

Luxembourg's Deconstructive Hospitality?

Voting Rights for Foreigners

Johan Van der Walt

In the following pages I wish to explain the significance of Luxembourg's plans for a referendum on the question of voting rights for foreigners in terms of a brief historical narrative. I will relate this narrative by beginning halfway so to speak, with an idea Immanuel Kant would articulate in 1786. I will trace this idea back, through Hugo Grotius, to thoughts that St. Thomas of Aquinas already articulated in the 13th century. And I will then jump back to thoughts that Jacques Derrida would articulate close to the end of the 20th century. To be sure, Kant is not strictly speaking the halfway mark in this narrative and Aquinas is surely not the beginning. The ideas at issue in this history can also be traced to St. Augustine, St. Paul, Jesus and Aristotle, and goodness knows where and when it actually started. The narrative that I will trace from Kant through Grotius to Aquinas and from Aquinas to Derrida is therefore quite constructed. No doubt, the story can be told differently, but the purpose of telling it in this way and not differently is to construct a thought, a deconstructive thought at that. And the further aim of constructing this deconstructive thought is to forward an understanding – one understanding, there may be others – of what is currently afoot in Luxembourg.

Kant writes in his essay *Zum ewigen Frieden*:

“World citizenship will be limited to conditions of general hospitality. At issue here is not philanthropy, but law. In this regard hospitality means [...] the right of a stranger not to be met with hostility when

he lands on the soil of another [...]. It is not a right to reside which the stranger can claim, but a right to visit to which the human being is entitled by virtue of the right to the common possession of the surface of the earth [...]. Inhospitable coasts are for this reason irreconcilable with natural law.”¹

Kant invokes here the principle of *Besuchsrecht* – the right of strangers to receive hospitality from foreign lands and cities they may visit. Where does this right come from? It is a principle of natural law, writes Kant. “Inhospitable coasts are irreconcilable with natural law.” Why? Because natural law endows humans with the rights that flow from their “common possession of the surface of the earth.”

Where does this idea of the “common possession of the surface of the earth” come from? Again, tracing it to its ultimate origins may soon have us lost in the mists of time, but a clear line can surely be traced from Kant to Grotius, and from Grotius to Aquinas. Grotius writes in *De Iure Belli Ac Pacis*:

“The next thing to be considered is the right, which men have to the common use of things [...]. [I]t appears that the establishment of property has absorbed every right that sprung from a state of things held in common. But this is by no means the case. For the intention of those who first introduced private property must be taken into account. And it was but reasonable to suppose, that in making this introduction of property, they would depart as little as possible from the original principles of natural equity [...]. From hence it follows that in cases of extreme necessity, the original right of using things, as if they had remained in common, must be revived [...].”²

Where does this idea of the “common possession of the surface of the earth” come from?

Grotius was an unabashedly eclectic thinker.³ His work was informed by both of the two major traditions of thought into which seventeenth century European scholars and intellectuals would be born, the cosmological line of thinking – emphasizing the intrinsic and global order of things – that runs from Aristotle to Aquinas and 16th century Spanish scholasticism, on the one hand, and the voluntaristic and nominalist tradition – emphasizing the dependence of natural orders on the contingent historical will of God – that runs from Augustine to Ockham and Gerson, on the other.⁴ Again Grotius borrowed from both these traditions, but the passage above can be traced directly to Aquinas, and especially to this passage from his *Summa Theologiae*, volume 38:

“The dictates of human law cannot derogate from natural or divine law. The natural order established by God in his providence, is, however, such that lower things are meant to enable man to supply his needs. A man’s needs must therefore still be met out of the world’s goods even though a division and apportionment of them is determined by law. And this

is why according to natural law goods that are held in superabundance by some people should be used for the maintenance of the poor. This is the principle enunciated by Ambrose and repeated in the *Decretum*, *It is bread of the poor which you are holding back; it is the clothes of the naked which you are hoarding; it is the relief and liberation of the wretched which you are thwarting by burying your money away.*”⁵

It is abundantly clear from everything Aquinas says that property must always remain subject to the community of goods that humanity holds in common. The rich may appropriate property for themselves, but always subject to the condition that they must share it with anyone in need of it.⁶ And the poor may appropriate somebody else’s property in a case of extreme necessity without being guilty of theft. They are only taking what is theirs in terms of natural law. It is not necessary to go deeper into this thought and its significance for current conceptions of private property relations. Public “property” relations are at stake when one considers the *Besuchsrecht* that Kant had in mind in the passage quoted above. Voting rights are of course another instance of such public property relations. Important to notice, however, is the fact that a concept of property is at stake when one considers these matters, notwithstanding their “public” character. The question of offering hospitality to foreigners turns on the question whether a people should share “their” land – if only temporarily as Kant thought – with others who are strangers to them. And the same question is obviously at stake when one considers the right of non-nationals to vote. Here the question is whether a people should share the exclusive right to determine *their* future, with strangers or foreigners.

This question, the question of voting rights for foreigners, raises the possibility of a much more radical or much deeper hospitality than the hospitality at stake in Kant’s *Besuchsrecht*. And it is this more radical and deeper hospitality that comes into the picture when one turns to Jacques Derrida’s interrogation of Kant. In the last phase of his thinking, Derrida contemplated a radical concept of hospitality that was strongly influenced by the work of Emmanuel Levinas. This concept of hospitality would question all notions of public and private property in an almost unprecedented way, at least as far as modern or postmodern philosophy is concerned (Marx and the anarchists being possible exceptions, but it is not clear that they ever had anything as radical and far-reaching in mind as that which Levinas and Derrida contemplated).⁷ We need not and cannot go into the multiple facets of Derrida’s thinking in this regard. The thoughts that follow only take issue with the way his thoughts on hospitality engage with

Immanuel Kant 1724-1804



the remnant of Aquinas' conception of the natural right to share the surface of the earth, that is still evident in Kant's concept of *Besuchsrecht*. At issue in Derrida's engagement with this remnant of the natural right to share the surface of the earth is an endeavour to radicalise it. Derrida seeks to free it from the in hospitality that still clings to it, or at least seeks to confront it with this inhospitality.

Kant, argues Derrida, reduces the right to the common possession of the surface of the earth to a right *to visit*. This right to visit ultimately sees to it that the visitor remains an alien in the land of his/her hosts. Derrida writes:

"If Kant takes care to define accurately this common good or common place that extends over the surface of the earth, it is without doubt in order not to exclude therefrom any corner of the world or of a spherical globe (at issue is a certain globalisation), there where an infinite dispersion remains impossible; but the accurate definition is above all aimed at excluding that which is elevated, built or constructed above the soil: habitat, culture, institutions, state, etc. Everything that is no longer just soil, however much it is still part of the soil and even founded on the earth, cannot be unconditionally accessible to everyone that may arrive. By grace of this strict delimitation (that is none other than the very institutionalisation of the limit as frontier, nation, state, public or political space), Kant can deduce two consequences and inscribe two other grids on that which we shall be interested to reflect tomorrow. 1. In the first place, he excludes the hospitality that would extend to a right to reside (*Gastrecht*); he limits hospitality to a right to visit. The right to reside should remain a matter of a specific treatise between states.... 2. Then, in doing so, by defining hospitality in all rigor as a right (which in all respects constitutes a certain progress), Kant subjects it to conditions that makes it dependent on state sovereignty, especially when the right to reside is concerned. Hospitality thus signifies here the public authorisation of public space, as is always the case with the juridical in the Kantian sense. The hospitality of the city or private hospitality is dependent and controlled by the law and the police."⁸

Central to Derrida's thoughts on hospitality is an awareness of the way in which law – all or any law – destroys hospitality by limiting it (for true hospitality is in principle unlimited). Kant's *Besuchsrecht* is a telling case in point. Even the law that seeks to give effect to hospitality, here *Besuchsrecht*, cannot avoid reducing it to the degree of hospitality that can be afforded by the host country. The *Besuchsrecht* is an affordable generosity. It is a far cry from the uncon-



The Hospitality of Abraham by Tichon Filatyev 1700

ditional hospitality to which Levinas calls one, the unconditional generosity that requires that one give even what one cannot afford to give, as we shall see below. How does this *Besuchsrecht* limit hospitality to considerations of affordability? By making sure the hospitality at issue is restricted to the superficiality of surface. It is in Kant's invocation of the "common possession of *the surface* of the earth" that the eagle-eyed Derrida spots the restriction of hospitality in Kant's conception of *Besuchsrecht*. The crucial lines in the passage above are these:

"[T]he accurate definition [of the right to visit] is above all aimed at excluding that which is elevated, built or constructed above the soil: habitat, culture, institutions, state, etc. Everything that is no longer just soil, however much it is still part of the soil and even founded on the earth, cannot be unconditionally accessible to everyone that may arrive."

Voting rights evidently allow the deepest entry into the cultural and political elevations that a people may erect on its soil. It allows complete access to the vertical dimensions of political existence. Granted

Central to Derrida's thoughts on hospitality is an awareness of the way in which law – all or any law – destroys hospitality by limiting it (for true hospitality is in principle unlimited).

Derrida knows that the radical hospitality contemplated here ultimately takes one out of the spheres of economics and politics where considerations of sustainability and affordability must remain central.

to foreigners, they would expose the vertical dimension of a people's political and cultural existence to uncontrollable and unpredictable influences. They would ultimately destroy the exclusivity without which this verticality cannot be contemplated. Political identity, or whatever remains of it, would become an open-ended reception of whatever foreign influence history would visit upon it. In other words, they would bring about a fundamental "horizontalisation" of the political that would break away completely from the vertical conceptions and embodiments of sovereignty that have dominated Western political history ever since the rise of Roman imperial rule. They would finally come to sever the monarchic chain of Being that descends from God to the sovereign and ultimately to the sovereign's subjects and soil.

This horizontalisation of sovereignty would not necessarily destroy the meaning of sovereignty, but it would render it unstable. It would destroy the ontological rootedness of sovereignty and expose it to the vicissitudes of history and historicity. It would bring about a veritably historical, contingent and horizontal sovereignty. This sovereignty would – within new limits, no doubt – embrace strangers in an unprecedented way.

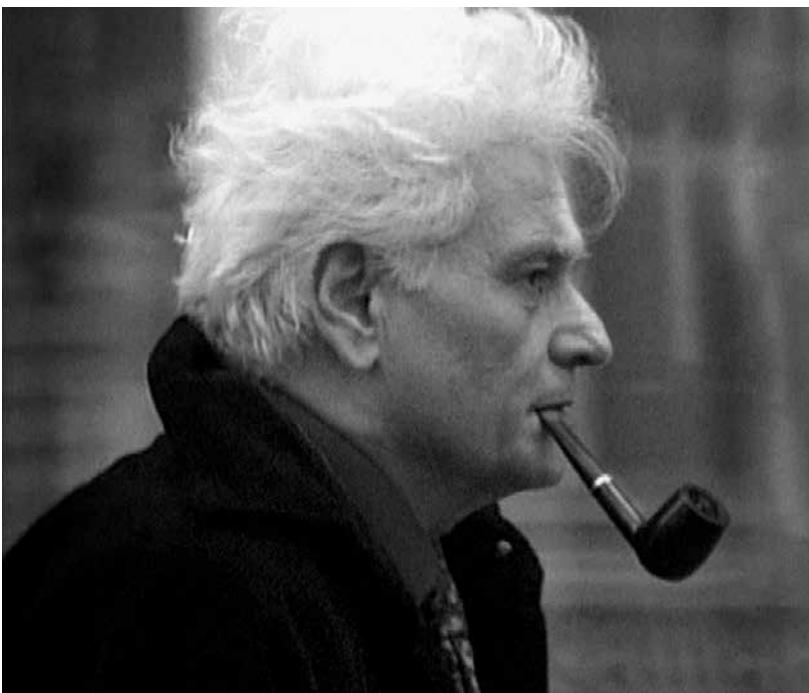
Can Luxembourg *afford* to do this? That would depend on the radicality of the hospitality it is prepared to risk. The Derridean concept of hospitality

elaborated above concerns the willingness to take a risk with *the unaffordable*. It concerns the risk with having to give everything one has to give and more, the risk of having to give away not only one's property, or specific instances of property, but also the heart of whatever property one may have or ever come to have, namely, one's political and cultural identity. This is indeed the hospitality that Derrida contemplates. He writes:

"In the same way that [hospitality demands] that one give beyond what one has to give, it demands that one gives beyond what one is. It demands that one transforms oneself beyond that which one can anticipate. It concerns a veritable conversion and an acceptance that the other affects me to the point that I cannot recognize myself anymore, to the point of where I could be put in danger. [Hospitality concerns] the gravest risk, [for it] touches my very identity."⁹

Derrida knows that the radical hospitality contemplated here ultimately takes one out of the spheres of economics and politics where considerations of sustainability and affordability must remain central. He expressly recognizes the mystical and religious nature of this hospitality – *l'expérience mystique et religieuse* – in the lines that follow directly on the lines of the passage quoted here. And earlier on in this same text he already notes the need for responsible politics to arrive at a unique compromise between this unaffordable hospitality and considerations of sustainability – *la responsabilité [est] un compromis unique*.¹⁰ For some democrats, the question regarding voting rights to foreigners may well be informed by a quest for pure democracy – a democracy that is unconditionally hospitable to all who might want to vote. For these radical or ultra radical democrats, democracy is unconstrained by economic considerations of affordability. For them, democracy does not concern affordability. It concerns, well, democracy. A religious, mystical and ecstatic democracy is evidently at stake for them. But political responsibility need not and should not be confused with an obsessive concern with pure democracy. Responsible politics, Derrida tells us, always compromises with sustainability. But he also tells us that any politics that would be informed exclusively by concerns of sustainability and the safeguarding of existing political identities would also not be a responsible politics. It would not be *responding* to anything, it would just be a monologue, a monological act of self-preservation. In order to *respond* to something or someone and to thus become *responsible*, politics also need to compromise sustainability and compromise with the incalculable risk of strangeness and otherness. Politics need to take some risk with otherness and

Jacques Derrida 1930-2004



strangeness, and with strangers, if it hopes to become or remain a responsible politics.

These, then, are the key terms of the formidable challenge that Derrida's profound contemplation of the meaning of hospitality poses for political theory and practice: unconditional hospitality, on the one hand, demands of sustainability, on the other, and the unique responsibility that would somehow bring them together. These terms evidently do not answer the questions that burden significant political decisions. They do not resolve the tensions that render political decisions urgent and necessary. But they do clarify the key considerations at stake in any truly significant political deliberation and action. Luxembourg and Luxembourgers may well want to keep them in mind as they prepare themselves for the referendum on voting rights for foreigners. ♦

1 Translated from Kant, *Zum ewigen Frieden. Ein philosophischer Entwurf in Werke in 10 Bänden* (Weischedel Edition) vol. 9 (Darmstadt: Wissenschaftliche Buchgesellschaft, 1983), p. 213-214: "Das Weltbürgerrecht soll auf Bedingungen der allgemeinen Hospitalität eingeschränkt sein." Es ist hier nicht von Philanthropie, sondern vom Recht die Rede, und da bedeutet Hospitalität .. das Recht eines Fremdlings, seiner Ankunft auf dem Boden eines andern wegen, nicht feindselig behandelt zu werden [...] Es ist kein Gastrecht, worauf dieser Anspruch machen kann [...] sondern ein Besuchsrecht, welches allen Menschen zusteht, sich zur Gesellschaft anzubieten, vermöge des Rechts des gemeinschaftlichen Besitzes der Oberfläche der Erde [...] Die Unwirtbarkeit der Seeküsten ..ist also dem Naturrecht zuwider."

2 Hugo Grotius, *Rights of War and Peace* (Eng. trans, A.C. Campbell, Westport, Connecticut: Hyperion Press 1979) II II VI. Cf also Grotius, *De Iure Belli ac Pacis* (P.C. Molhuysen Edition, Lugduni Batavorum: A.W. Sijthoff, 1919), II II VI 1: "Videamus porro ecquod ius communiter hominibus competat in ea res, quae iam propriae aliquorum factae sunt...cum proprietate videatur absorpsisse ius illud omne, quod ex rerum communi statu nascebatur. Sed non ita est. Spectandum enim est, quae mens eorum fuerit, qui primi dominia singularia introduxerunt: quae credenda est talis fuisse, ut quam minimum ab aequitate naturali recesserit....Hinc primo sequitur, in gravissima necessitate reviviscere ius illud pristinum rebus utendi, tanquam si communes mansissent...." Campbell's translation is slightly modified in the quotation above.

3 Cf. Grotius, *De Iure Belli ac Pacis*, prol 28. Cf also H. Schieder-mair, "Hugo Grotius und die Naturrechtsschule" in Börner et al (eds) *Einigkeit und Recht und Freiheit. Festschrift für Karl Carstens I* (Köln: Heymans 1984) p. 488.

4 Cf. Danie Visser, "Die invloede op Hugo de Groot" (1983) *Tydschrift vir Hedendaagse Romeins-Hollandse Reg.* 136-150; Robert Feenstra, "Der Eigentumsbegriff bei Hugo Grotius im Licht einiger mittelalterlicher und spätscholastischer Quellen" in Behrends et al (eds), *Festschrift für Franz Wieacker zum Geburtstag*, (70), (Göttingen: Vandenhoeck & Ruprecht), p. 219-226.

5 Aquinas, *Summa Theologiae: Volume 38*, (Cambridge: Blackfriars, 1975), 2a 2ae 66 7. The Latin text reads: Dicendum quod ea quae sunt iuris humani non possunt derogare juri naturali vel juri divino. Secundum autem naturalem ordinem ex divina providentia institutum, res inferiores sunt ordinatae ad hoc quod ex his subveniatur hominum necessitati. Et ideo per rerum divisionem et appropri-

tionem de jure humano procedentem non impeditur quin hominis necessitati sit subveniendum ex hujusmodi rebus. Et ideo res quas aliqui superabundanter habent, ex naturali jure debentur pauperum sustentationi. Unde Ambrosius dicit, et habitur in *Decret.*, *Esurientium panis est quem tu detines; nudorum indumentum est quod tu recludis; miserorum redemptio et absolutio est pecunia quam tu in terram defodis.*"

6 Aquinas, *Summa Theologiae: Volume 38*, 2a 2ae 66 2: "A person who arrives at the public games first in order to get things ready for others would not be acting amiss, but only if he stopped them from getting in. And, similarly, a rich man who takes prior possession of something that was common before is not doing anything wrong provided he is ready to share it; he sins only if he unreasonably prevents others from using it." The Latin text reads: "Ad secundum dicendum quod ille qui praeveniens ad spectacula praepararet aliis viam non illicite ageret; sed ex hoc illicito agit quod alios prohibet: et similiter dives non illicito agit, si praeoccupans possessionem rei, quae a principio erat communis, aliis communicat; peccat autem, si alios ab usu illius rei indiscrete prohibeat."

7 Cf. Jacques Derrida and Anne Dufourmantelle *De l'hospitalité* (Paris: Calmann-Lévy, 1979); Derrida, *Manifeste pour l'hospitalité*, (Grigny: Éditions Paroles d'Aube, 1999); Derrida, *Spectres de Marx*, (Paris: Éditions Galilée, 1993).

8 Translated from Derrida, *Cosmopolites de tous les pays, encore un effort!* (Paris: Éditions Galilée, 1997), 53-56: "Si Kant prend bien soin de préciser que ce bien ou ce lieu. commun s'étend à 'la surface de la terre', c'est sans doute pour n'y soustraire aucun point du monde ou d'un globe sphérique et fini (mondialisation et globalisation), là où une dispersion infinie reste impossible; mais c'est surtout pour en exclure ce qui s'élève, s'édifie ou s'érige au-dessus du sol: habitat, culture, institution, État, etc. Tout ce qui, à même le sol, n'est plus le sol, et même si cela se fonde sur la terre, ne doit pas être inconditionnellement accessible à tout arrivant. Grâce à la condition de cette stricte délimitation (qui n'est autre que l'institution de la limite comme frontière, nation, État, espace public ou politique), Kant peut alors déduire deux conséquences et inscrire deux autres grilles sur les quelles nous aurions intérêt à réfléchir demain. 1. Toute d'abord il exclut l'hospitalité comme droit de résidence (Gastrecht); il la limite au droit de visite (*Besuchsrecht*). Le droit de résidence devrait faire l'objet d'un traité particulier entre États... 2. - Ensuite, par là même, en définissant dans toute sa rigueur l'hospitalité comme un droit (ce qui est a bien des égards un progrès), Kant lui assigne des conditions qui le font dépendre de la souveraineté étatique, surtout quand il y va du droit de résidence. Hospitalité signifie ici publicité de l'espace public, comme c'est toujours le cas pour le juridique au sens kantien; l'hospitalité de la ville ou l'hospitalité privée sont dépendantes et contrôlées par la loi et par la police de l'État."

9 Translated from Derrida, *Manifeste pour l'hospitalité*, 151: "De la même façon qu'il faut donner au-delà de ce que l'on a, il faut donner au-delà de ce qu'on est: se transformer au-delà de ce qu'on peut anticiper, se laisser vraiment convertir, accepter que l'autre m'affecte au point que je ne m'y retrouve plus, au point que je puisse être mis en danger. Le risque le plus grave touche à ma propre identité."

10 Derrida *Manifeste pour l'hospitalité*, p. 113-114.