

**Immanuel Kant, John Rawls and Jürgen Habermas on
the Problem of the Possibility of Perpetual Peace**

Michelle Katherine Braiden

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ABSTRACT

Immanuel Kant, John Rawls and Jürgen Habermas
on
The Problem of the Possibility of Perpetual Peace

Michelle Katherine Braiden

The following is a critical analysis of John Rawls and Jürgen Habermas's contemporary reformulations of Immanuel Kant's *Perpetual Peace*, and focuses on their respective interpretations of Kant's arguments in favour of the 'negative surrogate' of a *foedus pacificum* (league of peace) and against the 'positive idea' of world government. It is argued that, however problematic, Habermas's World Parliamentary Democracy, based on the constitution of a reformed United Nations, is superior to Rawls's Society of Peoples—the contemporary ideal of peace must not subordinate the interests of individual persons to the peoples to which they belong, it must be in accordance with the development of a post-Westphalian order, and it must allow for the further development of Kant's idea of a law of world citizenship. It is further argued that Habermas's proposal is the one that is most likely to result in a 'soulless despotism,' as it is not clear that the ideal of peace must necessarily seek the further nullification of state sovereignty and thereby affirm a single, unified, global system of law and litigation. Kant was correct to suggest that a lasting global peace must on the rejection in principle of the threat of use or force among states, including that of a world state.

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Table of Contents:

Introduction	1
Chapter I: Immanuel Kant and the Problem of Perpetual Peace	11
Section 1: The Concept of Perpetual Peace	13
Section 2: Weltrepublik oder Völkerbund?	18
Section 3: The Problem of Coercive Power	22
Conclusion	26
Chapter II: John Rawls and the Negative Surrogate	28
Section 1: The Peoples of the Foedus Pacificum	31
Section 2: The Cosmopolitan Point of View	36
Section 3: The Problem of Coercive Power	44
Conclusion	50
Chapter III: Jürgen Habermas and the Positive Idea	52
Section 1: The Peace of Post-Westphalia	55
Section 2: The Conceptual Revision	60
Section 3: The Problem of Coercive Power	67
Conclusion	70
Conclusion	73
Bibliography	80

**Immanuel Kant, John Rawls and Jürgen Habermas
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Immanuel Kant's *Perpetual Peace* is an analysis of the global problem of war and as such takes the philosophical problem of politics to be that of Hobbes—Kant is concerned with the transition from the state of nature, as a state of war, to that of a state of peace and security.¹ John Rawls and Jürgen Habermas are the most recent interpreters of Kant's essay and have turned to it in order to further clarify their own positions on the role, function and efficacy of world political institutions and the ways in which world concepts (concepts that concern what interests everyone necessarily,² as Kant would say) are related to the universal claims of legal and moral philosophy.³ Rawls and Habermas share a common starting point in Kant's practical philosophy and their works are comparable in "architectonic complexity,"⁴ but nonetheless differ in their respective modifications of Kant's conceptual framework: Habermas rejects Kant's proposal

¹ "It is as *Hobbes* maintains: the state of nature is a state of injustice and violence, and one must necessarily abandon it and subject oneself to the constraint of law; for such constraint alone limits our freedom so that it can coexist with the freedom of everyone else and precisely thereby with the common best interest." Immanuel Kant. *The Critique of Pure Reason*. trans. Werner S. Pluhar. (Hackett Publishing Company: 1996). A752/B780. The "Transcendental Doctrine of Method," the last major division of Kant's *Critique of Pure Reason*, begins with an allusion to the biblical story of the Tower of Babel and is the starting point for both his theoretical and practical understanding of the concept of perpetual peace.

² Kant, *ibid.*, A840/B868.

³ Max Adler, Paul Natorp and Julius Ebbinghaus wrote extensively on the subject in the interwar period, while Karl Jaspers and Carl Friedrich addressed the topic in the years immediately following World War II. Allen W. Wood. "Kant's Project for Perpetual Peace." *Cosmopolitics: Thinking and Feeling Beyond the Nations*. pp. 59-76. eds. Pheng Cheah and Bruce Robbins. (University of Minnesota: 1998). n. 6, p. 74.

⁴ Thomas McCarthy, "Kantian Constructivism and Reconstructivism: Rawls and Habermas in Dialogue." *Ethics*, October 1994, vol. 105 (1). p. 44.

for the legal form of a perpetual peace—a federation of nations (*foedus pacificum*) that still respects the sovereignty of states as ‘moral persons’—but retains the moral universalism that guided Kant’s proposals as ‘the structuring normative intuition’ for his notion of cosmopolitan law and his proposal for the restructuring of the United Nations in the form of a World Parliamentary Democracy.⁵

John Rawls, by contrast, dispenses with Kant’s moral universalism but follows Kant in suggesting that world government—“a unified political regime with the legal powers normally exercised by central governments”—would lead either to a global (‘soulless’) despotism or to a world empire so fragile that it would ultimately collapse under the weight of civil strife and war.⁶ Rawls’s Society of Peoples takes shape around Kant’s ‘negative surrogate’ of a *foedus pacificum* and envisions an international social contract in which peoples-as-moral-persons come together in a voluntary political (moral) association that affirms a common set of principles concerning the dictates of peace and justice. It differs from Kant’s model of perpetual peace, however, in that Kant understood the *foedus pacificum* to be a federation of free republican states, with its code of civil and international law supplemented with a cosmopolitan law of world citizenship. For Rawls, on the other hand, the *foedus pacificum* needn’t exclude nonliberal societies from the Society of Peoples, provided such peoples are not aggressive against others and that they honor and respect a basic standard of human rights.

⁵ Habermas. “Kant’s Idea of a Perpetual Peace, with the Benefit of Two Hundred Years Hindsight.” *Perpetual Peace: Essays on Kant’s Cosmopolitan Ideal*. eds. James Bohman and Matthias Lutz-Bachmann. (MIT Press: 1997). p. 144.

Basic human rights are not cosmopolitan rights—they are not the rights that individuals have irrespective of the society to which they happen to belong, nor are they principles that reflect the independence of individuals from any particular society. Rawls argues against the cosmopolitan point of view and holds that it is erroneously predicated on the notion, first, that liberal democratic societies are the only acceptable forms of society and, second, that all individual persons (liberal and nonliberal) are to have the equal rights and freedoms in a (world) constitutional democracy. While it is not altogether clear how Rawls's rejection of liberal cosmopolitan justice is related to his rejection to the idea of a world state—it is not necessarily the case that representatives of individual persons in a cosmopolitan original position would seek the creation of a single, unified world state any more than the representatives of peoples in would in an international original position—it is nonetheless a difficult position in that Rawls's privileging of the sovereign rights of peoples (states) over the cosmopolitan rights of individual persons leads to a conception of international political association that does not recognize Article 1 of the Universal Declaration of Human Rights, whereby “all human beings are born free and equal...” (Art. 1)

Liberal and nonliberal *peoples* may be free and equal in the international original positions, but the *persons* who belong to such peoples are denied freedom and equality; that is, unless the persons belong to liberal peoples, in which case their freedom and equality is enshrined in their domestic-level constitutions. For Habermas, on the other hand, the cosmopolitan rights of the world citizens are indeed to be enshrined in the constitution of a World Parliamentary Democracy—

Habermas argues against the “unsurpassable conceptual limit” of the classical-modern world of nation-states, and instead argues for a model of perpetual peace that reconstructs the United Nations in the form of a cosmopolitan democracy, requiring the establishment of a World Parliament, the development of a more complete World Court system, and the reorganization of the Security Council. The world state is not a *foedus pacificum* in that it is not a voluntary political (moral) association, but is instead a legal association: the UN is to have its own military forces and a monopoly over the means to violence, the World Court is to always be in session, and is to be able to obligate national governments to abide by its judgements.

Habermas’s cosmopolitan law “goes over the heads of the collective subjects of international law to give legal status to the individual subjects and justifies their unmediated membership in the association of free and equal citizens;”⁷ it resembles state sanctioned civil law in that it is meant to definitively end the state of nature among states and to make it possible for citizens, in this case, citizens of the world, to live in legally guaranteed freedom under the hegemony of a single, powerful state. Rawls’s Law of Peoples is “a particular political conception of right and justice that applies to the principles and norms of international law and practice” and the Society of Peoples refers to “all those peoples who follow the ideals and principles of the Law of Peoples in their mutual relations.”⁸ Rawls, unlike Habermas, remains on the level of international law, with the Law of Peoples resembling state sanctioned civil law only in the sense

⁷ Habermas, *ibid.*, p. 128.

⁸ John Rawls, *ibid.*, p. 3.

that it extends the theoretical apparatus of *Theory of Justice* (1971) and *Political Liberalism* (1995) to the Society of Peoples. Rawls's Society of Peoples does not affirm the creation of a single, unified world state but instead outlines the foundations of a voluntary political association among peoples, but without thereby recognizing a supreme executive, legislative and judiciary power for the adjudication of their respective claims.

Rawls and Habermas both seek to reinterpret Kant's concept of perpetual peace in light of a world situation that has fundamentally changed and, the differences between their respective reformulations notwithstanding, both models can be construed as 'correct' interpretations of Kant's 1795 sketch. Kant offers two alternatives for perpetual peace—the “negative surrogate” of a *foedus pacificum* and the “positive idea” of world government—with his arguments in favour of the former and against the latter being inconsistent and contradictory. Kant repeatedly makes use of an analogy that holds between the civil, international and cosmopolitan states of nature and likewise of the normative principle of individual persons-as-moral-persons and states-as-moral-persons. He does not follow his analogy to political right through to its logical conclusion, however, as he contends that the problem of war is not to be solved by having states-as-moral-persons affirm a centralized system of law and litigation. Rather, its solution is to come about through the *foedus pacificum*, a model for political association that lacks the feature of statehood and system of positive law that could, according to his doctrine of right, establish the rule of law both within and between nations.

Kant argued that the best form for perpetual peace is that which adequately balances the sovereign rights of states ('peoples') with the civil and cosmopolitan rights of individuals ('persons'), and his rejection of the world state can be interpreted as a rejection of the nullification of state sovereignty. His sketch is predicated upon a Westphalian concept of state sovereignty, with states understood as independent and autonomous actors on the world stage. Individual persons are likewise autonomous and independent, and just as state sovereignty is inviolable, so too are the rights and freedoms of world citizens. Rawls retains the Westphalian normative principle of the state/peoples-as-moral-person, accepts Kant's arguments against the idea of a world state, but rejects the cosmopolitan view as being detrimental to the project of peace. Habermas rejects the concept of the state-as-moral-person, dismisses Kant's arguments against the concept of a world state, and argues in favour of the institutionalization of a liberal cosmopolitan world constitution.

The purpose of this thesis is to critically assess Rawls and Habermas's contemporary reformulations of Kant's *Perpetual Peace*, with a particular focus on their interpretations of Kant's arguments in favour of the *foedus pacificum* and against the idea of a world state. It will be argued that Habermas's World Parliamentary Democracy, however problematic, is superior to John Rawls's conception of the Society of Peoples—the contemporary ideal of peace must not subordinate the interests of individual persons to the “peoples” to which they belong; it must be in accordance with the development of a post-Westphalian order, and it must allow for the further development of Kant's idea of a law of

world citizenship. That said, however, it will also be argued that Habermas's proposal is the one that is most likely to result in a 'soulless despotism,' as it is not clear that the ideal of peace must necessarily seek the further nullification of state sovereignty and thereby affirm a single, unified, global system of law and litigation. Kant was correct to suggest that a model for peace must articulate principles on all three levels of constitutional law (right)—*ius civitatis*, *ius gentium* and *ius cosmopolitanism*—and also that a lasting global peace must be premised on the rejection in principle of the threat of use or force among states, including that of a world state.

Chapter I will show how the theoretical aporias in Kant's arguments in favour of the *foedus pacificum* and against the idea of a world republic are related to his contention that the best model for perpetual peace is that which adequately balances the sovereign rights of states ('peoples') with the cosmopolitan rights of individuals ('persons'). Section I analyses Kant's understanding of the concept of perpetual peace and how his sketch for the federation of nations is related to the three separate, but related, levels of constitutional law—*ius civitatis*, *ius gentium* and *ius cosmopolitanum*. Section II analyses Kant's arguments against the concept of a world republic and shows how these are a function of his unqualified endorsement of the Westphalian concept of state sovereignty; this section likewise shows how the theoretical aporias in Kant's arguments against the world state stem from his repeated use of an analogy that holds between individual persons in the civil state of nature, states-as-moral-persons in the international state of nature and individual persons and states in the cosmopolitan

state of nature. Section III analyses the disanalogy between individual persons and states-as-moral-persons and likewise the disanalogy between the civil, international and cosmopolitan states of nature, and also addresses “the problem of coercive power,” i.e., the fact that Kant’s sketch provides neither the practical mechanisms nor theoretical foundations for the enforcement of either the law of peoples (nations) or the law of world citizenship.

Chapter II analyses the ways in which Rawls’s Society of Peoples is both similar to and different from Kant’s *foedus pacificum* and focuses on three main points: Rawls’s use of the Westphalian concept of peoples (as-moral-persons), his rejection of Kant’s cosmopolitan point of view and the implications of this position for the contemporary problem of coercive power. Section I analyzes Rawls’s restatement of Kant’s arguments against the idea of a world state and his use of Kant’s normative principle of the state-as-moral-person (peoples-as-moral-person) as the first premise of his procedural account of the international social contract. Section II analyses Rawls’s rejection of Kant’s cosmopolitan point of view and how it relates to both his understanding of ‘basic’ human rights and his arguments for the exclusion of Article 1 of the Universal Declaration of Human Rights. Particular attention is paid to the role played by basic human rights in the Society of Peoples and human rights, as understood in the conventional view, as being those rights that guarantee persons certain rights by virtue of their characteristics as human beings and independently of considerations that might be particular to their own institutions and political cultures. Section III analyses the consequences of Rawls’s position on the problem of coercive power and the

difficulties that arise as a result of adhering to a model of world political (moral) association that does not affirm a supreme executive, legislative and judiciary power.

Chapter III analyses Habermas's sketch for a cosmopolitan democracy based on the rights of the world citizen and how it is related to Kant's positive idea of world government, and likewise reviews his arguments against Kant's *foedus pacificum* and the Westphalian principle of the state-as-moral-person. Section I reviews Habermas's socio-historical/empirical analysis of the changed nature of war and the resulting changes in Kant's concept of perpetual peace. Section II analyses Habermas's arguments against Kant's unqualified endorsement of the internal sovereignty of states, in addition to his arguments in favour of world government (as a legal, as opposed to moral) arrangement and the conceptual revision in terms of conceiving of the cosmopolitan community as a federation of world citizens. Section III looks at Habermas's model in light of the problem of coercive power—the models of Kant and Rawls are similar in that they conceived of perpetual peace in moral (political) terms. Habermas, by contrast, argues that perpetual peace must be understood as a *legal* arrangement and that the contemporary problem of war can only be solved upon the legal presupposition of a (central) authority that judges impartially and fulfils the conditions of a neutral criminal court. It is argued that while Habermas's proposal is superior to that put forth by Rawls, it is also the one most likely to result in a 'soulless despotism,' as it is not necessarily clear that the ideal of peace

must affirm a single, unified global system of law and litigation, whereby the *jus belli* of existing states is wholly transferred to the world body.

Chapter 1: Immanuel Kant and the Problem of Perpetual Peace

Immanuel Kant's *Perpetual Peace* is stylized after the 1795 signing of the Treaty of Basel between Prussia and Revolutionary France, and imitates its literary conventions by including a series of articles, clauses and appendixes that detail the prescriptive measures that all parties must abide by if they are to achieve peaceful world political association. The treaty differs from more conventional peace treaties in that Kant does not aim to specify the conditions required for the suspension of this or that particular war, but rather seeks "to make an end of all wars forever"⁹ and as such asks after the abolition of war *qua* war: the Preliminary Articles specify the initial terms of agreement to which all states must first consent so as to leave the state of nature among states, while the Definitive Articles sketch the moral and legal foundations of a *foedus pacificum* (league of peace) that is composed of republican ('liberal') polities and underwritten by a (cosmopolitan) law of world citizenship. Kant further adds two supplements, the first being a "guarantee" for perpetual peace, containing a brief outline of his philosophy of history, and the second, added to the 1796 edition, being a "secret article" exhorting the rulers of states to seek the advice of philosophers concerning "the conditions of the possibility of public peace."¹⁰

There is a lack of precision in the overall structure of the essay and Kant's reasoning is often inconsistent and contradictory, particularly with regard to his arguments in favour of the "negative surrogate" of the *foedus pacificum* and against the "positive idea" of world government. Kant repeatedly makes use of an

⁹ Immanuel Kant, "Perpetual Peace: A Philosophical Sketch." trans. Lewis White Beck. *Kant: On History*. (Library of Liberal Arts: 1958). p. 100.

analogy that holds between individual persons in the civil state of nature and states as ‘moral persons’ in the international state of nature; following the domestic-international analogy to political right, Kant’s model for perpetual peace ought to take shape around a world republican constitution, with states-as-moral persons affirming a centralized system of law and litigation for the peaceable adjudication of their claims. Kant instead uses the domestic-international analogy to justify his arguments in favour of a *foedus pacificum*, an entity that lacks the feature of statehood (the system of positive law) that, according to his doctrine of right, is precisely what could establish the rule of law and secure the peace both within and between nations—the *foedus pacificum*, unlike the idea of a world state, provides neither the practical mechanisms nor the theoretical foundations for the enforcement of either the law of peoples (law of nations) or the law of world citizenship.

The purpose of this chapter is show how the theoretical aporias in Kant’s arguments in favour of the *foedus pacificum* and against the idea of a world republic are related to his contention that the best form for perpetual peace is that which adequately balances the sovereign rights of states (‘peoples’) with the civil and cosmopolitan rights of individuals (‘persons’). Kant envisions a civil state of nature, an international state of nature and a cosmopolitan state of nature, and argues that the attainment of perpetual peace (however “impossible” and “unachievable”¹¹) requires the formulation of ‘a correct conception of a possible constitution’ that articulates principles on all three levels of constitutional law

¹⁰ Kant, *ibid.*, p. 105.

(right)—*ius civitatis*, *ius gentium* and *ius cosmopolitanum*. So understood, his arguments against the world state can be interpreted as a function of his concern with state sovereignty, as the concept of world government necessarily implies a limitation on the sovereign rights of states.

It will be argued that the idea of a world republican constitution need not be thought of as any more detrimental to the sovereign powers of states-as-moral-persons than a civil republican constitution is to individual persons-as-moral persons. It will further be argued that Kant was nevertheless correct to suggest that the idea of a world state contradicts the reason for its establishment, at least to the extent that a world state's coercive powers would undercut the possibility of states *freely* associating with one another. Unification, based on the threat of coercion, is contrary to Kant's claims that a *lasting* global peace must be premised on the rejection in principle of the threat or use of force among states.

Section 1: The Concept of Perpetual Peace

Kant's metaphorical treaty begins with a satirical explanation of its central concept, and rather than providing one of his characteristically long and lengthy explanations, he simply concludes that it is not for us to decide to whom, exactly, the expression 'perpetual peace' refers: humankind ("the burial ground"), the rulers of states ("insatiable of war") or philosophers ("those who dream this sweet dream")?¹² Elsewhere, *perpetual* is defined as a voluntarily established institution that is confirmed, by a state, for the benefit of its members; the statute for

¹¹ Kant, *Metaphysics of Morals*. trans. Mary Gregor. (Cambridge University Press: 1996). p. 119.

maintaining it is bound up with the constitution of the state itself.¹³ *Peace* is a rational idea based on a principle of cosmopolitan right.¹⁴

So the question is no longer whether perpetual peace is something real or fictitious, and whether or not we are deceiving ourselves in our theoretical judgment when we assume that it is real. Instead, we must act as if it were something real, though perhaps it is not... and even if the complete realization of this objective always remains a pious wish, still we are certainly not deceiving ourselves in adopting the maxim of working incessantly towards it.¹⁵

Practical reason thus works with the assumption that perpetual peace is possible as either a pragmatic-technical or moral end, and conceives of the adoption of its maxims as a duty: *there is to be no war*. One is required to act in conformity with the idea of that end, and is to strive to realize this highest political good through gradual reform and in accordance with firm principles.¹⁶

Perpetual peace is a hypothetical concept and an idea of reason, with both its possibility and necessity stemming from the fact that the natural state of peoples (and persons) living side by side is a state of war, be it its open hostilities or its unceasing threat. It is justified as a postulate of political philosophy, understood as a division of the philosophy of right, and requires the institutionalization and implementation of three separate, but related, levels of constitutional law, all of which derive from the basic postulate that “all who can reciprocally influence each other must stand under some civil constitution”: *ius civitatis* is the constitution conforming

¹² Kant, “Perpetual Peace,” p. 85.

¹³ Kant, *Metaphysics of Morals*. p. 121.

¹⁴ Kant, *ibid.*, p. 133.

¹⁵ Kant, *ibid.*, p. 123.

to the civil laws of persons in a nation or state; *ius gentium* is the constitution conforming to the law of nations (peoples) in their relation with one another; and *ius cosmopolitanicum* is the constitution conforming to the law of world citizenship and to the rights of individual persons in relation to the individuals of other states, as well as the rights of individual persons to other states-as-moral-persons, taken as a whole.¹⁷

The *foedus pacificum* is built around these three levels, and Kant holds, first, that its member states be republican; second, that the model for peace is to be a federative union; and third, that the law of world citizenship is limited to ‘conditions of universal hospitality.’ The republican constitution is the only constitution that is “entirely fitting to the rights of man” and moreover is the “only constitution which derives from the idea of the original compact, upon which all juridical legislation of a people must be based.”¹⁸ Such polities are, according to Kant, the most conducive to perpetual peace in that the persons of republican regimes are thought to have their rights and freedoms secured under the rule of just law, with the executive, legislative and judicial authorities under their effective control. Citizens must not only give their free assent to the waging of war in general, but also to the declaration of each particular war: “nothing is more natural than that [the citizens of a republic] would be very cautious in commencing such a poor game, decreeing for themselves all the calamities of

¹⁶ Kant, *ibid.*, 124.

¹⁷ Kant, “Perpetual Peace,” p. 92.

¹⁸ Kant, *ibid.*, p. 93.

war,” i.e., “having to fight, having to pay the costs of war from their own resources, having painfully to repair the devastation war leaves behind...”¹⁹

The peace of a *foedus pacificum* takes shape around what John Rawls calls “the fact of democratic peace,” requiring that the civil rights of individual persons be secured under the rule of law within the states to which they respectively belong. Kant is critical of the politics of the absolutist states of his time (Prussia in particular) and he holds that “if fortune directs that a powerful and enlightened people can make itself a republic,” then other states might follow suit and reconstitute themselves along republican lines. Such states can then join together in a federative union and can secure their sovereign rights and freedoms under the law of nations and can “make an end of all wars forever.”²⁰ The ‘federation of free states’ is composed of republican regimes who endorse the Westphalian principle of the sovereign equality of all states and the principle of nonintervention, and is a model of global governance that denies states their traditional right to war (*raison d’etat*) but in such a way that it nullifies neither their territorial integrity nor their political sovereignty.

A state, according to Kant, is “a society of men whom no one else has any right to command except the state itself.” It is a “trunk with its own roots” and to “incorporate it into another state, like a graft, is to destroy its existence as a moral person.”²¹ The Westphalian concept of state sovereignty is predicated upon a state’s right to territorial integrity and political sovereignty, with the concomitant of each and every state’s claim to incontestable authority within its own borders

¹⁹ Kant, *ibid.*, p. 95.

²⁰ Kant, *ibid.*, p. 100.

being the recognition that such a claim gives other states an equal entitlement to autonomy and respect within their own borders. State sovereignty therefore establishes an entitlement to rule over a bounded territory, with states given both rights of jurisdiction in their respective territories and communities and equal rights to self-determination. So conceived, the nation-state is “a bounded political space within which political authorities can treat citizens as they wish;” it is a political apparatus with supreme jurisdiction over a demarcated territorial area, backed by a claim to the monopoly of coercive power within its borders, and enjoys a distinctive claim to legitimacy as a result of a minimum level of support or loyalty from its citizens.²²

The acceptance of the Westphalian principle of the sovereign equality of all states and the principle of nonintervention, for Kant, in no way negates the rights of individual persons; state sovereignty may be inviolable, but so too are the civil and cosmopolitan rights of individual persons. The concept of cosmopolitan law, for instance, derives from the rights of human beings with respect to their common possession of the earth; bounded together on a finite surface, they are unable to disperse infinitely and must somehow learn to tolerate the presence of one another. Cosmopolitan law is as such indispensable for the maintenance of public human rights, and hence also for perpetual peace, but is limited to the right of hospitality—“the right of a stranger to not be treated as an enemy when he arrives in the land of another”—and extends only to the “right of temporary sojourn, a right to associate, which all men have” and the “conditions

²¹ Kant, *ibid.*, p. 86.

of the possibility of seeking to communicate” with those of foreign lands.²³ The law of world citizenship is moreover consistent with the sovereign rights of states, first, in that states may refuse to receive a person, so long as this can be done without causing a person harm and, second, because cosmopolitan right is not a right to plunder or enslave those of other states, nor is it a right to commit piracy. Citizens of the world, be they individual persons or states-as-persons, have a right to offer to engage in commerce with others and likewise a right to establish a cosmopolitan community with all other individuals, and to this end, they have a right to visit all of the regions of the earth.

Section 2: WeltRepublik oder Völkerbund?

The alternative to the “negative surrogate” of the *foedus pacificum* is the “positive idea” of a world state: “Only in a *universal association of states* (analogous to that by which a people becomes a state) can right come to hold *conclusively* and a true *condition* of peace come about.”²⁴ Kant holds that it is at least theoretically possible that “states, like individuals, as peoples” would join together under a world republican constitution and affirm a supreme legislative, executive and judiciary power for the peaceable reconciliation of their claims. Kant rejects the idea, however, on the grounds that a world state would nullify state sovereignty and would therefore result in either the “soulless despotism” of a “universal monarchy” or to a republic with a territory too vast to govern properly

²² David Held et al. *Global Transformations: Politics, Economics and Culture* (Stanford University Press: 1999). p. 45.

²³ Kant, *ibid.*, p. 102.

²⁴ Kant, *Metaphysics of Morals*, p. 119.

and too weak to enforce its dictates.²⁵ A world state would soon collapse into world war, thus vitiating the very purpose it is supposed to serve.

Perpetual peace is, for Kant, “impossible” and “unachievable,” be it the perpetual peace of the *foedus pacificum* or the perpetual peace of the world state.²⁶ To the extent, however, that a model for peace represents a regulative end for political action and is a guide for practical policy, Kant’s support for the federative union can be interpreted as an argument in favour of preserving Westphalian political practices. Again, for Kant, the most adequate model for peace is that which balances the sovereign rights of states with the civil republican and cosmopolitan rights of individual persons, and Kant’s reticence toward world government can be understood as an argument against a conception of a world state that is understood in purely individualistic, cosmopolitan terms. Michael Walzer, for instance, understands Kant’s rejection of a unified global government as being a rejection of the idea of a world state composed of “a single set of citizens, identical with the set of adult human beings, all of them possessed of the same rights and obligations.”²⁷ It would indeed be ‘a *true* condition of peace’ in the sense that conventional warfare would disappear—the state-as-person would wither away and leave radically stateless (‘deracinated’) individuals to fend for themselves within the limits of a global criminal law.

The agents of war (states) would disappear and so too would the traditional motives for going to war: ethnic and religious differences, divergent

²⁵ Kant, “Perpetual Peace,” p. 113.

²⁶ Kant, *Metaphysics of Morals*, p. 119.

²⁷ Michael Walzer. “Governing the Globe: What is the Best We Can Do?” *Dissent*, vol. 47, no. 4, Fall 2000. p. 44.

national interests, etc., etc. For Kant, such a peace would be even more dangerous to freedom than a state of perpetual war already is, and would be problematic to the extent that an entirely homogenous, universal state of individual cosmopolitan persons would be unable to maintain the much appreciated differences in world languages, cultures and religions. Why, however, must a world state be necessarily conceived of in purely individualistic, cosmopolitan terms? Must a world state entirely eradicate the sovereign rights of states? Otfried Höffe and Matthias Lutz-Bachmann both point to the inconsistencies in Kant's reasoning in this regard: Kant's repeatedly makes use of the analogy that holds between individual persons in the civil state of nature, states-as-persons in the international state of nature, and individual persons and states-as-persons in the cosmopolitan state of nature.²⁸ States may be "judged to injure one another merely by their coexistence" and "each may and should for the sake of its own security demand that the other enter into a constitution similar to the civil constitution, for under such a constitution each can be secure in his right."²⁹ States, as moral persons, have an obligation to quit the state of nature and join together under "universally valid public laws which restrict the freedom of each one."³⁰

²⁸ Matthias Lutz-Bachmann. "Kant's Idea of Peace and the Philosophical Conception of a World Republic." pp. 60-77. *Perpetual Peace: Essays on Kant's Cosmopolitan Ideal*. eds. James Bohman and Matthias Lutz-Bachmann. (MIT Press: 1997). Otfried Höffe. "Weltrepublik oder Völkerbund" in Höffe, ed., *Zum Ewigen Frieden*, pp. 109-132; cited in Katrin Flikschuh, *Kant and Modern Political Philosophy*. (Cambridge University Press: 2000). p. 184.

²⁹ Kant, "Perpetual Peace," p. 98.

³⁰ Kant, "Perpetual Peace," p. 101.

In the same way that individual persons within a republican state are to join together under a common civil constitution in order to have their rights and freedoms secured, so too would states-as-persons have their rights and freedoms secured under a world republican constitution. The world republic, as with the *foedus pacificum*, is predicated upon an understanding of the state as a ‘moral person’ and strictly speaking, Kant’s civil-international analogy to political right ought to lead to an understanding of a world state that continues to honor and respect the sovereign rights and freedoms of its member states. Individual human beings are to leave the state of nature through the social contract and are to establish a republic in which each person can realize his or her own freedom without diminishing the freedom of other citizens; states are to enter under a legal relationship with one another through a social contract that ends the international state of nature, but nonetheless allows states to realize their own freedom (or, self-determination as a state) without diminishing the freedom of other states.

The analogy to political right, when applied to the law of peoples, corresponds to the demand that all states party to the peace treaty enter into a consensual contract that would entail the specification of the moral and legal foundations of a new political entity that is common to all. The world republic, in order to be legally constituted, would have to ensure that each individual state could realize its freedom and self-determination through the creation of a binding global law that would in fact guarantee the individual rights and freedoms of its ‘citizens’ in accordance with democratic procedural rules. By analogy to the civil republic, the world republic would have to ensure a state’s juridical freedom—

“the privilege to lend obedience to no external laws except those to which I could have given consent”—and juridical equality—“that relationship among the citizens in which on one can lawfully bind another without at the same time subjecting himself to the law by which he also can be bound.”³¹ In other words, the world state need not be understood as being a political entity organized in opposition to its member states (moral persons) rights and freedoms.

The objection against a single, unified global state, with a purely individualistic, cosmopolitan constitution, would be justified if and only if the new global law superseded and went entirely beyond the domestic legal relationships of the states which constitute it. Here, the erroneous assumption is that legally constituted republican states would fuse so thoroughly together that the new global law would in fact replace all existing internal legal relations. However, this understanding a unified cosmopolitan state is not up for debate given Kant’s initial premises, and cannot be derived from the analogy that holds between the original contract, through which human beings form a civic republic, and the contract among states through which a world republic is formed.

Section 3: The Problem of Coercive Power

The *foedus pacificum* is “negative” in that it does not “tend to any dominion over the power of the state” but only to “the maintenance and security of the freedom of the state itself and of other states in league with it” without there being “any need for them to submit to civil laws and their compulsion as

³¹ Kant, *ibid.*, p. 93, n. 2.

men in the state of nature must submit.”³² Kant’s league of nations is an alliance that does not involve a sovereign authority, but is instead an association (federation) and an alliance that can be renounced at any time. The association to preserve peace is to be “a permanent congress of states,” with congress understood as “only a voluntary coalition of different states which can be *dissolved* at any time, not a federation (like that of the American states) which is based on a constitution and can therefore not be dissolved.”³³ It is moreover, according to Kant, ‘rationally preferable’ to the otherwise theoretically correct idea of a unified world state or world republic in that it is in keeping with existing Westphalian political practices, a system of international relations that understands the world to be composed of and divided into separate territorial states that do not recognize a superior authority for the adjudication of their claims.

The Peace of Westphalia (1648) marked the demise of the Holy Roman Empire as an effective institution and inaugurated the modern European state system. States are separate and discreet legal-political orders, and Kant accepts the principle of the sovereign equality of all states, which holds regardless of their comparative wealth or size, and also the principle of nonintervention, which holds that the condition of any one state’s sovereignty is a corresponding obligation to respect every other state’s sovereignty. Kant’s analogy between the civil and international state of nature is in fact a disanalogy—the civil state of nature differs from the international and cosmopolitan states of nature, first, because human

³² Kant, PP: 100

³³ Kant, *Metaphysics of Morals*, p. 120.

beings differ from states to the extent that republican states “already have an internal juridical constitution and have thus outgrown compulsion for others to submit to a more extended lawful constitution according to their ideas of right.”³⁴ Human beings live in the civil state of nature in a condition of lawless freedom, while states have internal legal constitutions and likewise adhere to the dictates of international law.

States are, then, distinguished from individuals in view of their internal organization according to the rule of law and the sovereignty granted to them through said international law. Otfried Höffe and Matthias Lutz-Bachmann nonetheless argue that Kant’s (dis)analogy between individuals-persons-as-moral-persons and states-as-moral-persons does not affect the contradictoriness of his arguments against the idea of a world republic. The requirement that states cede part of their sovereignty in order to submit to a higher authority is no more problematic than the demand that individuals give up their lawless freedom upon entrance into civil society. According to Katrin Flikschuh, however, Kant’s rejection of the world state does not apply so much to states’ loss of sovereign power as it does to the loss of their status as *free* republics. In which case, the idea of a world state contradicts the reason for its establishment to the extent that a world state’s coercive powers would undercut the possibility of states *freely* associating with one another.

Unification under a world state would be based on the threat of coercion, which goes against Kant’s claim that a lasting global peace must be based on the rejection in principle of the threat or use of force among states. It might be

³⁴ Kant, PP 100.

replied that the threat of coercion at the (civil) state level also undercuts the possibility of an individual's freely given consent, with there then being an inconsistency in what Kant is prepared to countenance at the intrastate level and what he rejects at the interstate level. According to Flishchuh, there are two possible rejoinders: one is to say that a federation of free republics does not rule out the establishment of a legal and institutional structure with the capacity of exerting *some* pressure in the form of sanctions on recalcitrant members, even though that structure would not amount to the fully coercive state powers. The argument against the world state is that it leaves individual states no choice but to be subsumed under it and would therefore unite all legal orders and political authorities under one supreme coercive authority.

A world state would encompass the entire spherical surface of the earth and would eradicate the plurality of sovereign, legally constituted powers. Within a confederation of independent states, as opposed to a federation based on a constitution or coercive law, existing political and legal pluralism is left in place in that a state can abstain from joining the federation of free republics, or can forfeit its membership. Thus, by focusing on the disanalogy between individuals and states as moral persons, it can be argued that free republics are more mature in their freedom than are individuals in the pre-civil condition and that free republics are capable of non-coercive association to an extent to which individuals are not *yet* capable. According to this interpretation, the three levels of law and right present even higher or more sophisticated levels of free

association. Cosmopolitan right, the *free association* among individual citizens of different states, then constitutes the most mature form of rightful relation.³⁵

Conclusion

The theoretical aporias in Kant's arguments in favour of the *foedus pacificum* and against the idea of a world republic are related to his contention that the best form of perpetual peace is that which adequately balances the sovereign rights of states with the civil and cosmopolitan rights of individuals. The *foedus pacificum*, composed of republican polities and underwritten by a law of world citizenship, is more likely, according to Kant, to preserve the territorial integrity and political sovereignty of states. It was argued, however, that the idea of a world republican constitution need not be thought of as any more detrimental to the sovereign powers of states-as-moral-persons than a civil republican constitution is to individuals-as-moral-persons, and as such that Kant fails to properly justify the central political thesis of his work—that a federation of nations is superior to the idea of a world states.

The *foedus pacificum* conforms to eighteenth-century Westphalian political practices in that it is a model for peaceful political association that takes the world to consist of, and be divided into, separate territorial states that do not recognize any supreme authority for the peaceable adjudication for their claims. Kant's repeated use of the analogy that holds between the civil, international and cosmopolitan states of nature ought to lead to a concept of perpetual peace that takes the shape of a world republic that continues to respect and honor the

³⁵ Flishchuh, p. 185.

sovereign rights of independent, autonomous states—in particular, if they have reformed domestically and have realized the rule of law within their respective republican regimes. There is no need to conceive of a world republic in purely cosmopolitan terms (as composed of radically stateless individuals), but rather, it is possible to understand the world republic as composed of moral persons (individuals and states) whose claims to juridical freedom and juridical equality are upheld by a world executive, legislative and judicial body. For Kant, however, the idea of a world state contradicts the reasons for its establishment to the extent that a world state’s coercive powers would undercut the possibility of states *freely* associating with one another—unification, based on the threat of coercion, is contrary to his claim that a *lasting* global peace must be premised on the rejection in principle of the threat or use of force among states, including that of a world state.

In which case, the *foedus pacificum* can be understood as attempting to achieve either the “moral whole” Kant speaks of in *The Idea for a Universal History* or the commercial and monetary arrangement spoken of in *Perpetual Peace*.

Chapter II: John Rawls and the Negative Surrogate

John Rawls's *Law of Peoples* takes Kant's *foedus pacificum* as the starting point for his deliberations on the 'limits of practical possibility' and as a spur toward the construction of a 'realistic utopia' that is to articulate the ideals and principles of the foreign policy of a reasonably just liberal people. The Law of Peoples is "a particular political conception of right and justice that applies to the principles and norms of international law and practice" and the Society of Peoples refers to "all those peoples who follow the ideals and principles of the Law of Peoples in their mutual relations."³⁶ The latter notion corresponds to Kant's federation of nations in that, ideally speaking, it consists of peoples and societies ('moral persons') whose voluntary political association is based on their mutual regard for the ideals and principles of peace and justice. It differs from Kant's conception, however, in that Rawls's Society of Peoples is not composed solely of liberal societies, nor is it supplemented with a law of world citizenship.

The Law of Peoples extends the domestic-level idea of the social contract to the Society of Peoples and seeks to lay out the general principles that Rawls holds can and should be accepted by both reasonable liberal and decent nonliberal societies as the standard for regulating their behavior toward one another, with the Society of Peoples modeling a conception of political association between liberal and nonliberal peoples that is stable for the right reasons, satisfies the criterion of reciprocity and is the subject of an overlapping consensus. It is developed out of a liberal idea of justice similar to, but more general than, the justice as fairness of *Theory of Justice* (1971) and *Political Liberalism* (1995) and is a procedural

account that uses the familiar ideas of the original position and veil of ignorance in order to articulate a conception of international justice that is ‘free-standing,’ i.e., independent of comprehensive moral, religious and philosophical doctrines, but that can nonetheless meet the standard of either reasonableness, if it is a liberal society, or decency, if the society is nonliberal.

Rawls’s Society of Peoples can be understood as a higher-level *foedus pacificum* than that put forth by Kant, as the ‘first part of ideal theory’ is concerned with the ideals and principles of an all-liberal league of peoples, while the ‘second part of ideal theory’ is concerned with the ideals and principles that are to regulate the relations of liberal and nonliberal peoples. Rawls’s acceptance of nonliberal peoples into the Society of Peoples means, however, that his conception further differs from Kant’s *foedus pacificum* in that Kant argued that the most adequate model for perpetual peace is that which balances the sovereign rights of states with the civil and cosmopolitan rights of individual persons. In Rawls’s view, by contrast, if liberal peoples are to reach an agreement with nonliberal peoples, then liberal peoples must be willing to forgo their (comprehensive) understanding of the political equality of individual persons as cosmopolitan citizens of the world. Rawls holds that any such political (moral) conception of liberal justice is inadequate because it works both with the assumption that the only acceptable societies are liberal democratic societies and because it amounts to saying that all individual persons (liberal and nonliberal) are to have the equal right and freedoms of citizens in a (world) liberal constitutional democracy.

³⁶ John Rawls, *Law of Peoples*. (Harvard University Press: 1999). P. 3.

It is not clear how Rawls's rejection of the cosmopolitan view is related to his rejection of the idea of a world state—it is not necessarily the case that the representatives of individual persons in a cosmopolitan original position would seek the creation of a single, unified world state any more than the representatives of peoples would in the international original position—but his position is nonetheless difficult in that it is a model for peace that privileges the sovereign rights of peoples (states) over the cosmopolitan rights of individual persons. It leads to a conception of world political association that does not recognize Article 1 of the United Nations Universal Declaration of Human Rights, whereby “all human beings are born free and equal in dignity and rights.” (Art. 1) Liberal and nonliberal *peoples* may be free and equal in the international original position, but the *persons* who belong to such peoples are denied freedom and equality; that is, unless the persons belong to liberal peoples, in which case their freedom and equality is enshrined in their domestic-level constitutions. In the all-liberal *foedus pacificum*, individual persons may regard one another as the bearers of inalienable rights and freedoms, whereas in the liberal-nonliberal *foedus pacificum*, only the persons of liberal societies are guaranteed freedom and equality, while the persons of nonliberal societies are denied such attributes.

This theoretical stance has further consequences for “the problem of coercive power,” as Rawls's ideal theory imagines the possibility of a voluntary association that might hold between liberal and nonliberal peoples, but likewise imagines a world in which the Society of Peoples is to confront “outlaw states.” The association is a political (moral) association, not a legal association, and there

is no supreme executive, legislative and judiciary power to which *all* peoples might appeal for the just adjudication of their claims.

Section 1: John Rawls and the Peoples of the Foedus Pacificum

Rawls accepts Kant's argument ("dogmatically," according to Thomas Pogge³⁷) that world government, as a unified global regime with its own system of law and law enforcement, would "result in either a global despotism or a fragile empire torn by frequent civil strife as various regions and peoples try to gain their political freedom and autonomy."³⁸ Rawls further accepts Kant's thesis concerning the "fact of democratic peace" and holds that it is "as close as anything we know to a simple empirical regularity in relations among societies" and as such is proof of the possibility of establishing a *foedus pacificum* among peoples that honor shared principles of legitimate government.³⁹ The fact of democratic peace obviates the need for a world state as a mechanism for keeping order, as Rawls assumes that well-ordered (liberal and nonliberal) societies will not go to war against one another and will instead a set of international principles allowing for the rise of various forms of cooperative organizations and federations concerned with matters of security, finance and trade.

Rawls's model for peace is Westphalian in character and begins with a conception of global society that takes the world to be composed of and divided into separate territorial states, with each having the political capacity to take and

³⁷ Thomas Pogge, "Rawls on International Justice." *The Philosophical Quarterly*, v. 51, no. 203, April 2001. p. 295.

³⁸ Rawls, *ibid.*, p. 36.

³⁹ Rawls, *ibid.*, p. 52–53.

carry out administrative decisions. In the absence of a world state, Rawls argues that there must be boundaries of some kind and that, however arbitrary such boundaries may appear from a historical point of view, the presupposition allows Rawls to conceive of these separate political states as individual agents ('moral persons') who are to maintain their respective assets and who are to bear the loss for not doing so; for Rawls, the agent is the peoples as politically organized, and the asset is considered its territory and its capacity to support them in *perpetuity*. They are moral agents in their own right, with interests of their own and with a corporate capacity for exercising responsibility over time.

Peoples are also units of political and legal organization, and have control over their economic lives—they need not be religiously or ethnically homogenous, but they are *politically* homogenous, unified actors and they constitute the first premise of the domestic-international analogy with regard to the idea of an international social contract. Peoples-as-moral-persons are much the same as Kant's state-as-moral-person. They are "peoples," as opposed to "states," however, because Rawls wishes to distinguish his thinking about states as traditionally conceived, with their two powers of sovereignty: the so-called right to go to war in pursuit of state policies (*raison d'etat*) and the principle of nonintervention, understood as a state's unrestricted right to internal sovereignty and (political) autonomy—its alleged right to do as it will with the persons within its own borders. They are also peoples (as opposed to states) because they are well-ordered: such a designation refers, first, to their internal ordering as either liberal democratic regimes or decent nonliberal hierarchies (they have been able

to establish the rule of law and gain legitimacy in the eyes of their peoples) and, second, to their external conduct in that they are ‘moral persons’ who are not moved solely by their prudent or rational pursuit interests (*raison d’etat*).

Peoples are therefore those politically organized communities who lay claim to statehood, but whose powers of sovereignty differ from political states as traditionally conceived in the (positive) international law in the three hundred years from the Peace of Westphalia to the end of the Second World War (1648-1948). They are both sociologically and ethically primary in that it is peoples, not individual persons, who are represented in the international original position. The problem of international society is that of domestic society writ large, but with some modifications: “What can be the basis for a Society of Peoples given the reasonable and expected differences of peoples from one another, with their distinctive institutions and languages, religions and cultures, as well as their different histories, variously situated as they are in different regions and territories of the world and experiencing different events?”⁴⁰

It is assumed that peoples will not affirm the creation of a world state and will not desire any further limitation on their sovereignty beyond the restrictions on the right to war and the unrestricted right to internal sovereignty. It is likewise assumed that the Society of Peoples is to model a form of peaceful political association that preserves pluralism in the international sphere, and that every society has in its population a sufficient array of human capabilities and that every society has the resources needed in order to fully realize their own particular conception of just (or decent) political institutions. Following Kant, the

international community is to secure the background conditions necessary so that differing peoples and societies are able to concern themselves with their internal flourishing; the task of the international social contract being to determine which principles and ideals are sufficient to regulate their behavior toward one another.

The problem, however, concerns whether or not Rawls's idea of a people presently represents a sufficiently desirable form of human social organization to serve as the basic element of world society. The idea of a people, according to Charles S. Beitz, need not serve as a realistic proxy for any actually existing state—an ideal conception of the social world need not simply be a redescription of familiar phenomenon—and Rawls need not maintain that any actual state fully satisfies the criteria for being a people in order to maintain that it would be desirable to move in the direction of the ideal.⁴¹ It is nonetheless one thing to hold that a global Society of Peoples would be a desirable goal of political and social change, but quite another to hold that international political theory should begin with 'peoples' in Rawls's sense of the term. It is moreover quite another thing to hold that the moral principles for international law ought to be derived solely from the perspective of such peoples, to the exclusion of those political and moral principles that might be derived from the perspective of individual persons.

Rawls is concerned with the fundamental interests of individual persons, but these interests are mediated by the peoples to whom they belong. Peoples are, again, organized groups whose structures include independent, territorial based political institutions (what one normally calls 'states'). They are politically

⁴⁰ Rawls, *ibid.*, p. 55.

organized, and their form of political organization is that of statehood even if, normatively speaking, they do not have all the traditional powers accorded to states. They are not in fact those groups that form distinct societies and who are united by common sympathies and conceptions of the good, but are instead those collectivities that enjoy the highest level of political organization (statehood). Rawls is not, then, suggesting that ‘peoples’ that are not organized in states are equal participants in the Society of Peoples—‘peoples’ do not refer to ethnic or national groups that lack their own states, but only to ‘peoples organized in states.’

Finally, while Kant may have held that international justice is exclusively a matter of considering the rights and relations of states, it is a view, according to Brian Orend, “that cannot today be allowed to stand unrevised.”⁴² Rawls does not altogether ignore the role that non-state associations ((corporations and non-governmental organizations (NGOs)) play in international relations, but he does exclude them from the international social contract. The abstracted and artificial concern with “peoples” therefore needs to be weakened: “This matter seems adequately taken care of by moving from the (implicit) claim that states are the only actors relevant to international justice to the more defensible notion that, while not alone, they are still the most important actors.”⁴³ Also important, however, are individual persons. Rawls’s concern with peoples overrides his concern with the persons who make up those peoples, with the result that his

⁴¹ Charles S. Beitz. “Rawls’s Law of Peoples.” pp. 669-696. *Ethics* 110 (July 2000). p. 679.

⁴² Brian Orend, *War and International Justice: A Kantian Perspective*. (Wilfred Laurier University Press: 2000). p. 68.

model does not specify the rights that individuals have regardless of the society to which they belong, and which further reflect the independence of individuals from any particular society. It is for these reasons, according to Allan Buchanan, that Rawls's Law of Peoples, "is a set of rules for a vanished Westphalian world and hence is of limited value for our world."⁴⁴

Section 2: The Cosmopolitan Point of View

Kant held that a fully adequate moral/legal theory of international relations must include principles that specify the relationship among peoples (states), but that it must likewise specify cosmopolitan principles that specify the relationship among individuals as individuals (including, also, principles for individuals in relation to other peoples/states). There must, in other words, be an adequate balance between the sovereign rights of states and the civil and cosmopolitan rights of persons. Kant's model draws an analogy between the civil, international and cosmopolitan state of nature and while there is, to be sure, a disanalogy between individuals in the social contract of the civil state and the social contract of states on the international level, he nevertheless includes a third level of political relation: *ius cosmopolitanum* seeks to develop principles for "the constitution conforming to the law of world citizenship, so far as men and states are considered as citizens of a universal state of men, in their external mutual relationships."⁴⁵ Rawls's model, on the other hand, draws an analogy between the

⁴³ Orend, *ibid.*, p. 68.

⁴⁴ Buchanan, "Rawls's Law of Peoples: Rules for a Vanished Westphalian World. pp. 697-721. *Ethics* 110, July 2000. p. 701.

⁴⁵ Kant, *ibid.*, pp. 92-3.

domestic and international levels, but to the exclusion of the cosmopolitan level—the domestic hypothetical contract device is modified so that the parties choosing the Law of Peoples are representatives of peoples (states); the device is not further modified so as to take account of those cosmopolitan principles that specify the rights that individuals have irrespective of which society they happen to belong to, nor for those principles that would further reflect the independence of individuals from any particular society.

The Law of Peoples uses a liberal social contract political conception of justice, but does not seek to address the question of liberal cosmopolitan or global justice for all persons. While other theorists have looked to Rawls's *Theory of Justice* and *Political Liberalism* in order to devise a global hypothetical choice situation in which individual persons are represented in a global (cosmopolitan) original position, Rawls rejects this approach because, as with the domestic original position, he contends that at the very least representatives of individual persons would adopt a first principle holding that all individual persons are to have the equal rights basic rights and liberties of those a (world?) constitutional democracy. Human rights would then be ground in a political (moral) conception of liberal cosmopolitan justice and as such would be prejudicial to nonliberal societies—persons in decent hierarchical societies are not regarded as free and equal citizens.

There is no need to think that the representatives of individual persons would affirm the creation of a world state any more than the representatives of states-as-persons would, Rawls nevertheless contends that cosmopolitan justice is

predicated upon a liberal (comprehensive) conception of the person as having the attributes of freedom and equality. The conception would therefore be detrimental to the project of peace in that this liberal cosmopolitan conception of ordering society would override the nonliberal conception and would fail to express due toleration for other acceptable ways of ordering society.⁴⁶ For Rawls, the task of the Law of Peoples is to specify how far liberal peoples are to tolerate nonliberal peoples and, provided that a nonliberal society's basic institutions meet certain specified conditions of political right and justice, liberal peoples are to tolerate and accept those societies as good standing members in the Society of Peoples.

Decent nonliberal societies do not treat persons who possess all the powers of reasons, intellect, and moral feeling as truly free and equal. Such societies have “never had the concept of one person, one vote, which is associated with a liberal democratic tradition” and should not be faulted for thinking that “such an idea mistakenly expresses an individualistic idea that each person, as an atomistic unit, has the basic right to participate equally in political deliberation.”⁴⁷ This does not mean, according to Rawls, that nonliberal societies ought not be tolerated in the Society of Peoples, as such peoples deserve a due measure of respect by liberal peoples—they are not aggressive against others and they honor and respect human rights. These human rights are not cosmopolitan human rights, but ‘basic human rights’—they include the right to life (the means of subsistence and security); to liberty (to freedom from slavery, serfdom, and forced

⁴⁶ Rawls, *ibid*, p. 59.

⁴⁷ Rawls, *ibid*, p. 73.

occupation, and to a sufficient measure of liberty of conscience to ensure freedom of religion and thought); to property (personal property); and to formal equality as expressed by the rules of natural justice (that similar cases be treated similarly).

Such rights are those that, according to Rawls, “cannot be rejected as peculiarly liberal or special to the Western tradition” and are likewise those that do not require decent societies to accept the liberal idea that persons are citizens first and therefore are to have equal basic rights as equal citizens.⁴⁸ Persons in a decent hierarchical society (to which Rawls gives the imagined example of “Kazanistan”) are not regarded as free and equal citizens, nor as separate individuals deserving equal representation; they are instead seen as decent and rational and as capable of moral learning as recognized by their society. Rawls goes to great lengths to formulate a conception of human rights that represents a common standard of legitimacy that he contends are equally acceptable to both liberal and decent nonliberal peoples and which can therefore further Rawls’s defense of pluralism in international affairs—a society’s adherence to human rights, even in the absence of liberal democratic institutions, is supposed to be sufficient to shield it from external interference aimed at bringing about domestic reform.

These rights are not to be confused with cosmopolitan rights, however, nor are they to be confused with the rights identified in the 1948 Universal Declaration of Human Rights (UDHR) and its various covenants, which together define the conventional view and scope of the presently internationally recognized human rights. Rawls’s list of basic human rights omits Article 1: “All human

beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.” Rawls likewise omits Articles 19—“everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers”—and Article 20—(1) “Everyone has the right to freedom of peaceful assembly and association” and (2) “No one may be compelled to belong to an association.” Finally, he omits Article 21: (1) “Everyone has the right to take part in the government of his country, directly or through freely chosen representatives;” (2) “Everyone has the right of equal access to public service in his country;” and (3) “The will of the people shall be the basis of the authority of the government; this will shall be expressed in periodic and genuine election which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.”⁴⁹

In Rawls’s view, these rights distinguish liberal democratic societies from others, and cannot serve as the basis of an overlapping consensus in the international original position. For Rawls, “human rights proper” are those illustrated by Article 3 (“Everyone has a right to life, liberty and security of persons”) and Article 5 (“No one shall be subjected to torture or to cruel, degrading treatment or punishment”) and Article 18 (“Everyone has the right to freedom of thought, conscience and religion...”), provided such rights can be interpreted in such a way that renders them amenable to nonliberal societies.

⁴⁸ Rawls, *ibid.*, p. 65.

⁴⁹ Universal Declaration of Human Rights. <http://www.un.org/overview/rights.html>.

Article 1, which considers all human being as born free and equal, is most “aptly described as stating liberal aspirations;” and Article 22, which promises the right to social security, and Article 23, promising the right to equal pay for equal work, are omitted in that they “appear to presuppose specific kinds of institutions,” i.e., liberal democratic institutions.⁵⁰

Human rights are not, then, to play the broad political role envisioned in the conventional understanding, and are not to act as bases of claims by individuals against their own government; nor are they to be the justifiable grounds for political action by the various nongovernmental organizations that compose international civil society. According to Beitz, Rawls’s human rights are a special class of rights intended for the limited purpose of demarcating the boundary of acceptable pluralism in international society as this should be understood in the foreign policy of liberal states. They do not, then, have kind of universality that is usually presumed, and they are not rights that guarantee that people are to be entitled in certain ways by virtue of their characteristics as human beings and independently of considerations that might be particular to their own institutions and political cultures.⁵¹ Cosmopolitan considerations do not register in an international original position in which the unit of representation is peoples rather than persons; the principles generated in the international original position are motivated by the corporate interests of peoples as social units rather than by the interests of their members of individuals.

⁵⁰ Rawls, *ibid.*, n. 23, p. 80.

⁵¹ Beitz, *ibid.*, p. 684.

The Preamble to the Universal Declaration of Human Rights, as Beitz also points out, states that the “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world” and further that “the peoples of the United Nations have in the Charter reaffirmed their faith... in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom.” Human rights are to be “a common standard of achievement for all peoples and all nations” and are to act as a guide for “every individual and every organ of society.”⁵² Human rights do not, as Rawls holds, simply play a role in the international arena as minimum conditions and standards for international recognition for a peaceable law of peoples, but rather they function as standards of conduct for governments and in the policies of various international institutions and development agencies—they are shared goals of political reform among international nongovernmental organizations and the focal points for domestic social movements in nondemocratic societies.⁵³

For Rawls, however, human rights so construed are prejudicial to nonliberal societies and liberal societies that pursue such rights would fail to express due toleration for other ways of ordering society and for other conceptions (nonliberal) of the persons. Maintaining mutual respect among different kinds of peoples in the Society of Peoples is of paramount importance and any inclination towards the cosmopolitan view would be detrimental in that

⁵² Universal Declaration of Human Rights. <http://www.un.org/overview/rights.html>.

⁵³ Beitz, *ibid.*, p. 685.

the foreign policy of a liberal people would then be one in which its regulative aim would be to gradually shape all not yet liberal societies in a liberal direction, until eventually all societies are liberal. Such a view of foreign policy is inadequate, according to Rawls, in that it assumes that only a liberal democratic society is acceptable; rather, the task of the Law of Peoples is to “proceed from the international political world as we see it” and works with the assumption that every society has in its population a sufficient array of human capabilities such that the society has enough potential human resources to realize just institutions.⁵⁴ For Rawls, “the final political end of society is to become fully just and stable for the right reasons.” The liberal cosmopolitan view, by contrast, takes “the ultimate concern of global political justice to be the well-being of individual persons, not the justice of individual societies living as members of a Society of well-ordered Peoples.”⁵⁵

Rawls holds that the great evils of human history (unjust war and oppression, religious persecution and the denial of liberty of conscience, starvation and poverty, genocide and mass murder) follow from political injustice. He further holds that once the gravest forms of political injustice are eliminated by following just or decent social policies and establishing just or decent basic institutions, that these great evils will disappear. However, he seems to think that these evils exist only the level of states, and if the internal flourishing of a state is guaranteed by the peace and security it may feel on the international level, then there is no need to consider, as Kant did, the relations among individual persons

⁵⁴ Rawls, *ibid.*, p. 83.

⁵⁵ Rawls, *ibid.*, p. 119.

as persons, nor the relations between individual persons and other states taken as a whole. It is wholly inadequate under contemporary conditions—indeed, there may very well be such a thing as *cosmopolitan* war.

Section 3: The Problem of Coercive Power

Rawls's ideal conception of the Law of Peoples is problematic, specifically, because it privileges 'peoples' over 'persons' and because his position does away with the 'cosmopolitan point of view' and its understanding of the political equality of all individual persons. This 'ideal,' which does not recognize Article One of the Universal Declaration of Human Rights—ratified in 1948 by nearly all of the countries/peoples of the earth—is “to guide these well-ordered peoples in their conduct toward one another and in their designing common institutions for their mutual benefit.” It is also to guide well-ordered peoples in their dealings with non-well-ordered peoples, specifically so as to deal with “the questions arising from the highly nonideal conditions of our world with its great injustices and widespread social evils.” Nonideal theory presupposes the conclusions of ideal theory, and asks how the Society of Peoples might be achieved, or how it is worked toward, in gradual steps, requiring therefore “policies and courses of action that are morally permissible and politically possible as well as likely to be effective.”⁵⁶

Rawls's ideal of the Society of Peoples is the objective and aim by reference to which the queries of nonideal theory are to be answered. Here too Rawls's theory is flawed in that these “questions of transition”—how to get from

here to there, i.e., “how to work from a world containing outlaw states... to a world in which all societies come to accept and follow the Law of Peoples”⁵⁷—are presumed to be answerable by referring to an ideal conception that, again, takes the interests of peoples to be both sociologically and ethically more important than the interests of individual persons; and second, again following from the first, because it does away with the Kant’s cosmopolitan citizens of the world. The ideal is built around the normative principle that peoples are the basic element of world society, and in nonideal theory, the task is to ask how these liberal and nonliberal peoples are to act toward *outlaw states*—those states that refuse to comply with the Law of Peoples.

Outlaw states are ‘states,’ as opposed to peoples, because they think that a sufficient reason to engage in war is that war advances (or might advance) the regime’s rational interests (*raison d’etat*). They also fail to honor basic human rights—rights which are *universal* in the sense that “they are intrinsic to the Law of Peoples and have a political (moral) effect whether or not they are supported locally. That is, their political (moral) force extends to all societies, and they are binding on all peoples and societies, including outlaw states.”⁵⁸ Outlaw states that violate these rights are to be condemned and in grave cases subjected to forceful sanctions and even intervention. They are not to be tolerated by the liberal and nonliberal peoples in the Society of Peoples: “Outlaw states are aggressive and

⁵⁶ Rawls, *ibid.*, p. 89.

⁵⁷ Rawls, *ibid.*, p. 90.

⁵⁸ Rawls, *ibid.*, p. 80-1.

dangerous; all peoples are safer and more secure if such states change, or are forced to change , their ways.”⁵⁹

Here, it must be noted that Rawls’s Law of Peoples is not like that of Kant’s *ius gentium*—the Law of Peoples is not a body of principles universally accepted by states, nor is it necessarily intended to constitute a reasonable basis for the cooperation or peaceful coexistence of *all* existing states. Outlaw states are not represented in the international original position, and there is no effort to justify the Law of Peoples to representatives of these types of societies. The problems with regard to outlaw states are many: first, how is one to justify intervention in societies not represented in the international original position? Second, without a cosmopolitan original position, on whose behalf does one undertake that intervention? Third, if one privileges peoples over persons, how is one to formulate a conception of the doctrine of just war that properly distinguishes between the ambitions of the rulers of states and the civilians of those states? Finally, who is to act as judge in cases of supreme emergency?

Recall that the Society of Peoples is stylized after Kant’s *foedus pacificum* and therefore makes no room for either the theoretical foundations or practical mechanisms for the implementation and enforcement of the Law of Peoples; that is, there is no supreme executive, legislative or judiciary power to which states-as-moral-persons and individuals-as-moral-persons might appeal for the proper adjudication of their claims. The Society of Peoples does not aspire to speak for all peoples (states), only those that are in the same regional association or federation (such as the European Community, or the commonwealth of the

⁵⁹ Rawls, *ibid.*, p. 81

republics of the Soviet Union), and the United Nations, 'ideally,' is to be thought of as having "the authority to express for the society of well-ordered peoples their condemnation of unjust domestic institutions in other countries and in clear cases of the violation of human rights... the scope of these powers covers all peoples and reaches their domestic affairs."⁶⁰

The United Nations is in part an extension of the Society of Peoples—which is nonsensical as Rawls continuously argues that liberal institutions, of which the United Nations is an exemplar, are prejudicial to nonliberal societies. If, however, such liberal institutions are so prejudicial, then why have any role at all for the United Nations? The United Nations is a community of states (peoples) with equal voting rights in the General Assembly that openly and collectively regulate international life while constrained to observe the UN Charter and its concomitant human rights conventions—including, of course, Article 1 of the General Assembly's Universal Declaration of Human Rights. Is it not, then, problematic to suggest both that liberal and nonliberal peoples are to disregard the foundational principles of the UN Charter in the Society of Peoples, while simultaneously subscribing to its dictates on the wider world stage? Peoples, while the liberal and nonliberal peoples of the Society are also likewise bound to the adhere to the dictates of the UN Charter?

Finally, the problem of peace can be understood as a problem of war: well-ordered peoples have a right to war in self-defense but not a right to war in the rational pursuit of their interests. They do not initiate war against one another, but only go to war when they believe that their safety and security are endangered

⁶⁰ Rawls, *ibid.*, p. 36.

by the expansionist policies of outlaw states. Liberal societies engage in war in self-defense (and in the interests of collective security) so as to protect and preserve the basic freedoms of its citizens and its constitutionally democratic political institutions. Decent peoples seek to defend their decent hierarchical structures, and their political institutions. These societies need not, however, wholly subscribe to the moral and legal principles underlying the UN—the institution is by definition prejudicial to nonliberal societies—nor need their actions be justified and/or constrained by the larger world community.

The Law of Peoples “guides well-ordered societies in facing outlaw regimes by specifying the aim they are to have in mind and indicating the means they may use or must avoid using.” Defense is “only their first and most urgent task,” with the “long-run aim” being “to bring all societies eventually to honor the Law of Peoples and to become full members in good standing of the society of well-ordered peoples.” In order to achieve the long-run aim, well-ordered peoples “should establish new institutions and practices to serve as a kind of confederative center and public forum for their common opinion and policy toward non-well-ordered regimes.” They can do this either within institutions (such as the UN) or by forming separate alliances of well-ordered peoples on certain issues. “This confederative center may be used both to formulate and to express the opinion of the well-ordered societies. There they may expose to public view the unjust and cruel institutions of oppressive and expansionist regimes and their violations of human rights.” According to Rawls, outlaw regimes are not altogether indifferent to this kind of criticism, especially when the basis of it is a reasonable

and well-founded Law of Peoples that cannot be easily dismissed as simply a liberal or Western idea.⁶¹

This position has further implications for Rawls's doctrine of just war. Rawls is not concerned with *jus ad bellum* (the moral justification for going to war), but with the principles for restricting the conduct of war. In the international original position, which fails to represent *all* of the actors in international society, the moral justification for war has already been decided upon: no state has a right to war in pursuit of its rational (as opposed to reasonable) interests. Peoples have the right to war in self-defense; such a right may be interpreted in different ways depending on how the society in question thinks of their ends and purposes. For Rawls, liberal peoples engage in war in self-defense when they seek to protect and preserve the basic freedoms of its citizens and its constitutionally democratic political institutions. Nonliberal peoples likewise defend their institutions, as might benevolent absolutisms—in other words, “*any* society that is nonaggressive and that honor human rights has the right of self-defense.”⁶²

The problem in this regard is that Rawls's Society of Peoples lacks a proper basis for *jus ad bellum*—the conventional understanding of the moral justification for going to war is that (a) the cause must be just; (b) a right authority must make the decision to go to war; (c) groups going to war must do so with right intention; (d) war must be undertaken only as a last resort; (e) the goal of war must be a likely peace; and (f) the war must be proportionate, i.e., the total

⁶¹ Rawls, *ibid.*, p. 92–93.

⁶² Rawls, *ibid.*, p. 92.

evil of a just war cannot outweigh the good achieved by going to war. Normally, each of these conditions must be met independently and prior to a decision that it is just to go to war. The question, then, is in the absence of a cosmopolitan world body whose dictates are subscribed to systematically by *all* peoples/states and the individual persons who compose them, as well as the plethora of other actors in international society, who is to judge whether in fact the cause is just? Who is Rawls's 'right authority'? How is one to decide if the war is undertaken with a right intention, as a last resort, and with its final goal that of an emergent peace?⁶³

Conclusion:

Rawls's model for perpetual peace is an ideal conception that follows Kant in utilizing the domestic-international analogy in order to devise an international social contract between peoples/states-as-moral-persons that is to specify the moral foundations of a league (or federation) of peoples. Rawls's *foedus pacificum* is a Society of Peoples between liberal and nonliberal peoples, and unlike Kant, who argued that the most adequate model for perpetual peace was one that balances the sovereign rights of states with the cosmopolitan rights of individual persons, Rawls argues that the cosmopolitan point of view is an unacceptable form of liberal (comprehensive) justice and is inadequate to the extent that it is prejudicial to nonliberal societies.

It is problematic in that Rawls's rejection of cosmopolitan justice means that his model erroneously privileges the interests of 'peoples' over the persons of

⁶³ Donald A. Wells. "The Doctrine of Just War." *Encyclopedia of War and Ethics*. (Greenwood Press: 1996). p. 112.

whom such peoples are composed and further does not articulate principles that reflect all the interests of all of the actors that take part in international society. The Law of Peoples “articulates rules for a vanished Westphalian world” in that it does not specify the rights that individual persons have regardless of the society to which they belong, nor those principles that reflect the independence of individuals from any particular society. It cannot address the claims of peoples who do not enjoy the highest level of statehood and it cannot address the issues related to civil war nor to “cosmopolitan war,” i.e., terrorism and the subsequent war on terrorism.

Rawls’s model is also inadequate in that it undermines the conventional view of human rights and likewise argues for a model for a voluntary political (moral) association that does not affirm Article 1 of the General Assembly’s 1948 Universal Declaration of Human Rights, thus robbing individual persons in both liberal and nonliberal societies of any focal point for domestic reform movements. The rejection of Article 1 also calls the foundational principles of the United Nations into question, perhaps even rendering it a superfluous ‘liberal’ institution. Finally, Rawls’s model lacks a proper basis for the dictates of *jus ad bellum* (the moral justification for going to war) and provides neither the theoretical foundations nor practical mechanisms, i.e., an executive, legislative and judiciary power, for the proper and just adjudication of states/peoples and persons legitimate claims.

Chapter III: Jürgen Habermas and the Positive Idea

Jürgen Habermas's "Kant's Idea of Perpetual Peace, with the Benefit of Two Hundred Years' Hindsight," was written on the two hundredth anniversary of the original publication of Kant's *Perpetual Peace*, a year which further coincided with the fiftieth anniversaries of the end of World War II and the establishment of the Charter of the United Nations. The focus of Habermas's work, unlike that of Rawls, is on the theoretical and practical relevance of Kant's *cosmopolitan* ideal: "Differences in conceptual framework and temporal differences now separate us from Kant. With the superior knowledge of later generations, we see today that his proposals suffer from conceptual difficulties and that they are no longer to appropriate to our historical circumstances."⁶⁴ Habermas argues against Kant's *foedus pacificum* on the grounds that it remains tied to the "unsurpassable conceptual limit" of the classical-modern (Westphalian) world of nation-states, and instead proposes a model of peace that aims at the furthering the development of Kant's idea of a cosmopolitan law of world citizenship.

Cosmopolitan law "goes over the heads of the collective subjects of international law to give legal status to the individual subjects and justifies their unmediated membership in the association of free and equal citizens;"⁶⁵ it resembles state-sanctioned civil law in that it is meant to definitively end the state of nature and to make it possible for citizens, in this case, citizens of the world, to live in legally guaranteed freedom under the hegemony of a single, unified world

⁶⁴ Habermas, *ibid.*, p. 114.

state. Habermas's model takes shape around a United Nations that has been reconstructed in the form of a World Parliament, complete with a World Court system. This requires an element of legal obligation, and likewise requires that the UN has its own military forces, i.e., a monopoly over the means to violence. This in turn requires that the World Court is always in session, and therefore able to obligate national governments to abide by its judgments:

For actionable rights to issue from the United Nations Declaration of Human Rights, it is not simply enough to have international courts; such courts will first be able to function adequately only when the age of individual sovereign states has come to an end through a United Nations that *can not only pass but act on its own resolutions*.⁶⁶

Habermas seeks to modify the sovereignty of independent nation-states and promotes the establishment of a single world government—an entity equipped with the executive, legislative and judiciary powers necessary to punish all and any agencies or individuals who violate the proposed cosmopolitan law and the constitutional rights of free and equal world citizens.

Habermas's position is one of *cosmopolitan liberalism*, whereas Rawls is that of *social liberalism*. The latter position conceives of the world community as composed of domestic level societies that are responsible for the well-being of their people; the international community is responsible for their internal flourishing, and holds that the principles for international relations are to be justified by considering the fundamental interests of those societies to which the

⁶⁵ Habermas. "Kant's Idea of a Perpetual Peace, with the Benefit of Two Hundred Years Hindsight." *ibid.*, p. 128.

⁶⁶ Habermas. "Citizenship and National Identity (1990)." trans. William Rehg. *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*. (MIT Press: 1997) p. 456.

principles apply, while cosmopolitan liberalism insists that the principles for the relations of societies should be based on a consideration of the fundamental interests of individual persons.⁶⁷ Habermas's plan takes 'persons,' not 'peoples,' as the basic constituent of world society, and is a particularly strong version of cosmopolitan liberalism, as he understands it to be in the fundamental interests of individual persons to affirm the creation of a world state with the requisite executive, legislative and judiciary powers needed in order to override the claims of sovereign states.

Cosmopolitan liberalism is consistent with a conception of the world as a society of domestic societies, but the cosmopolitan view does not thereby accord moral privilege to collectivities, by they nations, states or peoples.⁶⁸ Habermas's proposal is therefore a particularly strong version of cosmopolitan liberalism, as he understands it to be in the 'fundamental interests of persons' to affirm the creation of a world state with the requisite legislative, executive and judiciary powers needed in order the enforce the rights of individual persons over and against the claims of sovereign nation-states.

However problematic, Habermas's understanding of cosmopolitan law and the idea of a World Parliamentary Democracy, based on the constitution of a reformed United Nations, is nonetheless superior to John Rawls's conception of the Society of Peoples. The contemporary ideal of peace must not subordinate the interests of individual persons to the "peoples" to which they belong; it must

⁶⁷ Charles S. Beitz, *ibid.*, p. 680.

⁶⁸ Charles S. Beitz. "Rawls's Law of Peoples." *Ethics* 110 (July 2000): 669-696. P. 677-8.

be in accordance with the development of a post-Westphalian order, and it must allow for the further development of Kant's idea of a law of world citizenship. That said, however, it will likewise be argued that Habermas's proposal is the one that is most likely to result in a 'soulless despotism,' as it is not necessarily clear that the ideal of peace must necessarily affirm a single, unified, global system of law and litigation.

Section 1: The Peace of Post-Westphalia

Habermas argues that a model of peace is dependent upon the model of war it is seeking to circumvent, and as such that Kant's sketch is of limited value for the present day: "Kant is thinking here of spatially limited wars between states or alliances, not of world wars. He is thinking of wars conducted between ministers and states, but not yet of anything like civil wars. He is thinking of technically limited wars that still permit the distinction between fighting troops and the civilian population, and not yet of anything like guerrilla warfare and the terror of bombardment. He is thinking of wars with politically defined aims, and not yet of anything like ideologically motivated wars of destruction and expulsion."⁶⁹ Kant had neither the knowledge nor experience of the wars of the twentieth-century, and clearly could not have imagined *total* war, i.e., unlimited wars against whole populations; nor armed conflicts in the shape of genocidal civil wars. Nor, obviously, the prognosis for the future of war: "ecological imbalance; asymmetries of standards of living and economic power; powerful technologies of an unprecedented scale; the arms trade, especially the spread of

atomic, biological and chemical weapons; terrorism and the rise of drug-related criminality.”⁷⁰

Habermas’s reformulation of Kant’s concept of perpetual peace is undertaken “with the benefit of two hundred year’s hindsight”—in addition to a socio-historical (empirical) analysis of the changed nature of war, Habermas analyzes the changed nature of republics, the changed nature of world trade, and the changed nature of the world political public sphere, arguing that “the premises on which Kant based his theory reflect the conditions he perceived at the close of the eighteenth century no longer hold.”⁷¹ Habermas disputes the Rawlsian interpretation of the “the fact of democratic peace” and argues that the modern liberal democratic nation-state is no more peaceful than its predecessor, the dynastic absolutist state, nor more peaceful than authoritarian (nonliberal) regimes (of whatever kind). Republican convictions “create the willingness to fight and die for nation and fatherland” and play a role in “the mass mobilization of young men obligated to military service... stir[ing] nationalist passions and produc[ing] an age of devastating, ideologically unlimited wars of liberation.”⁷² Democratic states domestically encourage a pacifistic stance toward the outside world, and to the extent that the *universalist value orientations* of a population influences foreign policy, its use of military force is no longer exclusively determined by

⁶⁹ Habermas, *ibid.*, p. 115.

⁷⁰ Habermas, *ibid.*, p. 133.

⁷¹ Habermas, *ibid.*, p. 119.

⁷² Habermas, *ibid.*, 120.

particularist vision of *raison d'etat* “but also by the desire to promote the international proliferation of non-authoritarian forms of state and government.”⁷³

Rawls’s model for peace remains on the level of international law and takes the modern nation-state (peoples) to be the primary actors in world society; Habermas challenges the subject, scope and very sources of the Westphalian understanding of international regulation, in particular its conception of international law. The processes of globalization have put into question of the presuppositions of classical international law, including the sovereignty of states and the sharp distinction between domestic and foreign policies. He rejects the doctrine that international law is a law between states only and exclusively, and instead looks at the ways in which individuals and groups have become recognized as subjects of international law on the basis of such agreements as the Nuremberg and Tokyo war crimes tribunals, the Universal Declaration of Human Rights, and the Convention on Civil and Political Rights. He challenges the doctrine that international law is primarily about political and geopolitical affairs, instead arguing that international society is an arena that is increasingly concerned with coordinating and regulating economic, social, communicative and environmental matters. International society is today made up of a multitude of actors: non-governmental organizations, multinational corporations, internationally influential private banks.

The trade relations of early modernity have given way to a dense network of a world market, and “today globally dispersed media, networks, and systems necessitate a density of symbolic and social relationships, which bring about the

⁷³ Habermas, *ibid.*, 121.

constant reciprocal influence between local and quite distant events.”⁷⁴

Governments must respond to imperatives based on world trade and the increasingly global network of productive relations. In addition, a world public sphere has emerged in the wake of global communication. Habermas points to the United Nations sponsored conferences on global issues, such as ecology, population, poverty, and global warming, and argues that these world summits are attempts to bring political pressure to bear on governments “simply by making the problems of human survival themes for the global public.” He further looks to the role played by NGOs, such as Greenpeace and Amnesty International, in the international arena, as well as the growing impact of the press and other media who confront states from within the complex network that makes is constitutive of world civil society.⁷⁵

The ‘world society’ that has been created by communication systems and markets in the global context is a stratified world society, as the mechanisms of the world market couples increasing productivity with increasing impoverishment. Development is coupled with underdevelopment. In other words, the post-Westphalian world is one in which globalization has both divided the world and has forced it to cooperative action in the recognition that the world is a community of shared risks. Habermas speaks of the “three worlds” that compose our current world—the Third World consists of those territories where the state infrastructure and monopoly of the means to violence are weakly developed and decayed, and where social tensions are so high and levels of

⁷⁴ Habermas, *ibid.*, 122.

⁷⁵ Habermas, *ibid.*, 125-126.

political culture so low that the indirect violence of the Mafia or fundamentalist variety disrupts the internal order. These societies are also threatened by the processes of nationalist, ethnic and religious fragmentation. Their wars are primarily civil wars. The Second World is shaped by the heritage of power politics that individual nation states emerging from decolonization have taken over from Europe. Internally, such states balance their unstable relations through authoritarian constitutions and insist on sovereignty and non-intervention from the outside. They emphasize military violence and exclusively obey the logic of the balance of power.

The First World is a world of states that are the only ones capable, to a certain degree, of bringing their national interests into harmony with the normative claims established by the United Nations. Citing Richard Cooper, Habermas holds that the First World is composed of states with a decreasing relevance of external boundaries and the toleration of a legally flourishing internal pluralism—the influence of states on one another’s traditionally domestic concerns, with an increasing fusion between domestic and foreign policy; the sensitivity to the pressures of a liberal public sphere; the rejection of military force as a means of solving conflict; the juridification of international relations’ and the favouring of partnerships that base security on transparency and trust in expectations. “The First World thus constitutes the temporal meridian of the present, as it were, by which the political simultaneity of economic and cultural nonsimultaneity is measured.”⁷⁶

⁷⁶ Habermas, *ibid.*, p. 132.

The concept of peace must therefore be reformulated in such a way that it works towards overcoming social divisions and economic imbalances. Habermas contends that this aim could succeed in the face of the stratification of world society *only on the condition* that a consensus forms in three areas: a historical consciousness shared by all members concerning the nonsimultaneity of the societies simultaneously related by peaceful coexistence; a normative agreement concerning human rights, the interpretation of which remains disputed between the Europeans, Asians and Africans; and a shared understanding concerning the meaning of the goal of peace. Habermas criticizes Kant's "negative" conception of peace and argues that it is unsatisfactory, first, because all limits on the conduct of war have been surpassed, and second, because new global circumstances link the emergence of wars to specifically societal causes.

Peace ought to instead be seen as a *process* accomplished by nonviolent means, with its aim not merely to prevent violence per se, but also to satisfy the real necessary conditions for a common life without tensions among groups and peoples.⁷⁷ The strategy of nonviolent intervention works in favour of processes of democratization and takes into account that global interconnections have now made all states dependent on the global environment and therefore sensitive to the soft power of indirect influence.

II. The Conceptual Revision

The idea of perpetual peace, according to Habermas, has been given more tangible form in the institutions, declarations and policies of the United Nations,

as well as in other transnational organizations. The “incomparable catastrophes of the twentieth century” have given new impetus to Kant’s idea—“Against this somber background, the World Spirit, as Hegel would have put it, has jerked unsteadily forward”—and our “shaken world” has since “accelerated the transition from international law to cosmopolitan law based on the rights of the world citizen.”⁷⁸ Habermas points to the outlawing of war initially mentioned in the 1928 Kellogg-Briand Pact and its transference to the war-crimes tribunals of Nuremberg and Tokyo, likewise the eventual incrimination of war itself as a crime and also the fact that criminal law now includes ‘crimes against humanity’, i.e., “crimes carried out by legally empowered organs of the state with the assistance of countless members of organizations, functionaries, civil servants, businessmen and private individuals.” These features, according to Habermas, means that “governmental subjects of international law lost their general presumption of innocence in a supposed state of nature.”⁷⁹

Habermas rejects Kant’s normative principle of the state-as-moral-person, and holds that the contemporary model of peace must not remain tied to the classical-modern (Westphalian) world of nation states. He rejects Kant’s unqualified endorsement of the internal sovereignty of states as well as the concept of a *foedus pacificum*—Habermas points to the theoretical aporias in Kant’s reasoning and argues that inconsistencies can be rectified if cosmopolitan law is understood as resembling state sanctioned (civil) law and therefore considered in such terms that it would actually end the international state of

⁷⁷ Habermas, *ibid.*, p. 133.

⁷⁸ Habermas, *ibid.*, p. 126.

nature. Rather than retain their existence as autonomous and independent sovereign states, peoples are to subject themselves to the public coercive laws of a supreme power in order to establish and enforce the claims of parties over and against one another. Unlike the *foedus pacificum*, which is not organized around the organs of a common government with coercive authority, Habermas argues that the union of peoples ought to be a legal arrangement, not a moral arrangement, and that it must be able to make its own binding demands. Without the element of legal obligation, the peaceable congress of nations cannot become permanent—“the feature on which a civilized resolution of international conflict depends”⁸⁰—and it would remain hostage to “an unstable constellation of interests that is likely to degenerate and fall apart, much as the League of Nations did years later.”⁸¹

In Kant’s time, the balance of power functioned on the assumption that only sovereign states could be the subjects of the law of peoples. External sovereignty designated the capacity of states, each acting independently in the international arena, to defend the integrity of its borders when needed; internal sovereignty referred to the capacity, based on a state’s monopoly over the means to violence, for maintaining peace and order by means of administrative power and positive law. Habermas challenges this “classical-modern world of nation states” and maintains that it represents “an unsurpassable conceptual limit” to the project of formulating a cosmopolitan constitution. Habermas instead seeks to institutionalize the rights of the world citizens in such a way that they actually

⁷⁹ Habermas, *ibid.*, p. 126.

⁸⁰ Habermas, *ibid.*, p. 117.

bind individual governments, with the community of peoples able to holds its members to legally appropriate behavior through the threat of sanctions. “Only then will the unstable system of states asserting their sovereignty through mutual threat be transformed into a federation whose common institutions take over state functions: it will legally regulate the relations among its members and monitor their compliance with rules.” To do so, however, requires that the external relationship of contractually regulated international relations among states becomes an internally structured relationship among the members of a common organization based on a legally enforceable charter or a constitution.

The cosmopolitan community is to be conceived of as a federation of world citizens, not of states—the rights and freedoms of such citizens are not to be mediated through the sovereignty of their states but are to be given legal status as individual subjects with an unmediated membership in the association of free and equal citizens. Individuals would then be world citizens (in the full juridical sense of the term) as well as citizens of their respective states. The higher-level legal power to define authority would fall to the unified world state, and would give individuals a legally unmediated relation to this international community—individuals would further acquire the right to bring formal complaints and the legal means to challenge their own governments.

The Charter of the United Nations is to be further clarified so as to remove its ambiguous regulations concerning the limits and guarantees on the sovereignty. At present, the Charter prohibits offensive wars (article 2.4) and empowers the Security Council to use appropriate means, including military

⁸¹ Habermas, *ibid.*, p. 117.

action, whenever there is a threat or violation of peace or when an attack is present. At the same time, the UN Charter forbids the intervention in the internal affairs of a state (2.7) and also likewise allows each state the right to military self-defense. In other words, the Charter itself is predicated upon the full respect of the sovereignty, territorial integrity and national unity of states, and approximates Kant's *foedus pacificum* in that the UN does not have its own military forces, or any that it could deploy under its own command, and by no means enjoys a monopoly over the means to violence. It is instead dependent on the voluntary cooperation of its members, with the missing power base compensated for by the Security Council—which, according to Habermas, makes highly selective use of judgement in that it disregards the principle of treating similar cases similarly. The World Court is likewise problematic in that it only possesses symbolic significance, and is not always in session, nor can it yet obligate governments to abide by its judgements. The Security Council, when it does take the initiative, for its highly selective use of judgement—it disregards the principle of treating similar cases similarly.

The UN Charter imposes the general obligation on its member states to observe and attempt to realize human rights. As it stands, the United Nations does not simply leave the protection of human rights to nation states, but also possesses its own instruments for *establishing* that human-rights violations have occurred. The Human Rights Commission possess various observer functions and reporting procedures that concern themselves with basic social, economic and cultural rights; there are further procedures for bringing complaints about

violations of civil and political rights. In theoretical terms, according to Habermas, the rights of individuals to bring formal complaints, which give all citizens the legal means to challenge their own governments, are more significant than the complaints brought by states. However, in Habermas's view, the problem is that "there has been no criminal court that can test and decide upon well-established cases of human-rights violations."⁸² In other words: "The weak link in the global protection of human rights remains the lack of any executive power that could secure, when necessary, the General Declaration of Human Rights through interventions into nation states, despite their 'supreme power' over their territory."⁸³

The United Nations can be seen as an illustration of Kant's *foedus pacificum*, except that the UN is not an association of free states, nor is it representative of the Kant's theory that more and more democratic states would crystallize around the core of an avant-garde of peaceful republics. Rather, the United Nations is a world organization that has united *all* (liberal, nonliberal, outlaw, etc.) *all* states under one roof, regardless of whether they have already established republics or whether they respect human rights. "The political unity of the world finds its expression in the General Assembly of the United Nations, in which all governments are represented with equal rights."⁸⁴ As such, the world organization abstracts not only from the differences in legitimation among its member states but also from their status differences within a stratified world society. In Habermas's view, the General Assembly must be transformed into a

⁸² Habermas, *ibid.*, p. 129.

⁸³ Habermas, *ibid.*, p. 130.

kind of parliament that shares its powers with a second chamber in which peoples will be represented not by their governments, but by the elected representatives of the totality of world citizens. Countries that refuse to allow representatives to be elected by democratic procedures (including those procedures that also give consideration to their national minorities) would be represented in the meantime by non-governmental organizations that the World Parliament selects as the representatives of oppressed populations.

The World Court in The Hague must be able to press charges and make claims; it must be able to make binding decisions. Its jurisdiction must be extended beyond the concern with relations among states and must extend to conflicts between individual persons or between individual citizens and their governments; likewise international criminal prosecution must be permanently institutionalized. The Security Council, which was conceived to be a counterweight to the egalitarian General Assembly and was to reflect the de facto relations of power in the world, must be altered so as to include regional regimes (the European Union) along with the world powers (the United States). It is also necessary that the requirement of unanimity among the permanent members be abolished in favour of an appropriate form of majority rule. The Security Council would then be modeled after the Brussels ministry of the European Union, with the Council reformed as a whole into an executive power capable of carrying out policies. States would then adjust their traditional foreign policies according to the imperatives of a world domestic policy, but only if the world organization

⁸⁴ Habermas. *Ibid.*, p. 131.

possesses a military force under its own command and exercises its own policing functions.

III. The Problem of Coercive Power

Habermas's World Parliamentary Democracy is a cosmopolitan world organization that unites states and persons under the hegemony of a single, unified world state, complete with the executive, legislative and judicial powers that are normally associated with constitutional liberal democracies. It is founded on the notion that individual persons are free and equal citizens of the world and therefore deserving of a supranational entity that protects their fundamental right to peace and security. The model differs from both Kant and Rawls's *foedus pacificum* in that Habermas's model straightforwardly advocates the transfer of the existing *jus belli* of nation-states to the United Nations, therefore endowing the UN with the military power necessary to enforce its dictates against individual governments. Such a claim goes against Kant's understanding that perpetual peace requires the rejection in principle of the threat or use of force among states. The world state is not a voluntary political (moral) association, as with Rawls's Law of Peoples, nor does it dispense with Article 1 of the Universal Declaration of Human Rights.

Habermas's model instead retains "the moral universalism that guided Kant's proposals" as the structuring normative intuition of his proposals for reforming the United Nations and likewise to create effective supranational

organizations in various regions of the world.⁸⁵ To the extent perpetual peace is to be understood as a *legal* arrangement, Habermas argues that the extension of human rights and the implementation of cosmopolitan law need not entail the imposition of an arbitrarily favoured moral vision (Western, liberal); the institutional implementation of human rights is not to be seen as a self-defeating moralization of politics, nor is it to be seen as a hypocritical legal pacifism that wants to conduct ‘just wars’ in the name of peace and cosmopolitan rights, nor as a particularly useful ideological instrument (such as justice, progress and civilization) in the which wars fought against political enemies are undertaken in the name of humanity, while all the while not being a war for the sake of humanity, but rather a war in which particular state or international organizations usurp universal concepts in the battle against their enemies.

The politics of a world organization inspired by Kant’s idea of perpetual peace is not oriented to the creation of a cosmopolitan order whose pan-interventionism necessarily leads to a pan-criminalization and with it the perversion of the goal it is supposed to serve. Under the Rawlsian conception, the politics of ‘basic’ human rights may very well lead to wars that are disguised as police actions, lending them a moral quality, with the moralization stamping the enemy as an ‘outlaw’ and therefore an inhuman criminal. For Habermas, on the other hand, the juridification of the state of nature and the establishment of a cosmopolitan order means that violations of human rights are “no longer condemned and fought from the moral point of view in an unmediated way” but are prosecuted as criminal actions within the framework of state organized legal

⁸⁵ Habermas, *ibid.*, p. 135.

order according to institutionalized legal procedures.⁸⁶ Under the premises of the constitutional state and democracy, the coercive violence of the world state is to be channeled both externally and internally through legitimate law, with the democratic legitimation of law guaranteeing that the global law remain in harmony with recognized moral principles.

The difficulty with the *foedus pacificum*, according to Habermas, is that it lends itself to a false coding of legally protected political and state actions, such that the actions are themselves falsely moralized and judged according to the criteria of ‘good’ and ‘evil.’ They are then criminalized and judged according to the criteria of ‘legal’ and ‘illegal.’ The legal implementation of cosmopolitan law, however, requires the presupposition of an authority that judges impartially and fulfills the conditions of neutral criminal punishment. The politics of human rights undertaken by a world organization only turns into a fundamentalism of human rights when the organization undertakes an intervention that is in fact nothing more than the struggle of one party against the other, and then uses a moral legitimation as a cover for a false juridical justification. The world organization (or: the alliance acting in its name) does indeed engage in the “deception of humanism” to the extent that it portrays what is actually a military confrontation between two warring parties as a neutral police action justified by actual law and by the judgments of a criminal court. Perpetual peace thus requires a positive system of law with legal procedures of application and implementation, and fundamentalism about human rights is to be avoided through

⁸⁶ Habermas, *ibid.*, p. 140.

the cosmopolitan transformation of the state of nature among states into a legal order.

Conclusion:

Habermas's World Parliamentary Democracy, based on the constitution of a reformed United Nations, is superior to Rawls's Society of Peoples—the contemporary ideal of peace must not subordinate the interests of individual persons to the peoples to which they belong, it must be in accordance with the development of a post-Westphalian order, and it must allow for the further development of Kant's idea of a law of world citizenship. Cosmopolitan law, based on the rights of the world citizen, is to specify those rights that individuals have irrespective of the society to which they happen to belong, and are to further reflect the independence of individuals from any particular society, with human rights understood as the bases of claims by individuals against their own governments and as justifiable grounds for political action by the NGOs that compose international civil society. Such cosmopolitan rights are a guarantee that people are to be entitled in certain ways by virtue of their characteristics as human beings and independently of considerations that might be particular to their own institutions and political cultures.

According to Rawls, liberal cosmopolitan justice is erroneously predicated on the idea that liberal democratic societies are the only acceptable societies and, further, that all individual persons are to have the equal rights and freedoms of

citizens in a world liberal constitutional democracy. For Habermas, liberal cosmopolitan justice is the path to peace, as the institutionalization of the cosmopolitan rights of individual persons is a way of curtailing and delimiting state sovereignty such that basic standards and values can be set for the treatment of all during war and peace. Cosmopolitan law creates powers and constraints, and rights and duties, which transcend the claims of nation-states and which have far-reaching national consequences to the extent that elements of such law define and seek to protect basic humanitarian values which can come into conflict, and sometimes contradiction, with national laws.

Cosmopolitan law necessary limits the sovereign powers of states, as does the concept of a world state. Kant held that the best model for perpetual peace is that which adequately balances the sovereign rights of states with the cosmopolitan rights of individuals, with the cosmopolitan world body being that which affirms the inviolability of human rights and the inviolability of state's rights. While Habermas's World Parliamentary Democracy seeks to limit the rights of states, it is not the case that the state entirely withers away in his conception; the General Assembly remains an egalitarian institution that continues to be representative of states, while supplemented with a second chamber of world citizens. The second chamber represents a shift in the constitution of the present form of the United Nations, as does Habermas's argument that the UN must be reformed so as to give the world organization a monopoly over the means to violence and thus as having a military force under its own command. By transferring the *jus belli* of existing states to a cosmopolitan

world body, Habermas wishes to establish a legal order that protects human rights, not by condemning them from a moral point of view, but by prosecuting them as criminal actions within the framework of a state-organized legal order according to legally institutionalized procedures.

Habermas argues against Kant's normative principle of the state-as-moral-person, as well as the moral (political) basis of the *foedus pacificum*, and argues in favour of a world republican constitution with strong executive, legislative and judiciary elements. The question, then, concerns whether Habermas's model is the most likely to result in a 'soulless despotism'—must the ideal of peace necessarily seek to affirm the institutionalization of a single, unified, global system of law and litigation? Must the *jus belli* of existing states be wholly transferred to the world body? This is a difficult point—Habermas seeks to further nullify the sovereign powers of states; however, it was argued that a world republican constitution need not be thought of as any more detrimental to the sovereign rights of states than a civil republican constitution is to the civil rights of individual persons. A purely cosmopolitan world constitution, made up of radically stateless individuals, is nonsensical, and a centralized system of law and litigation need not entirely eradicate the sovereign rights of states in that a binding global law might even more firmly entrench a state's right to self-determination.

Conclusion:

Kant's *Perpetual Peace* offers two alternatives for the legal form of peaceful world political association—the *foedus pacificum* and the concept of a world republic—and his arguments in favour of the league of nations and against the idea of world government are inconsistent and contradictory in that the *foedus pacificum* is justified as a postulate of political right but paradoxically does not provide either the practical mechanisms nor the theoretical foundations for the enforcement of either the law of peoples (law of nations) or the cosmopolitan law of world citizenship. His rejection of the world state can be understood as the result of his concern with state sovereignty, as he argues that the best model for perpetual peace is that which adequately balances the sovereign rights of states with the civil and cosmopolitan rights of individual persons. It was nonetheless argued, against Kant, that the idea of a world republican constitution need not be thought of as any more detrimental to the sovereign powers of states-as-moral-persons than a civil republican constitution is to individual persons-as-moral-persons; it was further argued, however, that Kant was perhaps correct to suggest that a world state's coercive powers would undercut the possibility of states *freely* associating with one another and that unification, based on the threat of coercion, is contrary to Kant's claim that a lasting global peace must be premised in principle on the rejection of the threat or use of force among states.

John Rawls's Society of Peoples is modeled after Kant's *foedus pacificum*, but is modified in such a way so as to include nonliberal societies into the political association. Whereas Kant argued that the league of nations must be

composed of republican (liberal) polities and underwritten by a law of world citizenship, Rawls argues that the contemporary ideal of peace must not exclude nonliberal societies; this theoretical position has the consequence, however, of dispensing with Kant's cosmopolitan law of world citizenship. For Rawls, the cosmopolitan point of view is prejudicial to nonliberal societies in that they do not have a concept of the person as being 'free and equal in rights and dignity' (Article 1 of the UDHR) and that such an understanding cannot, therefore, provide an adequate moral (political) basis for the determination of the moral principles that are to regulate the relations of liberal to nonliberal societies. Such arguments were shown to be inadequate in that Rawls's moral principles for the Law of Peoples are derived solely from the perspective of peoples, with the result that the interests of individual persons are mediated by the peoples to whom they belong. Rawls does not specify the rights that individuals persons have regardless of the society to which they belong and which further reflect the independence of individuals from any particular society.

Kant was correct to suggest that principles are needed to govern the relations between states, but likewise that cosmopolitan principles are required to govern the relations between *all* moral persons—*ius cosmopolitanum* seeks to develop principles for “the constitution conforming to the law of world citizenship, so far as men and states are considered as citizens of a universal state of men, in their external mutual relationships.” Under contemporary conditions, a properly formulated international original position ought to be expanded so as to take account of those peoples who are not organized into states (national

minorities and oppressed populations) as well as non-state associations (corporations and NGOs); more importantly, however, the international original position must be supplemented with a cosmopolitan original position.

A cosmopolitan original position does not straightforwardly entail the creation of the single, unified world state, as it is not the case that the representatives of individual world citizens would necessarily affirm the creation of a world state any more than the representatives of peoples-as-moral-persons would. It does imply, as Rawls even admits, that the representatives of individual (liberal and nonliberal) persons would regard themselves as ‘free and equal in dignity and rights’ on the cosmopolitan world stage and thus deserving of rights that are to guarantee that persons are entitled in certain ways by virtue of their characteristics as human beings and independently of the considerations that might be particular to their own institutions and political cultures.

Rawls’s rejection of the cosmopolitan point of view has further implications for the ‘problem of coercive power.’ In Kant’s sketch, the problem of coercive power referred to the difficulty that resulted as a consequence of the theoretical aporias in his arguments in favour of the *foedus pacificum* as a moral arrangement and against the idea of world government as a legal association. Kant’s *foedus pacificum* provides neither the theoretical foundations nor the practical mechanisms for the implementation and enforcement of either the law of peoples or the law of world citizenship, and implied that a lasting global peace must be predicated in principle on the rejection of the use of force between states, including that of a world state. In Rawls’s Society of Peoples, on the other hand,

perpetual peace is understood to be a function of perpetual war and the question of “toleration” is central to his position. However, the Law of Peoples is not like Kant’s *ius gentium* in that it is not a body of principles universally accepted by all states, nor is it intended to constitute a reasonable/decent basis for the peaceful coexistence of *all* existing states. There is no effort to justify the Law of Peoples to so-called outlaw states, and it is difficult to see how one is to justify intervention into societies not represented in the international original position.

Moreover, without a cosmopolitan original position, it is unclear on whose behalf one would undertake such intervention, and finally, given the privileging of peoples over persons, it is not altogether clear how one can formulate an adequate conception of a just war that properly distinguishes between the rulers of states and the civilians of those states. An even larger question arises with regard to Rawls’s concept of a *just* war—the Society of Peoples is a moral (political) association between liberal and nonliberal peoples who do not systematically subscribe to the dictates of the Charter of the United Nations. The Charter is, by definition, prejudicial to nonliberal societies and can be thought of as simply embodying Western, liberal democratic principles. The problem, then, is that the Society of Peoples lacks a proper basis for *jus ad bellum* (the moral justification for going to war): in the absence of a cosmopolitan world body whose dictates are subscribed to by all peoples/states and the individuals who compose them, and in the absence of the world executive, legislative and judicial body, who is to judge whether the cause of intervention undertaken by the Society of Peoples is just?,

who is the 'right authority,' and how is one to decide if the war is undertaken with a right intention, as a last resort, and with its final goal that of an emergent peace?

Habermas's World Parliamentary Democracy is superior to the sketch put forth by Rawls, as the contemporary ideal of peace must not subordinate the interests of individual persons to the peoples to whom they belong, it must be in accordance with the development of a post-Westphalian order and it must all for the further development of Kant's idea of a law of world citizenship. Habermas rejects Kant's Westphalian normative principle of the state-as-moral persons, as well as his arguments in favour of the *foedus pacificum*, and seek to institutionalize Kant's idea of a cosmopolitan law based on the rights of the world citizen. While this does, of course, imply a limitation on the sovereign rights of states, Habermas's reformed United Nations is a cosmopolitan conception that leaves room for the freedom and equality of states in the General Assembly; it is, however, to be a parliament that shares its powers with a second chamber composed of the representatives of the totality of world citizens.

The United Nations, in its present form, can be understood as an illustration of Kant's *foedus pacificum* to the extent that it lacks the theoretical foundations and practical mechanisms for the implementation and institutionalization of the law of peoples and the law of world citizenship. Habermas's main contribution to the debate over Kant's *Perpetual Peace* is his argument that the UN ought to be reformed so that the UN has a monopoly over the means to violence and therefore as having a military force under its own command. The element of legal obligation requires that the World Court is

always in session and able to obligate national governments to abide by the dictates of a supreme executive, legislative and judiciary power. By transferring the *jus belli* of existing states to a cosmopolitan world body, Habermas wishes to establish a legal order that protects human rights, not by condemning them from a moral (political) point of view, but by prosecuting them as criminal actions within the framework of a state-organized legal order according to institutionalized legal procedures. The juridification of the cosmopolitan state of nature depends upon the legal presupposition of an authority that judges impartially and fulfills the conditions of neutral criminal punishment.

Habermas seeks to further nullify the sovereign powers of states, and by transferring the *jus belli* of existing states to the United Nations, it might be objected that Habermas's World Parliamentary Democracy is a sketch on the order of Kant's 'soulless despotism.' This is a difficult point—it was argued that a world republican constitution, and the institutionalization of a supreme executive, legislative and judiciary body, need not be thought of as any more detrimental to the sovereign rights of states than a civil republican constitution is to the civil rights of individual persons. A purely cosmopolitan world constitution, made up of radically stateless individuals, is nonsensical, and a centralized system of law and litigation need not entirely eradicate the sovereign rights of states: a binding global law might even more firmly entrench a state's right to self-determination. Unification, based on the threat of coercion, is nonetheless contrary to Kant's claim that a lasting global peace must be premised on the rejection of the threat or use of force among states, including that of a

world state. Be that as it may, the theoretical aporias in Kant's reasoning in favour of the *foedus pacificum* and against the concept of a world republican constitution means that he does not provide any real basis for Rawls's contemporary rejection of the moral and legal principles underlying the United Nations. The contemporary problem of the possibility of perpetual peace requires that the existing international order be pushed in the direction of a world constitution with legislative, executive and judicial elements, and requires above all the permanent implementation and institutionalization of a World/International Court.

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