IPRPD
International Journal of Arts, Humanities and Social Sciences
ISSN 2693-2547 (Print), 2693-2555 (Online)
Volume 06; Issue no 12: December 2025
DOI: 10.56734/ijahss.v6n12a8

ON COSMOPOLITAN LAW AND MIGRANTS AND THE IMPORTANCE OF GAZE

Giulia Maria Gallotta[1]

[1]*Researcher, History of Political Ideas, Department of Education, Psychology and Communication Science, University of Bari "Aldo Moro"*

Abstract

The essay begins with an analysis of the third definitive article of I. Kant's *Perpetual Peace* on cosmopolitan law and the interpretations that have been provided to address the issue of the digitisation of EU borders and what this actually means for those who arrive there in search of protection or a better life. The conclusions highlight how what the EU is trying to erase is the right to be seen, which is the cornerstone of Kantian cosmopolitan law.

Keywords

European Union – Kant's Perpetual Peace – Migrants – Digitalisation

In Valsugana, a small valley in eastern Trentino, the scene of fierce battles and an even fiercer trench war during the First World War, you can visit the Permanent Exhibition of the Great War. It is a short but very dense exhibition, which winds its way through meticulously reconstructed war scenes, such as trenches and field hospitals, and displays of weapons used by soldiers. Muskets and iron maces were used at extremely close range, allowing the soldier to see the face of the person he was striking.

This reminded me of a video game, which was the inspiration for a research project I worked on last year, *Papers, Please*! Here, the character the player is asked to identify with is the border guard of an imaginary autocratic country. The player does not know what he looks like or any personal details about him, only that he has a large family to support on an insufficient salary and that this can be increased based on the number of rejections he makes. In a completely mirror-image way, the player/customs officer loses points until he/she is eliminated from the game for every person he lets through, regardless of whether or not they have the right to do so.

The peculiarity of the game is that the guard knows not only the personal details and countries of origin of those who come to his desk: he knows their stories, i.e. he/she knows how valid and legitimate their reasons for entering are and how necessary entry is for their physical safety.

This means that the player must maintain a careful balance between their desire to help people he/she knows are in real danger and the need to carry out sometimes unjustified rejections in order to continue playing.
In *Papers, Please!,* too, the player sees, in the broadest sense of the word, the people to whom he must decide whether or not to grant entry into the country. In fact, these are all he/she sees, as he/she plays through the eyes of the border guard.

It is precisely this view of those we encounter, whether on the battlefield or at our borders, that seems to me to be gradually disappearing. Today's conflicts are fought with extensive use of aviation and, above all, drones, whether in the Russian-Ukrainian war, the Israeli-Palestinian conflict or the civil war in Darfur. Even the migration policies that the European Union has adopted and continues to develop make increasing use of artificial intelligence systems to screen people arriving at EU borders in search of protection, thus reducing the chances of direct confrontation between those who arrive, those who welcome them and those who assess their requests for international protection.

To explain what I believe this entails, I would like to start with I. Kant and his cosmopolitan law.

I hope you will bear with me.

I. Kant's 1795 essay *On Perpetual Peace* represents a revolution in the way of thinking about peace among European states at the time. The recurrence of wars had led many thinkers to question how to break the vicious circle, but with little encouraging results. To remain in the 18th century and with the authors I have had the

opportunity to study in depth, in his 1713 *Projet pour rendre la paix perpètuelle en Europe*, the Abbé de Saint Pierre, for example, called for the creation of a congress of sovereigns with the dual purpose of maintaining peace and ensuring their permanence on their respective thrones. This was an attempt to limit the consequences of the wars of succession that France itself had undertaken. In a subsequent edition of 1717, the congress of European sovereigns was intended as an anti-Turkish measure. What remains constant in Saint-Pierre's project is its basis on a coalition among sovereigns and, ultimately, on the central role of France.

This was, moreover, a common feature of the peace projects of the time, namely to guarantee the author's country a prominent role in the framework of the peaceful relations that were hoped for.

In this sense, Jean Jacques Rousseau was among the first to break the mould. In his *Judgement* on an extract from Saint Pierre's project, which he formulated when called upon to organise the papers of the deceased abbé, Rousseau did not limit himself to outlining the characteristics that an organisation of states should have in order to guarantee peace. He did so in entirely modern terms, postulating the need for an autonomous budget, binding mechanisms for resolving disputes among its members and, above all, their absolute equality. Furthermore, in a fragment of uncertain date, Rousseau firmly links peace in Europe to a radical policy of internal reforms within the states of the continent that would establish a true social contract in each of them. However, this is a hypothesis that the Genevan philosopher does not consider feasible.

In practice, therefore, Rousseau reaches the same conclusions as T. Hobbes, the 17th-century theorist of the Leviathan state, for whom there are no remedies for the international state of nature. This would require an impossible pact among states similar to the internal pact by which individuals cede all their power and rights to the Leviathan. Moreover, for Hobbes, international anarchy is more tolerable than that between individuals, given the costs and uncertain outcomes of wars.

In this scenario, Kant is the first to hypothesize a system for guaranteeing peace among peoples based on law, i.e. on what reason prescribes to all men in order to achieve the progress of humankind as a whole. And the instrument for achieving this progress is law, i.e. binding rules that make the freedom and development of each individual compatible with those of others (Kant 1973).

The booklet *On Perpetual Peace* therefore outlines a three-stage plan, interrelated and equally necessary to achieve peace: an internal republican constitution within states, international law based on *'a federation of free states'* (Kant 1991, 37), and cosmopolitan law *'limited to the conditions of universal hospitality'* (43). The *First definitive article* does not pose any particular difficulties for scholars because its prescriptions on the need for the people to decide on war and on the validity of a system of separation of powers are quite clear, except perhaps for the definition of the concept of independence of citizens, which Kant in previous writings defines in terms of economic independence but here reformulates in terms of the ability to stand trial. More convoluted is the wording of the *Second definitive article*, in which Kant starts from the moral/rational obligation for states to establish a *'federation of peace'*, i.e. a contract by which they agree to submit to *'the coercion of public laws'* (42) and then falls back on a simple alliance, i.e. a confederal bond within which states do not cede sovereignty. The solution that has been given over the centuries to this contradiction in Kant's argument also has consequences for what the philosopher meant by cosmopolitan law, i.e. what the right of visitation of the foreigner consisted of.

In a 2012 essay, Cavallar analyses Kant's cosmopolitan law within the broader vision of the latter not only of politics but also of religion and the destiny of man. In this sense, he identifies three types of cosmopolitanism. The legal-political type would develop around Kant's idea of a world republic which, by regulating relations between states on the basis of binding laws, would be a precursor to the modern doctrine of human rights and would allow the realization of the highest political good. Cavallar emphasises how the concept of the highest good is central to Kant's works, whether political, religious or pedagogical, and how it has been continuously refined to encompass all the different meanings of cosmopolitanism. In this sense, Cavallar emphasises how the concept of the highest good represents the most general *bestimmung* of man, his legal and moral destiny as a noumenal being, which is realised through the discreet work of Nature. This would act through the contradictions of men and what they can do, creating the context for the realisation of their purpose, namely civil constitutions that guarantee their external freedom and religious institutions that seek the realisation of the highest good. The spread of the Enlightenment, i.e. the light of reason, would also contribute to the realisation of the highest good through the process of self-education of men that is realized throughout history (Cavallar 2012).

P. Kleingeld also starts from the assertion that Kantian philosophy contains both political cosmopolitanism and religious cosmopolitanism, but hypothesizes that the former represents a sort of prefiguration of the latter. The starting point would be the need, postulated by Kant in the *second definitive article*, for a public authority capable of resolving conflicts between states on the basis of binding public laws, adopted in full agreement between the states that choose to adopt them. A confederation, therefore, capable of evolving over time into a federation with coercive powers. In this sense, Kleingeld interprets the cosmopolitan right as a right to interaction, 'a right to present oneself and request contact or entry without being treated as an enemy' (Kleingeld 2016, 18), without this implying any right to enter, unless refusal would result in the death of the stranger. However, as Kleingeld points out, the language of universal citizenship is not very present in Kant's writings, which instead develop the theme of a kingdom of ends, within which the ultimate moral legislator is God himself.

What is striking in both scholars is how cosmopolitan law, which is a genuine innovation of Kant's in an era that limited or prevented the movement of ethnic groups, such as the Roma, social groups such as the poor and religious groups such as the Jews, is reabsorbed into the broader sphere of Kant's religious-pedagogical philosophy, to the point that Cavallar does not dwell on it too much, or in any case reads it as a metaphor for a reflection that Kant begins with *Religion within the Bounds of Bare Reason* and continues in the *Metaphysics of Morals.*

In this sense, I find G. Marini's analysis preferable, which, while taking Kant's thought as a whole into consideration, focuses on his theory of peace. In this sense, on the basis of rigorous philological studies of Kant's texts, and *On Perpetual Peace* in particular, Marini interprets cosmopolitan law, as set out in the 1795 work, as the result of a progressive construction that culminates in the right of world citizens within a world republic. This would not be the universal monarchy so feared by Kant, but a *forma regiminis* based on the separation of powers and which 'resolves conflicts between peoples through the civilisation of legal procedures'[1] (Marini 1998, 81). Marini also believes that for Kant, the world republic represents an ideal that reason imposes on humanity to achieve through the development of its Enlightenment, an ideal which, in the tangled prose of the *Second definitive article,* is contrasted with confederation as a historically viable path. Similarly, cosmopolitan law would also be articulated, on the one hand, in the ideal of the 'right of world citizens' (Marini 1998, 83), which will be realised together with the world republic, and, on the other hand, in the right of visitation in the *Third definitive article* as an approximation of the ideal for the present time.

Beyond the differences in approach and conclusions, these analyses share the fact that they are based on a decidedly broad consideration of Kant's works.

On the other hand, there are different types of analyses of cosmopolitan law which, in a certain sense detaching it from Kant's philosophical corpus, attempt to update it, making it the key to understanding contemporary phenomena or the starting point for broader proposals.

An example of the former type is the essay by E. Greblo. He emphasises that Kant was the first to base the condition of the foreigner on law, 'an original right that precedes any positive rights or differences between individual states' (Greblo 2021, 153). Cosmopolitan law would therefore define an original right, linked to what Kant defines as the common belonging of humankind to a round earth that therefore obliges men to meet, a right that will emerge and consolidate in the development of interactions between people. Greblo also points out how Kant's harsh criticism of the colonisation practices of his time allows us to distinguish between a right to visit and a right to remain, and how Kant limits cosmopolitan law to the former only. This interpretation can be likened to that of F. Silvestrini, who, however, sees the individual and the progress of his rights as the driving force and litmus test for assessing the progress of humanity, on which Kant relies for the realisation of peace and the ultimate goal of humanity. However, by limiting his analysis to the texts preceding *On Perpetual Peace,* Silvestrini remains fixed on cosmopolitan law as 'a celebration of the public prerogatives of the individual that transcend the state dimension, since in it they suffer from instability and cogent uncertainty' (Silvestrini 2013, 69-70), which is exactly what the gradual construction of *On Perpetual Peace* seeks to overcome.

Of the second type, that is, cosmopolitan law as a starting point for broader proposals, is, on the other hand, J. Derrida's proposal. In a 1996 speech, later published, at the International Parliament of Writers, the philosopher used it as a benchmark to measure the scope of his proposal to establish sanctuary cities, open to the reception of political refugees, as a response to the progressive tightening of criteria for granting political asylum in France and in the countries of the European Union in general (Derrida 1997).

In contrast, in S. Benhabib's reflection, cosmopolitan law becomes the basis on which to build a radical critique of borders. The scholar starts from the link that Kant establishes between cosmopolitan law and the effective realization of a civil order between states. Without the latter, i.e. in the absence of fixed binding laws to regulate relations between states, cosmopolitan law as universal hospitality would lack a public authority capable of enforcing compliance, especially in cases where refusal would result in the death of the applicant. In other words, it would be a law devoid of any authority and therefore unenforceable, doubtful in its philosophical rather than legal foundations (Benhabib 2006). This is the point from which Benhabib launches a harsh critique of the hardening of borders in the contemporary world. These would have the historical function of distinguishing between those who belong to the political community they delimit and those who are outside it, but the criteria for exclusion should be morally justified in democratic discussion among citizens and not assumed to be a morally neutral historical accident. Here, for Benhabib, lies the paradoxical structure of contemporary democracies: born on the promise of supporting the development of human rights and the will of the democratic majority, they take away from the latter the choice on the boundaries of citizenship (34).

My brief review does not and cannot claim to be exhaustive. Kant's thought is a boundless field of research and study, whether it be his philosophical, political or pedagogical works.

What everyone seems to agree on, however, regardless of the developments in their respective research, is that cosmopolitan law is based on the right of those who arrive at the borders of a country that is not their own or who find themselves living there to be the object, if not of acceptance, then at least of the gaze of the other, the

[1] My translation. This applies to all quotes in the paragraph.

right to be looked at as a human being, belonging to the same species and therefore capable of arousing positive or negative emotions in those who must choose whether or not to welcome them. It is a gaze that can generate, if not empathy, at least a vague sense of responsibility towards the stranger. Precisely for this reason, it seems to me that much is being done to eliminate it.

3. For the European Union, it all began in April 2016 with the presentation of the Commission Communication on the development of *Stronger and Smarter Information Systems for Borders and Security* (Commission 2016). This starts from the observation that the creation of an internal space without borders, with free movement of persons among Member States, requires the parallel consolidation of instruments to ensure the security of Union citizens both internally, through the coordination of judicial databases and police forces, and externally, to control who enters European territory. In this sense, after reviewing existing databases, the Commission puts forward a series of proposals such as extending the Schengen Information System (SIS) to include biometric data of persons wanted by the police or under investigation in the EU and the creation of two new databases to remedy the substantial lack of information on the movements of third-country nationals, in particular those exempt from visa requirements when crossing EU borders. More specifically, these are the Entry/Exit System (EES) for the control of entries and exits from EU territory of any third-country national, regardless of visa requirements, and the European Travel Information and Authorisation System (ETIAS), which should collect requests for prior authorisation to enter and information on the journey itself from third-country nationals who are not required to have a visa, as well as the results of the relevant applications (European Commission 2016). These databases will replace the VIS (Visa Information System) which, by requiring the collection of fingerprints from those applying for a visa to enter the EU, allows border guards to detect anomalies or multiple applications.

Of course, the new databases will also operate on the basis of the collection and storage of applicants' biometric data. Mention is also made of the possibility of making all these databases interoperable through the creation of a single search interface and a single archive for data storage (ibid.).

The proposal on the interoperability of EU databases has since made its way through the legislative process and is now being implemented. This involves the creation of a single search portal providing access to all EU databases on security and migration, a common service for comparing the biometric data stored in these archives, a common archive of data relating to the identity of individuals and a system for detecting multiple identities. These are extremely complex IT systems in terms of design, development and actual implementation.

The EES, for example, became operational in a small number of Member States in October 2025 and should be fully operational within a year. This requires all third-country nationals arriving at EU customs points for short stays to have their facial image and fingerprints recorded. Together with the data contained in the passport, these will be stored to verify that the actual length of stay corresponds to that declared, in order to detect cases of overstaying, verify the identity of individuals and detect the use of false passports (Regulation EU 2017/2226). As for ETIAS, it should come into operation six months later than EES, but several Member States do not yet seem able to make the planned features operational.

This does not mean, however, that the project is being scaled back. The collection of biometric data on travellers to the EU, whether legal or illegal, is continuing. Biometric data is now included in passports, and EURODAC, the database that collects the personal details of irregular migrants arriving at the EU's borders, has been modified to also contain their biometric data for the purpose of verifying their identity and possible danger to the public security of the countries of first arrival. EURODAC will also be included in the interoperability system.

There would seem to be no problem. After all, the collection of biometric data is not invasive and its main purpose is to protect the security of those who already live and work in the EU. The new IT systems only serve to verify that potential criminals do not use fake identities to enter the EU and that regular travellers do not become overstayers, swelling the ranks of those illegal migrants who live like ghosts without rights in European cities and countryside. And after all, biometric data is collected with the explicit consent of the source, conveniently from home computers, at Commission offices around the world or at border crossings.

I do not want to dwell here on the fact that this is true for a small proportion of travellers, namely those who have the material and cultural resources to enter the EU legally. For those who arrive after long journeys, during which they have suffered unimaginable abuse (but sadly documented by the NGOs that deal with them), final crossings on dilapidated boats or exhausting journeys on foot, talking about voluntary consent to the acquisition of their biometric data when it is made clear that refusal means losing the possibility of entry seems a little hypocritical to me.

What I would like to focus on is that all this takes place far away or, for irregular migrants, close to the EU's borders.

The regulation, adopted by the Council and the EP in May 2024 on checks on third-country nationals at external borders, stipulates that migrants who manage to reach the EU's borders or specific transit zones must undergo identity checks and have their biometric and health data, as well as information on the degree of danger they pose to the EU and its Member States, entered into EU databases. This procedure does not give them the right to enter EU territory but serves to quickly channel them into one of the following procedures: refoulement,

submission of applications for international protection at the border for rapid examination, based almost exclusively on data on the recognition rates of protection applications by country of origin, submission of applications for protection in facilities identified by individual Member States where they await the outcome (Regulation EU 2024/1356). This also applies to irregular migrants identified/detained within the territory of the Union. Furthermore, the *Directive on the reception of applicants for international protection* specifies that, once they have entered, migrants can only enjoy reception conditions in the State of entry, where they are obliged to lodge their application for protection, even in the case of irregular migrants apprehended within the EU's borders (Directive EU 2024/1346). It seems superfluous to point out that they are often housed in facilities far from populated areas.

This simply means that, except for the now rare reports of landings, EU citizens never even see those who arrive at their borders. This is all the more so since the *Regulation on return procedures at the border* establishes the simultaneity of refusal of entry and expulsion measures (Regulation EU 2024/1349). In this case, any travel documents are taken from the migrant, who may be moved to detention facilities or special centres at the border for up to 12 weeks, pending return.

Return is still decided on the basis of national decisions and procedures, pending the adoption by the Council of Ministers and the European Parliament of the Commission's proposal for a single return procedure. I would just like to emphasise that the latter should be based on the recognition of national return decisions, and that this continues to be dramatically countered by the non-portability of international protection decisions.

In December 2024, in a letter to EU heads of state and government ahead of the last European Council meeting of the year, Commission President von der Leyen returned to the subject of EU migration policy, in light of the consequences in terms of migration flows that the fall of Bashar Assad's regime in Syria could have and those generated at the north-eastern borders of the Union by the hybrid war waged by Russia and Belarus through the movement of masses of migrants. Here, the conciliatory tone that had inspired the presentation of the *New Pact on Migration and Asylum* in 2020, despite the substantial tightening of border management that it contained, has disappeared in favour of the proposal to digitise return management procedures, again within the framework of future interoperability and the redefinition, in the sense of a softening, of the criteria for defining the country from which the migrant comes or through which he or she has transited as safe, in order to increase the number of return decisions[2] . Last but not least, von der Leyen proposes to open a discussion on the creation of return hubs in third countries, i.e. centres for the return of irregular migrants and perhaps also for the assessment of their applications for protection in countries outside the EU (von der Leyen, 2024). This immediately brings to mind the Italian government's centres in Albania and the recurring proposal in British politics to create such centres in African states, such as Uganda, which would become the host states for migrants if their applications for protection were accepted.

What this means seems quite clear to me. In fact, the objective pursued by the Commission and the Member States is to drastically reduce the number of irregular immigrants, who create an objective sense of insecurity among EU citizens. To do this, the strategy is very simple: on the one hand, their arrival must be prevented, both by concluding agreements with countries on the EU's borders and financing their policies to block departures without entering into any discussion on their respect for human rights, and by preventing their access to EU territory if they arrive at our border posts, without spending too much time checking whether they meet the requirements to apply for international protection. In this sense, the new *Mediterranean Pact* that the Commission has proposed to the coastal countries with which it has been cooperating for thirty years combines the development of new forms of cooperation on social resilience, the development of their citizens' skills and the development of a green and digital economy. Two paragraphs on migration management focus entirely on supporting the development of early warning systems in partner countries for migration crises, the repatriation/resettlement of migrants arriving there, and the development of joint migration management, which boils down to the adoption by partners of the same border control methods in force in the Union (European Commission 2025). It looks like another EU experiment to outsource the management of its borders to migrant transit states, but this time using the same digital tools in use in the Union. The EU would therefore only have to deal with those who would still manage to reach its borders, based on information probably already present in its databases.

On the other hand, when applications for protection are submitted, their examination is largely reduced to verifying the consistency of the data that individuals have left behind on their journey, without any interview, unless anomalies are found during computer checks. For those involved, this translates into a heavy feeling of dehumanisation, the awareness of being reduced to their biometric data, especially in the case of irregular migrants who are subject to multiple checks (Molnar 2020).

It also creates a sense of alienation for officials who scroll through long lists of computer data in search of anomalies. For these dehumanising procedures to work, however, it is necessary that digitisation is not perceived as problematic in itself. This, in turn, requires migrants to disappear from view. Everything must take place far from our gaze, with our unwitting consent.

[2] In practice, the country can be defined as safe for those who have transited through it or left it if it is possible to identify at least one region in which there is no risk of death and/or inhuman and degrading treatment for the individual in question (Regulation EU 2024/1348, art. 61).

Why?

In a fine essay from 2005, Herfried Münkler, analysing the concept of empire and how it has changed over time, notes that 'When empires succeed in keeping their promise of prosperity, in erecting an imaginary border through discourse on barbarians... and finally in ensuring peace in the area they dominate, all this brings them stability and longevity. This combination guarantees the survival of the empire" (Münkler 2008, 160-1). These words can easily be applied to the EU. It too was born as a promise of peace and economic development for populations severely affected by the Second World War, and here too, rhetoric about the invasion of migrants has been gaining ground since at least 2015. Indeed, taking this reasoning to its logical conclusion, it could be argued that the closure of its borders through digitalisation is nothing more than an attempt by the EU institutions to take out a kind of insurance policy on their own survival in times of economic and military competition, in which the EU is losing considerable ground to its competitors, particularly the US and China. An insurance policy at the expense of migrants. Or, still using Münkler's lens but this time looking inwards, that the latter are collateral damage in the EU's ambitious attempt to get involved in policies, such as border control, which are among the sovereign powers of the Member States.

Personally, I fear that the Commission is in fact following most of the governments of its Member States in their pursuit of populist parties, which are gaining support by pointing to uncontrolled migration as the cause of all society's ills. This is in stark contrast to the values of respect for dignity and human rights enshrined in the treaties as founding values of the integration process, and to demographic data indicating that we need migrants to replenish our increasingly ageing societies.

The strategy is basically simple. European citizens must be spared the moral dilemma that underlies the gameplay of *Papers, Please!*, where the customs officer player can choose to accept a person because he/she knows their past and the risks they would face if refused, even at the cost of deductions from their game score. In other words, it is a question of avoiding the idea that underlies Kant's reflection on cosmopolitan law as a means of achieving peace: that we can only accept going to war against other peoples if we do not know them, if their faces and their stories are unknown to us. If we do not see, there is nothing that can arouse compassion or shame.
Once the person is erased, the dilemma is erased, too.

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http://https://eur-lex.europa.eu/eli/reg/2017/2226/oj/eng PLEASE, ERASE THE PART IN GREEN

Regulation (EU) 2024/1348 of the European Parliament and of the Council of 14 May 2024 establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU

https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L_202401348 NEW LINE

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https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L_202401349 NEW LINE

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