

***Conceiving Cosmopolitanism and Cosmopolitan Law: Theories,
Contexts and Practice for a World Peace***

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Human interactions around the planet have always been subject of many debates and research among philosophers and scholars. The complexity of this topic just increases when analyzed having in perspective humanity development in political and juridical snippets. Some situations are important marks for political institutions developments, such as migrations, ecological crises, pandemic situations etc. These topics are relevant because they have been influencing theories about human relations that go beyond that interpersonal, reaching that among groups of individuals.

The result of this speculation is a vast theoretical production about ‘what’ and ‘how’ would be like a primeval communion and its unfolding for a State constitution. The sequence of making such questions is not just analyzing human relations in an individual perspective, but also an analysis about its internal relations, as well that among groups States. The problem begins when we realize that human interactions are not circunstrated on those levels, it has a third and not well explored one: when the person begins to play a role internationally in a form that is independent from her original State. That is, the person becomes an active subject when dealing with other countries. This is the case of

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cosmopolitan citizens - as it's called from its first theoretical construction, with the stoics. This relation is clear when we talk about international travels, but there are some complex situations that inevitably points to this third level analysis. In the last centuries not only has commerce increased, but refugee movements and environmental questions have been highlighting the insufficiency of international law to find a solution. This is the snip where theoretical constructions about cosmopolitanism have a sit, and it is from where the book *Cosmopolitanism: From the Kantian Legacy to Contemporary Approaches* lays its researching efforts.

The urgency of the topic nowadays is clearly observed, but it was already under the eye of many theoreticians throughout history. Cosmopolitanism, further of being considered just a chimera, was systematically thought of by a great number of philosophers, as Immanuel Kant. The cosmopolitan theory, however, has two distinct concepts: cosmopolitanism and cosmopolitan law. Starting from Kant's construction, juridical cosmopolitanism is an essence that should be thought within the idea of Right as the recognition that humanity is confined in a spherical and limited globe. For that reason, we have to learn to tolerate each other and to find ways of getting through our disagreements with the help of public justice and juridical procedures. Hence, cosmopolitanism can be considered as a normative exigence intrinsic in the concept of Right and within this ideal is the concept of going beyond sovereignty and national borders - even though this does not mean to disconsider them.

Cosmopolitan law, on the other hand, is a third sphere of public right and it is limited by the right of hospitality. This right is conferred to the foreigners to not be treated with hostility when visiting other territories, as well to not be rejected if her or his life is in danger². To the concept of cosmopolitan Law, Kant dedicated the third section in *The Metaphysics of Morals*. This section, when compared to the others in the same book, can be considered very small and thick, which makes possible a lot of interpretations and misinterpretations as well. Going further into the various possible interpretations of cosmopolitan law, it is possible to find a consensus about the fact that Kant was worried about avoiding any form of validating colonialism, which becomes even more clear when we read *Perpetual Peace*.

The worry about colonialism can be noticed on some levels. In the first place, it has to be viewed having in perspective all Kantian philosophy of right constructions. That is, we have to consider his formulation of the universal principle of Right as "any action is *right* if it can coexist with everyone's freedom in accordance with a universal law, or if on its maxim the freedom of choice of each can coexist with everyone's freedom in accordance with a universal law" (*MS*, AA 06: 231). This principle brings to a cosmopolitan project the idea of common will and the necessity of constructing a juridical state where rights can be safely secured. The absence of an international juridical condition makes clear that the international law that we have is insufficient to solve international conflicts. To surpass the state of nature is to give up into wild freedom to recover it in a judicial condition. Every right before the

² *ZeF*, AA 08:358.

juridical condition is merely provisory until this contract extends to all humankind³. Secondly, the cosmopolitan law was carefully limited by Kant in the right of hospitality. This conception is directly connected with the worry in avoiding colonialism. Hospitality was theorized in Kant's time as a positive right that could be claimed by those who arrived foreign lands. This situation granted colonists to be aggressive with natives that don't collaborate with them. For this reason Kant wrote that the permission to foreign visitors is to search for an interchange with the original inhabitants⁴. Kant was avoiding jesuitism, the sophisticated maxims and those actions where colonialists, by preaching a greater good, applied violence to get to where they wanted to. Third and finally, it is possible to analyze Kantian criticism in two perspectives, morally and prudentially speaking. For the moral one, the aggressive way of colonialist expansion is evidently against the categorical imperative as it consists in the interference in others external liberty. The prudential aspect, on the other hand, is observed in the sense that colonialism didn't give real profit to Europeans, just the immediate one. That is, from a prudential point of view, they didn't get any gain with it. The lack of prudential reasoning, for Kant, led these people immediately to their ruin. Prudential reasoning is a key-concept to think cosmopolitanism and cosmopolitan law as it has influence in concepts such as public well-being. Hence, a civil society body formation toward a cosmopolitan constitution has, in it, not only a moral perspective, but prudential one as well.

Beyond the discussion about what Kant really intended for cosmopolitan law to mean, there is also the discussion about how a political international community would be to fit a cosmopolitan constitution. In the essay *Idea for a Universal History with a Cosmopolitan Purpose* (1784) it is possible to find a normative exigence that, in order to overcome the conflict between States, supranational political and juridical institutions should be constructed. In this first moment Kant suggests an institution in the form of a State (*Staatskörper*). In the text *Theory and Practice* (1793) he shows public law necessity and effectiveness when dealing with international relations and aiming to solve war and constant hostilities. The main problem comes in the intersection between the two works *Toward Perpetual Peace* and *Metaphysics of Morals* where Kant seems to change his mind. It seems to abandon this international statal figure and move to the idea of a free federation of States or a world republic. From this point also emerges several interpretations facing the depth and difficulty of the political and juridical topics involved. However, Kant seems to show some crucial points that might be observed prior to making any inference about which would be the ideal form for an international body. The starting place, as pointed, is the universal

³ *MS*, AA 06: 266.

⁴ *ZeF*, AA 08: 359: "The worst, or from the standpoint of ethical judgment the best, of all this is that no satisfaction is derived from all this violence, that all these trading companies stand on the verge of ruin, that the Sugar Islands, that seat of the most horrible and deliberate slavery, yield no real profit, but only have their use indirectly and for no very praiseworthy object - namely, that of furnishing men to be trained as sailors for the men-of-war and thereby contributing to the carrying on of war in Europe. And this has been done by nations who make a great ado about their piety, and who, while they are quite ready to commit injustice, would like, in their orthodoxy, to be considered among the elect".

principle of right, this is the base for the development of any theoretic idea of right and its levels. This means that within the cosmopolitan concept of right, there is a normative idea. So, before choosing a better form for this international community, some actions might be taken for States to gain trust between each other, leading them to a spontaneous union. Beyond that, this mutual trust relationship must be built having in perspective the individual as well. For that it is indispensable analyzing all right spheres (national, international and cosmopolitan) as systematically coordinated. The lack of one of them in this scenario, the cosmopolitan perspective of right will not be achieved and even harder for an international community to be built. If we do so, it is easy to fall into a despotic government, a world monarchy and into a violation of basic human rights. In this debate level, another tough topic is the national state role in this international body. Which is the role and what is its relevance? How is it possible to care about individual and collective freedom facing such a complex and interconnected scenario? To solve these problems we have many paths. The contemporary context for political and juridical philosophy offers great contributions to this goal, with theories compromised to find a solution to the international community issue, as we can see in Habermas and Rawls writings.

Two main topics are found when we deal with cosmopolitanism and cosmopolitan law: its limitative feature as a negative right; and how would be the structure of an international community. However, going beyond this discussion and the negative formulation of cosmopolitan law, there are a lot of positive ramifications that are shown when we face contemporary approaches to the subject. When they are brought having Kant in perspective, it is possible one to object some anachronism to this positive form of cosmopolitan right. This, of course, has to be considered, having in mind that Kant left a short section dedicated to this topic. However, contemporary debates based on Kant that bring this positive idea have to be considered not only as important, but urgent.

Even though not expressly by Kant, it is reasonable to think and to notice that Kant was worried about, when dealing with right, have in perspective future generations. This open space for environmental subjects to be bought for the cosmopolitan debate. In the same way, the idea that every person has the right to be in some safe place on Earth allows us to talk about refugee rights. The work *Toward Perpetual Peace* can be considered with a visionary feature when faced with contemporary international right, geopolitics, globalization and subsequent discussions. In this work Kant proposes a juridical scheme that goes beyond any idea of national and international borders and that expands for all persons and people on Earth. It is urgent, at this point, to find this juridical spot that is adequate for all these juridical relations to happen, as we can gradually realize how actions made in a corner of the planet can affect the whole part of it and by generations. Kant was aware of it. Refugee relations, sanitary and ecological crisis among other examples shows us how *sui generis* and intercommunitary these relations are. That is, they are not restricted by national or international relations, they are global. That is why Kant remains not only relevant for nowadays issues, but to deep the analysis into his theoretical construction is fundamental for

us to be able to build a cosmopolitan idea of right. It is extremely important to understand the normative principles that sustain that ideal and the repercussions of them in an international community - never forgetting how challenging and tough it is to create binding obligations on an international level.

As an example to show the complexity of this subject is, when we start to think about the form of an international community, it is inevitable to start to question the role of democracies. What can we expect from them facing an union? That is a really expensive question for nowadays political scenarios. In the same direction, what would be democracies' function facing other States that might be not yet a democracy, even though peaceful. Or, even harder, facing an authoritarian nation? How would this pacific union be organized? Legal procedures, laws and public justice organized would be constructed in the same way that we do nationally or would it be necessary to think in new procedures structures? Until which point sovereignty has to be protected and where it is better to abandon it? With these questions we can realize how delicate are the subjects within cosmopolitan theory. We can find reasonable arguments in any direction. But, going even deeper, we can question how cosmopolitanism, as an essence, an ideal, would work as a guide to provide us the best grounding to find a way out of the problematic relation between liberalism and communitarianism perspectives. The answer to this question can significantly change the practical effects of this theory.

Surely we have practical and emergencial problems that have to be solved by cosmopolitanism, but are we sure that this ideal can be sufficient to create a truly pacifical international environment? It has to be one where we could discuss openly about nationalism, patriotism, racism, xenophobia, minority rights, pandemic situations, migration and other problems that reach us globally. This is why the book *Cosmopolitanism* makes a relevant contribution. Beyond presenting Kantian theoretical aspects, it offers us a wider perspective from other theoreticians. As an example, the book brings Habermas' perspective about Schmitt's verdict about how a cosmopolitanism based on human rights can lead us to a pan-interventionism. This is pertinent when we face a global organization already functioning, as the UN. Cosmopolitan law cannot be misunderstood as human rights, even though we can think of a lot of human rights that would fit into cosmopolitan law. A Habermas contribution in this direction is that a human rights fundamentalism is to be avoided not by renouncing a politics worried about individual well-being, but done by transforming international condition into a juridical one⁵.

The complexity of this theme can reach other levels when we face anthropological and sociological perspectives, bringing questions about culture, religious institutions and morality. In spite of some scholars⁶ claims about how a Kantian perspective is worried about the figure of State and the impossibility of its dissolution, States cannot longer be considered

⁵ Habermas, 1998, p. 201.

⁶ For this discussion see: Cavallar, 2020; Byrd, Hruschka, 2010; and Shell, 2005.

as a monad, a single cell. They are part of something bigger, part of a collective system that are interconnected and integrated. What we aim to show here is that cosmopolitan subjects reach points much deeper from just choosing between a form for the international community. We have steps to take before that. It is extremely necessary to think about cosmopolitanism elements, justifications, its subjects, its conceptual structure etc. It is also necessary to look at actual political systems and national juridical structures and try to find out how the individual can be considered within it as a cosmopolitan subject. Just with that perspective we can lead right to a cosmopolitan constitution.

The essays brought by the book have an integrative analysis not only about Kantian systematization and its influence on cosmopolitanism; but go beyond when trying to identify current movements that can open doors for a cosmopolitanism to emerge. With Kant and beyond Kant, we have Hume, Smith, Habermas, Fichte, Dworkin and some contemporary perspectives, enriching the debate. They introduce anthropological and historical arguments about pluralism and how it can be observed facing a peaceful constitution. It is clear, by this point, how cosmopolitanism can be interdisciplinary and how this theoretical exercise is crucial to build a well structured cosmopolitan theory that proposes to be applicable and effective.

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