

# Kant *eirenikós*: republicanism, commerce and the law of nations

Tomaž Mastnak

**Z**um ewigen Frieden (*ZeF*) is Kant's most popular text. As his *Critiques* are certainly not unknown, this popularity implies that the treatise on the eternal peace was widely read also by a non-philosophical *Publikum*. At the beginning of the nineteenth century when peace societies began to emerge in Europe and America, the Königsberg professor, already gone, was made a pacifist. His pacifist reputation has remained up to the present. It has particularly flourished in the periods preceding and following the upheaval of a major war. In the decades overshadowed by the two World Wars, the treatise appeared in numerous reprints and translations, and found a wide readership. Since the first Hague Peace Conference, Kant has repeatedly been imputed with the intellectual coresponsibility for the emerging international organization, materialized in the *League of Nations* and then the *United Nations*, and even for the fantasmatic »United States of Europe.« More than once he has suffered in the hands of those who cherished his memory; they distorted his thoughts in order to make them compatible with their own ideas about what was conducive to peace. Kantian professors defended him from his adversaries, no one defended him from these well intentioned friends.

There is no doubt, however, that Kant has entered the European irenic tradition. Yet the aim of this text is not to reconstruct this tradition; I am concerned with traditions of the languages of political theory to which Kant referred, or might have referred, when formulating his views on peace. I will argue that there are three main discursive traditions to which Kant's idea of the eternal peace is related: classical republicanism (civic humanism); jurisprudence and especially the law of nations; and the language of commerce. Kant's originality lies in combining these languages; a result of his taking the *jus gentium* seriously compels him to recognize the limits of both republicanism and the ideology of commerce, which makes his vision of international peace superior to other models available at the time (and to

---

*The research for this essay was assisted by an award from the Social Science Research Council of an SSRC-MacArthur Foundation Fellowship on Peace and Security in a Changing World. Most of the research was done during my visit to the Department of History, The Johns Hopkins University, Baltimore. A great inspiration for this work has been the seminar Empire, Confederation and Republic: From Atlantic Dominion to American Union, conducted by the Folger Institute Center for the History of British Political Thought, and directed by J.G.A. Pocock.*

much of what has come in circulation since then). By discussing Kant in this general context, and focusing on *ZeF*, I hope to contribute to the clarification of Kant's position in the specific context of the history of »European peace.«

Kant's allegiance to republicanism was explicit. The first definitive article of *ZeF* – »Die bürgerliche Verfassung in jedem Staate soll republikanisch sein« (*WA* XI, 204)<sup>1</sup> – is an unequivocal declaration of republican *credo*. Kant's republicanism, however, cannot be unproblematically accommodated to the tradition of classical republicanism. In his philosophy of law and state, on the basis of the distinction between *forma imperii* and *forma regimini*, the republic is a *Form der Regierung*, and as such a conceivable form in which either autocratic (or monocratic: *AA* XXIII, 160), aristocratic or democratic state authority could be exercised. »In allen drey Staatsformen kann die Regierungsform republikanisch seyn.« (*AA* XXIII, 159.) A normative dimension is added to this »organizational« description when republic is related to the other form of government. It is opposed to despotism and distinguished from it by the separation between executive and legislative power. This dualistic version of the doctrine of the separation of powers appears only in *ZeF* and differs from a more conventional *trias* elsewhere in Kant's work (which, again, differs in principle from Montesquieu's Anglo-liberal postulate). Because it involves conceptual difficulties,<sup>2</sup> it might be assumed that it was not introduced in order to provide a conceptual solution but rather to support Kant's argument against democratism. Despotism was the concept synthesising a century of polemics against royal absolutism<sup>3</sup> and its antithesis was, commonly, democracy. Kant's opposition between despotism and republicanism made it possible to characterize democracy »im eigentlichen Verstande des Worts« as the one »unter den drei Staatsformen« which is »notwendig ein *Despotism*.« (Cf. *WA* XI, 207.)

Positively, Kant's republic is defined as the only constitution which »aus der Idee des ursprünglichen Vertrags hervorgeht« and is, consequently, »was das Recht betrifft, an sich selbst diejenige, welche allen Arten der bürgerlichen Konstitution ursprünglich zum Grunde liegt.« (*WA* XI, 204.) The process of the realization of the constitution which corresponds to the juridical reason is therefore »ein Prozess der Republikanisierung staatlicher Herrschaft« so that »erst in einer Republik die Verwirklichung des Rechtsvernunft an ihr Ziel

1. I use Immanuel Kant, *Werkausgabe*, ed. Wilhelm Weischedel, Suhrkamp, Frankfurt/M 1977 (*WA*); and *Kant's gesammelte Schriften*, published by Preußischen Akademie der Wissenschaften (from the vol. XXIV on, by Akademie der Wissenschaften der DDR and Akademie der Wissenschaften zu Göttingen), Berlin 1900 – (*AA*).
2. Wolfgang Kersting, *Wohlgeordnete Freiheit: Immanuel Kants Rechts- und Staatsphilosophie*, Walter de Gruyter, Berlin/New York 1984, p. 279 sq.
3. Franco Venturi, »Towards a Historical Dictionary: Oriental Despotism«, in Venturi, *Italy and the Enlightenment. Studies in a Cosmopolitan Century*, ed. Stuart Woolf, New York University Press.

kommt.«<sup>4</sup> Republic is the legal/juridical accomplishment of the *status civilis* which is based on the following principles *a priori*: »1. Die *Freiheit* jedes Gliedes der Sozietät, als *Menschen*. – 2. Die *Gleichheit* desselben mit jeden anderen, als *Untertan*. – 3. Die *Selbstständigkeit* jedes Gliedes eines gemeinen Wesens, als *Bürgers*.« (WA XI, 145.)

Kant differs from the traditional contract theories in that that he derives the constitution of the state from the insight in the universally binding moral obligation to negate the *Rechtslosigkeit* of the state of nature and form a juridical association in which every »man« could equally exercise his external freedom under general public laws. The constitution of the state power is legitimized »nach dem principio exeundum e statu naturali« (AA XIX, R 7961; cf. AA XXIII, 157); the »Recht auf Staat« and »Pflicht zum Staat« logically precede the contract; so that one can say that »Kant findet einen vertragsunabhängigen Rechtsgrund für die Staatserrichtung.«<sup>5</sup> »Contractus originarius non est principium fiendi (Errichtungsgrund) sed cognoscendi (Verwaltungsgrund) des Staats« (AA XIX, R 7956): it is »merely a supposition to explain the obligations of citizens and rulers, who are to behave 'as if' it were real.«<sup>6</sup> If the original contract is not a fact but an idea which necessarily stems from reason and conveys the consent of all to constitute themselves as civil association, their agreement to institute general laws; if, as it follows, the institution of laws does not require a factual consent of the people but has to fulfil the conditions under which these laws would have met the general consent: they have to be made as if they were made by people, for the people is the legislator, »summus imperans souverain«;<sup>7</sup> if, consequently, the popular sovereignty is not a realistic description of people's action but a regulative idea, and is exercised by representatives of the people: then Kant's republicanism does not have much in common, moreover, it is rather at odds, with the tradition of civic humanism, its idea of politics and ideals of *vivere politico*.<sup>8</sup>

The purpose of Kant's republic is not to pursue the common good, and *salus publica* (or *populi*) is not the supreme law. Its principles are freedom and justice. In Kant's philosophy, the common good is the *status civilis* itself:

4. Kersting, *op. cit.*, p. 288, 291.

5. *Ibid.*, ch. C. II (p. 218); Roger J. Sullivan, *Immanuel Kant's Moral Theory*, CUP 1990, p. 239 sq.

6. J. W. Gough, *The Social Contract, A critical study of its development*, Clarendon Press, Oxford 1936, p. 173. For a different assessment of the hypothetical character of Kant's »social contract« see Patrick Riley, *Will and Political Legitimacy: A Critical Exposition of Social Contract Theory in Hobbes, Locke, Rousseau, Kant, and Hegel*, Harvard University Press, Cambridge, MA./London 1982, Ch. 5.

7. »Der summus imperans ist immer das Volk, die einzelne Person des summi imperantis ist nur der Represaeantant des Volks.« (AA, XXVII/2.2, 1382.)

8. For a succinct account of these ideas and ideals see Maurizio Viroli, »Machiavelli and the republican idea of politics«, in *Machiavelli and Republicanism*, ed. by Gisela Bock, Quentin Skinner and Maurizio Viroli, CUP 1990.

freedom under general law which allows to every person to seek happiness in the way that seems best to him, provided that he does not violate the right of any other person to do the same.<sup>9</sup> Kant's »political freedom« is related to that of classical republicanism in that that it consists in the participation of the people, that is, the entirety of citizens bound by general law, in the institution of the laws of civil community, for only those laws are just which are the expression of the general will; yet it differs from classical republicanism in that that it does not imply the compulsion of an actual *vita activa*, withering away the distinctions between legality and morality, state and society, public and private spheres, which Kant seeks to uphold (last but not least by envisaging a representative state<sup>10</sup>).

The second *a priori* principle of *status civilis* (the equality of all members of the social union as subjects) excludes privileges and hereditary prerogatives as unlawful – any *Vorrecht* is *rechtswidrig* – and requires the general accessibility of all juridical and social positions.<sup>11</sup> Such a view is in principle incompatible with the civic humanist juridical considerations of rank. The third principle of civil constitution, however, is a surprise. Firstly, because it is not the expected *fraternité*,<sup>12</sup> and secondly, because it brings in an »unprocessed« core element of the political tradition which the first two principles have left behind. The idea that *sibisufficiencia* is a necessary condition which qualifies a member of the commonwealth for citizenship (*WA XI*, 150-1), links Kant to the classical republican conviction that material independence was the precondition of political virtue and competence and, therefore, citizenship. Kersting's argument that Kant related himself to this tradition thoughtlessly<sup>13</sup> would imply that, when Kant did consequently think through the premises of his theory of law, his republicanism differed from the

9. Cf. *WA XI*, 145. In a note to § 89 of Achenwall's *Juris naturali pars posterior*, Kant placed in opposition »salus publica« and »iustitia publica« (*AA XIX*, R 7413). To the same article of *Juris naturali* refers the following remark: »Nicht das princip der allgemeinen Glückseligkeit sondern Freyheit nach allgemeinen Gesetzen macht das princip der Staatserrichtung und die Idee davon aus.« (*Ibid.*, R 7955.) »Was ist der Zweck einer Republique? Einige sagen: die Glückseligkeit, das ist aber so falsch, als es falsch ist, daß Gott die Menschen ihrer Glückseligkeit wegen erschaffen habe. Der Zweck der Republique ist die Administration des Rechts. Nicht einzelner Glückseligkeit, sondern der Zustand der öffentlichen Gerechtigkeit ist die Hauptsache dabei.« (*AA XXVII/2.2*, 1328).
10. »Alle Regierungsform [...], die nicht repräsentativ ist, ist eigentlich eine Uniform« etc. (*WA XI*, 207.) For Kurt Borries, *Kant als Politiker. Zur Staats- und Gesellschaftslehre des Kritizismus*, Neudruck der Ausgabe Leipzig 1928, Scientia Verlag, Alen 1973, p. 200, Kant's concept of representation is virtually identical with a concept of republicanism.
11. See *WA XI*, 146 sq. *ZeF* formulates this principle as »Abhängigkeit aller von einer einzigen gemeinsamen Gesetzgebung (*ibid.*, 204). Cf. *Immanuel Kants Menschenkunde oder philosophische Anthropologie*, ed. Fr. Ch. Starke, Leipzig 1831, p. 372: Laws »[müssen] auf Alle gehen, für Alle gelten und von Allen gegeben werden können.«
12. This is understandable if fraternity is seen as *Gesinnungsgemeinschaft* – as a community modelled on or striving to become a *société de pensée* (see François Furet, *Penser la Révolution française*, Gallimard, Paris 1978, p. 271 sq.) – because *Gesinnung*« is what reigns in the *status naturalis*.
13. Kersting, *op. cit.*, p. 257.

classical republicanism to the degree which showed up the limits of the older, civic humanist, tradition because it itself was already beyond it.

If the very situating of the discussion of republicanism in the framework of the theory of law, this jurisprudential displacement, meant a major distantiating from classical republicanism, Kant nevertheless shared a number of concerns with that tradition. Central among them was the militia issue, that is, the question of the organizational form of armed forces and their place in civil constitution. The third preliminary article of the treatise of eternal peace states, as the leading principle, that »stehende Heere (miles perpetuus) sollen mit der Zeit ganz aufhören,« and indicates, as a solution preferable to the standing army, exercise of citizens in arms.<sup>14</sup>

An authoritative and highly influential formulation of the classical republican view of military matters is Machiavelli's. »Good laws and good arms, the concern to recreate the links between the civilian and military spheres, to draw the military world and war back into the heart of political and civic life, to use military training to encourage civic virtue and patriotism; these were all messages that Machiavelli conveyed more clearly, more coherently than any of his contemporaries.«<sup>15</sup> In Machiavelli's and, later, Machiavellian world, militia was inextricably connected with the cultivation of political *virtù*, and arms continued to be »the most potent symbol of a citizenship«<sup>16</sup> well into Kant's time. Positions *pro et contra* militia were paradigmatically stated in the »Standing Army Controversy,« following the Peace of Ryswick, which has been characterized as »perhaps the most thorough single debate on forms of military organisation to occur in early modern Europe.«<sup>17</sup> The importance of the controversy, its novelty, may be seen to lie in the fact that the standing army now represented an alternative to militia which could be argued for consistently<sup>18</sup> and that, as much as the pro-militia opponents of the standing army tried to describe the latter in terms of corruption, its advocates

14. »Ganz anders ist es mit der freiwilligen periodisch vorgenommenen Übung der Staatsbürger in Waffen bewandt, sich und ihr Vaterland dadurch gegen Angriffe von außen zu sichern.« (WA XI, 198.) »Keine stehende Armee (perpetuus miles) zu halten« was a »Mittel« for achieving »ewigen Frieden.« (AA XXIII, 155.)

15. Michael Mallet, »The theory and practice of warfare in Machiavelli's republic«, in *Machiavelli and Republicanism*, *op. cit.*, p. 174.

16. John Robertson, *The Scottish Enlightenment and the Militia Issue*, John Donald Publishers Ltd., Edinburgh 1985, p. 224. For English Machiavellians' ideas on this issue, see J.G.A. Pocock, »Machiavelli, Harrington and English Political Ideologies in the Eighteenth Century«, in *Politics, Language and Time: Essays on Political Thought and History*, The University of Chicago Press, Chicago/London 1989, and *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition*, Princeton University Press, Princeton N.J., 1975, Ch. 12, 13.

17. Robertson, *op. cit.*, p. 15; cf. Pocock, *The Machiavellian Moment*, p. 423. For a summary of the controversy see Robertson, *ibid.*, p. 26 sq.; Lois G. Schworer, »The Literature of the Standing Army Controversy, 1697-1699«, *The Huntington Library Quarterly*, 28 (1965), 3; Schworer, »No Standing Armies!« *The Antiarmy Ideology in Seventeenth-Century England*, The Johns Hopkins University Press, Baltimore and London 1974, Ch. 8.

18. Michael Mallet, *op. cit.*, p. 175; Geoffrey Parker, *The Military Revolution: Military innovation and the rise of the West, 1500-1800*, CUP 1989.

nevertheless succeeded in influencing the debate to the effect of unlocking the Polybian circle.

This, however, is only one reason for considering Kant's ideas about war and peace against this background. The other is that, by doing so, we can trace his dialogue with the Scottish Enlightenment and see his views in the European intellectual context.<sup>19</sup> With regard to the militia/standing army dilemma, the German context alone would not help much to improve our understanding because a glimpse at what was thought and taught shows that different options were on offer.<sup>20</sup>

Kant's argument against the standing army was minimalist: he understood it as a device which generates war (WA XI, 197); and reformist: standing armies ought to be abolished only gradually. This gradualism forms a contrast to the impatience of the anti-army writers of the »Standing Army Controversy,« and the minimalism expresses an even deeper dissimilarity between Kant and the Commonwealth-Militiamen. These did not argue against war but against the army – because they perceived it as an organizational form which alienated the military from the political community. For them, arms were »the only true Badges of Liberty.«<sup>21</sup> They claimed that there should be »no difference between the Citizen, the Souldier, and the Husbandman« and that »Sword and Sovereignty« had to »march hand in hand.«<sup>22</sup> »that Nation is surest to live in Peace, that is most capable of making War.«<sup>23</sup>

19. Links between the »Standing Army Controversy« and the Scottish Enlightenment are discussed in Robertson, *op. cit.*; Robertson has also stressed the »European dimension« of the latter. On Kant's *Lektüre*, in this respect: Arthur Warda, *Immanuel Kants Bücher*, Verlag von Martin Breslauer, Berlin 1922, and his reprint of the *Verzeichniß der Bücher des verstorbenen Professor Johann Friedrich Gensichen, wozu auch die demselben zugefallene Bücher des Professor Kant gehören* etc., Königsberg [1808]. Cf. Günter Gawlick/Lothar Kreimendahl, *Hume in der deutschen Aufklärung. Umriss einer Rezeptionsgeschichte*, Fromman Holzboog, Stuttgart-Bad Cannstatt 1987, especially Ch. 9; still of interest: August Oncken, *Adam Smith und Immanuel Kant. Der Entwicklung und das Wechselverhältniss ihrer Lehren über Sitte, Staat und Wirtschaft*, Duncker & Humboldt, Leipzig 1877; F.W. Schubert, *Immanuel Kant und seine Stellung zur Politik in der letzten Hälfte des achtzehnten Jahrhunderts*, Brockhaus, Leipzig 1838.
20. Eg., Johann Michael von Loen, *Freye Bedancken Von der Verbesserung des Staats*, in v. Loen, *Der redliche Mann am Hofe*, Faksimiledruck nach der Ausgabe 1742, ed. by Karl Reichert, J.B. Metzlersche Verlagsbuchhandlung, Stuttgart 1966, pp. 549-53, argued for a »National- oder Land-Miliz«; Johann August Schlettwein, *Grundfeste der Staaten oder die politische Oekonomie*, Gießen 1779, § 224, was »neutral«; Johann Heinrich Gottlob von Justi, *Staatswirtschaft oder Systematische Abhandlung aller Oekonomischen und Cameralwissenschaften, die zur Regierung eines Landes erfordert werden*, Leipzig 1758, Vol. I, §§ 60, 70, stressed that a state needed »ein wohl eingerichtetes und hinlängliches Kriegesheer.«
21. [Andrew Fletcher,] *A Discourse of Government with Relation to Militia's*, Edinburgh 1698, p. 47.
22. [Walter Moyle and John Trenchard,] *An Argument, Shewing, that a standing Army is inconsistent with a Free Government, and absolutely destructive to the Constitution of the English Monarchy*, London 1697, pp. 20, 7. Cf. [John Toland,] *The Militia Reform'd, or an Easy Scheme of Furnishing England with a Constant Land-force, capable to prevent or to subdue any Foreign Power; and to maintain perpetual Quiet at Home, without endangering the Publick Liberty*, London [1698], p. 72.
23. Moyle/Trenchard, *op. cit.*, p. 12.

Kant's maxime – the veto declared by the moral-practical reason – was »*Es soll kein Krieg sein*« (WA VIII, 478). He was opposed to the standing army because he was opposed to war, and recognized that the permanent danger of war was imminent to the existence of standing armies. They represented, and created, an armed peace: a state prone to war the dynamics of which he described as an arms race.<sup>24</sup> For Kant, militia was an alternative to the army not because he thought that arms would, »n this way, come into the right hands but because he believed that citizens (or people), if they were to make the decision, were less likely to decide to go to war because they themselves would have to finance it, fight it and suffer all the consequences.( WA XI, 205 sq. ct. 170.) Another reason for his advocating the periodic exercises of citizens in arms was that he understood this to be voluntary, free, action while standing armies seemed to imply that people are hired to serve »als bloßen Maschinen und Werkzeuge in der Hand eines anderen,« and are used to kill or be killed, and such an instrumentalization is incompatible with the categorical imperative.(WAXI, 197-8.) If the Commonwealthmen decried the standing army as incompatible with the excellency of a free state, Kant argued against it because he perceived it as begetting war which contradicts any state, which negates the *status civilis* as such, the very condition of the possibility of freedom.

Kant's concern with the public debt and, more generally, commerce was a key issue which linked him to contemporary Scottish debates on militia. He called the public debt »die sinnreiche Erfindung eines handeltreibenden Volks in diesem Jahrhundert« and clearly recognized it as a device invented to finance war. Having had in mind that wars in his time were becoming more numerous and expensive (the latter due to the military modernization) he mordantly observed that periods of peace were becoming too short to supply the raising sums of money needed for a next war, so that in order to get out of the impass the (English) ingenuity invented public debts. (WA XI, 170.) The credit system, as Kant saw it, was »entgegenwirkende Maschine der Mächte gegen einander« and, as such, »eine gefährliche Geldmacht, nämlich ein Schatz zum Kriegsführen.« What it brought about was the »Leichtigkeit Krieg zu führen« which made it (together with the eagerness of those in power to make war) »ein großes Hindernis des ewigen Friedens.«<sup>25</sup> However, as ingenious an

24. WA XI, 197, 42, 98. The necessity to be at any time prepared for war is a characteristic feature of the state of nature: »Im Zustande des Friedens bin ich sicher durch mein Recht. Im natürlichen durch nichts als meine Gewalt; ich muß iederzeit in der Kriegsrüstung seyn [...]« (AA XIX, R 764e.)

25. WA XI, 198. The description of credit as »engine« was used already by Davenant, for whom »the mechanism of public debt creation was not merely the financial base of a standing army; it was a virtual financial equivalent to one.« (Istvan Hont, »Free trade and the economic limits to national politics: neo-Machiavellian political economy reconsidered«, in John Dunn, ed., *The economic limits to modern politics*, CUP 1990, p. 98 sq.) For the historical background: John Brewer, *The Sinews of Power: War, Money and the English State 1688-1783*, Unwin and Hyman, London 1989.

invention public credit might have been, it was a self-destructive one, and Kant believed that this was bound to reduce war waging states to powerlessness. (WA XI, 170. The expected form of this inescapable self-destruction was state bankruptca which »manche andere Staaten unverschuldet in den Schaden mit verwickeln muß, welches eine öffentliche Läsion der letzteren sein würde.« (WA XI, 199.) This was just another reason for Kant's conviction that, in the interest of international peace, public credit was not to be allowed to grow – a reason added to the recognition that the credit was not used »zum Behuf der Landesökonomie,« that it originated in military needs and interests and that its purpose was the financing of war.

It is true that Hume called for the destruction of public credit – in a phrase reminiscent of Moyle's and Trenchard's argument against the standing army<sup>26</sup> – in the interest of the nation while Kant had primarily in mind the relations between nations, yet what concerned Kant in the fourth preliminary article of *ZeF* was also Hume's *problématique*, and the one which occupied even his »dying thoughts.«<sup>27</sup> Moreover, Hume was well aware of the international dimension of the problem. Istvan Hont has argued that Hume in his essay »Of Public Credit« meditated on the links between the fiscal necessities of national security and the social dislocations produced by debt finance. Suggesting a revision of Pocock's interpretation of the essay Hont has stressed that Hume's ambivalence with regard to public debt »is not the product of a vision of warring forces within commercial society. Rather, the scourge came from the conjunction of commercial society and international power politics.« Consequently, the true antithesis to the danger of public debt was »a durable peace, where public debt ceased to exist while commerce expanded.«<sup>28</sup>

What underlies this argument is the belief which is at the core of the self-understanding of commercial society: that commerce is the opposite of (or the alternative to) war. The image of commerce as a – if not *the* – pacific force had become, by the time Kant thought of peace, a commonplace which he did not problematize. Commerce, he believed, promoted liberty (AA XXIII, 174), and he agreed with the optimistic spirit of the age that »[e]s ist der *Handelsgeist*, der mit dem Kriege nicht zusammen bestehen kann, und der früher oder später sich jedes Volks bemächtigt« (WA XI, 226). Paradoxically, it was this faith in the progressing prevalence of commercial spirit as a spirit incompatible with war which worried Kant's enlightened Scottish

26. [...] either the nation must destroy public credit, or public credit will destroy the nation.« David Hume, *Essays Moral, Political and Literary*, ed. by E. F. Miller, Liberty Classics, Indianapolis 1987, p. 360-1; Moyle/Trenchard, *op. cit.*, p. 4: »[...] the Constitution must either break the Army, or the Army will destroy the Constitution.«

27. J.G.A. Pocock, »Hume and the American Revolution: The dying thoughts of a North Briton«, in *Virtue, Commerce, and History: Essays on Political Thought and History, Chiefly in the Eighteenth Century*, CUP 1985.

28. Istvan Hont, »The Rhapsody of Public Debt: David Hume and Voluntary State Bankruptcy«, ms.



contemporaries. What Kant shared with them was the conceiving of commerce as civilizing force and the comprehension that this civilizing process surpassed the forms of political community characteristic of the past. For Kant, this simply meant leaving behind a »Regierung von alten Zeiten« (»Lehnwesen«) which »fast gänzlich auf den Krieg angelegt war« (WA VIII, 450). Morally problematic, for him, was that feudal world of privileges; for Scottish illuminati, the problem was moral transformation caused by commerce.

In their view, the growth of commercial society made the higher ranks unmanly and mentally mutilated the lower, and their adherence to militia was a moral reaction. Militia, they believed, would preserve and cultivate martial virtues without which they could not conceive of citizenship. Martial spirit was the crystallization of the virtues of *vivere politico*. In order to counteract ill effects of commerce, this spirit had to be preserved. Adam Ferguson, a key figure among the Moderate literati, wished to limit the expansion of commerce in society by maintaining a clear distinction between the commercial and the political spheres, so that the lower orders would be sacrificed to the production of wealth while the higher would actively pursue republican virtue.<sup>29</sup> Contrary to this, Adam Smith, envisaged »some kind of military training along ancient lines« as a compulsory part of public education for the common people in order to introduce them to the political life of society.<sup>30</sup> He conceptualized the extension of political community imminent to the progress of commercial society as the universalization of the traditional civic concept of armed citizenship.<sup>31</sup> Unexpectedly, perhaps, the political existence of commercial society was to be supported by the martial spirit which was believed to be incompatible with the commercial spirit: in the conservative version, by the preservation of a martially spirited high society, and in the progressive, by the militarization of society.

Kant, like Smith or any enlightened spirit, believed in education, yet a military education for citizenship could hardly be seen as being compatible with his political philosophy. The figure of an army officer and the picture of military exercise were the first images of the frustrated Enlightenment to have come to his mind when he thought of instances where the public use of reason, the defining characteristic of the *Aufklärung*, was forbidden. (WA XI,55.) Military virtues did not appeal to Kant. Valor (and the whole age of chivalry)

29. See *An Essay on the History of Civil Society (1767)*, ed. Duncan Forbes, The University Press, Edinburgh 1966, part VI; Forbes, »Introduction«, *ibid.*, p. xxxvi; Robertson, *op. cit.*, pp. 88 sq., 201 sq.

30. On military themes in Smith's work: Donald Winch, *Adam Smith's Politics. An essay in historiographic revision*, CUP 1978, Ch. 5, Robertson, *op. cit.*, p. 212 sq; on military education: *An Inquiry into the Nature and Causes of the Wealth of Nations*, ed. by R. H. Campbell, A. S. Skinner and W. B. Todd, Liberty Classics, Indianapolis 1981, V.i.f.58-61; Winch, *ibid.*, p. 118; Robertson, *ibid.*, p. 216.

31. Robertson, *ibid.*, p. 223-5.

was, for him, simply savagery.<sup>32</sup> a matter of taste. Yet if this was a matter of taste, there also were »objective,« that is, »theoretical,« reasons for discarding military virtues: they conflicted with Kant's concept of morality and liberty. Liberty, in his philosophy, was individual and juridical and morality was interchangeable with *Rechtslehre*. As opposed to this, military spirit as the guard of morality was not a means to oust war; it focused on the *salus populi*; and implied the positive concept of liberty. *ZeF* was alien to moral concerns of Scottish illuminati: »Es ist hier nicht die rede von Beförderung der Sittlichkeit nicht einmal der Glückseligkeit sondern blos den Krieg zu verbannen.« (AA XXIII, 162.)

Kant's description of commercial spirit as »ungesellig« (WA XII, 664) fits well into the framework of his treatise of peace. Given the famous formulation of the »*ungesellige Geselligkeit* der Menschen« as the antagonism that moves the world history towards the creation of a perfect civil constitution (cf. WA XI, 37), commerce can be understood as a historical force, as an agent in a teleological but still realistic view of conflict ridden history. Free from the corruption model, Kant, on the one hand, did not have to worry about the effects of the growth of commerce on the public spirit and social manners and could, in this respect, wholeheartedly accept the *Handelsgeist*. On the other hand, he did not have to suspend another aspect of commercial reality which seems to have been much less alarming to the enlightened Scottish late republicans. Half a century after the imposed Union with England, they seem to have accommodated their views to the higher good of their new country and recognized the standing army as useful – if only employed in colonies.<sup>33</sup> Commerce, it was understood, needed military backing. Commercial spirit not only was not incompatible with war: it became a source of wars.

Kant was intensely concerned with how commercial societies behaved to each other and, especially, with how the »handeltreibende Staaten unseres Weltteils« treated the rest of the world. He dealt with the international behaviour of the commercial nations in the third definitive article of *ZeF*, under the heading of »hospitality.« He defined this as »das Recht eines Fremdlings, seiner Ankunft auf dem Boden eines anderen wegen, von diesem nicht feindselig behandelt zu werden. Dieser kann ihn abweisen, wenn es ohne

32. WA XI, 222. »Der Krieg ist eine Art von Rohigkeit Unbezogenheit Barbarism wie unter Wilden statt der Argumente Schläge.« (AA XXIII, 162.) »Der rohe Mensch hält jeden Fremde für seinen Feind. Daher ist bei den Wilden jener der Vornehmste, der der Tapferste ist,« lectured Kant and added that this is a state of fear. (*Menschenkunde*, 368; cf. WA VIII, 681.) Ernst Katzer, »Kant und Krieg«, *Kantstudien*, XX (1915), p. 150 sq., ascribed much prominence to opposite views presenting war as a »Kulturmittel.« Cf. H. Vaihinger, »Eine französische Kontroverse über Kants Ansicht vom Kriege. Auch ein Wort zur Friedenskonferenz«, *Kantstudien*, IV (1900), p. 59; F. Staudinger, »Kants Traktat: Zum ewigen Frieden. Ein Jubiläums- Epilog«, *Kantstudien*, I (1897), especially his discussion of Pfleiderer's *Die Idee des ewigen Friedens*.

33. Cf. Robertson, *op. cit.*, p. 81-2.

seinen Untergang geschehen kann; so lange er aber auf seinem Platz sich friedlich verhält, ihm nicht feindlich begegnen.« (WA XI, 213.) The background to the discussion, the idea of the common property of the earth, was conventional, yet Kant's observations and conclusions were not. He compared the doings of the commercial European nations overseas to the brigandage of Barbarous pirates (the early modern symbol of outlawry) and condemned these doings in strong terms: »[D]ie Ungerechtigkeit, die sie in dem Besuche fremder Länder und Völker (welches ihnen mit dem Erobern derselben für einerlei gilt) beweisen, [geht] bis zum Erschrecken weit. Amerika, die Negerländer, die Gewürzinseln, das Kap etc. waren, bei ihrer Entdeckung, für sie Länder, die keinem angehörten; denn die Einwohner rechneten sie für nichts.« (*Ibid.*, 214-5.) What was established was »allergrausamste und ausgedachtteste Sklaverei« (*Ibid.*, 216), and wherever Europeans had landed war broke out. The map of the commercial expansion was actually a map of new armed conflicts. Kant certainly saw it this way.

»Die Länder von Amerika waren kaum entdeckt als sie nicht allein durch abgedrungene oder erschlichene Niederlassung sondern selbst die Einwohner theils als herrenloses Gut zu Sklaven gemacht oder auch aus ihren Sitzen verdrängt und durch innere Kriege aufgerieben worden wodurch denn den handeltreibenden Einwohnern eine Macht und auch vielfältiger neuer Anlas erwuchs sich innerlich aus Neid und Besorgnis des Übergewichts einestheils in vielfältig langen Kriegen unglücklich zu machen.« (AA XXIII, 174.) In East Indies, Europeans brought in, »unter dem Vorwande bloß beabsichtigter Handelsniederlagen, fremde Kriegsvölker hinein, mit ihnen aber Unterdrückung der Eingebornen, Aufwiegelung der verschiedenen Staaten desselben zu weit ausgebreiteten Kriegen, Hungersnot, Aufruhr, Treulosigkeit, und wie die Litanei aller Übel, die das menschliche Geschlecht drücken, weiter lauten mag.« (WA XI, 215.) In West Indies, Kant observed, economically unsuccessful trading companies switched to war business and trained seamen, clearly »auf die Kriege gerechnet,« which made even more plausible his prediction that wars which Europeans had started all over the world will finally come back home to Europe.<sup>34</sup>

I wish to point out that Kant must have been aware of the difficulties of resting the case of durable world peace on commerce and commercial spirit alone.<sup>35</sup> Such an argument could be made in the framework of his

34. WA XI, 216; AA XXIII, 174. The threat of war to Europe was seen by Kant as an indirect consequence of the *Negerhandel*, which was conducted by Europeans and was in itself a gross violation of the law of humanity. (AA, XXIII, 174-5.) »Ein Funke der Verletzung des Menschenrechts auch in einem anderen Welttheil gefallen nach der Brennbarkeit des Stoffs der Herrschsucht in der menschlichen Natur vornemlich Häupter die Flamme des Krieges leicht bis zu der Gegend verbreitet wo er seinen Ursprung genommen.« (*Ibid.*, 175.) For Kant's view of the interconnectedness of the peoples of the world, that »die Rechtsverletzung an einem Platz der Erde an allen gefühlt wird,« see WA XI, 216.

35. That Kant emphasized the pacifying effects of world trade is, as a rule, contended in the liberal pacifist reading of Kant. Susan Meld Schell, *The Rights of Reason: A study of Kant's*

transcendental view of history which allowed even wars to be seen as antagonistic forces working for the ultimate future pacific state. It is true that Kant's philosophy of history is an integral moment of his argument for peace, the guarantee of the eternal peace; yet because it makes sense of war it seems to be in a tense relationship with the imperative that there should be no war. The fact is, however, that, from the formal point of view, commerce does not figure as an article of peace in *ZeF*, except negatively: as the ban on national debt, and as a stratagem of Nature: a sort of *Mitläufer* of the cosmopolitan law.

As a stratagem of Nature, commerce itself does not imply the ending of the state of nature which is »ein Zustand des Krieges.« (WA XI, 203.) Peace, which has to be made (*ibid.*), is conceivable, not only in a *Rechtszustand*, but as a *Rechtszustand*. This is why the first definitive article of *ZeF* declares that the civil constitution of any state ought to be republican. This alone, however, does not yet create a state of peace because states, even if republican and therefore (the faith Kant shared with the civic tradition) »ihrer Natur nach zum ewigen Frieden geneigt« (WA XI, 211), do not yet spontaneously live in peace: states coexist in a *statu naturali*.<sup>36</sup> Here, too, peace has to be made, and it can only be made by creating a *Rechtszustand*. Peace, therefore, cannot be conceived outside the framework of the law of nations. Republican constitution of a nation is a necessary, yet not a sufficient, condition of peace; for peace depends also on the relations between nations: peace is, ultimately, an international problem and, primarily, a problem of national civil constitution. Kant's achievement was, of course, not in considering peace an international problem, for many had done that before; but in the way he conceptualized peace as an international problem in a jurisprudential framework.

Kant had no illusions about the power of what Bentham, in an unpublished paper a few years earlier, was the first to call international law. He observed that the codex formulated by Grotius, Pufendorf, Vattel and some others had »nicht die mindeste *gesetzliche* Kraft« (and also could not have it because

---

philosophy and politics, University of Toronto Press, Toronto/Buffalo/London 1980, p. 177, differs from this approach in adding that Kant »rejects as moral sophistry the (Lockean) contention that people who refuse to 'do business' may be justly colonized or enslaved. Commerce cannot furnish an excuse to deny the personality which juridically grounds it.« Murray Forsyth, *Unions of States. The Theory and Practice of Confederation*, Leicester University Press/Holmes & Meier Publishers Inc., New York 1981, p. 102, points out that Kant's *jus cosmopolitanum* implies »the freedom to trade, rather than the freedom of trade,« in which Kant parts with the nineteenth-century liberals. On how much war (and peace) there actually was in the economic thinking, see (for the discussed period) Edmond Silberner, *La guerre dans la pensée économique du XVI<sup>e</sup> au XVIII<sup>e</sup> siècle*, Librairie du Recueil Sirey, Paris 1939.

36. »Das Verhältniß der Staaten gegen einander ist das Verhältniß der Wilden.« »Dies zeigt aber offenbar von einer noch vorhandenen Barbarei.« (*Menschenkunde*, 371.) »Wir sind in Ansehung des Völkerrechts noch barbaren.« (AA XV, R1453.)

»Staaten als solche nicht unter einem gemeinschaftlichen äußeren Zwange stehen«,) and that it had been, even worse than that, often used for the justification of wars while there had been no cases »daß jemals ein Staat durch mit Zeugnissen so wichtiger Männer bewaffnete Argumente wäre bewogen worden, von seinem Vorhaben [to start a war] abzustehen.« However, the mere fact that »das Wort *Recht* aus der Kriegspolitik noch nicht als pedantisch ganz hat verwiesen werden können, und sich noch kein Staat erkühnet hat, sich für die letztere Meinung öffentlich zu erklären,« was interpreted by Kant as a homage which states paid to the *Rechtsbegriff*, and this was understood as a proof »daß eine noch größere, ob zwar zur Zeit schlummernde, moralische Anlage im Menschen anzutreffen sei, über das böse Prinzip in ihm [...] doch einmal Meister zu werden.«<sup>37</sup> From a less (teleologically) anthropological point of view, the respect shown to the notion of, or even the word, Right could be seen as the evidence for the authority of reason which »vom Throne der höchsten moralisch gesetzgebenden Gewalt herab, den Krieg als Rechtsgang schlechterdings verdammt, den Fridenzustand dagegen zur unmittelbaren Pflicht macht.« (WA XI, 211.)

When Kant explains the second definitive article on the eternal peace: »Das Völkerrecht soll auf einen *Föderalismus* freier Staaten gegründet sein« (WA XI, 208), he uses the juridical construct of the state of nature to describe relations between states in the absence of external general laws yet he is well aware that the analogy ends as soon one reflects upon departing from the state of nature, that is, entering into the *status civilis*.<sup>38</sup> States, that is, peoples constituting different states, cannot enter, in order to have their rights secured, into a *Völkerstaat*, for this would contradict the basic premise which was to secure rights of *peoples*, because in one state – given that »ein jeder Staat das Verhältnis eines *Oberen* (Gesetzgebenden) zu einem *Unteren* (Gehorchenden, nämlich dem Volk) enthält« – they would form one people and would cease to exist as peoples. (WA XI, 209.) This is such an obvious logical conclusion that it may look like a philosophizing unworthy of a serious thinker. However, the premises of Kant's inference were either logical or obvious. He was making a political argument which was, in those times, not unique (yet still less dominant or hegemonic) and represented the counterpoint to the conceptual solution by Christian Wolff, whom Voltaire called »*maître à penser de l'Allemagne*.«<sup>39</sup>

37. WA XI, 210; on the »moralische Anlage« cf. *Der Streit der Fakultäten*, Part II.

38. The limits of the analogy are stressed by Wolfgang G. Bayerer, »Das Königsberger Schlußblatt des Entwurfs 'Zum ewigen Frieden'«, *Kantstudien*, LXXIX (1988), p. 298. Leslie A. Mulholland, »Kant on War and International Justice«, *Kantstudien*, LXXVIII (1987), is less strict on this issue.

39. Cf. Marcel Thomann, »Christian Wolff«, in Michael Stolleis, ed., *Staatsdenker im 17. und 18. Jahrhundert: Reichspublizistik, Politik, Naturrecht*, Alfred Metzner Verlag, Frankfurt/M. 1977, p. 248.

In social theory, Wolff was a contractarian. He argued that all men are by nature equal and free, so that society can only be formed by the submission of individuals under one commanding will because, by nature, no individual can be subjected to another individual. Consequently, every society rests on an express or tacit contract.<sup>40</sup> These principles explain the creation of the state, as well, and by analogy Wolff construed one of his central concepts, the *civitas maxima*: the state into which nations have combined and of which they are citizens.<sup>41</sup> From this notion he deduced the voluntary law of nations, and *jus gentium* was thus, actually, the law of the *civitas maxima*, the civil law of »cette grante République.«<sup>42</sup> The nations which have combined into such a *civitas maxima* and »bound themselves to the whole« were in the same relation to the universal state and its »rector« as individuals were to the nation-state. On the basis of a presumed consent (Wolff did not hide that *civitas maxima* was »a kind of democratic form of government« they have divested themselves of sovereignty which »belongs to the whole as against the individual nations.«<sup>43</sup>

Wolff's *jus gentium* belongs to the tradition of natural jurisprudence and international law (as much as he claimed the superiority of his own method over that of Grotius and Pufendorf); the *civitas maxima*, however, links Wolff to another context, that of »*société des nations*,«<sup>44</sup> which has only by a false impression been styled internationalist and which, in its method and strategy, negates the law of nations. What constitutes the identity of the law of nations is the refusal to define it as the civil law of an entity aiming at, or modeled on, the universal empire,<sup>45</sup> that is, the rejection of the analogy between the civil law and the law of nations.<sup>46</sup> This made it possible, or necessary, to recognize the inalienable sovereignty of nations (states) as subjects of the law of nations.

40. Cf. *ibid.*, and Otfried Nippold, »Einleitung«, in Christian Wolff, *Jus gentium methodo scientifica pertractatum*, The Classics of International Law, The Clarendon Press/Humphrey Milford, London 1934, Vol. I, p. xxxv-xxxvi.

41. Wolff, *Jus gentium*, Prolegomena, §§ 9-10.

42. Emmerich de Vattel, *Le Droit des Gens ou principes de la Loi Naturelle, appliqués à la conduite & aux affaires des Nations & des Souverains*, The Carnegie Institution of Washington, Washington 1916, Preface, p. xvii.

43. Wolff, *op. cit.*, Prol., § 19; in »rector« § 21.

44. Marcellus Thomann, »Introduction«, in *Christiani Wolfii Jus gentium*, Christian Wolff, *Gesammelte Werke*, Georg Olms Verlag, Hildesheim/New York 1972, II. Abt., Bd. 25, p. xxxv-xxxvi.

45. As Thomann, *ibid.*, p. xxxviii, notes, Wolff qualified *civitas maxima* as »universal empire.«

46. Earlier interpreters »have gone astray in introducing into this subject [law of nations] a bald and often inappropriate discussion of civil law,« wrote Gentili (*De iure belli libri tres*, Clarendon Press, Oxford/Humphrey Milford, London 1933, I 1) whom Coleman Phillipson («Introduction», *op. cit.*, Vol. II, p. 18a, 20a, cf. 50a sq.) calls »the first great writer on modern international law, the first clearly to define its subject matter,« because he rejected the methods of the »civilians« who considered international law as being in large measure an application or extension of the civil law. Cf. Diego Panizza, *Alberico Gentili, giurista ideologo nell'Inghilterra elisabettiana*, Padova 1981, Ch. III, IV.

Gentili, applying his methodological caesura to *jus belli*, insisted on the definition of war as an armed contest between sovereign public authorities who have »a state, a senate, a treasury, united and harmonious citizens, and some basis for a treaty of peace.« In his view, wars originate in necessity which »arises because there cannot be judicial processes between supreme sovereigns or free peoples unless they themselves consent, since they acknowledge no judge or superior.«<sup>47</sup>

Not all theorists of *jus gentium* followed Gentili in making a sharp distinction between civil and international law, so that Wolff with the *civitas maxima* was all but a late survivor of an eclipsed tradition. There were critics of Wolff's universal state in Germany;<sup>48</sup> yet Kant seems to have followed Vattel who actually thought of himself as a popularizer of the illegible Wolff but asserted, in a crucial point, that »je ne reconnois point d'autre Société naturelle entre les Nations, que celle-là même que la Nature a établie entre tous les hommes. Il est de l'essence de toute Société Civile (*Civitas*) que chaque membre ait cédé une partie de ses droits au Corps de la Société, & qu'il y ait une Autorité capable de commander à tous les membres, de leur donner des Loix, de contraindre ceux qui refuseroient d'obéir. On ne peut rien concevoir, ni rien supposer de semblable entre les Nations.«<sup>49</sup> He was definitive that the subject of the law of nations, and its subjects, are sovereign states.

These states are, for Kant, the actors of war and peace. Because the way they, in the absence of an external tribunal, pursue their right (that is, by war) is destructive of right and neither victory nor peace treaty can bring peace but only end a given war while the state of war continues to exist; because states (according to the law of nations) cannot be expected to act like the natural law expects individuals to act, requiring that they leave the state of lawlessness, for states, as states, already have an internal juridical constitution; and because reason unconditionally condemns war and demands peace (which can only be created and secured by a treaty between peoples): »so muß es einen Bund von besonderer Art geben, den man den *Freidensbund* (foedus pacificum) nennen kann« and which differs from *pactum pacis* in that that it would terminate the state of war, not just a war. (WA XI, 210-1; cf. AA XXIII, 167-8.)

47. Gentili, *op. cit.*, I 2-4.

48. Cf. Nippold, *op. cit.*, p. xlv-xlix.

49. Vattel, *op. cit.*, Preface, p. xviii. Kant had a copy of the German translation of Vattel's book in his library and told to his students that, as to *jus gentium*, »das beste Buch hievon nachzulesen ist Vattels.« (AA XXVII.2.2, 1392.) He agreed with the Swiss in the rejection of the »barbarities« in the conduct of war, and categorically rejected »dishonourable strategema« which made it impossible to conclude peace (because they cause the loss of any trust in the enemy) and lead into a war of extermination: »Es soll sich kein Staat im Kriege mit einem anderen solche Feindseligkeiten erlauben, welche das wechselseitige Zutrauen im künftigen Frieden unmöglich machen müssen: als da sind, Anstellung der *Meuchelmörder* (percussores), *Giftmischer* (venefici), *Brechung der Kapitulation*, *Anstiftung des Verrats* (perduellio) in dem bekriegten Staat etc.« (WA XI, 200.) Wolff, on the contrary, argued that, in war, strategema can consist both in force and deceit, and allowed *dolus*, use of poisons *percussores* and *exploratores* (*Jus gentium*, §§ 857, 877, 878, 882, 884).

The sole purpose of this *foedus pacis* is to preserve and guarantee freedom of each state that has entered the treaty, to preserve peace among these states, without instituting public laws (that is, a supreme authority, or an arbiter) to the authority of which they would have to submit.<sup>50</sup> The peace keeping rests on a purely negative treaty (*foedus*).<sup>51</sup> What Kant calls »der freie Föderalismus« is a »Surrogat des bürgerlichen Gesellschaftsbundes,« because only such a substitute for a positive union is compatible with the notion of the law of nations – if the notion is to make any sense. (WA XI, 212.) »Ein solcher Föderalismus setzt [...] freye Staaten als solche voraus und ist blos negative nämlich die Absicht nur den Krieg abzuhalten und zugleich die Verschmelzung eines Staats mit dem andern.« (AA XXIII, 168.) Such a (negative) treaty between sovereign and separate states is »das syntetische Princip der äußern Freyheit der Staaten« (*ibid.*), and the law of nations which is not devoid of meaning can only be thought of as a »foedus pacificum oder pacis.« (AA XXIII, 169.) It is *Völkerrecht* which keeps out *Völkerstaat*, *jus gentium* which vetoes *civitas gentium*. Common sense would see a »society of nations,« an »universal state« which would gradually encompass all peoples on the earth and make them obey its laws, the solution for a state in which states are perpetually engaged in wars with one another. The idea of the law of nations, however, rejects such a solution and Kant had to conclude: »so kann an die Stelle der positiven *Idee einer Weltrepublik* (wenn nicht alles verloren werden soll) nur das *negative* Surrogat eines den Krieg abwehrenden, bestehenden, und sich immer ausbreitenden *Bundes* den Strom der rechtscheuenden, feindseligen Neigungen aufhalten, doch mit beständiger Gefahr ihres Ausbruchs.« (WA XI, 212-3; cf. AA XXIII, 169.)

There is a tinge of resignation to be felt in Kant's conclusion yet there is no evidence whatsoever for the assertion that »Kant saw quite clearly that there is only one way in which war between independent nations can be prevented; and that is by nations ceasing to be independent.«<sup>52</sup> This is indeed Kant turned upside down. It is not only an imputation, to Kant, of ideas he did not hold but also a displacement of his argument. If what was meant by the ceasing of nations to be independent was their incorporation into a kind of universal state, one can agree with Hinsley that Kant rejected such a »political federation« as impracticable, undesirable and irrelevant to the problem.<sup>53</sup> The idea was impracticable because sovereign states »nicht wollen« such an union (WA XI, 212); undesirable, because it would lead to anarchy through

50. »[...] so muß es einen Bund unter Staaten geben der lediglich auf die wechselseitige Erhaltung des Friedens untereinander gestellt ist.« (AA XXIII, 167; cf. WA XI, 211.)

51. »Die Friedenserhaltung auch einen blos negativen Vertrag enthält und nicht eine positive Verbindung wie die bürgerliche Verfassung erfordert.« (AA XXIII, 168.)

52. David. G. Ritchie, *Studies in Political and Social Ethics*, Swan Sonnenschein & Co., Ltd., London/New York 1902, p. 169.

53. F. H. Hinsley, *Power and the Pursuit of Peace. Theory and Practice in the History of Relations between States*, Cambridge University Press, Cambridge 1963, p. 79.



despotism;<sup>54</sup> and irrelevant to the problem of producing peace between nations precisely because a *civitas gentium* negates nations: and nations (states) were for Kant the prime condition of peace, they were peace settlements by definition because they represented *status civilis* as opposed to the warlike *status naturalis*. International peace was needed in order to preserve civil peace – in order to maintain conditions in which peace could be fostered and which in war would be destroyed – not to create it. And international peace could only be established between nations, and conceived of in the framework of the law of nations. For Kant, the eternal peace was »das letzte Ziel des ganzen Völkerrechts.«<sup>55</sup> From this point of view, Kant's free federalism, the federalism of free states, is indeed to be understood as an attempt to develop international law,<sup>56</sup> not as state (or empire) building. Small wonder that more than one school of international relations and international law has laid claim on Kant.<sup>57</sup>

The claim, however, that Kant thought that the independence of nations has to be withered away if wars between nations were to be prevented is a *profession de foi*, not a misunderstanding, and at the same time an expression of the desire to have Kant in the congregation. Why the irenic brethren should wish to have Kant in their ranks is at the same time easy and difficult to understand. Easy, because Kant spoke of peace, and difficult, because his idea of peace differed from the main stream irenic tradition. There may be a broad consensus that peace is desirable, yet there is no consensual idea about peace and how to achieve it. But because irenists have substituted the desirability of peace for clear ideas, thinking about peace has consequently become of lesser importance and great thinkers have become easy to deal with. So it has often happened that Kant, for instance, not only became Saint-Pierre's equal but also his follower. Yet this is side-tracks the argument. There are deep structural differences between Kant and European irenism.

54. »Die Idee des Völkerrechts setzt die *Absonderung* vieler von einander unabhängiger benachbarten Staaten voraus, und, obgleich ein solcher Zustand an sich schon ein Zustand des Krieges ist [...] so ist doch selbst dieser, nach der Vernunftidee, besser als die Zusammenschmelzung derselben, durch eine die andere überwachsende, und in eine Universalmonarchie übergehende Macht; weil die Gesetze mit dem vergrößten Umfange der Regierung immer mehr an ihrem Nachdruck einbüßen, und in ein seelenloser Despotism, nachdem er die Keime des Guten ausgerottet hat, zuletzt doch in Anarchie verfällt.« (WA XI, 225; cf. AA XXIII, 171; WA VIII, 682.)

55. WA VIII, 474. Janine Chanteur, *De la guerre à la paix*, PUF, Paris 1989, p. 209, seems to underestimate this point and argues that Kant »rompt avec cette vision des choses,« that is, with the vision of *ius gentium* authors who »n'ont pas pour finalité l'instauration définitive de la paix.« In more than fifty pages she has dedicated to Kant's philosophy of peace, only one paragraph deals with the second definitive article of *Zef*.

56. Hinsley, *op. cit.*, p. 69: Kant used »such phrases as 'federation' and 'a union of states' for the rule of law between states.« This is a very clear definition of Kant's problem; unfortunately it confounds Kant's *Rechtsstaatlichkeit* with the »rule of law.« (On the difference: Kersting, *op. cit.*, p. 286.)

57. Cf. Terry Nardin and David R. Mapel, eds., *Traditions of International Ethics*, CUP 1992.

Much of the peace politics which hoped to have some practical effect was immersed in power politics and to a large degree spiritually intertwined peace and the logic of unpacific power. It accepted, as the starting point, the existence of a number of sovereign states and tried to define ways in which they could coexist peacefully. There was one condition under which the peaceful coexistence of European states was imaginable, and that was that none of them was allowed to be too strong, so that it could endanger the existence of others. In order to counteract an »exorbitant power« (striving to establish a *monarchia universalis*) smaller states had to form alliances, and the concept that provided the rationale was the concept of balance of power. The balance of power pacific politics actually dissolved into a combinatory power calculus, failing to reliably determine what was the right amount of power needed for security; and it was a strange kind of pacifism for it not only designed warring alliances but sometimes actually dictated wars. Kant's ironic comment that »ein dauernder allgemeiner Friede, durch die so genannte *Balance der Mächte in Europa* ist, wie *Swifts* Haus, welches von einem Baumeister so vollkommen nach allen Gesetzen des Gleichgewichts erbaut war, daß, als sich ein Sperling drauf setzte, es sofort einfiel, ein bloßes Hirngespinnst« (WA XI, 172) is well known and could not be attributed to the fading attraction of the doctrine.<sup>58</sup> The doctrine was one of international relations, not of international law, and lacked the voice of moral reason which was to be heard in the law of nations.

There is a contradiction in the irenic tradition between this (ignoble, some would say, but realistic and modern) line of argument and the tendency to formulate (and impose) universalist solutions or models. This universalism originated in the tradition of empire and was incompatible with both *monarchia universalis* and sovereign states. In order to achieve peace, different arrangements of nation states were envisaged but in the last instance they were all subordinated to and dominated by an universal power. Ideally, peaceful settlement was a universal order, and a settlement could only be pacific if it aimed at universality. Moreover, it was the dissolution of the universal order, the decline and fall of the empire, which was believed to be the cause of wars. So the imagined peace establishments, as a rule, had a trait of restoration of *imperium* about them; the idea of peace was derived from the imperial idea. In this imperialism – materialized in European (and exceptionally more cosmopolitan) congresses, councils, diets, parliaments, courts, arbitrations and the like – lies the irenic ultimate rejection of sovereign states.

The realization that, since Gentili »a succession of writers argued that the problem of war and peace between states could only be resolved by *union*, that is to say by some kind of federal or confederal arrangement, and not by mere

58. Jeremy Black, *The Rise of the European Powers 1679-1793*, Edward Arnold, London et al. 1990, p. 162.

rules of *coexistence*,<sup>59</sup> needed specification. Such peace bringing unions had the extinction of national independence for their purpose, and substance, and the thinking that invented them was either alien or hostile and opposed to the tradition of international law. It was not only anti-jurisprudential but also anti-internationalist because it was fundamentally anti-nationalist. In the ideal pacific world both nations and their relations would be abolished. Kant, as I have argued, cannot be assimilated to this tradition. This becomes even clearer when we take into account that European irenists not only advocated but often called for crusades or even organized them; elaborated daring schemes for European expansion and conquest; pushed for wars, even wars of extermination, and worked on war finances; hated the Turk and compared »savages« to wild beasts which are to be killed – if not for other reason, for sport. The main body of European irenism has not parted with war. It is not only that the ideal pacific commonwealths or empires do not lack militaristic features and military spirit. This «pacifism» was unequivocally opposed only and solely to wars in Europe: it wanted to terminate wars among Christians. It found only one way to free Europe from wars, and that was by exporting them to non-European territories, or at least to the margins of Europe. This irenism argued that Europe needed peace in order to be able to fight and conquer abroad, and war abroad was understood to be the guarantee of peace at home. Wars against or between *Untermenschen* were the price for European peace.

Kant, as I hope I have indicated, differs from this irenism in all key points. The difference results from his resting the cause of international peace on a free federation of independent nations, sovereign states, and not on any kind of *civitas maxima*. Kant differs from irenism because he strictly defined the problem of international peace in terms of the law of nations. His jurisprudential framework also sets limits to the expectations that peace could be brought about by commerce or achieved through a universal republican settlement. On the one hand, it was clear to Kant that commercial innovations made it easier to wage war and that commercial nations, unbound in their action by *jus gentium*, were devastating non-European peoples and countries, and that the wars they had inflamed all over the world would ultimately affect Europe. On the other hand, a pacific order construed on the lines of classical republicanism would turn the world into one »great army in cantonments« and institute universal despotism.<sup>60</sup> Kant did not offer any instant solution for the problems of war and peace nor did he elaborate a detailed scheme of a pacific

59. Murray Forsyth, »The Tradition of International Law«, in Nardin/Mapel, *op. cit.*, p. 29.

60. A model of an European peace settlement on republican principles was developed by Andrew Fletcher: *An Account of a Conversation concerning a right Regulation of Governments for the Common Good of Mankind. In a Letter to the Marquis of Monstroe, the Earls of Rothes, Roxburg, and Hadington, from London the 1<sup>st</sup> of December, 1703*, Edinburgh 1704, p. 66 sq.

commonwealth. He, rather, defined the framework in which it is possible to think about war and the prospect for peace. He has left the prospect for peace open – all too many peace plans have closed this prospect down and, in the name of universal peace, sealed up a state of war.