
Immanuel Kant, Cosmopolitan Law and Peace

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Two centuries ago Immanuel Kant published one of his most celebrated political writings, *To Perpetual Peace. A Philosophical Project*. He introduced cosmopolitan law, which has puzzled various generations of scholars. This concept is examined by way of a comparison of Kant's contemporary international theories. It is argued that it plays a crucial role in Kant's system of International Relations. While on the one hand cosmopolitan law safeguards a state's sovereignty vis-à-vis other states, on the other it is an innovation which allows the international community to monitor the internal affairs of its members. The concept can be seen as a forerunner of the Universal Declaration of Human Rights, sharing with it the idea that some rights have a universal value even if they are not actually protected by any secular institution.

Today, *To Perpetual Peace. A Philosophical Project*¹ is considered the ancestor of a widely debated hypothesis of contemporary International Relations theory, namely, that democracies do not fight each other. The connection between Kant's ideas and the current debate on International Relations was emphasized more than a decade ago by Michael Doyle (1983: 225): '[Kant] predicts the ever-widening pacification of the liberal pacific union, explains the pacification, and at the same time suggests why liberal states are not pacific in their relations with nonliberal states'. Since then, the literature on this subject refers to Kant as the main forerunner of the 'democracies do not fight each other' hypothesis (see, e.g., Russett, 1993; Sørensen, 1993).

However, the connection between the national and international dimensions of Kant's political ideas has yet to be fully explored. This article discusses a conceptual innovation, cosmopolitan law, which Kant introduced in *Perpetual Peace*. I have argued (Archibugi, 1992; Archibugi and

Voltaggio, 1991) that this is an anticipation of the Universal Declaration of Human Rights proclaimed by the United Nations in 1948, laying the theoretical foundations for a model of international society very similar to that cherished by the UN and other international organizations in a number of reform bills. The conceptual innovation of cosmopolitan law also indicates that Kant did not believe that a peaceful and 'democratic' international society could be developed just by democracy being achieved within individual countries, but rather that it also required the establishing of appropriate institutions and the development of a consistent body of law. This essay seeks to explore the significance of cosmopolitan law in greater detail by: (i) identifying the historical and theoretical sources which Kant drew from; (ii) establishing the concept's role in Kant's political theory and, more specifically, in his conception of International Relations.

Over the last two centuries, scholars have asked what was the nature of Kant's cosmopolitanism. Authors such as Martin Wight (1991) and Hedley Bull (1977) have interpreted Kantian cosmopolitanism as an aspiration to create a society of individuals independent from states. Others, such as F.H. Hinsley (1963) and Norberto Bobbio (1969), have interpreted the concept of cosmopolitan law much more narrowly as a set of rules designed to regulate a state's relations with the citizens of other states (and hence corresponding in modern-day legal terminology to international private law). The variousness of these interpretations is also due to the existence of two concepts used in Kant's writings. The first is the wide concept of 'cosmopolitanism', and relates to Kant's philosophy of history no less than to his political theory; the essay *Idea for a Universal History with a Cosmopolitan Purpose* is probably the most developed articulation of it. The second and much more specific concept is 'cosmopolitan law', introduced in *Perpetual Peace* and reaffirmed in the *Metaphysics of Morals*.

Kant does not provide a full explanation of what he means by cosmopolitan law, but it may be possible to dispel this obscurity somewhat by considering the philosopher's sources and the specific historical features of his time.

This article contends that cosmopolitan law plays a crucial role in Kant's system of International Relations. First, it is a body of law which is addressed to states, especially European states. Kant argues that some of the basic rights states guarantee to their own citizens should also apply in other states or in state-less communities, such as those of the new world. Second, cosmopolitan law opens a channel which allows international society, including individuals, to interfere in the internal affairs of each state in order to protect certain basic rights. In Kant's words, 'the peoples of the earth have thus entered in varying degrees into a universal community, and it has

developed to the point where a violation of rights in one part of the world is felt everywhere' (Kant, 1795: 107–8).

Cosmopolitan law somehow 'compensates' Kant's rejection of the people's right to rebellion. As will be shown, all normative systems of the natural law tradition authorized either the subjects or other states (and sometimes both) to the recourse of violence against state authority if the latter violated natural rights. Kant, on the contrary, argued that neither the subjects nor other states should be legally allowed to resist the sovereign. But Kant opens another channel of non-violent interference, that of cosmopolitan law.

In the first part of this article, I analyse the sources of the concept of cosmopolitan law, identifying five fundamental ingredients:

- (1) The doctrine of natural law and, more precisely, the *jus gentium*. Although Kant kept aloof from it, the *jus gentium* doctrine was one of the main reference points for 18th century international theory.
- (2) Perpetual peace projects, another tradition typical of Kant's time. Although this tradition is generally regarded as much less important than the first one, for Kant it appeared to be a more appropriate reference framework in which to express his ideas to the point he used its terms in the very title of his booklet.
- (3) The US Declaration of Independence and the French revolutionary Declaration of the Rights of Man and Citizen. These two historic legal documents transformed some of the natural laws which philosophers had discoursed upon for centuries into positive laws.
- (4) Cosmopolitanism as a typical Enlightenment ideal. *Cosmopolis* was almost a slogan for the Age of Enlightenment, the expression of purposive political action to foster the birth of universal 'reason' in whose laws and under whose rule all human beings might recognize themselves.
- (5) The critical philosophy of reason itself, which, in the years following the French Revolution, Kant attempted to apply to both law and international relations.

The second part of the essay presents and discusses cosmopolitan law in terms of the following four points:

- (1) The meaning he attributes to the tripartition of public law into *state*, *international* and *cosmopolitan*. The philosopher shuns the classic domestic law/international law dichotomy which came to the fore midway through the 18th century, becoming the dominant legal paradigm after the Restoration.
- (2) The reasons why Kant, unlike many of his followers, denies the people's right to insurrection against state authority.

- (3) The brief life of legal cosmopolitanism, nipped in the bud by the Napoleonic Wars first and the Restoration later.
- (4) The political limits of Kant's design for international relations, which seldom ventures beyond the realm of moral peroration.

The value of the cosmopolitan law concept is not confined to the history of political theory. Thanks to its astonishing vitality, the notion might serve to resolve some of the contradictions of the international arrangement today, providing a foundation for projects for the transformation of international organizations.

The Ingredients of Cosmopolitan Law

The Jus Gentium

The *jus gentium* doctrine is Kant's starting-point. He was of course well acquainted with its tradition: in the years between 1767 and 1788 he held as many as twelve courses on natural law at the University of Königsberg, and he frequently cites the authors of the school in his own works. In an essay written in 1786 he carefully compiled a list of the names of the twenty-seven principal expounders of the doctrine, from Grotius to his own contemporaries (Kant, 1786: 807–12). Yet Kant himself stood aloof of the tradition. In *To Perpetual Peace*, he even went so far as to characterize three of its most celebrated authors — Grotius, Pufendorf and Vattel — as 'sorry comforters', one of the most polemical expressions he was ever to use in his writings.

This does not mean that Kant underestimated the tradition's worth. On the contrary, he fully acknowledged three of its essential points of reference: (a) the central role of states as actors in International Relations; (b) the conditions authorizing the use of violence both between states and inside them; (c) the title of individuals to inalienable rights. Let us deal with these three points one by one.

(a) Although it is now considered antiquated and a synonym of international law, the latin term *jus gentium* originally had a different, much broader meaning. In the Roman world, *jus gentium* also designated relations with non-state communities. In the 16th and 17th centuries, both the Spanish school and authors such as Alberico Gentili and Grotius embraced not only law external to the state, hence relations between sovereign states, but also relations between sovereign states and individuals belonging to non-state communities (those of post-Columbian America, for instance), as well as the rights and duties of sovereigns vis-à-vis the subjects of other states.

It is no coincidence that *jus gentium* developed inside natural law, and

that it was closely linked to the natural law tradition until the early 19th century. It is enough to glance through the titles of treatises written on the subject in the 17th and 18th centuries to appreciate the diffusion of the dual term *jus nature et gentium*. In the absence of a recognized supranational authority, relations between sovereign states could be regulated only in compliance with rules uncoded into laws and treaties.

Following the rise and consolidation of national states, the *jus gentium* ultimately coincided with interstate law.² This process was only brought to an end towards the middle of the 18th century, thanks to the publication of two great treatises — with which Kant was most certainly acquainted — by Christian Wolff (1749) and Emer de Vattel (1758). In terms of the effective principles of the law of nations, the differences between the two works are limited, Vattel's being largely a translation of Wolff's. Be that as it may, the two authors diverge on one decisive point, that of the existence — be it effective or hypothetical — of a supranational legal authority.

Wolff made an explicit distinction between *natural* (or necessary) and *voluntary* law. The *natural* law of nations imposes on single nations conduct grounded in respect of the rights of other nations, hence in respect of the rights and duties which each sovereign state has vis-à-vis the subjects of another state, and originates solely from the force of moral law. The *voluntary* law of nations is a positive law grounded in *consensus praesumptus* — that is, a law whose rules are based on domestic public law. It contemplates a sort of tacit or potential consent by each single nation to adjust its relation with others to general normative principles, such as the right of asylum, individual rights, the duty to respect obligations among nationals and citizens of other nations, and so on. In Wolff's words:

For this reason the law of nations, which we call voluntary, is not, as Grotius thought, to be determined from the acts of nations, as though from their acts their general consent is assumed, but from the purpose of the supreme state which nature herself established, just as she established society among all men, so that nations are bound to agree to that law, and it is not left to their caprice as to whether they should prefer to agree or not. (1934 [1749]: 6)

Wolff did not feel that the introduction of voluntary law besides treaty-based law (in Wolff's terminology *stipulative law*) sufficed to solve the crucial problem of the law of nations, namely, the absence of an institution invested with the authority and powers necessary to introduce and apply rules of this type. To fill the gap, Wolff argued that, just as individuals in the state of nature belong to a single society, so nations ideally belong to a society, a *civitas maxima*, as well. It should be considered 'a kind of democratic form of government. For the supreme state is made up of nations as a whole,

which as individual nations are free and equal to each other' (Wolff, 1934 [1749]: 16, §19).

Single states are thus ideally subordinated to states as a whole. Wolff even goes so far as to argue that, 'in the supreme state the nations as a whole have a right to coerce the individual nations, if they should be unwilling to perform their obligations, or should show themselves negligent in it' (Wolff, 1934 [1749]: 14, §13). This intervention envisages the existence of a supranational authority, the *rector* (Wolff, 1934 [1749], §21), entrusted to govern the *civitas maxima*.³

The concrete realization of Wolff's ideas would lead to something very similar to that envisaged by some perpetual peace projects, most notably those of Crucé and Saint-Pierre, and, to some extent, to the creation of a supranational authority not unlike the League of Nations or the United Nations.

Other than these radical assertions (which debar him *de facto* from the law of nations tradition), Wolff limits the scope of *civitas maxima*. He regards it as a legal fiction and views the hypothesis that it be endowed with autonomous branches as absurd. Yet it is this fiction which allows Wolff to derive the positive law of nations from natural law: states should interact with other states *as if* a *civitas maxima* would exist, and this would imply that they should respect the normative principles of the law of nations. The reason why Kant spared Wolff the epithet of 'sorry comforter' perhaps has something to do with his attempt to hypothesize the formation of a power capable of umpiring the conduct of states.

The greatest difference between Wolff's legal system and Vattel's is that, for the latter, the very idea of *civitas maxima* constitutes a threat to the principle of sovereignty. 'I find the action of such a republic neither reasonable nor well enough founded to deduce therefrom the rules of a Law of Nations at once universal in character, and necessarily accepted by sovereign states', he wrote (Vattel, 1916 [1758]: 9a), adding that, 'Of all the rights possessed by a Nation, that of sovereignty is doubtless the most important, and the one which others should most carefully respect if they are desirous not to give cause for offence' (Vattel, 1916 [1758]: 131, §54).

One of the elements which Kant borrows from the law of nations is his acceptance of the formal equality of states as members of the international community together with the related principle of non-interference. One of the preliminary articles in his hypothetical peace treaty reads: 'No state shall forcibly interfere in the constitution and government of another state' (Kant, 1795: 96). As we shall see, in his system of international law, Kant attributes a well-defined, non-fictional role to *civitas maxima*.

(b) But in one respect — the legal authorization of the use of force — Kant explicitly keeps his distance from the law of nations. The problem of

sovereignty is in fact directly connected with the regulation of conflict: it is no coincidence that the most relevant part of *jus gentium* treatises is devoted to wars and their division into just and unjust. In these treatises the legitimacy of the recourse to war is considered under two principal cases: (i) the use of force in the course of conflicts between states; (ii) a state's use of force in conflicts inside another state.

Kant regards the use of force as illegitimate in both cases. As far as the use of force in controversies between states is concerned, any attempt to define a war as 'just' is, in his view, unfounded. From the legal standpoint, the idea of just war is in fact meaningless in the absence of a legitimate supranational authority, since each party would be obliged to judge about the legitimacy of its own actions. From the factual point of view, Kant notes that states take pains not to abide by the precepts envisaged in the manuals of the law of nations (concluding ironically that, 'there is no instance of a state ever having been moved to desist from its purpose by arguments supported by the testimonies of such notable men' (Kant, 1795: 103)). Kant was in any case not against the recourse to war; he simply did not consider it possible to apply the concept of law to organized violence promoted by states against other states. For Kant, the terms *law* and *war* contradict one another.

The second question, that of the intervention of one state in the domestic conflicts of another, remains open in the *jus gentium* tradition, but, as we shall see, not for Kant. It is essential to note that in all normative *jus gentium* systems, there is always *at least one* legally legitimate way of forcibly opposing the state's authority if it performs illegal acts against its subjects. But who is authorized to use force against the sovereign who violates 'natural' law? The sovereigns of other states, the subjects of the sovereign, or both? On this point, *jus gentium* theorists diverge conspicuously.

Some of them, Grotius first and foremost, deny the right of subjects to rebellion, arguing that another state can intervene against a sovereign who violates natural law (normally referred to in current legal terminology as a humanitarian intervention): 'And indeed tho' it were granted that subjects ought not, even in the most pressing necessities, to take up Arms against their Prince [. . .] we should not yet be able to conclude from thence, that others might not do it for them' (Grotius, 1916 [1625]: 411, §3; see also Vincent, 1990).

Other authors, amongst whom Wolff and Vattel, turn this position on its head. They maintain that authorizing one sovereign to intervene against another risks opening the floodgates to all sorts of interference. Vattel's critique of Grotius is significant in this respect:

It is surprising to hear the learned and judicious Grotius tell us that a sovereign can take up arms to punish Nations which are guilty of grievous crimes against

natural law . . . Did not Grotius perceive that in spite of all the precautions added in the following paragraphs, his view opens the door to all the passions of zealots and fanatics, and gives to ambitious men pretexts without number? (Vattel, 1916 [1758]: 116, §7)

To avoid this kind of risk, the best solution is to establish once and for all that, as the title of one of Vattel's paragraphs states, 'A sovereign may not make himself judge of the conduct of another' (Vattel, 1916 [1758]:131, §55).

On the other hand, Wolff and Vattel follow Locke in arguing the right of subjects to rebellion. Only when rebellion has escalated into civil war, hence at the moment in which the pact between sovereign and his subjects has been broken *de facto*, is another state legally authorized to intervene not only, as generally allowed, to support the sovereign, but also to support the rebel party. In the words of Vattel:

But if a prince, by violating the fundamental laws, gives his subjects a lawful cause for resisting him, any foreign power may rightfully give assistance to an oppressed people who ask for its aid . . . hence, whenever such dissension reaches the state of civil war, foreign nations may assist that one of the two parties which seems to have justice on its side. (Vattel, 1916 [1758]:131, §56)

However complex and ambivalent Kant's position on the people's right to insurrection may be,⁴ he plainly regards both the intervention of one state in the affairs of another and the right to resistance of subjects as illegitimate. It may be that Kant sensed contradictions in a legal system which envisaged the positive right to resistance. The fact remains, however, that he refuses to recognize the legality of any type of violence exercised against the state institution.

(c) We thus come to the question of the rights recognized to individuals. Plainly, the problem of the use of force against the sovereign had to be qualified by the type of violation of the law of which he was guilty. The identification of inalienable rights — and as such independent from the positive rights effectively recognized within each state — was the principal theoretical problem for the natural law school: only the ascertainment of their violation by the sovereign made the recourse to violence — either by other states or by the subjects — legitimate.

But how was it possible to establish when an intervention, external or internal, was legitimate in the absence of a set of rules to which either states or individuals could refer? Rousseau had made a devastating critique of natural rights theory, in which he pointed out how the concept of law itself is valid only in the context of a community. To recognize given rights as 'natural', it was necessary to identify a set of values which might be applied

to all or most human communities. Kant's position against the people's right to resist against their sovereign is probably linked to the fact that the debate on natural rights remained theoretically unresolved due to the absence of supra-national institutions with the authority to sanction when and how the subjects had a right to resist.

In Kant's time, the basic assumptions of the law of nations pertaining to individual rights had a precise political connotation insofar as many real or presumed domestic conflicts had the habit of turning into international conflicts. To authorize a state's intervention in a civil war in another state could mean supporting both the legitimacy of French military intervention on the far side of the Rhine to back German Jacobins and that of a league of European powers against revolutionary France in aid of the monarchic party or the insurgents of the Vendée. It is by no means a coincidence that scholars who have interpreted Kant's writings in their historical context have glimpsed a stand against both of these eventualities.⁵ Be that as it may, it is worth stressing that, from the theoretical point of view, Kant denies the legal value of any form of violence against the state which might, as Vattel suggested, arouse the furies of zealots and fanatics. Conversely, Kant must have been aware that the denial *sic et simpliciter* of the people's right to revolution might be viewed as a seal of approval on any action taken by a sovereign to the detriment of his subjects, and thus as a suppression of individual rights other than those recognized in the positive legal system and by the sovereign. We shall now see how cosmopolitan law enabled Kant to recover an essential aspect of natural law — that is, the protection of individual rights over and above those effectively recognized within each state.

Perpetual Peace Projects. Union of States or Universal Republic?

The tradition of perpetual peace projects has much in common with that of *jus gentium*. Insofar as they developed side by side, they were stimulated by the same historical events. They were both products of contractualism and both pose the problem of the regulation of relations between states — first and foremost, that of peace and war. Yet although they lived alongside one another, none of their respective expounders ever felt the need to measure himself against the rival tradition. We can see this simply by observing the infrequency of references by authors of the one to those of the other. No less an author than Rousseau, who had no shortage of occasions to pronounce himself on the idea of perpetual peace, failed to elaborate a systematic comparison either with natural law or with the law of nations.⁶ In this perspective, perpetual peace projects appear to be a tradition of thinking on

international society parallel, and to a large extent alternative, to that of the law of nations.

It was Kant who eventually considered the two traditions jointly. Writing a perpetual peace project as opposed to a treatise on the law of nations, the position he assumed was clearly favourable to the first tradition. Even before the publication of *To Perpetual Peace*, in *Idea for a Universal History with a Cosmopolitan Purpose* (Kant, 1784) and *On the Common Saying: 'This May Be True in Theory, but it does not Apply in Practice'* (Kant, 1793), he judges Saint-Pierre's and Rousseau's idea of a great league of peoples as wild and wonderful, but also positive.

The tradition of perpetual peace projects differs from the law of nations chiefly because it opposes all wars rather than seeking to regulate them. To achieve their objective, perpetual peace projects purport to create special supranational institutions to judge the conduct of single states. As we have seen, an institution of this kind was never provided for by the law of nations, and even in its most radical versions — that of Wolff, for example — it was used at best as a legal fiction. Saint-Pierre's *Project* constituted the principal point of reference for the debate on perpetual peace. Elsewhere (Archibugi, 1992) I have argued that it may be considered the paradigmatic expression of a pyramidal model of international organization whose essential aspects may be synthesized as follows: (i) The Union takes the form of a council of sovereigns, in which each is entitled to one vote; it is thus composed of sovereigns and not of their subjects. (ii) The use of force in the international sphere is allowed only if it is authorized and directed by the Union. Force may be used against states which violate the Union's rules or decisions. (iii) The Union cannot interfere in the way in which each sovereign exercises his power within his own state. At the same time, no condition is placed on the nature of the political constitution in force in the member states. (iv) If subjects rebel against their sovereign, the Union is sanctioned to intervene to punish them, and to restore the existing regime.

The model of international organization designed by Saint-Pierre is very different from that of other projects. It is no coincidence that some of the greatest thinkers of the Enlightenment, from Voltaire and Rousseau onwards, regarded it as a sort of mutual alliance among despots to conserve their arbitrary power. But although it had an essentially conservative connotation, Saint-Pierre's *Project* became a vital point of reference in the debate on the foreign policy of revolutionary France.

Both the destiny of France and that of the entire continent of Europe depended on the decisions of French revolutionaries. Could the revolutionary regime in one country be consolidated while the rest of Europe succumbed to absolutism? Was it possible to 'export' the conquests of revolution with war? And if war was not considered an acceptable means,

what other channels could be used to make sure that the liberties conquered by the French spread elsewhere?

In the French National Assembly, two parties lined up against one another: one believed that the conquests made in France would be insufficient if they were not extended throughout Europe; the other pointed out that war was an ally of despotism inasmuch as it implied a despotic management of power. In this way conflict might cause the liberties conquered to be lost, thus fostering the return of tyranny.

One of the leaders of the pro-war party was Anacharsis Cloots, a colourful Prussian baron who had moved to Paris and had been elected to the National Assembly. The butt of his criticism was Saint-Pierre's Union, which he described as a 'bizarre and ridiculous congress'. Cloots's own proposal was that the conquests of the French Revolution should be extended by war, thus giving life to a sort of 'Universal Republic' inspired by the ideals of liberty, equality and fraternity. Whereas Saint-Pierre proposed a voluntary confederation of peaceful states, Cloots reversed the perspective, invoking a continent-wide war whose outcome would be the setting up of a European republican state.

Of course there was no shortage of more sensible thinkers in France who were afraid that war might lead to political upheaval such as to allow the Ancien Regime to return to power in the country. The anti-war party was led by none other than Robespierre, who was critical of the mania of those who wished to make peoples happy against their will. In the crucial year of reckoning, 1793, an unlikely spokesman for the pacifist party was the Marquis de Sade. In a page of remarkable clear-mindedness in *Philosophy in the Bedroom*, he warned his fellow Frenchmen:

Invincible within, and by your administration and your laws a model to every race, there will not be a single government which will not strive to imitate you, not one which will not be honored by your alliance; but if, for the vainglory of establishing your principles outside your country, you neglect to care for your own felicity at home, despotism, which is no more than asleep, will awake, you will be rent by intestine disorder, you will have exhausted your monies and your soldiers, and all that, all that to return to kiss the manacles the tyrants, who will have subjugated you during your absence, will impose upon you; all you desire may be wrought without leaving your home: let other people observe you happy, and they will rush to happiness by the same road you have traced for them. (Sade, 1965 [1793]: 339)

A few months prior to the publication of Kant's project, a revealing pamphlet entitled *Epître du vieux cosmopolite Syrach à la Convention Nationale de France*⁷ was printed in Paris. Its aim was to reconcile somehow the aspiration of the extension of democracy with that of the maintenance of

peace on the continent. The immediate political objective of the pamphlet was to prevent the European powers led by Britain from joining together in a league against France by demonstrating that such a policy would be against the interests of the single members of the coalition.

Contingent aims apart, Syrach also took sides on the question of which form of international organization was the most desirable. His suggestion was for a 'European cosmofederation', which was to originate from the law of nations and a general constitution of Europe:

Projects for a universal congress of nations or a universal peace are dreams that are neither vain nor premature. It would, on the contrary, be a most dangerous precipitancy were a European cosmofederation to come into being without reflection and without a plan in the same way that single states were formed! No! It must not like the latter be the work of force, but rather of enlightenment, of culture and universal maturity. (Syrach, 1795: 154–5)

Another tellingly significant feature of the pamphlet is that it presupposes that states, like individuals, must continue to enjoy given rights even after the setting up of the European 'cosmofederation':

Just as there are rights of man, which man cannot alienate, even if he enters into civil society, just as there are rights of citizens which peoples cannot alienate when they enter into political federations, so there are unalienable rights of states which cannot be sacrificed by states as a whole in the context of a great world federation. (Syrach, 1795: 145)

The writings of Cloots and the cosmopolitan Syrach reveal how, in those years, the debate on peace was related to the overall organization of European states, both domestically and externally. Reviving the formula typical of perpetual peace projects, Kant seems set on explaining which peace project would be compatible with the social aspirations of the peoples of Europe.

Declarations of the Rights of Man and Citizen

We thus come to the third ingredient of cosmopolitan law: the rights of man and citizen sanctioned by the two great revolutions in America and France. It was of course the natural law tradition which laid the theoretical bases for these declarations. That being said, they modified natural law notation profoundly, since rights which had previously been sanctioned in the abstract in the books of a few dozen thinkers were now transformed into positive rights. Although the American and French Declarations of rights had national legal value first and foremost, they were in reality much more ambitious, since they explicitly assumed the universality of these rights and

hence conferred upon them a value which extended beyond the borders of the two states in which they were approved.⁸

The critics of the Declarations of rights had good reasons for arguing that the documents had scarce legal value outside the borders of the countries that had approved them. Paradoxically, reactionary critics ended up using against the Declarations of rights the same argument Rousseau had used to criticize natural rights; that is, that the very concept of 'right' must refer to a specific community. It is reasonable to believe that Kant was acquainted with the weak theoretical foundations of the Declarations of rights: if he was not, it would be difficult to explain why he failed to make a systematic analysis of them. But unlike Bentham, for example, Kant probably appreciated their finalism: the American and French Declarations could in fact be interpreted as a necessary, albeit provisional, legal step towards a clearer definition of citizens' rights. In this respect, it is possible to interpret the Kantian theory of cosmopolitan law as an attempt to provide a solid theoretical basis precisely for the rights sanctioned by the great revolutions.

Cosmopolitanism as an Enlightenment Ideal

No general history of cosmopolitanism has yet been written.⁹ But the existence of ideal links between human beings — in particular within the intellectual community — independently from their belonging to a specific state, goes back as far as the Stoic tradition. In the 17th century, this doctrine once again became an integral part of European culture, while the term which portrays it most faithfully, *cosmopolis*, recurs over and over again in the vocabulary of the *res publica litteraria*.

For the 18th-century *philosophes*, cosmopolitanism was not only an aspiration but also, largely, a reality. It did of course concern only a limited section of the population — chiefly polyglot intellectuals, errant travellers, debunkers of the established authority and graphomanes. They congratulated one another and called themselves citizens of the world to designate their social caste. There is nothing untoward therefore in the fact that among the cosmopolitans scattered across 18th-century Europe and America, intellectuals of the stature of Voltaire, Benjamin Franklin and David Hume rubbed shoulders with adventurers and tricksters such as Giacomo Casanova, the Count of Cagliostro, Lorenzo da Ponte and Ange Goudar. Each in his own right was an ambassador of Enlightenment ideas.

The concept of cosmopolitanism was equally widespread in the German Enlightenment and the expression *Weltbürgerthum* entered common language. Lessing was keenly defining himself a citizen of the world in as early

as 1758, while Christopher Martin Wieland used the Greek root of the term and its German translation *Weltbürger* to create a synthesis between the idea of statehood and that of humanity:

The cosmopolitan (*Kosmopolit*) obeys all the laws of the state in which he lives, to whose wisdom, legitimacy and common utility he adheres in his role as a citizen of the world (*Weltbürger*), and he submits to the rest in the realm of necessity. He is certainly in agreement with his own nation, but he is equally so with all others as well, and is therefore not prepared to found the well-being, glory and greatness of his homeland on intentional harming or oppression of other states. (Wieland, 1830: 217–18)

In the years following the French Revolution, the adjective ‘cosmopolitan’ took on a more specific meaning, denoting the type of international relations that ought to characterize the whole continent. If Cloots, the self-styled ‘orator of human kind’, turned to cosmopolitans to realize a universal Republic, the elderly Syrach defined himself as cosmopolitan to reassert individual rights no less than the rights of states. During the revolutionary period, the Belgian author Kaunitz even issued a periodical entitled *Le cosmopolite*. The year prior to the appearance of *To Perpetual Peace*, Friedrich Bouterwek published *Fünf cosmopolitische Briefe* in Berlin, expressing his aspiration for a peaceful European constitution. Kant himself had used the adjective ‘cosmopolitan’ before. The word appeared as early as 1784 in the title of the celebrated essay *Idea for a Universal History with a Cosmopolitan Purpose*, in which Kant goes as far as to argue that, ‘a universal cosmopolitan existence will at last be realised as the matrix within which all the original capacities of the human race may develop’ (Kant, 1784: 51).

The same theme recurs in *On the Common Saying: ‘This May be True in Theory, but it does not apply in Practice’*, in which Kant explicitly takes sides on the political events of his time, asserting that:

The distress produced by the constant wars in which states try to subjugate or engulf each other must finally lead them, even against their will, to enter into a *cosmopolitan* constitution. Or if such a state of universal peace is in turn even more dangerous to freedom, for it may lead to the most fearful despotism (as has indeed occurred more than once with states which have grown too large), distress must force men to form a state which is not a cosmopolitan commonwealth under a single ruler, but a lawful *federation* under a commonly accepted *international right*. (Kant, 1793: 90)

In these writings, Kant does not stray far from what was the accepted meaning of cosmopolitanism towards the end of the 18th-century. To define oneself as ‘a citizen of the world’ was to undertake obligations and claim

rights not only vis-à-vis the state one belonged to. In the passage cited, Kant already anticipates one of the central aspects of his later writings; that is, the need to realize an intermediate form of organization somewhere between a league of states and a world state.

Kant's Critical Philosophy

Kant's legal philosophy is of course one application of his theoretical philosophy. That he intended to give *To Perpetual Peace* a strictly philosophical slant is clear from the subtitle, *A Philosophical Project*. This is more than just an expedient to defend himself against possible 'malicious interpretation', nor must it be seen solely as a 'saving clause'. The *Project* is *philosophical* in a very precise sense: it is an application of Kant's critical philosophy. The project is in fact based on the assumption that international relations can be subject to the same criticism as human reason and law.

When they draw up their constitutions, shouldn't states comply with the same imperative which critical philosophy prescribed for individuals — 'to use one's own understanding without the guidance of another'? This would imply that each state, as a moral agent, should be able to choose autonomously its own political constitution. To generalize this principle would lead to accept the fact that the world is populated by states with totally different political constitutions, each of them informed by values dictated by its own understanding. But Kant assumed that there was a single human reason. Likewise, he went so far as to state that there was a single acceptable political constitution for all nations, that is, the republican one.

However, Kant was also aware that states could enter into contact with each other only by recognizing their reciprocal existence and the diversity of their constitutions. The refusal of diversity would have given freedom of access to any form of interference by one state in the constitution of another, and therefore put a strong limit to the autonomy of each state.

Such theoretical questions had been addressed, not always successfully, by 18th-century internationalist thought and are inherent to Kant's ideas on international affairs. But Kant had an extremely powerful theoretical tool at his disposal — his critique of human reason. The development of cosmopolitan law could be interpreted as an application of Kant's philosophy to solve these problems: it is the legal innovation which allows each agent to apply its own understanding to judge international events. As we shall see, it is a body of law which is not based on coercion but on its moral authority. In this sense, it is meant to apply Kant's public use of practical reason on an international level.

A View of Cosmopolitan Law

The Tripartition of Public Law

Analysis of the elements which, I believe, constitute the ingredients of cosmopolitan law provides a different view of Kant's writings. The first element which stands out in Kant's legal construction is his negation of the subdivision of public law into state law and international law. The dichotomy had progressively asserted itself in *jus gentium* as the doctrine gradually shed its natural law connotations to assume those of modern international positive law. This evolution had almost come to completion in the second half of the 18th century,¹⁰ when the French Revolution first and the Napoleonic wars later totally changed the historical points of reference of legal reflection. It was only with the Restoration that the dichotomy became the dominant legal paradigm, remaining indisputably so until the approval of the United Nations Charter.

In an era heady with historical upheaval and intellectual fervour, Kant avoided the dichotomy, proposing in its place a *trichotomy* in which public law was divided into *state*, *interstate* and *cosmopolitan*. The second part of *The Metaphysical Elements of the Theory of Right*, dedicated to public law, is in fact subdivided into these three sections. At this stage it is necessary to clarify briefly the meaning Kant attributed to the term *Völkerrecht*. As we have seen, the expression had an ambiguous connotation, referring both to the law of nations and to the 'natural' rights of individuals, viewed as rights autonomous from those of their states. Kant felt the need to specify his use of the term: 'What we are now about to consider under the name of international right or the right of nations is the right of *states* in relation to one another (although it is not strictly correct to speak, as we usually do, of the *right of nations* [*Völkerrecht*]; it should rather be called the *right of states*, *jus publicum civitatum*)' (Kant, 1797: 165). When Kant speaks of the law of nations, we must therefore understand what we refer to today as interstate law.

Let us return to the trichotomy. In *To Perpetual Peace*, Kant outlines it in a passage which makes its connection with his critical philosophy explicit:

We now come to the essential question regarding the prospect of perpetual peace. What does nature do in relation to the end which man's own reason prescribes to him as a duty, i.e. how does nature help to promote his *moral purpose*? And how does nature guarantee that what man *ought* to do by the laws of his freedom (but does not do) will in fact be done through nature's compulsion, without prejudice to the free agency of man? This question arises, moreover, in all three areas of public right — in *public*, *international* and *cosmopolitan right*. (Kant, 1795: 112)

The three branches of law which he indicates thus constitute the way in which man is 'obliged', without jeopardizing his liberty, to act on the basis of a 'secret plan' to realize a domestic and external constitution, which is, in turn, the premise for the full development of human potential. In this perspective, the tripartition of public law seems, *mutatis mutandis*, to perform a function very similar to the Kantian versions of the categorical imperative:

1. Act in such a way as to make your actions become universal.
2. Act in such a way as to treat man, yourself as others, always as an end, never only as a means.
3. Act in such a way that your will may institute a universal legislation, [that is] to give life to a universal realm of ends.

The first version is directed to an individual's behaviour. The second is mainly directed to allow morally-based interpersonal relationships. The third is meant to inspire individual actions to develop a universal legislation.

The three definitive articles of *To Perpetual Peace*, the theoretical core of the work, repropose the same tripartition. The articles present three rules with which each branch of public law must comply if it is to attain perpetual peace.

1. The Civil Constitution of Every State shall be Republican.
2. The Right of Nations shall be based on a Federation of Free states.
3. Cosmopolitan Right shall be limited to Conditions of Universal Hospitality. (Kant, 1795: 99–105)

The first article refers to the state's domestic constitutional system. Imposing the condition of the political homogeneity of different states means moving to a totally different realm from the confederative one which most 18th-century perpetual peace projects belonged to.

But Kant's definition of 'republican' constitution should be clarified. He introduces a distinction between the form of a state, characterized by the individuals which rule it (which could be autocratic, aristocratic or democratic), and the method used to govern the people. The methods to govern are either *republican* or *despotic*. The former is based on the principle of separation of the executive and legislative powers. Also a constitutional monarchy could therefore be a republican system, while he argues that a form of direct democracy is necessarily despotic.

Kant's distinction between democracy and republic has sparked much debate, but it seems that by democracy he meant what we today call direct democracy, and by republicanism what we call representative democracy: 'but if the mode of government is to accord with the concept of right, it must be based on the representative system. This system alone makes

possible a republican state, and without it, despotism and violence will result, no matter what kind of constitution is in force' (Kant, 1795: 102). His definitions do not differ substantially from the meaning which these terms had in the era in which he lived.¹¹

For Kant, the republican system is more inclined to peace than the monarchic system because citizens are called upon to decide the cost of war in the first person: 'If, as is inevitably the case under this constitution, the consent of the citizens is required to decide whether or not war is to be declared, it is very natural that they will have great hesitation in embarking on so dangerous an enterprise' (Kant, 1795: 100).

In the first article, Kant avoids the Scilla of a vague confederation in which each sovereign can exercise despotism at will inside his own state; in the second he avoids being engulfed by the Charybdes of a universal republic. The second article refers in fact to international law, which necessarily implies the existence of states autonomous and independent from one another. If Kant had adopted the ideas of Cloots and the others who wished to set up a universal republic, he would have had to replace interstate law with federative law.

Apparently in direct polemic with the wretched Cloots, who by then had been beheaded, he argued that 'the positive idea of a *world republic* cannot be realised. If all is not to be lost, this can be at best find a negative substitute in the shape of an enduring and gradually expanding *federation*' (Kant, 1795: 105). His position in *The Metaphysics of Morals* is even more explicit: 'This association must not embody a sovereign power as in a civil constitution, but only a partnership or *confederation*. It must therefore be an alliance which can be terminated at any time, so that it has to be renewed periodically' (Kant, 1797: 165). He goes on to remark: 'In the present context . . . a congress merely signifies a voluntary gathering of various states which can be *dissolved* at any time, not an association which, like that of the American states, is based on a political constitution and is therefore indissoluble' (Kant, 1797: 171). It appears clear from these passages that what Kant had in mind, at least from 1795 onwards, was something completely different from a universal state, albeit founded on federal bases. The interpretation of scholars such as Martin Wight (1991), who have turned Kant into a partisan of a universal political organization, is thus untenable.

On the other hand, the fact that Kant also advocated the making of such a 'people's federation' indicates that for him it was not sufficient that the states were governed democratically to guarantee a perpetual peace. Something more was required, namely formal institutional arrangements and collective monitoring of basic rights.

Right to Revolution or Perpetual Peace?

In the first two articles Kant designs the international system that he cherished with a good deal of clarity. What he had in mind was a community of republican states interlinked by a confederation, in which existing controversies might be debated and, if possible, resolved. But since this confederation is founded on interstate law, and on the premise of non-interference in the domestic affairs of states (as Kant declares explicitly in preliminary articles II and V), on the basis of what criteria can the political system in force in a single state be subjected to criticism?

Of course, if they are to adhere to this confederation, states must have a republican constitution, but is a saving clause such as this sufficient for rulers to guarantee citizens' rights? The French experience clearly demonstrated that a republican constitution could be a necessary condition but also that it was insufficient in itself. How were individuals to regulate themselves vis-à-vis a government which degenerated into despotism, especially, as Kant suggested, if neither the insurrection of subjects nor the intervention of a foreign power could be accepted as legitimate? Had he not envisaged the opening of a channel of 'interference' in the domestic affairs of a state, no matter how peaceful and autonomous from other state powers, he would have guaranteed impunity to republican rulers turned despots.

It is my hypothesis that Kant addresses this problem through the legal innovation of cosmopolitan law. He defines the latter in fact as 'a necessary complement to the unwritten code of public and international right, transforming it into a universal right of humanity', and, at the same time, as a necessary prerequisite for 'advancing towards a perpetual peace' (Kant, 1795: 108) — that is, to found peace on respect of individuals as citizens of the world.

Hegel asserted that 'Kant proposed a league of sovereigns to settle disputes between states, and the Holy Alliance was meant to be an institution more or less of this kind' (Hegel, 1991 [1821]: 362). This criticism is entirely appropriate for peace thinkers such as Saint-Pierre, but is wholly inappropriate with reference to Kant. On the one hand, Kant lays down a precise rule with regard to each country's constitution — it has to be republican. On the other, cosmopolitan law is a tool for making an ongoing assessment of the way in which power is handled inside single states. Kant's proposed international society is therefore totally different from what was established by the Congress of Wien.

The few pages Kant devotes to cosmopolitan law in *To a Perpetual Peace* and *The Metaphysics of Morals* have as their starting-point a problem which was widely debated in the realm of *jus gentium* following the discovery of America, namely, the question of the rights it was necessary to recognize to

individuals in pre-state communities. Westerners entered into contact with these communities through state authorities responsible for geographical explorations and non-state organizations such as the famous East India company, often equipped with their own mercenary armies. *Jus gentium* sought to establish the conditions under which both states and private persons were authorized to use force. Although it envisaged certain provisos, these were extremely unrestrictive. It comes as no surprise to note that the broadest authorization of the use of force against uncivilized communities came from the celebrated Locke, the liberal who gave legitimacy to the right to resistance against the state.¹²

The issue of how to deal with non-state communities, which in Kant's system of law is envisaged by neither state law nor interstate law, is addressed under the heading of cosmopolitan law. Consistent with his opposition to the use of force against the institution of the state, Kant denies the right of conquest and, even more so, the lawfulness of the use of force against extra-European populations. Europeans had nonetheless the right to undertake commercial initiatives with these peoples, wherever there was common agreement between the parties. Reiterating an opinion that was common both in the free trade and pacifist doctrines, Kant believed that the commercial spirit is a substitute for and an alternative to war.¹³ As Bobbio has noted, cosmopolitan law thus came into being to regulate both the relations of one state with the citizens of another and the relations of a state with individuals who belong to no state; as *citizens of the world*, these individuals became *juridical* persons.

The subjects of cosmopolitan law were hence first and foremost states. Moreover Kant hurls himself into a polemical attack on those nations which recognize some rights inside their own state, yet are ready to commit the worst atrocities in the new world: 'all this is the work of powers who make endless ado about their piety, and who wish to be considered as chosen believers while they live on the fruits of iniquity' (Kant, 1795: 107). He was well aware that nations which are democratic domestically do not necessarily behave democratically beyond borders. In his tripartition of law, Kant thus presupposes that the laws which republican states recognize to their citizens must be valid for all the inhabitants of the planet. On the one hand, he censures the policy of the powers of the old continent, on the other he applauds that of the French Revolution, whose recognition of citizens' rights extended to the populations of colonies. His position is also tantamount to a critique of one of the outcomes of the American Revolution; namely that, despite the approval of the Declaration of the Rights of Man, slavery continued to be tolerated.

However, cosmopolitan law also seeks to regulate relations between individuals who enter into contact outside the mediation of the state,

including relations between individuals who belong to a state and those who do not. In this sense, cosmopolitan law imposes legal obligations both on individuals and on states, and in so doing becomes an attempt to provide a legal foundation for the rights of the individual regardless of the state to which he or she belongs — hence for veritable rights of citizens of the world. If these rights are recognized, they are valid not only vis-à-vis individuals of other states or stateless individuals, but also — and today we might add, above all — inside the state which effects the recognition. In a word, the guarantee that the constitution of a state is effectively republican is to be traced to its recognizing and respecting cosmopolitan rights both at home and abroad.

Although cosmopolitan rights ultimately perform a function similar to the one which natural law attributed to natural rights, their theoretical foundation is entirely different and much more solid insofar as citizens of the world are at once the possessors of these rights and the ones who, in the final analysis, are called upon to make them apply. This is the meaning we must attribute to the assertion that, ‘a violation of rights in *one* part of the world is felt *everywhere*’ (Kant, 1795: 107–8). As soon as he assumes the role of a citizen of the world, the citizen is called upon to use his reason to assess if and when the rights of his fellows are being violated.

In no way hypocritically, Kant entrusted the *philosophes*, the creators of 18th-century cosmopolitan society, with the task of seeing that citizens’ rights were respected. As depositories of the idea of reason, it was their duty to check that the effective holders of power, the rulers of states, kept the promises written into the republican constitution.

Cosmopolitan law does not of course cancel Kant’s negation of the people’s right to revolution, which had already been judged unacceptable both by the German Jacobins and by his own followers.¹⁴ But Kant uses the concept to fit a multitude of states with different customs and constitutions into his system. As early as 1784, he had argued that, ‘The greatest problem for the human species, the solution of which nature compels him to seek, is that of attaining a civil society which can administer justice universally’ (Kant, 1784: 45). However, the European political situation after the French Revolution made the unlikelihood of achieving this goal within a single state explicit. Thus cosmopolitan law became a *sine qua non* for realizing the cosmopolitan society which was the maximum aspiration of the Enlightenment, traces of which were still to be found in one of Kant’s last academic courses, on *Anthropology From a Pragmatic Point of View*:

The character of the species, as it is indicated by the experience of all ages and of all peoples, is this: that taken collectively (the human race as one whole), it

is a multitude of persons, existing successively and side by side, who cannot *do without* associating peacefully and yet cannot *avoid* constantly offending one another. Hence they feel destined by nature to [form], through mutual compulsion under laws that proceed from themselves, a coalition in a *cosmopolitan* society (*cosmopolitismus*) — a coalition which, though constantly threatened by dissension, makes progress on the whole. This idea is, in itself, unattainable: it is not a constitutive principle (the principle of anticipating lasting peace amid the most vigorous actions and reactions of men). It is only a regulative principle, [directing us] to pursue this diligently as the destiny of the human race, not without solid grounds for supposing that man has a natural tendency toward it. (Kant, 1798: 191)

Cosmopolitan Law after Kant

Is there a history of cosmopolitan law at all after Kant? There would seem not. Although Kant's contemporaries perceived the political implications of *To Perpetual Peace*,¹⁵ cosmopolitan law virtually disappeared from political theory. Even Fichte (1962 [1796]), in his review of his master's project, attaches scant importance to the concept, nor does he seem to have grasped the link which exists between cosmopolitan law on the one hand and the negation of the right to revolution on the other. In *Grundlage des Naturrechts nach Prinzipien der Wissenschaftslehre*, Fichte (1796) accepts the separation of *Völkerrecht* from *Weltbürgerrecht* without appreciating the complexity of Kant's position. His interpretation of cosmopolitan law is extremely limited, confining itself to consideration of the citizen's right to visit other states.

As far as I know, the only treatments of the subject in the Napoleonic era are those by A. P. A. Batain, who published a pamphlet entitled *La paix, système cosmopolite* (with 'Cosmopolis, Pluviôse, Année XII' inscribed in the frontispiece) in Paris in 1802, by E. F. Georgii, who published *De jure generi humani, seu de jure gentium et cosmopolitico* in Stuttgart in 1811, the only legal treatise which sought to acknowledge the Kantian innovation and, finally, a pamphlet entitled *Paix universelle et perpétuelle*, published by an anonymous Cosmopolite in Paris in 1814.

Albeit adding little to Kant's project, these works re-express the hope that Europe might emerge from the Napoleonic wars with a constitution respecting at once peace, the rights of nations and the rights of citizens. Once Napoleon had been defeated, there was no longer room for reflection about the possibility of recognizing individuals' rights outside their condition as subjects. In Vienna, in fact, the conception of solely and exclusively state-centric international law was preemptorily asserted.

The Limits of Kant's Reflection

My analysis thus far has, I hope, demonstrated the reasons why cosmopolitan law is totally different from the natural right doctrine. In the wake of the teachings of the Declaration of Rights following the French Revolution, it was directed at the citizen rather than at man as such. Nevertheless, Kant confined the concept to the realm of moral peroration, since he did not envisage any form of institution capable of sanctioning and applying cosmopolitan law in practice. The historical conditions in which Kant was writing allowed a more radical position.

In the decade following the French Revolution, other authors elaborated peace projects in which they proposed the formation of international tribunals of magistrates designated on the basis of their integrity as opposed to their belonging to one state or another. In 1796, for example, the German publicist Carl Joseph August Hofheim proposed the separation of executive, judicial and legislative powers in the realm of international relations. In *Contract Social surnomé Union Francmaçone*, published in Toulon in 1797, another colourful character, Pierre André Gargaz, proposed the formation of a council of arbitrators from all nations composed of 'citizens of over 40 years of age . . . exceedingly fair, enlightened and capable of acting in every circumstance, pro or contro this or that private citizen or nation or whatever, without bias or prejudice'. In the course of the Napoleonic wars the Russian Enlightenment thinker Vasily Malinovskii (1990 [1803]) proposed the formation of a general union of peoples founded on homogeneous linguistic communities. It would be superfluous here to compare the theoretical influence of these now long forgotten authors with that of the Königsberg philosopher. Their projects were incapable of resolving the complex problems of legally autonomous, but *de facto* highly interdependent, states. Their positions, however, indicate that it would not have been excessively foolhardy, upon recognition of the rights of citizens of the world, to propose their protection through the creation of bodies — devoid of coercive powers, admittedly — independent from states.

Conclusions

In this essay I have sought to solve an enigma — that of the meaning which Kant attributed to cosmopolitan law — which has fascinated many scholars. If my interpretation is correct, this notion plainly performs a crucial role in the Kantian system of international relations. It is ultimately the legal innovation which allows us to imagine an international system founded on:

(i) the existence of constitutional rules corresponding to the representative democracy inside states; (ii) a confederal union of free states in which the principle of non-interference applies; (iii) the existence of individual rights which states should respect. This applies to both their own citizens and to citizens of other states.

The emphasis I place on this, a 200-year-old legal notion remembered today only by a handful of scholars of the history of philosophy, stems from the fact that it might be helpful in resolving some of the legal contradictions in which the international community is currently floundering. The present international system is based on two irreconcilable assumptions: on the one hand, the recognition of the dogma of sovereignty and the principle of non-interference (on which the United Nations Charter is based), on the other a set of rules which, albeit underwritten by the majority of states, envisages no institution entrusted with the task of protecting them.

A return to the Kantian tripartition of public law would allow us to avoid not a few of these conceptual problems. It would enable us to conserve the principle of non-interference without having to accept the dogma of sovereignty uncritically. This is what we see happening today in the numerous projects for the reform of existing international organizations (from the Security Council to the General Assembly to the International Court of Justice) and even for the creation of new ones such as an elective Assembly representing world citizens without regard for their states of provenance or an International Criminal Court (for a review of these proposals, see Archibugi, 1995; Falk, 1995).

The 'fundamental principles of cosmopolitan law' have still to be written, but if legal scholars undertake this research programme, they will realize the utility of setting many of the rules already in force in defence of human rights and the rights of peoples in a sphere distinct from both state and interstate law. This is why, in all likelihood, we can expect to see Kant's tripartition, unjustly shelved in the historical archives of political thought, reappearing on the agenda of international politics.

The interpretation of Kant's ideas suggested in this article also indicate that Kant cannot be considered a pioneer of the hypothesis that democracies do not fight each other, as it is often assumed in this literature (see Doyle, 1983; Russett, 1993; Sørensen, 1993). From the behavioural viewpoint, Kant argued only that democracies are less war-prone than autocracies. Moreover, he was aware that liberal nations seldom apply the principles which inspired their internal regime beyond their borders.

From the normative viewpoint, Kant considered representative democracy within the majority of states a necessary but not sufficient condition for a perpetual peace. Its achievement was in fact also linked to both an

institutional union of states and the development of a code of law which democratic states should respect both at home and abroad.

Notes

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1. I have used H. B. Nisbet's translation of Kant's political writings (Reiss, 1991) with the odd alteration here and there.
2. It is no coincidence that the old terminology was conserved for such a long time. The Latin expression *jus gentium* was translated into English as *Law of Nations* in the early 17th century, while the French translation *droit des gens* was used until the early 20th century and the German *Völkerrecht* is still in use.
3. Although Wolff is not clear about the nature of the *civitas maxima* and of its *rector*, it seems that he imagined the former as an Assembly of representatives of states and the latter as its elected government. The UN, with a General Assembly and a Security Council appears to be very similar to what Wolff imagined.
4. For different interpretations of Kant's ideas on this subject, see Losurdo (1983) and Nicholson (1976).
5. See Losurdo (1983). On the reception of Kant in France, see the recent study by Azouvi and Bourel (1991).
6. Rousseau's writings on the subject are collected in Hoffmann and Fidler (1991).
7. It was translated into German and published immediately. The pseudonym Syrach seems to conceal the Polish publicist Kronowsky. See Van den Dungen (1990).
8. Of the extremely vast literature on bills of rights, see the essay by Barret-Kriegel (1989) which highlights the differences, as opposed to the similarities, between the American and French experiences. For a broad analysis, see Bobbio (1991) and the bibliography cited therein.
9. Cf. though, Schlereth (1977).
10. A text which, to all intents and purposes, belongs to the international positive law tradition inasmuch as it makes wide use of international treaties as sources of law, is Martens (1789).
11. See, among others, *The Federalist*, No. 14 (Hamilton et al., 1952 [1788]): 'In a democracy the people meet and exercise the government in person; in a republic, they assemble and administer it by their representatives and agents.'
12. Cf. Locke (1988), Ch. 26. Tuck (1995) dwells on this point.
13. The association between free trade and peace is commonplace in liberal thinking. For a very recent analysis, see Oneal et al. (1996).
14. The position of Fichte (1793) is emblematic in this respect.
15. The most significant interventions in the German debate on perpetual peace are collected in Dietze and Dietze (1989).

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