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Nomads, Territory, and the Kantian State

Anna Milioni

Centre de recherche en éthique/Centre for Research in Ethics, University of Montréal, Montréal, Québec, Canada
Email: anna.milioni@umontreal.ca

Abstract

This paper explores the 'puzzle of the nomads' in the *Metaphysics of Morals*: the apparent tension between Kant's argument about the duty to leave the state of nature and his insistence that European colonizers cannot permissibly force nomads to enter a civil union. Arguing that the puzzle is twofold, I suggest that the answer lies in the relationship between the state and territory in Kant's work. After showing the shortcomings of an approach which suggests that nomadic peoples cannot enter the civil state without settling, I defend an alternative interpretation, which conceives the territoriality of the state as contingent.

Keywords: territory; nomads; state of nature; civil state; colonialism

1. Introduction

According to international law, the four features of the state are (a) a permanent population, (b) a defined territory, (c) government, and (d) the capacity to enter into relations with other states.[1] This understanding of the state can be traced back to the Treaty of Westphalia of 1648, which stipulated that all states are equal and have exclusive sovereignty over their territory. The Westphalian model of the state is usually thought of as the result of the peace negotiations among Western and Central European states in the aftermath of a series of wars, and thus as a distinctively European model which was later extended to the rest of the world. This, however, overlooks the role of colonialism in shaping the Westphalian model of the state (Anghie 2006, 2007; Pahuja 2005). That is, the Treaty of Westphalia defined the sovereign state as a territorial self-governing entity not only on the basis of European states but also in opposition to non-European political communities. Judged by the standards of the Westphalian state model and found lacking, non-European political communities were reduced to 'non-state' entities and were denied equal status in the international realm. Colonizing states, on the other hand, were granted the role of 'civilizers' that would assist these communities to become sovereign states. Despite the significant achievements of the anti-colonial and anti-imperialist struggles of the twentieth century, this colonial legacy survives in contemporary international law, gatekeeping which political communities are granted the status of the state in a way that often reinforces and perpetuates colonial hierarchies instead of providing a mechanism for decolonization (Getachew 2019; Flikschuh 2017b: chapter 7).

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While critics of colonialism note the complicity of liberal political thinkers such as John Locke and Hugo Grotius in the justification of colonialism as a civilizing project (Arneil 1996), Kant's position is more complicated. Initially in support of European colonialism, in his later work Kant is considered to have taken an 'anti-colonial turn', repudiating his earlier views and harshly criticizing colonizers for their atrocities (Flikschuh and Ypi 2014; Ripstein 2019, 2021; Flikschuh 2017a, 2017b; Niesen 2007).[2] Even though this anti-colonialism might be more limited than it first appears,[3] the general consensus is that Kant is far more critical of colonialism than many of his predecessors and contemporaries. Kant's anti-colonialism is taken to culminate in the Doctrine of Right of the *Metaphysics of Morals*, where he criticizes European settlers for their violence and deception of nomadic indigenous peoples and suggests that 'specious' appeals to the 'supposedly good intentions' of the colonizers 'cannot wash away the stain of injustice in the means used for them'. Kant argues that, if European settlers want to settle in territories occupied by nomadic peoples, 'this settlement may not take place by force but only by contract, and indeed by a contract that does not take advantage of the ignorance of those inhabitants with respect to ceding their lands' (*MM*, 6: 353). Strikingly, Kant also raises the question whether colonizers are not allowed 'to found colonies, by force if need be, in order to establish a civil union with [nomadic indigenous peoples] and bring these human beings (savages) into a rightful condition', suggesting that 'this would sanction any means to good ends' (*MM*, 6: 266).[4]

Given that the duty to leave the state of nature and enter a civil state is central to Kant's analysis in the Doctrine of Right, these remarks have been taken to indicate the extent of Kant's opposition to colonialism. At the same time, they constitute a puzzle, as it is not immediately clear how they fit within the broader framework of the Doctrine of Right. This paper deals with this puzzle. First, I argue that the puzzle is twofold: that is, it is unclear not only why European settlers cannot force nomadic peoples to form a civil state but also whether Kant's analysis implies that indigenous nomads are in the state of nature (section 2). While Kantian scholars have explored the former question, my analysis shows that, to properly understand the extent of Kant's opposition to colonialism, the latter question also needs to be examined. Then, I suggest that the answer to both sides of the puzzle lies in Kant's conception of the relationship between the civil state and territory. The dominant understanding of this relationship implies that nomadic peoples cannot enter the civil state without settling. This understanding, however, severely limits the scope of Kant's anti-colonialism (section 3). Taking Kant's anti-colonialism seriously, I defend an alternative understanding of the relationship between the civil state and territory, which conceives the territoriality of the state as contingent (section 4). This allows for a more cohesive integration of Kant's remarks about nomadic peoples within the broader analysis of the Doctrine of Right. It also calls for two kinds of critical projects: (a) a critical re-reading of the Doctrine of Right as a whole, delineating the scope of Kant's arguments and flagging any remarks that are not compatible with his overall commitments and (b) a critical review of the conception of the state in international law, contributing to the work of critical international studies scholars.

Before proceeding, a clarification is in order. My main focus here is whether and to what extent an anti-colonial reading of Kant is possible. My analysis thus focuses on the interpretation of Kant's arguments and remains agnostic as to whether the

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Kantian framework is best suited to address colonialism and its legacies. Furthermore, as I will argue, the best interpretation of Kant's arguments as anti-colonial might entail a critical distancing from the views of the historical Kant, and might be in tension with some parts of his text.

2. The twofold puzzle of the nomads

Kant's argument about the duty to enter the civil state goes roughly as follows: By virtue of her humanity, each person has an *innate right to freedom*, that is, to set and pursue her goals as she sees fit, without being subjected to the choices of others, insofar as this freedom can coexist with the freedom of any other (*MM*, 6: 237). Since human beings are embodied beings, in setting and pursuing our goals, we interact with the world. Our innate right to freedom licenses us to interact with the world in pursuing our goals, using, for example, external objects as we want, or making contractual agreements with others. Crucially, we are free to do more than that: we can appropriate external objects, and exclude others from their use. Not being allowed to do so would restrict our freedom to pursue our goals without being subjected to others, as these projects often depend on the long-term possibility to access external objects that we are not continuously using (*MM*, 6: 246). Even though by appropriating external objects we unilaterally set limits to the freedom of others, it is *permissible* to do so, since not being able to appropriate external things would constrain everyone's freedom (*MM*, 6: 247).[5]

Given our social coexistence, our actions inevitably affect others. This raises the question of which of our actions are within our right. Recall that for Kant, we have an innate right to freedom *insofar* as this freedom can coexist with the freedom of any other. The challenge is to determine what our freedom consists of: what is the freedom that can coexist with the equal freedom of everyone else? This cannot be determined by any one individual. No one can be expected to accept another's judgement of what is right; this would be against their innate right to freedom, subjecting them to the unilateral choices of others. This grounds a *duty* to leave the state of nature and unite with all others under a civil state, i.e., under public institutions of justice that unite the will of each individual into an omnilateral will (*MM*, 6: 256). Any rights that we might claim to have in the state of nature are thus only provisional; they are made conclusive when they are authorized under the civil state (*MM*, 6: 257). It is, therefore, the civil state that allows individuals to relate to each other under conditions of right. Consequently, the duty to enter the civil state is particularly strong. Kant argues that individuals can constrain any other with whom they interact to enter into a civil state (*MM*, 6: 256), and that those who remain in the state of nature 'do wrong in the highest degree', as they 'hand everything over to savage violence … and so subvert the right of men as such' (*MM*, 6: 308). The duty to remain under a civil state also grounds Kant's argument against revolution, even in case of extreme abuse of state power, 'since a rightful condition is possible only by submission to [the] general legislative will' (*MM*, 6: 320).[6]

Kant defines the state as 'a union of a multitude of human beings under laws of right' (*MM*, 6: 313). He also distinguishes between existing states and 'the state as Idea', that is, the ideal form of the just state which existing states aspire to reach. The state has three main functions: it legislates, rendering what is right determinate, it adjudicates in cases of

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differences, and it ensures that rights are enforced, in cases of non-compliance.[7] By doing so, it enables individuals to relate to each other as free and as equals, under conditions of right. This brings us to the first side of the puzzle: are nomadic peoples not in the civil state, according to Kant's analysis? Nothing that has been mentioned so far suggests that they would not be. Even though Kant probably had limited and inaccurate information on the nomadic peoples about whom he writes, he had no reason to assume that they did not have some form of political organization. Presumably, he would have assumed that nomadic peoples had some form of decision-making procedures, some mechanism for adjudicating differences, and some way of enforcing their decisions. Certainly, their institutions were different from those of the Europeans – but so was the case with other non-European states, which Kant does not regard as being in the state of nature.[8] Even if Kant considered the institutions of nomadic peoples to be worse than those of European states, his distinction between the state as Idea and existing states allows for subpar states to still be understood as civil states. In fact, his discussion of revolutions indicates that his standards of what could constitute a civil state could accommodate considerably unjust institutions. There seems to be no principled reason to exclude nomadic indigenous peoples from the civil condition.

However, it is far from clear that Kant thinks so. In fact, most Kantian scholars think that he does not. Anna Stilz (2014: 206) briefly considers this possibility, but dismisses it in the absence of textual evidence. Katrin Flikschuh (2017a: 53) suggests that Kant 'evidently does not think' that nomadic peoples are in the civil condition. Peter Niesen (2007), Inés Valdez (2017), Anthony Pagden (2014) and Pauline Kleingeld (2014) all refer to nomadic peoples as *non-state* peoples, assuming that they are in the state of nature. Arthur Ripstein (2021: 196) claims that it is not clear from the text whether Kant considers nomadic peoples to be in the civil state, while Jakob Huber (2022: 72) suggests that, despite recognising that nomadic peoples have some form of political organisation, Kant hesitates to specify whether this constitutes a civil state.

Ripstein and Huber are right that the textual evidence is ambiguous. Kant consistently refers to nomads as 'peoples' (*Völker*) and defines a people as 'a multitude of human beings ... that, because they affect one another, need a rightful condition under a will uniting them' (*MM*, 6: 311). In his discussion of the Right of Nations, he draws a distinction between 'peoples' and 'tribes' (*Völkerschaften),* suggesting that the latter, unlike the former, have chosen to live in the state of nature (*MM*, 6: 343). Furthermore, when Kant considers the powers of the head of the (civil) state, he refers to the case of 'a nomadic people under a head of state' (*nomadisch-beherrschtes Volk*), conceding the possibility of nomadic peoples being in the civil state (*MM*, 6: 324). On the other hand, when he explores the relationship between colonizers and nomadic peoples, Kant considers the argument that colonizers can permissibly force nomadic peoples to leave the state of nature. Instead of dismissing the argument on the basis that nomadic peoples are already in the civil state, he argues that doing so by force 'would sanction any means for good ends' (*MM*, 6: 266; see also 6: 353), taking issue with the means and not with the end. At a rhetorical level, Kant often refers to nomadic peoples as 'savages' (e.g., *MM*, 6: 266), while he uses the same term to refer to the state of nature (*MM*, 6: 308). Should we understand nomadic peoples to be in the civil state or in the state of nature, according to Kant's analysis?

This brings us to the second side of the puzzle. If nomadic peoples are taken to be in the state of nature, then how can Kant's anti-colonial argument be reconciled with his

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broader analysis about the duty to leave the state of nature? Several Kantian scholars have tackled this question, offering different interpretations. Stilz (2014: 218) concedes that nomadic peoples might have a duty to enter the civil condition but argues that, in the absence of international institutions that could determine which political communities are in the civil state, Europeans are in no position to make a unilateral judgement about this. The problem with this approach is that it grants too little. The duty of nomadic peoples to form a state, which Stilz's approach concedes, entails a duty to abandon their own institutions – which are deemed unlawful – and form institutions that are more similar to those of European states.[9] This amounts to a rather limited anti-colonialism, despite Kant's repudiation of the practices of the colonizers.

In a somewhat similar vein, Ripstein (2021: 195–7) suggests that European settlers have a duty to treat nomadic peoples *as if* they are in the civil state, regardless of whether they actually are. In a way, the argument is reminiscent of the relations between individual persons: in the same way that, at the interpersonal level, we have to treat everyone as free and as equal, similarly when we visit other parts of the world, we have to treat the peoples that we meet as if they are already in the civil state. However, this seems to overlook the fact that it is crucial to be able to distinguish cases of people who are in the civil condition from cases of people in the state of nature. Arguably, this has normative implications, especially when we no longer focus solely on cases of cosmopolitan law (where members of some state travel to other parts of the world and come in contact with other peoples) but look at Kant's broader system of right. Should nomadic peoples participate, for example, in the *league of nations* that Kant envisions in the Right of Nations? Are they covered by his stipulations of how *states* should treat each other? Given that states are a link in Kant's broader system of right, it makes a difference whether nomadic peoples should be considered as civil states or not. Focusing on how settlers, i.e., individuals from another state, should treat members of nomadic peoples, Ripstein's approach does not have an answer to these questions.[10]

Flikschuh (2017b) takes a more radical approach. She argues that, when Kant denies settlers the right to force nomadic peoples to enter the civil state, he implicitly contextualizes the duty to leave the state of nature. Instead of a universal duty, the duty to leave the state of nature becomes a duty that arises in the context of the European way of life and might not apply in other contexts (see also Niesen 2007). This resonates with some of Kant's remarks from his earlier (pro-colonial) writings, and particularly in his 'Conjectural Beginning of Human History' (Kant 2007 [1786]). There, Kant suggests that the need for civil institutions arises in sedentary societies, where people have stable property relations. Nomadic peoples have no such need, as their coexistence is not inevitable, but only contingent: in cases of disagreements, Kant supposes that they can simply leave their community (Muthu 2000). In his anti-colonial turn, Kant retains the view that nomadic peoples have no need for a civil state,[11] but now also suggests that European settlers have no right to force their own perspective (which assumes a duty to enter the civil state) on others. Flikschuh suggests that this leaves Europeans in need of a re-orientation: the institutions that we considered universal are in fact contextual, and we lack a framework that would regulate our relations with others who do not share our own context.

Denying that nomadic peoples are under a duty to change their way of life and form institutions that more closely resemble those of the Europeans, Flikschuh's

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approach is more strongly anti-colonial than Stilz's solution. In addition, taking a clear position as to the non-state status of nomadic peoples, Flikschuh can answer the questions that Ripstein's approach had left unanswered: nomadic peoples cannot participate in the international community as states, but this indicates a need to revise our approach to the international community in a way that can accommodate non-state peoples. However, Flikschuh's approach comes at an important cost which undermines its anti-colonial potential. While Flikschuh suggests that Europeans cannot make claims against nomadic peoples, this also implies that nomadic peoples cannot make claims against European colonizers. If Europeans have to treat nomadic peoples in a rightful way, signing non-exploitative contracts with them instead of stealing their lands or forcing foreign institutions upon them, this is not because of any *claims* that nomads make against them: the incompatibility of the different frameworks makes these claims unintelligible. Instead, the Europeans' conception of what is rightful comes solely from their own juridical framework, which might put some limits to the permissible treatment of the nomads. And yet, given that Flikschuh's argument relies on a radical incompatibility of contexts between Europeans and nomadic peoples, the Europeans' framework can be assumed to be ill-suited for the nomads.

3. States and territory

In section 2, I presented the 'twofold puzzle' of the nomads: Are nomadic peoples in the state of nature, in Kant's analysis in the Doctrine of Right? And if they are, how to reconcile Kant's claims against forcing them to leave the state of nature with his broader argument about a duty to enter the civil state? The relation between states and territory can provide the answer to the puzzle. In this section, I present a first interpretation of this relation as co-constitutive, and suggest that it implies that nomadic peoples cannot form a civil state without abandoning their nomadic way of life and becoming sedentary. In the following section, I defend an alternative interpretation of this relation as contingent.

According to the co-constitutive interpretation, endorsed by Stilz (2014, 2011) and Flikschuh (2000: 147–78; 2017b: 46–58), the appropriation of land plays a crucial role in the argument for the move from the state of nature to the civil state. As I mentioned in section 2, for Kant, each person has a right to set and pursue her goals as she sees fit. The possibility to appropriate external objects is crucial for the realization of this right. This entails the possibility to appropriate not only external mobile objects but also the land – otherwise, our external possessions could be moved around by others, in a way that hinders our ability to pursue our goals, without us being able to complain (*MM*, 6: 261–2). This leads to a problem: humans are embodied beings, which means that they take up physical space. Given that the surface of the earth is finite, in a world where land appropriation is permissible, people might find themselves without a place to be, since all land might be already appropriated by others. However, their innate right to freedom entails that people 'have a right to be wherever nature or chance ... has placed them' (*MM*, 6: 262). People might also find themselves unable to move beyond their own property, if the rest of the land is appropriated by others. In order to respect each other's rights, people thus have a duty to unite under a state, whose institutions would determine what belongs to each

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in a way that respects the rights of all. Before entering the civil state, anyone's claims to property are provisional, as they reflect their unilateral will and potentially violate the freedom of others.

In this interpretation, the move to the civil state *implies* the previous territorial appropriation which created the duty for its formation. Simultaneously, on the basis of this appropriation, the state *constitutes* its territory, no longer as an aggregation of (provisional) individual land properties, but as a land that belongs to all, and can be seen as divided into individual land properties according to principles of distribution (*MM*, 6: 324). The upshot is that the state is necessarily territorial. This has significant implications for nomadic peoples, as it seems that they cannot enter the civil state without abandoning their nomadic way of life and becoming sedentary. While this reading is compatible with Kant's remarks about nomadic and sedentary peoples in the 'Conjectural Beginning', it significantly restricts the scope of his supposed anti-colonialism. To enter the civil condition, nomadic peoples not only have to adopt institutions that resemble more closely those of the Europeans, they also have to significantly change their way of life.

One could try to overcome this problem by suggesting that nomadic peoples make property claims to their lands, even though their approach to property is different from that of the Europeans. This is the move made by Stilz (2014: 204–5), who suggests that nomadic peoples make provisional property claims to land. It is true that, unlike other political thinkers, such as Locke, whose conception of land appropriation by means of cultivation was tailor-made to exclude indigenous peoples, Kant explicitly denies the need to cultivate the land, build on it, or otherwise improve it, in order to appropriate it. To make a property claim on a piece of land, Kant suggests, one only needs to make 'an external sign of taking possession' (*MM*, 6: 265). Furthermore, Kant's property argument is not restricted to private property; land could be collectively owned by a people. He explicitly refers to the case of Mongolia 'where, since all the land belongs to the people, the use of it belongs to each individual, so that anyone can leave his pack lying on it or recover possession of his horse if it runs away, since it is his' (6: 265).

Nevertheless, this move faces difficulties. First of all, Kant suggests that a people's ability to take possession of a land extends 'as far as whoever wants to appropriate it can defend it' (*MM*, 6: 265). This makes it difficult to argue that nomadic peoples, 'who depend for their sustenance on great open regions', make *property* claims over their own lands, since it seems unlikely that they would be able to defend the periphery of these lands. This reading is corroborated by the fact that, when he refers to nomadic peoples, Kant refers solely to their 'use' of the land, not mentioning any claims to property. Furthermore, suggesting that nomadic peoples made property claims seems to be at odds with how nomadic peoples themselves understood their relationship to their lands.[12] For Kant, property rights have a specific content: they entail a right to use external objects *as I see fit,* in order to pursue my goals, as well as a right to exclude all others from their use. Both the exclusive use and the right to use their land in any way they might want, in order to pursue their goals, are far from the claims that nomadic peoples were making over their lands. Although in theory, nomadic peoples *could* make provisional property claims, these do not seem to be the claims that they *were* making.[13]

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Therefore, even though the co-constitutive interpretation of the relation between the state and territory seems to solve the puzzle of the nomads, its solution is not particularly appealing if one wants to remain committed to an understanding of Kant as anti-colonialist. The co-constitutive interpretation explains why nomadic peoples are not in the civil state by pointing to a link between the civil state and permanent settlement. Insofar as they do not make any property claims to land, nomadic peoples are not under a duty to enter the civil state and cannot be forced to do so. The problem is that this relegates nomadic peoples to the state of nature, unless they abandon their nomadic way of life.

It is possible that this understanding perfectly reflects the views of the historical Kant. After all, despite the problematic association of nomadic peoples with the 'savage' condition of the state of nature, his account still sets important limits to how European settlers can treat nomadic peoples. Nonetheless, it is worth considering whether an alternative, more strongly anti-colonial reading is possible. In the next section, I will propose such a reading. Taking a cue from Flikschuh, I will take seriously the possibility that Kant's remarks about nomadic peoples call for a re-orientation of our normative thinking. However, I will suggest that this re-orientation is not about the duty to leave the state of nature, but about the relation between the state and territory.

4. States without territory

Is it possible for a nomadic people to be in the civil state? Kant's reference to 'a nomadic people under a head of state' (*MM*, 6: 324) implies that it is. It is indicative that, in Kant's text, this possibility appears to be an exception to the standard relation of a people with their territory. Kant suggests that 'since the land is the ultimate condition that alone makes it possible to have external things as one's own ... all [property] rights must be derived from the sovereign as lord of the land, or better, as the supreme proprietor of it' (*MM*, 6: 323). He then suggests that, in a state, all land belongs to the people, 'except in the case of a nomadic people under a head of state, with whom there is no private ownership of land' (*MM*, 6: 324).

The possibility of a nomadic people that constitutes a civil state without having any land property lends credibility to an alternative interpretation of the relation between the state and territory, not as co-constitutive but as contingent (e.g., Ripstein 2009; 2019; Waldron 2006). According to this interpretation, claims about possession of external things are only one among the many types of claims that might entail a duty to enter the civil condition. Nomadic peoples might not appropriate any territories and therefore might not be making any claims to land property (even though they most probably appropriate other external objects). Still, we can expect that they make agreements among themselves, and that they form interpersonal relations that entail rights and obligations (such as one's obligations to one's children or, in a more communal case, the community's obligations to all children). In all these cases, people make claims against each other. Yet, these claims are unilateral. This means that no one is entitled to impose on others one's own interpretation of what is within their right and what they are owed. So, in order to respect each other's freedom, nomadic peoples *are* under a duty to leave the state of nature and enter a civil state. The need to make decisions about what is right, enforce these decisions,

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and adjudicate in case of differences does not only arise in sedentary communities. Thus, understood as a union of people under laws of right, the state need not be sedentary.

This interpretation is well-supported by textual evidence. At the beginning of the Doctrine of Right, Kant suggests that relations of right might have to do with corporeal things, with another's choices (when, for example, as a result of an agreement, we can expect others to act in the way that we have agreed), and with another's status in relation to us (such as conjugal or parental relations) (*MM*, 6: 247). By focusing only on the appropriation of external things, defenders of the co-constitutive interpretation unduly neglect the two other potential relations of right. This might not be a big problem insofar as we focus on Western political communities, where all three kinds of relations apply. When, however, we apply the Kantian framework to communities that do not exhibit all three relations – such as nomadic communities without land property – this neglect might lead us to the unconsidered assumption that nomadic peoples are not in the civil state.[14] The problem is accentuated by the fact that, given his familiarity with communities that manifest all three kinds of relations, Kant tends to take the territoriality of states for granted, rendering it an implicit or explicit assumption of his arguments.

On this interpretation, we have no reason to assume that nomadic peoples are in the state of nature. If they are, they are under a duty to enter a civil state. But in the absence of any evidence to the contrary, we must assume that they are not. Consequently, the colonizers' appeals to the end of bringing the nomads to the civil state are specious not only because colonizers have ulterior motives, and because the ends cannot justify the means but also because nomadic peoples are *already* in the civil state. Moreover, while nomadic peoples make no property claims to their lands, there is no reason we cannot assume that they do not make other forms of claims. We can plausibly imagine them making claims to what Stilz (2019: 34–6) calls 'occupancy rights': rights to access and use a certain geographical area in ways that do not disrupt the use of others.[15] Unlike property rights, these are not rights to *exclusive* access to the land nor to any use that the nomads might see fit. For example, the claim of nomadic peoples to occupancy rights would not include a claim to be free to use the land in ways that are detrimental to the land itself, or to non-human animals living on it. They do include, however, a claim to the unhindered access to and the continuous use of the lands that nomadic peoples occupy (and thus a claim against their displacement and relocation to other territories). Thus, while occupancy rights are different from property rights, they might be more suitable for the nomadic way of life. Given that Stilz considers nomadic peoples to be in the state of nature, her account construes these occupancy rights as pre-institutional. However, this is incompatible with the Kantian framework, which cannot accommodate conclusive pre-institutional rights – as we saw, rights in the state of nature are only provisional. Interpreting the relation between the state and territory as contingent and assuming that nomadic peoples are in the civil state allows us to understand these occupancy rights as conclusive.

Granted, this category of rights does not feature in Kant's analysis of property. It might even be perceived to be in tension with some of his remarks on land appropriation which, as I suggested in section 3, Kant conceives as crucial for any other appropriation of external objects (*MM*, 6: 261). Still, in the face of this apparent

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incompatibility, we need to ask two questions. First, is Kant making assumptions about sedentary life that do not apply to the case of nomadic peoples, in his analysis of property? And second, would occupancy rights, as a special form of rights that might be better-suited for the nomads and are not considered by Kant, be able to replace land property rights in the case of nomadic peoples? Given that a permanent residence in a single place is not part of the nomads' goals, it seems that *for them*, land property is not a necessary condition for the appropriation of other external objects. In that case, the scope of Kant's arguments about land property might be more limited than it first appears.

This interpretation is therefore better-suited for an anti-colonial reading of Kant. Relying on a plausible understanding of Kant's core argument about the duty to leave the state of nature, it recognizes the claims of nomadic peoples on their lands without equating them with property rights. It is particularly important that this interpretation does not suggest that nomadic peoples are in the state of nature but assumes that, in the absence of good reasons to think otherwise, they are in the civil state. First of all, this entails that the occupancy claims of nomadic peoples to their lands are conclusive and not provisional. Second, it not only allows us to make sense of Kant's remarks that European colonizers have to respect the claims of nomads to their lands – this was also entailed by Ripstein's 'agnostic' approach to the status of nomadic peoples – but it also grants nomadic peoples equal status to the European states at the level of international relations. And last, this reading does not perpetuate hierarchies between the 'savage' nomads in the state of nature and the 'civilized' Europeans. Nomadic peoples are not construed as 'savages' whom Europeans have to treat rightfully, merely *as if* they are in the civil state. Their communities might be different, but they are also in the civil condition, and are entitled to as much respect as any other civil state.

At this point, I should highlight a potential limitation of this anti-colonial reading. As I already pointed out, in his discussion of the civil state, Kant distinguishes between existing states and the state as an Idea, which provides the norm that all existing states should aspire to reach. Depending on how close or how far they are from the Idea of the state, different civil states might be considered to be more or less civilized – consider, for example, Kant's distinction between republican and despotic states and his critique of the latter (*TPP*, 8: 349–52). So, suggesting that nomadic peoples are in the civil condition does not automatically erase the possibility of any colonial hierarchies. It could be plausibly suggested that, while nomadic peoples are in the civil state by virtue of having institutions of justice that determine what is right, enforce decisions, and adjudicate, these institutions are inferior to those of sedentary states, in a similar way that despotic states are inferior to republican states. That is, one way of minimizing the tensions between Kant's argument about property and the conception of nomadic peoples as being in the civil state would be to suggest that people have the right to set and pursue their goals as they see fit – and are therefore free to exclude permanent settlement and the appropriation of land from their goals – but doing so is a sub-optimal choice of how to live their lives. This resonates with Kant's early remarks about nomadic peoples in the 'Conjectural Beginning', where he suggests that 'the increasing luxury of the town dwellers' could lure nomadic peoples into permanent settlement (CBHH, 8: 120). It is probable that

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the historical Kant would endorse the view that a sedentary life is more rightful than the life of a nomad.[16]

Nothing in the text precludes this reading, but it should be clear that this would severely undercut the interpretation of Kant as an anti-colonialist. Despite considering nomadic peoples as being in the civil state, this interpretation still perceives the institutions of the nomads as inferior and the nomadic way of life as 'backwards' or 'uncivilized' compared to the life of the Europeans. Still, even though it seems less likely to have been endorsed by Kant himself, the text of the Doctrine of Right allows for an alternative, more strongly anti-colonial interpretation, that would suggest that the nomadic way of life is different but not inferior to a sedentary life. The merit of this interpretation is twofold. First, even though it might not reflect Kant's own views, it is compatible with the text. And second, it is consonant with the moral judgement that the nomadic life is not inferior to the sedentary, as it expresses a choice of the people on how to live together. As I argued, Kant's analysis of the appropriation of external objects is premised on the idea that people have the right to set and pursue their goals as they see fit, and the appropriation of external objects allows them to do so. It seems that for long periods in human history, nomadic life offered access to more resources that allowed nomads to pursue their goals, and therefore did not constitute an irrational choice (Cohen 2019: 14). Given that, and regardless of the views that the historical Kant may or may not have had, it seems that his own argument gives us reasons to resist the assumption that nomadic life is inferior.

5. Conclusion

In this paper, I explored the 'puzzle of the nomads' in Kant's Doctrine of Right. I began by suggesting that the puzzle is twofold. First, it is not clear whether the nomadic peoples that appear in Kant's argument against colonialism should be considered to be in the state of nature or in the civil state. And second, if they are in the state of nature, it is not clear how to reconcile Kant's remarks against forcing them to enter the civil state with his argument about the duty to leave the state of nature. I suggested that the answer to these questions depends on two different interpretations of the relation between the state and territory in the Doctrine of Right. A first way to understand this relation suggests that the state and the territory are co-constitutive: the duty to enter the civil state arises through the unilateral appropriation of land by individuals, and the state unites the individual land properties into a single territory. I argued that this interpretation is at odds with understanding Kant as anti-colonialist, as it implies that nomadic peoples would remain in the state of nature unless they adopt the sedentary way of life of the Europeans. I then explored an alternative interpretation of the relation between the state and territory which, I suggested, is more compatible with considering Kant as anti-colonialist. According to this interpretation, the relationship between the state and territory is only contingent, as humans are entangled in various relations that can give rise to claims of rights. This means that, unless we have reasons to think otherwise, we should assume that nomadic peoples are in the civil state. I suggested that this interpretation is more compatible with regarding Kant's analysis as anti-colonial. However, I highlighted that this interpretation can still imply a hierarchical view of political communities that would prioritise sedentariness over a nomadic life.

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I suggested that, even though this view might be compatible with Kant's own thoughts about nomadic communities, his argument gives us reasons to endorse a more strongly anti-colonial view that would regard nomadic communities as equal to sedentary ones.

I want to conclude with two remarks about the implications of my analysis. First, while the interpretation that I defended can be supported by textual evidence and by the content of Kant's own arguments, the view that nomadic peoples are in the civil state might create some tensions with some parts of the Doctrine of Right. This is even more apparent if one adopts the view that not only are nomadic peoples in the civil state but also their way of life is not inferior to that of settled communities. This view has the merit that it allows for a reading of the Doctrine of Right that is committed to the principle that people have a right to live their lives and pursue their goals as they see fit – simply applying this to the adoption of a nomadic way of life. The argument for the non-inferiority of a nomadic way of life is also informed by, and harmonised with, sociological information about mobility and settlement that we now have, but Kant did not. Inevitably, this implies some clashes between the interpretation that I proposed and Kant's text. As a result, the interpretation that I defended calls for a critical re-reading of the Doctrine of Right, alert to the possibility that the text unjustifiably relies on the assumption that a sedentary life is superior to a nomadic one. In this re-reading, we should be careful to disentangle the views of Kant himself from the anti-colonial interpretation of the Doctrine of Right. Instead of erasing these views, a fruitful re-reading would identify which parts of the analysis have been affected by them, explore how they intersect with other problematic aspects of Kant's work (such as his views on sex and race), and consider their implications.[17] Furthermore, the critical re-reading calls us to explore the implications of considering nomadic peoples as being in the civil state for Kant's arguments about right at the level of the state and the international level.

Second, an anti-colonial reading of Kant's work calls for a critical re-examination of dominant assumptions regarding international law. As I mentioned in the introduction, international law has been shaped by colonial assumptions that were often justified through the work of political philosophers. An anti-colonial reading of Kant might provide helpful tools to criticize these assumptions. For example, according to international law, territory is one of the key features of the state. The anti-colonial reading of Kant's analysis suggests that the assumption that sovereign political communities have territories is not justifiable and has served to exclude nomadic peoples from being considered as equals at the international level. Challenging this assumption is of practical import today, as it would contribute, for example, to arguments made by indigenous peoples for their equal inclusion in the international community, or to a critique of the assumptions that determine when a political community is recognized internationally as a state.[18] Questioning the idea of exclusive territorial state sovereignty could potentially have far-reaching implications, transforming the international community as we know it. This would necessitate, in turn, a critical philosophical account that could guide us in this process.

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Notes

1 Montevideo Convention of 1933, article 1, which is considered to restate *ius cogens* (customary international law) and is therefore binding for all states.

2 Kant's critique of colonialism can be found in his late works, especially in *Toward Perpetual Peace* and in the Doctrine of Right of the *Metaphysics of Morals*. In his earlier works, Kant expresses a far more positive view of colonialism, which he construes as a civilizing project (see Kleingeld 2014). I cite Kant referring to the volume and page numbers of the German Academy of Science's edition of the text in German, using the following abbreviations: *TPP*=*Toward Perpetual Peace* (1795 [in Kant 1996]), *MM*=*Metaphysics of Morals* (1797 [in Kant 2017]), CBHH='Conjectural Beginning of Human History' (1786 [in Kant 2007).

3 Inés Valdez (2017, 2019) argues that Kant's anti-colonialism was prompted by his concerns over the effects of colonialism for the possibility of peace in Europe and maintains that his critique of colonialism co-exists with a hierarchy of race. Justifying the claims of indigenous peoples to their territories on Kantian grounds might be more difficult that it first appears (Huber 2017). Kant's arguments have also been interpreted as licensing foreign intervention that aims to 'force' a people to be free, justifying the war of the US against Iraq (Applbaum 2007).

4 Following Katrin Flikschuh (2017a, 2017b), I refer to *nomadic indigenous peoples* and not to *non-state* peoples, as other scholars do, for example, Niesen (2007) or in the contributions in Flikschuh and Ypi (2014). The reason for this is twofold. First, as Flikschuh (2017b: 41) points out, the conception of these people as nomadic (regardless of its historical accuracy) is a crucial premise for Kant's argument, whereas the term 'non-state peoples' could extend to cases of non-nomadic peoples to whom Kant's remarks would not necessarily apply. Second, and more significantly, I hold that *whether* these people are non-state peoples is part of the question and should not be taken for granted.

5 On Kant's *lex permissiva*, see Flikschuh (2000: chapter 4) and Byrd and Hruschka (2010: chapter 4).

6 Certain scholars (Byrd and Hruschka 2010: 90–1, 181–4; Ripstein 2009: 325–52; Weinrib 2019: 29–30) defend Kant against the critique that his argument requires submission to any regime, no matter how tyrannical. They suggest that extremely oppressive regimes would not count as public institutions of justice under Kant's definition, therefore not requiring obedience. For a critique of this approach, see Flikschuh (2008).

7 See especially Ripstein (2009), Waldron (2006).

8 See his remarks about China and Japan in *Perpetual Peace* (*TPP*, 8: 359).

9 That is, *regardless* of the fact that Europeans are in no position to *force* them to do so.

10 Huber (2022: 90–6), who argues that Kant's cosmopolitanism refers to relations of human beings as members of the earth (and not relationships between members of different peoples, as Ripstein's analysis suggest) faces the same problem: while he can explain why colonizers cannot force nomadic peoples to enter the civil state, his account cannot address the question of the treatment of nomadic peoples at the international level.

11 See also his remarks in *Perpetual Peace*, where Kant suggests that civil states were possible 'after humankind had earlier made its way from the lawless freedom of hunting, fishing, and shepherding to a life sustained by agriculture', and that 'of all ways of life, hunting is doubtless the most contrary to a civilized constitution' (*TPP*, 8: 364).

12 See Coulthard (2014), Deloria (2003: chapter 4), and Alfred (1999: 60–2). This is not to say that indigenous peoples are not making property claims to their ancestral lands *now*, or that the Europeans, in lack of another legal category, should not have recognised the claims of indigenous peoples to their lands *as* property claims. See also Nichols (2020).

13 This could explain Stilz's turn from provisional *property* rights (Stilz 2014) to *occupancy* rights (Stilz 2019: 34–6). Conceiving occupancy rights as pre-political and independent from the formation of a political community, Stilz's argument departs from the Kantian tradition.

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14 It is indicative that Flikschuh and Stilz, who endorse versions of the co-constitutive argument, characterize nomadic peoples as 'non-state' peoples, whereas Ripstein, who endorses the contingent argument, suggests that the evidence about the status of nomadic peoples is inconclusive.
15 The term 'occupancy rights' might be problematic, as it has been employed in legal history to justify the dispossession of indigenous peoples from their lands (Nichols 2020: 40–5). It should be clear that the occupancy rights to which I refer here entail a different but not inferior claim to land than that of property rights.
16 On that point, see Valdez (2022, 2017) and Pagden (2014).
17 For more on the idea of a critical re-reading of Kant, with regard to his views on sex and race, see Kleingeld (2022).
18 See, for example, the debate about recognizing non-territorial autonomy to indigenous peoples (Spitzer and Selle 2020), or about their equal representation in the United Nations (Charters 2010).

References

Alfred, Taiaiake (1999) *Peace, Power, Righteousness: An Indigenous Manifesto*. New York: Oxford University Press.
Anghie, Antony (2006) 'The evolution of international law: Colonial and postcolonial realities'. *Third World Quarterly*, 27(5), 739–53. https://doi.org/10.1080/01436590600780011.
—— (2007) *Imperialism, Sovereignty and the Making of International Law*. Cambridge: Cambridge University Press.
Applbaum, Arthur Isak (2007) 'Forcing a people to be free'. *Philosophy & Public Affairs*, 35(4), 359–400.
Arneil, Barbara (1996) *John Locke and America: the Defence of English Colonialism*. Oxford: Clarendon Press.
Byrd, B. Sharon, and Joachim Hruschka (2010) *Kant's Doctrine of Right: A Commentary*. Cambridge: Cambridge University Press.
Charters, Claire (2010) 'A self-determination approach to justifying indigenous peoples' participation in international law and policy making'. *International Journal on Minority and Group Rights*, 17(2), 215–40. https://doi.org/10.1163/157181110X495872.
Cohen, Robin (2019) *Migration: The Movement of Humankind from Prehistory to the Present*. London: Andre Deutsch.
Coulthard, Glen (2014) 'From wards of the state to subjects of recognition?: Marx, indigenous peoples, and the politics of dispossession in Denendeh'. In Audra Simpson and Andrea Smith (eds.), *Theorizing Native Studies* (New York: Duke University Press), 56–98.
Deloria, Vine (2003) *God is Red: A Native View of Religion*. Golden, Colorado: Fulcrum Publishing.
Flikschuh, Katrin (2000) *Kant and Modern Political Philosophy*. Cambridge: Cambridge University Press.
—— (2008) 'Reason, Right, and Revolution: Kant and Locke'. *Philosophy & Public Affairs*, 36(4), 375–404. https://doi.org/10.1111/j.1088-4963.2008.00146.x.
—— (2017a) 'Kant's nomads: Encountering strangers'. *Con-textos Kantianos*, 1(5), 346–48. https://doi.org/10.5281/zenodo.805977.
—— (2017b) *What is Orientation in Global Thinking?: A Kantian Inquiry*. Cambridge: Cambridge University Press.
Flikschuh, Katrin, and Lea Ypi (eds.) (2014) *Kant and Colonialism: Historical and Critical Perspectives*. Oxford: Oxford University Press.
Getachew, Adom (2019) *Worldmaking after Empire: The Rise and Fall of Self-Determination*. Princeton: Princeton University Press.
Huber, Jakob (2017) 'No right to unilaterally claim your territory: on the consistency of Kantian statism'. *Critical Review of International Social and Political Philosophy*, 20(6): 677–96. https://doi.org/10.1080/13698230.2016.1196093.
—— (2022) *Kant's Grounded Cosmopolitanism: Original Common Possession and the Right to Visit*. Oxford: Oxford University Press.
Kant, Immanuel (1996) *Practical Philosophy*. Trans. and ed. Mary J. Gregor. New York: Cambridge University Press.
—— (2007) *Anthropology, History, and Education*. Trans. and ed. Robert B. Louden and Günter Zöller. Cambridge: Cambridge University Press.

https://doi.org/10.1017/S1369415424000438 Published online by Cambridge University Press

—— (2017) *The Metaphysics of Morals*. Trans. Mary J. Gregor, ed. Lara Denis. Cambridge: Cambridge University Press.
Kleingeld, Pauline (2014) 'Kant's second thoughts on colonialism'. In Katrin Flikschuh and Lea Ypi (eds.), *Kant and Colonialism: Historical and Critical Perspectives* (Oxford: Oxford University Press), 43–67.
—— (2022) 'On dealing with Kant's sexism and racism'. In Luigi Caranti and Alessandro Pinzani (eds.), *Kant and the Problem of Morality: Rethinking the Contemporary World* (London: Taylor & Francis Group), 6–21.
Muthu, Sankar (2000) 'Justice and foreigners: Kant's cosmopolitan right'. *Constellations*, 7(1), 23–45. https://doi.org/10.1111/1467-8675.00168.
Nichols, Robert (2020) *Theft Is Property! Dispossession and Critical Theory*. Durham, NC: Duke University Press.
Niesen, Peter (2007) 'Colonialism and hospitality'. *Politics and Ethics Review*, 3(1), 90–108. https://doi.org/10.1177/1743453X0700300108.
Pagden, Anthony (2014) 'The law of continuity'. In Katrin Flikschuh and Lea Ypi (eds.), *Kant and Colonialism: Historical and Critical Perspectives* (Oxford: Oxford University Press), 19–42.
Pahuja, Sundhya (2005) 'The postcoloniality of international law'. *Harvard International Law Journal*, 46 (2), 459–69.
Ripstein, Arthur (2009) *Force and Freedom: Kant's Legal and Political Philosophy*. Cambridge: Harvard University Press.
—— (2019) 'Political independence, territorial integrity and private law analogies'. *Kantian Review*, 24 (4), 573–604. https://doi.org/10.1017/S1369415419000323.
—— (2021) *Kant and the Law of War*. New York: Oxford University Press.
Spitzer, Aaron John, and Per Selle (2020) 'Is nonterritorial autonomy wrong for indigenous rights? Examining the "Territorialisation" of Sami power in Norway'. *International Journal on Minority and Group Rights*, 28(3), 544–67. https://doi.org/10.1163/15718115-28030005.
Stilz, Anna (2011) 'Nations, states, and territory'. *Ethics*, 121(3), 572–601. https://doi.org/10.1086/658937.
—— (2014) 'Provisional right and non-state peoples'. In Katrin Flikschuh and Lea Ypi (eds.), *Kant and Colonialism: Historical and Critical Perspectives* (Oxford: Oxford University Press), 197–220.
—— (2019) *Territorial Sovereignty: a Philosophical Exploration*. Oxford: Oxford University Press.
Valdez, Inés (2017) 'It's not about race: Good wars, bad wars, and the origins of Kant's anti-colonialism'. *American Political Science Review*, 111(4), 819–34. https://doi.org/10.1017/S0003055417000223.
—— (2019) *Transnational Cosmopolitanism: Kant, Du Bois, and Justice as a Political Craft*. New York: Cambridge University Press.
—— (2022) 'Toward a narrow cosmopolitanism: Kant's anthropology, racialized character and the construction of Europe'. *Kantian Review*, 27(4), 593–613. https://doi.org/10.1017/S1369415422000358.
Waldron, Jeremy (2006) 'Kant's theory of the state'. In Immanuel Kant and Pauline Kleingeld (ed.), *Toward Perpetual Peace and Other Writings on Politics, Peace, and History* (New Haven: Yale University Press), 179–200.
Weinrib, Jacob (2019) 'Sovereignty as a right and as a duty: Kant's theory of the state'. In Claire Finkelstein and Michael Skerker (eds.), *Sovereignty and the New Executive Authority* (Oxford: Oxford University Press), 22–46.

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