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A Genealogy of Hospitality: On the Necessity of Border Management

Wal, Mart van der

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A Genealogy of Hospitality

On the Necessity of Border Management

Mart van der Wal

S3401421@vuw.leidenuniv.nl

S3401421

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1. Introduction

‘Passport please’. This sentence, or a closely related version, is nearly inescapable when crossing the borders between states. Except for moving within the European Schengen zone, border controls remain a common experience when transitioning between states. Indeed, border crossing is a *transition*. First, it is a transition between states, as is probably obvious. Generally, the state is understood as a sovereign apparatus, meaning that it is the sole politico-juridical authority reigning over a specific population in a defined territory with the legitimate use of force.¹ The projection of sovereignty on a territory creates a limitation on where a state’s power can be exercised. This territory could be considered its jurisdiction. In light of this, passing over a border essentially means traversing jurisdictions, as such transitioning between politico-legal systems. Second, border crossing is a transition between communities. With each state, there comes a nationality, which gives a social dimension to the aforementioned population. A nation can be defined as a socially constructed community mediated through language, culture, and commonly held beliefs.² Anderson has pointed out that no imagined, i.e., socially constructed community can encompass everybody and is always limited.³ Similarly, Duara holds that this limitation is important to make the nation recognisable as renders the social group authentic and separate from other (national) groups.⁴ As such, when one crosses state lines, one moves between societies, with different values and ideas, separate from one’s own.

In order to govern these transitions, states partake in border management, which I understand as the regulation of the movement of bodies over and on state lines.⁵ The immediate questions that follow from this is *why* do states do border management and, to a lesser extent, *how* do they do it? And, indeed, most academic work on the topic has dealt with these questions in some way or another. Some have argued that border management mainly has a political-economic function, protecting the state and population from economic instability.⁶ Others have focused on how states more on the security aspects, and what the rights of states and migrants are on borders.⁷ Lastly, there is a group that considers how

¹ Jens Bartelson, *A Genealogy of Sovereignty* (Cambridge: Cambridge University Press, 1995), 2; Michel Foucault, *Society Must Be Defended: Lectures at the Collège de France 1975-76*, ed. by Mauro Bertani and Alessandro Fontana, trans. by David Macey (New York: Picador, 2003), 44, 48-9; Carl Schmitt, *The Nomos of the Earth in the International Law of the Jus Publicum Europaeum*, trans. by G. L. Ulmen (New York: Telos Press, 2006), 45-6.

² Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (London: Verso, 2016), 6, 11-2; Prasenjit Duara, “The Regime of Authenticity: Timelessness, Gender and National History in Modern China,” *History and Theory* 37, no. 3 (1998): 288.

³ Anderson, *Imagined Communities*, 7.

⁴ Duara, “The Regime of Authenticity,” 289-90.

⁵ Michael Dillon and Luis Lobo-Guerrero, “Biopolitics of Security in the 21st Century: An Introduction,” *Review of International Studies* 34, no. 2 (April 2008): 268.

⁶ David B. Carter and Paul Poast, “Why Do State Build Walls? Political Economy, Security, and Border Stability,” *Journal of Conflict Resolution* 61, no. 2 (February 2017): 241-2; Alisha C. Holland and Margaret E. Peters, “Explaining Migration Timing: Political Information and Opportunities,” *International Organization* 74, no. 3 (2020): 1-2.

⁷ Jef Huysmans, “The European Union and the Securitization of Migration,” *Journal of Common Market Studies* 38, no. 5 (December 2000): 753; Roxana Barbulescu and Jean Grugel, “Unaccompanied Minors, Migration

border management reinforces the separation between states' polities and populations.⁸ My account, here, aligns most closely with the third group. In this, it is important to note that borders are not blockades, but rather strainers, used to administer who is accessing the state's territory.⁹ Border management, then, is a specific expression of power, that allows the state to control if an individual can access its territory.¹⁰ As I will argue later, this is possible due to a specific subject-object relationship built on mistrust, that equates the state to the protector against the migrant's dangerous outsider. This leads to strangers, presenting themselves at the border, to be *prima facie* excluded from the polity.¹¹ Hence, contemporary border management relies on a rationality of exclusion.

Arguing this is, however, not the main intent of this thesis. Rather, my aim is to pose a different question than the aforementioned questions asked by most research on the topic of border management. Most scholars quite readily accept that states *can* exclude migrants.¹² This is also not without reason. That border management happens is undeniable. However, by taking border management as an accepted practice, it remains *unthought* and escapes a deeper form of critique that questions its existence as such. To counter this, this thesis aims to answer the question: *How* can border management be thought? In this, I will search for the intellectual conditions that allowed the practice to be considered necessary. For reasons I will explain in the next chapter, I take these conditions to be historically constructed. The element of history is especially important, as it helps shatter the idea that border management is necessary. As Salter points out, the ancient Greeks believed in the principle of hospitality, which obliged the polity to welcome strangers into their society.¹³ It is the reverse of the contemporary frame of border management, as the Greeks *prima facie* included strangers in their polities. This thesis shall delve into why the practice of hospitality was discontinued and made place for the exclusion of border management.

In the next chapter, I shall briefly discuss the theoretical and methodological underpinnings of this work. In the following chapters, I will trace hospitality from its earliest traceable iterations from before Homer, past the Romans and Christians into the Middle Ages. Subsequently, I shall show the role hospitality played for the Spaniards in justifying their Conquest of the Americas. Afterwards, I will show how intellectuals parted relatively swiftly from the principle of hospitality. In the final chapter, I will argue

Control and Human Rights at the EU's Southern Border: The Role and Limits of Civil Society Activism," *Migration Studies* 4, no. 2 (July 2016): 258; Marco Perolini, "Do Human Rights Reinforce Border Regimes? Differential Approaches to Human Rights in the Movement Opposing Border Regimes," *Journal of Intercultural Studies* 44 (2023): 30.

⁸ Mark B. Salter, "The Global Visa Regime and the Political Technologies of the International Self: Borders, Bodies, Biopolitics," *Alternatives* 31 (2006): 168, 171; Didier Bigo, "Security and Immigration: Toward a Critique of the Governmentality of Unease," *Alternatives* 27 (2002): 73.

⁹ Dillon and Lobo-Guerrero, "Biopolitics of Security in the 21st Century," 268.

¹⁰ Salter, "The Global Visa Regime," 178; Bigo, "Security and Immigration," 65.

¹¹ I use the term polity to denote any political unit, in so evading the ahistorical use of the word 'state'.

¹² Which is of course a different question than whether states *should*.

¹³ Salter, "The Global Visa Regime," 171.

that the Spaniards' continuous breaking of the principle of hospitality was instructive for political-ontological thought that followed the decades after the Conquest. In this, we shall see the intellectual conditions that allow for border management as known today to be thought. To be sure, the idea of hospitality has not been forgotten, despite its discontinuity as a societal practice. Jacques Derrida, for example, has argued for taking up hospitality as a type of ethics.¹⁴ It is interesting to note that it has been juxtaposed with Carl Schmitt and his politics of enmity.¹⁵ This suggests that the ethics of hospitality are antithetical to the nature of the modern nation-state. While a discussion of Derrida's (and Schmitt's) work is beyond the scope of this thesis, I do hope to contribute to the burgeoning knowledge of the underlying rationalities that make up contemporary political life.

¹⁴ See Jacques Derrida, *Of Hospitality*, trans. by Rachel Bowlby (Stanford: Stanford University Press, 2000).

¹⁵ See Gerald M. Mara, *Between Specters of War and Visions of Peace: Dialogic Political Theory and the Challenges of Politics* (New York: Oxford University Press, 2019).

2. Underpinnings

This chapter explains the theoretical and methodological foundations of this chapter. I will start by justifying my claim that the conditions for what is thinkable are historically constructed. This will be done through a brief discussion on the relationship between history and reality. In this, I also want to answer MacKay and LaRoche's call for a more explicit role of the philosophy of history in (historical) research.¹⁶ Subsequently, I will transition to the more methodological aspects of this chapter. It is necessary to utilise a methodology that connects to the theoretical discussion that precedes it. Hence, I require a manner to study the construction of thought. Moreover, I am not simply dealing with its construction, but rather with its reconfiguration. I aim to explain how hospitality's logic of welcoming was replaced by border management's logic of exclusion. Hence, the discontinuity of practices and ideas ought to take a central place in my methodology. As I will show, the Foucauldian genealogy provides the possibility to deal with shifting thought and departs from similar theoretical underpinnings.

2.1 History and Reality

The contemporary world is often taken as is. From the manner in which our politics is ordered through the state to the organisation of the family through heterosexual monogamous relationships – these are aspects of reality that are considered natural and logical. Of course, some of these aspects are well-known to have a history. The establishment of the state, for example, is the object of many history classes in high schools and universities, and it is well-known that other forms of political organisations, like tribal communities, have predated it.¹⁷ There is, however, an issue with most common narratives. It presents the outcome of historical events as the natural outcome.¹⁸ When doing historical research, this is called the fallacy of presentism, meaning writing a history in terms of the present.¹⁹ The issue with this approach is that establishes the present free from contingency. In this manner, past and present are separated. As I have suggested in the introduction, this is the case for border management: the practice of regulating the cross-border movement of bodies is something that appears nothing but normal and logical; of course, the state regulates border-crossing. However, my goal with this thesis is to show that this practice relies on a specific understanding of reality. Moreover, I have mentioned the practice of hospitality, which stands in stark contrast with contemporary border management. This suggests that the understanding of reality differs between the times of hospitality and the times of border management. For these reasons, it is instructive to take reality as being shaped by historical forces.

¹⁶ Joseph MacKay and Christopher David LaRoche, "Theories and Philosophies of History in International Relations," in *The Routledge Handbook of International Relations*, ed. Benjamin de Carvalho, Julia Costa Lopez, and Halvard Leira (Abingdon: Routledge, 2021), 22.

¹⁷ Prasenjit Duara, "Why is History Antitheoretical?" *Modern China* 24, no. 2 (April 1998): 109.

¹⁸ Duara, "Why is History Antitheoretical?" 108.

¹⁹ Andreas Nøhr, "Poststructuralism and the Challenge of History," in *The Routledge Handbook of International Relations*, ed. Benjamin de Carvalho, Julia Costa Lopez, and Halvard Leira (Abingdon: Routledge, 2021), 92; Bartelson, *A Genealogy of Sovereignty*, 55-6.

So, instead of considering reality as a naturally given, I consider it to be a collection of attitudes and dispositions – what might be called a regime, a logical space, or structure – that were historically formed. Through the logical space, certain practices become possible, conceivable, and understandable.²⁰ For example, Benjamin Meiches points out how genocide as a concept is reliant on specific understandings of the subject, object, and motivation behind the practice, which has been redefined to no end; from genocide’s pre-history to its initial definition by Raphaël Lemkins, to its adoption into international law, to current studies in academia.²¹ Within International Relations, the logical space is better known as *structure*, in the Waltzian neo-realist sense as most ‘postwar American IR’ scholars use it.²² The Waltzian argument is that the international system is anarchical and, therefore, states cannot trust one another. Subsequently, they act merely in their own interest without considering the interests of others, knowing that other states can betray them at any point.²³ It is at this point, however, where the neo-realists fail to properly consider the relationship between structure and practice. Due to the belief in an anarchical structure, states behave in a self-interested manner that reinforces the structure. Neo-realists consider their structural theory to be a-temporal and pre-historic, in the sense that it is considered an ontological truth that structures action, without considering how actions shape the world. Theory and structure are put outside of history.²⁴ This, however, contradicts my argument that structure is shaped by history. Hence, I require an outlook in which practice and structure are taken together.

Ashely highlights how this is the dynamic of historicity, existing out of two axioms, that shapes reality: (1) practice depends on structure, meaning that actions are reliant on societal presuppositions, conventions, and institutions. Actors behave according to what the structure allows them to do; (2) structure depends on practice, referring to how the logical space is constantly constituted and reinforced through actions.²⁵ As such, we find ourselves in a paradox: structure determines action, but action also determines structure. Past action has determined the modern structure, upon which is acted today. In this sense, ‘we’ are shaped by history as well. To be sure, it is important to recognise that both structure and practice are not stable, but rather depend on the context, that is, the moment in history and the location it occurs. The change of context occurs from dealing with the unexpected and the accidental, which can be sudden but also incremental. Moreover, it ought to be noted that the structure does not take the past as whole, but rather is selective in what is remembered. See, for example, the now

²⁰ Richard K. Ashley, “Living on Border Lines: Man, Poststructuralism, and War,” in *International/Intertextual Relations: Postmodern Readings of World Politics*, ed. James Der Derian and Michael J. Shapiro (Massachusetts: Lexington Books, 1989), 274.

²¹ Benjamin Meiches, *The Politics of Annihilation: A Genealogy of Genocide* (Minneapolis: University of Minnesota Press, 2019), 11-3.

²² MacKay and LaRoche, “Theories and Philosophies of History in International Relations,” 19.

²³ Please be aware that this is merely an example and that the realisation of these ideas is far more complex than I can discuss in this work.

²⁴ Nøhr, “Poststructuralism and the Challenge of History,” 90.

²⁵ Ashley, “Living on Border Lines,” 272-3.

diminishing dominance of the discourse that ‘Western’ states are simply more politically evolved to explain that they are significantly wealthier than most states in the rest of the world. This ‘forgets’ the colonial history that allowed this difference to arise. Structure is especially keen on forgetting that which denaturalises it; Western geopolitical dominance hides colonial history, the natural appearance of the state hides different forms of political ordering, and, possibly, border management’s exclusion hides the possibility of free travel around the globe. It is in this forgetting that we see discontinuities.

2.2 Writing Histories

Understanding reality as described above, we find ourselves with a problem: how can we understand the history of something if we ourselves are shaped by the same historical forces? It is not possible to take a position outside of history, as this would lead to the a-historicity of structural theorising as seen above. However, writing a history fully from within would lead to the aforementioned fallacy of presentism. Hence, it is necessary to write history on the borderlines, where concepts, ideas, and practices are considered to be historically contingent and ought to be understood in their proper context, while simultaneously considering these same concepts, ideas, and practices to have been instructive for the present.²⁶ Hence, I turn to the Foucauldian genealogy. A genealogy, as explained by Bartelson, deals ‘[...] with those episodes which are involved in the effective *formation* of that which was identified as problematic in the present’.²⁷ Its focus lies directly on the historical forces that shaped structure today, but is simultaneously aware that these forces were shaped by preceding structures as well. It is for this reason that Foucault highlights that genealogy does not search for a beginning or starting point of something, but rather ‘[...] cultivates the details and accidents that accompany every beginning’.²⁸ Here, Foucault stresses how the structural conditions are instructive in the formulation of an idea or the initiation of a practice.

In this manner, the structural conditions for present-day thinking will be distilled which lead to the necessitation of border management. However, more than this, I shall also delve into the practices and events that led to the construction of the current structure. In turn, it will be necessary to also lay out the structure of thought that contextualised these practices and events, explaining the underlying reasonings. Hypothetically, this method of sketching out practice and structure could be repeated *ad infinitum*. For obvious reasons, this falls outside the scope of this thesis. Hence, I shall limit myself to the time frame set out by existing literature. Similarly, it is impossible to outline all influential events and ideas. For this reason, the instrumental question is: ‘*How did we get here?*’²⁹ Taking up Nøhr’s suggestion, I shall ‘[...] trace how the rationalities [i.e. structures] that underlie [...] practices change

²⁶ Ibid., 271-2.

²⁷ Bartelson, *A Genealogy of Sovereignty*, 73. [Emphases added.]

²⁸ Michel Foucault, “Nietzsche, Genealogy, History,” in *The Foucault Reader*, ed. Paul Rabinow (New York: Pantheon Books, 1984), 80, 88-9.

²⁹ Nøhr, “Poststructuralism and the Challenge of History,” 92. [Emphasis in original.]

and shift over time [...].³⁰ Hence, this thesis is placed firmly in the history of ideas, but without overlooking the concrete practices that followed from this. Moreover, Foucault argues specifically that a genealogy focuses on *how* power can be exercised differently through the change in structures.³¹ Combining this with the genealogical focus on historicising that which appears natural, it becomes possible to make the previously unthought become an object of inquiry.³²

Hence, in order to answer the question ‘How does border management become thinkable?’ I will document several iterations of hospitality, as far as I can possibly go back in time. Most attention, however, will be given to what happened with this practice during the rise of the contemporary structure that allowed border management to arise. For the sake of clarity, I shall mainly maintain a chronological order within the thesis, although this will not be perfectly attainable due to overlapping time frames and simultaneous developments.

³⁰ Ibid., 93

³¹ Foucault, “Nietzsche, Genealogy, History,” 90-1.

³² Ibid., 95.

3. Hospitality's Earliest Traces

Now that I have explored the Foucauldian genealogy, it is time to commence my exploration of hospitality. In this chapter, I will discuss the earliest references to the practice, going back to Ancient Greece. Much has already been written on hospitality in this era. Baker, for example, has already written on the genealogy of hospitality from the Ancient Greeks to the Romans.³³ However, he overlooks certain aspects of the Roman understanding and neglects the role hospitality had in early Christianity. I shall fill these gaps. Moreover, despite also connecting hospitality to the Conquest of the Americas, Baker fails to connect the relevance of the practice to that era. I will explain this connection through the concept of *ius gentium*, which shall be set up in this chapter, but will be the focus of the next. After discussing hospitality in Ancient Greece, I will transition to Rome, where we also find the first use of the word. Some specific transformations and considerations of hospitality during the rise and fall of the Empire will be discussed. This will be combined with the manner in which early Christians considered hospitality. Lastly, I shall discuss *ius gentium*'s influence after the fall of the Roman Empire and see how it arrived to scholars in the Renaissance.

3.1 Hospitality in Ancient Greece

The practice of hospitality is generally traced back to Ancient Greece and the so-called Greek Dark Ages, specifically to the Homeric epics and the cult of Zeus, placing the practice back to at least the 8th century BCE. Yet, as the Foucauldian genealogy befits, hospitality appears to be an adopted and reconceptualised practice already present before the societies we call Greek today. It has been suggested that the Mycenaeans and other ancient civilisations used hospitality out of a fear of the stranger (*xenophobia*). This unknown figure, presenting themselves on the outskirts of a community, was thought of as having mystical powers and being capable of usurping the society.³⁴ By welcoming this stranger into the community, thus making them a guest, it was hoped that the stranger felt welcomed and satisfied, in the hope that the threat of usurpation does not crystallise. In this sense, it appears that the practice of hospitality relies on a transaction: the resources of the host are given in exchange for the guest staying in peace. The initial driver for this hospitality was, thus, a fear of the stranger. Hence, the reason for hospitality appears to be for the host's reassurance, despite the practice focusing on the guest. Over time, this appeasement of the stranger transformed into a 'cleansing' role, in which the stranger lost their mystical power and ceased to be a threat.³⁵ The fear of the stranger appears to have remained, yet it was remedied through the practice of hospitality. Underlying motives remained the same, yet it was the actual understanding of the practice that changed here, as appeasement discontinued and became understood as a cleansing.

³³ Gideon Baker, "The Spectre of Montezuma: Hospitality and Haunting," *Millennium: Journal of International Studies* 39, no. 1 (2010), 36-42.

³⁴ Baker, "The Spectre of Montezuma," 39.

³⁵ *Ibid.*

It is a reinterpretation of this understanding that the Homeric understanding came to be commonplace. Then, hospitality was considered part of the natural order and it became linked to an apparition of Zeus called Xenios Zeus – xenios being derived from xenos, meaning foreigner or guest.³⁶ The practice resulting from this is called *xenia*, which historians now translate as guest-friendship, although for the sake of this thesis, I will call it hospitality.³⁷ The cult of Zeus instructed people to offer hospitality to guests, that is, foreigners. Connecting this practice to Zeus, who is well-known to be the highest god in Ancient Greek mythology, immediately suggests the importance of hospitality. It is even suggested that a guest might be (Xenios) Zeus in disguise, testing the hospitality of the host.³⁸ This imagery is called *theoxenia* – theo deriving from theos, meaning god. As such, providing hospitality in the Greek context ought to be considered as part of the natural order.³⁹ Note how the fear present in the preceding understandings shifts towards some sort of reverence. The guest is no longer a possible foe with mystical powers, but rather a god to be respected. The magical undertones remained part of the drive to provide hospitality, yet it lost its element of fear. Thus, the xenophobia has turned into xenophilia – love for the stranger. Moreover, instead of a remedy for the host to feel secure, hospitality became an obligation for the host. This obligation was, as the passage below shows, to create security.

This importance is not a lofty call to ethical behaviour, but a practice with a significant societal function. The Ancient Greek societies existed out of relatively small communities of people who lived together for protection against the precarious conditions of the earth. Through societal living, safety could become reality. Between these communities, danger persisted. Hospitality, then, meant ‘[...] the extension of communal boundaries to include the stranger as a friend, rather than a foe, [functioning] as a buffer against uncertainty and a powerful mechanism of networks that can serve as safety nets against future security risks’.⁴⁰ The logic of hospitality provided a safety mechanism that ensured that people were able to travel between communities, knowing for sure that they could find shelter from the hostilities of the world.⁴¹ This facilitated trade, but also create a security structure that provided hope for safety outside of civil living. In this sense, we are able to speak of an ethics of hospitality. In this manner, the host was obligated to create security. However, there was also an obligation for the guest to behave reasonably.⁴² As can be seen by the example of the suitors taking over Odysseus’s home in the *Odyssey*, overstaying one’s welcome and depleting the host’s resources is as much a disruption of

³⁶ Eftihia Voutira, “The Perversion of the Ancient and Traditional Value of “Hospitality” in Contemporary Greece: From Xenios Zeus to “Xenios Zeus”,” in *Migration – Network Skills: Anthropological Perspectives on Mobility and Transformation*, ed. Astrid Wonneberger, Mijal Gandelsman-Trier, and Hauke Dorsch (Bielefeld: Verlag, 2016), 87-8; Gabriel Herman, *Ritualised Friendship & The Greek City* (Cambridge: Cambridge University Press, 2002), 2.

³⁷ Herman, *Ritualised Friendship & The Greek City*, 1.

³⁸ Baker, “The Spectre of Montezuma,” 38.

³⁹ Herman, *Ritualised Friendship and the Greek City*, 2.

⁴⁰ Voutira, “The Perversion of the Ancient and traditional Value of “Hospitality” in Contemporary Greece,” 88-9.

⁴¹ Herman, *Ritualised Friendship and the Greek City*, 8.

⁴² Baker, “The Spectre of Montezuma,” 38-9.

the rule of hospitality as it is for the host to fail to extend this hospitality in the first place. Nonetheless, hospitality appears to have shifted from being for the host – to protect themselves from the danger posed by the stranger – to the guest – to protect them from the dangers outside of communal living.

To summarise, during the Ancient Greek era, it appears there are broadly three conceptions of hospitality. First, the hospitality of appeasement, driven by xenophobia, where it functioned as a way to protect the host from the attack of a magical stranger. Hospitality was provided and a peaceful stay of the stranger was received. Second, the hospitality of cleansing, where the xenophobia remained, but now the hospitality functioned as a ritual that stripped the stranger from their magical capacities. Still, hospitality functioned to provide safety for the host. Moreover, the element of exchange remained, although it became more covert. Third, the hospitality of security, in which xenophobia was transformed into xenophilia. The magical aspect remained, but now became positive. Moreover, as a practice, hospitality no longer functioned for the security of the host, but for the security of the guest. The exchange for this understanding indicates a significant break with previous iterations. Hospitality, here, was provided to ensure that all venturing outside of communal life had a safe haven. It is in the hospitality of security that we can speak of an ethics of hospitality.

3.2 Hospitality in Ancient Rome

That hospitality finds a continuation in Ancient Rome should not be surprising, considering the general adoption of Ancient Greek culture. And indeed, in the same manner (Xenios) Zeus was the protector of hospitality for the Greeks, so was Jupiter for the Romans.⁴³ Baker points out that there is, nonetheless, a ‘radical disjuncture’ between the two, considering that by the time the Roman stoics adopted hospitality, it had turned into an elitist xenophilia.⁴⁴ As a Roman elite practice, hospitality became a manner for the elite to show of their wealth to strangers. Yet, simultaneously, the hosting of guests became a practice of elite hosts welcoming distinguished guests.⁴⁵ Hospitality, in Roman society, became an exclusive practice, meant for those of a higher social status. Another difference from earlier Greek conceptualisations is the formality and legality that the Romans applied to hospitality.⁴⁶ It is actually Roman law where the term hospitality (*hospitalitas*) is first encountered. Interestingly, the word *hospes* refers to both the guest – also being translated as friend or foreigner – and the host.⁴⁷

It ought to be noted that there is also the Latin *hostis*, which means enemy or foreigner. This word is older than *hospes* and originally encompassed all the meanings – friend, foe, and foreigner. Yet, it

⁴³ John Nicols, “Hospitality Among the Romans,” in *The Oxford Handbook of Social Relations in the Roman World*, ed. by Michael Peachin (Oxford: Oxford University Press, 2011), 425.

⁴⁴ Baker, “The Spectre of Montezuma,” 40.

⁴⁵ See e.g., Cicero, see *On Duties*, ed. by M. T. Griffin and E.M. Atkins (Cambridge: Cambridge University Press, 1991), 64, quoted in Baker, “The Spectre of Montezuma,” 40; see also Nicols, “Hospitality Among the Romans,” 426.

⁴⁶ Nicols, “Hospitality Among the Romans,” 424.

⁴⁷ Salter, “The Global Visa Regime and the Political Technologies of the International Self,” 171.

appears that the words split to denote both a favourable foreigner – *hospes* – and a hostile stranger – *hostis*.⁴⁸ Noteworthy is that the second half of *hospes* is derived from the component *pot-*, signifying a ‘master’. It has its origin in Greek, as can be seen in the word despot (*despótēs*), where it also concerns mastery. This same denominator was also used to express the chief of clans or the master of the house and expresses possession.⁴⁹ In this manner, the elitist context of hospitality in Rome is reflected, as it is etymologically connected to mastery. But what makes a foreigner favourable? The answer lies in coming in peace; not corrupting that of which the host is master is the foundation of the Roman’s hospitality. In return, the master welcomes the foreigner into *his* house or community. In this sense, we can see that the exchange that was already present in the xenophobic hospitality of the Greek Dark Ages is still present in Roman thought. However, for the Romans, it was not per se the security of the community under threat, as much as the property and rule of the host.

This frame of mind is also reflected legally. The law of the Twelve Tables – which is the foundation of Roman law and originates from the 5th century BCE – reads that *adversus hostem aeterna auctoritas est(o)*, which Benveniste translates as ‘vis-à-vis a stranger, a claim for property persists forever’.⁵⁰ However, since the ‘stranger’ was excluded in this manner, the politician Festus argued that *hostes* had the same rights as Roman citizens.⁵¹ In light of this, it is only logical that *hospes* referred to both host and guest, as it implies a form of equality between the two. This also makes sense when further delving into hospitality’s legal development. Within Roman law, the category of *ius gentium* – meaning law of the people – was applied to all peoples, contrasting it with *ius civile* – civil law – which only applied to Roman citizens.⁵² In this sense, *ius gentium* was closely connected or even equated with natural law. Gaius, for example, highlighted how *ius gentium* was applicable outside of the polis, equal throughout all peoples [*gentes*] and conceived through reason, while the particular law of a polis was called *ius civile*.⁵³ Considering that it was applicable outside of the civil condition, it is quite logical that it governed the legal status of aliens.⁵⁴ Some caution is pertinent when using the term *ius gentium*, as it is often translated to law of nations. In Ancient Roman, *ius gentium* applied to all individuals, regardless of social origin. The only Roman law applicable between the social units that might retroactively be called ‘nations’ is *ius belli* and *ius fetiale*, the law of war and law of just war respectfully.⁵⁵

⁴⁸ Émile Benveniste, *Dictionary of Indo-European Concepts and Society*, trans. by Elizabeth Palmer (Chicago: Hau Books, 2016), 61, 65-6.

⁴⁹ Benveniste, *Dictionary of Indo-European Concepts and Society*, 62-3.

⁵⁰ *Ibid.*, 66.

⁵¹ *Ibid.*

⁵² Christopher Meckstroth, “Hospitality, or Kant’s Critique of Cosmopolitanism and Human Rights,” *Political Theory* 46, no. 4 (August 2018): 545; Kaius Tuori, “The Reception of Ancient Legal Thought in Early Modern International Law,” in *The Oxford Handbook of the History of International Law*, ed. by Bardo Dassbender and Anne Peters (Oxford: Oxford University Press, 2012), 1016.

⁵³ Meckstroth, “Hospitality, or Kant’s Critique of Cosmopolitanism and Human Rights,” 545.

⁵⁴ Vincent Chetail, “Sovereignty and Migration in the Doctrine of the Law of Nations: An Intellectual History of Hospitality from Vitoria to Vattel,” *The European Journal of International Law* 27, no. 4 (2016): 902

⁵⁵ Tuori, “The Reception of Ancient Legal Thought in Early Modern International Law,” 1014.

Through *ius gentium* and its development, hospitality would have a legal basis that applied at least until the Renaissance. However, before discussing this historical trace, it is necessary to discuss a form of hospitality that existed concurrent to the Romans, namely the hospitality of the early Christians. I have shown Roman hospitality to be a hospitality of elites. It was no longer an ethical concept but rather a legal one, that protected the elites' property from being lawfully overtaken by strangers. As such, the elites had a legal power the stranger was excluded from. In exchange for their lack of legal power, strangers received hospitality.

3.3 Hospitality for Early Christians

The first groups of Christians started to form in the first century CE. Baker points out that Christians took up the concept around the same time as the later Stoics, yet he fails to differentiate the Roman elite practice from the role hospitality had for the early Christians.⁵⁶ In opposition to being elites, the first Christians were persecuted and marginalised within the Empire. Nadella points out that Christians valued hospitality because of the subsequent displacement they experienced.⁵⁷ He explains that the Bible regularly references outsiders being welcomed and celebrated by insiders, because of the early Christians' lack of home.⁵⁸ Hospitality was, then, utilised as the safety net for those who wandered through the Empire. While it undeniably reflects the previous hospitality practices aimed at protecting people moving in between communal living, the Christians were thought of as constantly moving through the communal world, as opposed to *between* communities. It might even be said that the movement between these 'spots' of hospitality is what partially created the community. Unlike the movement between Greek societies, the Christian places of hospitality were not localised.

On the contrary, the provision of hospitality was arguably something that should always be provided. This duty could, then, not be localised. In this sense, the duty also becomes fully placed outside of the civil condition. For the Greek ethics of hospitality, civil living provided shelter from the dangers of the natural world, hence it is only logical that the duty fell on those in the civil condition. This is, however, discontinued, as for the Christians providing hospitality is something that had to be done regardless of the civil condition. This also creates an interesting connection to *ius gentium*, considering its applicability regardless of societal origin. There is, however, a way in which the Greek form of hospitality continued in the Christians that disappeared for the Romans. As I have shown, the Roman form of hospitality was about showing wealth and came from legalistic thinking. Hence, I argued it was no longer an ethics of hospitality. This cannot be said of the Christians. As mentioned, the early Christians were marginalised and persecuted in the Empire, despite some of them being legal Roman

⁵⁶ Baker, "The Spectre of Montezuma," 40.

⁵⁷ Raj Nadella, "Embrace, Ambivalence, and Theoxenia: New Testament Perspectives on Hospitality to Strangers," in *Christianity and the Law of Migration*, edited by Silas W. Allard, Kristin Heyer, and Raj Nadella (Routledge: London, 2021), 166.

⁵⁸ Nadella, "Embrace, Ambivalence, and Theoxenia," 167-8.

citizens.⁵⁹ As such, they were the opposite of elites. Hence, they were not the subject of hospitality from the Roman legal perspective.

Why, then, would a Christian provide hospitality to a guest? Of course, one could say that this facilitates the continuation of the community and this point is undeniably valid. However, there is also an ethical motivation that stimulates this continuation of Christianity. This motivation does not come from an unexpected place, as it is provided by scripture to show hospitality to guests. The book of Matthew, for example, tells multiple stories of Jesus being the guest and outsider, where the lesson is to be hospitable to strangers. Curiously, these parables reflect the Ancient Greek stories of Xenos Zeus. I agree, therefore, with Nadella that this is a continuation of theoxenia.⁶⁰ Moreover, this builds an ethical argument for why hospitality should be provided. Christian hospitality is thus still ethics based. Unlike the Romans, it is not focused on the host but on the guest. In both ways, it thus strongly resembles the Greek manners, although reinterpreted through Christian discourse. A manner in which the Christians diverge from the Greeks and Romans is the matter of an exchange. For all other discussed hospitalities, there has been an element of exchange. This is, however, not something that appears to apply to the Christians. To be sure, one could argue that providing hospitality was an exchange for doing good, which brings one closer to salvation. Yet, this does not come forward in the discourse of the early Christians.

As a practice, Christian hospitality in the manner it was initiated lost its importance quite suddenly. Until Constantine became emperor, the persecution of Christians was common and legally allowed. Yet, in 313, the Edict of Milan was issued by Constantine, giving freedom to all religions including Christianity. As such, providing hospitality became a superfluous practice. However, as I shall show, Christianity's ethical arguments remained relevant.

3.4 Hospitality through the Middle Ages

Despite becoming accepted, Christianity never fundamentally impacted Roman law and it is only after the fall of the Western Roman Empire that the two become juxtaposed, and even centuries more before they become synthesised. The separation can be observed in the writings of Isidore of Seville, an archbishop in the late sixth and early seventh century CE, who discusses both Roman law – specifically *ius gentium* – and Christian teaching. Isidore is inspired by a legal perspective that is sometimes traced to Roman historian Livy, but it is more precise to point to Pomponius in the second century CE for the first usage of *ius gentium* as the law of nations and third century CE jurist Hermogenian. It is for these authors that *ius gentium* was defined as governing the relationship between socio-political units, placing for example the legal principles of demarcating units under it, but also matters that transcend a single

⁵⁹ Ibid., 176.

⁶⁰ Ibid., 173-4.

unit.⁶¹ Subsequently, Isidore defines it as the laws regarding ‘[...] occupation of land, construction, fortification, wars, captivities, enslavement, the right of regaining citizenship after captivity, treaties of peace, truces, the inviolability of ambassadors, the prohibition of mixed marriages. And it is called *ius gentium* because nearly all [*gentes*] use it’.⁶² *Ius gentium* for Isidore was, in a sense, a very practical matter of legal arrangements created by human societies to arrange matters that transcended singular units. In this regard, it differed drastically from his ideas surrounding natural law.

Natural law, for Isidore, is the laws common to the whole world.⁶³ As such, it regards laws of succession, property, and marriage. In this that the Christian tradition shines through, as Isidore’s conception of natural law has a moral component. Instead of applying to the socio-political units as such, natural law applies *despite* the social arrangement. Specifically, it applied directly to the individual who had to abide by it.⁶⁴ The Christian drive of moral obligation arrived through Saint Augustine at Isidore. As he does not specifically discuss hospitality, it is impossible to say what he thought about this concept. Nonetheless, Isidore’s work provides a link in which the Roman legal ideas and Christian ideas were juxtaposed and became equals. This can most clearly be seen in the fact that Isidore’s ideas were almost directly adopted in the *Decretum Gratiani*, the most important legal work out of the Church in the Middle Ages, which was equally authoritative as the most important Roman legal documents, spreading it through Western Europe.⁶⁵

The split between natural law and *ius gentium* would, with time, disappear. This can be seen in the work of Thomas of Aquinas. He took up Isidore’s discussion of *ius gentium*, but *does* put it directly under natural law.⁶⁶ For Aquinas, natural law comes from god and concerns the right ordering of things, including political organisation.⁶⁷ He highlights how ‘things which come from God are ordered’ and that, therefore, those things are in their ‘proper place’.⁶⁸ It reinterprets Isidore’s idea that *ius gentium* concerns the claim of territory, and inserts a socio-political ordering legitimised through theological arguments, projecting it onto the earth. Through this, Aquinas’s argument is also connected to the divine right of kings, which is well-known to be the main principle for structuring politics in the Middle Ages.⁶⁹ Like Isidore, Aquinas does not discuss hospitality. Hence, at this point, it is unclear how it was conceived. Despite this, I would still argue that the practice plays a role in the Middle Ages, albeit

⁶¹ Tuori, “The Reception of Ancient Legal Thought in Early Modern International Law,” 1017; Bart Wauters, “Aquinas, *Ius gentium*, and the Decretists,” *Journal of the History of Ideas* 81, no. 4 (October 2020): 515.

⁶² Isidore of Sevilla, *Etymologies*, in Wauters, “Aquinas, *Ius Gentium*, and the Decretists,” 515; Tuori, “The Reception of Ancient Legal Thought in Early Modern International Law,” 1018.

⁶³ Wauters, “Aquinas, *Ius Gentium*, and the Decretists,” 516.

⁶⁴ *Ibid.*, 510, 516.

⁶⁵ *Ibid.*, 510, 519.

⁶⁶ Tuori, “The Reception of Ancient Legal Thought in Early Modern International Law,” 1018.

⁶⁷ Thomas of Aquinas, *Political Writings*, trans. and ed. by R. W. Dyson (Cambridge: Cambridge University Press, 2002), 1-2, 18, 273, 278.

⁶⁸ Aquinas, *Political Writings*, 2.

⁶⁹ For a discussion, see Bartelson, *A Genealogy of Sovereignty*, 102 onwards.

implicitly. The feudal system did not create the homogenous, large-scale territories seen in the state system, but rather patchworks of overlapping jurisdictions. Lords would travel between their lands, crossing the jurisdictions of other lords. Free travel through socio-political units was, thus, necessary for the feudal political system to function. This suggests a role for hospitality.

Since authors barely touch upon the subject, the exact workings of hospitality in the European Middle Ages remain unclear and implicit, especially in practice. Hence, more investigation into this matter is necessary, although it falls outside the scope of this thesis. Regardless, the role of Roman law and Christian thought definitely allow for a role for hospitality. This intuition is also confirmed by the author to be discussed in the next chapter, Francisco de Vitoria (1483-1546), who writes that ‘[...] it would not be lawful for the French to prohibit Spaniards from travelling or even living in France, or vice versa [...]’.⁷⁰ He suggests that the division of political units should not stand in the way of individuals travelling the earth. The context and importance of this remark, combined with Vitoria’s influence as such, provides the starting point of the next chapter.

⁷⁰ Francisco de Vitoria, “On the American Indians,” in *Vitoria: Political Writings*, ed. Anthony Pagden and Jeremy Lawrance (Cambridge: Cambridge University Press, 1991), 231.

4. Hospitality and the Rise of the State

In the previous chapter, I discussed the earliest traceable iterations of hospitality and explained how it found its way into the Middle Ages. I noted how the Roman legal concept of *ius gentium* was especially instrumental in this. I ended with a quote by Francisco de Vitoria, who argued that someone's origins – Spanish or French in his example – should not limit where one can travel. In this chapter, I will continue with his conceptualisation of hospitality, which was instructive for legitimising the Spaniards entering the Americas. Vitoria is well-known as the father of international law.⁷¹ Unsurprisingly, he places the obligation to give hospitality under *ius gentium*, which for him either is or is part of natural law. After Vitoria, I will temporarily look pause the investigation into hospitality and focus on the rise of political thought surrounding the state. This will lead me first to the work of Jean Bodin (1529/30-1596), who is instrumental in the conceptualisation of sovereignty, and second to social contract theory, which is the foundation of the contemporary structure in which border management is thinkable.

4.1 Hospitality and the Americas

By the time Vitoria delivered his famous work regarding the Conquest, most of the continent we call South America today had already been explored and conquered. Vitoria's *On the American Indians* was probably written in 1538 for a lecture that was not to be given until 1539.⁷² The aim of this work was to discuss on which grounds the Spanish could and could not legitimately enter the newly discovered lands in the West. Today, it is best remembered for giving a preliminary discussion of just war theory and the possible grounds for humanitarian intervention.⁷³ While at face value this might seem surprising, it makes sense when considering that Vitoria was concerned with the question of what justified the Spaniards' violence in the New World. It becomes even less surprising when remembering that the laws of just war were the closest thing the Romans had to a law of nations in a more modern sense. In this sense, Vitoria lived in an extraordinary time. Specifically, it was the rise of the state as a form of political organisation that made it noteworthy from a political standpoint. Centralisation politics, combined with acquisitions by marriage and conquest had created larger political units, which were more homogenous in their legal, economic, and social affairs, and that become singular territories rather than the patchworks of the Middle Ages.⁷⁴ Vitoria also conceptualises the state as a uniform polity. 'A civil community is constituted by all its citizens, and thus the commonwealth has the power to administer and govern itself and its citizens in peace [...]'.⁷⁵ The state as a political unit is autonomous, with its

⁷¹ William Bain, "Vitoria: The Law of War, Saving the Innocent, and the Image of God," in *Just and Unjust Military Intervention*, ed. by Stefano Recchia and Jennifer M. Welsh (Cambridge: Cambridge University Press, 2013), 70; Chetail, "Sovereignty and Migration in the Doctrine of the Law of Nations," 903.

⁷² Vitoria, "On the American Indians," 231.

⁷³ See e.g., Bain, "Vitoria: The Law of War, Saving the Innocent, and the Image of God."

⁷⁴ Andrew Fitzmaurice, *Sovereignty, Property and Empire 1500-2000* (Cambridge: Cambridge University Press, 2014), 6-7.

⁷⁵ Francisco de Vitoria, "On Civil Power," in *Vitoria: Political Writings*, ed. Anthony Pagden and Jeremy Lawrance (Cambridge: Cambridge University Press, 1991), 17.

own legal affairs internally, separated from external relations.⁷⁶ It is also in light of this that Schmitt argues that *ius gentium* essentially transformed into *ius inter gentes*.⁷⁷ Although I shall not adopt this terminology, I do agree that it is indicative of the changing relation between political units.

But how did Vitoria think about *ius gentium*? While referring to the *corpus iuris civilis*, the Spanish theologian slightly retracts from the Thomistic understanding, as he explains that it either *is* natural law or it is derived *from* natural law.⁷⁸ There is, however, one connotation to this. Natural law, for Vitoria, dictates just action. Yet, it is still for humans to first conceive what natural law is – which can be done through reason – and to act accordingly. Vitoria still considered natural law to be the word of god and, therefore, be just and correct. Yet, he places more agency on humans to act accordingly and create this world.⁷⁹ For this reason, Vitoria is often considered as being in between naturalistic and positivist scholars.⁸⁰ Part of natural law for Vitoria was the establishment of a civil condition, to which he mainly meant kingdoms, but also city-states.⁸¹ Moreover, he highlights that *ius gentium* governs the relations between these civil units.⁸² Furthermore, since natural law is the word of god, and god created everything, it is applicable everywhere. The Christian concept for this is *oikumenē*, a Greek word meaning ‘inhabited (world)’, referring to the idea that all living things are part of the order of god. Thus, for Vitoria, natural law applied to all beings, including the Indigenous Americans, and, therefore, *ius gentium* was applicable to all civil units. This also reflects how the early Christians looked at ethical obligation to be applicable everywhere, regardless of place.

But what is the relation to hospitality? Hospitality plays an instrumental role in Vitoria’s justification for the Spaniards entering the Americas. In his very first proof, he points to the principle of hospitality, which supposedly comes from *ius gentium*. He writes that ‘[a]mongst all nations it is considered [...] humane and dutiful to behave *hospitably* to strangers’. He goes on to explain that the world and all things on it were held in common at the beginning of time, and everybody could travel freely. This was a right, which Vitoria does not consider to be taken away by the division of property. ‘[I]t was never the intention of nations to prevent men’s [sic.] free mutual intercourse with one another by this division’.⁸³ Moreover, he argues that ‘hospitality is commended by Scripture’ and that ‘[refusing] to welcome strangers and foreigners is inherently evil’.⁸⁴ Providing hospitality is, for Vitoria, thus a legal obligation

⁷⁶ Bartelson, *A Genealogy of Sovereignty*, 133

⁷⁷ Schmitt, *The Nomos of the Earth*, 129.

⁷⁸ Vitoria, “On the American Indians,” 278.

⁷⁹ Vitoria, “On Civil Power,” 40.

⁸⁰ Tuori, “The Reception of Ancient Legal Thought in Early Modern International Law,” 1019; Anthony Pagden, “introduction,” in *Vitoria: Political Writings*, ed. by Anthony Pagden and Jeremy Lawrance (Cambridge: Cambridge University Press, 1991), xv; Natural law refers to the idea that there is a set of laws which are valid and enforceable by nature, while positivist law refers to the idea that laws are only valid and enforceable if they have been consented to.

⁸¹ Vitoria, “On Civil Power,” 8-9, 14, 20.

⁸² *Ibid.*, 40.

⁸³ Vitoria, “On the American Indians,” 278.

⁸⁴ *Ibid.*, 281.

– as it comes from *ius gentium* – as well as a moral obligation – as it is obliged by Christian-defined natural law. It does, however, come with a limitation. A host does not have to provide hospitality if the ‘guest’ is behaving in a ‘harmful’ or ‘detrimental’ manner.⁸⁵ This is also a foundation for the just war aspects derived from Vitoria.

It is in this manner we find the recurrence of the exchange element seen in previous iterations of hospitality. For Vitoria, a host society is obligated to provide hospitality to strangers by letting them roam freely through their society, in exchange for the peaceful behaviour of the guests. In this manner, the stranger is *prima facie* to be welcomed, until a guest acts violently, which would provide a justified reason for the host to exclude the stranger. That hospitality plays such an important role for Vitoria in justifying Spanish presence in the Americas is rather surprising, due to the aforementioned rise of the state. As I have suggested in the introduction, the state today stands directly opposed to the openness suggested by Vitoria’s hospitality. Of course, for Vitoria, this merely makes sense, as he considers all states to be under the Christian organisation. This ontological vision was, however, already changing during Vitoria’s lifetime. During the Renaissance, there was a slow but undeniable trend away from considering the constitution of the world as directly ordered by god to have a perfect image created by god but to be constituted through humans.⁸⁶ I will now briefly bracket the specific case of hospitality to further highlight the development of political thought relating to the state. This is a necessary step to understand how hospitality was discontinued and replaced with exclusion.

4.2 Articulating Sovereignty

The most important development in the rise of the state is probably when it was connected to sovereignty. This concept plays a central role in political philosophy, political science, and International Relations to this day. As such, it both requires and deserves to be discussed when understanding the modern structure that shapes contemporary political practices. During the first half of the sixteenth century, sovereignty replaced the aforementioned ordering of god as conceptualisation of political ontology.⁸⁷ Illustrative is the work of Jean Bodin. He is often credited with having originally conceptualised sovereignty, although this neglects the ‘epistemic underpinnings’ that allowed him to formulate his theory.⁸⁸ Nonetheless, Bodin’s tremendous influence on political thinkers and jurists alike makes his writing the perfect place to consider the changing ideas surrounding political organisation.

Today, sovereignty generally is thought of as the characteristic of being the highest juridical and political authority within a territory. Bodin’s conception generally reflects this. He writes that ‘[a] sovereign power is not subject to the laws of the Greeks, or any other alien power, or even those of the Romans, much less to his own laws, except in so far as they embody the law of nature [...] to which all kings

⁸⁵ Ibid., 278.

⁸⁶ Bartelson, *A Genealogy of Sovereignty*, 142.

⁸⁷ Ibid., 138.

⁸⁸ Ibid., 141.

and princes are subject'.⁸⁹ In this passage, something especially noteworthy happens: By granting 'kings and princes' the sovereign right, Bodin declares them free from *ius gentium*. The only exception he makes is when a sovereign consents to it.⁹⁰ Regardless, Bodin specifically mentions that sovereigns are 'not subject' to Roman law, as such attempting to part with the two-century old legal tradition. However, there is an immediate critique possible. For Aquinas and, to a lesser extent, Vitoria, *ius gentium* was part of natural law. As such, one can argue that *ius gentium* had become independent of the Romans and that it is rather crucial to look at natural law to consider the case of hospitality. Bodin already mentioned that sovereigns are subject to natural law. He affirms this by writing that '[...] absolute power only implies freedom in relation to positive laws, and not in relation to the law of God'.⁹¹ This reveals that for Bodin, too, natural law is the word of god. Hence, Bodin has freed the sovereign of the obligation towards the Romans, but the obligation towards god remains. In this sense, his ideas surrounding the state's capacity do not differ drastically from Vitoria, considering there is still an obligation, although it is left to the state to act on it.

The necessary question for this thesis is what this means for hospitality. Considering Bodin's theory, states are no longer considered obligated to provide hospitality under *ius gentium*, yet there is still the possibility it is required under natural law. Unfortunately, Bodin does not explicitly discuss hospitality. The closest thing he discusses is what defines a citizen from a foreigner. 'It is [...] the submission and obedience of a free subject to his prince, and the tuition, protection, and jurisdiction exercised by the prince over his subject that makes the citizen. This is the essential distinction between the citizen and the foreigner'.⁹² At most, Bodin suggests that the sovereign does not have any obligation towards the foreigner and, as such, there is no need to be hospitable. This is, however, not made explicit and is only made thinkable within Bodin. Nonetheless, this sheer potentiality allows for new interpretations and ideas on how a state is supposed and can act.

4.3 Social Contract Theory

The terminology of sovereignty is famously adopted by Thomas Hobbes (1588-1679), known for his work *Leviathan*. Together with John Locke (1632-1704), he is one of the most famous representatives of the social contract theory, also known as contractarianism.⁹³ The premise of the social contract is as follows: before the humans lived together in societies, they all lived in *the state of nature*. Here, everybody was equal in strength and mind. As such, everybody was equally able to pursue their individual interests. And since the state of nature lacked any social bonds, pursuing interests could be done without consideration of another. This led to endless conflict that was in essence a 'war of all

⁸⁹ Jean Bodin, *Six Books of the Commonwealth*, trans. by M. J. Tooley (Oxford: Alden Press, 1967), 35.

⁹⁰ Bodin, *Six Books of the Commonwealth*, 35-6.

⁹¹ *Ibid.*, 35.

⁹² *Ibid.*, 21.

⁹³ Other social contract theory thinkers are Immanuel Kant, Jean-Jacques Rousseau and Mozi to name a few.

against all'.⁹⁴ Hobbes famously described life in the state of nature as 'solitary, poor, nasty, brutish and short'.⁹⁵ It is a situation in which another person could betray you at any time and, subsequently, distrust reigned. Overcoming this rather unfortunate lifestyle was thought imperative, although the reasoning for this can slightly differ. For Locke, the reason is to ensure compliance with natural law, which grants everybody a right to be free from harm of 'life, health, liberty, or property'.⁹⁶ For Hobbes, however, the reason is to ensure that peace is created.⁹⁷ To surmount the state of nature, a social contract is required: 'The only way to erect such a Common Power, as may be able to defend [a group] from the invasion of Forraigners, and the injuries of one another, and thereby to secure them in such sort [...] is to conferre all their power and strength upon one Man [sic.], or upon one Assembly of men [...]'.⁹⁸ Similarly, Locke writes that '[...] all men are naturally in [the state of nature], and remain so, till by their own consents they make themselves members of some politic society [...]'.⁹⁹

Hobbes argues for a 'Covenant', that points one person or representative group to become a Leviathan, that is, an authority that receives the power of a commonwealth for peace at home and protection against enemies abroad.¹⁰⁰ While he leaves the option for an assembly open, Hobbes continuously refers to the Leviathan as a single person. 'And he that carryeth this Person, is called Sovereigne, and sad to have *Sovereigne Power*; and every one besides, his Subiect'.¹⁰¹ Indeed, the social contract becomes the foundation of sovereign power. Moreover, by giving the Leviathan sovereign power, they are free from laws, rules, and obligations, with the exception of the duty of ensuring the peace and well-being of the commonwealth as per social contract. These ideas were the foundations that legitimised the state and outline the understanding of what the state is and can do. As I have suggested, it is ensuring the continuation of the commonwealth which is the end of the state and all means necessary are available in attaining this goal. This means both the maintenance of internal peace within the state, as well as protection against possible foreign threats. Combining this with the aforementioned trend of the state taking up clearer territories, a state becomes a localisation of peace.¹⁰²

The social contract, then, solves the 'issue' of the state of nature's war of all against all within a certain group, on a certain piece of land, by establishing a sovereign that has unlimited control within that territorial and social space. Notice how a sovereign has a limited amount of subjects, namely only those who consented to the social contract. In this, we see a connection to the inherent limitedness of the

⁹⁴ Thomas Hobbes, G. A. J. Rogers, and Karl Schuhmann, *Thomas Hobbes: Leviathan* (London: Continuum, 2005), 100-1.

⁹⁵ Hobbes et al., *Thomas Hobbes*, 102.

⁹⁶ John Locke and Ian Shapiro, *Two Treatises of Government: And a Letter Concerning Toleration* (New Haven: Yale University Press, 2003), 102.

⁹⁷ Hobbes et al., *Thomas Hobbes*, 106.

⁹⁸ *Ibid.*, 136.

⁹⁹ Locke and Shapiro, *Two Treatises of Government*, 106.

¹⁰⁰ Hobbes et al., *Thomas Hobbes*, 137.

¹⁰¹ *Ibid.* [Emphasis in original.]

¹⁰² See also Schmitt, *The Nomos of the Earth*, 140-1.

nation, mentioned in the introduction. As such, the sovereign also does not have any obligation towards foreigners. Moreover, by limiting the sovereign's spatial range, it becomes possible to account for the multiplicity of states. Within each territory, there is sovereignty connected to the state, making it the highest juridico-political authority. However, *between* states, the state of nature continues. Each state looks out for its own interests, i.e., the continuation, security, and welfare of its population. If we were to call this international state of nature anarchy, it becomes immediately obvious how impactful contractarianism is on the contemporary structure: It is the foundation of our understanding of (geo)political life.

This, then, finalises the development of political thought necessary to show how the state, as a sovereign unit with a population and a defined territory, becomes understood in our era. There is, however, a caveat to this. Social contract theory is not merely a theory that simply arose to make sense of the state and other political developments. Instead, it is laden with historical context that allowed contractarianism, specifically the state of nature to be thinkable. This context is mainly related to the discovery and Conquest of the Americas. This was incredibly influential on political thought, as already suggested by Locke above. However, as I have already shown with Vitoria, hospitality had a role in the Spanish presence in the New World, that has to my knowledge not been considered in relation to the conceptualisation of contractarianism. Through filling this gap, I shall show what remained of hospitality in dawn of the contemporary politico-ontological structure that allowed border management to arise.

5. The Corruption of Hospitality

In this final chapter, I will do three things. First, I will discuss the historicity of social contract theory's state of nature. I will show that, instead of being 'merely' a philosophical concept, the state of nature is grounded in a historical perspective on the Americas. There is already a rich literature on this matter. However, to my knowledge, the role of hospitality has been overlooked. Second, I shall fill this gap. This will be done by briefly retelling two stories told by theologian and friar Bartolomé de las Casas (1484-1566). These stories explicitly show how the Spaniards failed to comply with Vitoria's conceptualisation of hospitality.¹⁰³ Third and last, is to see how the corruption of hospitality influenced political thought. For this, I shall take up the work of Samuel von Pufendorf, who, as a jurist, was familiar with *ius gentium*, was influenced by the concept of sovereignty and social contract theory – specifically Hobbes – and explicitly discussed hospitality. For Pufendorf, we will see that foreigners are *prima facie* excluded from the state. It is from his work that I will show that border management became thinkable.

5.1 Creating the State of Nature

I have already mentioned that the discovery of the Americas was influential on the state of nature picture. To understand why this is, it is important to know that the encounter with the people in the Americas caused a crisis of thought in Europe. None of the authoritative sources on the origin and structure of the world – ranging from the Bible to the works of Aristotle – mentioned the existence of another people and continent. Subsequently, many works in the centuries following the 'discovery' dealt with the matter at least implicitly. Focusing on the time of the Conquest itself, the Europeans had to understand what these newly encountered beings were. Jahn points out that, '[the encounter] forced the Spaniards to grapple with an ontological rather than just a political or legal question: What was the nature of these [Indigenous Americans]; were they human beings at all?'¹⁰⁴ Simultaneously, the Spanish had an interest in claiming the resources and lands. Determining, then, what the ontological status of the Indigenous Americans was, provided an opportunity to create a hierarchy between the Indigenous peoples and the Europeans that allowed the latter to take over the lands and resources of the former. As such, the Europeans needed to explain whether the Indigenous Americans *owned* their lands and resources. In the Middle Ages and Renaissance, the matter of property was understood through the concept of *occupatio*, i.e., the idea of occupation. It was used to both explain how something can be rightfully exclusively owned and how someone could have certain rights.¹⁰⁵ *Occupatio* could lead to

¹⁰³ I use Vitoria's work due to his influence.

¹⁰⁴ Beate Jahn, "IR and the State of Nature: The Cultural Origins of a Ruling Ideology," *Review of International Studies* 25 (1999): 414.

¹⁰⁵ Fitzmaurice, *Sovereignty, Property and Empire 1500-2000*, 2-3.

dominium, i.e., owning one's body, other beings, and therefore exercising power in the material world.¹⁰⁶

For the Spanish, the fundamental faculty required for property – both *occupatio* and dominium – was reason. While this term has a long history of different conceptualisations, here, reason is best understood as having the mental capacity to understand and reveal to oneself a 'right' order of things.¹⁰⁷ Subsequently, to evaluate the Indigenous Americans capacity for reason, '[...] the Spaniards tested whether the [Indigenous Americans] followed their 'natural' obligation to realize the 'natural' hierarchy from inorganic matter through plants and animals to human beings on the highest level, i.e. to control the external as well as their internal nature; in other words, to turn nature into culture'.¹⁰⁸ In practice, the test of reason became a test to see how much the Indigenous Americans reflected the Europeans, both on an individual and on a societal level. The actual outcome was widely debated. The Dominican friar and priest Bartolomé de las Casas (1484-1566), also known as the 'the Protector of the Indians', considered the Indigenous Americans to have reason that was somewhat *underdeveloped*, although certainly not *undeveloped* as seen by the societies they have created.¹⁰⁹ De las Casas, therefore, considered the Indigenous peoples to have dominium. For this reason, he fundamentally opposed the Spaniards' treatment of the Indigenous peoples in the Americas.

This was, however, not the general conclusion. This 'underdevelopedness' was considered enough proof that the Indigenous Americans were not (yet) fit to govern the lands and, hence, the Spaniards could take over. This perspective is usually framed in light of the work of Vitoria, who undoubtedly sees arguments for the Spanish crown to take over the Americas' political administration, although he remains decisively more undecided in the matter than generally suggested.¹¹⁰ Jahn argues that the discourse of reason, where more reason was equal to being more like the European, created a teleological view of societies.¹¹¹ The imagery that followed this placed the Europeans in civilised condition, while Indigenous Americans remained in a pre-social state. The idea of the state of nature is 'pre-social' entails two things. First, it lacks the ordering of a society – with a ruler and subjects – and, therefore, everyone is equal.¹¹² This is not only in terms of social status, but, as previously mentioned, also of strength. Second, as also discussed above, each individual only looks out for their own interests and preservation rather than that of others. The combination of the two aspects comes, however, with a grave danger for the contractarian. Namely, it becomes impossible to trust others. Everyone is ensuring

¹⁰⁶ Jahn, "IR and the State of Nature," 413; Bartelson, *A Genealogy of Sovereignty*, 131; Schmitt, *The Nomos of the Earth*, 126.

¹⁰⁷ For a more extensive discussion on its history, see Genevieve Lloyd, "Reason, Gender, and Morality in the History of Philosophy," *Social Research* 50, no. 3 (Autumn 1983), especially 501-2.

¹⁰⁸ Jahn, "IR and the State of Nature," 413-4.

¹⁰⁹ Bartolomé de las Casas, *A Short Account of the Destruction of the Indies*, ed. and trans. by Nigel Griffin (London: Penguin Books, 1992), 5.

¹¹⁰ Vitoria, "On the American Indians," 290.

¹¹¹ Jahn, "IR and the State of Nature," 417.

¹¹² Hobbes et al., *Thomas Hobbes*, 99; Locke and Shapiro, *Two Treatises of Government*, 101-2.

their own preservation, which means one cannot rely on others to respect one's own life and interests. Hence, it becomes favourable to betray others and kill if necessary. And all of this is merely because people live in a state of nature.

From this, it follows that as long as people are without a legitimate authority that is able to enforce peaceful behaviour, there is underlying assumption that humans will only follow their own interests and kill if they deem necessary. Curiously, the extensive literature on the historicity of the state of nature, does not consider what happens when someone is outside the context of their commonwealth. All the while, as I have shown in the previous chapter, contractarianism does consider the state to be a spatialisation of the social contract. The 'discovery' of the Americas also lends itself excellently to this subject, especially due to Vitoria considering the principle of hospitality to be one of the main justifications for Spanish presence in the New World. In this sense, it can already be considered a part of the structure in place at the time. In the next section, I will focus on the practice of hospitality. Subsequently, I shall show how this practice – or rather, failure to practice – led to a shift away from hospitality.

5.2 Hospitable Hosts and Gruesome Guests

To briefly recall, for Vitoria hospitality meant that every community was hospitable towards guests, by giving them free passage through their lands, on the condition that the guests behaved peacefully. As is widely known, the Spanish behaved in a rather unpeaceful manner in the Americas. As such they failed to comply with the principles of hospitality. Indicative of this are the stories told by the aforementioned priest De las Casas and his time in the Americas. In this, I take inspiration from Baker's work on hospitality in the case of *Conquistador* Hernán Cortés's (1485-1547) entry and annexation of the Inca city Tenochtitlan.¹¹³ Cortés was given extensive hospitality by the emperor Montezuma, when the latter provided food and shelter for at least three hundred Spaniards. In his article, Baker focuses on Montezuma's unconditional hospitality towards those who betrayed his welcoming – the Inca emperor did not fight back when the Spaniards took him hostage – which showcases that (unconditional) hospitality is *haunted* by the possibility of betrayal.¹¹⁴ Understanding and acknowledging the force of this argument, my case instead considers the structural betrayal of the Spaniards of the principles of hospitality as understood at the time as a foundation for the image of untrustworthy guests.

As a missionary, De las Casas participated in the Conquest. Yet, after witnessing the gruesome actions of the Spanish, De las Casas considered himself obligated to speak up against it. As such, he tells many stories about mass violence, which today is labelled more and more as genocide. Although this term is anachronistic, it does indicate the brutality of the Conquest.¹¹⁵ During the exploration of Hispaniola –

¹¹³ Baker, "The Spectre of Montezuma," 23-36.

¹¹⁴ Ibid., 30, 32.

¹¹⁵ See also Meiches, *The Politics of Annihilation*, 121.

modern-day Haiti and the Dominican Republic – the Spanish encountered five kingdoms. The fourth kingdom, Xaraguá, is described as the most ‘cultivated’ by De las Casas.¹¹⁶ He considered this kingdom and its elites to be noble. As such, De las Casas writes: “Chief among [the nobles] were the king Behechio, and his sister, Anacaona, both of whom rendered great service to the European settlers, on occasion even saving their lives [...]’.¹¹⁷ Indeed, the Xaraguás did not merely let the Spaniards into their kingdoms, which would have already fulfilled the Vitorian requirement for hospitality. Instead, the Xaraguás assisted the Spaniards, ensuring the continuation of their lives. Providing freedom of movement is the minimal standard for hospitality, something which the Indigenous Peoples complied with. Yet, they went beyond and created safety for the Spanish. So, how did the latter react? When the newly, Spanish-appointed governor of the island arrived and visited the kingdom, he brought sixty men on horses and three hundred more on foot. ‘The governor duped the unsuspecting leaders of this welcoming party into gathering in a building made of straw and then ordered his men to set fire to it and burn them alive. All the others were massacred, either run through by lances or put to the sword’.¹¹⁸ Instead of remaining in peace, the Spaniards exchanged hospitality for violence.

The second example shows this even clearer. De las Casas points to the *Conquistador* Francisco Pizarro’s travels into current-day Ecuador and Peru, which at the time was simply considered Peru. Arriving in 1531, Pizarro ventured to the West coast of the continent, being well experienced in the violent manners of the Spaniards. ‘When [Pizarro] visited the island of Puná [of the coast of South-Ecuador] [...], the lord and the people of this beautiful and populous island *welcomed* him and his men as though they were angels come from Heaven’.¹¹⁹ Indeed, the Indigenous people on the other side of the continent were as providing as the people on Hispaniola. However, the Spaniards remained equally cruel. De las Casas continues: ‘The way the guests [Pizarro and his company] repaid [the Indigenous people’s] *hospitality* was to set about them with sword and lance, killing many and enslaving the rest, treating them the while in the most barbaric and cruel fashion’.¹²⁰ As was already clear in the first, but what becomes even more obvious in the second example: the Conquest of the Americas was nothing less than the consistent and systematic breaking of the principle of hospitality, where the Spaniards exploited the welcoming by the Indigenous peoples and turned to violence the instance they could. The principle of hospitality was abused.

5.3 The End of Hospitality

The picture above paints a horrific scene that undeniably shows that the Spanish Conquistadores did not abide by hospitality. However, in order to fully show that this led to the abandonment of the principle, I have to show that hospitality and the Conquest were connected. For this reason, I turn to the

¹¹⁶ De las Casas, *A Short Account of the Destruction of the Indies*, 21.

¹¹⁷ Ibid.

¹¹⁸ Ibid., 21-22.

¹¹⁹ Ibid., 108. Emphasis added.

¹²⁰ Ibid. Emphasis added.

work of Pufendorf. I will start by briefly outlining his vision of the state, to make the connection to contractarianism. Subsequently, I shall turn to the role of hospitality in his work. Contemporary writing often categorises Pufendorf in the Reason of State tradition, following thinkers like Giovanni Botero and to a lesser extent Niccolò Machiavelli.¹²¹ While there is an undeniable influence of these thinkers on Pufendorf, I want to focus on another influence, namely that of social contract theorists, specifically Hobbes.¹²² Of course, categorising an author can be deeply problematic from a genealogical perspective. Hence, the opportunity to draw from these more unexpected influences allows both to obscure categorisation and to expose underlying assumptions of the discourse of exclusion.

Pufendorf considers the state to have ‘its own special rights and property’ which cannot be taken away and that nobody ‘may appropriate apart from him who holds the sovereign power or to whom the government of the state has been committed’. He continues that ‘[...] the state is understood to will whatever [the sovereign] has decided [...] in anything within the purpose of a state’.¹²³ As such, it is a composite moral person, whose will blended and combined from the agreement of many is taken as the will of all so that it may employ the forces and capacities of every individual for the common peace and security’.¹²⁴ Pufendorf appears to continue working in the vein of Bodin’s sovereignty, considering that the sovereign has full control over the polity in exchange for obligations towards its subjects. Within the state, what he calls the civil condition, there is ‘the reign of reason, here there is peace, security, wealth, splendour, society, taste, knowledge, benevolence.’ Pufendorf directly contrasts this with the state of nature, where ‘[t]here is the reign of the passions, there is war, fear, poverty, nastiness, solitude, barbarity, ignorance, savagery’.¹²⁵

In actuality, Pufendorf differentiates between two types of state of nature: one as is most commonly known – a fictional conceptualisation of how people lived before communities – and a natural state that ‘actually exists’. The latter, according to Pufendorf, ‘shows each man joined with a number of other men in a particular association, though having nothing in common with all the rest except the quality of being human and having no duty to them on any other ground. This is the condition that now exists between different states and between citizens of different countries [...]’.¹²⁶ Pufendorf makes the observation that the state of nature does not (anymore) exist between individuals, as it has been overcome through the creation of a state. Yet, it still exists between states and the citizens of different states. The continuation of the state of nature inter-states and inter-peoples comes from the lack of a

¹²¹ Samuel Pufendorf, *On the Duty of Man and Citizen According to Natural Law*, ed. by James Tully and trans. by Michael Silverthorne (Cambridge: Cambridge University Press, 1991), xiv-v.

¹²² Pufendorf, *On the Duty of Man and Citizen According to Natural Law*, xvi; Fiammetta Palladini, *Samuel Pufendorf Disciple of Hobbes: For a Re-Interpretation of Modern Natural Law*, trans. by David Saunders (Boston: Brill, 2019), 1, 4.

¹²³ Pufendorf, *On the Duty of Man and Citizen According to Natural Law*, 137.

¹²⁴ Ibid.

¹²⁵ Ibid., 117-8.

¹²⁶ Ibid., 116.

‘common judge’ or ‘an authority’ that can enforce compliance with agreements or compensate for wrongdoings.¹²⁷ As such, the state of nature lives on between political units and commonwealths. Contractarianism structured how Pufendorf thought about the world. But what did the jurist think about hospitality?

Pufendorf writes that ‘[A] Duty of *Humanity* is the Admission of Strangers, and the kind Reception and Entertainment of *Travellers*’, explaining that there is such a thing as ‘the Right of Hospitality’.¹²⁸ Pufendorf notes how *inhospitality* is common and generally unjustified. However, he also explains that it seems ‘[...] reasonable [to be inhospitable], because the Grounds of prudent Caution and Suspicion are so numerous, that we may easily make use of one or other of them, to justify us in keeping such Persons [i.e. strangers] at a distance [...]’.¹²⁹ At this point, Pufendorf directly addresses Vitoria and the latter’s justification for entering the Americas through hospitality. ‘[...] [It] seems very Gross and Absurd, to allow others an Indefinite and unlimited Right of travelling or living amongst us, without reflecting either on their Number, on the design of their coming [...]’.¹³⁰ As I have mentioned, Vitoria acknowledges that the intent with which a stranger arrives, matters for how the host community should and can react. However, Pufendorf considers the more open treatment Vitoria argues for to be incautious, as the intent of the stranger can never be truly known and, therefore, the consequences of providing access might be disastrous. For him, the case of the Americas was instructive of hospitality’s danger. Hence, Pufendorf concluded ‘[t]hat it is left in the power of all States, to take such Measures about the Admission of Strangers, as they think convenient [...]’.¹³¹

It is in this framing that the stranger can no longer claim free admission to a polity per the right of hospitality. The polity, in the shape of the state, has received the power to do whatever is necessary for the security of the community. The social contract obliges the state, as the sovereign, to take care of the peace and well-being of its ‘creators’. The state takes on the role of protector of the commonwealth. Outside of the state, there are people who have not committed themselves to the peace of the commonwealth and submitted themselves to the sovereign. For this reason, they cannot be trusted and are considered a threat to the commonwealth. Hence, the state ought to be sure that those who enter its territory are not a threat. In this, the state gains the power to do border management. As the outsider, looked upon with mistrust from inside the commonwealth, tries to enter the state, they become the object of this power. Moreover, due to the inherent suspicion of the relational state of nature, the outsider is *prima facie* excluded. Hospitality is impossible in the state system conceptualised through social

¹²⁷ Ibid., 118.

¹²⁸ Samuel Pufendorf, *Of the Law of Nature and Nations* (London, 1717), Book III, 32. [Emphasis in original.]

¹²⁹ Pufendorf, *Of the Law of Nature and Nations*, Book III, 33.

¹³⁰ Ibid.

¹³¹ Ibid.

contract theory, because the state of nature frames other states and their populations as possible threats. For this reason, hospitality becomes unthinkable and border management is considered necessary.

6. Conclusion

In this thesis, I set out to explain how border management can be thought. It was noted how, in the contemporary world, foreigners are *prima facie* excluded from the state's territory. Simultaneously, I pointed to the practice of hospitality, which in Ancient Greece tasked communities with welcoming travellers and providing for them. Out of curiosity about the discontinuation of this practice, I commenced a genealogy of hospitality. The Foucauldian genealogy considers the events, ideas, and practices relevant to the formation of the contemporary structure in which (political) life takes place. Through a discussion of several iterations of hospitality – from pre-Greek societies via the Romans into the Middle Ages – I showed how the changing conceptualisation of the concept. Each involved different actors, rationalities, and understandings, which made the practice appear as loosely connected at best. Especially noteworthy is how hospitality came under *ius gentium*, which as a legal concept had become a subset or was equated with natural law. By the Renaissance, hospitality had become an obligation to allow travellers from different polities to travel through their lands freely. I discussed how this was used as a justification for the Spaniards to travel through the newly-found Americas.

Here, I split my analysis into two. First, I further traced the evolution of political thought, which through the concept of sovereignty shed any obligation the state had under *ius gentium*, which brought hospitality in a precarious position as possibly no longer being necessitated. Subsequently, I showed that the rise of social contract theory created a reasoning where the state no longer was obligated anything toward outsiders, while simultaneously framing this outsider as a possible threat against which the commonwealth had to be protected. Second, I showed how the discovery of the Americas was instructive for the creation of the state of nature narrative. I argued that the role of hospitality had been overlooked in this. This gap was filled by showcasing how the Spaniards had abused the hospitality of the Indigenous Americans to conquer the New World. From this, I argued that hospitality became discontinued in the contemporary structure, which is based on the imagery of social contract theory. Here, foreigners are thought of as untrustworthy and, therefore, they should be investigated before being given access to a state's territory. This line of thought necessitates border management and makes the idea that foreigners freely travel between polities unthinkable.

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