ESSAY

Hypocritical Inhospitality: The Global Refugee Crisis in the Light of History

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Political authorities often claim that states have an absolute right to decide for themselves who enters their territory and the conditions on which they enter by mere virtue of their sovereignty. In 2018, for example, the then U.S. ambassador to the United Nations, Nikki Haley, responded to the UN's criticism of the Donald Trump administration's practice of separating children from parents entering the United States without documentation, including those claiming asylum, with a typical appeal to sovereign prerogative: "We will remain a generous country, but we are also a sovereign country, with laws that decide how to best control our borders and protect our people. Neither the United Nations nor anyone else will dictate how the United States upholds its borders."[1]

A brief glance at the history of sovereignty, however, reminds us of two crucial things. First, sovereignty is socially constructed, and its meaning and implications have changed and continue to change over time. Sovereignty need not entail, and historically has not entailed, an absolute right to regulate the movement of people in and out of one's territory.[2] Second, we are reminded of the deep and problematic ties between the history of sovereignty's construction and the history of the European colonial project.[3]

Sovereignty was for a long time considered a privilege enjoyed only by Europeans and those non-Europeans whom Europeans deigned to acknowledge as civilized members of the "family of nations." It was not until the second half of the twentieth century that Europe's widespread empires were finally dismantled, self-government was granted to formerly colonized peoples, and the

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institution of the territorially bounded sovereign state spread across the globe. More than that, for centuries, the wealth of Europe's sovereign powers was augmented, and the territories of their soon-to-be-sovereign settler colonies beyond Europe were acquired by means of violent conquest, subjection, enslavement, displacement, and, often, slaughter of nonsovereign indigenous peoples.

That much is well known. What is less well known is that one justification that European imperial powers offered for the violent subjection of nonsovereign non-Europeans, at least for a time, was indigenous peoples' violation of a supposedly natural and enforceable duty of hospitality. Today, many of these same powers—including European Union member states and former settler colonies, such as the United States and Australia—work tirelessly and expend billions of dollars to resist granting hospitality to forcibly displaced people seeking asylum at their borders or waiting in refugee camps and urban centers in developing regions of the world. The powerful once demanded hospitality from the vulnerable. They now deny it to them.

This essay examines the hypocritical inhospitality of these wealthy and powerful states in four stages. I first outline how the notion of a duty of hospitality was deployed as a justification for European colonialism. Second, I contrast this historical demand for hospitality with the denial of hospitality by former colonial powers today, noting that they legitimate this denial by again imposing an expectation of hospitality on others. Third, I consider the justified limits to the duty of hospitality, explaining how Immanuel Kant and others usefully sought a formulation of the duty that would protect the vulnerable from the predations of powerful intruders while still requiring the powerful to provide relief to the displaced vulnerable. And fourth, I argue, given that certain states accrued vast wealth and territory from the European colonial project, which they justified in part by appeals to a duty of hospitality, these states are bound now to extend hospitality to vulnerable outsiders not simply as a matter of charity or even reciprocity, but as justice and restitution for grave historical wrongs.

Hospitality as Justification for Colonialism

Contemplating the justice of the Spanish conquests in the New World in the sixteenth century, theologian Francisco de Vitoria asserted that the Spaniards would have had just cause for war if they had been unjustifiably denied the right to travel and dwell in the Native Americans' lands. "Amongst all nations," he declared, "it

is considered inhuman to treat strangers and travelers badly without some special cause, humane and dutiful to behave hospitably to strangers." This principle of hospitality was said to be confirmed by scripture. "The Spaniards are the barbarians' neighbors, as shown by the parable of the Samaritan," he claimed, "and the barbarians are obliged to love their neighbors as themselves, and may not lawfully bar them from their homeland without due cause." The French could not lawfully prohibit Spaniards from living in France so long as they did no harm, he observed, and so neither could the Native Americans bar them from the New World. "To refuse to welcome strangers and foreigners," he summarized, "is inherently evil."[4]

Vitoria, it should be said, doubted whether the Native Americans had in fact breached their duty of hospitality to the Spaniards, particularly since the Spaniards were strongly armed and gave the indigenous people good reason to fear their intentions. Indeed, he worried that the Spaniards ultimately had no cause for war other than "sheer robbery."[5] Some of Vitoria's fellow theologians at the universities of Salamanca and Alcalá expressed their doubts about the applicability of the duty of hospitality to the situation at hand even more strongly, noting that the invading Spaniards were not mere "travelers" to whom hospitality was owed any more than Alexander the Great had been owed hospitality on his own journeys.[6]

Nevertheless, the argument for an enforceable duty of hospitality would be confidently reasserted and expanded by European powers and their advocates to justify imperial expansion over subsequent decades. Hernán Cortés had already made use of the idea in the early sixteenth century, claiming that the Aztecs' pretense of hospitality was belied by their efforts to persuade the Spaniards to turn back and by their plots to ambush them, suggesting that this justified the Spanish resort to arms.[7] In the early seventeenth century, Hugo Grotius wrote of the "sacrosanct law of hospitality," invoking numerous historical examples of wars waged in response to breaches of this law and claiming that the Dutch had the right to resort to war on the same premises in the East Indies should the Portuguese be inhospitable and deny them entry and commerce in lands they controlled.[8] An anonymous tract commissioned by the Virginia Company in 1610 even portrayed the colonizer as a peaceful seeker of sanctuary: "Is it not against the law of nations, to violate a peaceable stranger, or to deny him harbor?"[9]

This notion of an enforceable duty of hospitality was just one item in an evolving grab bag of justifications utilized by European rulers and companies to justify the mass killing of indigenous peoples, the extraction of wealth, the acquisition of

territory, the establishment of sovereign authority, and the mass migration of tens of millions of Europeans out of Europe.[10] Put plainly, the wealth and territory enjoyed by many states in the Global North today—both former centers of empire within Europe and former settler colonies beyond Europe—are at least partially products of the violent subjection of indigenous peoples that was at times justified with appeals to a duty of hospitality, a duty that these same states refuse to perform for so many displaced people today.

Hospitality Denied

As we have seen, having once demanded hospitality from the vulnerable, the powerful now deny it to them. The numbers are alarming and worth stating. More than seventy million people today are forcibly displaced as a result of persecution, conflict, violence, or human rights violations. Of these people, forty-one million are internally displaced, twenty-five million have fled their country of origin and had their refugee status recognized by the United Nations High Commissioner for Refugees (UNHCR) or the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNWRA), and three million have fled their country of origin and are awaiting a decision on their application for asylum. On average, thirty-seven thousand people are forced to flee their homes every day, more than half of whom are children. And displacement for most people is protracted. More than three-quarters of the world's refugees have been displaced for more than five years. More than five million have been displaced for more than twenty years. While many states in the Global North perceive the global refugee crisis in terms of large numbers of displaced people approaching or crossing their borders, the vast majority of refugees—84 percent—are hosted by countries in developing regions of the world. Indeed one-third of the world's refugees are hosted by the world's "least developed" countries, including Bangladesh, Uganda, and conflict-torn Yemen.[11]

Certainly, some states in the Global North admit tens of thousands of refugees for resettlement each year and provide protection to hundreds of thousands of asylum claimants. But these countries' combined efforts provide a home to only a small fraction of the world's forcibly displaced people. Only 92,400 refugees were admitted for resettlement in 2018. This amounts to less than 0.5 percent of the global refugee population and less than 10 percent of the number of refugees that UNHCR identified as being in specific or urgent need of resettlement

that year.[12] And not only do states in the Global North refrain from providing hospitality to larger numbers of forcibly displaced people but they also spend billions of dollars each year to ensure the containment of displaced people in the Global South, deterring asylum seekers from approaching their territories and detaining for long periods those who manage to claim asylum in the hope that they give up and either return to their country of origin or seek a new home elsewhere.

And things are getting worse. As the global number of refugees continues to rise each year (nearly doubling since 2012), resurgent nationalism has resulted in a hardening of attitudes in the Global North toward displaced foreigners (resulting in a more than 50 percent reduction in resettlement numbers since 2016). This resurgent antagonism among the world's most powerful states hampers efforts to develop global solutions, as evidenced by the United States' rejection of the UN's Global Compact on Refugees in 2018 as being incompatible with its "sovereign interests."[13] The Global North thus shifts duties of hospitality onto the Global South.

Well-meaning practitioners and scholars inadvertently facilitate this approach. Expectations that wealthy and powerful states should extend hospitality to greater numbers of people are sometimes diluted by sweeping claims that, actually, "all refugees want to go home."[14] Arguments are then made that it is best for displaced people and the communities to which they will ultimately return that they remain close to home, in the Global South, where they receive humanitarian aid and "development solutions" from the Global North, but only a "symbolic minimum" of its hospitality.[15]

The populations of countries-of-first-asylum in the Global South, moreover, are often cast by actors in the Global North as "naturally hospitable" people, rendering less remarkable the fact that one in six people in Lebanon and one in fourteen in Jordan are refugees.[16] Hospitality is thus once again demanded of formerly colonized peoples in the hope that they will again extend welcome, not to colonial intruders this time, but to people forcibly displaced from neighboring states. And in the cases where these "naturally hospitable" communities, overwhelmed by the enormous numbers of displaced people within their territories, exasperated with the shortfalls in the international assistance they receive, and goaded by the exclusionary policies of wealthier and more powerful states, begin closing their own borders and returning refugees prematurely to unsafe home countries, they are condemned for abandoning their role as "the world's great refugee-hosting

countries."[17] The powerful thus continue to shift the duty and expectation of hospitality away from themselves and onto weaker states.

Hospitality's Just Limits

To be sure, there were serious problems with how European colonizers and their defenders constructed the duty of hospitality, and their formulation ought not to be replicated today. The reservations that Vitoria and his colleagues at Salamanca and Alcalá expressed about an absolute and enforceable duty were further clarified and theorized over subsequent centuries, and the justifiable limits to hospitality that certain theorists proposed remain vital. In the late seventeenth century, Samuel Pufendorf developed a notion of "imperfect" duties—which he considered duties whose performance is rightly subject to the discretion of the duty bearer and not enforceable—and he offered hospitality as an example.[18] Recognizing that hospitality had been deployed as an excuse for conquest, he explained that, while the granting of hospitality to others was certainly a virtue, no state was bound to grant it to those they had reasonable grounds to fear. He acknowledged that it would be immoral for a state to show "indiscriminate hostility to those who come on a peaceful mission," but thought that no state was obliged to receive "a great multitude, armed, and with hostile intent."[19] The following century, Kant declared "universal hospitality" to be a matter of "cosmopolitan right," but, like Pufendorf, he saw that host states needed to retain the right to limit the entry and settlement of outsiders where necessary, recognizing that European colonizers had repeatedly abused the principle. Kant argued that "the injustice they show in *visiting* foreign lands and peoples (which with them is tantamount to *conquering* them) goes to horrifying lengths."[20]

These theorists sought to place just limits on the duty of hospitality that might protect the vulnerable from the predations of the powerful. However, they in no way intended these limits to provide justification for the powerful to deny hospitality to the vulnerable. Some more recent advocates of the duty of hospitality, such as Jacques Derrida, misunderstand this, forgetting the historical context and reading the limits to hospitality proposed by Kant and others not as necessary responses to colonial abuses, but as problematic justifications for the exclusion of vulnerable outsiders.[21] In fact, while rejecting the abuse of hospitality by colonial powers, Kant made clear that he did not intend to provide justification for excluding the vulnerable. A foreigner cannot be turned away if this will have the effect of

"destroying him," he declared. Provided the foreigner "behaves peaceably . . . he cannot be treated with hostility."[22] Similarly, while rejecting the deployment of the duty of hospitality as a justification for the Spanish conquests in the New World, Domingo de Soto, one of Vitoria's colleagues at Salamanca, wrote passionately of the duty of European political communities to render hospitality to the foreign poor and to treat them the same as local residents, allowing them to enter the city, to beg, and to have their necessities met.[23]

Emer de Vattel put it well in the mid-eighteenth century. A political community is under no obligation to contribute to the welfare of outsiders if this would require doing "an essential injury to herself," he contended. But he also suggested that the community ought not to refuse to aid others out of fear of "a slight loss, or any little inconvenience: humanity forbids this; and the mutual love which men owe to each other, requires greater sacrifices."[24] Vattel applied his reasoning directly to the issue of strangers who, driven from their own country, seek asylum in another. If the sovereign judges that admission of a particular group of strangers "would be attended with too great an inconvenience or danger," he wrote, "he has a right to refuse." But in general, "every state ought, doubtless, to grant to so unfortunate a people every aid and assistance which she can bestow without being wanting to herself."[25]

The duty of hospitality is imperfect and justly limited. Developing states today, for example, are surely permitted to limit the entrance of predatory or ill-intentioned outsiders, be they individuals or corporations or states. But these ethical limits do not excuse powerful states for their inhospitality to the forcibly displaced, all the more so since the power and capacity that they enjoy to welcome vulnerable outsiders is at least partly a consequence of their historical demands for hospitality from vulnerable others.

Hospitality as Restitution

Not only is the present-day inhospitality of former centers of empire and former settler colonies hypocritical but it is also deeply unjust. The issue is not merely that former imperial powers once claimed hospitality from others and so, for reasons of fairness or reciprocity, they should now extend it to others. The problem is more that these powers deployed this claimed duty of hospitality—along with a range of alternative claims—to justify war and conquest, enslavement and eradication, the mass migration of people out of Europe, and the inflow of natural

resources into Europe, enabling the accrual of vast territories and riches. These former imperial centers and settler colonies remain some of the world's wealthiest and most powerful states, maintaining their wealth and power in the postcolonial era in part through the establishment and perpetuation of global practices, rules, and structures that contribute to sustaining the underdevelopment and instability of others and, in turn, their vulnerability to displacement-generating crises. From the harms caused by their foolish wars and their reckless provision of arms and finance to abusive regimes, to their exploitative economic bargaining practices and their contributions to the routinized destruction of the global climate, the affluence and security of those who once demanded hospitality from others is inextricably connected to the poverty, vulnerability, and displacement of those whose requests for hospitality they now deny.[26]

Scholars and commentators increasingly contend that the responsibilities that states in the Global North have for responding to the global refugee crisis should take into account not only their *capacity* to provide welcome but also their *culpability* for displacement. Some argue for a notion of "asylum as reparation," focusing often on the obligations of powerful states whose recent injustices have contributed to the displacement of others, such as those states that are responsible for the 2003 invasion of Iraq.[27] Tendayi Achiume and others look further backward to argue compellingly for "migration as decolonization," asserting that former colonial powers and their settler colonies are obliged as a matter of justice to open their borders to former colonial subjects.[28]

For some, such obligations are owed to particular victims of injustice or their descendants. But the impacts of global injustices are often so complex and diffuse that it is difficult to precisely apportion blame to particular states for particular crises and to accurately calculate their contributions to displacement. At the very least, recognition of the historical (and ongoing) culpability of wealthy and powerful states for injustices that have contributed to the displacement of strangers should prompt far greater willingness to extend hospitality to the displaced than we presently see—and should do so to an even greater extent when one considers that some of these injustices were themselves justified with appeals to a duty of hospitality. Recognition of the hypocrisy of inhospitality should prompt former centers of empire and former settler colonies to hesitate before declining to contribute more than their "fair share" to global resettlement and refusing to pick up the "slack" that may be left behind by others. And it ought to prevent those of us who are citizens of these states from conceiving of the duty to welcome forcibly

displaced people as a discretionary act of charity or a gratuitous act of generosity. It is a matter of justice—a restitution for wrongs done, and often done in the name of this very same duty of hospitality.

NOTES

[1] Nikki Haley, quoted in "Press Release: Ambassador Haley on the UN's Criticism of U.S. Immigration Policies," United States Mission to the United Nations, June 5, 2018, usun.usmission.gov/press-release-ambassador-haley-on-the-uns-criticism-of-u-s-immigration-policies/.

[2] The Peace of Westphalia, signed in 1648, for example, which is often (mis)represented as having attributed absolute authority to sovereign states to govern their territories as they wished, clearly imposed upon signatory powers an obligation to grant rights of emigration to religious minorities.

[3] Among numerous analyses, see Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge, U.K.: Cambridge University Press, 2005); and Lauren Benton, *A Search for Sovereignty: Law and Geography in European Empires, 1400–1900* (Cambridge, U.K.: Cambridge University Press, 2010).

[4] Francisco de Vitoria, "On the American Indians," in Anthony Pagden and Jeremy Lawrance, eds., *Political Writings* (Cambridge, U.K.: Cambridge University Press, 1991), pp. 278–81.

[5] Francisco de Vitoria, "Letter to Miguel de Arcos, OP Salamanca, 8 November [1534]," in Pagden and Lawrance, *Political Writings*, p. 332. See also Vitoria, "On the American Indians," in ibid., p. 282.

[6] Melchor Cano, "De dominio Indorum," in Luciano Pereña, ed., *Corpus hispanorum de pace*, vol. 9 (Madrid: Consejo Superior de Investigaciones Cientificas, 1982), p. 579; and Domingo de Soto, *De iustitia et iure* (1553), V.3.3, pp. 417–27.

[7] Hernán Cortés, "The Second Letter," in Anthony Pagden, ed. and trans., *Letters from Mexico* (New Haven, Conn.: Yale University Press, 1986), pp. 79–80.

[8] Hugo Grotius, *Commentary on the Law of Prize and Booty*, ed. Martine Julia Van Ittersum (Indianapolis: Liberty Fund, 2006), pp. 304–5. See also Hugo Grotius, *De jure belli ac pacis libri tres*, vol. 2, trans. Francis W. Kelsey (Oxford: Clarendon Press, 1925), II.2.15–17, pp. 201–3.

[9] "A True Declaration of the Estate of Virginia," quoted in Andrew Fitzmaurice, *Humanism and America: An Intellectual History of English Colonisation, 1500–1625* (Cambridge, U.K.: Cambridge University Press, 2003), p. 145.

[10] Tendayi Achiume notes, "The European colonial project involved the out-migration of at least 62 million Europeans to colonies across the world between the nineteenth and the first half of the twentieth century alone." E. Tendayi Achiume, "Migration as Decolonization," *Stanford Law Review* 71, no. 6 (June 2019), pp. 1509–74, at p. 1517.

[11] United Nations High Commissioner for Refugees, *Global Trends: Forced Displacement in 2018* (Geneva: UNHCR, 2019), pp. 2–3, 17, 22.

[12] Ibid., pp. 3, 30.

[13] Kelley Currie, "Explanation of Vote in a Meeting of the Third Committee on a UNHCR Omnibus Resolution" (speech, U.S. Mission to the United Nations, New York City, November 13, 2018). See also UNHCR, *Global Trends: Forced Displacement in 2018*, p. 4; UNHCR, *Global Trends: Forced Displacement in 2017* (Geneva: UNHCR, 2018), p. 30 (reporting that 189,300 refugees were admitted for resettlement in 2016).

[14] "'All Refugees Want to Go Home Someday'—UNHCR Spokesperson and Author Melissa Fleming," *UN News*, May 26, 2017, news.un.org/en/story/2017/05/558212-all-refugees-want-go-home-someday-unhcr-spokesperson-and-author-melissa-fleming. For a critique, see Lena Kainz and Rebecca Buxton, "All Refugees Want to Go Home. Right?," openDemocracy, October 18, 2017, www.opendemocracy.net/en/all-refugees-want-to-go-home-right/. On repatriation more generally, see Mollie Gerver, *The Ethics and Practice of Refugee Repatriation* (Edinburgh: Edinburgh University Press, 2018).

[15] Alexander Betts and Paul Collier, *Refuge: Rethinking Refugee Policy in a Changing World* (Oxford: Oxford University Press, 2017), p. 230. For a critique, see Benjamin Thomas White, "'Refuge' and History: A Critical Reading of a Polemic," *Migration and Society: Advances in Research* 2, no. 1 (2019), pp. 107–18.

[16] Dan Bulley, *Migration, Ethics and Power: Spaces of Hospitality in International Politics* (London: SAGE, 2017), pp. 88–116 (USAID's description of the "natural hospitality" of Jordan's people is at p. 109); and UNHCR, *Global Trends: Forced Displacement in 2018*, p. 3.

[17] See, for example, Bill Frelick, *"I Have No Idea Why They Sent Us Back": Jordanian Deportations and Expulsions of Syrian Refugees* (New York: Human Rights Watch, 2017), p. 1.

[18] Samuel Pufendorf, *De jure naturae et gentium libri octo,* vol. 2, ed. Charles Henry Oldfather and W. A. Oldfather (Oxford: Clarendon Press, 1934), I.7.7, pp. 118–19.
[19] Ibid., III.3.9–10, pp. 363–67.
[20] Immanuel Kant, "Toward Perpetual Peace," in *Practical Philosophy*, trans. and ed. Mary J. Gregor (Cambridge, U.K.: Cambridge University Press, 1996), pp. 328–29.
[21] Jacques Derrida, "On Cosmopolitanism," in *On Cosmopolitanism and Forgiveness*, trans. Mark Dooley and Michael Hughes (London: Routledge, 2001), pp. 1–24. For critiques of Derrida's reading, see Gideon Baker, "The Spectre of Montezuma: Hospitality and Haunting," *Millennium* 39, no. 1 (August 2010), pp. 23–42; and Garrett W. Brown, "The Laws of Hospitality, Asylum Seekers and Cosmopolitan Right: A Kantian Response to Jacques Derrida," *European Journal of Political Theory* 9, no. 3 (July 2010), pp. 308–27.
[22] Kant, "Toward Perpetual Peace," p. 329.
[23] See Daniel Schwartz, *The Political Morality of the Late Scholastics: Civic Life, War and Conscience* (Cambridge, U.K.: Cambridge University Press, 2019), pp. 64–67.
[24] Emer de Vattel, *The Law of Nations, or: Principles of the Law of Nature, Applied to the Conduct and Affairs of Nations and Sovereign, with Three Early Essays on the Origin and Nature of Natural Law and on Luxury*, ed. Béla Kapossy and Richard Whatmore (Indianapolis: Liberty Fund, 2008), preliminaries §14, II.10.131, pp. 73–74, 326.
[25] Ibid., II.10.136, pp. 328–29. See also II.18.332, pp. 454–55. For further discussion, see Luke Glanville, "Responsibility to Perfect: Vattel's Conception of Duties beyond Borders," *International Studies Quarterly* 61, no. 2 (June 2017), pp. 385–95.
[26] On Global North responsibilities for global inequality and injustice generally, see Thomas Pogge, *World Poverty and Human Rights*, 2nd ed. (Cambridge, U.K.: Polity, 2008); Richard W. Miller, *Globalizing Justice: The Ethics of Poverty and Power* (Oxford: Oxford University Press, 2010); and Iris Marion Young, *Responsibility for Justice* (Oxford: Oxford University Press, 2011).
[27] James Souter, "Towards a Theory of Asylum as Reparation for Past Injustice," *Political Studies* 62, no. 2 (June 2014), pp. 326–42; Alise Coen, "Capable and Culpable? The United States, RtoP, and Refugee Responsibility-Sharing," *Ethics & International Affairs* 31, no. 1 (Spring 2017), pp. 71–92; Joseph Nevins, "Migration as Reparations," in Reece Jones, ed., *Open Borders: In Defense of Free Movement* (Athens, Ga.: University of Georgia Press, 2019), pp. 129–40; and Lucy Hovil, "Telling Truths about Migration," *International Journal of Transitional Justice* 13, no. 2 (July 2019), pp. 199–205.
[28] E. Tendayi Achiume, "Reimagining International Law for Global Migration: Migration as Decolonization?," *American Journal of International Law* 111, no. 1 (July 2017), pp. 142–46; and Achiume, "Migration as Decolonization."

Abstract: One of the justifications offered by European imperial powers for the violent conquest, subjection, and, often, slaughter of indigenous peoples in past centuries was those peoples' violation of a duty of hospitality. Today, many of these same powers—including European Union member states and former settler colonies such as the United States and Australia—take increasingly extreme measures to avoid granting hospitality to refugees and asylum seekers. Put plainly, whereas the powerful once demanded hospitality from the vulnerable, they now deny it to them. This essay examines this hypocritical inhospitality of former centers of empire and former settler colonies and concludes that, given that certain states accrued vast wealth and territory from the European colonial project, which they justified in part by appeals to a duty of hospitality, these states are bound now to extend hospitality to vulnerable outsiders not simply as a matter of charity, but as justice and restitution for grave historical wrongs.

Keywords: colonialism, forced displacement, global refugee crisis, hospitality, hypocrisy, reparations