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World Peace: Rational Idea and Reality  
On the Principles of Kant's Political Philosophy<sup>1</sup>

"Meißel und Schlägel können ganz wohl  
dazu dienen, ein Stück Zimmerholz zu  
bearbeiten, aber zum Kupferstechen muß  
man die Radirnadel brauchen."  
Kant, Prolegomena, Vorwort (AA IV 259)

I

Kant's various teachings concerning (world) peace are characterized by a philosophically unique realism.<sup>2</sup> Thereby, they are fundamentally distinguished from all preceding doctrines about peace. This thesis of realism refers to various aspects, respectively levels, of the doctrine,

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<sup>1</sup> Part of this paper is a strongly revised version of my "Kants Rechtslehre vom Weltfrieden" (Zeitschrift für philosophische Forschung, 37 (1983), 363-388). Where it deviates from my former position this has to be taken as abandoned. Some of its theses have been presented to the 8th International Kant Congress in Memphis (USA) March 1995. For the preparation of my congress paper I have especially consulted Anglo-Saxon literature. This is also the reason why more Anglo-Saxon scholars are referred to in this article than e.g. German.

For both criticism and help in the translation I am especially indebted to Maggie Lycett (Canterbury), John G. Holroyd (Maidstone), and Thomas W. Pogge (New York). I do hope that their fierce sense of English usage has saved the text from too many "teutonisms".

<sup>2</sup> In passing it may be remarked that exactly this deciding fact is obscured or even lost in the various English translations. (For further discussion of this point see below.) It may be supposed therefore that in the Anglo-Saxon world quite often the true position of Kant is either just unknown or misunderstood. In the few check-ups which I had to make for my own studies I found so many distorting and even fatal mistakes in the various translations which I used, that I tend to doubt whether any reasonable study of Kant's teachings on the basis of the available translations is possible at all.

namely: 1) in general to the assumptions of the doctrine of Right<sup>3</sup> altogether (ch. II); 2) in particular to the assumptions of the doctrine of eternal peace (chs. III-V); 3) to the recommendations with regard to the realization of eternal peace (chs. VI-XI); 4) to the reasons by which Kant justifies the hope with regard to eternal peace (ch. XII, XIV-XVII); 5) to Kant's strict denial of a specifically political "morals" (ch. XIII-XVII).

## II

As a sensible being endowed with *practical reason* man is constantly confronted with two kinds of (heterogenous) problems: firstly, the problem with regard to the *ends* he may set for himself and, secondly, the problem with regard to the (external) *actions* he may perform in order to achieve his ends.<sup>4</sup> Only the second problem refers to an appearance in space and time by which man can come into practical conflicts with his equals. Thus, the question which ends man may, should or should not set for himself (how to determine his will) concerns only the individual man himself. The question, however, how he may, should or should not act (which use to make of his freedom of action) also concerns others and can accordingly only be solved by taking the relationship to them into consideration.

The object of moral philosophy, in general, are the moral laws (in contrast to the laws of nature) which determine the possible exercise of free choice. Just as there are two kinds of moral problems, so there are also two kinds of moral laws, those concerning the internal exercise of free choice or inner freedom and those concerning the external exercise of free choice or outer freedom. Accordingly, moral philosophy (= practical philosophy = metaphysics of morals) divides into two independent parts, the doctrine of the lawgiving for inner freedom (doctrine of virtue or ethics<sup>5</sup>) and for outer freedom (doctrine of Right).<sup>6</sup>

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<sup>3</sup> "right" (with a small letter) only refers to "Recht" (ius, droit, diritto) in the subjective sense (= right). "Right" (with a capital) refers either to "Recht" in the objective sense (= law) or to "Recht" in both senses (right and law). Cf. Mary Gregor (ed. & trs.): Immanuel Kant, *The Metaphysics of Morals*; Cambridge 1991, pp. X-XI; Wolfgang Schwarz (ed. & trs.): *Principles of Lawful Politics. Immanuel Kant's Philosophical Draft Toward Eternal Peace*; Aalen 1988, pp. 157 f.

<sup>4</sup> The problem of the appropriate means is one of theoretical reason.

<sup>5</sup> "Tugendlehre" or "Ethik".

<sup>6</sup> Accordingly moral laws ("Moralgesetze" or "Sittengesetze") are either ethical laws ("Tugendgesetze" or "ethische Gesetze") or juridical laws ("Rechtsgesetze" or "juridische Gesetze"). Kant himself uses the terms "Ethik" and "ethisch" sometimes also in the broader sense of "Moral" and "moralisch". But then the context usually leaves little room for doubt. Unfortunately one cannot say the same about English publications on Kant. All too often one reads "ethics" ("ethical") when it should be "moral" because either both spheres are meant or even only the sphere of Right. - But also in German publications, and even in the context of Kant's moral philosophy, one can find the term "Rechtsethik" (Ethics of Right) which, of course, makes the confusion complete. See e.g. Otfried Höffe: *Den Staat braucht selbst ein Volk von Teufeln. Philosophische Versuche zur Rechts- und Staatsethik*, Stuttgart 1988.

The internal exercise of free choice as a purely "internal act of the mind"<sup>7</sup> is possible only by self-determination and, if necessary, by self-constraint and therefore simply (physically) not open to external lawgiving and constraint by another.<sup>8</sup> An external action, however, can indeed also be prescribed by external lawgiving and enforced by external constraint. The doctrine of Right, thus, is the "sum of those laws [of freedom; GG] for which [also; GG] an external lawgiving is possible"<sup>9</sup>, i.e. of laws concerning (external) actions only.

In the case of a conflict of actions between two or more persons where the performance of an action is, partly or totally, hindered by another's action, the question arises as to which external exercise of one's choice each may make. And this is precisely the quest for Right (objectively and subjectively). For the determination of the (moral) concept of Right it is necessary to first clarify what has to be eliminated from the considerations as irrelevant.<sup>10</sup>

1a) The *internal relation* of one person to another (in the form of thoughts or feelings towards the other) is as such not a possible factor in a conflict of actions and is therefore a priori ruled out with regard to the determination of the concept of Right. Thoughts or feelings may lead to certain actions; but still, a conflict with another person is only due to the actions themselves. Thus, with regard to the question of Right only the *external relationship* between persons is relevant.

1b) The *theoretical relationship* between persons (as being determined by laws of nature) is also, and for the same reason, a priori ruled out with regard to the determination of the concept of Right as a *moral* concept. Thus, the only relevant factor is the *practical relationship* between persons, i.e. that which is possible only through their freedom.<sup>11</sup>

1c) And not even every external and practical relationship between persons is relevant for the determination of the concept of Right<sup>12</sup>, but only<sup>13</sup> those external manifestations of free choice which, as such, can influence the sphere of another person's outer freedom.<sup>14</sup>

When Kant in this context speaks of actions as "facta"<sup>15</sup> he only emphasizes that it is exclusively about *free* agency. Therefore, "facta" must not, as occurs in all of the four English translations I

<sup>7</sup> Kant, Rechtslehre (= RL), Akademie-Ausgabe (= AA) VI 239 (trs. Gregor, p. 64). Unless indicated, the translations are mine, sometimes using one or more of the available versions. When I merely "made use" of a translation this indicates that I regarded it as not completely correct or satisfactory.

<sup>8</sup> See Kant, Tugendlehre (= TL), AA VI 394. It will be shown later that, even if someone's setting of an end for himself were *physically* a possible object of such lawgiving and constraint, it nevertheless would not be so *morally*, simply on grounds of Right.

<sup>9</sup> Kant, RL, AA VI 229 (trs. Gregor, p. 55).

<sup>10</sup> For the following see Kant, RL, AA VI 230.

<sup>11</sup> Cf. Kant, Kritik der reinen Vernunft (= KrV), AA III 246; 520.

<sup>12</sup> For example not a talk between persons as a talk.

<sup>13</sup> This point is lost in Nisbet's translation by the arbitrary addition of a seemingly explaining "that is". See Hans Reiss (ed) and H. B. Nisbet (trs.): Kant, Political Writings; Second Enlarged Edition, Cambridge 1991, p. 133.

<sup>14</sup> The purely physical element in talking (the acoustic waves, the sound, the noise) can have such an influence, not, however, the spiritual element (its contents) *as such*. Nobody is hindered in his outer freedom by whatever another says to him. Only by *his own* (or indirectly also by other peoples') "interpretation" of it he may then be hindered to act in a certain way.

<sup>15</sup> Kant, RL, AA VI 230<sub>10</sub>.

know, be translated as "facts"<sup>16</sup>, let alone as "in fact"<sup>17</sup>, but as "deeds"<sup>18</sup>. Deeds, viewed merely as facts, are appearances<sup>19</sup> determined by laws of nature. But they are "made" (facta) by men as free agents, and as free actions<sup>20</sup> they are viewed as being under (moral) laws of freedom. The result, concerning the possible determination of the concept of Right, is that the ground determining choice to action, and especially the moral quality of the will, are of no relevance. They stand in no necessary relation to the possibility of a conflict of actions which alone (and unavoidably) constitutes the question of Right. Hence, for the determination of the concept of Right the most difficult problem of *moral* philosophy, the problem of the *freedom of the will*, can be left out of the discussion entirely.

2) *Wishes* (needs or interests) of a person may be affected - positively or negatively - by the free agency of another person. But they are themselves not a possible part of a conflict of actions between two (or more) persons. Such a conflict neither occurs because a free action affects another's wish,<sup>21</sup> nor because a wish affects another's freedom of action, but only, because a free action affects another's *freedom of action*. Therefore, wishes are also excluded from

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<sup>16</sup> W. Hastie (ed. & trs.): Immanuel Kant, *The Philosophy of Law. An Exposition of the Fundamental Principles of Jurisprudence as the Science of Right*; Edinburgh 1887; Reprint Augustus M. Kelley Publishers, Clifton New Jersey 1974, p. 45; Gregor, p. 56.

<sup>17</sup> John Ladd (ed. & trs.): Immanuel Kant, *The Metaphysical Elements of Justice*; Indianapolis, New York, Kansas City 1965, p. 34; Nisbet, p. 133.

<sup>18</sup> Mary Gregor writes in a note (p. 283, note 23): "perhaps 'as deeds'". For this, she herself refers to the original (RL, AA VI 227) which, actually, makes the case absolutely clear: "Imputation (imputatio) in the *moral* sense is the judgment by which someone is regarded as the *author* (*causa libera*) of an action, which is *then* called a deed (*factum*) and stands under laws [of *freedom*; GG]." (Gregor's translation; my italics; Kant's italics dropped) But still, for Mary Gregor "in a number of passages it is unclear whether *Tat* is to be taken as 'fact' or as 'deed'". Unfortunately, she does not give any references. I am, however, unable to find any such case. (See e.g. *Die Religion innerhalb der Grenzen der bloßen Vernunft* (= Rel), AA VI 6; 23; 31; RL, AA VI 223; 227; 252; 270; also *Kritik der praktischen Vernunft* (= KpV), AA V 5; 31-2; 42; 47; 55.) At Rel, AA VI 23 Kant says with the utmost clarity: "A morally [in our case: juridically; GG] indifferent action (*adiaphoron morale*) would be one resulting merely from natural laws [as in the case of animal choice; GG], and hence standing in no relation whatsoever to the moral law, which is the law of freedom; as it [such action; GG] is not a fact [Factum; GG]". I have made use of the translation of Greene/Hudson (Kant, *Religion Within the Limits of Reason Alone*, 2nd ed., New York etc. 1960, p. 18). But Greene/Hudson change "not a fact" into "not a morally significant fact at all" and thereby destroy the point Kant wants to make: the mentioned action is morally insignificant just because it is not a "Factum" (= deed). Cf. also RL, AA VI 223 18-23.

<sup>19</sup> Cf. Kant, RL, AA VI 371.

<sup>20</sup> See Kant, RL, AA VI 222.

<sup>21</sup> A free action never has an immediate effect on the wishes of another person, but always only through the medium of that person's external freedom. When Robinson eats a banana, this may affect the wishes of Friday in manifold and unforeseeable ways. But what is absolutely certain about it is its clear effect on Friday's external freedom. Whatever his wishes were and are - over that banana he no longer has a possible power of disposal. If Robinson had, instead, beneficently offered the banana to Friday, the effect on Friday's wishes would still entirely depend on Friday's free choice, whether to accept or refuse the offer. And if Robinson - possessing the banana physically - would not offer it to Friday, it would, again, merely depend on Friday's free choice, whether he would try to get it or not. And only here - and here also unavoidably - the question of Right arises, namely with regard to the respective exercise of free choice of Friday as well as of Robinson.

consideration with regard to the concept of Right. Hence, for the determination of this concept, also the *ethical* problem concerning duties with regard to the welfare of others may be, and even has to be, disregarded.<sup>22</sup> What is at stake is exclusively the outer freedom in the mutual external relationships of human beings.<sup>23</sup> The quest for Right concerns the possibility of free agency within a community of agents, the possibility of uniting the free choice<sup>24</sup> of each with the choice of all others.<sup>25</sup>

3) Lastly, and of paramount importance for the history of the philosophy of Right, the *matter of free choice*, i.e. the respective *end* someone may pursue, is also absolutely irrelevant with regard to the determination of the concept of Right. On the one hand, it is not by their ends, but only by their actions that people can come into a conflict with each other. On the other hand, such a conflict of action can be caused by the realization of any end whatsoever. Therefore, no single end, albeit a perfectly moral one, can be, with respect to the quest for Right, distinguished from any other. Hence, finally, also the traditional *dependence of the concept of Right on ethical principles* is completely and irreversibly abolished. The doctrine of Right and the doctrine of virtue henceforth are only linked to each other by their common principle, the general moral law. After this necessary ruling-out operation,<sup>26</sup> only the *form* of external free choice, i.e. its merely being free, remains for the determination of the concept of Right. Thus, Right can only refer to

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<sup>22</sup> A right to the satisfaction of one's needs cannot be based on these needs, but only on an unrightful restriction of one's freedom, namely in the case that it is this restriction which prohibits the satisfaction of the need. A political philosophy, which considers - like Marxism - right(s) in terms of interests, necessarily fails in practice because it fails in theory. Interests are subject to laws of nature and hence entirely independent even of the free choice of the wisher himself. A fortiori, it is absolutely impossible to place the exercise of one's free choice into an objectively law-governed (see below note 108) relationship with the interests of (all) others. For details see Julius Ebbinghaus, *Sozialismus der Wohlfahrt und Sozialismus des Rechts*, in: Julius Ebbinghaus, *Gesammelte Schriften* (= GS), vol. 1: *Sittlichkeit und Recht*, Bonn 1986, 231-64; Jürgen von Kempski, *Bloch, Recht und Marxismus*, in: Jürgen von Kempski, *Schriften*, vol. 1: *Brechungen*, Frankfurt/Main 1992, 218-23.

<sup>23</sup> See Kant, *Über den Gemeinspruch* (= GS), AA VIII 289. Cf. Kant, AA XXIII 269: "The doctrine of Right is the doctrine of duties, as far as it is determined by the *choice of others* according to the principle of *freedom* - the doctrine of virtue, as far as it is determined by *one's own choice* according to the principle of *ends*." (my italics)

<sup>24</sup> Ladd (p.34) and Nisbet (p. 133) translate wrongly "Willkür" into "will" instead of "choice" which is disastrous for the whole argument since the point here is simply not the mutual harmonization of the wills of persons, but of their actions. Hastie speaks - freely, but philosophically correctly - of the "relation of his free action to the freedom of action of the other" (p. 45). Cf. Kant, RL, VI 230<sup>21-23</sup>.

<sup>25</sup> See Kant, RL, AA VI 230.

<sup>26</sup> This operation with its careful distinctions was entirely neglected by Patrick Riley in his contribution to the Kant Congress in Memphis. He constantly confused Kant's moral philosophy (of the "Groundwork" and the second "Critique") and its specific problems with the doctrine of Right, and - even worse - the doctrine of Right with the doctrine of virtue. He provided the audience with some sort of anything goes-mosaic made from pieces which had only one feature in common - that they were taken from the same quarry, Kant's writings. And although Riley thought he was still speaking about Kant, he indeed ended up with Fichte. For a detailed criticism of Fichte's position see my "Fichtes 'Aufhebung' des Rechtsstaates", *Fichte-Studien*, 3 (1991), 86-117.

the outer freedom *qua* freedom. And so we arrive at Kant's famous concept of Right: "Right<sup>27</sup> is [...] the sum of the conditions under which the choice of one can be united with the choice of another in accordance with a universal law<sup>28</sup> of freedom."<sup>29</sup>

I have been so painstaking in this section because the essential issues of Kant's doctrine of Right, in all its parts, are predetermined at this crucial point.

To summarize: The concern of Kant's doctrine of Right is a possible association of (externally) *free* beings. Accordingly, the only anthropological presupposition therefore made, is the very one which *constitutes* the problem of Right: man's faculty of free agency within an unavoidable community with his equals. But no human ends, whatsoever and however motivated, are taken into consideration. The concept of Right follows purely analytically "from the concept of *freedom* in the mutual external relationships of human beings"<sup>30</sup>, and has nothing to do with the ends men may have.<sup>31</sup> Freedom in the mutual external relationships of human beings cannot be conceived other than as being limited by a law of freedom to the necessary conditions of its possibility. Lawless freedom is not freedom at all. But by no means is it impossible to conceive without contradiction the freedom of an agent as not being limited by a law to the realization of certain ends.

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<sup>27</sup> Ladd translates the title of Kant's "Metaphysische Anfangsgründe der Rechtslehre" freely into "The Metaphysical Elements of Justice" and is quite right in this since Kant's doctrine of Right *altogether* really is a doctrine of the conditions of justice. But Ladd is wrong in also translating "Right" into "Justice" with regard to the *concept* of Right (p. 33 f.). This concept stands at the beginning of Kant's doctrine. The development of the concept of justice, however, is "the entire final end of the doctrine of Right" (Kant, RL, AA VI 355). The innate right of humanity ultimately means the right to justice. And the completely developed concept of justice means a universal *civil* condition, the constitution of which *fully* conforms to principles of Right (cf. Kant, RL, AA VI 318). Therefore, even a state of (public) Right is by no means *eo ipso* a state of (public) justice. And, although the state of nature is a state devoid of public justice, it nevertheless is also a state of valid natural and private Right. Cf. Schwarz, p. 158.

For the same reasons, I think the appropriate translation of "Rechtspflichten" is "juridical duties" or "duties of Right", and not "duties of justice". They are, indeed, duties to realize justice (by *honeste vivere, neminem laedere* and *suum cuique tribuere* [cf. Kant, RL, AA VI 236 f.]); but the reason why they are duties is the universal law of *Right*.

<sup>28</sup> In surpassing Hobbes, Rousseau had made (with regard to the determination of the concept of Right) a decisive step with his total neglect of the *matter* of free choice. And yet, he did not see that external freedom of man in community with others can be conceived only as limited by a universal law. This Idea is one of Kant's most important contributions to the doctrine of Right.

<sup>29</sup> Kant, RL, AA VI 230 (trs. Gregor, p. 56).

<sup>30</sup> Kant, GS, AA VIII 289 (trs. Nisbet, p. 73).

<sup>31</sup> "What end anyone wants to set for his action is left to his free choice." Kant, TL, AA VI 382 (trs. Gregor 187). - In a context dealing with Kant's doctrine of Right Höffe says that men as well as States have the right to form themselves "in accordance with laws of freedom" and then he claims with regard to right the "limiting condition of universal agreeability". Well, that is all wrong. Firstly, in the case of States it is about forming themselves with regard to the exercise of outer freedom of their citizens; in the case of individual men it would be about forming themselves with regard to the exercise of their own inner freedom. But, secondly, such a right of individuals to certain ends as such does not exist. They have the right to exercise their outer freedom in accordance with laws of freedom, and right, independently of any ends, is itself the condition of, and guarantee for, any universal agreeability. See Otfried Höffe, *Kategorische Rechtsprinzipien. Ein Kontrapunkt der Moderne*, Frankfurt/Main 1990, p. 273.

When it is argued<sup>32</sup> that ends do not come into consideration for the concept of Right *only* because to have them cannot be enforced, then a decisive point is overlooked. It is true, neither the moral quality of the will nor the setting of certain ends, but only (external) actions can be subject to external law-giving and constraint.<sup>33</sup> It is also true, however, that to discover this Kant came much too late. What is at stake is indeed only the harmonizing of mutual spheres of actions. It is the *answer* given by Kant to this problem which revolutionizes the history of juridical thinking. The law by which, according to Kant's teachings, everybody's freedom of action "is limited by its Idea"<sup>34</sup> and may also be actively limited by others"<sup>35</sup>, is itself a law of *outer* freedom and certainly not a law with regard to possible human ends like (individual or universal) happiness or perfection.

The concrete *ends* themselves, whether set by inclination or by duty, are empirical and "thus incapable of becoming a universal rule"<sup>36</sup> at all. The (*ethical*) principle of virtue indeed is a universal principle. But it concerns only the *maxims of ends* (and actions),<sup>37</sup> not *actions as such* and is therefore absolutely inept to serve as a (*juridical*) principle for any law-governed determination of everybody's freedom of action.

That is exactly the reason why the natural state of mankind is by a priori necessity a peaceless state.<sup>38</sup> The reason for this does not lie in the fact that human actions are determined by inclinations rather than by reason and its laws, but in the fact that the spheres of action between two or more persons are not in a pre-established law-governed harmony. Thus, even if one conceives mankind within a "kingdom of ends" the problem of Right would still need to be solved.<sup>39</sup> Right (as the principle for the law-governed determination of outer freedom *as such*) is an absolutely necessary condition for any possible union of men with regard to the pursuit of the ends they may, or even ought to, have; for in "the Right of the public [...] alone a union of the ends of all is possible".<sup>40</sup> By no means, however, is Right in the *service* of any such union.

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<sup>32</sup> As e.g. by Bernd Ludwig, *Kants Rechtslehre*, Hamburg 1988, p. 93 ff.

<sup>33</sup> See Kant, RL, AA VI 239<sub>9-12</sub>.

<sup>34</sup> Gregor (p. 57) translates: "in conformity with the Idea of it".

<sup>35</sup> Kant, RL, AA VI 231 (I made use of the translations of Hastie, p. 46, and Gregor, p. 56 f.).

<sup>36</sup> Kant, *Der Streit der Facultäten*, (= Streit), AA VII 87 (trs. Nisbet 183 f.); cf. *Anthropologie in pragmatischer Hinsicht* (= Ant), AA VII 331; GS, AA VIII 289 f.; VIII 298.

<sup>37</sup> See Kant, TL, AA VI 388; 395.

<sup>38</sup> For details see further below.

<sup>39</sup> That's why Kant's (and already Hobbes's) crucial point is totally missed if one says (as do e.g. Höffe, Williams, Wood in the tradition of Augustine as well as of Fichte) that no State would be necessary if all people would act according to the moral law. It is the lawlessness not of the will, but of external free choice which causes the problem. Therefore public Right and thus also public legislation and public judges would still be needed. Only the enforcing authorities would be superfluous. See Otfried Höffe, "Recht und Moral", *Neue Hefte für Philosophie*, 17 (1979), 33; Howard Williams, *Kant's Political Philosophy*, New York 1983, p. 69 ff.; 260 ff.; Allan Wood, "Unsociable Sociability: The Anthropological Basis of Kantian Ethics", *Philosophical Topics*, 19 (1991), 344.

<sup>40</sup> Kant, *Zum Ewigen Frieden* (= EF), AA VIII 386 (trs. Schwarz, p.133). In Nisbet's translation (p. 130) "Right of the public" is distorted into "public right".

## III

Apart from the concept of Right, there is a second element in Kant's doctrine of Right which is of prime importance, particularly for the doctrine of eternal peace, and that is the rational concept of a natural state of mankind conceived in purely juridical terms. It is the Hobbesian Idea of a state of men (not: man!) as bearers of natural right within a society not yet regulated by public Right: "status hominum extra societatem civilem".<sup>41</sup>

Hobbes places the discussion of this status - rightly - under the heading "libertas". According to him, man has by right of nature the liberty "to use his own power, as he will himselfe, for the preservation of his own Nature"<sup>42</sup>. Analogously, according to the Kantian concept of Right, man has by nature ("by virtue of his humanity") the (innate) right to freedom limited and thus determined by a universal law of freedom.<sup>43</sup> A purely rational consequence of this with regard to the state of nature is that "each has its own *right* to do what seems right and good to [him] and not to be dependent upon another's opinion about this".<sup>44</sup> And this is tantamount to a state of society in which everybody is his own judge.<sup>45</sup> The state of nature, taken as a state of natural Right, appears in the juridical analysis as a state of universally possible dispute about rights; as an eternal juridical war of everybody against everybody.<sup>46</sup> From this, finally, it follows that man as a bearer of natural right has a duty of Right to leave, together with all others, the natural state and to establish a civil state, whose function is to make the Right of humanity, and<sup>47</sup> possible acquired rights, *effective* so that everyone is able "to enjoy his right"<sup>48</sup>.

This result, i.e. the evidence for the (juridical) necessity of the civil state, again has been achieved by a purely rational analysis, the analysis of the Idea of the natural state. The necessity for the establishment of public Right follows "analytically from the concept of *Right* in external relations".<sup>49</sup> Again, no anthropological presuppositions - in particular, no assumptions about the moral quality of mankind - have been made.<sup>50</sup>

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<sup>41</sup> See Hobbes, *De Cive*, ch. I.

<sup>42</sup> Hobbes, *Leviathan* XIV 1 (Ed. Richard Tuck, Cambridge 1991, p. 91).

<sup>43</sup> See Kant, RL, AA VI 237; GS, AA VIII 289 f.

<sup>44</sup> Kant, RL, AA VI 312 (trs. Gregor, p. 124; Kant's italics dropped; my italics); cf. Hobbes, *Lev* XIV 1.

<sup>45</sup> See Kant, Rel, AA VI 95; 97; cf. Rel, AA VI 97; RL, AA VI 349<sub>21</sub>; EF, AA VIII 355<sub>33</sub>.

<sup>46</sup> In this *purely juridical* sense, and only in this sense, the natural state of mankind is a state of *universal* and, "in its own nature", "*perpetual*" war (thus Hobbes, *De Cive* I 13 [Warrender, Engl. Ed., p. 49]). In a sense anticipating Kant, in the English version of the Dedicatory Epistle to *De Cive* Hobbes also speaks of "Immortall Peace" [Warrender, p. 25]). - In the state of nature men could become saints and still there would be no change with regard to that state: Each his own (private) judge - each his own (private) right - and, correspondingly, each his own (private) sword! Without a common ("competent" [Kant. RL, AA VI 312]) judge no common (public) Right! Of course, saints could do without a public sword.

<sup>47</sup> To be sure, not only acquired rights, as is claimed by some authors. It suffices to glance e.g. into Kant, RL, VI 237<sub>24-26</sub>; 242<sub>18-19</sub>; 250<sub>1-8</sub>; cf. also AA XXVII 589 f.

<sup>48</sup> Kant, RL, AA VI 305 f. (trs. Ladd, p. 69).

<sup>49</sup> Kant, RL, AA VI 307 (trs. Gregor, p. 122). Patrick Riley makes the following out of it: "For Kant there is a duty to enter a 'juridical state of affairs', because moral freedom involves both the 'negative' freedom



If one views the end of the State (and thus its Right) not exclusively in securing the law-governed *outer freedom*<sup>51</sup> of all, but (seemingly only in addition to it) in securing freedom as the capacity to determine one's actions according to *certain ends*<sup>52</sup>, be they moral or "hedonistic", there is no possibility to formulate a universally obligatory principle for the limitation of outer freedom and thus for the *juridical* borders of State activity.<sup>53</sup> "The task to realize Right on earth cannot be thought of as being dependent on the task to realize the kingdom of ethical freedom".<sup>54</sup> The accomplishment of the first task, authentically *statal*, is principally prevented by also giving the State a stake in the fulfilment of the second task. The State and its coercive power cannot, then, appear otherwise than as a necessary evil: as an "evil", because one's own exercise of outer freedom is restricted without any universally obligatory criterion;<sup>55</sup> as "necessary", because in one's own interest the outer freedom of all others also has to be restricted. The typical consequences of such an understanding of the role of the State are on the one hand political apathy and on the other hand the incapability to conceive the function of politics in anything other than the satisfaction of one's own interests.

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of the will from 'determination by sensible impulses' and the 'positive' freedom of a will that is determined by pure practical reason itself" (Patrick Riley, *Will and Political Legitimacy*, Cambridge and London 1982, p. 129). To say it plainly: when one reads about Kant authors like Riley, but also Paul Guyer, Leslie Mulholland, Jeffrie Murphy, Kenneth Westphal, Howard Williams, Allan Wood, etc., one sometimes is not sure whether there are just two philosophers with coincidentally the same name. Kant himself expresses clearly his opinion about this kind of treatment. See AA VIII 251<sub>1-3</sub>.

<sup>50</sup> Allen Wood claims that Kant's moral philosophy (including the doctrine of Right) has an anthropological basis. (See his article mentioned in note 39). This is not the place to show how completely mistaken Wood is with regard to both the "Groundwork" and the "Critique of Practical Reason" as well as to "Religion". The "doctrine of Right" only makes the trivial anthropological assumption that men can act by exercising their free choice and that they "cannot avoid mutually influencing one another" (Kant, GS, AA VIII 289; trs. Nisbet, p. 73). Without this assumption, however, there would just not be a juridical problem. Of course, whenever moral theory is applied to the human condition (e.g. in the case of "politics as executing doctrine of Right" [Kant, EF, AA VIII 370; trs. Schwarz, p. 106]), anthropological knowledge is needed and made use of. But this does not allow Wood's claim that Kant's moral theory has an anthropological *basis*. Cf. e.g. Kant, *Grundlegung zur Metaphysik der Sitten*, AA IV 389; 412 ff.; RL, AA VI 216 f.

<sup>51</sup> "a constitution of the greatest human freedom according to laws"; Kant, KrV, AA III 247; "the greatest freedom"; Kant, *Idee zu einer allgemeinen Geschichte in weltbürgerlicher Absicht* (= *Idee*), AA VIII 22.

<sup>52</sup> The right to a certain exercise of one's outer freedom then only results from the right to a certain exercise of one's inner freedom.

<sup>53</sup> For that very reason the citizens in a State are entitled to remain in an "ethical state of nature" in which everybody is his own (moral) judge. "But woe to the legislator who would like to establish through coercion a constitution directed to ethical ends. For in doing so he would not merely achieve the very opposite of an ethical constitution but also undermine his political constitution and make it insecure." (Kant, *Rel*, AA VI 95 f.; I made use of the translation of Greene/Hudson, p. 87).

<sup>54</sup> Julius Ebbinghaus, "Der Begriff des Rechtes und die naturrechtliche Tradition", in: Julius Ebbinghaus, GS, vol 1, p. 348. One glance into the history of European public law, especially penal law, shows how far away from this cognition the political reality for centuries was, and partly still is.

<sup>55</sup> *Prudent* politicians will of course also take into consideration the interests of their subjects, but according to some *empirical* and therefore not universally obligatory criterion.

For Kant, the difference between a republican and a despotic State lies exactly in the way they limit the outer freedom of their people: by lawful coercion according to principles of freedom or by arbitrary coercive laws.<sup>56</sup> For a republican State the public welfare (*salus publica*) is "precisely that law-governed constitution which guarantees everyone his freedom by<sup>57</sup> laws".<sup>58</sup> Any other State (with a law-governed constitution)<sup>59</sup>, however, which aims *first and primarily* at guaranteeing anything other than just outer freedom, like the virtuousness or the welfare and happiness of its citizens, is despotic since in principle it "suspends the entire freedom of its citizens, who thenceforth have no rights whatsoever"<sup>60</sup>.

#### IV

It may be pertinent here to make some remarks about the various English translations of § 44 of "Kant's Doctrine of Right".

With regard to the very start of this paragraph, two of the above mentioned four translations are simply wrong. They tell us that "it is not experience from which we learn of men's maxim of violence"<sup>61</sup>. But, according to Kant's theoretical philosophy, it is *only* experience from which we can get such knowledge. And in § 44 of the "Rechtslehre" Kant does not say anything contrary to it. We can get a correct version by rather slight, but still crucial changes of Gregor's translation<sup>62</sup>: "It is surely not experience (from which we learn of men's maxim of violence and of their malevolent tendency to attack one another before external legislation endowed with power appears), it is thus surely not some fact that makes coercion through public Right

<sup>56</sup> See Kant, EF, AA VIII 374.

<sup>57</sup> Nisbet translates "durch Gesetze" into "within the law" which refers rather to "im Rahmen der Gesetze". But the emphasis here is not on the laws as the limits of freedom, but as its guarantor (of course by way of limiting it).

<sup>58</sup> Kant, GS, AA VIII 298; see also RL, AA VI 318; Ant, AA VII 331; XI 10.

<sup>59</sup> Without this it is not a civil state (State) at all, but just a state of nature. This is, for instance, the de facto-difference between the "barbarism" of Hitler-Germany and anything thought of by Kant as a despotic State. Cf. Kant, Ant, AA VII 330<sub>31</sub>-331<sub>1</sub>.

<sup>60</sup> Kant, GS, AA VIII 291 (trs. Nisbet, p. 74); cf. also 298 and Kant, RL, AA VI 318. The former Soviet minister for foreign affairs, Gromyko, gave a succinct formulation for the *suprema lex* of a despotic State: "Our purpose...is the well-being of the people, whether they like it or not." (quoted from: Richard McKeon [ed], *Democracy in a World of Tensions*, A Symposium Prepared by Unesco, Paris 1951, p. 489); and of course, long before Gromyko, Dostoevsky's Grand Inquisitor; and long before Dostoevsky Kant himself: "to make the people as it were happy against its will" (GS, AA VIII 298 f.; see also Streit, AA VII 86 f.).

<sup>61</sup> Kant, RL, AA VI 312 (trs. Gregor, p. 123); Hastie's translation is almost the same (p. 163). Nisbet makes a comparably small mistake in translating: "experience teaches us the maxim that human beings act in a violent [...] manner" instead of: "...teaches us *of* men's maxim of violence..." (p. 137). Also Ladd's translation is far from being precisely what Kant indeed has said, but at least it does not ruin the argument (p. 76).

<sup>62</sup> This reads: "It is not experience from which we learn of men's maxim of violence and of their malevolent tendency to attack one another before external legislation endowed with power appears. It is therefore not some fact that makes coercion through public Right necessary."

necessary." As already indicated, Kant's essential point is that the necessity of a civil state does not follow from anthropological assumptions, in particular from empirical knowledge about the moral quality of mankind. As if this would not be enough for his argument, he adds that with regard to that necessity nothing will change "even if one thinks men to be as well-disposed and law-abiding as one pleases".<sup>63</sup> The simple reason is that the necessity is a necessity from pure practical reason; it follows from the juridical fact that in the state of nature each is his own judge.<sup>64</sup>

In the same paragraph Kant again, when speaking about the state of nature, adds: "in which each follows his own head". But none of the translators seems to have found "head" an appropriate translation. So, we read instead "judgment"<sup>65</sup>, "desires"<sup>66</sup> and "inclinations"<sup>67</sup>. Well, the natural facts, of course, are ruled out: we are not on the empirical, but on the juridical level. "Judgment" is not wrong, if it is only taken as juridical judgment (Rechtsurteil) about the moral (here: juridical) rightness of actions, and not, instead, as a judgment about their appropriateness as means.

Murphy, although he calls Ladd's translation correct, nevertheless changes it from: "because each will have his own right"<sup>68</sup> into "because each will claim his own right";<sup>69</sup> and for this "correction" - not only of Ladd, but also of Kant - Murphy gives the following justification: "since it is clear that Kant is *denying* here that we really do have such a natural right. Indeed, [...] Kant claims that there is only one innate or natural right - freedom."<sup>70</sup>

Let us disregard the fact that the "one innate right", Kant speaks about, is by no means just freedom, but freedom limited by a universal law of freedom.<sup>71</sup> But with the mentioned "correction" and the underlying "reasons" Murphy misses exactly and completely the argument by which Hobbes had unhinged classical political philosophy.<sup>72</sup> Kant made Hobbes's argument his own and also found the most succinct form for it: "The state of nature: an ideal of Hobbes.

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<sup>63</sup> Not just "however well disposed and law-abiding men *might be*" (trs. Gregor, p. 124; my italics), since this again refers to the empirical and not to the purely rational level. Men in this context can be *thought of* as devils and as angels.

<sup>64</sup> Instead of "each has its own right" Nisbet (p. 137) and Ladd (p. 76) translate "each will have his own right", although each has it "by nature", namely as a direct consequence of his innate right. (See already Hobbes, *De Cive* I 7-9). Ladd translates "...men...can never be certain that they are secure..." instead of "...men...can never be secure..." (p. 76), which changes again Kant's argument, since they indeed can be certain, namely that they can never be secure. The uncertainty refers to the security, not to the knowledge about it. Finally, Hastie, by speaking about "the consideration that every one of his own will naturally does what seems good and right in his own eyes" (p. 163), ruins the whole argument, since it is neither about man's will, nor about what he does, let alone about his "nature", but only about his right. Whatever he wills or does according to his own judgment, - he has a right to it.

<sup>65</sup> Ladd, p. 76; Gregor, p. 124.

<sup>66</sup> Nisbet, p. 137.

<sup>67</sup> Hastie, p. 164.

<sup>68</sup> Really correct is Mary Gregor's translation: "since each has its own right" (p. 124).

<sup>69</sup> Jeffrie G. Murphy, *Kant: The Philosophy of Right*, London and Basingstoke 1970, p. 125.

<sup>70</sup> *Ibid.*, p. 169.

<sup>71</sup> See Kant, *RL*, AA VI 237. In this, Kant differs fundamentally from Rousseau.

<sup>72</sup> See Hobbes, *De Cive* I 7-15.

What is taken into consideration here is Right in the state of nature and not the fact. It is proved that it is not arbitrary to leave the state of nature, but necessary according to rules of Right"<sup>73</sup>. Hobbes's evidence for the necessity to found a civil state is purely rational, not empirical. It is achieved by purely juridical considerations, and the necessity is a juridical necessity. The famous-infamous eternal war of all against all is to be understood as an (unsolvable) juridical cause, a litigation, a war in terms of Right.

Murphy's reference to "each will claim his own right" is exactly the reference to experience which Kant had rejected at the beginning of the paragraph. The necessity of coercion through public Right emerges from a concept of pure juridically practical reason<sup>74</sup>. It is the concept of the natural condition of mankind in terms of Right<sup>75</sup> in which everybody has the original natural right to law-determined freedom and which itself is not (yet) regulated by public Right.<sup>76</sup> In such a condition, which Kant calls the juridical state of nature<sup>77</sup>, "each has its own right to do what seems right and good to [him]"<sup>78</sup>. This natural right, however, is in the state of nature the juridically necessary consequence of the original right and in so far implied in it. For, without the right to judge about right or wrong and the corresponding right of the private sword there would also be, in the state of nature, no right to law-determined freedom. But it is exactly that consequence which makes the juridical state of nature a "state devoid of justice [...], in which, when rights are in dispute [...], there would be no judge competent to render a verdict having rightful force",<sup>79</sup> and that means: which makes the civil state juridically necessary ("according to rules of Right"). It is the concurrence, both unavoidable and ruinous, of private judgments, rightful (*rechtsgültig*) and yet of no effect (*rechtsunwirksam*), which makes peace under conditions of natural Right alone a priori impossible. The *scandalon* of the state of nature does

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<sup>73</sup> "der Stand der Natur: ein Ideal des hobbes. Es wird hier das recht im Stande der Natur und nicht das factum erwogen. Es wird bewiesen, daß es nicht willkührlich sey, aus dem Stande der Natur herauszugehen, sondern nothwendig nach Regeln des Rechts". (Refl. 6593, AA XIX 99 f.)

<sup>74</sup> Reine rechtlich-praktische Vernunft (trs. Hastie, p. 96). In most cases I do not understand Gregor's translation of "rechtlich" into "rightful(ly)". Here, too, I do not understand why she translates "rechtlich-praktische Vernunft" into "rightfully practical reason" (p. 76; RL, AA VI 254), particularly since she always translates "moralisch-praktische Vernunft", for Kant the systematically corresponding concept, into "morally practical reason" (pp. 160, 211, 230; RL, AA VI 354, 411, 434). See also her notes 15 and 28.

<sup>75</sup> "status iuridicus"; Kant, Rel, AA VI 97.

<sup>76</sup> "nicht-rechtlicher Zustand"; Kant, RL, AA VI 306; 312. I am afraid that Gregor's translation of "nicht-rechtlich" as "not rightful" (pp. 121; 124) is not appropriate here. It is only in the following juridical analysis that such a state appears to be a state where (valid) rights, innate or acquired, are of no effect.- Nisbet translates "nicht-rechtlich" into "non-lawful" (p. 137), Hastie into "non-juridical" (p. 156) respectively into "not yet regulated by Right" (p. 163); Ladd says "nonjuridical" (p. 70) respectively drops it altogether (p. 76).

<sup>77</sup> See Kant, Rel, AA VI 95 ff.

<sup>78</sup> Kant, RL, AA VI 312.

<sup>79</sup> Kant, RL, AA VI 312 (trs. Gregor, p. 124). The last words read in the original: "*rechtskräftig* den Ausspruch zu thun" (my italics). Hastie translates: "to give an authorized legal decision" (p. 164); Ladd: "to render a decision having the force of law" (p. 76); Nisbet: "to pronounce legally valid decisions" (p. 137). With none of these translations I am fully content.

not lie in the original natural right of each to freedom determined by laws, but in the mode, which is characteristic for this status, to determine the limits of this right according to one's own (rightful) judgment and to defend them, again and again, with one's own (private) sword. Therefore men have to renounce their disastrous right to do what seems right and good to them in order to ensure their original natural right.<sup>80</sup>

## V

What has been said about individual men in the state of nature is also true for States. Before a civil condition is established, they, too, are in a juridical state of war of all against all. And this, again, is totally independent of how moral people are. Thus, with regard to the external relations among States, the Right of humanity and possible acquired rights still remain insecure until these relations, too, are regulated by public Right. Therefore, practical reason declares it to be an unconditional (juridical) duty also of States to accord with one another. They have to give up their "state of externally lawless freedom"<sup>81</sup> (which is, for that very reason, also the freedom to arbitrary warfare) and to enter together into a "covenant of peoples" ("Völkerbund")<sup>82</sup> with a cosmopolitan "constitution, similar to the civil one",<sup>83</sup> in order to bring about a peace that ends not just a single war, but the very possibility of war:<sup>84</sup> - eternal peace.<sup>85</sup>

As in the case of individual men, also the civil state of free peoples (States) can only be thought of as being established by a contract.<sup>86</sup> That is why Kant, in his essay "Toward Eternal Peace", worked out the steps to be taken for achieving such peace, and the principles of Right to be

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<sup>80</sup> It may be useful to give my suggestion of how the whole first paragraph of § 44 of the "Doctrine of Right" would read in English:

"It is surely not experience (from which we learn of men's maxim of violence and of their malevolent tendency to attack one another before external legislation endowed with power appears), it is thus surely not some fact that makes coercion through public Right necessary. For, even if one thinks men to be as well-disposed and law-abiding as one pleases, it still lies a priori in the rational Idea of such a (non-juridical) state that before a state regulated by public Right is established, individual men, peoples, and States can never be secure against violence from one another, since each has its own right to do *what seems right and good to it* and not to be dependent upon another's opinion about this. So, unless it wants to renounce any concepts of Right, the first thing it has to resolve upon is the principle that it must leave the state of nature, in which each follows its own head, unite itself with all others (with which it cannot avoid interacting) in order to subject itself to a public law-governed external coercion, and so enter into a state in which what is to be recognized as belonging to it is determined by *law* and is allotted to it by adequate *power* (not its own but an external power); that is to say, it ought above all else to enter a civil condition."

<sup>81</sup> Kant, RL, AA VI 307 (trs. Gregor, p. 122).

<sup>82</sup> Kant, EF, AA VIII 354 (trs. Schwarz, p. 74; cf. also the note there).

<sup>83</sup> Kant, EF, AA VIII 354 (trs. Nisbet, p. 102).

<sup>84</sup> "putting an end for ever to all litigation"; "ewige Aufhebung alles Rechtsstreits"; Kant, Refl. 7837; AA XIX 530.

<sup>85</sup> Cf. Kant, KrV, AA III 491<sub>35</sub> - 492<sub>2</sub>.

<sup>86</sup> Cf. Kant, GS, AA VIII 297.

observed in doing so, as a formal treaty. This, however, is not to be taken as a juristic plan of a contract, which afterwards, in reality, would have to be agreed on by the States. It is, rather, "a philosophical plan"<sup>87</sup>, with the function to constitute *the rules and the basis of legitimation* for internal and external State activity.

The purpose of the imagined treaty is the establishment of a universal and eternal peace among the individual States. Thereby, the content of the treaty is already determined. But, first, the necessary conditions for the possibility of its conclusion (in Idea) have to be created.

Accordingly, Kant makes use of the form of a double treaty, quite usual in the international affairs of his time. The Idea of a preliminary treaty aims at the *possibility of peace*. In this treaty, the States agree on certain conditions absolutely necessary for the abolition of the universal state of war. Only on this basis can the States establish in a definitive treaty the necessary and, taken all together, sufficient conditions for the *reality of peace*.<sup>88</sup>

## VI

A peace agreement among autonomous States primarily presupposes the mutual recognition of one another's external sovereignty. That makes the preliminary articles nos. 2 and 5 necessary. Then, the Idea of an eternal peace itself, agreed on in a contract, implies, firstly, the invalidity of all grounds for war which may still exist (no. 1), secondly, the will to diminish the readiness for war (nos. 3 and 4) and, thirdly, with regard to a still possible war, the will not to make, by the very warfare, any peace treaty absolutely impossible (no. 6).

I limit myself to some remarks about the preliminary articles nos. 1, 3 and 6.

No. 1: Peace cannot be conceived as under conditions. As a civil state (of public Right) it absolutely excludes the juridical possibility of any State seeking its "right" by its private sword. All parties to the peace agreement therefore, mutually and unconditionally, recognize the status quo, whatever it may be.<sup>89</sup> Making one's acceptance of the status quo conditional upon its appropriateness for one's own interests would a priori abolish the very possibility of a peace treaty, since the inappropriateness of the conditions with regard to any interests is exactly the reason for the necessity of such a treaty. The violent establishment of a more favourable status quo taken as (universal) right would contradict itself and is thus simply unjust.<sup>90</sup>

No. 3: The readiness for mutual and universal disarmament is also a necessary condition for the possibility of coming to an accord about peace. Armament aims at being, in the case of a war, stronger than a possible enemy. Each State has such an interest, and rightfully so, as long as the

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<sup>87</sup> So the sub-title of Kant's essay. One may also call it a design or even a proposal.

<sup>88</sup> The articles of the preliminary treaty serve, as it were, to gradually remove mutual mistrust, those of the definitive treaty, however, to gradually build up mutual trust.

<sup>89</sup> Cf. also Kant, Refl. 7837; AA XIX 530.

<sup>90</sup> A change of the status quo, of course, still remains possible, but only peacefully, on a voluntary, contractual basis. One may think e.g. of the not unimportant changes of the West German borders after World War II.

state of nature as a state of possible hostilities and the "Right" of the stronger<sup>91</sup> lasts. Hence, the armament of one State forces every other State, affected by it, to arm even more. Armament is, by its very nature, always a mutual arms race. And, therefore, the unavoidable inner dynamics of armament brings about a condition of a permanent threat of war. "Thus, arms policy, which seems to be the effect of the danger of war, in reality becomes the only cause of it."<sup>92</sup> "The Kantian principle thus reads: First disarmament, then security."<sup>93</sup>

No. 6: The natural condition among States is as such devoid of distributive justice for want of compulsive public Right. This is in particular true for a state of real war. But even with regard to such a state, there are binding<sup>94</sup> rules of the Right of Nations. These rules unconditionally obligate the States, a) to get involved in war, b) to contrive a war, and c) to finish a war only in a way in which a state of public justice, and thus of peace, is not necessarily made impossible for the future.

a) The Right with regard to getting involved in war<sup>95</sup> does under no circumstances give any State an (original) right to start a war. There is no possible end which could justify starting a war. As a universal principle of the Right of Nations, the maxim to start a war would make, regardless of the pursued ends, such Right altogether impossible. Thus, there is no such thing as a just war.<sup>96</sup> The right to go to war is only the (acquired) right to defend one's own right, whether it be violated or only threatened.<sup>97</sup> But, of course, with regard to this very right every State is its own judge. Therefore, after a war no (victorious) State has the right to place a former enemy country on trial<sup>98</sup> and to condemn and sentence it.<sup>99</sup>

b) The Right during a war obligates every State to abstain from any means and goals of warfare which would make the conclusion of a peace treaty and its observance necessarily impossible. By the Right during the war "the conditions are determined under which alone a universal covenant

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<sup>91</sup> See Kant, RL, AA VI 344.

<sup>92</sup> Leonard Nelson, *System der philosophischen Rechtslehre und Politik*, GS, vol. 6, Hamburg<sup>2</sup> 1976, p. 454.

<sup>93</sup> Julius Ebbinghaus, *Die christliche und die kantische Lehre vom Weltfrieden*, in: Julius Ebbinghaus, GS, vol. 2: *Philosophie der Freiheit*, Bonn 1988, p. 31.

<sup>94</sup> Cf. Kant, Refl. 7817, AA XIX 525<sub>6</sub>.

<sup>95</sup> See Kant, RL, AA VI 346.

<sup>96</sup> It is at the same time highly informative and shocking to read two texts by Medicus and Binder written on the subject of peace a decade before World War I and II respectively. One sees the wars, and in Binder's case even Hitler, coming. See Fritz Medicus, *Kants Philosophie der Geschichte*, in: *Kant-Studien*, 7 (1902), 220 ff.; Julius Binder, *Die sittliche Berechtigung des Krieges und die Idee des ewigen Friedens*, Berlin 1930.

<sup>97</sup> Egypt e.g. in 1956 had broken a valid convention which conceded to the signatories Great Britain and France explicitly a temporally unlimited right to supervise the keeping of the contract. And thus, these two States did not act contra to the Right of Nations when they tried to enforce with violence contractual fidelity. For details see Julius Ebbinghaus, *Sind England und Frankreich "Rechtsbrecher"?*, in: Julius Ebbinghaus, GS, vol. 2, p. 17 ff.

<sup>98</sup> For details see Julius Ebbinghaus, *Kants Lehre vom ewigen Frieden und die Kriegsschuldfrage*, in: Julius Ebbinghaus, GS, vol. 1, pp. 24 ff.; *Grundsätzliches zur Kriegsschuldfrage*, l.c., pp. 35 ff.

<sup>99</sup> For the realism, connected with this argument, one only needs to think of the so-called Versailles peace treaty and its disastrous consequences.

of peoples [allgemeiner Völkerbund] is possible".<sup>100</sup> Hence, absolutely illicit are both wars of extermination or subjugation and punitive wars. An alleged right to such wars, taken universally, would abolish the very Idea of the Right of humanity, respectively of the Right of Nations.

c) Again, the Right after a war in no circumstances gives any State a right deriving from its victory. Rather, it imposes on the victorious State a duty of Right to recognize the sovereignty of the defeated State and to treat it accordingly. Otherwise, the very possibility of a community of independent States with regard to rights would a priori be abolished.

As to the mode of their validity, all preliminary articles stand under no condition and allow no exception. They all formulate "prohibitive laws"<sup>101</sup>. But three of the corresponding duties (nos. 1, 5, 6) are obligatory "irrespective of circumstances" and have therefore to be fulfilled immediately, since a gradual fulfillment is not even possible, let alone necessary. In the three other cases (nos. 2, 3, 4), the States are allowed, according to the historical situation, to defer the fulfillment ("though without losing sight of the end that permits this deferment"<sup>102</sup>!), because they also have the duty to safeguard their own external sovereignty and the degree of political freedom and juridical peace achieved internally.

The juridical principles emanating from the Idea of a preliminary treaty, thus, signify that the States are under an unconditional duty of Right to establish - be it immediately or gradually - the necessary conditions for the possibility of a definitive peace treaty. Only under these conditions can positive measures with regard to a peremptory world peace be taken into consideration, i.e. those juridical principles the adherence to which would establish, albeit only provisionally and precariously, a certain amount of peace reality.

## VII

In the state of nature, both individual men and States unavoidably and permanently "injure each other already by their being beside one another"<sup>103</sup>, because of the "lawlessness of [their] state"<sup>104</sup> and the mutual abolition, resulting from that state, of the effectiveness of their rights. Therefore, in the lawless state of nature every individual and every State is the other's enemy and may rightly be treated as such<sup>105</sup> so long as it does not comply with the request to enter together a state of public Right. He who doesn't want Right, doesn't want peace.

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<sup>100</sup> Kant, Refl. 8061, AA XIX 598.

<sup>101</sup> Kant, EF, AA VIII 347.

<sup>102</sup> Kant, EF, AA VIII 347 (trs. Schwarz, p. 54).

<sup>103</sup> Kant, EF, AA VIII 354 (trs. Schwarz, p. 74); see also Kant, EF, AA VIII 349; AA XIX 477: "laesus per statum".

<sup>104</sup> Kant, EF, AA VIII 349.

<sup>105</sup> This does not imply the right to start a war against the other State. (See also ch. IX) But it does include the right to armament and other kinds of defence policy.



Accordingly, the final and all-embracing postulate of practical reason, emanating from the Idea of Right, reads: All men ought to subject themselves to a (common) cosmopolitan constitution. The ultimate consequence of the Idea of Right is a "covenant of peoples as a world republic".<sup>106</sup> In the light of the historical reality, i.e. taking the existing plurality of States into account, the postulate, then, reads: "All men who can mutually influence one another must belong to *some* civil constitution"<sup>107</sup>, i.e. be in some kind of law-governed<sup>108</sup> state which guarantees their rights, wherever the "mutual influence" may take place - on "national", "international" or "global" level. Hence follows, with regard to the Idea of world peace, the division of (natural) public Right, according to the three levels, into the Right of the State, the Right of Nations<sup>109</sup> and the cosmopolitan Right.

Even a provisional peace among men, let alone a peremptory world peace, is possible only under the condition that on each of these three levels of juridical relationships a state of public Right is established.<sup>110</sup> Thus, the definitive treaty leading "toward eternal peace" must be thought of as made up of three articles which contain the juridical principles for the shaping of those three levels.

## VIII

1) The juridical imperative of the first article requires that "the civil constitution in every State shall be republican"<sup>111</sup>. And this implies: a) that everybody's domain of *external freedom* is determined (equally) by a *law of freedom*; b) that everybody is, by birth, *equally subject* to the laws, and therefore, nobody is excluded by law from access to any position whatsoever in society; c) that everybody has an (equal) right as a *citizen* to participate in the *law-giving* of the land; d) that there is a separation of legislative, judicial and executive powers.

Such a "republican" constitution, firstly, is the only one which guarantees (in principle) that within the society everybody is independent of any other's constraining choice. He can pursue his

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<sup>106</sup> Kant, Rel, AA VI 34; cf. also Refl. 1499, AA XV 783.

<sup>107</sup> Kant, EF, AA VIII 349 (trs. Schwarz, p. 60; my italics).

<sup>108</sup> This refers to relationships *under* laws of freedom, not necessarily *in accordance with* laws of freedom. Therefore, in German it would read "gesetzlich", not "gesetzmäßig". The (usual) translation into "lawful" would thus be wrong. I am thankful to Thomas Pogge (Kant's Theory of Justice, Kant-Studien, 79 (1988), 415) from whom I learned a better translation: "law-governed". But it should be clear that it only means (*objectively*) that there *are* obligatory laws, no matter whether the subjects abide by them and are thus (*subjectively*) governed by them or not. "Gesetzliche Freiheit", however, I translate into "law-determined freedom". See also notes 74 and 76.

<sup>109</sup> "The Right of *states* in relation to one another (which in German is called, not quite correctly, the *Right of Nations* [Peoples; GG], but should instead be called the Right of States, *ius publicum civitatum*)[...]" Kant, RL, AA VI 343 (trs. Gregor, p. 150). It is not about peoples as such, let alone about nations, but only about peoples as "Staatsvölker". The rights of the Scottish or English "nation" as such, if there are any, belong to the Right of the British State, not to the "Right of Nations".

<sup>110</sup> See Kant, RL, AA VI 311.

<sup>111</sup> Kant, EF, AA VIII 349 (trs. Schwarz, p. 62).

respective ends as he pleases<sup>112</sup>, without having to resort to violence in a case of conflict of actions. Disputes can be settled by juridical means, thus peacefully. Therefore, the Idea of "republicanism" is the fundamental norm for all kinds of civil state,<sup>113</sup> i.e. also for the international and cosmopolitan level. He who doesn't want republicanism, doesn't want peace. Secondly, there is the persuasive empirical argument that a republican State will be *less inclined* to get involved in war. The decision-making process is more complicated and laborious than under a despotic regime, and public criticism, guaranteed by freedom of speech, can have an important impact on the decision-making process. The citizens, as the participants of that process, "would have to bring down on themselves all the miseries of war"<sup>114</sup>. There will be a tendency that the republican community will also in its external relationships prefer the (juridical) means of conflict solution which have internally proved their worth. There will be fewer reasons for escaping into international "adventures" in order to distract the people from internal problems caused by governmental mismanagement.

There is no doubt, by the way, that in our times the quality of these empirical arguments strongly depend on the "republican" quality of the "fourth power", the mass media. Given their present standards, one may doubt whether they really have a positive effect on the public formation of a profound and differentiated political judgment, or whether they have not, to the contrary, degenerated to means of (hidden) persuasion and steering of the "law-giver" masses.

## IX

2) A condition of universal peace can be thought of only as a "universal *association of states* (analogous to that by which a people becomes a state)"<sup>115</sup>, a State of free peoples under public coercive laws.<sup>116</sup> For the question, however, how such a commonwealth might, under historically given conditions, be established according to principles of Right, it is of the utmost importance that States, unlike individual men, are already themselves, as it were, islands of civil condition within a global state of nature.

Individual man in the state of nature is in a state in which to remain he has no right; he is simply obliged to leave it. A people united under laws of freedom, however, is, indeed, on the one hand with regard to other peoples also in a state of nature and therefore also obliged to leave it. But on

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<sup>112</sup> As he pleases, even if he *harms* others as long as the exercise of his freedom is in accord with the general law of freedom. (Cf. Kant, GS, AA VIII 290<sub>29-33</sub>; 298<sub>17-20</sub>.) Right is by no means in the service of virtue, and also in the service of morality only in so far as it is in the service of (outer) freedom; and the State is not, as the Greeks conceived the polis, the place of virtue, but "only" the place of Right. Both Riley (l.c. [note 49], pp. 129 ff.) and Pogge (l.c. [note 108], p. 412) got this wrong; and, although in a different sense, so did Allan Wood ("Unsociable Sociability: The Anthropological Basis of Kantian Ethics", *Philosophical Topics*, 19 [1991], 343 ff.).

<sup>113</sup> Cf. Kant, EF, AA VIII 349<sub>22-24</sub>; 350<sub>4-6</sub>; Streit, VII 91<sub>1-5</sub>.

<sup>114</sup> Kant, EF, AA VIII 351 (I made use of the translations of Schwarz, p. 67, and Nisbet, p. 100).

<sup>115</sup> Kant, RL, AA VI 350 (trs. Gregor, p. 156); see also Kant, GS, AA VIII 312<sub>28</sub>.

<sup>116</sup> Cf. Kant, GS, AA VIII 311 f.; EF, AA VIII 357; RL, AA VI 350.

the other hand such a people is at the same time in a civil state, and that is exactly the state into which it was obliged to enter. In the juridical analysis the right of humanity turns out to be the right to a State. In the case of individual man this right refers to something which he does not yet have; in the case of a State it refers to a right which the people of that State already have. Individual man has a natural right to a State in the sense of to get into a civil condition. A people in a State have an acquired right to a State in the sense of to remain in a civil condition. In the first case the right can only be violated by hindering men to enter a civil condition. In the second case, however, it can also be violated by forcing them to leave the civil condition which they have already reached, without any guarantee that they would come into a juridically better one. It is true that the States also have to give up their "wild (lawless) freedom"<sup>117</sup> in favour of a freedom determined and guaranteed by law. And they, too, are obligated by a postulate of pure practical reason to abolish the (global) state of war and to establish a state of (world) peace. But, unlike individual men, in trying to fulfill this duty they also jeopardize the degree of civil constitution already internally realized. Thus, with regard to the Right of humanity, they have two duties, one arising from their existence as civil societies, and the other from the global state of nature. The first duty is to continue to secure the already existing (law-determined) freedom of their subjects.<sup>118</sup> The second duty, ultimately aiming at the abolition of external sovereignty, is to participate in establishing and securing such freedom also worldwide and universally. Both duties are juridical duties. But since the "compliance with [the second] duty can [...] consist only in continual progress [...] this duty is indeed narrow and perfect *with regard to* its object" (eternal peace on earth), "*with regard to* the subject however it is a wide and only imperfect duty to oneself"<sup>119</sup> (deferment of its fulfillment according to the circumstances<sup>120</sup>).<sup>121</sup> All States are under the unconditional obligation to constantly and incessantly strive for a "universal State of peoples"<sup>122</sup>. But with regard to some steps<sup>123</sup> the States have the right, and even the juridical duty, to postpone decisions in case the step to be taken is judged by them (still) to be jeopardizing the civil condition of their own people. That is the reason why Kant conceives the historical process of approaching the final goal as a continuous and at all points voluntary step-by-step action.

Here, Kant's doctrine of the Right of Nations gets its hallmark.<sup>124</sup> The path to freedom and peace between States must start with their juridical autonomy and external sovereignty. By this, the clear direction of that path, but also its lengthiness is determined. The doctrine of the (natural)

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<sup>117</sup> Kant, EF, AA VIII 357; also RL, AA VI 316.

<sup>118</sup> Cf. Kant, EF, AA VIII 372<sup>19-23</sup>.

<sup>119</sup> Kant, TL, AA VI 446 (I made use of Gregor's translation, p. 241).

<sup>120</sup> See Kant, EF, AA VIII 347; 378.

<sup>121</sup> That is what Kant has in mind with the questionable concept of a "permissive law". See Kant, EF, AA VIII 347; 373.

<sup>122</sup> "allgemeiner Völkerstaat"; Kant. GS, AA VIII 312 f.

<sup>123</sup> Preliminary articles nos. 2, 3, 4 and definitive articles nos. 1 and 2.

<sup>124</sup> The arguments given here have been criticized by Otfried Höffe (l.c. [note 31], pp. 272 ff.). But what and how he writes to support his counter-claims does not give the impression that he really got Kant's and my point.

Right of Nations - as part of the doctrine of (natural) public Right - deals with the conditions under which independent States can be united into one community based on public Right. Kant thinks of eternal peace in terms of Right. That is why he also has to think about the aptest means to reach this target primarily in terms of Right. The steps towards a global state of public Right must not be themselves a violation of the principles of Right. They have to be juridically allowed. What Kant himself presents as "Right of Nations" is *natural Right*<sup>125</sup> in the juridical state of war, i. e. in a state devoid of public justice. It contains, with regard to external State activity, the conditions "under which alone the establishment of public justice, a covenant of peoples, is possible"<sup>126</sup>, "the sum total of laws in order to approach the state of peace"<sup>127</sup>. As already suggested, such unification can only be thought of as being established by mutual agreement. But in contrast to the foundation of a civil condition of individual men, in the case of (autonomous) States the contract has to be concluded in reality.<sup>128</sup> Every State, it is true, has the unconditional juridical duty to strive steadfastly for the "continual approximation"<sup>129</sup> to a worldwide civil condition. But this duty by no means entails a right of other States to exercise a corresponding coercion on it. And war, in particular, is under no circumstances juridically allowed as a means to achieve world peace.<sup>130</sup> The situation of an individual person in the state of nature can, in terms of Right, only improve, even by coercion from others, since this person is *exclusively* in that state which itself already is a state of war. This is not true for a State, i.e. "a union of a multitude of men under laws of Right"<sup>131</sup>. "As States, they internally already have a juridical constitution and have thus outgrown the compulsion of others to subject them according to *their* concepts of Right to an expanded law-governed constitution."<sup>132</sup> There is no doubt, Kant is strongly against a "universal monarchy"<sup>133</sup> and is always aware that it is possible at any time. But he certainly is, and *from his juridical principles he has to be*, as strongly in favour of a world republic, i.e. of one single (global) civil society under public coercive laws of outer freedom. Therefore, he also has to plan accordingly the steps to be taken by mankind in its history, in order both to avoid a development towards world tyranny and still to

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<sup>125</sup> Without the "least force of *law*"; Kant, EF, AA VIII 355 (trs. Schwarz, p. 76).

<sup>126</sup> Kant, Refl. 8061; AA XIX 598.

<sup>127</sup> Kant, Refl. 8057; AA XIX 597; cf. Refl. 7817; AA XIX 525.

<sup>128</sup> See Kant, EF, AA VIII 356; 383.

<sup>129</sup> Kant, RL, AA VI 350.

<sup>130</sup> According to the maxim "to be unjust once and for all so that afterward [one] can establish justice all the more securely and make it flourish". Kant, RL, AA VI 353 (trs. Gregor, p. 159); cf. also Kant, EF, AA VIII 356 f.; 385; RL, AA VI 344<sup>17-21</sup>; 348<sup>22-23</sup>; Refl. 8065, AA XIX 599. The juridical condition is different after a war. See Kant, RL, AA VI 343<sup>23-25</sup>; 348; 349<sup>8-10</sup>; 349<sup>33-34</sup>.

<sup>131</sup> Kant, RL, AA VI 313 (trs. Gregor, p. 124).

<sup>132</sup> Kant, EF, AA VIII 355 f. (my translation, using Schwarz, p. 77, and Nisbet, p. 104; my italics). See also 356<sup>12-14</sup>.

<sup>133</sup> See e.g. Kant, Rel, AA VI 34; 123; cf. GS, AA VIII 311; EF, AA VIII 367.

finally achieve the "highest political good"<sup>134</sup>, "the state of eternal peace based on a covenant of peoples as a world republic"<sup>135</sup>.

A civil condition is defined by three characteristics: public Right, public judge and public coercive power.<sup>136</sup> The state of nature amongst sovereign States is like a "game" which is played without any common rules and without an umpire possessed of power. Since coercion by other States is juridically excluded the only way to approach a state of peace is by agreement.

The attempt to realize "the positive Idea of a world republic"<sup>137</sup> "immediately and precipitately"<sup>138</sup> may be absolutely "contrary to the purpose itself"<sup>139</sup> by producing a global despotism, the "graveyard of freedom"<sup>140</sup>. But "if anything at all shall remain thinkable" by the concept of the Right of Nations, and "unless everything shall be lost", the Idea of a "free federalism" as a "negative surrogate" "of the covenant of civil society" is a necessary concept of practical reason: a "peace covenant"<sup>141</sup> of sovereign States, voluntarily agreed on and subject to notice at any time, open to every State, without common law-giving and common judge and thus without the right and power of coercion.<sup>142</sup>

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<sup>134</sup> Kant, RL, AA VI 355.

<sup>135</sup> Kant, Rel, AA VI 34.

<sup>136</sup> Cf. Kant, Rel, AA VI 95<sup>22-23</sup>; RL, AA VI 312; AA XXVII 589 ff.

<sup>137</sup> Kant, EF, AA VIII 357.

<sup>138</sup> Kant, EF, AA VIII 372 (trs. Schwarz, p. 110).

<sup>139</sup> Kant, EF, AA VIII 347 (trs. Schwarz, p. 54).

<sup>140</sup> Kant, EF, AA VIII 367.

<sup>141</sup> Kant, EF, AA VIII 356 f. (trs. Schwarz, p. 79).

<sup>142</sup> See Kant, EF, AA VIII 356<sup>12-14</sup>; 383<sup>14-17</sup>; RL, AA VI 344<sup>19-21</sup>; 350<sup>24-25</sup>; 351<sup>1-4</sup>.

Here, again, a remark about translating Kant into English may be pertinent. In the majority of cases, when Kant uses the auxiliary verbs "müssen" and "dürfen" together with the negation "nicht", he means just the opposite of what is meant in current German. Thus, "nicht müssen" has the meaning of "nicht dürfen" and vice versa. This does not cause a great problem for English translators with regard to "müssen", since Kant's "man muß nicht" (usually meaning "man darf nicht"), translated literally into "one must not" also means "man darf nicht", and is thus correct. But Kant's "man darf nicht" (usually meaning "man muß nicht") must not then be translated into "one may not", but into "one need not". I give three examples to show the philosophical importance of this seemingly minor point:

1) RL, AA VI 231<sup>20</sup>: "darf und soll man selbst nicht" reads correctly as "one need not and even should not".

2) RL, AA VI 232<sup>6</sup>: "das Recht darf nicht" reads correctly as "Right need not"; otherwise Kant would also have had to continue with "muß" and not, as he does, with "kann".

All four above mentioned translations are wrong at these two points!

3) EF, AA VIII 383<sup>15-16</sup>: Kant's position is that the covenant between the States "*need not just be based [...] on laws of compulsion but may if necessary [allenfalls] also be that of a continuing-free association*" (trs. Schwarz, p. 129; my italics; Kant's italics dropped). In Nisbet's translation (p. 127) this reads: "*must not be based on coercive laws, but may at most be a state of permanent and free association*". (The same mistake already in: Mary Campbell Smith (ed. & trs, Perpetual Peace, London 1903) The German "allenfalls" can, indeed, have two opposite meanings. Nisbet gets it wrong because of the wrong context produced by him.

This peace covenant would be a pure non-aggression and defence alliance<sup>143</sup> with the sole purpose to prevent real wars<sup>144</sup> so long as an international civil constitution is not (yet) available.<sup>145</sup> Such a "federative status of States" is "the only *juridical* condition [rechtlicher Zustand] compatible with their *freedom*"<sup>146</sup>. It alone respects the autonomy of the member States, and at the same time it is the first step in the direction of a world republic and itself already the establishment of peace among States, if only provisionally<sup>147</sup>. Just because of this, that federation, and it alone, is a priori in necessary harmony with the original right of each State to law-determined freedom. It cannot, thus, possibly harm the right of any State.<sup>148</sup> Therefore, however insufficient, it definitely is a step forward on the road to world peace. And he who doesn't want this federation, doesn't want peace.

For all further steps this a priori certainty does not exist. They may prove to be regressive and therefore they are not without risk. But, still, they have to be taken, somehow and at some time, if peace on earth is not to remain "an impracticable Idea"<sup>149</sup>.

In a later phase, the States may create a "federation according to a commonly agreed Right of Nations"<sup>150</sup>. The member States commit themselves to settling their possible disputes "in a civil way, *as if* by a lawsuit, rather than in a barbaric way (the way of savages), namely by war"<sup>151</sup>. Given their function, the common rules agreed on thus far are already (positive) *public Right*, since they make at least a "*thoroughgoing harmony* [between the States] possible"<sup>152</sup>. They are indeed the public expression "of a *general will* determining everyone's own"<sup>153</sup>. But, similar to private Right in the state of nature, they are only *provisional* Right, since, although valid, they are not secured by any public judge possessed with power. The situation<sup>154</sup> is such that indeed "a right *can* actually be apportioned to a person"<sup>155</sup>. But, for want of a public law-governed external coercion, there is no guarantee that it happens. And yet the situation has, in terms of

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<sup>143</sup> Ebbinghaus has emphasized that this may not be taken as a pact for the outlawing of war. See Julius Ebbinghaus, *Kants Lehre vom ewigen Frieden* (note 98), p. 15 f.

<sup>144</sup> See Kant, EF, AA VIII 356<sub>10-12</sub>; 357<sub>15</sub>; 367<sub>10-12</sub>; 383<sub>23-25</sub>; 385<sub>7-8</sub>; RL, AA VI 349<sub>10-12</sub>.

<sup>145</sup> This alliance neither presupposes that the member States have a republican constitution nor that within these States civil wars cannot break out. And in neither of these cases do the other members of the alliance have a right, let alone a duty, to interfere. (Cf. Kant, EF, AA VIII 346; 373) The only purpose of the alliance is to organize the mutual *external* relationships amongst its members according to rules of Right.

<sup>146</sup> Kant, EF, AA VIII 385 (I made use of Schwarz's translation, p. 131).

<sup>147</sup> "in constant peril of [the] outbreak" of "the right-shunning inimical inclination"; Kant, EF, AA VIII 357 (trs. Schwarz, p. 79).

<sup>148</sup> Cf. Kant, RL, AA VI 349<sub>10-13</sub>.

<sup>149</sup> Kant, RL, AA VI 350 (trs. Hastie, p. 224).

<sup>150</sup> Kant, GS, AA VIII 311.

<sup>151</sup> Kant, RL, AA VI 351 (trs. Gregor, p. 157; my italics).

<sup>152</sup> Kant, GS, AA VIII 290; my italics.

<sup>153</sup> Kant, EF, AA VIII 383 (trs. Schwarz, p. 129; my italics).

<sup>154</sup> As a condition of public Right it is no longer a (non-juridical) state of nature, but also not yet a civil condition. See Kant, RL, AA VI 255.

<sup>155</sup> Kant, EF, AA VIII 383 (trs. Schwarz, p. 129).

Right, fundamentally changed since the States can now do wrong in a way in which it would not have been possible before. The violation of a valid public contract "reveals a maxim by which, if it were made a universal rule, any condition of peace among nations would be impossible". "In terms of the concepts of the Right of Nations", the violating State becomes an "unjust enemy". His action "can be assumed to be a matter of concern to all nations whose freedom is threatened by it". Therefore, "they are called upon to unite against such misconduct in order to deprive [this] state of its power to do it".<sup>156</sup>

The next step to be taken is the establishment, again only voluntarily, of a common arbitral authority,<sup>157</sup> but still without coercive power. Now, a breach of public rules could also be brought to court. And the mentioned call upon the other States would be even more urgent if a State would refuse to comply with the verdict of the common arbiter. But even in this stage, the (positive) Right of Nations would still be the Right of sovereign States.

There is an unsolvable contradiction between the Ideas of world peace and of external sovereignty of States. The "last step"<sup>158</sup> which therefore has to be accomplished is the establishment of an irresistible universal coercive power<sup>159</sup> able to really force the States to keep to the rules respectively to abide by the judicial decisions. Only with this step the States would finally forgo their external sovereignty, and thus their lawless freedom altogether, and their physical power<sup>160</sup> to resist legal actions against them. They would commonly enter into a "cosmopolitan commonwealth under a sovereign head [Oberhaupt]"<sup>161</sup>. The provisional public Right of Nations (Völkerrecht) would dissolve into a peremptory public Right of a universal federal republic of free, but externally not sovereign "States"<sup>162</sup>, into "Völkerstaatsrecht"<sup>163</sup>. This world republic constitutes a united power which is exercised according to laws of a united will.<sup>164</sup> There cannot be any doubt that Kant always, from 1784 to 1798, envisaged the world republic as the final goal of the political development of mankind.<sup>165</sup>

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<sup>156</sup> Kant, RL, AA VI 349 (trs. Gregor, p. 155); cf. GS, AA VIII 311<sup>33-34</sup>.

<sup>157</sup> Cf. Kant, RL, AA VI 350. He speaks there about the European States which "*thought of the whole of Europe as a single confederated state that they accepted as arbiter, so to speak, in their public disputes*". (trs. Gregor, p. 156; my italics)

<sup>158</sup> Kant, Idee, AA VIII 26.

<sup>159</sup> See Kant, Rel, AA VI 123: "a universal Right of Nations *possessed of power*" (I made use of the translation of Greene/Hudson, p. 114; Kant's italics); GS, VIII 357<sup>9</sup>; RL, VI 312<sup>9-12</sup>.

<sup>160</sup> Cf. Kant, RL, AA VI 312<sup>20</sup>.

<sup>161</sup> Kant, GS, AA VIII 311.

<sup>162</sup> "which (although they retain their freedom within the general union with others) nevertheless are subject to coercive laws"; Kant, GS, AA VIII 290 (I made use of Nisbet's translation, p. 73).

<sup>163</sup> Kant, RL, AA VI 311. Gregor translates: "Right for all nations" (p. 123), Nisbet: "international political right" (p. 137), Hastie: "universal Right of mankind" (p. 162). None is appropriate. The literal translation would read: "Right of a State of Peoples". And exactly this is meant, - the public Right of a single world republic of all peoples (= Staatsvölker) as its free members. "Völkerstaatsrecht" is "Staatsrecht" (of free, but externally no longer sovereign 'States') and not "Völkerrecht".

<sup>164</sup> See Kant, Idee, AA VIII 24. Ten years later Kant still held the same position. See AA XXVII 591: "universal federation of peoples" with "public legislation" and "public power" as the source of universal peace. When Kant in this context speaks of "Völkerbund", it must not be translated as "league of nations". It means Völkerbund "as world republic" (Rel, AA VI 34). In "Zum Ewigen Frieden" (AA VIII 354) and

Kant, by no means, imagines world peace being realized within a gigantic centralized State. On the contrary, he is horrified by this idea.<sup>166</sup> That is exactly the reason why the second definitive article requires a "*federalism of free States*"<sup>167</sup>. Kant thinks of a (world-) "republic of federated free nations"<sup>168</sup>, i.e. a single, global civil state consisting of a multiplicity of self-governing political units (like the States in the USA, or the German Länder). The degree of their autonomy may even reduce the function of the world republic to guaranteeing the "civil way" as the only way of deciding public disputes.<sup>169</sup> Thus, the road to world peace would end, as it began: with a federation of States in order to secure the freedom of its members. But now, it would no longer be "merely provisional" and (at the most) general, but "peremptory" and universal.<sup>170</sup> The constant peril of the outbreak of war would juridically be banished for ever: eternal peace on earth. Even this peace, it is true, does not mean per se physical security; but what it does mean, is juridical security, safety of one's rights.<sup>171</sup> As Hobbes already phrased it: "Indeed, to make men altogether safe from mutuall harmes, so as they cannot be hurt, or *injuriously* kill'd, is impossible; [...] But care may be had there be no *just cause* of fear"<sup>172</sup>. What is abolished, is the possibility of a violence which, though arbitrary, is yet not unjust. Therefore, physical peace is now *necessarily possible* and not only by chance.

## X

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in "Rechtslehre" (AA VI 344) Kant indeed means by "Völkerbund" only the voluntary covenant of the first step. But also there he leaves no doubt that in order to come to "a true condition of peace" the States have to put themselves under public coercive laws of a "universal association of states [allgemeiner Staatenverein] (analogous to that by which a people becomes a state)" (RL, AA VI 350; trs. Gregor, p. 156). Cf. EF, AA VIII 357: State of peoples ("Völkerstaat [civitas gentium]"); also GS, AA VIII 312 f.: universal State of peoples ("allgemeiner Völkerstaat").

<sup>165</sup> See Kant, Idee, AA VIII 26; 27<sub>4-5</sub>; 28; 29<sub>3-4</sub>; Kritik der Urtheilskraft (= KU), AA V 432; GS, AA VIII 307; 310; 311; Rel, AA VI 34; EF, AA VIII 354; 357; 358; RL, AA VI 350; Ant, AA VII 331; 333.

<sup>166</sup> "world-monarchy, a constitution wherein all freedom [...] would necessarily expire", Kant, RL, AA VI 34 (I made use of the translation of Greene/Hudson, p. 29); see also RL, AA VI 350; GS, AA VIII 311; EF, AA VIII 367.

<sup>167</sup> Kant, EF, AA VIII 354.

<sup>168</sup> Kant, Rel (2nd edition from 1794), AA VI 34 (trs. Greene/Hudson, p. 29).

<sup>169</sup> In the extreme, the States would give up only their external sovereignty and completely keep their internal sovereignty.

<sup>170</sup> See Kant, RL, AA VI 350.

<sup>171</sup> That is the reason why "ewiger Frieden" should be translated into "eternal", not into "perpetual peace". The time-dimension does not play an essential role here. The problem of war is juridically, not empirically, solved once and for all. Only in so far it makes sense that Kant calls the phrase "eternal peace" a pleonasm. (See Kant, EF, AA VIII 343; cf. also Kant, Refl. 8063; AA XIX 599<sub>6-7</sub>; and Schwarz, p. 42.) With regard to historical reality, eternal peace must not be taken as a temporal (ever lasting) state, but rather as a continuous (timeless) task of practical reason. Cf. Kant, EF, AA VIII 386<sub>27-33</sub>.

<sup>172</sup> Hobbes, De Cive VI 3 (Warrender, Engl. Vers., p.93; my italics).



3) So long as the federation of States is not yet a global one and thus the Right of Nations is not yet transformed into a "Völkerstaatsrecht", there remains a third level of relationships, i.e. the global one, which needs a peaceful ordering by juridical determination. The respective principle limits cosmopolitan Right "to conditions of universal hospitality"<sup>173</sup>. Positively, this means, that individual men and peoples as citizens of a common world (Weltbürger) have a universal right of visit, and only this. Negatively, it means the unconditional prohibition of usurping other peoples' possessions and, in particular, of colonialism and imperialism. Even the right of a guest is excluded.

Just a glance into human history, not least of the last two centuries, suffices to give evidence particularly of the great realism of the cosmopolitan principle. And it is not in spite of it being purely juridical, but because of this, that this principle is realistic. Again, so long as men's (and peoples') domains of external freedom are not determined and guaranteed by public coercive laws of freedom, the only safeguard is the private sword. But whenever it is used, rightly or - probably more often - wrongly,<sup>174</sup> it usually leads to repercussions. It is even more important that by victories no right is decided. Therefore, a victory as such can never bring about a condition of peace, but only that state of war which is called truce.<sup>175</sup>

## XI

Kant mainly comes to his *realism* by simply not taking reality into account. This is firstly true for his purely rational concept of Right. It is secondly true for his equally purely rational proof of the necessity of a civil constitution. And furthermore it is true with regard to the steps pointed out as necessarily to be taken for the possibility and the reality of world peace. Here again one need not, and even must not, refer, for their discovery, to man's natural condition. This condition only plays a role in the *constitution* of the problem: in the state of nature, beings with natural inclinations and interests find no chance of satisfying them other than by resorting to violence in the case of a conflict with others. For the *solution* of this problem, however, human nature is irrelevant. Kant is far from asking men, as is so often done, to give up their inclinations and interests or at least some part of them, which, by the way, would always depend on personal value judgments and preference scales. What is at stake for Kant, is not to eliminate a *natural disposition* in man to quarrel, but to eliminate possible *juridical grounds* for it.<sup>176</sup> The work of "civilizing" the condition of mankind, therefore, does not make the well-known conflicts of interests between

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<sup>173</sup> Kant, EF, AA VIII 357.

<sup>174</sup> Wrongly: knowing that what one does is just not "right and good" and thus *misusing* the right to one's own judgement; a misuse which, however, plays a role only in foro interno, i.e. without any juridical consequences with regard to the relationship to others. Cf. already Hobbes, De Cive I 10 note.

<sup>175</sup> Cf. Kant, EF, AA VIII 38630-31.

<sup>176</sup> Cf. Kant, KrV, AA III 492: "by a *judicial sentence* which, as it strikes at the very root of the conflicts, must grant an eternal peace" (I made use of the translation of Norman Kemp Smith). At Streit, AA VII 91 he says with regard to "respublica noumenon", the eternal norm for all civil conditions whatsoever, that it "eliminates all war".

individual men, peoples, and States disappear; on the contrary, they would continue to exist. This work can only bring about a situation - and here, exactly, lies the difference between war and peace - in which those conflicts can and will be settled by rational means (of Right) rather than by physical means (of violence).<sup>177</sup>

## XII

Only now, after the completion of his doctrine of Right, i.e. after having shown which juridical steps have to be taken with regard to world peace, may Kant pose an empirical question, and does so in a "supplement". The all-embracing categorical imperative of Right says that world peace has to be striven for unconditionally. An empirical argument *against* this command is a priori impossible, because it would have to show the absolute impossibility of the adherence to it.<sup>178</sup> Historical experience may well show that the command has not (yet) been lived up to,<sup>179</sup> but history can never show that this is impossible.<sup>180</sup> A look into the history of mankind may, however, give some positive hints with regard to the chances of realizing world peace. This purely *practical* interest is the only reason (and legitimation) for Kant's (rather "frugal") philosophy of history "from a cosmopolitan point of view"<sup>181</sup>, a pure supplement to his doctrine of Right.<sup>182</sup> Kant looks for "historical signs"<sup>183</sup> as an (empirical) "*guarantee* of eternal peace"<sup>184</sup>.

<sup>177</sup> Cf. Kant, EF, AA VIII 366 f.

<sup>178</sup> Cf. Kant, RL, AA VI 354<sub>15-19</sub>.

<sup>179</sup> Cf. Kant, GS, AA VIII 309 f.

<sup>180</sup> An apodictic statement about the future history of mankind is necessarily impossible, since this history also depends on the development of human knowledge which is a major factor in free agency and which cannot be anticipated.

<sup>181</sup> I think that it is not correct to translate the title of Kant's essay "Idee zu einer allgemeinen Geschichte in weltbürgerlicher Absicht" into "Idea....with a Cosmopolitan Purpose" (as Nisbet does; p. 41) or "...with Cosmopolitan Intent" (as C. J. Friedrich does); or, as I also once read, "...with a Cosmopolitan Aim". There are numerous cases in which Kant uses the word "Absicht" with the meaning of "Hinsicht". Nisbet himself translates the sub-title of chapter 3 of "Theory and Practice": "In [...] kosmopolitischer Absicht betrachtet" (GS, AA VIII 307) correctly into "Considered from a [...] Cosmopolitan Point of View" (p. 87). For the case in question Kant makes it abundantly clear by speaking himself of "a particular point of view in considering the world" (Idee, AA VIII 30; trs. Nisbet, p. 53) and of "still from another standpoint" (ibid.). Cf. also Idee, AA VIII 27<sub>15</sub>; 314; GS, AA 277<sub>22</sub>; 277<sub>33-35</sub>; 307<sub>3</sub>; and the title of the anthropology.

<sup>182</sup> As the philosophy of religion is nothing other than a supplement to his ethics.

<sup>183</sup> Kant, Streit, AA VII 84.

<sup>184</sup> Kant, EF, AA VIII 360. For details see Kant, Idee, AA VIII 15 ff.; Muthmaßlicher Anfang der Menschengeschichte, AA VIII 107 ff.; KU, AA V 429 ff.; GS, AA VIII 307 ff.; EF, AA VIII 360 ff.; Streit, AA VII 77 ff.; Ant, AA VII 321 ff. - Kant leaves the reader in no doubt that such empirical arguments in favour of a "guarantee" for the eventual achievement of eternal peace are "no more than a personal opinion and hypothesis; [they are] uncertain, like all judgments which profess to define the

As every reader of his works knows, he does, indeed, find some special signs in the "antagonistic" nature of mankind itself, its famous "unsociable sociability"<sup>185</sup>. a) Both, by "internal dissent"<sup>186</sup> and "war from without"<sup>187</sup>, a people is compelled to replace the anarchy of its natural condition by a civil constitution.<sup>188</sup> b) The "differences of languages and of religions"<sup>189</sup> cause a segregation of peoples into different independent States, thus preventing the formation of a universal tyranny. c) And lastly, "mutual self-interest" and "spirit of commerce"<sup>190</sup> bring about a tendency amongst peoples to replace their armed conflicts, un-economic in the extreme, with peaceful cosmopolitan relationships.

The empirical "guarantee", resulting from the "mechanism of human inclinations"<sup>191</sup>, does not, it is true, allow any (theoretical) forecast of the political development.<sup>192</sup> But in practical respect it is sufficient, since it shows that the juridical duty to promote world peace is not directed towards a "merely chimerical" end.<sup>193</sup>

At the end of his life, Kant finds a particularly promising sign in the French Revolution, that is to say, not in the event itself, but in the courageous and enthusiastic approval it found in the non-participant spectators in other European countries. It is the "cast of mind" ("Denkungsart")<sup>194</sup> of the onlookers, publicly displayed as a "universal and yet disinterested sympathy"<sup>195</sup>, which proves, according to Kant, at least "a moral disposition [Anlage] within the human race"<sup>196</sup>. Thus emerged, once and forever, a universal awareness that a people is endowed with political rights and furthermore able to bring about its own political destiny. "Such a phenomenon in the history of men will never be forgotten."<sup>197</sup>

In a second "supplement"<sup>198</sup>, Kant deals with the role of a doctrine of public Right within a system of (positive) public Right and thereby, in particular, with the (political) relevance of his own treatise with regard to the realization of the goal set in it. The result is one single "*secret* article": "The maxims of the philosophers on the conditions under which *public* peace is possible

appropriate natural cause of an intended effect which is not wholly within our control". (GS, AA VIII 311 f.; trs. Nisbet, p. 91)

<sup>185</sup> Kant, *Idee*, AA VIII 20.

<sup>186</sup> Kant, *EF*, AA VIII 365 (trs. Nisbet, p. 112).

<sup>187</sup> Kant, *EF*, AA VIII 365 (trs. Schwarz, p. 99).

<sup>188</sup> Cf. Kant, *Ant*, AA VII 330.

<sup>189</sup> Kant, *EF*, AA VIII 367 (trs. Schwarz, p. 101).

<sup>190</sup> Kant, *EF*, AA VIII 368 (trs. Nisbet, p. 114).

<sup>191</sup> Kant, *EF*, AA VIII 368.

<sup>192</sup> See Kant, *Streit*, AA VII 83 f.

<sup>193</sup> Kant, *EF*, AA VIII 368 (trs. Schwarz, p. 103).

<sup>194</sup> Kant, *Streit*, AA VII 85.

<sup>195</sup> Kant, *Streit*, AA VII 85 (I made use of Nisbet's translation, p. 182).

<sup>196</sup> Kant, *Streit*, AA VII 85 (trs. Nisbet, p. 182).

<sup>197</sup> Kant, *Streit*, AA VII 88.

<sup>198</sup> Added to the second edition of the essay (1796).

shall be consulted by the States armed for war."<sup>199</sup> Those who want (and ought) to establish the only world appropriate to man as a reasonable and thus free being, also ought to listen to the professional voice of reason. This is certainly no Platonic call for philosopher-kings. On the contrary, it is desirable that each follows his own specific business, "since the possession of power inevitably corrupts the free judgement of reason"<sup>200</sup>. Both, for politics and for philosophy, for peace and for the reflection on it, it is sufficient and at the same time advantageous when this reflection can happen publicly, instead of letting "the class of philosophers dwindle or fall silent".<sup>201</sup>

With subtle irony concerning the practice usual with international treaties, Kant states the article, clarifying the role of the philosopher in politics, to be the only one that, although part of a treaty which aims to establish (provisional or peremptory) *public* Right, may be, and even has to be, *secret*. Only the State, through its representatives, has the immediate right and duty to take the necessary steps towards international peace. It can neither give up nor share the corresponding responsibility (and dignity) by regulating through public Right its relationship to the philosopher. And, moreover, the advice of the philosopher is not a possible object of public Right regulation. Thus, the relationship between "kings" and "philosophers" can be determined only "secretly": the statesman follows his (*public*) business, as must be the case, on his own responsibility; but in doing so he also lends his (*private*) ear to the philosopher.

Kant's doctrine of peace is essentially a juridical doctrine. That is the reason why Kant puts his considerations, both about the empirical "guarantee of eternal peace" and about the role of the specialist of a doctrine of Right in a world where this doctrine has to be realized, into supplements. They still belong to the doctrine of peace, but not to the doctrine proper. They do not contain steps to be taken, but rather reflections with regard to the significance and the chances of the two treaties. The considerations of the first supplement are theoretical (empirical) "from a practical standpoint" and therefore part of the philosophy of history. The considerations of the second supplement belong to "politics as executing doctrine of right"<sup>202</sup>. As supplements they presuppose the essay proper and would not make any sense without it. In both cases, the "standpoint" respectively that which has to be "executed", first has to be established. And no single word in the two treaties would have to be changed if the result of those reflections were different.

### XIII

Much more so is true for what Kant intentionally puts into appendices. They contain, so to speak, meta-considerations about the practical status of morality and of prudence and of their mutual

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<sup>199</sup> Kant, EF, AA VIII 368 (I made use of the translations of Schwarz, p. 104, and Nisbet, p. 115; my italics). Cf. also Kant, Streit, AA VII 89.

<sup>200</sup> Kant, EF, AA VIII 369 (trs. Nisbet, p. 115).

<sup>201</sup> Kant, EF, AA VIII 369 (trs. Schwarz, p. 105); see also 386<sub>6-9</sub>.

<sup>202</sup> Kant, EF, AA VIII 370 (trs. Schwarz, p. 106).

relationship in politics. These considerations are not even as a supplement part of the doctrine of peace. But they belong into an appendix to it in so far as Kant clarifies here that not only from moral, but also from realistic reasons Right has the primacy over politics, and that it is therefore not only moral, but also more prudent to minimize the tortures of the natural mechanism which mankind has to suffer from on the road to peace.<sup>203</sup>

The moral foundation for Right and for its obligation has been laid down outside the doctrine of Right altogether, respectively in the "Groundwork" and in the "Critique of Practical Reason". In the doctrine of Right as a doctrine of duties, therefore, the moral law as the binding law for the exercise of human (inner and outer) freedom in any case may be, and even has to be, presupposed and taken for granted.<sup>204</sup> Thus, also in the juridical considerations with regard to world peace, there is neither the possibility nor the necessity to discuss it anew. It is enough to remind the reader laconically that men *have* the unconditional and perfect duty to promote world peace. But what really has to be discussed, are the juridical duties themselves: and that is the field of (juridical)<sup>205</sup> *legality*. Indeed, the *juridical* conditions to arrive first at a preliminary and then at a definitive peace treaty and, within the reach of this treaty, initially at a provisional state of peace and eventually at a peremptory (eternal) state of peace are the very heart of Kant's doctrine of eternal peace.<sup>206</sup>

Kant argues in favour of a strict adherence to legality, i.e. a strict adherence to the juridical duties, whether it be done "from duty" or "from inclination". And "how indeed can one expect something perfectly straight to be framed out of such crooked wood" as sensuous human nature is.<sup>207</sup> One may therefore not expect human beings to search for Right (and justice) for its own sake. But with regard to political reality, it completely suffices - and moreover does not make any empirical (visible) difference - when they do it simply from enlightened self-interest.<sup>208</sup> That

<sup>203</sup> One can compare the relationship between essay proper, supplements and appendices with the travel papers one may get in an agency: the main train ticket (proper) which allows one to go under certain conditions from A to B; a supplement which allows one, in addition, to go under all conditions from A to B; and, as an appendix, a schedule which does not belong to the tickets, but gives some useful information with regard to using them.

<sup>204</sup> Cf. Kant, RL, VI 221 ff.: "Preliminary Concepts of the Metaphysics of Morals". It is quite surprising how many authors (e.g. Paul Guyer, Jeffrie Murphy, Thomas Pogge, Patrick Riley) when dealing with Kant's theory of Right (and politics) refer to - and even support themselves with - the "Critique of Practical Reason", and more so, with the "Groundwork". For the understanding of Kant's juridical teachings these writings are rather irrelevant and taking them into consideration is often even quite misleading. Kant's theory of morality altogether and especially his various teachings about the freedom of the will are absolutely irrelevant for the question whether or not and how eternal peace can be realized on earth. They are even irrelevant for the doctrine of Right *as such*.

<sup>205</sup> As distinguished from ethical legality, i.e. acting in conformity with ethical duties.

<sup>206</sup> The essay "Toward Eternal Peace", on its side, is an essential part of Kant's doctrine of Right as a doctrine of peace; and it is especially a doctrine of "eternal peace among States" (Kant, EF, AA VIII 348) which itself forms the centre of the essay. But neither within the frame-work of Kant's moral philosophy altogether nor within Kant's theory of teleology does it play an independent, let alone a decisive role. On the contrary, in the two appendices Kant simply applies his moral theory, and in the first supplement he applies his theory of teleology, both theories being worked out somewhere else.

<sup>207</sup> Kant, Rel, AA VI 100 (trs. Greene/Hudson, p. 92).

<sup>208</sup> Cf. Kant, Streit, AA VII 92.

one makes it one's maxim to act in accordance with Right is not only a moral demand,<sup>209</sup> but also a requirement of highest political prudence.<sup>210</sup> Only a short-sighted judgment of so-called prudence can come to the conclusion that the disregarding of rules of Right is advantageous.<sup>211</sup> Kant pleads in favour of Right as the supreme principle of all political maxims because any other principle (like the "State's welfare and happiness"<sup>212</sup> [the famous-infamous "reason of State"]) would a priori make impossible world peace as the guarantee of the external freedom of everyman with regard to all others. Also and especially prudence, if it be really prudent, "must bend its knee before Right"<sup>213</sup>. Right is, in the moral as well as in the prudent sense, the basis of all prudent politics.<sup>214</sup>

There will be no peace on earth unless under the rule of law.<sup>215</sup> And without peace there will be no possibility for mankind to pursue its respective ends, be they moral, amoral or even immoral, independently from another's constraining choice. It is true, there is not only a moral, but even an empirical difference whether somebody abides by the juridical laws from duty or from inclination. In the second case, the abidance itself depends on natural and thus contingent conditions. But the difference in the *reliability* of the pursuit of the laws does not affect the juridical eternity of peace, but only its empirical durability.

Thus, Kant adds to the a priori argument about moral duties, which emanate from the principle of Right as a categorical imperative (of *morality*), a persuasive empirical argument by which the principle of Right can also be taken as a hypothetical imperative (of *prudence*). But, regardless of whether the search for (juridical) peace is categorically "commanded" or hypothetically "advised",<sup>216</sup> i.e. whether it is a question of morality or of prudence, it can be *successful* only

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<sup>209</sup> See Kant, RL, AA VI 231.

<sup>210</sup> The attempt of Heinz-Gerd Schmitz (Moral oder Klugheit? in: Kant-Studien, 81 [1990], 413-434) to prove that Kant in the "Peace" essay *replaced* - of course against his own intentions (!) - the categorical imperative with prudence is tantamount to committing an intellectual rape on Kant's juridical doctrine of peace. The article may be useful in a seminar in order to give the students an opportunity to work out in detail all the nonsense foisted - of course without any intention - on Kant (e.g. with regard to what he says about "permissive laws" or to his distinction between morality and legality). But a happy combination of prudence and morality prevents me from wasting any more time on it here. Unfortunately, the rejoinder to Schmitz's article by Howard Williams (Morality or Prudence?, in: Kant-Studien, 83 [1992], 222-225) is no better. He tries to defend Kant, but in the end he takes back all that he has seemingly given and leaves - he, too, of course without intention - the battle-field to Williams, but philosophically rather bare.

<sup>211</sup> If one only takes the picture which world politics show at this very moment, in all its gruesome and shocking aspects, it is, through and through, the result of breaking rules of Right in the past, long ago or recently, and, of course, in the present. And wherever it shows pockets of peace and civilization, again, this is the result of law-governed constitutions (especially republican ones), of the rule of law, and of abiding by these rules.

<sup>212</sup> Kant, EF, AA VIII 379.

<sup>213</sup> Kant, EF, AA VIII 380.

<sup>214</sup> Cf. Kant, EF, AA VIII 385.

<sup>215</sup> See Kant, EF, AA VIII 360<sub>4-9</sub>; 380<sub>4-5</sub>.

<sup>216</sup> It is not the *objectivity* of the validity of the juridical "dictates of reason" which is affected by the lack or the failure of a critique of practical reason, but only the *status* of that validity as hypothetical or categorical. I hope soon to find an opportunity to give a detailed account about the relationship between moral philosophy and doctrine of Right, and the claimed independence of the latter from the former. See

under certain juridical conditions,<sup>217</sup> many of which, by the way, were already pointed out by Hobbes. Nobody has understood better than this philosopher that, in the case of moral laws of *Right*<sup>218</sup>, their rationally derived binding character can, if necessary, be replaced by the authority of the State, and the voluntariness of their observance can be replaced by State coercion. The *problem of establishing peace* is soluble for mankind because mere *rules of expediency* are sufficient. The knowledge of prudence shows that behaving rightfully pays - "even for a people of devils (if only they have understanding<sup>219</sup>)"<sup>220</sup>.

#### XIV

How much the status and the function of the first supplement and of the appendices can be an object of misunderstanding has lately been shown by Paul Guyer.<sup>221</sup> The main question in the paper presented by him at the Kant Congress in Memphis was whether Kant maintained in 1795 the position he had in 1784, namely (according to Guyer) that eternal peace would be brought about *entirely and inevitably by natural processes*. Guyer's answer then was: On the contrary, according to Kant's "mature" position, peace can be achieved *only through a moral exercise of free human will*.

Well, Kant never has, and never could have, made either of these two claims. And one glance into Kant's writings suffices to show that especially the "mature" author emphasized the role of historical signs<sup>222</sup> and that already the "immature" author found a "morally good attitude of mind [Gesinnung]"<sup>223</sup> better than the painful alternative of natural mechanism.<sup>224</sup>

#### XV

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the very interesting discussion of this subject in Wolfgang Kersting, *Wohlgeordnete Freiheit*, Frankfurt 1993, pp. 134 ff.; the contribution of Friedrich Tretter on "Freie Willkür, Freiheit, Recht und Rechtsgültigkeit bei Kant" in this volume; and also, although from a different angle, Georg Picht, *Kants transzendente Grundlegung des Völkerrechts*, in: *Aufrisse. Almanach des E. Klett Verlages 1946-71*, Stuttgart 1971, pp. 223-279 (repr. in: Georg Picht, *Hier und Jetzt*, vol. 1, Stuttgart 1980).

<sup>217</sup> The two transcendental formulas of public Right in the second appendix (Kant, EF, AA VIII 381; 386) are regulative with regard to the establishment of such conditions under which alone politics can be brought into concord with moral doctrine (as doctrine of Right). They formulate the supreme principle for all political maxims which are expected to bring about peace on earth.

<sup>218</sup> As distinguished from moral laws of virtue.

<sup>219</sup> The faculty of cognition of juridical rules and of compliance with them, *regardless of the motivation*. Cf. Kant, KU, AA V 431<sub>4-5</sub>: the faculty to arbitrarily set ends for oneself.

<sup>220</sup> Kant, EF, AA VIII 366 (I made use of the translations of Schwarz, p. 99, and Nisbet, p. 112).

<sup>221</sup> See also Howard Williams, l.c. (note 39), p. 268.

<sup>222</sup> See Kant, Streit, AA VII 84 ff.

<sup>223</sup> Kant, Idee, AA VIII 26 (trs. Nisbet, p. 49).

<sup>224</sup> See Kant, Idee, AA VIII 26.

Past history is appearance and as such indeed "determined in accordance with natural laws, as is every other natural event"<sup>225</sup> and is thus also open to causal explanation. But even under the assumption, indeed made by Kant, of a complete causal determinacy of the phenomenal world a prediction of human history is not possible. "For we are dealing with freely acting beings to whom one can *dictate* in advance what they *ought* to do, but of whom one cannot *predict* what they actually *will* do".<sup>226</sup> Therefore Kant could not, and indeed never did, claim that eternal peace would *inevitably* be caused by natural mechanisms.<sup>227</sup> And however strongly the natural mechanism may push mankind towards peace on earth, it still has to be realized through free human action by establishing certain conditions of Right.

Kant's *teleological* interpretation of history<sup>228</sup> has no theoretical relevance whatsoever; it does not increase our knowledge. It also has no relevance for moral philosophy in general and the doctrine of Right as a doctrine of duties in particular. Mankind has the unconditional duty of Right to strive for world peace. But given this, it is of paramount practical importance to know whether that goal is not simply a chimera.<sup>229</sup> (Juridically) practical reason itself allows and even demands man to look at history *as if* it were a process of the emergence of law-governed external freedom within the human race. For Kant, the very notion of history is a practical one. The "guiding principle a priori" ("Leitfaden a priori") is a regulative principle of practical reason. Its function is not to direct empirical research, but to conceive historical phenomena "in cosmopolitan respect". Only this respect gives history a "meaning" or a "sense" for mankind. That is also the reason why Kant conceives history as universal.<sup>230</sup> Only "from the cosmopolitan point of view" certain empirical data become historical "facts" and only as such they are of any interest.<sup>231</sup> Kant's view on history serves only to answer the question: what may we hope for with regard to peace in this world? The answer is of great importance for "politics as executing doctrine of Right" since it may make mankind "content with providence"<sup>232</sup>. "Even the faintest signs of the approach [of eternal peace] will be extremely important to us"<sup>233</sup> if only they "open up a comforting prospect of the future"<sup>234</sup>.

As early as in 1784, the "natural mechanism" was made up of nothing but more or less convincing "historical signs" for the support of hope with regard to eternal peace. The title of the famous essay already made it abundantly clear what it was about: the history of mankind conceived (not: cognized) from a practical point of view according to the guiding principle of cosmopolitanism. Kant's "discovery" of a natural mechanism in human society has not the

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<sup>225</sup> Kant, *Idee*, AA VIII 17 (trs. Nisbet, p. 41).

<sup>226</sup> Kant, *Streit*, AA VII 83 (trs. Nisbet, p. 180).

<sup>227</sup> Cf. Kant, *Streit*, AA VII 79 ff.

<sup>228</sup> See Christoph Wild, *Die Funktion des Geschichtsbegriffs im politischen Denken Kants*, in: *Philosophisches Jahrbuch*, 77 (1970), 260-275.

<sup>229</sup> Cf. Kant, *Ant*, AA VII 328 f.

<sup>230</sup> See Kant, *Streit*, AA VII 79<sub>14-18</sub>.

<sup>231</sup> Cf. Kant, *Idee*, AA VIII 31.

<sup>232</sup> Kant, *Muthmaßlicher Anfang der Menschengeschichte (= MA)*, AA VIII 121.

<sup>233</sup> Kant, *Idee*, AA VIII 27 (trs. Nisbet, p. 50).

<sup>234</sup> Kant, *Idee*, AA VIII 30 (I made use of Nisbet's translation, p. 52).



theoretical status of laws of nature which would allow the claim of inevitability. What Kant indeed takes as some sort of social regularity, empirically proved by the course of the natural history of man, is a general existence of certain social forces (the antagonisms of man's unsociable sociability) which execute a strong effect on men's readiness to put themselves under civil conditions<sup>235</sup>, i.e. "to take the step which reason could have suggested to them even without so many sad experiences"<sup>236</sup>. It is Kant's version of Mandeville's "private vices - public benefits" and Adam Smith's "invisible hand"<sup>237</sup>, referring to history as a social science. But such history remains "meaningless" as long as it is not viewed "from a different point of view"<sup>238</sup> by which it is conceived also as the history of beings under laws of freedom.

Kant holds this position until the very end. In 1795 he enlarges the palette of empirical arguments and gives a more profound analysis of them.<sup>239</sup> In 1798, finally, he gives a new answer to the "renewed" question, whether the human race is continually improving<sup>240</sup>. He adds to his claims concerning a natural mechanism in human society<sup>241</sup> an historical argument of a completely different and still purely empirical quality.<sup>242</sup> He speaks about the above mentioned attitude of the non-participant spectators of the French Revolution as "an occurrence in our time which proves [a] moral tendency of the human race" and which "is already a form of improvement in itself"<sup>243</sup>. It is the sudden awakening of a universal awareness of the rights of a people<sup>244</sup> which as a historical phenomenon "will never be forgotten"<sup>245</sup>. This historical sign has a new quality with regard to the possibility of a "prognosticative history"<sup>246</sup> since it shows that mankind itself can be the "author" of its own improvement. From now on, Kant expects "progress to the

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<sup>235</sup> Cf. Kant, *Idee*, AA VIII 20<sup>27-29</sup>; 22<sup>33-34</sup>.

<sup>236</sup> Kant, *Idee*, AA VIII 24 (trs. Nisbet, p. 47).

<sup>237</sup> Cf. Kant, *Idee*, AA VIII 24; GS, AA VIII 312<sup>13-18</sup>; Ant, AA VII 328 f.

<sup>238</sup> Kant, *Idee*, AA VIII 30.

<sup>239</sup> In studying differences between the "Idea" essay and the "Peace" essay one should not overlook that in the first essay the main subject is history, and only the standpoint is a cosmopolitan one. In the latter essay, however, the main subject is Right, and questions with regard to history are treated only in a supplement. But still, they *are* treated in a supplement; so, why and how should Kant then replace them with a totally different argument in an appendix? Cf. above note 203.

<sup>240</sup> Kant, *Streit*, AA VII 79 (I made use of Nisbet's translation, p. 176; my italics).

<sup>241</sup> He does not abandon them. Cf. Ant, AA VII 327 ff.

<sup>242</sup> For details see Klaus Reich, Introduction to: I. Kant, *Der Streit der Fakultäten*, Hamburg 1975, pp. XV-XXIV.

<sup>243</sup> Kant, *Streit*, AA VII 85 (trs. Nisbet, p. 182).

<sup>244</sup> See Kant, *Streit*, AA VII 85 f.

<sup>245</sup> Kant, *Streit*, AA VII 88.

<sup>246</sup> Kant, *Streit*, AA VII 79 (trs. Nisbet, p. 177). Unfortunately, Nisbet does not see that Kant makes a decisive distinction between history which is "wahrsagend" and history which is "weissagend (prophetisch)". Both are working without "known laws of nature", but the first is still "natural", while the second needs "supernatural revelation". For Kant the latter does not come into consideration. Nisbet, however, identifies the first with the *second* and calls this "prognosticative or prophetic" and later in the text only "prophetic". Thus, he rules out exactly that one to which Kant dedicates the whole second section of the "Streit".

better"<sup>247</sup> in the human condition not only from nature, but also and especially from a more or less irresistible pressure on the political development through public opinion about people's rights which cannot any longer be ignored. Now, in 1798, Kant indeed claims his new position as being "tenable within the most strictly theoretical context"<sup>248</sup> because from now on mankind itself, by means of reason, will "*produce* and occasion the events [reason] predicts"<sup>249</sup>. But, of course, even this does not mean any claim of real inevitability. In the "Anthropology", published at the same time, Kant speaks about a "tendency of nature to bring about the development of the good out of the evil", and then he adds that such a development can be expected "with *moral* certainty (which is sufficient for the duty to strive for that goal)"<sup>250</sup>.

## XVI

The idea that Kant expected the establishment of peace on earth "*only through a moral exercise of free human will*" is entirely mistaken. Peace as a phenomenon can be brought about *only* by natural processes, namely by free human actions. Men have, it is true, the obligation to strive for peace;<sup>251</sup> and if they abide by the moral law for its own sake, it is, no doubt, much the better for themselves; for the world, however, only in so far as the steadfastness of their striving does not rely on the contingencies of nature, but indeed on the moral principles of their free will. But the *realization* of world peace depends *exclusively on the legality of their actions* "without the slightest extension of the moral foundation in the human race"<sup>252</sup>. The only thing which causally counts - and peace has to be achieved only in the *phenomenal* world - is "legality in actions *in conformity with duty*, by whatever motive these actions may be caused"<sup>253</sup>, whether men are pushed and even forced by nature, or act voluntarily from enlightened self-interest or from duty. Freedom of the will only belongs to the noumenal world and can itself never appear. Even if it really "causes" actions this will *as such* never show. Whether a certain exercise of free choice is caused by nature or also by freedom (reason) makes no visible difference.<sup>254</sup> A phenomenal world of devils acting in total conformity with the moral law, but from pure inclination, is not

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<sup>247</sup> Kant, Streit, AA VII 91.

<sup>248</sup> Kant, Streit, AA VII 88 (trs. Nisbet, p. 185).

<sup>249</sup> Kant, Streit, AA VII 80 (I made use of Nisbet's translation, p. 177).

<sup>250</sup> Kant, Ant, AA VII 329 (my italics); see also EF, AA VIII 368<sup>17-20</sup>.

<sup>251</sup> And even if the natural history of mankind would *inevitably* be heading for eternal peace and if mankind would know this, men would still remain under the obligation to work on their part in favour of this goal. After all, one does not have a duty because the world would look differently without its fulfillment.

<sup>252</sup> Kant, Streit, AA VII 92.

<sup>253</sup> Kant, Streit, AA VII 91 (my italics). Exactly this point is missed by Nisbet who translates (p. 187) "pflichtmäßige Handlungen" into "actions *governed* by duty" (my italics).

<sup>254</sup> Cf. Kant, Streit, AA VII 91<sup>28-33</sup>; KU, AA V 196<sup>32-34</sup>.

distinguishable from a phenomenal world of angels doing the same, but through the moral exercise of their free will.<sup>255</sup>

With regard to peace on earth it is an absolutely sufficient condition that people act in conformity with the demands of juridical reason. Freedom of the will is neither presupposed, nor is it excluded.<sup>256</sup> So, why should Kant have expected the establishment of peace on earth "only through a moral exercise of free human will", i.e. through real morality of men. First, this is not a necessary condition at all. Secondly, it is the strongest possible metaphysical assumption one can make in this context. And, finally, it would really be in vain to look for any historical signs which could give us some hope with regard to a possible "improvement" of mankind. Kant indeed never, in any of his writings, presupposes the moral improvement of mankind as a necessary condition for the establishment of peace.<sup>257</sup> On the contrary, at various places he makes it explicitly clear that a moral improvement may be expected only within and after the process of civilizing mankind;<sup>258</sup> and even then he means by moral improvement, apart from juridical legality, only ethical legality.<sup>259</sup>

Bernd Ludwig in his contribution to the Memphis Congress offered some sort of *deus ex machina*-theory which modified Guyer's thesis by reducing the necessary condition for establishing peace on earth to the work of "moral politicians" within a people even of devils. But, apart from the general reasons given above, it would really be very naive of Kant<sup>260</sup> (and of us) to rely with regard to world peace on "moral politicians" of all people.<sup>261</sup> And if we look e.g. at those contemporary western democracies which have at least partly realized the demands of the first definitive article, then we have no special reason to maintain that this is due to moral politicians. Firstly, it is by no means due only to politicians. Instead, it is due to people working in the various branches of the legislative, judicial and executive powers, but also to the electorate, to the mass media, to "public opinion" which - last, but not least - may have been influenced by political philosophers<sup>262</sup> and so on. Secondly, amongst all these people some (perhaps) may

<sup>255</sup> This is meant by Julius Ebbinghaus when he says that "autonomy by its very nature cannot have the slightest influence on the making of the historical destiny of man" and that it is only the "matters of heaven which are affected by the question of the validity, as Kant claimed, of the law of freedom." Julius Ebbinghaus, *Kant und das 20. Jahrhundert*, in: Julius Ebbinghaus, *GS*, vol. 3: *Interpretation und Kritik*, Würzburg 1990, p. 169 ff.

<sup>256</sup> Therefore, even the assumption of a perfect natural inevitability of eternal peace would by no means affect Kant's doctrine of autonomy. The claim of inevitability refers exclusively to the level of human *action*, regardless of the incentive. It only states that the lack of a moral incentive would be compensated by incentives of human nature. But what will otherwise be enforced by nature can still also be done voluntarily. Cf. Kant, *Idee*, AA VIII 27<sub>26-28</sub>; *GS*, AA VIII 313; *EF*, AA VIII 365.

<sup>257</sup> Cf. Kant, *EF*, AA VIII 366<sub>23-33</sub>.

<sup>258</sup> See e.g. Kant, *EF*, AA VIII 366<sub>33-35</sub>; *Rel*, AA VI 94; *Streit*, AA VII 92 f.

<sup>259</sup> See especially Kant's answer to the question: "What profit will the human race derive from progressive improvement?" (Kant, *Streit*, AA VII 91 f.; trs. Nisbet 187); also *Ant*, AA VII 333.

<sup>260</sup> Cf. Kant, *Streit*, AA VII 92, where he speaks about the danger that such expectations could easily be treated as the "fantasies of an overheated mind" (trs. Nisbet, p. 188).

<sup>261</sup> Cf. e.g. Kant, *EF*, AA VIII 371: "since one can anyway count little on the moral attitude of the legislator" (I made use of the translations of Schwarz, p. 109, and Nisbet. p. 117).

<sup>262</sup> Cf. Kant, AA VIII 27<sub>9-11</sub>; 29<sub>5-6</sub>.

have acted from moral motivation, but many (probably) may have acted from amoral and even immoral reasons. For the result in the phenomenal world (such as republican constitutions or disarmament or recognition of the status quo or whatever necessary condition for the realization of peace) the kind of motivation is simply irrelevant. What counts is only the compliance with the demands of Right.

## XVII

What Kant thinks to be necessary and also possible in this world is "an ever growing quantity [not] of *morality* in the attitude of mind", but only of "*legality* in actions in conformity with duty, by whatever motive these actions may be caused"<sup>263</sup>. A "moral improvement" in the history of the human race, if any, can be expected and will show only in the "good deeds"<sup>264</sup> of men. "Moral Progress" means an increase in the amount of legality.<sup>265</sup>

The "guarantee" of nature with regard to eternal peace means that the natural inclinations of mankind themselves produce some sort of social dynamics within human society which, though slowly, compel people "without prejudice to their freedom" to do "by a compulsion of nature" what they ought to do "according to laws of freedom"<sup>266</sup>. People are, as it were, forced by nature to be externally free.<sup>267</sup> Kant's general argument would read: on the long run mankind will be, or has at least the tendency<sup>268</sup> to be, ready to put itself under the constraint of public Right because it is thereby just better off. Kant's practical optimism is mainly based on the idea that violating juridical principles does not pay.<sup>269</sup>

Moral rules are universal rules and therefore fit for a community of free agents. Actions in accordance with them even get support from the mechanism of nature.<sup>270</sup> Moral evil, however, "has the quality - inseparable from its nature - of being adverse to itself and self-destructive in its intentions (especially in relation to others of like mind) and thus makes room, though in slow strides, for the (moral) principle of the good."<sup>271</sup> Moral principles have better chances to stand the test of reality than have principles of pure prudence,<sup>272</sup> let alone immoral principles. The effects of self-seeking inclinations in a people will neutralize each other mutually<sup>273</sup> and the

<sup>263</sup> Kant, Streit, AA VII 91; my italics.

<sup>264</sup> Kant, Streit, AA VII 91.

<sup>265</sup> Cf. Kant, GS, AA VIII 310<sub>9</sub>; 311<sub>29-34</sub>; EF, AA VIII 375 f.; Streit, AA VII 93<sub>21-23</sub>; Ant, AA VII 327<sub>12-14</sub>; 328; 333.

<sup>266</sup> Kant, EF, AA VIII 365 (trs. Schwarz, p. 98).

<sup>267</sup> Cf. Kant, GS, AA VIII 313<sub>12-14</sub>; EF, AA VIII 365<sub>31-32</sub>.

<sup>268</sup> Cf. Kant, Streit, AA VII 84 f.; Ant, AA VII 324; 329; 331.

<sup>269</sup> Cf. Kant, Streit, AA VII 94.

<sup>270</sup> See Kant, EF, AA VIII 378<sub>16-19</sub>.

<sup>271</sup> Kant, EF, AA VIII 379 (trs. Schwarz, p. 122); cf. GS, AA VIII 312<sub>13-18</sub>; Ant, AA VII 328<sub>19-21</sub>; 329<sub>11-13</sub>.

<sup>272</sup> See Kant, EF, AA VIII 377 f.

<sup>273</sup> See Kant, EF, AA VIII 366.

"devils" "themselves [will] necessitate each other to submit to coercive laws"<sup>274</sup> if the organization of civil society (which then "can maintain itself like an automaton"<sup>275</sup>) is accordingly.

The "moral politician", required for the establishment of such a society, again, need not be taken as somebody who acts morally through the exercise of his free will. It is enough that he conceives politics as "executing doctrine of Right" and that he submits to the juridical demands of reason in his actions, be it from duty or "from a love of honour" or "from a lively awareness of where [his] own advantage lies"<sup>276</sup>. He indeed makes it his maxim to act in accordance with Right and thereby acknowledges its primacy. But he need not do so from moral reasons. It is also a great mistake to speak, as Allan Wood does<sup>277</sup>, of two epochs in human history, of the "epoch of nature" and the "epoch of freedom" and, correspondingly, of the epoch of the State and the epoch of the church. If "freedom" means freedom of the will then speaking of an epoch (as a temporal concept) does not make any sense, since noumena do not appear. If "freedom", however, only refers to freedom of choice, then the whole history as *human* history is one single "epoch" of freedom. The realm of nature is never left by phenomenal mankind. In its history it may really fulfill its duties of Right and realize a political commonwealth and thereby peace on earth. It may, furthermore and separately, even fulfill its duties of virtue and realize an ethical commonwealth. Whether these fulfillments are only actions *in conformity with duty* or also done for duty's sake makes a fundamental difference with regard to men's morality and their destiny in an intelligible world, but none on earth.<sup>278</sup> By the way, only the realization of those two kinds of commonwealth is an ultimate moral end for mankind.<sup>279</sup> Morality, however, the worthiness to be happy, the achievement of the supreme good (and thereby the furthering of the highest good) is a final end only for individual man. Therefore, the attempt to link Kant's doctrine of the "highest political good"<sup>280</sup>, peace on earth, with his doctrine of the "highest good in the world", which can only be an intelligible world,<sup>281</sup> is absurd.<sup>282</sup> It just means mixing up the world of phenomena with the world of noumena, worldly matters with heavenly matters, philosophy of history with moral theology, the moral vocation of the human race with that of man as an autonomous being.

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<sup>274</sup> Kant, EF, AA VIII 366 (I made use of Schwarz's translation, p. 100).

<sup>275</sup> Kant, Idee, AA VIII 25.

<sup>276</sup> Kant, Streit, AA VII 92 (trs. Nisbet, p. 188).

<sup>277</sup> See his above [note 39] mentioned article.

<sup>278</sup> See Kant, Streit, AA VII 91-22-33.

<sup>279</sup> Cf. Kant, Rel, AA VI 93 ff.; Ant, AA VII 327; 331; MA, AA VIII 116 ff.; GS, AA VIII 312; EF, AA VIII 361.

<sup>280</sup> Kant, RL, AA VI 355.

<sup>281</sup> Cf. Kant, KrV, AA III 528; KpV, AA V 125; KU, AA V 469; Rel, AA VI 6; GS, AA VIII 279.

<sup>282</sup> See e.g. Allan Wood, l.c. (note 39), pp. 341 ff.; Howard Williams, l.c.(note 39), pp. 260 ff.; Yirmiahu Yovel, *Kant and the Philosophy of History*, Princeton 1980, p. 31.