, the disenfranchised, the voiceless, and above, all the stateless. Many of the latter have been denied the right to have rights;³ that is, among other things, the right not to be denaturalized, a process that would see the revocation of citizenship rights. Benhabib's Jurisgenerative politics offers a way for such outsiders to be part of the dialogical communicative practice by which people in a democratic demos frame norms and mores. This may occur through their direct participation, or by way of their representatives. Jurisgenerative politics entails increasing the threshold of justification to which former exclusionary practices are now submitted. Exclusions take place; however, the threshold for justifying them becomes higher. Jurisgenerative politics entails increasing the threshold for those who wish to hold on to strong elective identities as opposed to ascriptive identities. The latter cannot constitute fair criteria for membership exclusion since they are non-moral attributes of a person's identity. Jurisgenerative politics ensures

that each person becomes a unit of moral concern for all by allowing those whose lives are deeply affected by the will of others—but who have no chance of contesting such decisions—a way to insert their voices into the dialogic public sphere.

Viewed as twin socio-political and juridical tropes, Jurisgenerative politics and democratic iteration allow those on the periphery of the demos, immigrants, guest workers and refugees, to transform any incontestable identity claim codified around blood, nationality and ethnicity by applying their own creative agency to the process of achieving peoplehood. In an era of disaggregated citizenship, the movement of human bodies in an unprecedented manner in human history, peoplehood, Benhabib states, is not a fact; it is an aspiration.

If (perhaps omit democratic iterations) democratic iterations and Jurisgenerative politics widen the domain of the ethical and, a fortiori, the pantheon of the human community, they function in two ways. Some of their political applications are morally binding on the democratic will of a people; others are merely suggestive, normative recommendations. The exercise and application of both concepts is a way of potentially securing permanent membership for outsiders.

I want to turn now to two distinct ways these concepts which, when applied, aid the deliberative democratic process. One is by way of an ethical mandate that, morally speaking, is binding on the will of a people. Benhabib argues that refugees have a moral and legal right of admittance, immigrants do not. Arguably, although immigrants may qualify for legal admittance, they do not have the same moral standing as refugees. Norms then that would govern our moral sensibilities and reasoning as we are considering **who gets let in and who** does not are suggestive in the case of immigrants,

resolutely binding in the case of refugees. Those norms that are morally binding, however, cannot by-pass the dialogic procedure of the democratic process. They have to be discussed, reasons have to be given for their intrinsic moral value despite the fact that they stand, morally speaking, above the will of the people. If refugees cannot petition for themselves, then their representatives—arguably anyone who chooses to invoke their moral right of admittance—can and should speak on their behalf. Jurisgenerative politics is, in this particular case, a way of challenging either color blind, situationally blind or other seemingly objective and uniformly standard criteria for admittance when doing so is a form of subverting justice: Unequals cannot be treated equally since they lack the prerequisites to compete on equal footing. **(Briefly state the background to this--- cosmopolitan right and Geneva Convention.**

1

Refugee versus Immigrant: A Moral Conundrum

My first objection to the immigrant/refugee distinction as a way of demarcating the moral duties states have in admitting the former is that it is empirically problematic. That is, we will have to ask what must be presupposed in making the distinction such that our moral commitments to refugees outweigh those to immigrants. Refugees and asylees include—though, not necessarily— stateless persons. Their dire and desperate existential plight has some purchase on our moral sensibilities. We recognize that because the consequences of not granting them asylum would be devastating, refusal makes us—at least by default—guilty of moral negligence.

Refugees are often stateless people with no homeland, no recognized nationality by their political compatriots, and no way of negotiating the exchange of values that immigrants, it is believed, are capable of. Because they, more than members of any other group, have been denied the right to have rights—that is, the right not to be disenfranchised by arbitrary or other wise objectionable criteria such as religious affiliation, nationality and ethnicity—their susceptibility to being robbed of their legal personality makes them more eligible candidates for the cosmopolitan right of admittance.

The concept refugee is a broad concept under which is subsumed a plethora of individuals with different life stories; their existential crises are not qualitatively equal. Furthermore, the very term itself is often arbitrarily created by state actors as a deliberate way of ensuring that “politically legitimate” individuals may find a home while other types of persons who could qualify as refugees not be seen as such. Refugees coming from Cuba are a varied bunch. Some are poets and homosexuals under persecution; others are desperately poor who, while not being persecuted by the state, are simply seeking a better life. Still others are landed aristocrats who are highly educated and who find a ready-made Cuban community that welcomes them in Miami. Cubans, by and large, are granted political refugee status regardless of their existential circumstances because the United States regards Cuba as its ideological enemy. Political asylum is granted, quite often without any reference to the qualitative differences among those seeking asylum.

Haitian boat persons, on the other hand, have not only been subjected to brutal persecution by despotic governments but face severe economic hardships. Mexicans

escaping from oppressive states within the federation, attempt to do so for fear of torture, imprisonment without trial and insurmountable economic hardships. Arguably, a great many of them –categorized at various times as “immigrant hopefuls” are worse off than certain types of refugees or “legitimate asylees.” Our moral commitments, therefore, cannot be allocated neatly according to the politically nefarious ways in which persons are so categorized according to interstate-relations among geo-political state actors.

Summary: If the immigrant/refugee distinction is often one that is subject to arbitrary geo-political machinations, then our moral sensibilities will become stymied, hijacked almost and too subjected to paradigmatic realist criteria that do not correspond to moral obligations we have or ought to have. This is not to say that there is no conceptual way of properly defining the terms. However, when we look at our messy world and at the lives of those individuals labeled under such concepts, we see that the criterion for supporting the prima facie obligation for first-admittance rights for refugees but not immigrants does not correspond to what I have argued justifies it: the existence of a higher qualitative difference in their dire circumstantial plight. Justice, as Mill pointed out in chapter Five of Utilitarianism, ought to stand above the law and social norms since the two can violate principles of justice.

In Europe the ability to determine properly who is objectively deserving of refugee status and who is not is not a simple task. In the case of The Netherlands, for example, women subjected to the human rights violation of having their clitorises cut from their bodies—sometimes referred to as female genital mutilation and now widely condemned on the grounds that is an incontestable form of violence and torture against women that violates their bodily integrity—and who wish to seek asylum there on the for

reasons of physical cruelty and torture are denied their petitions. They will instead, have to seek refugee status by proving that they are victims of a civil war. (**footnote-see Ali here and her story**). We are thus required to make a qualitative distinction between the intrinsic state of suffering, or at best, the degree of harm done to a woman in order to justify why the victim of one form of an unfortunate state of affairs—genital female mutilation and subjection to a civil war— is morally more qualified to receive protection from the state than any other. My worry is not that we will get into a case of invidious comparisons on the level of beggars comparing their sores to see who had the worst. My worry is that given the subjective state of personal suffering and the difficulty involved in identifying certain crimes or actions committed against others as crimes, our standards of evaluating and judging acts obstruct our efforts to reach something like a fairness doctrine in evaluating the claims of asylum seekers. Let me give one example that, I hope, will bring into sharper relief the moral conundrum we face.

Rape is often used as a weapon in wars—both intra-national and in civil wars. Activists have fought long and hard to get rape recognized as a war crime deserving of punishment under various categories including atrocities and or crimes against humanity. Rape is always a humiliating experience for those who are raped. IN spite of the fact that various women have various capacities to respond to the trauma of rape, it would be undesirable to allow this capability that some have to factor into our evaluative algorithm when deciding whether rape as a war or sectarian violence crime is a justifiable candidate for granting asylum to a woman. If a woman belongs to a group whose members are being systematically rape and statistically she can show that she stands a good chance of

being raped, ought this high probability to factor into our moral judgments as to whether or not she has good grounds for being granted asylum?

Objectors may say that if the answer is yes, then it leaves open the door for women who are members of groups where traditions of wife beating and even marital rape is high. Some women, critics may argue, recover from the trauma and go on to lead lives in which their capabilities and capacities for exercising choice options that lead to meaningful life plans are still possible. The subjective factors I have cause for worry are brought into sharper relief. We the individuals have way too much interpretational latitude to both formulate principles that can broadly apply to several cases and too much second-guessing about recovery capacities to even make such principles have the traction they will need to have to function as principles rather than privileges bestowed upon “choice victims.” As a way of introducing a fairer and broader principled way of assessing rape as a weapon we may want to examine the connection between rape and genocide. What would our approach be if rape were used systematically by its perpetrators as one way of instantiating genocide? Genocide is an already legally recognized atrocity from which no persons have the right to be subjected to. Those who are have both an uncontested moral right to seek refuge and at least a legally justified means for petitioning states to grant them asylum. Much of the problems that have arisen in this dilemma of genocide is often semantic: when do mass killings become genocide and when is it appropriate for political actors to take a stance against it and identify it as such as opposed to the use of euphemistic terms such as “atrocities against” a people?

The moral philosopher, however, ought to face no such strategic conundrums which participants in *realpolitik* have to deal with. We recognize genocide as the

intentional efforts by one or more states and or their authorized or unauthorized aggressors to systematically eliminate a group of persons differently identified from the aggressor group. Ethnic cleansing likewise is a similar problem with the sole difference being that it need not involve the killing of persons. It must, however, the intentional displacement of a people from their place of occupation—their homes.

Rape as a weapon has been used (and, of this writing, is still being used) as a weapon of sectarian discord and genocide in Iraq. How is this possible? Iraq is a country governed by the logic of “**patriliney**.” This means that a child there receives her social and legal categories from the father and not the mother. A child born to a Turkish, Iranian or Kurdish mother and an Arab father is recognized solely as an Arab. There are not any Iraqis who are legally regarded as belonging to two parentally conferred categories. Categories are shut off from each other by air tight conventions of kinship. Hybrid identities do not exist.⁴ According to cultural anthropologist Diane E. King a specialist in Kurdish and Iraqi and identity the patriliney found in Iraq gives rise to a peculiar view of procreation, one imagined in seed and soil metaphor. It is held that during sex a man plants a seed in a woman. The seed is nurtured in the soil of the womb. The only thing that is seen to contribute to the essence of the child is the seed. A child who bears resemblance to his mother is viewed as a product of a seed that failed to fend off permeation by some of the soil during gestation. The father was then ridiculed as being weak.⁵ Under patrilineal cultures, King points out, rape is a direct tool of sectarian violence and genocide. She explains:

When a Shiite militia man rapes a Sunni woman, for example, he is seen as potentially implanting a Shiite individual into her womb. He is causing her to suffer dual humiliations: She is sexually violated, with all of the personal implications that it would carry in any culture. But the rape further serves like a

Trojan Horse: Thereafter, an offspring bearing the rapist's identity may well be hidden inside her body, an enemy who will emerge in nine months... So cross-sectarian rape as a weapon of political conflict can hypothetically force a woman to nurture her own enemy. But in actual practice this rarely happens. Rather, the tragedy of rape is compounded when a member of that woman's group eliminates her and any offspring through an "honor killing."⁶

Honor killings, which King reports have been on the rise in Iraq, are usually carried out by the father or brother of the victim or other members of the group. Many women commit an "honor suicide." The connection between rape and genocide is yet brought into sharper relief by applying the logic outside the cases of rape in ways that are still annexed to the logic of "rape as a weapon." According to patrilineal logic a man is not just seen as an individual who can wage conflict. He is the only bearer of the seed whose successful sowing strengthens his group. A man who is killed is eliminated from producing other members of his group. King emphasizes the point further:

"In patriliney, the stage is set for one patrilineal group to inflict maximum harm on another: Rape the women, and thereby inflict one of the awful options of bearing enemy children or killing their own. Kill the men, and thereby eliminate not only combatants, but those with power to produce more members of the enemy. No people with hybrid identities exist."⁷

*The interpretational latitude of policy and political actors and geo-political strategists in making interpretational judgments about the qualitative status among atrocities in this case are remedied when rape is systemically and systematically linked to genocide. No one ought to be ever subjected to rape. It is a heinous crime against a woman. But no one, further, ought to have one's body be the object of rape and at the same time be the site into and on which genocide is inscribed and instigated. Rape when

inextricably linked to genocide is even more abhorrent in this case because it forces the woman to be an accomplice to and participant of genocide. She and every other person in her group are condemned to eliminating any child deemed an enemy child and any woman deemed a carrier of the enemy. By the logic of patriliney, men are systematically targeted for elimination because they and only they have the capacity to produce progeny of a certain type. A good case can be made that women are worse victims than men in this case: they are “carriers of enemies,” and thus need to be killed, kill themselves and or have their children killed; they are also raped. Men are only killed. Although we can avoid the invidious comparison dilemma by citing the double dose of harm suffered by women—both of which are egregious human rights violations, men qualify as subjects of genocide not only because of the logic or patriliney, but also because a particular application of it makes them—as creators of enemies—targets of equal elimination.

*My use of the case of rape is meant to highlight the difficulty involved in making fair evaluations of rights violations whose victims can reasonably qualify as making refugee or asylees claims which states have a moral obligation to consider.

I shall later argue that that a broader fairness doctrine can be used to gauge such claims and the concomitant moral obligations it levels against states.

I shall simply reiterate my initial concern about the refugee/immigrant distinction. And it is this: In the division of moral labor we appeal to our hierarchy of values in order to determine how best to fulfill our moral obligations in general, and the order in which to fulfill them sequentially. In giving first priority of admittance to refugees and asylum seekers rather than immigrants—many of whom are asylum seekers—we buy into arbitrarily created political bifurcations. Morality rather than preceding politics becomes

its handmaiden. We run the risk of, at best, partially excluding immigrants from their appropriate inclusion in the domain of the ethical where each becomes a unit of moral concern. Moral discrimination of this sort, I submit is a form of moral negligence. My use of the rape as a weapon example should strengthen my view that women who have not yet been raped but who further can prove that they have a statistically high chance of being raped and, further, show that rape of a certain type is a systemic route to genocide have more than compelling factors on their side which makes them qualify for asylum regardless whether rape exists as a category that could ever qualify as a legal route to asylum.

The second problem with the immigrant/refugees distinction is external to it. Nevertheless, it is used as a criterion of fairness when adjudicating among dilemmas over admittance of outsiders. The problem, actually, has less to do with the distinction and is more concerned with a procedural criterion used to justify exclusion. More importantly, the problem concerns the subject of moral suasion at the heart of discourse ethics and procedural communicative action. A single criterion used to justify the exclusion threshold of immigrants entails convincing those seeking admittance who have been refused to see in reason why they cannot be admitted. Benhabib writes:

“If you and I enter into a moral dialogue with one another, and I am a member of a state of which you are seeking membership and you are not, then I must be able to show you with good grounds, with grounds that would be acceptable to each of us equally, why you can never join our association and become one of us. These must be grounds that you would accept if you were in my situation and I were in yours. Our reasons must be reciprocally acceptable; they must apply to each of us equally.”⁸

In some sense, this reads like an extrapolated version of Rawls's use of the veil of ignorance and original position method of achieving justice dressed up as discourse ethics. This is surprising, given Benhabib's trenchant criticism of his original position and veil of ignorance hypothetical form of reasoning. She refers to it as disembodied reasoning.

I submit that the task Benhabib thinks that moral suasion can perform via the use of purely rational argumentation is going to be seriously compromised under the circumstances of the addmittee's life situation. Benhabib is guilty of overstating the work of justification that reason can do in the absence of indispensable social goods that aid the work she thinks it can do. Its capacity to understand, evaluate, make sound judgments and then yield to the truth claims of political actors justifying the exclusion of those whose rational capabilities is compromised by the very absence of material resources that mediate and aid its proper function. The idea that a hungry, semi-literate, sexually and physically abused applicant can reason in the same manner as a basic-needs-met person is untenable.

Reason's exercise—which includes the exercise of moral imagination-- requires what John Rawls called social goods: in brief, sustained living conditions and material resources conducive to bodily and mental functioning. Despite differences in abilities, we ought to want to ensure that, to the best of our efforts, persons have the best opportunities to reason on level playing fields with others. A desperate immigrant, I submit, will never be able to accept any reasons given by a state actor denying her entrance as ones that she would accept as fair and just were she in the other's position. Benhabib is here guilty of

what I could call rationalistic hyperbole. That is, she overstates the case of reason and burdens it with a political task it cannot execute.

11

Some preliminary notes to myself on how to negotiate Part 11.

The Right to Permanent Residency: Negotiating Kant's Moral Benevolence

What I need to do in this section is the following: highlight the problems that exist for those labeled as refugees and immigrants. That is, list the ways in which persons humanity are actually violated—the ways in which they are treated not only as means to the ends of others, not only the ways in which they are prevented from setting ends for themselves but, also, the ways in which their oppression is enshrined in law which prohibits the realization of their legal and moral personalities is a systematic theme of political life. This presents the ways in which discrimination against them qua human beings fails to match up to the refugee/immigrant categorization that attempts to locate justifiable criteria for membership in a political polity that restores AGENCY to them.

Point 11---SELECTIVELY RECONSTRUCT ASPECTS OF Kant's moral philosophy that provides an answer to this dilemma. So, I must first truly understand what the dilemma is, then I can go into the texts to see where to find an answer—all the time pushing and stretching what I shall call, KANT'S MORAL BENEVOLENCE—THAT IS (among other things) THE WAYS IN WHICH KANT SHORT-CIRCUITED HIS OWN MORAL PHILOSOPHY.

I have tried to blur the distinction between refugees and those who do not qualify as refugees—immigrants, or immigrant hopefuls for both strategic and conceptually correct purposes. I want to show that such distinctions unfairly demarcate persons into categories in which one group of individuals are thought to be more deserving of special treatment than another. The demarcation is unfair because they do not consistently pick out factors that necessitate special treatment of one group of persons above another. Statements of belief should not be elevated to a level of policy because too much is at risk: the lives of individuals.

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***Perhaps this is the way to start the paper

The Dilemma: One way of framing this dilemma is by way of the following formulation: No person has the right to be excluded from an empirical space in which putting she can exercise her moral agency. The ability to formulate moral rules and principles does not depend on circumstances from Kant's perspective. The ability to translate them into ways of life—realized goals and ends—depend on real contingencies in life. This is a basic right of man born out of, among other things, his intrinsic moral worth as a free autonomous agent to set her own ends in behalf of her life.

As far as Kant was concerned the contingent configuration in which this basic right could be realized was: republican state governed by a republican constitution. Kant writes: "Now the republican constitution is the only one in which does justice to the rights of man."⁹ Kant envisaged this constitution as devised in such a way that

government had the proper coercive power to limit external freedom of persons when and if the exercise of such freedom violated the just freedom of others. Irreconcilable private impulses of evil men, Kant noted, would not be permitted to contravene into the public space. Human beings' coercive impulses are so inhibited in ways through which public conduct is transmitted that the conduct of such human beings towards one another is the same as if their persons did not have evil attitudes.¹⁰ The laws of the constitutional republic, therefore, neutralize or diffuse the annihilatory impulses of human beings as they existed in the state of nature. The contingent existence of laws as they are formulated in the constitutional republic play a crucial role—albeit not by intent—in transforming human beings from, as Kant would put it, natural creatures into moral creatures. They submit to coercive laws that produce a peace amenable to enforcement of such laws. We are in the position of witnessing, from this state of affairs that which right prescribes. And, once more, this instantiation of right from the laws legislated by men does not necessarily come from internal moral reasons.

Kant: “In the same way, we cannot expect their moral attitudes to produce a good political constitution; on the contrary, it is only through the latter that the people can be expected to attain a good level of *moral culture*.”¹¹

The question that one ought to ask now is: Ought anyone by virtue of an accident of birth (that of being born outside of a just polity, being born of a sex or nationality or religious affiliation by which one is singled out for, among other things, oppression of a sort that violated the humanity of one's person in one's person) to be excluded from moral culture? Any answer short of a resounding no on Kantian grounds runs the risk of violating Kant's own moral egalitarianism. By this I mean the extent to which Kant not

only unambiguously defended the intrinsic moral worth of each person qua human being, but excoriated human beings who by, whatever means, used others persons as means to their ends; who prevented persons from setting their own ends; who enforced reasons and goals upon them even for their own good. This moral egalitarianism is seen in Kant's defense of one and only one innate right which each person possessed in the fundamental sense. And it is this: "Freedom (independence from being constrained by another's choice), insofar as it can coexist with the freedom of every other in accordance with a universal law, is the only original right belonging to every man by virtue of his humanity."¹² This original right grounds what Kant calls, innate equality. The form that this innate equality takes is in the words of Kant: "independence from being bound by others to more than one can in turn bind them."¹³ This freedom for Kant that is the basis for a universal unassailable moral respect that everyone is owed as a moral—although imperfect—being. In recognition of the dignity of others we restrain our actions and even our and allows sense of self-conception and self-formation to be bounded by the practical love we owe others. At the heart of our subjectivity, therefore, is a sense of the moral constitution of the other. This sense of the others' moral constitution, as well as our own, is one of the legitimizing factors that informs the maxims we adopt to guide our actions. We may call such a factor a "practical law." The principle that makes this duty which is a law possible is maxim the agent forms on subjective grounds. Such a principle can also hold as a universal law. Kant notes: "You must therefore first consider your actions in terms of their subjective principles; but you can know whether this principle also holds objectively only in this way: that when your reason subjects it to the test of conceiving

yourself as also giving universal law through it, it qualifies for such a giving of universal law.”¹⁴

Although moral theorists such as Martha Nussbaum have done invaluable work in showing how moral imagination shapes our sense of the conception of others, we have inherited from Kant, the shared ways in which our moral personalities come into existence and the ways to protect this universal moral personality.

We may take this moral personality as an uncomplicated fact of the phenomenal world. Moral personality is under the jurisdiction of practical reason and belongs to the realm governed by the freely legislated use of one’s reason. Moral personality for Kant is “...therefore nothing other than the freedom of a rational being under moral laws.”¹⁵

And who are those denied the chance to develop moral personalities? That is, what are we to make of those who having the freedom to formulate right principles are legally and, in the widest sense of the term, politically denied the chance to apply such principles? We are here talking of persons in the world whose humanity are systematically violated, who are routinely and legally treated as means to ends, whose legal and moral personalities stymied by oppressive forms of governance how would we best redress this state of affairs on Kantian grounds? If persons were forced to violate their own moral agency not by being forced to formulate wrong principles—they have the freedom of will to formulate right principles in behalf of their intrinsic moral value—but are prevented from applying the principles in their lives, that is to say, persons whose external freedom are violated not because the exercise of such freedom violates the rights of others, but because they reside under despotic/tyrannical governments that refuse to recognize the force this freedom that persons have to right to exercise by choosing ends

for themselves how might Kant respond. If such persons were denied an empirical space to develop a full-fledged moral personality what would a Kantian response to such a form of injustice look like? Let us say that they are denied this empirical space because their legal status is one that allows the state to degrade them by using them as means to the perverse ends of an unjust state how ought one, on moral cosmopolitan grounds to respond? Finally, let us imagine that persons are living under a political regime in which violation of the humanity in themselves is legally sanctioned and, further, they are forced to violate the humanity in themselves by being prevented from carrying out the positive duties they have to themselves—i.e.: the duty of self-preservation, the duty of preservation of the species (which includes but is not limited to respecting the outer freedom of others); and preservation of their natural capacity to enjoy life. If we can imagine such a state of affairs and or ostensibly identify them in the world, how on Kantian cosmopolitan grounds would we remedy such a state of affairs?

Before giving a robust answer to such questions we must first ask a simpler question. What is the single term that Kant would use to describe such unfortunate persons? He would say such a person is a *res corporalis*, a thing. A thing for Kant is “that to which nothing of value can be imputed. Any object of free choice which itself lacks freedom is therefore called a thing (*res corporalis*)¹⁶any object of free choice which itself lacks freedom. Those who violate their duty to respect the humanity of others through respect commit a moral transgression. Since, politically speaking, the best way to protect this duty of respect is by way of a constitutional republic, we are closer to understanding just how deep is the transgression of those who devise politically strategic or other means of ensuring that the moral right of persons to develop from natural creatures to moral

creatures get stymied or prohibited. When we interfere with the process of moral evolution of persons we are, among other things treating them as purely corporeal entities.

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Restoring Humanity to the Agent: Kant and the Right of Residency

We are faced with a crucial dilemma which still haunts us in the modern world. How do we deal with those who are inappropriately denied the means to develop their full moral agency and or personalities? Philosophically speaking we may phrase the dilemma like this: What are our responsibilities towards those who live in a civil society under unjust public systems that stymie or systemically disallow moral capabilities from being created? We may exercise our 21st century sensibilities that are compatible with our cosmopolitan era of human rights to interpret unjust laws as those which restrict the exercise of outer freedom based on arbitrary criteria such as gender, race, ethnicity, place of national origin and even religious affiliation. Violations of that which rightfully belongs to another is an egregious violation. To treat someone as a purely corporeal being and further: to force them to treat themselves as such is a moral transgression. Persons who are thus forced to violate the two fundamental duties that they have towards themselves, or persons in whose person the: the right of humanity in their own persons, and the end of humanity in their own persons are violated, are forced to have their choice options in a practical manner foreclosed. They cannot translate into real life the exercise of their reason into manners that demonstrate their identity as moral creatures in a robust manner.

Kant writes: “That is *rightfully mine (meum iuris)* with which I am so connected that another’s use of it without my consent would wrong me. The subjective condition of any possible use is possession.”¹⁷

Slavery, the event of the Holocaust, genocide, rape as punishment, female genital mutilation, miscegenation laws, laws that penalize social intercourse among persons based on the arbitrary criteria listed above, citizens prevented from voting based on sex/gender and race are among those that involve laws that restrict the use of one’s personhood on behalf of one’s life where such a life is either obliterated, used as an object of possession and used to promote social organization without one’s consent. Miscegenation laws are especially problematic because they organize a person’s life around enforced ends; ends not of their own choosing.

Persons living under conditions of a civil war and at least two of the conditions listed above: genocide and rape as punishment are subjected to life conditions reminiscent of those in a state of nature. Such conditions and the persons living under them ought to be specially singled out because to live within a state of nature or within a facsimile of it are those living under conditions in which the political infrastructures that bring into existence a civil society are absent; that is under conditions in which public and legitimized just laws as conceived under the Doctrine of the Right are absent. Persons then are inhibited if not systematically prevented from developing their **civil personalities**. Citizens prevented from voting are also worth singling out because they are arbitrarily prohibited from exercising their will in a way that legitimizes civil society: granting legislative authority to political actors. It is worth quoting Kant on this matter at length. I want to so because I think it will later prove to be an invaluable justification for

my thesis; that is, that persons denied the exercise of their moral agency in deep practical ways have a moral right to permanent residency in a country that allows for the practical application of deep agency. It is also worth quoting Kant at great length because his concept of a citizen includes women, those he calls underlings and persons from India. I will, course, be challenging Kant's conception of citizens not only because parts of it are morally egregious, but because the idea that exclusion of women and persons from color from active citizenship is simply an anachronistic idea—even when we find it at work in 21st century societies.

Kant writes: that

The members of a society who are united for giving law (*societas civilis*), the members of a state, are called citizens of a state (*cives*). In terms of rights, the attributes of a citizen, inseparable from his essence as a citizen are: lawful *freedom*, the attribute of obeying no other law than to which he has given his consent; **civil equality**, that of not recognizing among the *people* any superior with the moral capacity to bind him as a matter of right in a way that he could not in turn bind the other; and third, the attribute of civil independence, of owing his existence and preservation to his own rights and powers as a member of the commonwealth, not to the choice of another among the people. From his independence follows his **civil personality**, his attribute of not needing to be represented by another where rights are concerned.

The only qualification for being a citizen is being fit to vote. But being fit to vote presupposes the independence of someone who, as one of the people, wants to be not just part of a commonwealth but also a member of it, that is, a part of the commonwealth acting from his own choice in community with others. The quality of being independent, however, requires a distinction between *active* and *passive* citizens, though the concept of a passive citizen seems to contradict the concept of a citizen as such. – The following examples can serve to remove this difficulty: an apprentice in the service of a merchant or artisan; a domestic servant as (distinguished from a civil servant); a minor (*naturaliter vel civiliter*); **all women**¹⁸ and, in general, whose preservation in existence (his being fed and protected) depends not on the management of his own business but on arrangements made by another (except the state). All these people lack civil personality and their existence is, as it were, only inherence. –The woodcutter I hire to work in my yard; the blacksmith in India, who goes into people's houses to work on iron with his hammer, anvil, and bellows, as compared with the European carpenter or blacksmith who can put the products of his work up as goods for sale to the public; the private tutor, as compared with the school teacher; the tenant farmer as compared with the leasehold farmer, and so forth; these are mere underlings of the commonwealth because they have to be under the direction or protection of other individuals, and so do not possess civil independence.¹⁹

That women and persons of color are mere underlings because they have to be under the protection of others is, of course, among the most flamboyant of examples of question begging in the history of Western philosophy. That they are under such protection precisely because they are disenfranchised by the state and placed outside the purview of common humanity has already been taken up a phalanx of distinguished scholars in 20th and 21st centuries political and moral philosophical theory. I won't reconstruct the criticisms against classical 18th and 19th century liberalism's problematic conception of human moral agency. I do, however, believe that in spite of Kant's subjective anthropological bias against women, persons of color and other disenfranchised individuals from specific groups, that there is much in his moral philosophy that rescues him against his own bias. It is precisely because the same bias still unfairly exists in certain nation-states in the world today against women and members of other groups that I want to make a strong case that human beings whose agency are not compromised by such applied specious forms of reasoning and, more specifically who have the freedom to exercise and cultivate their agency have a moral responsibility to bring into existence a more just world for those who are penalized birthplace and parentage. Ultimately these two contingencies are arbitrary from a moral standpoint. But we have seen where Kant himself treated such contingencies as if they were morally or at best, anthropologically relevant criteria for determining citizenship. –

If lawful freedom consist in the legislative capacity of the united will of the people, and since all right proceeds from it, making such legislative authority incapable of doing any wrong by its law and, if the legislative authority derived from this united will of the people is derived from citizens of the state, the we ought to ask: what is to become of

those persons denied rightful citizenship in their homeland? Surely, such persons unlike those of us in the positions to exercise some leverage over the political machinery of our free civil and political societies have an obligation to tweak it in behalf of those who are born into ones that treat them as mere possessions. Or, do we?

Benhabib, Joseph Carens and others have argued that we do. The method by which they come to this conclusion, however, differs. Others may say that the approach I am pursuing is unnecessary because we may simply ostensibly point to countries such as the United States, Canada, and France to name a few that have and continue to pave the way for its immigrants to become full-fledged citizens. Such countries unlike, say, Serbia and, historically speaking, organize human citizenship around a set of core political ideas, not similar histories. They are governed by civic nationalism as contrasted with ethnic or cultural nationalism.

It is not the case, however, that such ostensible examples illustrate exactly why we ought to make it a moral responsibility to make permanent residency leading to eventual citizenship the right of those punished for **arbitrary contingencies** of their lives.

*****One fruitful way of philosophically determining who has the right to permanent residency is by way of visiting Kant's theory of the right to visitation, to hospitality or, temporary sojourn. The upshot of this right for Kant was that to prevent someone from temporary resort when such refusal would result in persons' death and destruction was to commit a moral transgression.

Kant was not the first thinker to bring into public debate the issue of the rights of strangers. He was the first major Enlightenment thinker, however, to offer a robust

account of why strangers or foreigners had a right to visit countries outside of their own. This was not philanthropy for Kant, nor was it a social virtue but, rather, what he termed cosmopolitan right. Articulated in the Third Article of his famous “Perpetual Peace”, a short treatise written in 1795 upon the signing of the Treaty of Basel by Prussia and revolutionary France, the document was a political tract that was meant to articulate how peace could actually come about among nations that had a similar political constitution and form of government. This form of government was a constitutional republic which secured the rights of individuals by limiting the powers of government to that of a custodian of rights and enforcer of justice. The external freedom of others was justified when the exercise of such freedom violated the inalienable rights of others.

Kant’s hope was that a federation of constitutional republics would bring about world peace primarily because, government being accountable to the people and government and having a separation between the legislative and the executive branch would temper the aggressive impulses of unaccountable rulers to engage in warfare. It is not in the interest of individual men to engage in warfare when they are its primary victims. More than this, however, was the view that a cosmopolitan federation of states along with its consociates would ultimately approximate the perfectibility of human moral nature that was at the heart of Kant’s progressive moral philosophy.

The right to hospitality and temporary visitation for Kant was the natural right of the stranger not to be treated with hostility when he arrived on foreign territory. He can be turned away if this can be done without causing his death. He must not, however, be turned away for arbitrary or capricious reasons. The cosmopolitan right of the stranger was not an absolute right, therefore. It did implicitly presuppose the sound and moral

judgment of those whose responsibility it was to determine right of entrance and exit. He whose duty it was to determine and limit right of entrance was someone who accepted the terms of rightful entrance. Exceptions to the rule were grounded in some legitimizing principle other than the mere unregulated will of a political actor. The right of hospitality is believed to be situated at the boundaries of the polity; it delimits civic space by regulating relations among members and strangers. The right of hospitality occupies that space between human rights and civil rights. In other words, somewhere between the right of humanity in our person and the right that accrues to us insofar as we are members of specific republics.²⁰ In fact, for Kant, the right to be a permanent resident differed from the right of temporary sojourn in that the latter was awarded through a freely chosen special agreement which goes beyond what is owed to the other morally and what he is entitled to morally. Kant called this a contract of beneficence. It is a special privilege that the sovereign can award to some foreigner residing in their territories the right. Such residents would have to perform certain functions such as engage in long term trade and acquire property. They would have to be capable of practicing a certain profession. But we have already seen how difficult a condition this would be to establish given that those most in need of permanent residency have been and still continue to be those whom Kant would refer to as mere auxiliaries of the state. How does one protect the assaulted moral agency of those who, by legal definition are at the mercy of laws that regard them only as partially qualified moral agents?

One way of exploring this tension is to understand the manner in which Kant legitimized cosmopolitan right, that is, the right of temporary visitation. What was its foundational basis and what were the intrinsic limitations (if any) that restricted the scope

of the right of entrance to one of temporary visitation? In what follows I shall not only reconstruct Kant's argument for temporary visitation, I will also argue that for such a cosmopolitan right to have any real traction in human life, the right would have had to have had a more permanent and far reaching scope than we find it to have in a simple right of visitation. I shall further argue that there is not anything in the original foundational principles that would not have given us this broadened scope that secures a right to permanent residency.

The natural geographical demarcations and indeed, the very geographic features that make the earth the kind of entity that it is, has been appealed to by social contract theorists such as Locke to justify who has a rightful share in both the earth's possessions and resources and the areas of the earth itself that are hospitable to requirements of human survival. Locke in The Second Treatise of Civil Government, writes that "In the beginning God gave the earth to men in common to enjoy" (Locke [1690] 1980, 19. Until human beings appropriate the earth in a way that speaks to their transformational capacities as rational creatures, none has any rightful and or intrinsic right of first possession. Rightful appropriation which leads to rightful private property involves the conjoinment of reason and labor for Locke. One who uses his intellect to plant at the right time of the year, in the right soil based on careful analysis of soil that is conducive to a good harvest, or, one who kills deer and finds a way to preserve the carcass by means of salting and curing it has the rightful claim to it as his property. He has conjoined labor with the use of his intellect. Since human beings can only live by means of their rational minds for Locke, any aspect of earth's resources that is transformed by adapting it to

human needs through the use of one's reason rightfully belongs to one. No other human has a rightful claim to the product of one's mind, goes the Lockean form of reasoning.

Kant deploys a similar form of reasoning to locate his original cosmopolitan right of visitation. He does not endorse, necessarily, Locke's ratiocination to justify private property. As Benhabib rightfully points out, Kant explicitly rejects the *res nullius* thesis in its Lockean forms. That is, he saw it as "thinly disguised formula for expropriating non-European peoples who do not have the capacity to resist imperial onslaughts."²¹ So what did the idea of the common possession of the earth justify in reality?

A universal morality of equal right to self-sustainment pervades Kant's treatment of the claim to common possession of the earth. All men have the right to present themselves in the society of others by virtue of their right to communal possession of the earth's surface. The earth is a globe, Kant explains, and because of this fact human cohabitation is a virtual indisputable fact. People cannot disperse over an infinite area. They must tolerate each other's company.²² Keeping in mind that no person has an intrinsic right to occupy any portion of the earth by nature, it is worth quoting Kant at length on how he goes from communal right of possession, to a cosmopolitan right of visitation that is not to be conflated with a permanent right of residency. Kant writes:

The community of man is divided by uninhabitable parts of the earth's surface such as oceans and deserts, but even then, the *ship* or the camel (the ship of the desert) make it possible for them to approach their fellows over these ownerless tracts, and to utilize as a means of social intercourse that *right to the earth's surface* which the human race shares in common. The inhospitable behavior of coastal dwellers (as on the Barbarybut this natural right hospitality, i.e. the right of strangers, does not extend beyond

those conditions which make it possible for them to *attempt* to enter into community of human beings.

We may read Kant's right of hospitality as a first step of a rather long induction into the protracted process of becoming fully human. That Kant does not envision the right of hospitality as a permanent feature of moral political right is both understandable and problematic. Given his respect for de facto sovereignty and given his proceduralist account of how political changes can actually come about, Kant seems right in exercising caution against extend the right of hospitality extending into a moral right. Kant was working a notion of citizenship that was largely de facto and delimited at that. If women and persons of color and the other auxiliaries of the state were not permitted full citizenship in his political order, then by what means could Kant have plead for permanent residency and then eventual citizenship of foreigner? It is precisely this lack of cleavage between his wider moral principles of humanity and limited moral –politico universe that I shall find problematic. Like Kenneth Baynes, I find that his rejection of world republican sentiments in this area to be a failure on his part to be consistent with the deeper motivation of his own moral and political principles.²³

If the moral perfection of human beings is the goal of nature, as Kant argues it is, then we may think of the geographic orderings of the earth into which human life is supplanted as necessary conditions for a cosmopolitan public sphere of world citizens. In the federation of constitutional republics as he envisions it, peace comes about via a cosmopolitan public sphere. Here we must be attentive to the things that can violate this peace in this order. An unwritten code. That is, any political order—or absence thereof—that does not protect the inviolable right of the individual in her own inalienable rights. A

democracy was neither necessary nor sufficient for Kant to achieve this purpose. In fact, it already well known that Kant's disdain for democracy was not because he harbored illiberal impulses. Quite the contrary. He felt that because a democracy was one in which everyone ruled that mob rule could easily obliterate the rights of the individual. A powerful majority could fail to uphold the pre-political (for Kant, moral rights in ones person as a human being) not to be harmed, for example. By historical association we know that a powerful minority such a white South Africans during the apartheid years, could and did violate the human rights of a disenfranchised non-white majority.

Democracy was a form of despotism for Kant because it established an executive power through which all the citizens could make a decision against the individual without his or her consent. If laws are made by all the people and, a fortiori, with freedom itself.²⁴

Kant, as is well known, believed strongly that it was Republican states, each existing as such among other such states that could achieve perpetual peace. The authorizing agencies of power are allocated among three branches of government each of which places a legitimate system of checks and balances on each other. When the brunt of war is borne directly by private citizens, the desire to war is proportionately decreased in relation to the toll each would have to bear privately. There is a political ratiocination of a sort that speaks to the personal self-interest of those not vested in war for the sake of glory and power, but of those whose job it is to execute war in the world: the people themselves. Republicanism, a form of government in which the state becomes the servant of the people and not the other way around, places theoretically proscribes the will of individuals who would pervert a political system to their personal advantage. Kant realizes this problem in his famous dictum: "...the problem of setting up a state can be

solved by a nation of devils (so long as they possess understanding.”²⁵). The constitution must be designed in a way that persons who differ in their private attitudes, the public conduct of citizens will be such that opposing views inhibit each other and the public sphere becomes one in which civilized conduct towards person—meaning, most importantly, respecting the intrinsic humanity and dignity in each person which includes but is not limited to toleration of attitudes differing from those one holds. Although Kant intimates that the organization of this public sphere in which differing attitudes among persons can co-exist peacefully, does not involve the moral improvement of man, it only involves their willingness to submit themselves to coercive laws that restrain their impulses to rights violation, he later the situation endorses a theory of moral socialization that takes place in the Constitutional Republican state. Kant writes:

“... We cannot expect their moral attitudes to produce good political constitution; on the contrary, it is only through the latter that the people can be expected to attain a good level of moral culture. Thus that mechanism of nature by which selfish inclinations are naturally opposed to one another in their external relations can be used by reason to facilitate the attainment of its own end, the reign of established right.”²⁶

There is, also another way of conceiving of this unwritten code. Bohman argues that by it Kant meant that some informal and publicly known equivalent to international law emerges via the non-formal mechanism of world public opinion. It is in the exercise of public reason among citizens of more powerful and civilized nations that “unwritten” but nonetheless universal rights become a political reality. This unwritten code operates

in a global, universal community. It is a code that makes the violation of rights in one part of the world felt everywhere.²⁷ We shall refer to this in the spirit and words of Kant: the right of humanity. This right of humanity that exists in any person is to be also found in the person of every other. (P.P..108) Kant's theory of the purposiveness of nature is twofold. Nature's goals for man cannot be accomplished without at the same time achieving the goals it has for the human species. For the human being to evolve to his full potential qua human being, the individual qua individual must be united into a cosmopolitan public order. Nature's purpose is to make world citizens out of each person. We are transformed from natural creatures into moral creatures; we go from being self-centered solipsistic entities into reason giving world citizens. The milieu in which this happens is a cosmopolitan public sphere that is broad in scope and diverse in human make-up. We may inquire as to what is presupposed by an idea of moral evolution? The answer on Kantian grounds seems to be a public sphere in which reason can be tested, persons can learn—through their institutional embeddedness—the virtue of accountability, that is, communicative accountability. This will involve a space in which one's own reason and non-reason generating capabilities are tested against competing validity claims of others and the give-and take of discourse life. Persons living under conditions of censorship, authoritative paternalism and restrictions on movement are precisely those who have their capabilities stymied by means of a political process that either criminalizes their efforts, or fails to recognize the moral foundation on which such rights ought to formally come into existence via a legal and political enshrinement of such rights.

James Bohman writes that, a public is a potential audience of successful communication that is unrestricted in its assumptions, and certainly the cosmopolitan public is the broadest possible audience.” (Bohman 183) This public if restrained in the scope of its reason and non-reason generating capabilities is precisely one that both denied full entrance into the pantheon of the human moral community, and, a fortiori, prevented from developing fully from partially evolved natural creatures into full-fledged moral creatures.

Before moving on I want to suggest, too, that Kant’s argument from what we may call death and danger which obligates us to retain the stranger on our shores is one that, when considered against the backdrop of its logical conclusion, has little traction indeed. For if we must give respite to the stranger because to refuse to do would cause him death, what then are we to make of cases in which returning visitors to their homelands will result in their death through either harsh economic conditions, or worse, outright political persecution because of factors such as gender, race, ethnic and national identity or religious affiliation? Refugees and asylee seekers who are deported face imminent death too often for us to ignore the weak moral underpinnings of the argument from death that Kant advances. Undoubtedly, such persons will have their universal right of humanity violated if they are returned home.

The problem of permanent residency hopefuls remains. Why should some persons because of place of birth—which is a morally irrelevant factor of one’s identity—be excluded from the domain of the ethical where this moral cosmopolitan socialization in a cosmopolitan public sphere takes place?

There are, from the political standpoint, several problems to this problem. I have already outlined the proceduralist approach that ought to take place in a democratic state for such rights to be implemented as political rights. My goal though, is to argue for the right to permanent residency as a human right. Human rights precede politics and are supra-legal in nature. Since they are moral rights and the last rights that one appeals to I shall restrict my answers.

I pose two interpolated questions: why should refugees and asylees and any other person who is systematically denied the chance to develop a full-fledged moral and legal personality not be granted an opportunity to do so by living in a democratic republic; and how can we reformulate Kant's moral and political philosophy to accommodate this goal?

I shall devote the next section of this paper to exploring options available which may provide answers to the second question.

Kant cautions against turning away persons from foreign shores when doing so would bring about their harm and or imminent death. He can be turned away if this can be done without causing his death. He, however, cannot be turned away so long as he behaves in a peaceable manner. Kant is uncompromising when it comes to the question of the visitor overstaying his welcome, so to speak. He writes: "The stranger cannot claim the **right of a guest** to be entertained, for this would require a special friendly agreement whereby he might become a member of the native household for a certain time."²⁸

I am going to suggest that Kant approximates the kind of moral benevolence that would make his moral and political cosmopolitan project complete when he writes that the right of hospitality, i.e. the right of strangers makes possible for persons of differing backgrounds to enter into relations with each other. In such a way, “continents distant from each other can enter peaceful mutual relations which may eventually be regulated by public laws, thus bringing the human race nearer and nearer to a cosmopolitan constitution. This lofty goal, Kant argues, is part of the plan nature has for human beings. Peaceful relations among nations, one could conjecture according to the spirit of this argument, is important because the proximity of human bodies as they are ensconced in their geopolitical states can establish reciprocal exchanges of knowledge regarding customs, mores, ways of life and, more importantly, the common humanity possessed by each in common with the other. Warfare, strife, conflict and what we may even call Kant’s cultural apartheid, that is, the ethnic and national distinctions Nature has created to accommodate the local identities of persons serve a teleological purpose: it locates the moral bifurcation that exists in persons so as to eventually allow for an overcoming of the features in human beings that would divide each from her fellow human beings. In the Fourth and Fifth Proposition in “Idea for a Universal History from a Cosmopolitan Perspective,” we see a form of provisional identity politics at work that is yet to be overcome. Proposition, we may see part of Kant’s identity politics at work. Moral identity is forged in the crucibles of those impulses—antagonistic asociality—that seek to obliterate identity and the sociality of others. The tendency to come together coupled with a resistance to it and a proclivity for self-isolation is a seemingly irreconcilable tension first through the incremental lessons of warfare learned when nations fight among

themselves and then, from a realization on the part of men that those whom they cannot bear to be with are also those whom they cannot bear to live without. This for Kant is the first step from barbarism to culture which consists in the social worthiness of the individual. Kant writes:

All man's talents are now gradually developed, his taste cultivated, and by a continued process of enlightenment, a beginning is made towards establishing a way of thinking which can with time transform the primitive natural capacity discrimination into definite practical principles; and thus a *pathologically* enforced social union is transformed onto a *moral* whole.²⁹

In the fifth proposition Kant spells out clearly that the highest task which nature has set for mankind must therefore be that of establishing a society in which freedom under external laws would establish a perfect state of justice under a perfectly just civil constitution.

I would like to bring our two interpolated questions now into sharper relief having highlighted some of the crucial ways in which, for Kant, nature aids the process of moral socialization via strife and conflict. Furthermore, nature not only aids the socialization process, she plays, albeit indirectly, a causal role in the development of the individual's natural capacities.³⁰ Why should any person through an accident of birth be left dangling in nature's time warp, so to speak? That is, given the various political configurations under which human agency develops, and given the extent to which moral and legal personality is irreparably damaged under some systems, in the name of the moral egalitarianism and the equal moral worth of each why should any person be left out of

this teleological design of nature to develop human capacities and moral nature? If we further take the proximity argument seriously, that is that peaceful cohabitation among nations brings the world closer to a just cosmopolitan order, then we may on Kantian grounds create a two tiered division of labor on nature's part to ensure that on cosmopolitan grounds, the individual as individual not only does not get left out of the agency development program of nature's purposiveness, but is accepted into a system whose political and juridical principles protects, develops and sustains her intrinsic moral worth. I submit that the conjoinment of Kant's cosmopolitan right and cosmopolitan law can generate a defense of persons who, when their moral and legal agency are damaged, prevented from coming into existence can make a human right claim to permanent residency in any country which protects their basic right not to have their full-fledged moral and legal personalities void. Again, I leave the question of how permanent residency can be implemented to the realm of administrative politics. Human rights preceded politics and are, of course, the last court of appeals in the tribunal of rights to which one ought to appeal. Cosmopolitan law protects the rights of citizens of the world by making their relations to the state a concern of the world community.

Following Daniele Archibugi's lead I submit that cosmopolitan moral, political and legal principles are precursors of reality by first and foremost being declarations of good intent rather than on actual existing positive legal rights. Cosmopolitan principles should not be assessed on the basis of their feasibility in the present moment. Instead, they ought to be assessed on the basis of their utility in an indeterminate future.³¹

Let me summarize my thesis so far. Kant's moral cosmopolitanism and, more pointedly, his theory of cosmopolitan right, or the rights of the stranger gains greater moral and empirical traction if we can find a way to apply it in such a way that the following yields.

- (i) common possession of the earth remains a theoretical and potentially practical reality in spite of legal political boundaries which make de facto sovereignty of any state a given. Sovereignty does not cancel a claim to universal membership of the earth since:
- (ii) the misfortune (or) fortune of being born into a political demos or polity cannot, on Kantian moral grounds increase or decrease one's intrinsic moral value. Equal intrinsic moral value is a sufficient condition for enjoying the moral benefits of those political configurations under which a full-fledged moral and legal personality can come into being.
- (iii) political membership is a necessary condition for the conferral of justice by the state to individuals. One form justice takes is in the protection of the intrinsic moral value of each by respecting and protecting the inalienable rights of each
- (iv) no one can be permitted, or ought to be permitted to violate the intrinsic moral value that resides in each person's humanity on the basis of race, national membership, ethnicity, religious affiliation, gender or sexual orientation.³² Both non-moral and morally relevant features of a person's identity or behavior is never a reason to violate his or her intrinsic moral worth, dignity and humanity.
- (v) Bringing the human race nearer to a cosmopolitan constitutional state can be achieved more robustly by bringing human individuals into a cosmopolitan association by linking strangers with compatriots in a permanently binding socio-political bond.

To reinforce (v) it is worth quoting Kant again on one of his moral cosmopolitan goals in uniting the human species. He writes:

The people of the earth have entered into a universal community, and it has developed to the point where a violation of rights in one part of the world is felt everywhere. The idea of cosmopolitan right is therefore not fantastic and overstrained; it is a necessary complement to the unwritten code of political and international right transforming it into a universal right of humanity.³³

If our moral imagination need not be over-taxed to endorse cosmopolitan right, then would it need be stretched beyond the point of the reasonable to accommodate the right to permanent residency as a moral right? If again, we take moral personality to be a distinctly human characteristics that allows us to navigate n the world in a distinctly human manner, if it plays a distinct role in ensuring that human moral nature not fall below a certain threshold that would cease to make it recognizably human, then the time might have come to widen that delimited space between the polity of rights conferred by the sovereign republic and those that reside in our common humanity. Since human rights stand before and exists apart from all other rights claim, the work that needs t be done in greater detail is to close the gap between the rights conferred by the polity and the extralegal and supra-national human rights which only the juridical machinery of a polity or some non-national cosmopolitan body can both recognize and begin the process of implementing.



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¹¹ Benhabib, Seyla, The Rights of Others, p.137. The discretionary powers of states are greater where immigrants are concerned. This is indeed strange, given that Benhabib argues that a human right to emigrate ought to correspond to a right of admittance. If there greater discretionary powers in the case of immigrants, then how is the right realized? A right is a moral or legal claim that corresponds to a duty bearer's obligation to fulfill such a right. Benhabib further defends the rights of democracies to regulate the transition from first-admission to full membership.

² Numerous theorists have argued that since a paid holiday is a right that could only pertain to the employed then, it cannot be a human right since it excludes a group of—the non-working—from enjoying the right to have the right.

³ Benhabib rearticulates Arendt's original idea to mean that no person has the right to be robbed of his or her nationality; no person has the right to have his identity criminalized in such a manner that, as was the case of Jews under National Socialism, they can be divested of their civil, political and citizenship rights.

⁴ "Using Rape as a Weapon," Diane King, Times Herald Tribune, Monday July 9, 2007

⁵ "Using Rape as a Weapon."

⁶ "Using Rape as a Weapon."

⁷ "Using Rape as a Weapon."

⁸⁸ Benhabib, Seyla, The Rights of Others, p.138

⁹ Kant, "Perpetual Peace," in Kant's Political Writings p, 112.

¹⁰ "Perpetual Peace," p. 113.

¹¹ "Perpetual Peace," p.113. Italics are mine.

¹² Immanuel Kant, The Metaphysics of Morals p, 30

¹³ Immanuel Kant, The Metaphysics of Morals p, 30.

¹⁴ Immanuel Kant, The Metaphysics of Morals p, 17.

¹⁵ Immanuel Kant, The Metaphysics of Morals, p. 16

¹⁶ Immanuel Kant, The Metaphysics of Morals, p. 16

¹⁷ Immanuel Kant, The Metaphysics of Morals, p.37

¹⁸ Italics and emphasis mine.

¹⁹ The Metaphysics of Morals, p91-92.

²⁰ Benhabib, Seyala, The rights of Others p, 27

²¹ Benhabib, Seyla, The Rights of Others, p.31

²² Immanuel Kant, "Perpetual Peace" in Political Writings, p 106

²³ Kenneth Baynes, "Communitarian and Cosmopolitan Challenges to Kant's Conception of World Peace," in Perpetual Peace: Essays on Kant's Cosmopolitan Ideal." Edited by James Bohman and Mathia Lutz-Bachman (MIT Press: Cambridge, MA 1997) p. 225

²⁴ Kant, Perpetual Peace, 101

²⁵ Kant, Perpetual Peace, 112.

²⁶ Kant, Perpetual Peace, 113

²⁷ Kant, Perpetual Peace, 108

²⁸ Kant, Perpetual Peace, 106

²⁹ Kant, Idea for a Universal History, p. 44-45

³⁰ Kant, Idea for a Universal History, 45.

³¹ Archibugi, 126

³² I am not here suggesting that there could actually exist any reason for which a person would ever deserve to have his humanity violated. I single out the aforementioned categories, however, because from a legal and morally practical perspective, the categories I have mentioned are frequently used by violators as justifiable reasons to violate the humanity of persons. If political actors of a state used any other arbitrary reasons to justify violation, however, or if one could identify independently of the justification given any other arbitrary reason such as height, weight or even criminal activities, the victim would have as much right to seek a human right claim to permanent residency as any other person whose humanity were violated for the usually most common reasons which the categories mentioned.

³³ Kant, Perpetual Peace, 108