Communicating Historical Rights in Kant

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The topic of this panel is “freedom of speech.” My paper is entitled “Communicating Historical Rights” and its topic is historical rights, in the sense of property and territorial rights that stem from titles that claim validity in part due to a historical chain that can (supposedly) be traced back to first or original acquisition. Additionally, I want to argue the key to understanding historical titles lies in part in Kant’s writings on religion.¹ What have these all to do with each other? The most crucial link is the possibility of communication and capacity for publicity.

¹ Citations will refer to the volume and page number of the Academy edition of Kant’s works, followed by an abbreviation for the work, and (if appropriate) a section number or label. For example: “VIII:349 PP” for the first definitive article in Perpetual Peace.

PP = Towards Perpetual Peace.
TP = “On the Common Saying: That May be Correct in Theory, but it is of No Use in Practice.”
MM = Metaphysics of Morals (Introduction & Part I: the Rechtslehre, or Doctrine of Right).
DV = Metaphysics of Morals (Part II: the Tugendlehre, or Doctrine of Virtue).
RBBR = Religion within the Boundaries of Bare Religion. (The English title varies by translator.)
CF = The Conflict of the Faculties.
OT = What is Orientation in Thinking?
WIE = What is Enlightenment?

This is important in several respects. First, there is the idea that communication should be allowed so as to correct possible mistakes, as none of can be certain about our claims. This leads to what might be called a right of communication. Second, there is the idea that rights and religion must be able to take a public form. This allows us to institute a negative criterion, saying that we can judge that a certain communication does not have a divine origin (in the case of religion) or an origin in accordance with the principles of legitimacy embodied in the idea of the original contract (in the case of right). Third, there is the important question of when coercion is permitted and its connection to communication and certainty. In religion, this is discussed under the topic of using a revealed religion to torture people. In right, this leads to questions about when coercion can be used to enforce property rights. Fourth, there is the idea of provisionality. Provisional right has been written about as important in the context of property rights and international relations. Less attention has been paid to the similar logic of provisionality in Kant’s writings on religion, and how they may link together. Fifth, and connected to provisionality, I will draw an analogy between empirical property statutues and

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2 On the right to communication in Kant, see Peter Niesen, "Colonialism and Hospitality," Politics and Ethics Review 3, no. 1 (2007). Compare what Kant says in Theory and Practice: “For, to assume that the head of state could never err or be ignorant of something would be to represent him as favored with divine inspiration and raised above humanity. Thus freedom of the pen - kept within the limits of esteem and love for the constitution within which one lives by the subjects' liberal way of thinking, which the constitution itself instills in them (and pens themselves also keep one another within these limits, so that they do not lose their freedom) - is the sole palladium of the people's rights.” (TP 8:304)

3 Kant says that a plain rational faith (as opposed to a historical faith based on a revelation to particular people) can be “convincingly communicated to everyone” (RBBR: 103). The prominent mention of publicity in Kant’s political writings is at the end of Perpetual Peace.

4 On politics and the original contract, see Theory and Practice, section II, as well as The Metaphysics of the Morals, the section on the right of the state in the “Doctrine of Right.” What is Enlightenment and What is Orientation in Thinking discuss both politics and the church or religion, with the former using the contract metaphor. Contest of the Faculties and Religion within the Limits of Bare Reason discuss the problem of how to tell when a message is (not) from God.

5 See Elisabeth Ellis, Kant's Politics: Provisional Theory for an Uncertain World (New Haven: Yale University Press, 2005).

6 On religion, see for example how Kant says that true religion in its time required as aids the use of empirical religious statutues (those that stem from a supposed divine relation and contain more than is possible to derive from mere reason). RBBR 6:84
empirical Church statutes and how the links together with more “pure” forms of right and religion. The latter two have a public dimension in a way the former two do not need to. At the same time, provisionality may allow coercion in places where it may otherwise not be expected that it would be allowed.

I do not address all of these elements in full in this paper. In this paper, I concentrate on a particular puzzle that emerges in the context of Kant’s discussion of cosmopolitan right, the dangers of allowing an unlimited transnational right to communication, and how Kant’s writings on religion may help us address this problem.

1. The Puzzle

In his discussion of the cosmopolitan right to hospitality in the *Metaphysics of Morals* and *Perpetual Peace*, Immanuel Kant says that individuals have a right to travel and visit distant lands without being treated in a hostile manner simply because they communicate offers of commerce or ask to settle in the neighborhood. However, any further interactions beyond the initial communication require the consent of Native peoples (6:353 MM §62; 8:357 PP). The consent requirement is a strong one: While the Natives must apparently listen to the offer, it seems that the Natives can refuse offers of interaction without giving any justification to the settlers and without having taken into account the settlers’ interests. In addition, Kant says that the outsiders should not take advantage of the ignorance of the Natives. There are two exceptions to the requirement of consent. The first is that outsiders cannot be turned away if doing so would cause their destruction. In that case, the Natives are obliged to give hospitality understood as a right; still, the outsiders’ right to hospitality is only a right of temporary sojourn, not necessarily

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7 *The Metaphysics of Morals* should not be confused with Kant’s earlier work on ethics, *The Groundwork for the Metaphysics of Morals*. 
a right to settle permanently (that would require a special pact). The second “exception” is when the outsiders settle far enough away from the Natives. The requirement of consent only applies when the settlement would interfere with the local’s use of land. Still, “use” is understood by Kant to include the use of vast expanses of land in their traditional, non-sedentary activities. Kant’s analysis leaves open a major question: From where do a Native people (whether “indigenous” or not) get the right to claim a large portion of the Earth as their own and thus the right to exclude outsiders?

To put this more sharply: there is a little noticed tension between two views held by Immanuel Kant: (1) his condemnation of European colonization on the land of Native inhabitants\(^8\) without their actual consent and (2) his theory of property, in which a person (such as a settler) is bound to respect the possession by another person (such as a Native inhabitant) of an object (such as land), only if such possession takes into account their interests, or is justifiable to all (relevant) others, or proceeds from a common will. Kant expresses both of these views in the *Rechtslehre*, part I of the *Metaphysics of Morals*. Given his theory of property, how can Kant assume that Native inhabitants have a title to the (potentially large amounts of) land they inhabit and that this title is so strong that settlement by outsiders can take place only with the explicit consent of the Native inhabitants? Why are they entitled to use coercion to turn away outsiders, without offering any justification, beyond the one or two qualifications mentioned above?

At the same time, there is a danger if we say there is unlimited and unqualified right to communication on the part of the outsiders to continually make offers.\(^9\) The danger that may be

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\(^8\) Here, the term ‘Native inhabitants’ refers to inhabitants of land who are native to the land relative to the newcomers who want to settle the land or visitors who want to engage in other contacts. In several instances, as will be made clear from the context, the term is used to refer only to indigenous peoples, “tribal” peoples, or non-sedentary peoples. The term ‘setters’ refers to actual settlers and would-be settlers.

\(^9\) This is why I hesitate about some of Peter Niesen’s assertions about the right to communication.
associated with this is when a right to communication allows certain forms of domination in politics. Are there any limits to the rights of Europeans (and other foreigners) to constantly offer offers of commerce? May the rulers or sovereign of a local society stop outsiders from communicating with insiders without violating their right to communication (or right to free speech?) If the right to communicate offers leads to fundamental change in the society (by transforming into a more market-based economy, for example), does the society as a whole have a legitimate interest in preventing there offers or in regulating them? May the Europeans continually make offers even if the very hearing of the offers makes the locals vulnerable? What if there has been a historical experience that at least certain groups of outsiders tend to colonize? Must each individual outsider be heard and is it a form of collective punishment for the locals not to hear an individual because he is member of a certain group?

I suggest here that Kant’s discussion of religious tolerance and coercion may provide a key to unravelling this puzzle. We ought to look to his writings on religion and his discussion of the justification of the use of coercion can depend on one’s level of certainty and the type of action taken. At the end of the paper, I draw some brief implications for the larger issues of freedom of speech and the right to communication.

2. Historical Faiths and the Inquisitor

In Religion within the Bounds of Bare Reason and The Contest of the Faculties, Kant discusses problems of relying on a “historical faith,” based on the statutory precepts found in revealed scripture for a particular people at a definite time and place. This is in contrast to a pure rational religion, which is based on reason rather than a historical text, and which is universally valid (as it is universally communicable). In contrast to a religion based on the reason, which we
all have access to, a historical faith can never be apodically certain. A “historical faith” is passed down through history, supposedly originating in a divinely inspired text. Further, its meaning has been interpreted by a community of scholars. Kant notes that unless we directly experienced the revelation, we cannot claim to be certain about statutory requirements of the historical faith; instead, we rely on a historical claim about the origin of text.

Kant presents us with the scenario of a Grand Inquisitor who is persecuting people for not having the right brand of faith. Kant writes:

But was he really as strongly convinced of such a revealed doctrine, and also of its meaning, as is required for daring to destroy a human being on its basis? That to take a human being’s life because of his religious faith is wrong is certain, unless (to allow the most extreme possibility) a divine will, made known to the inquisitor in some extraordinary way, has decreed otherwise. But that God has ever manifested this awful will is a matter of historical documentation and never apodictically certain. (6:186-7 RBBR)

Kant does not insist that we can know that it is impossible that such a will would manifest itself. What he does insist upon is that in so acting on this supposedly divine will, we act against conscience, because we do have a sufficient level of certainty to act in such a manner. How do we act against conscience? It is not sufficient that (a) we take the objectively correct action. Nor

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10 “Every faith which, as historical, bases itself on books, needs for guarantee a learned public in whom it can be controlled, as it were, through writers who were contemporaries of the faith’s first propagators yet in no way suspect of special collusion of them, and whose connection with our present authors has remained unbroken. The pure faith of reason, on the contrary, does not need any such documentation but is its own proof.” RBBR 6:129
is it enough that (b) we take the action that is correct based on beliefs we take to be correct and are sincere in our aim.¹¹

Kant is not ruling out relying on historical faiths and says that this may be necessary, at least provisionally, given the kinds of beings we are. We may need the pictorial images provided by a historical faith in order to strengthen our resolve to be moral. However, Kant insists that it is wrong to treat these additional requirements of historical faith as if they were essential. Different historical faiths add non-essential elements to pure religion, giving further ecclesiastical laws that is present in pure rational religion. Kant writes:

We have noted that, although a church sacrifices the most important mark of its truth, namely the legitimate claim to universality, whenever it bases itself upon a faith of revelation which, as historical faith, (even if more widely spread and more firmly secured for the remotest posterity through scripture) is incapable of a transmission that commands conviction universally, yet, because of the natural need of all human beings to demand for even the highest concepts and grounds of reason something that the senses can hold on to, some confirmation from experience or the like, (a need which must also be seriously taken into account when the intention is to introduce a faith universally) some

¹¹ Arguably, both of these conditions (for all we know) were met by George W. Bush when he decided to go to war. (I use this example because it is a familiar example, easily grasped; I do not care whether the reader agrees with its substance, and I am not claiming I fully do. Indeed, familiarity combined with disagreement will suffice to illustrate the form of the argument.) I am supposing here that there was not sufficient evidence for the (public) justification, the presence of weapons of mass destruction.¹¹ Since war is a serious matter, involving the use of force to kill and such, parties ought to act conscientiously (it may be said) before going to war. Now, it may just so happen, that despite their not being sufficient evidence for WMD beforehand, the WMD are found. Nonetheless, that does not change the fact that the parties (we assume) did not act on a sufficiently certain basis. Nor is it necessarily enough that the party is sincere. He may genuinely believe at the time that WMDs exist in Iraq. However, Bush or his officials may know that he only can hold that belief with a particular amount of certainty. (For example, suppose CIA analysts were pressured to come up with certain results, so the process was corrupted.) If he has not looked into the evidence adequately, he make act against conscience. Note that this means that even if WMDs had been found, and the party initiating the war believed they would be found, this “faith” in Saddam’s evil is not enough to justify the war if the party acting against conscience. Again I apologize for the diversion. One takeaway is that when you have a serious matter, you need a certain level of certainty. Further, perhaps this level of certainty may vary based on the seriousness of the matter. Additionally, such a requirement of conscientiousness does not require absolute certainty that is absolutely certain. Action can take place in some circumstances in any case; that is not ruled out.
historical ecclesiastical faith or other, usually already at hand, must be used. (RBBR 6:110)

Moreover, even though historical faiths are not universally valid, they serve a natural need that must be attended to if the intention is to introduce a faith universally. Kant is not against historical faiths, so long as we interpret them in a way that is not in conflict with pure religion.

3. Hospitality, Being First, and Destruction

I think that Kant’s argument regarding the problem with relying “historical faiths” to destroy another human has a lot in common with the brief comments about the cosmopolitan right hospitality. In Perpetual Peace, Kant says that the foreigner needs to obtain the consent of the locals before he can engage in further commerce or settle in the neighborhood; the foreigner can be turned away “if this can be done without destroying him….“ Kant suggests in cosmopolitan right that locals cannot away travelers if this would destroy them; I suggest this is because this requires a level of certainty that only those inspired by God can have.

In order to destroy a human being, to act like God or as if inspired by God, we need a certain basis. One basis for saying “this land is our land!” might revolve around the following claim: “We established ourselves here first, without dispossessing anyone one, and certainly didn’t dispossess you. You, however, would dispossess an already present occupant. We now claim to have acquired the land through legitimate procedures, and say that our right to it means that you are under a duty to leave it alone without our consent. Further, right allows that coercion be used to enforce property rights, if you agree property rights can exist. We exercised our freedom to establish an exclusive sphere of control whereby others would be kept out without
our consent. However, you propose to dispossess us and make our land yours. If you claim to make it yours, you claim to be able to rightly keep future people out. However, this is inconsistent with your dispossessing us. Indeed, if you were dispossessed, you would claim the right to have the land returned (if indeed you thought the land was yours, something permanently owned, rather than temporarily occupied). Yet, you would deny us the right to have the land returned to us following your dispossession.”

Now, the force of such a statement is on the alleged inconsistency of the dispossessor who both says that they have a property or territorial right that others ought to honor, but that the rights of the dispossessed need not be honored. Note that this does not provide much in the way of a positive argument. It does not tell us how much weight first occupancy or prior occupancy should hold and why specifically. However, that is not the problem I want to focus on here.

There can be doubt sown about who was first on the land, or who was there earlier. For example, when Cortez encountered the Aztecs, he implied (on Todorov’s telling)\(^\text{12}\) that the Spaniards were descendents of a group that the Aztecs had previously dispossessed. We cannot be absolutely certain that the basis on which we claim the right to turn others away, that we can trace our title to the first legitimate claimants to this land, is correct. Claims to land rights based on historical title rely on historical claims that do not have the type of certainty required.

I also do not want to say that literal first occupancy must be standard, though this takes us into tricky waters. Note that even if the prior occupant was not the first occupant, it may not be inconsistent to demand that they have a right acquired by long possession and/or lack of early claimant against them. The prior occupant can say: I am willing to return the land to any earlier possessor of this land who was wrongfully dispossessed. That still earlier prior occupant would

not need, necessarily, to prove they were the absolutely first occupant. But to be consistent, an occupant would have to willing to return the land to a prior occupant. Richard Epstein called this idea ‘relative title’.  

4. Uncertainty and Universal Validity

Putting this aside at least for now, there is a larger issue: even if acquisition can take through first occupancy or otherwise, there remains the problem of how we know who was first or earlier. The above discussed and focused on the relevant standard. But it also matters what sorts of proof matters publically to established property rights. That is, if property rights may be coercively enforced, what level of certainty do we need to have that the relevant conditions were in fact met?

Now, there are multiple places where uncertainty might come in. First, let’s take as given that first occupancy is the rule. How certain do we have to be that a party was first, in order to enforce their rights to the full extent? This takes the principle for granted and asks about evidence of its fulfillment and lack of certainty on that front. Second, we might doubt whether a rule like first occupancy is indeed the correct rule. Even if we could be certain a party was there first, why does this matter? Third, we might argue that even if first occupancy may play a role, it can only do so subject to certain provisos. It may have weight, but certainly not beyond certain bounds.

If I say: we have legitimately acquired this land through a historical process, under what conditions are obliged to respect this? First, note that there appears to be an analogy between the moment of divine revelation and original appropriation of property. What actually happened may

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be lost in the sands of time. Further, we learn about the religious texts and their supposedly authoritative meaning through a community of interpreters and scholars. Even if it is agreed that a text is sacred, and originated divinely, the meaning of these words may be unclear. There may be disagreement about how to interpret the text. (Kant was not the first scholar of the enlightenment to note this hermeneutic problem). Similarly, there may be questions about whether property titles were passed down legitimately in an unbroken chain and about the source and correctness of the community of interpreters. In the case of property, the “text” is statutory: it is a set of land titles and statutes governing property origination and transfer, as well as adjudication.

Note that a religious text is not universally valid for all peoples on Earth, simply because of its historical revelation to a people. While a statutory church may have some sort of authority over its members, it cannot claim that others are obliged to accept that its text is a revealed one, and that the community of textual interpreters are authoritative. Kant is quite clear that statutory faith cannot be universally communicated.14

Similarly, peoples and states with local property systems may claim that the land was legitimately acquired at some point, and claim that their authoritative interpreters (e.g., judges, elders, priests) can say what are the property rights that have been pass downed to us. Now, such rights to external things in property (in specific external things) cannot be deduced by reason alone in the state of nature. Why are non-members obliged to obey? The point here is not that their interests are not taken into account, a point of contention about many global justice and open border debates. Rather, the question is whether coercion (to, say, stop them from crossing a border “illegally”) can be justified through right (rather than just being brute force). Just as

14 “Now historical faith (which is based upon revelation as experience) has only particular validity, namely for those in contact with the history on which the faith rests…” 6:115 RBBR. See also 6:109 RBBR; 6:114 RBBR.
historical religions are not universally valid (with all of their statutory requirements that are in addition to pure rational religion), so too, perhaps (and this is my suggestion, not Kant’s) property and territory rights. Kant is quite clear about the problem with communicating historical religions, and though he did not apply it to property, I think it is fruitful to do so.

5. Negative Criteria

In *Religion*, Kant insists that mere historical belief is not enough when it is in conflict with a clear and certain principle of morality. Historical belief supposedly originates in a revelation; its meaning is passed down through a community of interpreters of a revealed text. This is traced back a divine revelation or miracle. So while Kant does not want to deny the possibility of a miracle, he does think we should incorporate them into our practical maxims. Still, Kant says we can know that a voice is not from God if it contradicts something that is certain, that is, morality. Kant refers to negative criterion:

> For, as regards the theistic miracles, reason can at least have a negative criterion at is disposal, namely, if something is represented as a commanded by God in a direct manifestation of him yet is directly in conflict with morality, it cannot be a divine miracle despite every appearance of being one (e.g. if a father were order to kill his son, who so far as he knows, is totally innocent)... (RBBR 6:87)

> Is there an analogous negative criterion by which we can tell that we know this cannot be a legitimate command in the realm of property and/or territorial rights? Already we see something like this is ‘the idea of the original contract’ when Kant discusses constitutional right
in a state. Kant does not think the original contract is an actual, historical contract regarding the founding of society. Rather, it is a test of legitimacy of the acts of the sovereign. The test is whether the people could not possibly have consented to it. Kant gives the example of sovereign willing hereditary nobility in perpetuity. The purpose of the original contract, Kant says, is for free and equal citizens to have a state securing their freedom and equality. Further, in “What is Enlightenment?” Kant says a people cannot give up for all time their ability to revise religious doctrines.

However, Kant does not explicitly extend his idea of the original contract to the international or cosmopolitan level. But we may ask: how could the parties have possibly consented to forming separate territories where each would hold sway? Note that this construction does not necessarily construct the parties in the same manner as on the level of the state internally. The parties may be states or peoples. (So it may be no complaint that the resulting institutions do not treat individuals as ‘free and equal citizens’ with all that entails, at least assuming the type of thick citizenship appropriate to republics. There may a thinner ‘world citizenship.’) But what might this negative criterion of cosmopolitan right be?

Suppose that a people, upholding one system of property, turns back a refugee and causes his destruction. Further, the locals claim that the outsider is bound to obey their local property system. They claim the right to command, doing more than simply relying on their power. (Note that in international right, Kant says that the victor in a war ought not claim the right to punish, but simply relies on his power.) The locals turning away the refugee in a sense speak like God in asking for a sacrifice from the outsider; however, the outsider can know this is a voice in conflict with the principles of right. Indeed, we cannot imagine how anyone could possibly have agreed to have been bound by another’s unilateral will that they be put under duties to respect local
property rights, if this results in them having no space on the Earth and no place to exercise free agency. The purpose of allowing property (or territorial) rights in the first place is to secure domains of freedom.

Still, while Native peoples may need an unobtainable certainty in order to destroy visitors, they can still act on their property claims for actions short of that destruction. This suggests that the level of certainty required depends on the type of action done. Different levels of justification may be owed in different circumstances. The level of certainty we have can be tied to the actions we are permitted to do. This explains why cosmopolitan right allows indigenous peoples (or any people) to turn away foreigners short of causing their destruction. It allows for space for the requirement of consent in interaction, even when we cannot be certain about the historical basis of indigenous claims. This helps to explain the contours and balance of Kant’s cosmopolitan right to hospitality.

6. Are Native Land Claims an Historical Faith?

I want to cap this discussion by reframing the puzzle through a drawing a parallel to Kant’s writings on religion based on provisionality. Kant is not ruling out relying on historical faiths and says that this may be necessary, at least provisionally, given the kinds of beings we are. At least in the beginning, we are human beings who are best communicated to through the senses, given our flaws, and requires images drawn from revealed scripture. Revealed religion was at least provisionally valid as a vehicle so that people would understand and hear the commands of rational religion. Kant questions whether historical faiths might one day disappear as unneeded, asking “whether a historical (ecclesiastical) faith must always supervene as an essential portion of saving faith over and above the pure religious one, or whether, as mere vehicle, historical faith
will finally pass over, in however distant a future, into pure religious faith.”¹⁵

Does this suggest that property claims established in history should disappear over time and that we should rely on a rational system of property? Should Native land claims (indeed, all historical property rights) be seen as merely a historical faith? If a historical faith is merely a vehicle that will be discarded when the time is right, should we view property and territorial rights as similarly dispensable? One piece of evidence that Kant does not think so relies on what Kant says (in unpublished writings) about property rights provisionally acquired in the state of nature: “Provisional right persists in the civil condition in its consequences and is incorporated into the right of the civil condition, insofar as it does not oppose the nature of the civil condition” (23:293).¹⁶ Different historical faiths add non-essential elements to pure religion, giving further ecclesiastic laws. Kant is not against historical faiths, so long as we interpret them in a way that is not in conflict with pure religion. Similarly, we need not discard either historical rights claims or a flawed scripture; rather, we must interpret them in a way that harmonizes with rationality, without necessarily being fully dictated by it. Cosmopolitan right may have a ‘negative criterion’ that constrains legitimate holdings, but still allows space for historical titles, at least on a provisional basis.

7. The Danger of Communication

In this section, I want to briefly bring my discussion back around to how this may impact more general claims about the right to communication and the right to free speech.¹⁷ It has been said that Kant’s view of free speech differs from many popular anglophone views of free speech.

¹⁵ 6:116 RBBR. See also the views expressed in The Conflict of the Faculties. ¹⁶ My own translation. ¹⁷ I take myself in part to be opposing the spirit of some claims made by Peter Niesen. I thank him for various conversations.
While of course Kant’s view has nuances and perhaps changes slightly in different places, I think it is relatively clear that he thinks that the right to communication should exist in a context that is sensitive to political power and domination. Thus Kant frames the right to what he calls “freedom of the pen” in this manner: “Thus freedom of the pen - kept within the limits of esteem and love for the constitution within which one lives by the subjects' liberal way of thinking, which the constitution itself instills in them (and pens themselves also keep one another within these limits, so that they do not lose their freedom) - is the sole palladium of the people's rights.” (TP 8:304) Politics and the constitution help to make the preservation of freedom of the pen possible. These are not something merely opposed to freedom of speech.

It is helpful to remember when we consider that claims for property rights must be public as well. They must be communicable, of course. But it is not simply the possibility for communication that must exist in an abstract sense, but rather that there exist a system of law in which such a claim makes sense and is seen (or should be seen) as legitimately binding. Of course, Thomas Hobbes had this insight when he talked about the importance of the sovereign deciding the language of right and wrong. Kant goes further and says that certain types of things can be recognized as not legitimate because they could not take a public form that could bind everyone. Even if obedience is still demanded in such cases (and Kant equivocates on this), people need to be able to complain about such injustices. Hence the need for the freedom of the pen.

Interestingly, immediately before saying the quote above, Kant writes: “For, to assume that the head of state could never err or be ignorant of something would be to represent him as favored with divine inspiration and raised above humanity.” (TP 8:304) Remember that Kant condemned the inquisitor who acted as if he were certain and tortured someone with a different
historical faith. Similarly, we should not assume the head of state is something godlike and cannot err. While the head of state is able to coerce us, the coercion does not come from an assumption of infallibility. (This is said of the head of state, which is not quite the sovereign itself.) (Compare this to what Kant says about members of a faith versus the Universal Church.)

Still, the claims I make as a citizen for property within a state are only possible (as conclusive) within the context of a state. The upshot of this is that the state makes certain forms of communication possible by saying that citizens must necessarily take its views as conclusive. Property would not be secure unless there was enforcement and univocality. So an assertion of property rights requires that there be a publically agreed standard. Property rights, to be binding, but be communicable to others, and the context of politics makes possible for us to communicate new types of claims, that of acquired rights. Roughly speaking, the context for freedom of the pen and the right to communicate is created by politics.

Now what are we to say about the realm of cosmopolitan right? First, the right to communicate is not exactly something that exists in the state of nature in any full sense. I think it is wrong to see any right to communicate as an instance of private right valid in the state of nature. The possibility of communication is indeed a condition for public right (and even private right in a provisional sense). But it is important to remember that public right (as discussed in different terms above) creates a context where undominated communication is (ideally) possible.

So in the state of nature, Kant is quite clear that I have no obligation not to treat my neighbor as an enemy if he does not give me an assurance he will not harm me. How does this fit together with the claim in cosmopolitan right that Europeans and other have a cosmopolitan right to travel the world and not be treated in a hostile manner simply because of their presence?

\[^{18}\text{See section II of Perpetual Peace.}\]
How can it be said that distant foreigner have assured the locals they will not harm them? Part of the answer, I think, is that cosmopolitan right is part of the category of public right – it must be established. Kant says in *Perpetual Peace* that “Cosmopolitan Right is Limited to Conditions of Universal Hospitality.” One way to interpret this is with reference to the content of cosmopolitan right: the cosmopolitan right or rights we have refer only to hospitality, and nothing further like the right to colonization. Another way, perhaps, to interpret this is to stress “conditions” and “universal” in the quote. That is, a precondition for cosmopolitan right may be universal hospitality. Kant is clear that rights have to be reciprocal, and he does not seem interested in saying (as he does in his ethics) that one person must abide by an obligation (or still has that obligation) in absence of reciprocity. Indeed, this need for reciprocity and universality is what leads to the demand for the state in the first place (MM section 8). At this stage, all I can suggest is that, again, there is a negative criterion. Locals cannot do anything to rule out the possibility of universal hospitality, and neither can foreigners. There are certain things that do this. This is the case especially since we have no determinative judge in cosmopolitan right.

Indeed, in one sense, the locals or Natives are like the head of state in constitutional right. They can be seen as legislative, or something similar. However, their laws or commands could not possibly bind others under certain conditions. This is a global version of the original contract. Moreover, just like the situation domestically, this necessitates the needs for complaints. Outsiders need to be able to make offers (and complaints) – they need to be heard without being threatened. There is some need to have some judge, but this does not mean that (a) any solution is legitimate, and (b) others should lose the power to communicate complaints and suggested revisions. This is a sort of universal element in the particular system.

At the same time, this still allows the shutting off of communicative offers where there
are dangers. For example, in the United States, it has been ruled that money equals speech, and since there is a right to free speech, there are few if any real limits on campaign donations. This has a real potential for domination. Moreover, it distorts the purposes the freedom of the pen is meant to serve, to help inform the sovereign or the public.

While Kant clearly wants this to serve the larger interests of enlightenment, we can also think there is a special connection to coercion. Coercion needs to be justified or justifiable. At the same time, it is important to remember that individual acts of communication are not necessary what are important. The individual’s untramelled liberty to communicate, in a manner that is not consistent with the like freedom of others, is not something Kant would or need endorse. Similarly, the right to communicate on a transnational or cosmopolitan scale is not something that merely attaches to individuals. This is not to say it attaches to groups (that is a separate issue). Rather, the relevant agents (be they individuals or groups, I remain neutral) must have universal freedom: freedom that is compatible with the like freedom of others. A system of freedom must be established. The right to communication is not something opposed to restrictions, but is part of it. Restrictions domestically and transnationally can be communication and freedom possible.