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KANT ON JUST WAR AND INTERNATIONAL ORDER

ABSTRACT

Kant's legal and political philosophy is essential for understanding and advancing international order. The article aims to posit arguments that confront the claims that Kant was just war theorist. Since that is the most opposed part of Kant's political philosophy, mostly due to the misleading interpretation of his argumentation, the author presents Kant's standpoint on the matters of just war and international order and discusses potential ambiguities between Kant's and his critics' theories. Furthermore, the consequences of opponents' arguments considering states of states, world republic and cosmopolitan democracy in contemporary political philosophy are debated. Finally, the possibility of consent between the three model solutions which are arising from the contemporary international order theory and Kant's position are compared and analysed.

KEYWORDS

Kant, Just War Theory, International Order, Constitution, Federation of Free States, States of States, World Republic, Cosmopolitan Democracy

1. Introduction

The article¹ aims to show the relevance of Kant's theory in the field of legal and political philosophy and inquire about his position regarding just war theory and their interrelatedness within the contemporary international order theory. In the introductory part of the article, the author is describing Kant's perspective of the just war theory and examining his standpoint on the matters of war and international order. At the same time, the author tries to determine in which way current political philosophy, laid in the Kantian legacy, and especially his political theory insights, could be used as the resolution for the current theoretical ambiguities in what we call liberal democracies.

In philosophy, the just war theory as an essential component of international order theory has been repeatedly discussed. It is a doctrine studied by many philosophers throughout history. The main idea of doctrine is to support war as a morally justifiable act through a series of standards, all of which

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must be met for a war to be well-thought-out as just. Just war theorists divide rules of war into *Jus ad Bellum*, the set of rules that nations must follow in going to war, *Jus in Bello*, the set of rules that nations must follow during the war (Masek 2002: 143) and *Jus Post-Bellum* as the set of rules concerning justice after the war (Orend 2007: 571).

As is well known, Kant disapproves philosophies which are containing the arguments of just and regular war theory kind in their research and says:

It is surprising that the word *right* could still not be altogether banished as pedantic from the politics of war and that no state has yet been bold enough to declare itself publicly in favour of this view; for Hugo Grotius, Pufendorf, Vattel, and the like (only sorry comforters) – although their code, couched philosophically or diplomatically, has not the slightest *lawful* force and cannot even have such force (since states as such are not subject to a common external constraint) – are always duly cited *in justification* of an offensive war, though there is no instance of a state ever having been moved to desist from its plan by arguments armed with the testimony of such important men. (Kant 1996: 326)

In contrast, advocates of the re-revised modern just war theory developed their ideas in such an approach presenting Kant as consecutive just war theorist, not essentially different from his predecessors. In the recent period, the interest has been keen on founding arguments that highlight the Kant's just war position. Much of the contemporary philosophical enquiries have been constructed in that way. The enquiry which defends the juridical state of states or world republic perspective has been pursued by Byrd and Hruschka (2008) and Höffe (1998), for example. As well, Orend (1999) claims that Kant is a just war theorist and the critique of Kant's perspective and attempts of its reformulation (see, for instance, Habermas 2006) can be found in many recent papers written on the subject.

Unrelatedly of the theoretical position that one advocate, there is no doubt that Kant's practical thinking, presented in his various works, is a central argumentation for research in the contemporary political philosophy. Kant's influence is indispensable in current inquiries, regarding just war theories and international order. There are reasons for re-revising Kantian political philosophy, because only in his work, "we find a theory concerned with the problem of how to overcome the danger of war, in favour of a worldwide order of law and peace" (Höffe 1998: 51). Wars, humanitarian crisis and global immoral political behaviour are set as a standard of the world at present. Harbom and Wallensteen (2007: 624) provide the data on 122 conflicts identified in the period from 1989 until 2006².

State law, a national system of *public legal justice*, is for Kant instrumental to morality (Riley 1979: 44). Legal and political input closely connected with his ethics are in the best way presented through second categorical imperative formulation. It demands that we must: "Act in such a way that *we* treat humanity,

² The civil wars in Syria (2011), Libya (2014) and Ukraine (2014) are not included in this list.

whether in your own person or in the person of any other, never merely as a means to an end, but always at the same time as an end” (Kant 2012: 38). Kant was an optimistic philosopher in search of all the threads that can link us to humanity, dignity and justice, and with his *peace theory* he “has an important contribution to make to the debate on just war thinking” (Williams 2012: 3).

The world of politics is the most responsible for the morality of humankind, and the acting of every government authority towards others should be like the one Kant (1996: 338) suggests in the appendix of his work *Towards Perpetual Peace*. The philosopher’s task is to determine the right moral way and he “clearly subordinates politics (and indeed everything else) to morality, but at the same time bases politics on the *right*, not on utility or happiness” (Riley 1979: 45). That is the only possible approach to Kant’s political philosophy and the topic of the just war legacy. Besides, it brings new theoretical perspectives regarding the argumentation that will arise from an analysis of Kant’s work.

The article is organised as follows. After the preliminary draft of the just war theory, an overview of the Kant’s argumentation has been presented in the debate to make an explanation of Kant’s standpoint on the just war theory and international order. These and correlated questions and arguments are discussed below in section 2 and 3. A particular line of thought runs through these sections and serves as a central thread in the discussion: just war theory and its role within the international order. In this part of the article, the author draws on the recent researches. In the part that follows, however, the focus is on matters of contemporary reformulations of Kant’s theory, especially the one presented by Habermas. In the final comments of the article, the author shows how the distortion of Kant’s standpoint may be misleading for the contemporary theory of justice and tries to define his position.

2. Kant’s Standpoint on Just War and International Order

The structure of *Towards Perpetual Peace* follows the characteristic form of peace treaties that were written earlier. Kant had an idea, different from his predecessors. Although he listed all the just war theory problems in the preliminary articles, later he perceives just war theory from an alternative perspective, aiming, above all, at a peaceful organisation of the nation-states. He expresses disapproval on those thinkers whose work justifies military aggression, although their diplomatic and philosophically formulated codes do not and cannot have any legal force, since the states as such, are not obliged to a common external constraint. As one sees from the title of his work, his intention is indeed not to write a new peace treaty or just war theory, but to give to the humanity a new theory solution for the issues of war.

His idea is peace, established very firmly as a notion in his political philosophy. Peace is in his work in the same corpus of ideas with the truth, justice and freedom. Peace is the firstly, ground philosophical term, and only later a juridico-political concept. He is fully aware that no philosophical knowledge, moral acting or aesthetic judgment, is possible in the state of war. There is no

legitimate solution for peace between people in the field of jurisprudence and politics only. Peace is, before anything else, a philosophical matter and *highest political good*.

Kant holds that a peace treaty is not valid in places where the settlement includes in itself the elements of a future war. Silence about actual causes of war and real pretensions of enemies are usually typical for such peace arrangements. Therefore, he suggests that this is not a step towards perpetual peace but only a temporary end of hostilities. For Kant, “peace is not merely the absence of open fighting, in the form of an ongoing cease-fire; it is a positive condition in which states accept that disputes will be resolved peacefully, that is on their merits” (Ripstein 2016: 190). Unfortunately, all the decisions about future war are in the hands of the mighty authority rulers who will always follow their interest in these matters and not the general will of their people. This kind of decision making would not lead us toward perpetual peace.

The state, for Kant, is not a property (*patrimonium*), a piece of land, which can be an object of trade, but a community of citizens independent of all external influences. The idea behind the statement is:

No independently existing state (whether small or large) shall be acquired by another state through inheritance, exchange, purchase or donation. (Kant 1996: 318)

Such state also means that renting of standing army to another against fighting the mutual or different enemy is not justified. In Kant’s (1996: 318) opinion, governments are using citizens as objects, and they can do with them whatever they like. Usage as this one is the reason why standing armies should disappear with time.

Furthermore, Kant emphasises that piling up material wealth as a reliable war tool is also disgraceful, and the state should not fall in external debt. It is above suspicion if the reason for credit is an improvement of roads, new settlements or formation of supplies against unfertile years. However, as an opposing mechanism in the antagonism of powers, a credit system, which grows beyond sight, constitutes an insecure money power because not all creditors require payment at one time.

Kant is more than clear about this matter:

The ingenious invention of commercial people in this century. Dangerous power of money, namely a treasury for carrying on a war that exceeds the treasuries of all other states taken together and that can only be exhausted by the deficit in taxes that is inevitable at some time (however, that is postponed for a long time because trade is stimulated by the reaction of such loans, on industry and earnings). (Kant 1996: 319)

An ability like this one, to wage war with money power, shared with the predisposition of those who are rulers of states is, therefore, a significant obstacle to perpetual peace and this should be banned in every preliminary article of some future international constitution.

The next step in developing arguments for preventing war is the idea that states should not intrude by force in the constitution and government of another state. No possible mean can justify it. Kant sees only one exception: if one state with internal disagreement would divide into two parts so that both parts can represent themselves as states. In this case, another state from aside can help the newly founded state. All other activities will lead to international *disorder*.

Kant highlights the fact that the only suitable way of avoiding warring is building the civil *constitution* in every individual state on a *republican* basis. It “is important not only because it is the only constitution that is fully in accordance with external right, but also because it is the only constitution that by its nature leads to peace” (Kleingeld 2006: 483).

The civil condition, regarded merely as a rightful condition, is a priori based on the following principles: the freedom of every member of the society as a human being, his equality with every other as a subject, the independence of every member of a commonwealth as a citizen. (Kant 1996: 305)

Then again, this formulation is, to some extent, differently mentioned in the first definitive article of *Towards Perpetual Peace*:

A *constitution* established, first on principles of the freedom of the members of society. Second, on principles of the dependence of all upon single common legislation. Third, on the law of their equality. The sole constitution that issues from the idea of the original social contract, on which all-rightful legislation of a people is based, is a republican constitution. (Kant 1996: 319)

Kant emphasises the same idea in various places. The crucial argumentation for development of the future international order is laying in a “possibility of a fully lawful state at the national level is therefore dependent on some sort of world order—an order which he commonly called the *foedus pacificum*”. (Riley 1979: 52) The state constituted as a *republican* society should afterwards join the federation of free states. To avoid republicanism to be confused with the democratic constitution, Kant describes forms of the state. He is dividing these forms in the following way: either by number or by way of governance. According to the number of persons who have supreme power, the state could be monarchy, aristocracy and democracy as a form of sovereignty. Conferring to the way, the superiors of the state govern people in the *despotic* or *republican* way, like a form of government.

The primary quality of the republican political system is the separation of the executive and legislative power. In contrast, despotism is autocratic managing of the state with laws superior has given to himself. Kant “focuses on the threat of despotism and on separating legislative and executive authority as a barrier to despotism” (Nardin 2017: 358). In this state, a regime is handling the public will as it is private. Of all three forms of sovereignty, that of democracy in the strict sense of the term is necessarily a despotism because it constitutes an executive power in which majority will always outvote the one who

disagrees. That is in contradiction with the general will itself and the principle of freedom, states Kant (1996: 324).

A non-representative form of government (*forma regiminis*) is not a system at all. The legislator cannot be in the same individual and at the same time, the executor of his will. People as citizens deserve to decide, among many other things, if they want to go to war or not. This waging war must be with their consent because they are paying for it with their own life. The situation is different under the constitutions in which the subjects are not citizens. The superior is not a member of the state but the owner, and he could raise war without any significant reason. Republican constitution is, therefore, the barrier for warring intentions of the superior.

The following stage of Kant's journey from the spheres of private and the public law took him to the areas of international order. "The problem of establishing a perfect civil constitution is dependent on the problem of a lawful external relation between states and cannot be solved without the latter" (Kant 2009: 16). Ensuing the same thought pattern, Kant sought to "derive the forms and practices of an ideal international law from the juridical postulates of practical reason" (Fine 2011: 147). Kant starts to build an argument of the necessity of the international order in part three of his work *On the common saying: That may be correct in theory, but it is of no use in practice*, such as a response to the view that the human race will never make any moral progress. The international order is seen as a condition in "which alone the predispositions are belonging to humanity that makes our species worthy of love can be developed" (Kant 1996: 305).

Kant emphasises that nowhere human nature appears less attractive than in relations between the nations and that no state is safe from the other, neither its independence nor its property. The will for conquering has always existed. Nevertheless, Kant's philosophical position from *Towards Perpetual Peace*, states that the international order as "the right to go to war is, strictly speaking, unintelligible" (Kant 1996: 328). It should be based on *universal laws* and not on the brute force, and it must be designed on the federalism of the free states. The only possible solution for this is an international order, based on public laws accompanied by the power of the republican constitution. Federalism of *republican* states is building a peaceful alliance. Only *republican* states should constitute some future league of nations because they are peaceful by their nature. We observe the states with their people as free agents in their state of nature, independent from external coercive power. Then again, this presumes that all states of the alliance are having their *republican* governance, which guarantees all the fundamental human rights to every single man. This alliance should be, in Kant's view, a union of people, which does not have to be a multinational state blended in one single entity.

The concept of international order assumes that many neighbouring countries are existing independently. Although such condition means war *per se*, it is still, according to the ideas of our reason, better than the state of nature, "a condition that is not rightful, that is, a condition in which there is no distributive

justice” (Kant 1996: 451). Because, if the extent of such power is significant and more prominent, the effect and influence of the civil laws and rights start to weaken, and we will have mindless despotism leading toward complete anarchy in the end. Therefore, to conclude, the republican system of government is the necessary condition for the subsequent step in the prevention of war, which is for Kant, the federation of the free states.

Kant repeatedly compares external state relations to the interpersonal state of nature. He “draws different conclusions concerning how to overcome the state of war between persons and the state of war between the states” (Mikalsen 2013: 305). The crucial stage in setting up of warless condition is the federation of the free states’ solution. Analogically³ to the social contract theory in which people live in a state of nature before the founding of the civil society, the states exist in a natural state before the federation of the free states. Just as individuals, who can be final referees of their decisions and behaviour, governments in a natural setting can decide about their way of interaction with the other regimes. Like individuals in the natural state, which end in war and struggle, governments in a natural state end in mutual hostility.

Governments in a natural state are in the situation we define as the *war of everyone against everyone* (Hobbes 1651: 80). The only outcome of such a state of affairs can be accumulated destruction, just as relations between individuals will end in wrongdoing and insecurity. However, interactive communications between governments are much more complicated than connections among individuals who live in a natural state. Therefore, individuals and nation-states existing under a natural state have both similarities and differences. Before their agreement with the federation of free states, nation-states deal with following types of interactions: the two-sided relationship between two states, the multilateral relationship between the states that are members of the federation, and the relationship of the people of one state with the government of another. Kant describes the states as moral agents, who have obligations towards the others. According to his moral philosophy, here lies the following model of reasoning: each state (like each moral agent) should universally treat another. Kant thinks that the same moral law, which drives agents from the state of nature to a juridical society, will drive nations toward federation, a form of worldwide republicanism.

Therefore, the states must arise from the state of nature (*Ius Naturale*). The creation of the federation of free states is a necessary measure, so that, within a setting of non-interference, national states would be able to provide general safety against external impact. The federation of free states must have no leader. This fact must be a part of the constitution of a future congress, where countries would be free to join as members or get out of congress. “Only by such a *congress* can the idea of a public right of nations be realised, one to be established for deciding their disputes in a civil way, as if by a lawsuit, rather than in a barbaric way (the way of savages), namely by war” (Kant 1996: 488).

3 Analogy as a perfect similarity of two ratios of dissimilar things (Hirsh 2012: 483).

Nation-states make the association with the federation to leave behind their previous natural lawless state and conflict and to preserve their security and stability. Two significant duties in case of security are set: non-interference in the internal activities of the member states and unified front against aggression. If non-interference duty of member states is working right, we do not need the latter one. If governments subscribe to the conception of non-interference, idea of a cooperative defensive alliance is not an issue, regardless of the aggressor is a member of the federation or outsider.

A *world federation* is different from a peace treaty. A peace treaty may serve as a mean of ending of hostilities, but it will not change the circumstances, which in some way can lead to a new war. People and governments must hold the notion of rights and moral responsibility as a means of rejecting war. The reason, as the definitive source of ethical regulation, levels of absolute disapproval against war and, on the other hand, creates peace as a demanding obligation. Peace is not only the absence of war. For establishing peace, a mutual contract among the nations must exist, and Kant denotes such contract as a *foedus pacificum*.

Kant articulates the following:

There must be a league of a special kind, which can be called a pacific league (*foedus pacificum*), and what would distinguish it from a peace pact (*pactum pacis*) is that the latter seeks to end only one war whereas the former seeks to end all war forever. (Kant 1996: 327)

This league, which takes responsibility for justice and morality, seeks not to control a representative government, but only to preserve the freedom of all countries, including the freedom of the member states. Just as in a society based on law, in which individual liberties come into harmony, in the world federation regimes abandon the idea of interfering with another's the sphere of freedom and contribute to an atmosphere of peaceful co-existence.

The right of nations consists of four elements: the state of nature is a state of antagonism (war), the states are in the state of war in their external relations with each other, a federation of free states is based on some form of the social contract, and this federation may have no form of sovereign power. (Kant 1996: 482)

The consecutive essential principle of war prevention and constitution of perpetual peace is providing citizens with the cosmopolitan right. The right that allows people to travel and cooperate without being treated with aggression. Kant formulates it in the following lines:

Hospitality means the right of a foreigner not to be treated with hostility because he has arrived on the land of another. The other can turn him away if this can be done without destroying him, but as long as he behaves peaceably where he is, he cannot be treated with hostility. (Kant 1996: 482)

What one can privilege is not the right to be a guest, but the right to visit. With his concept of hospitality, Kant is developing the right to travel (*Ius Peregrinandi*).

Articulated like this the right to travel “is directed against all kinds of authority over a foreign country, i.e. against imperialism and colonialism” (Höffe 1998: 55). Kant was a historical witness of conflicts brought about by the process of colonisation, and he was aware of its consequences. However, such acts of exploitation and manipulation did not pose an obstacle to people for entering other societies and interrelating with their fellow humans. The people of one continent can visit the other continents and establish mutual relations. The governments, in this case, must “respect human rights not only of their own citizens, but also of foreigners” (Kleingeld 2006: 477).

In Kant’s philosophy, the notion of a *world federation* reflects the idea of the cosmopolitan whole. According to Kant’s view, nature reaches its goal only when mutual relations, in the context of civil society and human freedom, are not in a situation of war. Under such conditions, natural capacities will complete their maximum abilities. “Construction of a *cosmopolitan* world order in which the relations among nations provide a set of moral and political conditions that, instead of constantly offering a setting for war, open possibilities for securing lasting peace” (Rossi 2012: 219). Vital for the creation of such conditions is the establishment of a *Cosmopolis* as a defensive safety net against countries’ pretension threats to each other. The desire for wealth and greedy government leaders are an obstacle for founding a *Cosmopolis*. If this continues, war and destruction will ruin the chances for the cosmopolitan goal.

Finally, Kant summarises on the topic considering what is substantial to the purpose of perpetual peace and what nature does for this purpose:

Hence to the favouring of his moral purpose, and how it affords the guarantee that what man ought to do in accordance with laws of freedom but does not do, it is assured he will do, without prejudice to this freedom, even by a constraint of nature, and this in terms of all three relations of public right: the right of a state, the right of nations and cosmopolitan right. (Kant 1996: 334)

His teleologically formulated idea is that natural providence will lead to this end. As one can see, Kant, unlike the other cosmopolitan thinkers, does not share the opinion that the state is simply a political construction that does not contain any moral value. If this is true, then the state is merely a constructed institutional entity designed to coordinate the political relationships between people (Brown 2011: 56).

3. The Juridical State of States, World Republic and Cosmopolitan Democracy as a Possible Resolution for Kant’s International Order Theory

Proponents of the state of states model and philosophers who want to impose that Kant was simply another just war theorist, are more than willing to modify Kant’s theory of the federation of the free states. They are trying to use “Kant against Kant to advocate the establishment of a world government” (Kleingeld 2004: 304). In the work of Sharon Byrd and Joachim Hruschka, we

can find such an interpretation of Kant's arguments. (Byrd, Hrushka 2008) Their thesis is that Kant changed his own opinion, or plan, as those authors state, from 'Towards Perpetual Peace' and that his ideas developed over time.

Kant was a mature thinker in that period, without any radical revolution in his life and work, and the presumption that he drastically changed his opinion on this matter is not entirely reliable. When it comes about the topic of the Kant's work, *Towards Perpetual Peace* takes up where *The Metaphysics of Morals* stops (Williams 2012). From the authors' point of view, the diverse interpretation of Kant's perpetual peace task is speculative. "Perpetual peace as a concrete regulative principle for the refashioning of just war theory" (Rossi 2012: 220) must be a guideline for relevant research on the topic.

Kant imagined legal relations among the nations as an analogy to those of individuals in the state of nature. For him, "the state of nature is deeply immoral — and indeed *every* state of nature, including that pertaining *between* states — so that the aim must always be to overcome this as well" (Joas, Knöbl 2013: 52). He attempted to overcome this state of natural position and find a solution for legal world order in the formula of a state of states as the consequence of international relations, a worldwide republic consisting of the nation-states instead of persons. However, Kant almost immediately realises that this solution bares uncertainties and that what is right *in hypothesi* does not work very well in practice. The single world state is not as the right theoretical answer as it may appear at the first look. Kant's argumentation is not entirely coherent in every part of his work, sometimes he offers negative surrogates instead of the final solutions, but he is always unequivocal when he argues about the things which are not acceptable in the future international order.

On the other hand, the line of thinking in Byrd and Hruschka's article claims that the international order arguments are laying in the first part of *The Metaphysics of Morals* called Doctrine of Right. They make an analogy between the position of individuals in the state of nature and the position of states in international relations, quite oppositely from Riley who claims that: "Kant did not believe that states were in quite the same position as men in a state of nature, that they were under the same obligation to leave that condition as *natural* men" (Riley 1979: 54). After a detailed analysis of the Doctrine of Right, Byrd and Hruschka concluded that Kant drastically changed his position since the first edition of the *Towards Perpetual Peace*. Their arguments related to Kant's explanation of exiting the state of nature and entering the juridical state with *republican* governance. They argue that Kant's final stand on world peace was that all nations of the world must join a juridical state of nation-states, much like the individual nation-states we inhabit today. This juridical state of nation-states would be equipped with a judiciary and coercive power to enforce the judgments it reaches.

Nevertheless, Kant points out:

This would be a league of nations, which, however, need not be a state of nations. That would be a contradiction. In as much as every state involves the

relation of a superior (legislating) to an inferior (obeying, namely the people). However, many nations within one state would constitute only one nation, and this contradicts the presupposition. (Kant 1996: 326)

Once it is implemented, republican governance of the state determines the individuality of its people. Kant has in mind the right of individual people in the universal relation and not people melted in one giant state with despotic governance. In the *Metaphysics of Morals*, he puts the same idea in another phrase:

By a congress is here understood only a voluntary coalition of different states which can be dissolved at any time, not a federation which is based on a constitution and can therefore not be dissolved. Only by such a congress can the idea of a public right of nations be realised, one to be established for deciding their disputes in a civil way, as if by a lawsuit, rather than in a barbaric⁴ way, namely by war. (Kant 1996: 488)

Byrd and Hruschka's approach in their commentary on Kant's *Doctrine of Right* is analytical and very detailed. Word by word, their pedant analysis of the text sometimes distracts us from the general picture. They seem to agree that *Metaphysics of Morals* is a higher authority than *Towards Perpetual Peace* in defining Kant's attitude toward warfare. In their commentary, they adopt thinking that the statements Kant made on legal philosophy were unsatisfactory before the Doctrine of Right. Kant's lectures in 1784, in *On the common saying: That may be correct in theory, but it is of no use in practice*, of 1793, in *Towards Perpetual Peace* of 1795, and in his short comments in many other works, are steps toward the system of legal philosophy that unfolds in the *Metaphysics of Morals (Doctrine of Right)* of 1797. They are steps towards his system, but they do not already contain the system itself (Williams 2012: 54). Their approach is described in the following:

The dramatic change in Kant's theory of the state and the ideal international arrangement for states can be traced to Kant's deeper development of the concept of a 'juridical state' (*rechtlicher Zustand*) in the Doctrine of Right. (Byrd, Hruschka 2008: 604)

Byrd and Hruschka suggest that it is plausible that Kant makes mistakes while he is trying to establish his theory. The system is, in their opinion, refined to perfection in the *Metaphysics of Morals*. They presume this as Kant's final position and that he should be perceived as a just war theorist. They appear to endorse the extremely subverting idea that Kant allows for wars to be waged to force other states into 'peaceful' federation of states or what they describe as a juridical state of states. By taking this view, they open the way for Kant's doctrine to be arranged by those enthusiastic proponents of the modern just

4 *Barbarism* is a technical term for Kant; he defines it as force without freedom or law. The distinctive feature of barbarism is that one party is subject to the private choice of another, based entirely on the power of the stronger (Ripstein 2016: 180).

war theory “who wish to extend their economic and political system to new territories by force if necessary” (Howard 2012: 55). The lack of agreement is based on the idea that Kant’s loose, negative surrogate of the federation of free states is the correspondent to his arguments on the state of nature. Most of Byrd and Hruschka’s argumentation is trying to identify the state of nature with the state of states.

In contrast, an entitlement that Kant gives to human freedom lies in the way “the international order providing conditions for peace comes about as a voluntary federation of states. Unlike the coerced movement that brings individuals out of the *juridical* state of nature, movement out of the international state of nature is, in an important measure, uncoerced”. (Rossi, 2012: 229) On the other hand, Byrd and Hruschka reflect relations among states in analogy with those of individuals in the state of nature. As individuals must enter a legal condition to overcome the state of nature, nation–states as well must enter a legal condition like that of civil society, known in Kant’s writings as the federation of the free states. Byrd and Hruschka find further divergence in the following parts of Kant’s quotes:

However, what holds in accordance with a natural right for human beings in a lawless condition, cannot hold for states in accordance with the right of nations (since, like states, they already have a rightful constitution internally and hence have outgrown the constraint of others to bring them under a more extended law-governed constitution in accordance with their concepts of right). (Kant 1996: 327)

Moreover, in the *Metaphysics of Morals* Kant discusses the original right free states have to wage war against each other in the state of nature (in order, for example, to establish a state approaching the juridical state) (Byrd, Hruschka 2008: 624). Byrd and Hruschka suggest that Kant makes the U-turn in his thought neglecting the rest of the sentence.

After this sentence, Kant continues in the following way:

As regards the original right that free states in a state of nature have to go to war with one another (in order, perhaps, to establish a condition more closely approaching a rightful condition). The first question that arises is: What right has a state against its subjects to use them for war against other states? To expand their goods and even their lives in it, or to put them at risk, in such a way that, whether they shall go to war does not depend on their own judgment, but they may be sent into it by the supreme command of the sovereign? (Kant 1996: 483)

If one takes a straight look at these two pieces of Kant’s work, he will immediately see that in the *Metaphysics of Morals (Doctrine of Right)*, we could find only several⁵ paragraphs dedicated to the problem of the just war. Even

5 Kant’s discussion of a number of matters that lie within the scope of classical just war theory is included under the more general heading of *The Right of Nations (Völkerrecht)*, a relatively brief section of nine pages in toto (AA 6: 343–351 [§§ 53–61]); this

there we can find that “practical reason pronounces in us its irresistible *veto*: *there is to be no war*, neither war between you and me in the state of nature nor war between us as states, which, although they are internally in a lawful condition, are still externally (in relation to one another) in a lawless condition; for war is not the way in which everyone should seek his rights” (Kant 1996: 491). Then again, *Towards Perpetual Peace* is fully dedicated to this problem. Although there are discrepancies between the *Doctrine of Right* and *Perpetual Peace* in the way they adopt the possible legitimacy of the just war, they are far from being entirely incompatible with one another (Williams 2012: 7).

In accordance with reason, there is only one-way the states in relation with one another can leave the lawless condition, which involves nothing but war. It is that, like individual human beings, they give up their lawless freedom, accommodate themselves to public coercive laws, and so form a state of nations that would finally encompass all the nations of the earth. (Kant 1996: 328)

Instead of the definite idea of the world republic, Kant suggests that negative substitute of a league that prevents war is the only institution that can stop the aggression, although it is fragile and can easily be broken. Does Kant have elements of just war theory in his philosophy? “Although Kant accepts the regular war account of what war *is*, he rejects its account of its justification” (Ripstein 2016: 190). Would he be familiar with the right to conduct the war counter to non-republican’s states? Kant quote clearly says: “No state shall forcibly interfere in the constitution and government of another state” (Kant 1996: 319). The goal of perpetual peace is happening only by the enlightened improvement of the establishments of all states until they reach the form of government in Kant’s political theory known as *republicanism*. This development could be achieved only in a peaceful manner. The *republican* nation cannot use force as a solution for peace. This case is in contradiction to the idea of right. Further argumentation goes to the direction of the problem of international legal order in the contemporary era seen through the existence of the League of Nations and the United Nations.

The significant thinker who will differently revive Kant’s ideas of international order in the contemporary era is Jürgen Habermas (1998: 165), the German social philosopher. His work *Kant’s Idea of Perpetual Peace: At Two Hundred Years Historical Remove* is a profound critic of the sketch with historical distance. He speaks about the importance of grasping Kant’s theory with all its historical background and without the state of nature concept because they are not anymore consonant with our historical experience. He describes Kant’s theory only by three main arguments: perpetual peace as a final goal, the federation of free states as a project, the idea of the cosmopolitan order as the solution of the proposed project. The critics like Kleingeld reacted that “the case for transforming the United Nations into a cosmopolitan democracy

is followed by a section on *Cosmopolitan Right (Weltbürgerrecht)* (AA 6: 352–353 [§ 62]) and a “Conclusion” (AA6: 354–355) (Rossi 2012: 217).

with strengthened coercive powers is preceded by a lengthy argument showing that Kant's position in *Perpetual Peace* is riddled with contradictions and that Kant's own principles should have led him to argue for a federative state of states with coercive powers" (Kleingeld 2004: 304). At the same time, Habermas "is skeptical of grandiose plans for a world state or global federal republic" (Scheuerman 2008: 485).

Nevertheless, he is developing arguments in the following direction. First, Habermas thinks that the concept of the federation of free states and the right of the nations "need reformulation in the light of the contemporary global situation" (Habermas 1998: 165). Second, there is also a conceptual gap existing in the legal construction of the *constitutional* state says Habermas, which invites a naturalistic interpretation of the nation to fill in. "The scope and borders of republican states cannot be settled on normative grounds" (Habermas 1996: 131). Although perpetual peace is an essential characteristic of the cosmopolitan order, it is still only the indicator of the final consequence. The main problem is how to specify differences between the classical view of the international order as a right to have a just war, and the cosmopolitan law, which is yet to come. In other words, how to justify the constitutional gap and what is specific for the *ius cosmopolitanum*?

Kant, (1996) as we have already seen, is proposing a *League of Nations*, the *Federation of the Free States* or a *Congress of Sovereign States*. He also draws a correlation between the state of nature and the social contract and future forming of the federation. In the same way, as the social contract drives the state of nature between self-reliant individuals to an end, so the state of nature between aggressive states should end as well. From now on, the order described as cosmopolitan is supposed to be different from an internal legal constitution, since the states, unlike individual citizens, do not submit themselves to the public coercive laws of a superordinate power, but hold their independence. "Kant recognised, however, that the idea of a world republic could degenerate into something different from a supranational legal order" (Habermas 2006: 123). The predicted federation of free states that rejects war forever is supposed to maintain the sovereignty of its followers in their foreign relations. The perpetually-connected states hold their highest constitutional authority and do not incorporate into a world republic. Instead of the definite idea of a world republic, Kant is building the negative substitute of a *foedus pacificum* whose goal is to prevent conflict.

This federation is supposed to arise from sovereign agreements between the republican states, in accordance with the international order, which is now no longer in the state of nature. This association does not establish any coercive legal laws of the states against one another, but only unites them into a permanent voluntary alliance. Consequently, association into a *foedus pacificum* goes beyond the weak obligatory power of the right of nations merely in respect of its durability.

The contradiction here is glaring. Kant wants to preserve a *cosmopolitan* form of sovereignty among the federation of free states members. He keeps

them in a soft, voluntary alliance without any coercive power. On the other hand, the federation that establishes a perpetual peace is supposed to be different from the merely common condition. According to Habermas, members of the federation of free states must subordinate their sovereignty to the mutually stated goal of not resolving their disagreements by war, but by a process similar to a court of law. Habermas notes:

Without this element of obligation, the peace congress of nations cannot become permanent, nor can its voluntary association become enduring; instead, it remains hostage to an unstable constellation of interests and will inevitably fall apart, much as the League of Nations would years later. (Habermas 1998: 169)

Kant does not grasp the federation of the free states as a union with common institutions, and therefore this organisation does not have any coercive authority; this implies that the relationship between the states relies purely on moral grounds, but such trust even in his time, and especially today, is nothing but a philosopher's sweet dream. Nevertheless, in the historical sense, Kant's project of the federation of free states remains plausible.

Kant's suggestion for a cosmopolitan "international order is on the establishment of an adjudicatory order for the settlement of disputes that would otherwise lead to war" (Rossi 2012: 230). The new institutional design of the international order ranges from minimal intergovernmental models to proposals advocating a world government with full coercive authority. Proponents of the minimal intergovernmental prototype promote a league of states without coercive authority. On the other hand, the world republic advocates like Höffe sees its character as minimal statehood. Höffe suggests that the *Preamble to the General Declaration of Human Rights* (1948) "demands more than this and specifies three tasks for the United Nations: protection of human rights, encouragement of international cooperation and encouragement of social progress and better living conditions under greater freedom" (Höffe 1998: 59). Two different types of reasoning are present among those who invoke a world government. We have philosophers who are promoters of the state of states model, and those who are trying to establish a theory of cosmopolitan democracy.

Conversely, Jürgen Habermas is going in another direction with his cosmopolitan democracy (multi-level model) theory. His critic of the federation of free states does not imply that he is in favour of the idea of world republic or state of states. In the *Kantian Project and the Divided West*, he is pointing out the thesis about the process of "constitution of international law" (Habermas 2006: 115). Through analysis of Kant's arguments, he is trying to create space for implementation of his theory. This theory implies reformulation of new international legislature according to the idea of protection of fundamental human rights. These rights are the cornerstone of Kant's cosmopolitan law. This reformulation is for him a proper synthesis between the *world republic* on one side and free voluntary *league of nations* on the other. In a multi-level global system, Habermas says, "the classical function of the state as the guarantor of security, law, and freedom would be transferred to a supranational

world organisation specialised in securing peace and implementing human rights worldwide” (Habermas 2008: 445).

Kant, on the contrary, says in the second definitive article of perpetual peace that this constitution should be in the form of the league of nations and not a state of states and emphasises:

That would be a contradiction, in as much as every state involves the relation of a superior to an inferior; but a number of nations within one state would constitute only one nation, and this contradicts the presupposition (since here we have to consider the right of nations in relation to one another insofar as they comprise different states and are not to be fused into a single state). (Kant 1996: 325)

The contradiction comes from the fact that the price the citizens of a world republic would have to pay for the legal assurance of peace and civil liberties would be the “loss of the practical ethical freedom they enjoy as members of a national community organised as an independent nation-state” (Habermas 2006: 127). There is a fear that a world republic, in its federal structure, would unavoidably lead to social and cultural uniformity. In the second level rests the objection that a global state of nations would progress into a universal form of despotism. Kant seems to be worried that the alternative to the system of aggressive sovereign states would be the global control by a single world power. That idea will lead him to the option of the negative surrogate, the conception of a League of Nations. According to this view, “the interpenetration of the positive law and political power does not aim at the legal type of modern government as such, but at a democratically constituted rule of law” (Habermas 2006: 131).

The final point of the process of legislation of political power is the very idea of a constitution that a community of free and equal citizens gives itself. At this point, we must differentiate between a *state* and a *constitution*. A state is a composite of hierarchically ordered functions that can exercise political power or implement political programs; “a constitution, by contrast, defines a horizontal association of citizens by placing the fundamental rights that free and equal founders mutually grant each other” (Habermas 2006: 131).

The *republican* conversion of the state power is a necessary change toward a constitution of international order. Completion of the process of legislation of international order sets the seal on the problem of an initial situation in which law serves as an instrument of power. As a result, constitutional state means that all authority mechanisms originate from the autonomously formed will of the civil society. Legitimation requirements of a “democratically constituted world society without the world government could be satisfied assuming that nation-states and their population undergo specific learning process” (Habermas 2008: 445). Here we can notice that Habermas attempts are directed with the real-world picture and emancipatory consciousness.

In other words, the general rational will of individuals is creating the constitution. The international order is viewed as the logical continuation of the evolution from national to global state. What is missing is a supranational

power above the competing states that would provide the international community with the executive and sanctioning powers required to implement and enforce its rules and decisions. The classical international order is already a kind of constitution in the sense that it creates a legal community between parties with formally equal rights. “This international proto-constitution differs in essential respects from a republican constitution” (Habermas 2006: 133).

It is composed of collective participants rather than individual persons, and it shapes and coordinates powers rather than founding new governmental authorities. Compared with a constitution in the strict sense, the international community of sovereign states has no necessary force of standard legal requirements. Only voluntary restrictions on sovereignty, the rejection of its core element, and the right to go to war can transform parties to treaties into members of a politically constituted community. A league of nations and the prohibition of war are logical extensions of a development connected with the membership status of the subjects of international order. States must be supplemented at the supranational level by “legislative and adjudicative bodies” (Habermas 2006: 133). Besides, they need sanctioning powers if they want to become a community capable of taking political initiatives and executing joint decisions. In the development of a process of constitution of international law, a priority of horizontal relations between member states over centralised practical competences points to an opposite evolutionary direction, to that of the ancestors of the constitutional state. It proceeds from the non-hierarchical association of collective participants to the supranational and transnational organisations of international order.

The initial situation of the classical international law has left permanent traces in the Charter of the United Nations. Sovereign equality remains mutually recognised by the community of the states and peoples. Strictly speaking, when it comes to public security, and, meanwhile, the promotion of human rights, the world organisation has acquired the authority to intervene in the internal affairs of criminal regimes or failing states. In these two policy domains, the member states grant the UN Security Council the ability to protect the rights of citizens against their governments if necessary. Hence, it would be consistent to describe the world organisation as already a community of the states and citizens. In a similar spirit, “the Brussels Convention presented its draft of the European constitution in the name of the citizens and the States of Europe” (Habermas 2006: 135).

The reference to collective participants acknowledges the prominent position, which they will retain, as the driving subjects of the development in a peaceful global legal order. The reference to individuals, by contrast, draws attention to the actual bearers of the status of the world citizen. The multi-level system outlined by Habermas would realise the peace and human rights goals of the UN Charter at the supranational level and talk about the problems of global domestic politics through compromises among major domesticated powers at the transnational level. This sketch is merely an illustration of a conceptual alternative to a world republic.

Habermas's idea intends to show, for example, that the state of states is not the only institution, which the Kantian project could adopt as an alternative to the surrogate of a league of nations. The type of a constitutional state projected onto a global scale alone does not fulfil the requirements for a cosmopolitan condition, understood in suitably abstract terms. Likewise, to the republican type of constitution, which Kant had in mind, liberal types aim at a juridification of political power. However, in the latter cases, juridification means the power must be set in national relations.

Habermas's multi-level model is a plan that assigns different responsibilities to different institutional levels. He claims that:

Global Three-level model consists in discriminating the three elements of statehood, democratic constitution and civic solidarity that are closely linked in the historical form of the constitutional state. (Habermas 2008: 445)

“He also believes that the politics of global distribution and similar issues will have to be negotiated among transnational regimes, in contrast to human rights and questions of war and peace, which he assigns to the UN” (Verovšek, 2011: 374). On the supranational level, Habermas saw a reformed and strengthened UN that is to serve, among other things, as an executive authority responsible for securing peace and protecting human rights. Habermas “supports the restructuring of the Security Council and limiting the veto power of its permanent members in order to make the UN a more representative and effective organisation” (Mikalsen 2012: 308).

Habermas defends the formation of permanent international courts, where states, and individuals, have legal standing. In addition to settling conflicts between states and conflicts between the private actors and a state, the function of such courts is to prosecute individuals for criminal acts performed in service of the state. The author has to mention Habermas's proposition that, in addition to the consolidation of core institutions such as Security Council and the General Assembly, reforms should aim at separating these institutions from specialised UN organisations, such as UNESCO, WTO and the World Bank. This way, the world organisation would become an institution whose responsibilities are narrower compared to the present-day UN. But this model also proposes a “potentially confusing multiplicity of decision-making entities at the national, transnational, and supranational levels” (Scheuerman 2008: 488).

Unlike Kant's league, a reformed world organisation has more extensive powers. It is supposed to serve as a “supranational executive authority” (Habermas 2006: 158) providing the international community with adequate means to put into effect its rules and decisions, even if Habermas emphasises that the states are to remain in control of the means of coercion. His model also extends the scope of responsibilities. The league is established for the sole purpose of dealing with conflicts between the states, whereas the world organisation is additionally supposed to protect fundamental human rights globally.

Finally, the division of the General Assembly into two chambers would make the UN, in contrast to Kant's intergovernmental league, an organisation that recognises two types of actors as legal subjects by international law, namely the states and individuals. The feature that significantly distinguishes Habermas's (2006) proposal from both the league of states and the world republic is the institutional mid-levelling between the supranational and the national levels. Besides, the delegation of transnational topics to interregional negotiations is supposed to reduce the amount of work of the world organisation, thus enabling it to deal more efficiently with global peace and human rights enforcement. He seems to have two main reasons for rejecting the world republic, and these explain why he thinks there is a need for his multi-level system instead.

World republic would not have the necessary legitimacy. A political community that wants to recognise itself as a democracy must at least distinguish between the members and non-members. As we see, the argument of the world republic is not necessary for creating binding international law. Habermas develops this argument against the background of Kant's interpretation. Kant rejects the world republic because of the despotic governance possibility in favour of the negative surrogate of the *foedus pacificum*. Kant has come to this conclusion by observing the similarity between the state of nature among individuals and lawless international relations. Only one option is the legitimate one, and that is the world republic as a minimal state (Höffe 1998: 57). Conversely, according to Habermas (2006), if the only way of overcoming the individual state of nature is *republican* governance, then the solution for differences between sovereign states goes toward a world republic.

The states as warrantors of legally secured freedom among individuals should be considered seriously. First, one must not perceive national legislation in the same way as international legislation. Habermas (2006) suggests that we understand the establishment of a just system of international law as complementary, rather than as analogous to the establishment of just national legal systems. The second reason why to think of the international rule of law as integral, and not like the national rule of law, is that promoting the rule of law in the two spheres of influence involves challenges that are in a certain way opposite and therefore call for different solutions.

Deficiency of executive and sanctioning powers implies that what is necessary for forming a cosmopolitan legal order is, in the end, a world republic. However, the point of emphasising the priority of the horizontal associations among the states is conflicting. First, Habermas tries to show that a legal constitution can be separate from a hierarchical state construction not only conceptually, but also in practice. For this reason, Habermas speaks of the classical European order of states as a "proto-constitution that creates a legal community among parties with formally equal rights" (Mikalsen 2012: 312). Second, and more crucially, emphasising the imbalance between the national and the international cases is meant to show that the challenge of binding state power by law externally is substantially different from the difficulty of binding state power by law internally, and subsequently the recent calls for a different solution than the latter.

4. Conclusion

Although Kant discusses the issues of *Jus ad Bellum*, *Jus in Bello* and *Jus Post-bellum* in his political philosophy, his consideration of the topic has the goal to constitute peace as a highest political good. Kant “can have a conception of right in war, against the background of his more general view that war is by its nature barbaric and to be repudiated entirely” (Ripstein 2016: 180). However, he cannot be proclaimed as a just war theorist like Orend (1999) suggests, only because he is discussing those issues. In the same manner, we can build the theoretical position that Descartes and Spinoza were medieval scholastics because they discussed the issue of substance, for example. Just because Kant was not a pacifist and postulates some self-defense arguments in the Doctrine of Rights, does not necessarily mean that he was a just war theorist. The missing element and the reason why we cannot claim Kant to be a just war theorist is the moral justification of the punitive warring between the nation-states. The author concludes that the arguments for supporting Kant’s ideas outweigh the arguments against doing so. Kant’s contribution to building an international order is immeasurable. He offers a robust and steady theory of international order if we follow his philosophical system.

Also, one could easily link Kant’s thought with the conception of sovereignty. “World organisation must be worked out in terms of sovereignty, in terms of a free federation of corporate bodies voluntarily obeying international law, and not a world law for individuals” (Riley 1979: 54). However, for Kant, sovereignty is more than a juridical principle of international order.

Furthermore, the relations of moral agents in the republican constitution are analogue to relations of sovereign states. Every other possibility would be to treat the others just as means and not as ends.

The next step of Kant’s theory, the federation of the Free states, is the one with the most objections. Kant’s *federation of the free states*, *congress of states*, and *league of nations* or *pacific league* is vulnerable to criticism. Besides, moral grounds of the federation of the free states, as the only argument for its justification, provide even more problems. Kant is aware that his regulation of international relations has some antinomian matters, and because of this, he builds the voluntary negative surrogate approach in his international order theory.

Peace is the final, and the ultimate goal of humanity and the only acceptable means for reaching that goal need to be peaceful. Worldwide peace has no less status for Kant than the highest political good (Höffe 1998: 51) and international order must establish the *cosmopolitan law*. From Kant’s universalistic perspective, every human life has equal moral value. In this way, Kant’s theory of international order offers an option for the establishment of the doctrine of universal human rights. This argument is a starting point of his inner debate, but also of an ongoing academic discussion. Proofs for such claim could derive from various attempts of reformulation, improving, ‘perfecting’ and reconsidering of this fragment of Kant’s theory.

From all the arguments presented above, the one called cosmopolitan democracy attracts most of the attention. Habermas continually tries to modify Kant's theory and solve the paradoxical Kant's arguments discussed above. The nation-states would have to give up their sovereignty to a certain extent and transfer it to the supra-national level, and that Habermas has in mind as a multi-level legal order. In this struggle with Kant's arguments, his own opinion has altered several times during the last 20 years. We have to keep in mind that Habermas attempts are always optimistic, honest and emancipatory. From the devoted supporter of the concept of the cosmopolitan democracy and international law with supranational and transnational coercive powers, his opinion slides into a not as much of extreme position with time. He realised that not every humanitarian intervention is necessarily compatible with the Kantian platform and advances toward a proper civil constitution. This point of view is also unfamiliar with Kant's analogy amongst moral citizen and the state. Implementation of international laws by force is alien to Kant's moral theory and international law theory. If we indeed have a moral responsibility toward others and if we are concerned about how their governments treat citizens of other states, we must find a peaceful solution instead of the punishment and just war.

There is a need for changes in the current situation in this fast-shifting world. Development of the conceptual international order based on the interdependence of the communities is necessary, and in consequence, we must consider some of the arguments Habermas offers. If we do not continue to elaborate those arguments in searching for better solutions and fail to find a resolution for Kantian standpoint, the possibility of ending up in some despotic world republic or juridical states of states remains plausible.

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Nenad Miličić

Kant o pravednom ratu i međunarodnom poretku

Apstrakt:

Kantova politička filozofija i filozofija prava od suštinskog su značaja za razumevanje i unapređenje međunarodnog poretka. Rad ima za cilj da izloži argumente koji se suprotstavljaju tvrdnjama da je Kant bio samo teoretičara rata. Budući da je to najkontroverzniji deo njegove političke filozofije, uglavnom zbog krivog tumačenja njegove argumentacije, autor iznosi Kantovo stanovište o pitanjima pravednog rada i međunarodnog poretka i razmatra potencijalna razilaženja između Kanta i teorija koje zastupaju njegovi kritičari. Nadalje, biće diskutovane posledice kontra argumenata vezanih za državu država, svetsku republiku i kosmopolitsku demokratiju unutar savremene političke filozofije. Na kraju, upoređuju se i analiziraju mogućnosti saglasnosti između tri modela rešenja koja proističu iz savremene teorije međunarodnog poretka.

Ključne reči: Kant, teorija pravednog rata, međunarodni poredak, ustav, federacija slobodnih država, država država, svetska republika, kosmopolitska demokratija