

Normative foundations of Kant's cosmopolitan right: the overlooked legacy of Kant's metaphysics of nature

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Abstract.

Kant's philosophy of natural science has traditionally concentrated on a host of issues about the role of laws of nature and teleological judgments, among several others. However, so far, the literature has made virtually no contact with the no less important tradition in Kant's legal and political philosophy. This paper explores one aspect of such connection in relation to the normative foundations of Kant's notion of cosmopolitan right. I argue that Kant's argument for cosmopolitan right is based on two main premises: the first is what I call the *law of equilibrium*, and the second is the *premise of physical interaction* (*commercium* in Latin) at work behind what Kant called the original "community of land". The paper argues that the relevant notion of community qua *commercium* should be understood in the context of Kant's metaphysics of nature as a "real community of substances" governed by a dynamical law of equality of action and reaction. This metaphysical-causal interpretive reading has far-reaching implications for the foundations of cosmopolitan right and its scope of applicability well beyond Kant's envisaged right to universal hospitality.

1. Kant's *ius cosmopolitanicum* and the debate on its normative foundations

One of the most important legacies of Kant's legal and political philosophy has been the introduction of the notion of cosmopolitan right. In 1795 *Toward Perpetual Peace* (TPP) and 1797 *Doctrine of Right* (DoR), Kant drew a distinction among three different kinds of right: domestic right as the right that pertains to citizens of specific sovereign states; international right (*Völkerrecht*, or in Latin *ius gentium*) as the right of states in their mutual external relations (what in contemporary terms one would identify with rights resulting from international treaties signed up by individual states); and, finally, cosmopolitan right (*Weltbürgerrecht* or *ius cosmopolitanicum*). Kant understood the latter essentially as the right to universal hospitality that pertains to everyone not in virtue of being a citizen of a particular sovereign state, or in virtue of any interstate right, or as

right of a guest that the stranger has a claim to...but rather a right to visit, to which all human beings have a claim, to present oneself to society by virtue of the right of common

possession of the surface of the earth. Since it is the surface of a sphere, they cannot scatter themselves on it without limit, but they must rather ultimately tolerate one another as neighbors, and originally no one has more right to be at a given place on earth than anyone else. 8: 358, (Kant, 1795), p. 82.

The right to universal hospitality is then presented as the “right of foreign arrivals” pertaining to the “conditions of possibility of *attempting* interactions with the old inhabitants” in a peaceful and non-hostile way. As a contrast class, Kant famously refers to the injustices of approaching foreign lands and people for “*conquering*” them, with the “native inhabitants counted as nothing”, bringing foreign troops “under the pretext of merely intending to establish trading posts”, and “expansive wars, famine, unrest, faithlessness, and the whole litany of evils that weight upon the human species”, (8: 359).

Against the backdrop of this condemnation of European exploitative and imperialistic trades in America, Africa and Asia, Kant nods to China and Japan for restricting European access to their ports and makes his final plea for the need of introducing a third kind of right in addition to domestic and international right, i.e. a “cosmopolitan right (*Weltbürgerrechts*) ... a necessary supplement to the unwritten code of constitutional and international right, for public human right in general, and hence for perpetual peace. Only under this condition can one flatter oneself to be continually progressing toward perpetual peace. 8: 360, (Kant, 1795), p. 84.

A very similar argument for cosmopolitan right is presented again by Kant two years later, in 1797 in the *Doctrine of Right*, Part I, Section II Public Right, Chapter 3 of *The Metaphysics of Morals*, § 62:

The rational idea of a *peaceful*, even if not friendly, thoroughgoing community of all nations on earth that can come into relations affecting one another is not a philanthropic (ethical) principle but a principle *having to do with rights*. Nature has enclosed them all together within determinate limits (by the spherical shape of the place they live in, a *globus terraquens*). And since possession of the land, on which an inhabitant of the earth can live, can be thought only as possession of a part of a determinate whole, and so as possession of that to which each of them originally has a right, it follows that all nations stand *originally* [ürsprunglich] in a community of land, but though not of *rightful* community of possession (*communio*) and so of use of it, or of property in it; instead they stand in a community of possible physical *interaction* (*commercium*) [physische möglichen Wechselwirkung], that is, in a thoroughgoing relation of each to all the others of *offering to engage in commerce* [Verkehr] with any other, and

each has a right to make this attempt without the other being authorized to behave toward it as an enemy because it has made this attempt. — This right, since it has to do with the possible union of all nations with a view to certain universal laws for their possible commerce, can be called *cosmopolitan right* (*ius cosmopoliticum*). 6: 352, (Kant, 1797), p. 121, emphases in original.

There is some clear similarity between the two passages of *Perpetual Peace* and *Doctrine of Right* and some clearly common lines of argument that Kant deploys to introduce the notion of a cosmopolitan right. The argument seems to be based on an important premise: i.e., that of the “common possession of the surface of the earth” as Kant presents it in *PP*, or an original [ürsprunglich] “community of land” as described in *DoR*. In both cases Kant presents it as an *original right*: “originally no one has more right to be at a given place on earth than anyone else” (*PP* 8: 358), where it is worth stressing already at this stage the use of the expression “to be at a given place on earth” as opposed to possessing, occupying, owning, or using a given place on earth qua *legal notions* presupposing tacitly some kind of land use or land property right, something that Kant clearly rules out in the forementioned quote from *DoR* where he highlights the contrast between *commercium* qua physical interaction [Wechselwirkung] and *communio* (the latter covering the legal notions of “*rightful ...possession (...)* and so of use of it, or of property in it”).

In recent times, the notion of cosmopolitan right has been at the centre of a flourishing and vast literature which I won’t even attempt to survey here—from discussions about justice (O’Neill, 2000) to questions about nationhood (Benhabib, 2006) and identity politics (Waldron, 1992); from global order (Held, 1995) and globalization —see essays in (Bohman & Lutz-Bachmann, 1997) to the political idea of a federation of states (Caranti, 2022) and rights for migrants (Ypi, 2014)—, without mentioning the orthogonal (and similarly vast) literature where discussions of cosmopolitanism are entangled with debates about moral duties.

My interest in Kant’s argument for cosmopolitan right is very selectively focussed around two main philosophical questions:

- I. What are the philosophical-normative foundations of Kant’s notion of cosmopolitan right?
- II. Relatedly, is such a notion amenable to being extended beyond what Kant called the right to ‘universal hospitality’?

While Kant never gave a positive answer to II., for he was unequivocal that cosmopolitan right was confined to the right to universal hospitality, I argue that such an answer can be given within his conceptual resources. To better understand why a positive answer to question II. is within grasp, one has to better appreciate the normative foundations of the notion of cosmopolitan right. This brings me back to my first question.

My answer to question I. is that the normative foundations can be found in unexpected places, namely in Kant's metaphysics of nature on which he patterned some of the arguments for the notion of cosmopolitan right. This is the novel contribution that this paper intends to offer to the ongoing debate: Kant's philosophy of nature (and in particular, his dynamical theory of matter and the dynamical law of equality of action and reaction) offered the blueprint for how he conceived of the normative foundation of *ius cosmopolitanicum*. I argue that Kant's metaphysical foundations of natural science offers an important *dynamical* (rather than phoronomic or spatial) interpretive lens through which Kant's argument for cosmopolitan right can be read. That argument famously proceeds from the premise of the original "community of land" as Kant presented it in *DoR*. I shall explain how Kant understood the original community of land as a right that everyone enjoys not in virtue of occupying *either this or that* spatial portion of the original land, but instead in virtue of standing in a *mutual, equal, and reciprocal causal–ontological relation of forces and counterforces* with other beings forming a real community.

In this respect, my interpretive reading latches onto and departs in relevant ways from an ongoing debate surrounding the following question: how can the assumption of an original "community of land" function as the premise of an argument for the cosmopolitan right to universal hospitality? Unsurprisingly, this question has attracted several possible interpretations and I shall only very briefly mention four here.

Byrd and Hruschka (Byrd & Hruschka, 2010) p. 206-7, in their influential commentary on *DoR* have noted how the right to visit and the right to the so-called 'non-damaging use' of natural resources, like e.g. drinking water in a river or anchoring a ship along a coast, is a right that legal theorists like Grotius and Pufendorf considered as retained well after the original state of nature was dissolved.¹ They comment that Kant followed in the footsteps of Grotius and Pufendorf, against Achenwall who had argued against the right to non-damaging use in light of the risks associated with it, e.g., of foreign troops marching on national territories. However, conscious of Achenwall's criticism,² Kant limited such natural right to the right to hospitality.

¹ See (Bhuta, 2020) for a discussion of Grotius.

² Kant used to lecture on Achenwall's *Ius Naturae* (1755) and *Iuris Naturalis pars posterior* (1756) still in 1784—(Byrd & Hruschka, 2010), pp. 16-17.

In her field-defining work in this area, Pauline Kleingeld has remarked how Kant's appeal to the original community of the land to ground cosmopolitan right is problematic: "What exactly is the relevance of the idea of an original common possession of land if it is no longer held in common?" (Kleingeld 2012, p. 82). Kleingeld offers an answer in terms of the innate right to freedom which "when transposed to the domain of cosmopolitan right, would seem to provide directly the underpinning for the right to attempt to initiate communication or community of all kinds—including but not limited to potential property transactions...If this interpretation is correct, it means that the innate right to freedom and the idea of the original community of the land together provide the grounding for cosmopolitan right" (ibid. p. 84).

Alice Pinheiro Walla draws attention on how Kant "*secularizes* the natural law conception of a community of the earth" (Walla, 2016), p. 178, in that Kant "following Achenwall, criticizes Grotius and Pufendorf for understanding original community as a fictitious 'historical' fact (*uranfänglicher Gesammatbesitz communio primaeva*). Kant...understands the notion as an idea of reason, having objective, that is, legally practical reality (*rechtlich praktische Realität*)" (ibid., p. 162). Walla observes a departure of Kant from the tradition of natural right and argues that "The right to occupy a place on the earth is thus a *disjunctively universal right (disjunctiv-allgemein)*...The spatial relations between individuals are what constitute the global community, not God's gift of the earth to humanity." (Walla 2016, 176-77).³

Jakob Huber depicts "a more antagonistic kind of community of agents capable of physically interacting with one another in real time and space" (Huber, 2022), p. 16, and spells out "Kant's argument from earth dwellership" whereby "This is not a common possession in the sense of common ownership, but a disjunctive community of mutual exclusion, i.e. a straightforward implication of the fact that wherever I am, nobody else can be" (Huber 2022, p. 34). Huber argues for a grounded "spatial cosmopolitanism" (ibid., p. 87) whereby as "earth dwellers, we do not simply relate to one another as juridical equals, but we relate to one another as juridical equal who coexist on the spherical surface of the earth" (ibid., p. 60).

Yet, I contend, there is something still amiss in this overall picture of Kant's argument for cosmopolitan right, something that is important both *historically* to appreciate the origins of Kant's idea of an original community of the earth's surface and *philosophically* to better understand the normative foundations of Kant's argument. That something is amiss is captured by a worry concerning the perennial risk of overstretching and overinflating the universal right to visit.

³ See also (Ripstein, 2022) p. 237, who notes "Individual possession of the earth's habitable surface is disjunctive in Kant's technical sense of that term, that is, the mutual exclusion that forms the logical analog of the category of community in *Critique of Pure Reason*. Applied to the case of the earth's surface, disjunctive possession in common entails that each of us is entitled to be wherever nature or chance has placed us, wherever another person is not".

Interestingly, Kant foresaw this worry and both in *Perpetual Peace* and *Doctrine of Right* warned against the possible abuse of the right to hospitality, which he saw as being perpetrated at the time by European colonizers. He clarifies that the right to visit should not be conflated with the “right to *settle* on the land of another people (*ius incolatus*), which would require a special contract” (*DoR*, 6: 353). And that any settlement that happens either with violence or by taking advantage of the “ignorance of the inhabitants with regard to the relinquishment of such land” (*DoR*, 6: 353) would be effectively an abuse of the right to hospitality.

I believe that Kant’s criticism of European colonialism in these passages offers the hint about further hidden premises in Kant’s argument. Original common possession of the earth’s surface *by itself* does not fend off the risk of potential abuses and overstretching of the right to hospitality as a right to settle or the right to appropriate natural resources in someone’s else land. Treating the original community of the land either as an idea of reason or as a disjunctive community of mutual spatial exclusion, while illuminating, is not *normatively sufficient* to prevent the always lurking risk of overstretching the right of hospitality. To prevent such risk, additional premises are needed.

In the next Section, I zoom in on what I take to be two key premises in Kant’s argument for cosmopolitan right—what I shall call the *law of equilibrium* and the *premise of physical interaction*—and I explain how they both enter into his argument. I spell out the *law of equilibrium* through a particular interpretation of the key concept of “possible physical interaction [Wechselwirkung] (*commercium*)” (*DoR* 6:352) that Kant put centre stage in his analysis of the original “community of land” (the second premise in the argument for cosmopolitan right—what I call the *premise of physical interaction*). Section 3 elucidates the origins of the *law of equilibrium* in Kant’s metaphysics of nature and his dynamical theory of matter. I conclude the paper in Section 4 by highlighting some far-reaching consequences of the interpretive view here outlined for how one ought to understand the wider applicability of the notion of cosmopolitan right today.

Kant’s own ambiguity in the presentation of the argument for *ius cosmopolitanicum* between *PP* and *DoR* explains why several commentators have typically placed emphasis on the spatial geometrical nature of the earth (as a sphere) rather than on the ‘law of equilibrium’ between forces and counterforces encapsulated by the law of equality of action and reaction behind the notion of “community of possible physical *interaction* [Wechselwirkung] (*commercium*)” (*DoR* 6: 352). The goal of this paper is to argue that the normative force of cosmopolitan right resides in it being a right that anyone can exercise only in virtue of being part of an interdependent community, whose

fragile co-existence depends on there being a balance and equilibrium among the forces and counterforces that hold the community together in the first instance.

More to the point, understanding the original community of land in terms of physical interaction [Wechselwirkung / *commercium*] as a dynamical relation—rather than a spatial relation of how individuals enter into a disjunctive and mutually exclusive global interconnectedness, either with one another or with respect to the land they occupy—allows us to better understand the *necessity* and *reciprocity* that underpins Kant’s cosmopolitan right. It is the equilibrium of forces (e.g. attractive and repulsive) that set planets in their original motions and keep them in the orbits, Kant argued in *Universal Natural History and Theory of Heavens*. Any unbalance would result in planetary orbits spiralling down.

Likewise, the later Kant argued that it is the equilibrium of forces and counterforces underpinning the community of possible physical interaction (*commercium*) between individuals and states that secures equilibrium and ultimately perpetual peace. Any unbalance would result in self-destructive war mongering.

But before I begin, a ground-clearing remark is in order. Someone might doubt that connecting Kant’s legal philosophy with his philosophy of nature risks blurring the fundamental division between the normative domain of the former and the descriptive realm of the latter. Is not there a risk of robbing cosmopolitan right of its prescriptive force by doing so?

In reply, Kant’s philosophy of nature is not descriptive of nature. It is intended to offer metaphysical foundations for nature. *Metaphysical Foundations of Natural Science* aims to show how one *ought to think* about matter as filling space according to a fundamental elastic force, or motion according to Kant’s laws of mechanics, or absolute space as a necessary idea, and so forth—see (Watkins, 1998), (Warren, 2001), (Stan, 2017), (Friedman, 2013), (Massimi & Breitenbach, 2017).

Interestingly then, what Kant’s metaphysics of nature can shed light on is *not* the *appropriate content* of specific rights (such as the cosmopolitan right), but instead the *general form* upon which the prescriptive force of the right rests. Likewise, the metaphysical foundations of nature do not prescribe the content of any specific empirical law but simply the general form—see (Friedman, 1992), (Massimi, 2017), p. 170. It is in this sense that Kant famously argued that the faculty of understanding prescribes laws to nature without implying that the content of any specific empirical law might be derived from the categories themselves.

Once seen through these lenses, the *prima facie* puzzle in appealing to Kant’s metaphysics of nature to shed light on the normative foundations of cosmopolitan right dissolves. The categories, I argue, offer normative-metaphysical foundations for the lawfulness of nature, as much as they do for the notion of cosmopolitan right. They do not offer the specific content regarding

any particular kind of right for the same reason why they cannot be expected to offer the content of any specific empirical law of nature. They offer instead the *general form* under which one ought to think about relations of forces in nature and relations of powers in the juridical realm, as I articulate in detail in what follows.

My aim in this paper is to show that in the juridical realm it is the category of relation—and more precisely the Third Analogy of Experience with the principle of community—that provides the normative-metaphysical underpinning for the law of equality of action and reaction at work both in the natural science and in the notion of cosmopolitan right in the doctrine of right.

The far-reaching consequence of this new reading is that there is nothing in the normative foundations of cosmopolitan right that forces it to be confined to a right to universal hospitality. And indeed it would be a mistake to try and establish first the specific *empirical content* of the right rather than analysing its normative foundations, where it gets its prescriptive force from, and whether these normative foundations make the right amenable to being applied in a more extensive way than Kant himself was able to contemplate at the time, trapped as he was in the historical context of legal debates whose troubled colonialist background and vestigial Christian remnants behind the idea of a *globus terraquens* I explain in the next Section.

2. The original “community of land” and Kant’s argument from equilibrium

What in *Perpetual Peace* is called “the right of common possession of the surface of the earth” (8:358) and in *Doctrine of Right* is presented as an original right to “a community of land” based on the spherical shape of *globus terraquens* (6: 352) is neither an original nor a new assumption introduced by Kant. It is the secularised remnant of a long legal Christian tradition that begins with Aquinas and flourished against the backdrop of discussions about rights to newly discovered territories in the New World, especially in the so-called School of Salamanca in Spain, with Francisco de Vitoria (1486–1546) and the Jesuit Luis de Molina—see e.g. (Izbicki & Kaufmann, 2019) Section 6.1, (Williams, 1990), (Anghie, 2005), and (Cavallar, 2011), Ch 2 for an overview and nuanced appraisal. As (Trujillo, 2015), p. 15, writes, “It is not accidental that at the beginning of the modern world, after the discovery of the Americas, Francisco de Vitoria put forward the idea of a universal community of communication, the *communitas orbis*.”

Wolfgang Ertl (Ertl, 2013), p. 406, refers to a burgeoning literature that in the attempt to establish a link between the School of Salamanca and Kant identified the Albertina in Königsberg as a “center of both the scholastic and the Renaissance variant of Aristotelianism until the early decades of the 18th century”. And Cavallar (Cavallar, 2011) Ch 2, has highlighted some of these

historical sources behind the idea of cosmopolitan right before Kant, including Christian Wolff's *Ius gentium* (1749) and *Institutiones iuris naturae et gentium*, as well as Wolff's student Emer de Vattel. And it is to Emer de Vattel (1714–67) that I briefly turn here, since Kant mentions him alongside Grotius and Pufendorf in *Perpetual Peace* 8: 355, as “(all tiresome comforters) ...still faithfully cited to *justify* an offensive war, even though their codex...does not have the least amount of *legal* force and cannot have such a force”.

Right on Book I, Ch XVII of *The Law of Nations or the Principles of Natural Law* (1759), Vattel put forward the premise of the common possession of the earth in a way that is surprisingly close to Kant's later argument for the justification of cosmopolitan right. Vattel declares that

The earth belonged to all men in general; destined by the Creator to be their common habitation and nursing-mother, *derived from nature the right of inhabiting it* and drawing from it the things necessary for their subsistence, and those suitable to their wants. But the human race being extremely multiplied, the earth became no longer capable of furnishing spontaneously, and without culture, support for its inhabitants; and could not receive a proper cultivation from the itinerant nations who had possessed it in common. It then became necessary that these people should fix themselves on some part of it, and that they should appropriate to themselves portions of land...This must have introduced the rights of property and dominion, and this fully justifies their establishment. (Vattel, 1759), Vol I, p. 162, emphases added.

Vattel does not go as far as deducing from this premise any conclusion about a cosmopolitan right to universal hospitality. Nonetheless he takes two necessary steps for Kant's later use of the same premise:

- a. That the original common possession of the earth can be understood as “the right of inhabiting it and drawing from it the things necessary for their subsistence”;
- b. And, given demographic increase, “the earth became no longer capable of furnishing spontaneously” all the necessary supplies for human subsistence and that “by hunting, fishing, and wild fruits, our globe would not be sufficient to maintain a tenth part of its present inhabitants” (Vattel 1759), Vol. I, p. 165.

Almost thirty years after Vattel, in *Perpetual Peace* Kant makes a similar point by referring to the spherical nature of the surface of the earth whereby “they cannot scatter themselves in it without limit, but they must rather ultimately tolerate one another as neighbors, and originally no one has more of a right to be at a given place on earth than anyone else” *TPP* 8: 358. One problem, however, was left wide open by Vattel’s account. What if each nation or people (*gens*) appealed to this original communal possession of the earth as a ‘right of inhabiting’ and abused of this natural right to occupy more territories for themselves? Worse, is not this what had in fact historically happened?

Notwithstanding the caveat that no nation should “reserve to itself... more than it is able to people or cultivate” and that “such a pretension would be absolutely contrary to the law of nature”, Vattel did not answer these questions. Nor did he envisage a mechanism to avoid such “pretension” from being (repeatedly) advanced by different nations against various peoples across diverse regions of the globe as the shocking reality of European colonialism made it clear for all to see. Kant, as I explain below, provided the answer that Vattel never gave by putting in place the law of nature that he saw as effective to avoid any risk of overstretching and abusing the original ‘right of inhabiting’.

Thus, what is genuinely new in Kant’s argument for cosmopolitan right is not so much the premise it starts with—the original community of land—fraught as was with its troubled historical context of European colonialism. The philosophical novelty, I maintain, has to be looked for in two different hidden premises, which I am going to call the *law of equilibrium* and the *premise of physical interaction*, whereby the only way of stabilising human interactions and avoiding clashing claims of ‘inhabiting’ over the same portions of land is to reach some kind of equilibrium among *gentium* where no one can advance more claim than anyone’s else on any particular portion of the surface of the earth.

In other words, the only way of taming the original natural right to ‘inhabit the earth’ (following Vattel) and avoiding the risk of abusing it is to assume that human interactions follow some kind of action and reaction principle whereby equilibrium among competing forces is reached and the guarantee of perpetual peace naturally follows. Thus, I take that the normative foundations of cosmopolitan right are to be found in the following argument, which I call *the argument from equilibrium*:

1. The original community of the land (6: 352) for Kant is not a real historical state of nature or *communio primaeva* as Grotius and Pufendorf had it. The *communio primaeva* is just

- a fiction (*DoR* 6: 251) for which there are no historical documents, Kant maintained. Humankind never had any primaevial communal contractual ownership of the earth.
2. Nor should the original community of the land be understood as “a *legal* community of possession (*communio*) and thereby of use, or ownership of the same.” (*DoR* 6: 352). In other words, it should not be conflated with what in § 16 *DoR* Kant calls *communio fundi originaria*⁴ as a legal community that eventually determined “what land is mine or yours” (*DoR* 6:267)—as a secularised remnant of the Christian *communitas orbis*. The *communio fundi originaria* is relevant to Kant’s argument for establishing rights to acquire land, but irrelevant to Kant’s argument for cosmopolitan right, I maintain.
 3. Instead, the notion relevant to *ius cosmopolitanum* is what Kant refers to as a “community of possible physical interaction (*commercium*), that is, of a universal relation of one to all others to *present* oneself for possible commerce [Verkehr] with each other” (*DoR* 6: 352). And this is the crux: where does this “community of possible physical interaction (*commercium*)” in turn come from? How should it be understood?
 4. Given that the earth is a sphere and given demographic pressure on securing food and resources for everyone, following Vattel, Kant seems to be suggesting that my right to *be here* on this portion of the earth must be counterbalanced by your right to *be there* on that portion of the earth. This right is a sheer primitive right to inhabit rather than a *legal right to possess*, or to own, or to use (which would fall under the legal notion of *communio fundi originaria* in premise 2 above). It is instead a simple right anyone enjoys *in virtue of being part of a community of beings in physical interaction (commercium)*. Let us call this the *premise of physical interaction*.
 5. As long as anyone’s right to *be here* is counterbalanced by someone’s else equal, mutual and reciprocal right to *be there*, there is equilibrium in mutual physical interactions. Let us call it the *law of equilibrium*.

⁴ According to the *communio fundi originaria* by nature every human being has “the *will* to use it (*lex iusti*), which because the choice of one is unavoidably opposed by nature to that of another, would do away with any use of it if this will did not also contain the principle for choice by which a *particular possession* for each on the common land could be determined (*lex iuridica*) (*DoR* 6:267, emphases in original).

6. But if anyone overstretched their right to be somewhere (i.e. colonizers), equilibrium would be jeopardised, and conflicts and wars would follow.
7. Thus, the only way of guaranteeing perpetual peace is to secure that such equilibrium in the “community of possible physical interaction [Wechselwirkung] (*commercium*)” is never broken.
8. In practical terms, maintaining equilibrium means that the best anyone can reclaim for themselves in the name of an original right to the “common possession of the surface of the earth” (8: 358) is the right to “*present oneself for possible commerce [Verkehr]*” with one another” (6: 352) without overstretching such right.
9. Such right is called *ius cosmopolitanicum* because it ultimately concerns humankind as a unified whole of “all people with the intention of establishing certain universal laws governing their possible commerce” (6: 352).

It is interesting that Kant refers to “certain universal laws” governing human interactions in these passages and also his choice of the term *Wechselwirkung* (*commercium* in Latin) to denote this universal relation that every human being bears to everyone else when it comes to entering into possible physical interactions. In the next Section, I provide textual evidence to show how Kant’s *argument from equilibrium* and especially premise 5—the *law of equilibrium*—is patterned upon some of Kant’s familiar metaphysical arguments about the equality of action and reaction of forces in Newtonian physics. Likewise, the *Wechselwirkung* of force and counterforce is what ultimately secures equilibrium in the exercise of the original right to inhabit the earth and guarantee perpetual peace among *gentium*. Kant’s metaphysics of nature, especially Kant’s third law of motion in *Metaphysical Foundations of Natural Science* (MFNS), provided the blueprint for thinking of human physical interaction (*commercium*) as being governed by universal laws undergirding the equilibrium of forces.

The bad news is that it was Kant’s historical limit not to see how his *metaphysical* justification for cosmopolitan right (as per argument from equilibrium) made *ius cosmopolitanicum* amenable to being applied well beyond the right to universal hospitality. This is the glaring limit of Kant’s argument. Kant’s view of cosmopolitan right *had to be confined* to the right to universal hospitality because it was the product of its own time and of Kant’s deeply engrained background assumptions about a *globus terraquens* as a secularised re-enactment of the Christian *communitas orbis*.

The good news is that given what I take to be not the *legal* but the relevantly *metaphysical* foundations, the scope of applicability of cosmopolitan right is in fact amenable to being extended well beyond what Kant could have possibly envisaged.

3. The metaphysical foundations of Kant's argument from equilibrium

In this Section, I offer a brief excursus through Kant's metaphysics of nature—from *Universal Natural History* to *Metaphysical Foundations of Natural Science* to the Third Analogy of Experience in the first Critique—with an eye to shedding light on premises 4–5 in the argument from equilibrium. I argue that the metaphysical foundations of cosmopolitan right are to be found in the relations among individuals and states that are brought under a universal law of equilibrium (premise 5 in the argument in Section 2), subject to mutual and reciprocal influence. The perennial temptation to overstretch one's own boundaries find a positive resistance in the boundaries of others (premise 4), just like one substance would enter into physical contact with other substances through their respective spheres of activities of the attractive and repulsive forces under the underpinning law of equality of action and reaction.

The term *Wechselwirkung*—namely, physical *interaction*, or in Latin *commercium*—appears several times always in the context of Kant's metaphysics of nature and in reference to the transcendental principle of *community*. Community is an a priori principle (i.e. the Third Analogy of Experience) concerning the category of *relation*. It finds its counterpart in Kant's third law of mechanics in MFNS, and then, indirectly, in Newton's third law of mechanics (the law of equality of action and reaction). In this Section, I explain how premise (4) in the argument from equilibrium—what I have called the *premise of physical interaction*—has its foundations in Kant's transcendental principle of community, and more precisely, in the instantiation of the principle of community in the law of equality of action and reaction central to Kant's metaphysics of nature. I provide textual evidence for my reading, starting with Kant's work on natural science.

As early as 1755 in *Universal Natural History*, Kant describes the formation of the planetary system with its planetary orbits, moons and even Saturn's rings in terms of fine particles of an originally diffuse ethereal matter being subject to Newtonian forces of attraction and repulsion whirling around until “the conflict and the convergence of the elements is resolved and everything is in the state of least interaction” UNH 1: 266.16-17 (Kant, 1755).

Kant saw the mechanism underpinning the formation of planets in terms of a balance between Newton's attractive force acting on an original ethereal matter and another Newtonian repulsive force as a quasi-elastic force under which the fine ethereal matter would tend to

dissipate—see (Massimi, 2011). It is the balance between these two original attractive and repulsive forces that according to Kant caused the fine ethereal matter to eventually coalesce into planetary bodies and set planets in their original circular motion, see 1:283-84.

Kant envisaged a mechanism whereby particles in the original ethereal matter would have different “specific gravity” that would explain why “by the interaction of the others must either depart from the sphere of the planet with the excess motion, or else be forced to sink back onto the planet by a lack of motion” (1: 292). In brief, the interaction among particles of matter under the action of the attractive and repulsive forces is what secured the formation of planets and their circular motions under what Kant calls the “eternal laws that are prescribed to substances for their interaction” (1: 332).

In the first edition of the *Critique of Pure Reason* and also in the *Prolegomena to Any Future Metaphysics* (4: 307), the term *Wechselwirkung* is used to denote the principle of community under which appearances must be subsumed, Kant says, “insofar as coexistence is to be cognized objectively”. Kant calls these transcendental concepts or principles “the actual laws of nature, which can be called dynamical” 4: 307 (Kant, 1783).

In the *Metaphysical Foundations of Natural Science* we find again the term *Wechselwirkung* to refer to the law of equality of interaction [Gesetze der Gleichheit der Wechselwirkung] as Kant calls it in the Chapter on Dynamics (MFNS 4: 515) as a principle of mechanics rather than dynamics. Kant indeed introduces two different laws of the equality of action and reaction: a mechanical one and a dynamical one and the difference between these two is worth a closer look for the purpose of my argument.

In the Chapter on Mechanics, Proposition 4, Kant describes his third law of mechanics as follows: “In all communication of motion, action and reaction are always equal to one another”. A number of commentators including (Watkins, 1998) have pointed out the peculiar nature of Kant’s third law and how it differs from Newton’s third law once properly read in the context of the Leibnizian-Wolffian tradition of metaphysical dynamics in which Kant was operating. Unsurprisingly in the Proof of Proposition 4, right at the outset Kant says

(From general metaphysics we must borrow the proposition that all external action in the world is *interaction* [Wechselwirkung]. Here, in order to stay within the bounds of mechanics, it is only to be shown that this interaction [Wechselwirkung] (*actio mutua*) is at the same time a reaction [Gegenwirkung] (*reactio*); but here I cannot wholly leave aside this metaphysical law of community, without detracting from the completeness of the insight). MFNS 4: 545 (Kant, 1786).

That Kant understood the third law of mechanics as a ‘metaphysical law of community’ based on the equilibrium and reciprocity of mechanical action and reaction of bodies in motion is clear from the ensuing exposition in this passage where the third law is presented as a law that governs changes of relations as necessarily *mutual* “insofar as they may be *causes* of certain actions or effects” (MFNS 4: 545). Kant’s example is taken from the relative motion of a body with respect to another body which is at rest in space. Having rejected Newton’s absolute space as a pure idea of reason —see (Massimi, 2022b)— Kant (MFNS 4: 548) argues that all motion is relative motion: a moving body A colliding with another body B at rest in space can be regarded in motion as much as B *together with the space it is in*, can in turn be regarded as moving toward A.

Kant then clarifies that in addition to this mechanical law of how one body A communicates motion to another body B, there is also a “*dynamical law*” of the equality of action and reaction that looks at how matter “*imparts* this motion originally to it, and, at the same time, produces the same in itself through the latter’s resistance”; and he gives the examples of traction and countertraction, or pressure and counterpressure (MFNS 4: 548-49). The dynamical third law of the equality of action and reaction builds on Kant’s analysis in the Dynamics chapter of MFNS about physical contact between two bodies being the result of the “interaction [Wechselwirkung] of repulsive forces at the common boundary of two matters” (MFNS 4: 512).

Since Kant defined impenetrability of material bodies *dynamically* in terms of an original repulsive force that counterbalances the original attractive force, he saw in the balance and equilibrium of these two forces the underpinning mechanism that could explain the formation of planetary motion in *Universal Natural History* as well as the explanation of why a body approaching another one eventually encounters resistance and impenetrability. For Kant’s dynamical theory of matter, physical contact among two material bodies A and B is defined in terms of the common boundaries where the sphere of action of A’s repulsive force meets the sphere of action of B’s repulsive force.

Therefore, against the so-called ‘transfusionist’ view of motion, which treats motion as if it could be “poured from one body into another like water from one glass into another” (MFNS 4:549) Kant conceived of mechanical collisions among bodies as essentially elastic collisions where the “resting body does not, merely as resting, acquire motion lost by the impacting body, but that, in the collision, it exerts actual force on the latter in the opposite direction, so as to compress, as it were, a *spring* between the two, which requires just as much actual motion on its part (but in the opposite direction) as the moving body itself has need of for this purpose.” (MFNS 4: 549, footnote †).

Commenting on this dynamical view, Watkins notes that “Reaction, ..., is not a passive force, but rather simply the active force of the second body... Only such an ontology, Kant argues, can adequately account for the communication of motion.” (Watkins, 1998), p. 556. In another paper, (Watkins, 2011) has perceptively pointed out how “the distinction between the mechanical and the dynamical versions of the third law corresponds to the distinction between *communio* and *commercium*” (ibid., p. 56), where *communio* captures the spatial (contiguity) and temporal (simultaneity) communal relations that hold (mechanically so to speak) between “determined states of substances” whereas *commercium* refers to the dynamical “causal relations that make up mutual interaction” among substances (ibid. p. 51). Watkins has pointed out how in the latter case “mutual interaction involves ontological (or a certain kind of causal) determination” (ibid., ft 7, p. 60) as in reciprocal causal judgements by contrast with the logical determination of mutual (spatio-temporal) exclusion underpinning disjunctive judgments. In what follows, I build on Watkins’ insight and shed new light on the notion of *Wechselwirkung* (*commercium*) as Kant uses it in the aforementioned argument from equilibrium to provide the normative foundations for *ius cosmopolitanum*.

Looking again at the transcendental principle of community in the *Critique of Pure Reason*, and how Kant presents it there under the category of relation and in association to the logical form of disjunctive judgment, several commentators—from (Longuenesse, 2011) to Walla (2016) to Huber (2022) building on Longuenesse—have read community (the Third Analogy of Experience) as the expression of a universal disjunctive principle of the understanding. Yet, focussing on the logical determination at play in disjunctive spatio-temporal judgments masks the real nature of the *ontological–causal* determination at play in the relevant notion of community qua *commercium* (or *Wechselwirkung*) rather than *communio* that Kant clearly deploys in *DoR* to justify *ius cosmopolitanum*.

One clear consequence of this distinction between *communio* and *commercium* is the following: while in *communio* members stand in a relation of mutual exclusion (i.e. “A or B”, where if A is in a certain spatio-temporal location, B cannot also be in the same spatio-temporal location); in *commercium* members stand in an ontological-causal relation of reciprocal non-exclusive physical interaction (i.e. A imparts motion on B, and B imparts motion on A by resisting to A like a spring recoiling under an applied pressure).

Whether or not Kant primarily intended *commercium* rather than *communio* in the Third Analogy of Experience remains debatable. For example, to support his interpretive reading of the principle of community mostly qua *commercium* Watkins (2011) goes back to the *Critique of Pure Reason*, which in the second edition reads “All substances, insofar as they can be perceived in space as simultaneous, are in thoroughgoing interaction” (A211/B257). Watkins defends the distinctive

nature of the Third Analogy as somehow resulting from combining elements of the other two Analogies—persistence of substance and law of causality—and draws attention to the following passage:

The word “community” [*Gemeinschaft*] is ambiguous in our language, and can mean either *communio* or *commercium*. We use it here in the latter sense, as a dynamical community, without which even the local community (*communio spatii*) could never be empirically realised. CPR B260

In the footnotes appended to this passage Kant clarifies how “I.e., ‘community’ or ‘commerce’, the former connoting membership in a common whole but not necessarily interaction among the parts, the latter connoting interaction.” (footnote *c*, B260) and “ ‘Community of spaces’ that is, a single spatial order or relationship among multiple objects” (footnote *d*, B260).

My purpose here is not to offer any exegesis of the Third Analogy of Experience, but to highlight how there is enough textual evidence to demonstrate that Kant was using the word commerce (*commercium*) to denote the metaphysical relation between parts–whole whereby mutual physical interactions among parts explains how they *collectively* form a “dynamical community”. The dynamical law of equality of action and reaction in MFNS finds therefore its underpinning in the Third Analogy of Experience where community can be understood first and foremost as *commercium*, rather than as *communio*. *Commercium* differs also from *communio spatii* as a mostly spatial order among parts forming a whole (reminiscent of the aforementioned *communio fundi originaria* in Doctrine of Right as a mostly spatial-legal notion relevant to explaining the apportionment of the original land and the emergence of property rights).

In the same Section of the *Critique of Pure Reason*, Kant elucidates how he sees this dynamical community underpinned by interaction (*commercium*) in terms of *causal* relations of reciprocal nature among substances, whereby each substance can be regarded as containing “the ground of the determinations” of another substance in a mutual reciprocal “relation of community or interaction” (B258) and concludes

But this is a reciprocal influence, i.e. a real community (*commercium*) of substances, without which the empirical relation of simultaneity could not obtain in experience. Through this commerce (*commercium*) the appearances, insofar as they stand outside one another and yet in connection, constitute a composite (*compositum reale*), and composites of this sort are possible in many ways. (A214/B261–A215/B262).

Let us take stock and return one more time to cosmopolitan right and how to understand the notion of interaction [*Wechselwirkung*] (*commercium*) in the context of *Doctrine of Right* (§62) where the original community of land is presented precisely not as a *communio* (premises 1–2 in the argument from equilibrium) but as a *commercium* namely a “community of possible physical interaction” (premise 4) and cosmopolitan right is introduced as a right that “concerns the possible unification of all people with the intention of establishing certain universal laws governing their possible commerce” (*DoR* 6: 352, p. 146). How should one understand premise 4 in the argument from equilibrium? Namely, what does Kant intend to suggest when he appeals to the original “community of land” not as a “*rightful* community of possession (*communio*)” but instead as standing in “a community of possible physical *interaction* (*commercium*)” *DoR* 6: 352?

I contend that Kant meant the original community of the land as a right that everyone enjoys in virtue of standing in a mutual, equal, and reciprocal causal–ontological relation with other beings forming a “real community” of substances rather than some form of spatially-grounded cosmopolitanism (see Huber 2022, p. 87) based on the disjunctive mutually exclusive occupation of specific portions of the earth’s limited surface. Under the reading I am here laying out, cosmopolitan right is not a right that human beings enjoy in virtue of the *antagonistic* competition to occupy portions of the spherical surface of the earth that they equally shared qua *communio*. It is instead a right that human beings enjoy in virtue of their hard-won and ever fragile *collegial* standing in a reciprocal causal-ontological relation of physical interaction (*commercium*) —a real community of substances in equilibrium of forces where the very possibility of the determinate state of B causally depends on A, and the other way around too. To further substantiate my reading, let us take a closer look at a series of passages of Kant’s legal-political texts where the analogy between metaphysical foundations of nature and normative foundations of cosmopolitan right becomes more tangible.

In the 1784 *Idea for a Universal History from a Cosmopolitan Perspective*, Seventh Proposition dedicated to *The problem of establishing a perfect civil constitution is dependent upon the problem of a law-governed external relations between states and cannot be solved without having first solved the latter*, we find an interesting passage where Kant links what he calls “a law of equilibrium” among destructive forces existing among states in war with the need of introducing a “cosmopolitan condition”:

through the use of all of the commonwealth’s resources to arm for war against others, through the ravages of war, but more still through the need to remain constantly prepared for war, progress toward the full development of our natural predispositions is hindered,

but the ills that arise from it, in turn, compel our species to discover a law of equilibrium with regard to the in itself productive resistance between many states which arises from their freedom, and to introduce a united power which lends force to this law. A cosmopolitan condition of public security is thus introduced, which is not completely free of *danger*, so that humankind's powers do not fall into slumber, but also not without a principle of the *equality* of their mutual *actions and reactions*, so that they do not destroy one another. IUH 8:26

A cosmopolitan condition is here presented as governed by a law of equilibrium, or more precisely a principle of the equality of mutual actions and reactions, as the social counterpart to the dynamical law of mutual interaction that two years later Kant presented in MFNS to explain how material bodies with their forces and counterforces impart motions to one another. Kant portrays freedom as some kind of expansive repulsive force whereby each nation state may try to expand and occupy more land and invade other territories until it encounters the “in itself productive resistance” of many other states who also are engaged in similar expansionistic projects and some kind of equilibrium among powers is reached so that they do not end up destroying one another. The ensuing cosmopolitan condition of public security is presented as still fragile and subject to “danger” in the precarious game of “humankind's powers”. But in a way the cosmopolitan condition is also the best guarantee against the risk of self-destruction due to endless wars, along the lines of my argument from equilibrium in Section 2, premises 6–9.

In 1793, in *On the common saying: this may be true in theory but it does not hold in practice*, Kant clarifies how the “condition of equality of action and reaction of a mutually limiting choice in accordance with the general law of freedom (which is called the civil condition)” is the very principle of a juridical condition (*status iuridicus*) “which all those who belong to a people are subjects” TP 8: 292 (Kant, 1795). Interestingly this text was originally conceived of as a new edition of the 1784 *Idea for a Universal History*. Kant had originally declined the invitation by the book merchant Johan Carl Philip Spener of writing a revised edition for the *Berliner Monatsschrift*. In a letter to Spener on 22 March 1793, he declared he could not agree to the proposal of publishing a new separate edition “least of all with addenda directed at current affairs”, presumably referring to the French revolution, Corr 11:417 (Kant, 1999). However, six months later, in September 1793 *On the common saying* appeared in the *Berliner Monatsschrift*. Kant's change of mind is indirectly revealed in a letter from Johan Erich Biester on 5 October 1793, where Biester congratulated Kant on the essay for having dispelled the rumour of having come out in favour of the “ever increasingly repulsive French Revolution” (Corr 11:456), with clear reference to the

escalation of events that led to the war in Vendée, the Jacobin Coup d'Etat, the assassination of Marat, and the rise of Robespierre in the spring-summer 1793.

It is against this historical and cultural backdrop that Kant in *On the common saying* declares the need for “an international right that is founded on public laws that are backed with power and to which every state must subject itself (in accordance with the analogy with civil or constitutional right among individual persons)”. He adds “For an enduring general peace by means of the so called *balance of powers in Europe* is, like *Swift's* house, which was built so perfectly by a master builder according to all the laws of equilibrium that it immediately collapsed when a sparrow landed on it, is a mere fantasy” (TP 8:312). Now this might seem in contradiction with the analysis offered so far in this paper.

Yet it is not. If anything, this passage further corroborates my analysis because not only does it chime with the aforementioned passage from the 1784 text where Kant clearly had already described the fragility and precariousness of a cosmopolitan condition of public security based on “humankind's powers”. But also, immediately after this passage in the 1793 text, Kant mentions how the prospects of states voluntarily subjecting themselves to coercive laws for the purpose of perpetual peace evokes the theories of the “abbé of St Pierre or Rousseau” whose respective works on perpetual peace in 1713 and (posthumously for Rousseau) in 1782 “might sound nice” in theory but are said not to be “valid in practice”, echoing the title of Kant's essay. Distancing himself from the dictum (and, specifically, from Moses Mendelssohn who had doubted the ability of moral progress for humankind), Kant concludes,

For my part, I place my trust in what the theory that is based on the principle of right says about how relations *ought to be* among human beings and states and which extols the maxim to the earthly gods to always act in their conflicts with one another such that such a general state of peoples could thereby be introduced and therefore to assume that it is possible (*in praxi*) and that it *can exist*. TP 8: 313.

Kant seems to apply a universal maxim that at the normative level invites the “earthly gods” (presumably a sarcastic reference to various despotic leaders of the time) to act in “their conflicts with one another” as if a “a general state of peoples” were possible in practice, with the balance of powers as a real possibility (fragile and precarious like Swift's house as it might be). As with any universal maxim, this one too should prevent any “earthly god” from the ever-tempting desire and ambition to prevail over others. It is a duty to act according to such a maxim, Kant seems to suggest. But duty aside, Kant returns once more to the inevitability of such equilibrium as the

result of natural human inclination to fight against one another (“*fata volentem ducunt, nolentem trahunt*” he adds in the following sentence). Therefore, the conclusion that “from the cosmopolitan point of view, too, the assertion still stands: Whatever reason shows is valid in theory, also holds true for practice” (TP 8:313).

To further support my interpretive analysis here, and indeed to cast better light on this passage, it is worth going back to the draft of *On the common saying* consisting of a number of *Loses Blatt* published in the CUP edition (Rauscher, 2016). In *Loses Blatt* F2, dated 13 July 1793, the day of the assassination of Marat in the aftermath of the Jacobin coup d’État, Kant takes a stance against Hobbes and his “Machiavellianism claiming that the people have no rights at all” (L-Pol 23:134) and there is a surprising reference to metaphysics as the philosophy of the supersensible that “applies also in right...the right of nations as a cosmopolitan community. The principles of a state constitution must be derived from concepts of right as principle and that is theory” (ibid.). Claiming otherwise and trying to derive them from experience would only “put the cart before the horse”, Kant says. The text continues:

Because right contains within itself an *equality of action and reaction*, which is the product of laws of freedom, so it is also practical for the single valid principle to make a persisting whole possible even under senseless actors; thus theory is here simultaneously practical in maxims but its realization depends on experiential trials.

Nothing can be accomplished through morality or a state constitution from the bottom up. War exhausts everyone,...and many human beings involved in a *balance of powers*, and the necessary weapons. But it is possible that states will enter into a republican constitution from above starting from the aggregate of states, which themselves, in line with the jealous lust for power inherent in human nature, war among themselves until they have exhausted their energies. 23:135 emphases added.

Mark these words and the strident contrast between the *equality of action and reaction* and the *balance of powers* in this draft passage. The former is said to be inherent in the concept of right and itself a product of the laws of freedom: it is what grounds the practical possibility of “a persisting whole” despite human actors behaving recklessly against one another. The latter, by contrast, seems to refer to something altogether different from the equality of action and reaction. *Balance of powers* seems to denote in this context the sheer geopolitical wrestling among warmongering leaders (the aforementioned “earthly gods”). The following sentence concerning a “republican constitution from above” might be referring to the recent tumultuous events of the French revolution, from

the war in Vendée to the sans-culottes uprising to the internal infights within the Jacobins which eventually led to the assassination of Marat and the rise of Robespierre. This is a glaring example of how the “jealous lust for power” ends up in wars that exhaust everyone and eventually leads to the collapse of the house built on the *balance of powers*, as Kant would add in the published version of *On the common saying* just two months later, in September 1793.

In the same draft text of Theory and Practice, *Loses Blatt* D13 Kant even mentions again the equality of action and reaction and links it to the principle of community “*commercium actio et reactio*” as foundational to a cosmopolitan constitution of states:

Freedom, equality, and cosmopolitan unity (fraternity)...Cosmopolitan not federalist through contract. The implementation works this way:...If we build a state by composition (*aggregatio*)..., then the order is: 1. Independence of the members, 2. equality of action and reaction, 3. freedom in the use of their power....

Equality (namely rightful equality) is the degree of dependence of powers of the one on those of the other (in accordance with laws of freedom) according to which no one is required to bear more from another than the other must endure from him in accordance with laws of freedom. ...

Freedom, equality and union (*unio*) are the *dynamic categories* of the political so that the last, i.e. the state constitution, lies at the basis of everything practical through reason. The law arises from outer freedom; necessitation must harmonize with the law, harmonize with the principle of equality, so as to resist, in accordance with the law, the influence of members’s behavior on one another; union from the community of the will of all in a whole of the state (*substantia, causalitas (influxus) commercium actio et reactio*) {substance, causality (influx), community of action and reaction}.

No one can foresee how without the principle of equality a duty of a member of a state though to the other as obedience to orders would be possible... L-Pol 23: 139–143, emphasis added.

It is clear from passages like this one that Kant was looking for counterparts to his Analogies of Experience, and in particular the dynamical principle of community in the Third Analogy, in the context of his political philosophy and doctrine of right. The Analogies of Experience (substance, causality and community) find their counterparts in freedom, equality qua reciprocal physical influence of one over another, and unity grounded on a community of equilibrium of forces.

Two years later, in *Perpetual Peace* he fully spelled out what is involved in entering a *civil juridical* condition whereby “by entering into this condition, one party guarantees another party the necessary security....all people who can mutually exert influence on one another must be party to some civil constitution” (TPP 8: 349). It is in this context that Kant draws the threefold distinction among domestic right, international right, and cosmopolitan right as follows:

Yet any juridical constitution, with regard to the persons that are subject to it, takes one of the following forms:

1. One based on the right of *citizens of a state* governing the individuals of a people (*ius civitatis*),
2. One based on *international right* governing the relations of states among one another (*ius gentium*),
3. One based on *cosmopolitan right*, to the extent that individuals and states, who are related externally by the mutual exertion of influence on each other, are to be regarded as citizens of a universal state of humankind (*ius cosmopoliticum*).

This classification is not arbitrary but necessary with respect to the idea of perpetual peace. For if only one party were able to exercise physical influence on the other and yet were in the state of nature, then this would amount to the state of war, and it is emancipation from precisely this state of war that is the aim here. 8: 349, footnote *.

Kant’s use of expressions like “mutual exertion of influence on each other” and “physical influence” chimes with the passages in MFNS and the Third Analogy of Experience where reciprocal mutual influence among substances, namely the ability to act as a ground for the determination of other substances, is precisely what constitutes the notion of a “real community (*commercium*) of substances” A214/B261—what in this 1795 text becomes the juridical condition associated with cosmopolitan right, not as a contingent or arbitrary condition, but as a *necessary* one if one has to escape the state of war and secure perpetual peace.

In *Doctrine of Right* Kant returns once more to “*the law of equality of action and reaction*” governing moving bodies and presents it as an analogy for the “law of a reciprocal coercion necessarily in accord with the freedom of everyone under the principle of universal freedom” 6: 233. He adds that as in pure mathematics, properties of objects cannot be derived immediately from concepts but can be discovered by constructing concepts, likewise “it is not so much the *concept* of right as rather a fully reciprocal and equal coercion brought under a universal law and consistent with it, that makes the presentation of that concept possible” (ibid.)

The cosmopolitan condition whereby we are all regarded as “citizens of a universal state of humankind” is nothing but the juridical counterpart of the metaphysical “real community of substances”. The underpinning principle in both cases is a dynamical law of equality of action and reaction understood not as a phoronomic, spatial or even mechanical law, but rather as a dynamical law that governs the *reciprocal causal influences* among physical bodies in motion, or, equivalently, human agents in geopolitical action.

4. Conclusion. Normative foundations for cosmopolitan right revisited

The first, and probably most relevant conclusion is that if we understand the original community of the land as Kant clearly indicates in light of the notion of mutual interaction [Wechselwirkung / *commercium*] at the heart of Kant’s argument, cosmopolitan right should not be regarded as a “disjunctively universal right” (Walla 2016, p. 177), namely a right of everyone to possess either *this or that* place on the surface of the earth; or in Huber’s words (2022, p. 67) a “ ‘disjunctive’ community of physical beings who stand in a distinct kind of relationship when it comes to structuring the shared space they inhabit”.

As I have argued, not only does this reading conflate a dynamical category of community qua *commercium* with the mechanical (or spatio-temporal) category of community qua *communio*, but it also takes the latter rather than the former as somehow foundational to the notion of cosmopolitan right. If the analysis offered in this article is on the right path, the premise about the original community of the land should be understood as *commercium* (4. *premise of physical interaction* in the argument from equilibrium) qua a metaphysical-dynamical mutual interaction of substances forming a whole, regulated by the law of equilibrium.

Accordingly, the normative foundations of cosmopolitan right are to be found in a law of equilibrium (premise 5)—the law of equality of action and reaction as Kant refers to it in several passages—whereby for each dynamical action there is a reaction as a positive act (not as a sheer passive resistance). I have illustrated the long history of how Kant’s philosophy of nature, with its emphasis on two original forces of attraction and repulsion appealed to such a law to explain a number of phenomena: from the formation of planetary motion in *Universal natural history*, to phenomena concerning elasticity and pressure in MFNS. Such law appears again in the context of his legal philosophy in relevant passages where Kant is concerned with the need to safeguard perpetual peace against the self-destructive, war-mongering tendency that would bring individuals and states in conflict with one another, overstretching their respective sphere of influence and trying to annex new portions of land.

Cosmopolitan right exists only in virtue of every person being part of a composite system in a metaphysical-causal relation that is necessarily governed by the transcendental principle of community qua *commercium*, namely mutual counterbalancing of forces. Violation of this law would break the harmony and order of the heavens as much as it brings havoc and wars among nations. I have a cosmopolitan right only because you have exactly the same right, Kant seems to be saying. And I can reclaim mine only to the extent that you can reclaim yours and my right and your right—like that of everyone else who is part of this composite community—stand in a state of equilibrium, counterbalance and mutual reciprocity. If this anti-foundationalist, wholly relational reading is on the right path, one can appreciate why Kant saw cosmopolitan right as occupying a special legal realm distinct from that of international right (*ius gentium*) in three main respects: i.e. necessity, reciprocity, and scope.

Necessity.

According to the reading here laid out, the rationale for cosmopolitan right does not lie in interstate legal relations (*contingent* as they might be on the willingness of any nation state to enter or not into any such relations) but rather in the *necessity* through which universal laws such as the law of equality of action and reaction govern the heaven and society too in Kant's view. This necessity is born out of Kant's metaphysics of nature and the reciprocal way in which each substance grounds the determinations of other substances which jointly compose a whole, a "real community (*commercium*) of substances" (A214/B261) as per Third Analogy of Experience.

Read through the lenses of these metaphysical foundations, one can see why for Kant cosmopolitan right is not just another legal category above *ius gentium*, some kind of *ius supra gentes* whose contingent existence would be at the mercy of individual nation states (and group thereof) entering into external relations (e.g. by signing treaties and conventions). The *normative necessity* of cosmopolitan right is not subject either to the historical vagaries of there being particular institutions that might or might not enforce such rights—be it the 'world republic' as a positive idea or the 'federation of states' as a "negative surrogate of it" (TPP 8: 357). Cosmopolitan right is instead a necessary right in virtue of all human beings forming a "real community (*commercium*) of substances".

Reciprocity.

Far from being based on a disjunctive community of human beings having to share finite space (and finite resources), cosmopolitan right can be understood as being underpinned by the network

of metaphysical–causal relations that everyone shares with everyone else and their reciprocal right to inhabit the earth under the law of equality of action and reaction.

Shifting attention to this different reading of ‘community’ casts a different light on Kant’s argument for cosmopolitan right not as a mutually exclusive right but as a reciprocal right, one that obtains only in virtue of everyone else being able to reclaim it as their own insofar as everyone is part of a composite community of physical substances whose action and reaction are governed by a universal law of equilibrium.

Scope of cosmopolitan right.

Disentangled from the link to private property rights (*communio fundi originaria*), and freed from a too literal spatial-temporal reading (*qua communio spatii*), the normative foundations of cosmopolitan right are amenable to being expanded well beyond the right to universal hospitality. Kant’s metaphysical foundations contain the seeds of a much wider scope of applicability for the notion of cosmopolitan right that Kant himself was not able to envisage at the time, trapped as he was in the historical context of legal debates I briefly sketched in Section 2.

Kant did not quite see himself that the argument from equilibrium implied a much broader scope for cosmopolitan right, one that we can see these days as applying to the right to food, the right to education, the right to clean water and the right to scientific progress—all the international human rights enshrined in United Nation Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights. It is an interesting and open question, to be left for another occasion, what kind of consequences a shift in philosophical emphasis from international human rights to cosmopolitan rights might have when it comes to today’s implementation of these rights—for some preliminary observations in this direction about e.g. the right to enjoy the benefits of scientific progress (REBSP) *qua* a cosmopolitan right that pertains to humankind beyond vaccine nationalism and international philanthropy see (Massimi, 2022a).

To conclude, revisiting the normative foundations of Kant’s cosmopolitan right from a historical-philosophical perspective is important to both better appreciate its historical limits and its far-reaching legacy for contemporary debates in philosophy of law and philosophy of science.

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Bibliography

- Anghie, A. (2005). *Imperialism, Sovereignty and the Making of International Law*. Cambridge University Press.
- Benhabib, S. (2006). *Another Cosmopolitanism: With commentaries by Jeremy Waldron, Bonnie Honig, Will Kymlicka* (R. Post, Ed.). Oxford University Press.
- Bhuta, N. (2020). The State Theory of Grotius. *Current Legal Problems*, 73, 127–176.
- Bohman, J., & Lutz-Bachmann, M. (1997). *Perpetual Peace: Essays on Kant's cosmopolitan ideal*. MIT Press.
- Byrd, B. S., & Hruschka, J. (2010). *Kant's Doctrine of Right: A Commentary*. Cambridge University Press.
- Caranti, L. (2022). *The Kantian Federation*. Cambridge University Press.
- Cavallar, G. (2011). *Imperfect Cosmopolis. Studies in the History of International Legal Theory and Cosmopolitan Ideas*. University of Wales Press.
- Ertl, W. (2013). 'Ludewig' Molina and Kant's Libertarian Compatibilism. In A. Aichele & M. Kaufmann (Eds.), *A companion to Luis de Molina* (pp. 405–445). Brill.
- Friedman, M. (1992). Causal laws and the foundations of natural science. In P. Guyer (Ed.), *The Cambridge Companion to Kant* (pp. 161–199). Cambridge University Press.
- Friedman, M. (2013). *Kant's Construction of Nature*. Cambridge University Press.
- Held, D. (1995). *Democracy and the Global Order: From the modern state to cosmopolitan governance*. Polity Press.
- Huber, J. (2022). *Kant's Grounded Cosmopolitanism*. Oxford University Press.

- Izbicki, T., & Kaufmann, M. (2019). School of Salamanca. In E. N. Zalta (Ed.), *The Stanford Encyclopedia of Philosophy* (Summer 2019 Edition).
<https://plato.stanford.edu/archives/sum2019/entries/school-salamanca/>
- Kant, I. (1755). *Universal Natural History and Theory of the Heavens: Vol. E. Watkins (ed.) Natural Science* (E. Watkins, Ed.; O. Reinhardt, Trans.). Cambridge University Press.
- Kant, I. (1783). *Prolegomena to any future metaphysics* (H. Allison & P. Heath, Eds.). Cambridge University Press.
- Kant, I. (1786). *Metaphysical Foundations of Natural Science* (M. Friedman, Ed.). Cambridge University Press.
- Kant, I. (1795). *Toward Perpetual Peace and Other Writings on Politics, Peace, and History, with essays by J. Waldron, M.W. Doyle, and A. Wood* (P. Kleingeld, Ed.; D. L. Colclasure, Trans.). Yale University Press.
- Kant, I. (1797). *The Metaphysics of Morals* (M. Gregor, Ed.). Cambridge University Press.
- Kant, I. (1999). *Correspondence* (A. Zweig, Ed.). Cambridge University Press.
- Longuenesse, B. (2011). Kant's Standpoint on the Whole: Disjunctive Judgment, Community, and the Third Analogy of Experience. In C. Payne & L. Thorpe (Eds.), *Kant and the Concept of Community* (pp. 17–40). Boydell & Brewer.
- Massimi, M. (2011). Kant's dynamical theory of matter in 1755, and its debt to speculative Newtonian experimentalism. *Studies in History and Philosophy of Science*, 42, 525–543.
- Massimi, M. (2017). Grounds, modality, and nomic necessity in the Critical Kant. In M. Massimi & A. Breitenbach (Eds.), *Kant and the Laws of Nature* (pp. 150–170). Cambridge University Press.
- Massimi, M. (2022a). A human rights approach to scientific progress. The deontic framework. In Y. Shan (Ed.), *New Philosophical Perspectives on Scientific Progress*. Routledge.

- Massimi, M. (2022b). Absolute space as a necessary idea: Reading Kant's phenomenology through perspectival lenses. In M. B. McNulty (Ed.), *Kant's Metaphysical Foundations of Natural Science. A critical guide* (pp. 215–239). Cambridge University Press.
- Massimi, M., & Breitenbach, A. (Eds.). (2017). *Kant and the Laws of Nature*. Cambridge University Press.
- O'Neill, O. (2000). *Bounds of Justice*. Cambridge University Press.
- Rauscher, F. (Ed.). (2016). *Kant: Lectures and Drafts on Political Philosophy* (K. Westphal, Trans.). Cambridge University Press.
- Ripstein, A. (2022). *Kant and the Law of War*. Oxford University Press.
- Stan, M. (2017). Metaphysical Foundations of Neoclassical Mechanics. In M. Massimi & A. Breitenbach (Eds.), *Kant and the Laws of Nature*. Cambridge University Press.
- Trujillo, I. (2015). Cosmopolitanism and Human Rights. In L. C. Sanahuja & F. Ghia (Eds.), *Cosmopolitanism: Between ideals and reality* (pp. 10–34). Cambridge Scholars Publisher.
- Vattel, E. de. (1759). *The Law of Nations or the Principles of Natural Law* (printed for J. Newbery, J. Richardson, S. Crowder, T. Caslon, T. Longman, B. Law, J. Fuller, J. Coote, and G. Kearsly). London.
- Waldron, J. (1992). Minority cultures and the cosmopolitan alternative. *University of Michigan Journal of Law Reform*, 25, 751–793.
- Walla, A. P. (2016). Common Possession of the Earth and Cosmopolitan Right. *Kant-Studien*, 107, 160–178.
- Warren, D. (2001). *Reality and Impenetrability in Kant's philosophy of nature*. Routledge.
- Watkins, E. (1998). Kant's justification of the laws of mechanics. *Studies in History and Philosophy of Science*, 29, 539–560.
- Watkins, E. (2011). Making sense of mutual interaction: Simultaneity and the equality of action and reaction. In C. Payne & L. Thorpe (Eds.), *Kant and the Concept of Community*. Boydell & Brewer.

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Forthcoming in *Kantian Review*.

Williams, R. A. (1990). *The American Indian in Western Legal Thought: The Discourses of Conquest*.

Oxford University Press.

Ypi, L. (2014). A permissive theory of territorial rights. *European Journal of Philosophy*, 22, 288–312.