Juridical and Ethical Aspects of the Idea of Peace in Kant

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The categorical imperative central to Kant's *Essay on Perpetual Peace* is the imperative: "There ought to be no war!". This imperative is more fundamental than all more specific imperatives that we find in both the preliminary and the definitive articles on perpetual peace, for instance the imperatives that there ought to be no standing armies and that the civil constitution should be republican. In what follows, it will be shown that this general imperative that motivates the *Essay on Perpetual Peace* can be understood in two ways, namely, first, as an imperative of an ethical law-order and, second, as a juridical imperative of the pure reason of right. Moreover, the considerations on the juridical character of this central imperative will unavoidably lead us to Kant's conception of the law of peoples and to the question whether his differentiated conception of international law is able to cope with the demands of the juridical imperative of peace.

In order to distinguish the ethical realm from the juridical realm, we can refer to the third section of the Introduction to the *Metaphysics of Morals*, in which Kant explains the latter's division in a doctrine of right and a doctrine of virtue. It is said there that the doctrine of right and the doctrine of virtue do not have to be distinguished because of different corresponding duties,[1] and that the legislation of the first thus can correspond to the legislation of the second "with respect to the action that turns it into a duty" (MS AA06: 218.24-25). In the case of perpetual peace as a duty, the said actions are peace-installing or war-avoiding actions that can as well be prescribed by the doctrine of right as by the doctrine of virtue. What now distinguishes the realm of right from the realm of virtue are the different determining grounds of the will that they appraise in the active subject. The distinguishing characteristic is the variety of motives for identical external actions.

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[1] See MS AA06: 219sq.

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The ethical legislation requires that the idea of the "internal duty is of itself the determining principle of the will of the actor" (MS AA06: 219.19-20); it requires, that the "duty is at the same time […] motive" (MS AA06: 219.03), that the acts happen only "because they are duties" (MS AA06: 220.34-35). The ethical legislation cannot be an "external" legislation – Kant adds: "not even of a divine will" (MS AA06: 219.27-28). The legislation has to be internal and must be grounded on the "self-compulsion" (MS AA06: 380.01) of the self-obliging subject. So for example the ethical "duties of benevolence" (MS AA06: 220.29-30)2 with respect to everyone must ground on obligation as internal self-obligation; the benevolence has to be that which in its origin is proper to us and cannot be produced by any heteronymous influences.

Specific to the juridical legislation is that it doesn't require an internal ground of determination of the will and that it is built on another motive than the idea of duty. Duties of right are external duties, and law takes its motives „from the pathological grounds of determination of the will" (MS AA06: 219.07-08), in particular from the pathological grounds of determination belonging to the feeling of pain. That is: in the interest of obeying the duties of right, it is built on the "external obligation" (MS AA06: 220.04) as embodied in the risk of punishments and on the "reluctance" (MS AA06: 219.08) against those. For Kant, "following the principle of non-contradiction, a right goes together with the license to oblige anyone who doesn't respect it" (MS AA06: 231.32-34). Therefore, when the relation between the concept of right and the coercive power is analytic, the former is not possible without the latter and a supposed right without coercive power is thus no right at all.

Kant normally characterizes the juridical state of nature by the fact that everyone there is his/her own judge, so that the individual reacts with private violence to a real or merely supposed infraction. An essential property of the transition from a juridical state of nature to the state of a civil constitution or a national legal system is that it is no more the case that everybody is his/her own judge, but that there is an institutionalized public jurisdiction that exerts the coercive power that essentially characterizes the concept of right. Following the prescriptions of the reason of right, without such jurisdiction, we strictly can't speak of a state. We must stress this point, because Kant draws an analogy between the transition from constitutional law to the law of peoples and the transition from the state of nature to the political state. Thus, before the establishment of the law of peoples, the relations between the states

[2] Compare with MS AA06: 451-453.

(understood analogously as persons) are such that every state is its own judge and claims for itself its own particular coercive power. The law of peoples now must transcend these relations for the sake of a universal coercive jurisdiction, if it is to comply completely with the conditions of the concept of right as such.

Regarding the juridification-process of the general imperative of peace, we find in Kant's Essay on Perpetual Peace two particularly important more specific imperatives. The first demands that the inner organization of states secures peace; the second demands a particular outer juridical relation between states. They find their expression in the two first definitive articles on perpetual peace: "The civil constitution of every state should be republican." (ZeF AA08: 349.08); and: "The law of peoples must be founded on a federation of free states." (ZeF AA08: 354.02).

Kant sees the reason for the peace-entertaining character of the republican constitution in the fact that it "requires the consent of the citizens to decide whether war should be, or not" and that they thus would have to "decree for themselves all the calamities of war" (ZeF AA08: 351.05-08), unlike in a non-republican constitution in which "the ruler is not a member of the state, but the proprietor of the state" (ZeF AA08: 351.15-16) and therefore the principle of legal equality of citizens wouldn't be in force. Already these indications with respect to republicanism let us think almost inevitably on a democracy in the modern sense,3 and even more so do the further fundamental theoretical determinations. These are, first, the principle of external legal freedom, explained by the possibility of the citizens' approval of the law,[4] second, the principle of "dependence of all upon a single common legislation (as subjects)" (ZeF AA08: 249.10-11) and, third, the principle of representation, following which, unlike under despotic conditions, all individuals as citizens leave their private will behind and are bound by the public will, the united will of all.[5] That, finally, the rational – that is: republican – constitutional state should be characterized by a sharp

[3] Kant does not hold the - perhaps obvious – view that, in the event that all countries fulfill the imperative of republicanism, peace would already be ensured, and that therefore citizens would never decide to go to war when democracies were established everywhere in the world (whereby the imperative of the law of peoples in the second definitive article would become superfluous). The necessity that this imperative be fulfilled is actually that much independent from other conditions that it even obliges states whose constitution is not yet republican to submit themselves to the law of peoples. This has been pointed out especially by Georg Geismann (2012, 210). The rationally legal final state however requires indeed that there are only republics. Moreover, it requires that "the co-existence between states is also configured as a republic" (Hoffe 1995, 118).

[4] See ZeF AA08: 349.

[5] See ZeF AA08: 352-3.

separation of powers, is elucidated most clearly in the doctrine of right of the *Metaphysics of Morals*.

On the question of which kind of government is adequate to the republican principles, so far as this is contingent upon the personnel of the executive or, more precisely, on "the difference between persons holding the supreme public authority" (ZeF AA08: 352.02), the text that the Essay on perpetual peace provides under the first definitive article contains a certain potential for confusion which, however, can be made largely harmless. To be sure, the formal resolution that "either only one" can exercise the executive power "or some associated with each other or all together […] possess the sovereignty" (ZeF AA08: 352.06-08) is as such unequivocal. Problematic, however, is that the first of these options is further specified by the term "monarchy" (ZeF AA08: 353.06) – also called "autocracy" (ZeF AA08: 352.08) or "the power of a monarch" (ZeF AA08: 352.09) –, the second by the term "the power of the nobility" (*Ibid*.) or "aristocracy" (ZeF AA08: 352.08) and the third by "democracy" (ZeF AA08: 352.08-09).

The smallest of the problems is merely terminological and has to do with the concept "democracy". The use of this term is limited, in Kant, to the merely thinkable possibility that the executive power be at once in the hands of all citizens – an idea which almost never is of relevance for political praxis. When he finally rejects democracy in this sense, because the regency of each citizen must get stuck in private will and cannot be risen to the public will and thus be representative, he doesn't reject the democracy in the actual sense, for which precisely the above mentioned Kantian principles of republicanism are constitutive. – The somewhat bigger problem is linked with the other two forms of government, with monarchy and aristocracy, because they presuppose a nobility. To specify the executive power of a single or a few in this way cannot have its origin in the "pure source of the concept of law" (ZeF AA08: 351.02) from which Kant draws his normative precepts for peace, since the phenomenon of nobility is historically contingent. During his transition from the formal quantitative indication of possible forms of government to the two concretizations "monarchy" and "aristocracy", we thus must have to do with an implicit change of perspective from the purely normative towards the conditions of their empirical realization. This extension is quite motivated and quite understandable because the historically given empirical field of application of his theory of law is still, in Kant's time – notwithstanding a begin of change inspired by the French revolution – a political landscape shaped by the aristocracy. By the way, the treatise on peace is characterized throughout by the repeated

changes of perspective between, on the one hand, a priori theory of law and, on the other hand, theoretical considerations on its application; the latter will eventually also become explicit in the doctrine on the moral politicians who are at the same time acting in accordance with rules of prudence.

In a long remark to the first definitive article, made in the context of the explanation of the principle of legal equality, Kant then also states unambiguously that the nobility can lay no claim whatsoever on a place within the structure of the pure doctrine of law. It is said there that "the general will of the people in an original contract (which is indeed the principle of all rights) will never decide" that "a rank is associated with birth", so that the right "to be the commander" "would be given to a beneficiary who is without any merit" (ZeF AA08: 351.27-30fn). What Kant concedes using the word "noble", is a "noblesse", but in this case "the rank does not stick, as a property, to the person, but to the position, and the equality is not thereby violated; because, when he resigns from the post, he also stores the rank, and it is rendered to the people" (ZeF AA08: 351.31-35). It follows from the foregoing that, according to today's parlance, one of the two forms of government that Kant thinks can be legitimized in front of the reason of right, namely the one that puts the highest executive power in one person, would be called a presidential democracy.

With respect to the historical figures of monarchy and aristocracy Kant now also admits something that pertains again to the reflections on the realization process of the pure theory of law, namely that it is "at least possible", although not guaranteed, "that they *would adopt* a kind of government that is in accordance with the *spirit* of a representative system of government" (ZeF, AA08: 352.31-32). Honorably mentioned in this context is Frederick II, because he, so Kant, "at least *said*" – in the original this word is highlighted by spaced letters – "that he is merely the chief servant of the state" (ZeF AA08: 352.32-33). Kant also notes that the people are "more preoccupied" with "the type of government" – that it is in the spirit of the representative system – "than with the form of government" (ZeF AA08: 353.09-10). This remark gives expression to the factuality of the views of the people as Kant supposes them to be and should in no way be read as recognition of the normative superiority of a form of government that is merely exercised *in the spirit* of Republicanism over the form of the state. He thus also immediately adds to this remark that "a lot depends" on the form of the state and its adequacy for the purpose of republicanism (ZeF AA08: 353.11). Already

before he had spoken of the necessity of reforms, in order to arrive at a "perfectly legal constitution" (ZeF AA08: 353.08).[6]

In the perfectly legal constitution, the obligation to respect the united will of all, that is: the republican representative system, would have to be guaranteed; it must not merely be left to the discretion of the executive power to govern according to its spirit. It would have to be realized according to the letter, that is: by laws that are made public and by legal institutions. According to the concept of law, the laws should be accompanied by a coercive power. According to the principle of legal equality, also a first servant of the state would have to comply with the jurisdiction. It would then be litigable if he would violate one of the specifications of the general peace imperative "There ought to be no war", for example the imperative "No national debts should be incurred as an aid to the conduct of foreign policy" (ZeF AA08: 345.20-21).

But as long as there is yet no legal constitution that is literally republican, compliance with the imperatives of peace still depends on the effectiveness of the internal motives for peace held by the actors. With respect to the distinction initially made, during this period those imperatives are only ethical and not juridical. In the perfect legal constitution, however, the same imperatives should have become legal imperatives. Because this constitution goes together with the existence of a coercive jurisdiction, as necessarily implied in the concept of juridical imperatives, there could then be dispensed with the effectiveness of the internal motives for peace, although such effectiveness is of course not excluded by the juridification.[7]

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[6] Therefore I do not agree with Heiner Klemme, who thinks that reason claims a "world-monarchy that is organized as a republic" ("nach der republikanischen Regierungsart organisierte Weltmonarchie"), which however – with Kant's consent – the people do not want out of certain empirical grounds, namely the "contingent grounds […] of the diversity in language and religion", so that the "federation of states" remains as the unique candidate for the ultimate international institution (Klemme 2012, 195). As we will show later, contrary to such kind of superiority of the factual above the normative, reason does demand (with Kant's consent) the realization of its norm, that is: the realization of one world-state that, given the irrational nature of the nobility, will not possibly be a monarchy, even when really existing monarchs can and must advance the progression towards "an entirely juridical constitution" (ZeF AA08: 353.08) by adopting the "form of government that is conform to the spirit of a representative system" (ZeF AA08: 352.31-32).

[7] As far as can be seen, in the ramified literature on Kant's theory of peace it has been very rarely noted that the effectiveness of the *ethical* motivation is necessary for the evolution towards a completely legal constitution, hence until it has made itself redundant because of its institutionalization. Otfried Höffe assumes the ethical motivation only implicitly, e.g. when he characterizes the acts of particular states to dispense with sovereignty in favor of the establishment of an effective law of peoples in such a way that they could "only happen entirely voluntarily" (Höffe 1995, 131). In the case of the juridical motivation, the determining ground of the capacity for choice is never the unrestricted free will, because, as we have seen, when it comes to rights one always has to deal also with the pathological determining ground of external coercion. Georg

The legalization of the imperative of peace with respect to the external relations among the States is, as was said before, called for by the second definitive article, which postulates a law of peoples that – as it is stated – should be *grounded* on a federation of free states. What exactly is required by this article is not totally clear and it is therefore highly controversial among commentators. Should the said legalization end with the federation of free States, that is: the federation of States that stay sovereign with respect to their contractual connections and that, in its largest dimension, would involve all States? Or does the requirement consist in a law of peoples that is merely *based* on this federation as a switching stage, and which ultimately would have to be overcome in favor of one single world-republic?[8]

In his explanation of the second definitive article, Kant leaves no doubt that one single world-republic would be the most rational option when it comes to the realization of peace. But he also brings forward arguments that speak against the establishment of one single world republic. It is important to determine and verify the meaning, the status and the legitimacy of these counterarguments. But before doing that, let us express with the words of Kant the rational character of the idea of a republican World State:

> For states in their relation to each other, there cannot be any reasonable way out of the lawless condition which entails only war except that they,

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Geismann also holds that Kant conceives of the path to the goal of the legal state of peace "as a series of ever voluntary steps in an ongoing historical process" (Geismann 2012 180).

[8] In the relevant literature, there are widely differing views regarding the rationally legal final form that is suitable to world peace and regarding the position on this issue that is ascribed to Kant. Basically, these views can be associated with three directions of interpretation. We are talking here about the question whether this final form is achieved by a confederation of States that is founded on contracts between States that remain themselves totally sovereign or by a Republican World-State that of course supposes the abandonment of all rights on sovereignty. The three directions can be outlined in the following way:

1. The confederation of States is the adequate peace-theoretical legalization and for good reasons it is also exactly the view that Kant subscribes to. For instance, according to Oliver Eberl "the contract for the peace-confederation must be esteemed the full-fledged legalization of the external relation of states" (Eberl 2008, 205). Also Sandra Raponi attributes this position to Kant and stresses that the good reasons for it do not only consist in the readily mentioned pragmatic ones referring to the unfeasibility of the World-State (cf. Raponi 2008, 666 and 675).
2. Kant merely propagated the confederation of States, but he has not presented any compelling arguments against the global governmental state-order, and therefore no convincing arguments against the establishment of a "supranational statehood" with "effective state-like institutions" (Kersting 1996, 437).
3. The in Kant's mind only and indeed rationally legal adequate legalization of the peace-imperative is the "world state (of course of a Republican kind" (Geismann 2012, 207). Pauline Kleingeld also has advocated arguments for the international state advanced by Kant; she considers "defective" the "standard interpretation of Kant's position", namely the one that attributes to him only the "ideal of a voluntary League of Nations" (Kleingeld 2004, 99).

> like individual men, should give up their savage (lawless) freedom, adjust themselves to the constraints of public law, and thus establish a continuously growing state consisting of various nations (*civitas gentium*), which will ultimately include all the nations of the world. (ZeF AA08: 357.05-11)

Following the rational idea of a worldwide legal order for securing peace, as expressed in this sentence, the individual states would have to give up freedom, namely the always wild and lawless freedom to wage war that goes together with the absence of such legal order. By analogy with the transition of individuals from the state of nature into the state of law, they would have to dispense with the unrestricted freedom of choice and comply themselves to the general principle of law which demanded, in its modification to the law of peoples, that national sovereignty must be able to coexist with the sovereignty of any other single State according to a universal law.[9]

The motives that are presupposed among the actors that strive for the establishment of this state of law, i.e. the motives for the aforementioned acts of renunciation and [self-]obligation would obviously have to be ethical, that is: internal, because the motive that is specific to the juridical realm, external compulsion, cannot be assumed during the instauration of a law order. But *after* its establishment, the law of peoples would have to provide a coercive jurisdiction and a coercive executive in order to satisfy the concept of law and to assert the specifically juridical motives. It would have to provide a sort of peace police of the State of nations, because, as in the case of domestic law, the breach of law is of course not to be excluded. After the establishment of the law of peoples, every case of violence among the now limited sovereign states would be such a breach of law, since the law of peoples should first of all oblige them to have the conflicts in their external conditions settled by that universal jurisdiction and thus to refrain from vigilante justice by means of war. In addition to the limitation of the sovereignty of the individual states under the terms of their external relations, one would have to ascribe to the global juridical State the juridical – thus, again, coercive – competence to watch over the preservation of the republican principles in its interior, i.e. to make legally effective the imperative of peace of pure reason that is expressed in the first definitive article. Finally, a rational law of peoples would have to prohibit the withdrawal from the global legal order, and, on the level of constitutional law, not allow the states to have their citizens

[9] Cf. MS AA06: 230-231.

remove themselves from the legal order and return to the state of nature to be again a judge in their own cause.

This irreversibility of the worldwide legal order is well suited to give an earnest meaning to the word "perpetual" in the mostly ironically understood Kantian formula "perpetual peace". If anything, the conditions as they have to be represented according to the given sketch of the law of peoples have none of the idyll that critics sometimes suppose to be Kant's ideal representation, only in order to declare it soon afterwards unworldly and naïve. Kant is on the contrary very much aware that there will always be conflicts in the external relations among States, but that a fully established law of peoples turns a peaceful legal solution into a duty and that each kind of violence that is nevertheless exerted is, as we have seen, a violation of that law that would have penal consequences for the criminal actors. Together with a fully established law of peoples would be installed the external motive that Kant characterizes as the specifically juridical one and that he wants to bring to bear, so that we obtain peacekeeping even in the event of the ineffectiveness of the internal ethical motive.

Now, why does the second definitive article not require from the outset the law order that has been explained to be perfectly reasonable, namely a State of nations that is responsible for the legitimateness of external relations and for safeguarding the principles of Republicanism in states that in all other respects remain autonomous? Why does it only request that "the law of peoples ought to be founded on a federalism of free states" (ZeF AA08: 354.02)?

In preparing a reply to these questions, we need to discuss an argument that Kant brings up against the state of nations:

> That would be contradictory, since a state implies the relation of a superior (legislating) to an inferior (obeying, i.e., the people), and many nations in one state would then constitute only one nation, which contradicts the presupposition, for here we have to weigh the rights of nations against each other so far as they are distinct states and not amalgamated into a single one. (ZeF AA08: 354.09-15)

This argument is quite strange and cryptic, but it can still be deciphered. It cannot seriously consist in pointing out that it would be formally logically contradictory to describe the legal order of a single nation with the plural term "law of peoples". When it comes to logical correctness, this expression could easily be replaced, for instance by the formula "global law". As he recognizes in the doctrine of law of the *Metaphysics of Morals*, Kant, for another reason, takes the talk of "law

of peoples" [*Völkerrecht*] to be unfortunate anyway.[10] The reason is actually not explicitly mentioned there, but it can be derived from his general conception of constitutional law. Following this conception, the juridical entity "State" is completely free from ethnic implications, i.e. with respect to the legal communitization in the State, the concept of 'people' in its teleological understanding, as community of descent, doesn't play any role at all. Nevertheless, Kant follows the common parlance.

Coming back now to the argument that Kant presents against the State of Nations: it cannot be directed against any kind of such a State, because only a few sections before it has been explained as conform with reason. The proposed solution, which was first presented by Pauline Kleingeld, is directed against that State of nations in which originally different States "would melt together". In this kind of World State, the various States would have disappeared. The State of Nations that is declared to be conform with reason however should merely "contain" "ultimately all nations on earth" (ZeF AA08: 357.11) and thus leaves room for the continued existence of the various states, of which the sovereignty is only limited with respect to its external relations and to its commitment to republican principles, i.e. placed under a global coercive law order and its corresponding institutions.

The argument against the fusing State of Nations, however, needs further explanation. There has namely as yet not been provided any factually based reason, why the melting together of all States into a single one should be avoided. In the discussed passage, this reason cannot be found. Pauline Kleingeld, whom I am indebted to with respect to the interpretation of this passage,[11] finds the right argument in the "First Supplement" within the treatise on peace, where Kant describes the risk that a State that after "amalgamation" (ZeF AA08: 367.12-13) would in all respects retain the full power, could easily turn into despotic "universal monarchy" (ZeF AA08: 367.14).[12] In the other type of a State of Nations, this wouldn't be easily possible, because the central government would only have limited competency and the other competences would be distributed among the individual States.[13]

[10] Cf. MS AA06: 343-344.
[11] Kleingeld 2004.
[12] Cf. Kleingeld 2004, 109.
[13] Höffe (1995) considers it rightly to be a "too simple alternative: full or no sovereignty"; he pleads for a "stepped sovereignty" (122), but only wants to attribute "extremely minimal state functions" (127) to the State of Nations (from which he thinks that it leads beyond Kant): "The world republic takes care of the safety and the self-determination of the individual States and of nothing else"

Kant now also presents a second, again initially disconcerting, argument against the State of Nations, immediately after the latter has been qualified as rational. As a ground for the rejection, he argues that the peoples "definitely do not want" such a State and thus "discard in hypothesi what is right in thesi." (ZeF AA08: 357.12-13) As a consequence of this diagnosed indignation, we have to adopt "in place of the positive idea of a *world republic* [...] only the *negative* surrogate of an *Alliance* that averts war" (ZeF AA08: 357.13-16), that is: the discussed "*federalism* of free States" (ZeF AA08: 354.02) that is based on a sum of contracts between States that remain completely sovereign. Kant is clearly aware of the substitutive character of such an alliance, and thus its falling short of a full juridification of the peace imperative, as he is also aware of the fact that, as he states, at best, it merely suspends "the hostile tendencies", "but with constant peril of their breaking loose again" (ZeF AA08: 357.16-17). Being aware of the incomplete legalization, he must also be aware that the imperative of peace could in these circumstances only remain effective as an ethical law. Its observance by the State-actors would then remain dependent on the effectiveness of their internal motives for peace because one couldn't rely on the effectiveness of external legal motives. As long as the legalization of the imperative is based merely on voluntary negotiated

(131). Also Kersting (1996) subscribes to the concept of a "legally enforcing world-statehood in the minimal sense" (438) and believes that he must correct Kant's alleged sovereignty-dogma.

To conceive of the World Republic as minimal State, however, seems a bit euphemistic, even if one only transfers to it the responsibilities that are relevant with respect to peace-policy (as should be the case, because the grounds are lacking for competences that go beyond this). When one thinks of the legalization-process that is required by Kant's theory of peace as having been completed, one necessary has to attribute to the World State a number of specific tasks that could only be implemented by powerful legal institutions. For example, the above mentioned Peace-Police of which it would have to dispose, would have to be able to globally take action against breaches of the law committed by individual States, for instance against the well conceivable infringement that such States would want to reestablish the standing armies that are prohibited by international law (cf. the 3rd preliminary article). If within this context States would contract debts, the prohibition of debts that are motivated out of belligerent grounds would have to be enforced (cf. the 4th preliminary article); even better would be a proactive global financial supervision of the individual States.

Finally, a cosmopolitan law that is thought of as perfectly legally effective, the *ius cosmopoliticum* that in Kant's opinion is the last to be made "publicly lawful" within "a cosmopolitan constitution", requires global institutions with executive powers and with enforceable rulings. Worldwide legal protection and law would not merely have to be guaranteed at the level of legal entities that move beyond the borders of their individual State, but on the still more conflict-prone level of collectives (for instance economic collectives) whose acts transcend the borders of their State. The significance of the task can be measured by referring to Kant's example of a breach of law by the standards of cosmopolitan law on this second level, namely the colonialism of European countries in his time. Nothing short of phenomena of such magnitude would have to be stanched by an effectively established international law or the World Republic, which is why it is difficult to imagine the latter as minimalist.

contracts that provide no limitation or transfer of sovereign rights, so that the States remain free to terminate the contracts, this legalization can only be regarded as provisional. Under these conditions, the law of peoples is not irreversible and has no legal means of coercion that are still required according to the concept of juridical law. The provisional character of a mere "association (Federation)" among States is clearly uttered in the doctrine of right of the *Metaphysics of Morals*, as it is explained there as "an alliance that can be terminated at any time and therefore must be renewed from time to time" (MS AA06: 344.19-21). It is impossible that Kant has conceived of the state of such mere alliance, which remains dependent on empirical factors such as the changing interests of particular States, as the final realization of the legal order as prescribed by the pure source of reason. It would also imply to abandon the categorical character of the imperative of peace if the peace-securing global law were supposed to be subordinated to the condition of an endlessly repeated factual consent of the States. This can no more correspond to a reason of right that is understood to be pure than it could correspond to such reason if the pooling of the individuals into the state, i.e. the overcoming of the legal state of nature would be put at the disposal of each generation in order to make its legitimacy dependent on the always renewed de facto approval of the newborns. Yet we shouldn't suppress the fact that Kant, in the extensively quoted passage, puts forward against the State of Nations that the people "definitively don't want" (ZeF AA08: 357.12) it, and that it thus has surely to be founded on the factuality of a historically contingent state of the will of the nations. This is at least in tension with his expressed distancing, at the very beginning of the treatise on peace, from those politicians who think that one "must proceed on empirical principles" (ZeF AA08: 343.09-10). His theory of peace is accordingly also deployed throughout as a counterfactually normative theory. Moreover, in his essay *On The Common Saying*, he opposes vehemently the phrase that is here ascribed to the reluctant nations, "what is right in thesi, [is] to be rejected in hypothesi".

However, the outlined problems can be solved after all, once again, in fact, by referring to Pauline Kleingeld's approach,[14] which is, however, in opposition to the mainstream of the relevant Kant-literature.[15] According to this approach, Kant's appeal to the factuality of

[14] Cf. Kleingeld 2004, 101-107.

[15] Allen Wood does well represent the mainstream when he writes (Wood 1995, 11): "Clearly neither the federation nor the state of nations is to be an all-embracing world state […]". The arguments against the world state that Wood distillates out of Kant's text, however, are only those

the reluctance of the nations before the idea of a State of Nations is normatively embedded. This appeal can indeed also be understood as an expression of the following norm: the nations must first of all want the State of Nations, or, put differently: it shall not be *established* by force. Coercion before its establishment would mean war – war in order to introduce the legal order of peace. In this case we would not only have to face the risk that the objective of the war is not realized, but also that the internal legal status of the States disintegrates in the chaos of war, and that thus for the sake of a global legal order that should guarantee peace, there would at the same time occur a destruction of already established legal relations. At one point Kant indeed states that he rejects the compulsion among States to succeed in establishing the law of peoples, because "internally they have already a legal constitution" (ZeF AA08: 355.36-37). If the nations thus should first want the law of peoples in the form of a State of Nations, then this means with respect to the revolving issue of the motives that, for the instauration of the law of peoples, one must count on the internal motives of the State-actors. The imperative by which it is advised to introduce, for the sake of peace, a global law of peoples, and in fact without compulsion, is therefore originally an ethical law; an ethical law that commands legalization. The consistent final form of this legalization is the worldwide State of Nations which has sovereignty with respect to the imperative of peace, concerning the external relations between the individual states, and with respect to the imperative of Republicanism, concerning their internal constitution. With these restrictions, the individual states have only a limited sovereignty. In the established global State, the imperative "There ought to be no war" is now finally a juridical law, i.e. a law that is linked with the coercive powers of the State. To suppose an inner motivation for peace among the actors that have to comply to the law is as yet no longer necessary, though still possible.

The federation of free States represents an intermediate stage on the way to full legalization, and in this respect, the law of peoples *is based*, as stated by the second definitive article, on this federalism. It is the voluntary beginning of the legalization of the peace-imperative. In so far that such a voluntary beginning is necessary within the process of the further reaching duty of legalization, federalism itself can be commanded and thus be declared mandatory, as it is indeed to be found in Kant. But that federalism cannot be more than an intermediate stage is clear from

that Kant advances against the type of world state that is the result of an amalgamation and therefore would totally destroy the particular states.

its already mentioned characteristic that Kant provides in the *Metaphysics of Morals*. In a federal League of Nations, the connection has, "to be sure, no sovereign power (as in a civil constitution)" (MS AA06: 344.17-18). But the absence of a central authority that overarches the individuals or the individual States, in particular the absence of a central jurisdiction, are characteristic, in Kant, for the legal state of nature, in which there is no prescribed procedure for resolving conflicts and just everyone is his/her own judge. Under the terms of the voluntary nature of the stay within – or the repeated renewal of – a merely federal peace order, the beginning legalization of the peace-imperative, represented by federalism, is still reversible. To hold upright a merely federal order of peace requires again and again the effectiveness of the internal motives of those involved. In that case, the peace-imperative remains a merely ethical law. In order to have it become a juridical law, one has to compel the sovereign power of the coercive global juridical State, that is effective as an external motive without therefore at the same time requiring the effectiveness of the internal motive. We may thus continue to have to confront belligerent state leaders; they would only have to be restrained by a powerful law of peoples from waging war. In so far as the global juridical State that conforms to this law of peoples would be, after its voluntary establishment, irreversibly entrenched, one could actually speak of a lasting peace in the sense of the permanent validity of a law that dictates the civil resolution of conflicts and prosecutes each violation as a breach of the law.

Bibliography

EBERL, O. *Demokratie und Frieden. Kants Friedensschrift in den Kontroversen der Gegenwart*. Baden-Baden: Nomos, 2008.

GEISMANN, G. *Kant und kein Ende*. Bd. 3. Pax Kantiana oder der Rechtsweg zum Weltfrieden. Würzburg: Königshausen u. Neumann, 2012.

HÖFFE, O. "Völkerbund oder Weltrepublik?" In: Höffe, O. (Hg.) *Immanuel Kant: Zum ewigen Frieden*. Pp. 109-132. Berlin: Akademie Verlag, 1995.

KERSTING, W. "Philosophische Probleme der internationalen Beziehungen". In: Bayertz, K. (Hg.) *Politik und Ethik.* pp. 423-456. Stuttgart: Reclam, 1996.

KLEINGELD, P. "Kants Argumente für den Völkerbund". In: Nagl-Docekal, H.; Langthaler, R. (Hg.) *Recht – Geschichte – Religion. Die Bedeutung Kants für die Gegenwart*, pp. 99–111. Berlin: Akademie Verlag, 2004.

KLEMME, H. F. "Frieden durch Recht und Natur: Kant und die Idee des Völkerbundes". In: Delgado, M.; Holderegger, A.; Vergauwen, G. (Hg.).

Friedensfähigkeit und Friedensvisionen in Religionen und Kulturen. pp. 193-204. Stuttgart: Kohlhammer, 2012.

RAPONI, S. "What's Wrong with a World State? Kant's Conception of State Sovereignty and His Proposal for a Voluntary Federation". In: Rohden, V.; Terra, R. R.; Almeida, G. A. de; Ruffing, M. (Hg.). *Recht und Frieden in der Philosophie Kants. Akten des X. Internationalen Kant-Kongresses. Bd. 4. Sektionen* V – VII. pp. 665-676. Berlin: Walter de Gruyter, 2008.

WOOD, A. "Kant's Project for Perpetual Peace". In: H. Robinson (Hg.) *Proceedings of the Eighth International Kant Congress*. Bd. Vol. 1, pt. 1., pp. 3-18. Memphis: Milwaukee, 1995.

Abstract:
The categorical imperative central to Kant's *Essay on Perpetual Peace* is the imperative: "There ought to be no war!". This imperative is more fundamental than all more specific imperatives that we find in both the preliminary and the definitive articles on perpetual peace, for instance the imperatives that there ought to be no standing armies and that the civil constitution should be republican. In this paper, it will be shown that this general imperative that motivates the *Essay on Perpetual Peace* can be understood in two ways, namely, first, as an imperative of an ethical law-order and, second, as a juridical imperative of the pure reason of right. Moreover, the considerations on the juridical character of this central imperative will unavoidably lead us to Kant's conception of the law of peoples and to the question whether his differentiated conception of international law is able to cope with the demands of the juridical imperative of peace.
Key-words: Kant; Peace; War; Imperative; Ethics; Right

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