IMMANUEL KANT’S VISION OF THE RIGHT OF NATIONS

ABSTRACT: The purpose of this article is to present Kant’s theory of the Right of Nations, which is the essential part of present-day international law debate. In his philosophical work, “Towards Perpetual Peace”, Immanuel Kant is inquiring conditions for co-existence between the states. According to Kant, three elementary conditions lead us toward perpetual peace:

1) Republican government
2) Federation of Free States
3) Cosmopolitan right of a person to a world citizenship

Federation of Free States has an important place in Kant’s vision of the rights of nations and perpetual peace as a final goal of this doctrine. It is crucial for better understanding of Kant’s position on the rights of nations. It is also the most objected part of Immanuel Kant’s political philosophy by various contemporary critics and therefore demands further exploration and analysis. At first, a brief overview of the history of the law of nations, considering the arguments that preceded Kant’s theory will be given. Further analysis of Kant’s work should clear his position and offer an argument in support of his general ideas, reply to the objections and critics of his arguments and evaluate pro and contra opinions. Finally, the consequences of such argumentation and their influence on contemporary political thinking will be discussed. The possibility of appropriate consensus solution will be considered.

KEYWORDS: Kant, Right of Nations, Federation of Free States, International Law, Perpetual Peace

„In accordance with reason, there is only one-way the states in relation with one another can leave the lawless condition, which involves nothing but war. It is that, like individual human beings, they give up their savage (lawless) freedom, accommodate themselves to public coercive laws, and so form an (always-growing) state of nations (Civitas Gentium) that would finally encompass all the nations of the earth. But, in accordance with their idea of the right of nations, they do not all want this, thus rejecting in hypothesi what is correct in thesi. So (if all is not to be last) in place of the positive idea of a world republic only the negative surrogate of a league that averts war, endures, and always expands can hold back the stream of
hostile inclination that shies away from the right, though with constant danger of it’s breaking out.”

Immanuel Kant, *Towards Perpetual Peace*, Second Definitive Article for a Perpetual Peace

„The Law of Nations Shall be founded on a Federation of Free States”

**Introduction**

Historians of philosophy were focused on the philosophy of *Three Critics* and they neglected Immanuel Kant’s small political writings as a part of his legacy. On the other side, historians of political thought did not appreciate Kant’s political writings, because he did not have a grand book in that field. Here, the aim is to show the relevance of Kant’s theory in the field of political philosophy presented in various small works as equally essential part of his philosophical system. Kant’s practical philosophy is a central point of present-day political philosophy and has a vital position in theoretical research in this field. His influence is immeasurable and crucial in contemporary discussions, especially regarding the right of nations and international relations.

There are many reasons for going back to Kantian political philosophy, despite a great number of books and articles written on that subject lately. Furthermore, it is important to emphasize how much value Kantian theory of the rights of nations has in this historical moment. It is the moment in which wars, various crisis, scandals and global immoral political behaviour are set as a basic benchmark of political world, and academic public looks at the world of politics with contempt, the moment in which we are constantly asking, is it possible to act in politics and still hold some traces of humanity?

For all these reasons, Immanuel Kant’s work has to be repeatedly considered. His huge contribution is presented by a formulation, in which we have to „Act in such a way that you treat humanity, whether in your own person or in the person of any other, never merely as a means to an end, but always at the same time as an end”. He was a philosopher in search of all the threads that can link us to humanity, and not separate us from it. Because of that, his *Kingdom of ends* has revolutionary implications. By marking the rights of nations (*Ius Gentium*) and the world citizenship (*Ius Cosmopoliticum*) as a goal of civil history, Kant has lifted political consciousness to a metaphysical level.

The world is going incredibly fast towards a new social order, sometimes with consequent brutality, creating a new civil state in processes such as Globalisation, and

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1 This research was supported by the GAJU (*Grant Agency of the University of South Bohemia*), the Czech Republic under the project „Science for Peace – Immanuel Kant Legacy” (037/2018/H)

2 Immanuel Kant, (1795) *Toward perpetual peace: A philosophical sketch* in *Kant Practical Philosophy*, (Cambridge university press, 1996), 328.
as a result, the political world is becoming one genus. If this is true, then Kantian political philosophy is inevitable. Humanity, from the second formulation of the categorical imperative, must become the basis for all our procedures if we want to secure a brighter future. The world of politics is the most responsible for the morality of humanity and acting of every politician towards others should be „Act only according to that maxim whereby you can at the same time will that it should become a universal law”, like Kant suggests in the appendix of his work „Towards Perpetual Peace”.

This paper is not a historical overview, but an analytical approach to Kant’s political philosophy and the subject of the rights of the nations (\textit{Ius Gentium}), as well as a proper assessment of his legacy with an attempt to give answers to a number of contemporary theoretical questions. In addition, it will bring new critical perspectives regarding the arguments that will arise from analysis of his predecessors and Kant’s own work. Furthermore, a link between Kant’s thought and existing philosophical problems will be made, and new arguments offered. In Kant’s philosophical sketch – \textit{Towards Perpetual Peace} his vision of a cosmopolitan condition that will come provides an endless source of arguments for current political theories. Kant’s writings are viewed as a classic thought, however, they are timeless and we should not frame them in historical perspective. Nevertheless, Kant’s position on the subject of the rights of nations and his political thought remains as relevant to our times as it was in his time.

\textbf{Law of Nations (Ius Gentium). History of the Law of Nations}

Firstly, we have to see how the law of nations (\textit{Ius Gentium}) has developed through history. Obviously, Immanuel Kant was not the first philosopher who is mentioning this subject. Ever since the Roman period, the Law of Nations has always been considered as a part of a Natural Law (\textit{Ius Naturale}). Law of nations was never a part of a human (civil and canon) law, and it was interpreted rather like a set of customs, than a positive law. In other words, it was not a part of any written code and it did not have coercive power or any sanctions. It will be also useful to observe Law of Nations through the lens of authority because there is no coercive instrument for the implementation of such a law. What kind of law could regulate the behaviour of those who are members of different states? Aquinas describes four types of law:\textfootnote{3 Frederick Copleston, \textit{A History of Philosophy Vol.2 Medieval Philosophy - From Augustine to Duns Scotus}, (Doubleday, 1993.), 418.}

- Eternal law
- Natural law
- Civil law (Canon law)
- Divine law
Eternal law is God’s order of the universe. Natural law is human existence according to eternal law. Unlike other creatures, people can contemplate on how to achieve their final good. The natural law regulates human behaviour, but only in an abstract way, and there are no prohibitions according to this law. Natural law can tell us not to steal or kill, but not in a particular case, nor can it propose the penalty. Human right is a part of the natural law. Reason gives us the idea that something is wrong according to the natural law, but there has to be a positive law that will be coercive in such cases. The main function of the legislator is to define the natural law and to apply it in particular cases in which such law would be effective.4

Aquinas defines law as a rule brought for the common good by legitimate authority. The whole community must recognize this law as his own, and that is his final element. Only legitimate political power and authority can bring the civil law. He also thought that Law of nations is some sort of human positive law different from the civil law and that this law can control matters of trade and commerce. Law of nations incorporates in itself what is mutual to every nation and manages relations between the states. He made several remarks on the relationship between nations but did not develop an argument about how this law can be improved.

Juridical Philosophy in the Second Scholasticism

Francisco De Vitoria, the second scholastic Dominican thinker educated in Paris, is the first to change the view and offer different argumentation about the law of nations. His juridical and political philosophy covers a multitude of topics interesting for this article such as the nature of sovereignty, just war, the roles of borders and travelling, trade, immigration, and in particular, the way how various sovereign states can make one broader community. His definition of the law of nations is: „What natural reason has established among all nations is called the law of nations. (, Quod naturalis ratio inter omnes gentes constituit, vocatur ius gentium”)”. 5 According to Vitoria, the law of nations contains the law that is common to all peoples or nations and has his roots in reason. Law of nations includes the right to hospitality, freedom of travel and trade between nations and states, as they are common to all peoples. Vitoria enumerates further norms of the law of nations:

- Free access to all countries of the world (Ius Peregrinandi)
- Free trade (Ius Negotiandi)
- The right to become citizen of another state
- Diplomatic immunity6

4 Ibid.
5 Heinz-Gerhard Justenhoven, Francisco de Vitoria: Just War as Defense of International Law in From Just War to Modern Peace Ethics, (De Gruyter, 2012.), 129.
6 Ibid., 130.
Vitoria extends this argument to the norms of *Ius Gentium* and emphasizes how their force of law, in contrast to the lesser obligatory force of mere *pacta* and *condicitiones*, connects with the public power of a commonwealth: „The law of nations does not have the force merely of pacts or agreements between men, but has the force of law. The whole world, which is in a sense a commonwealth, has the power to enact laws, which are just and convenient to all men. Norms like these make up the law of nations. No kingdom may choose to ignore the law of nations because the authority of the whole world gives it”.

Vitoria is clear about the fact that the law of nations includes the strength of the positive law. He quotes that like in a case of the positive law, the law of nations can incorporate the results of private and public contracts. Public contracts include regulations common to all nations and people, with a goal to protect the natural law. For example, the safety of ambassadors is necessary for the nations if they want to avoid the war. Such rules are not a part of the natural law. According to this, the law of nations is like any other coercive law.

He does not describe how the law of nations can be implemented if no ruler has the authority over the world. How can a ruler resolve or punish the violation of international law? He explains that under some circumstances the ruler of one state has authority over strangers who are not under his government. Vitoria defines this as a just war. If there is an injustice or violation of the law of nations, only legitimate ruler can punish the injustice. The same authority can be part of disagreement and at the same time the judge of it. He has a duty of protecting the innocent as one of the possible causes for a just war.

Some Spaniards used the sins of Indians for justification of Spanish conquest of America. Vitoria thinks that the same argument rulers can use for justification of the attack on other Christian nations, because of the fact that some Christians also commit sodomy, blasphemy and robbery. Vitoria thinks that every political community is sinful. Military intervention could be justified only in case of brutal violation of natural law such as tyranny of barbarians over their people (subjects) or repressive laws against innocent people such as the human sacrifice of innocent people or cannibalism. Vitoria’s thesis is that everyone with legitimate political power can defend the innocent. The ruler who intervenes in cases like this is at the same time the protector and the judge.

Although considering the criminal act committed, rulers have a right to react and be judges as in the case described above. Their authority is the basis of the need that

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7 Andreas Wagner, „Francisco de Vitoria and Alberico Gentili on the Legal Character of the Global Commonwealth“, *Oxford Journal of Legal Studies*, (2011): 9.
8 Ibid., 10.
9 Ignacio de la Rasilla del Moral, „Francisco de Vitoria’s Unexpected Transformations and Re-interpretations for International Law“, *International Community Law Review 15* (2013):290.
someone has to punish those who act unjustly. It is not clear who is proclaiming this law of nations. Vitoria thinks that relevant laws are rational and have worldwide consent, but it is not clear how to prescribe this consent. It is possible to update the law of nations with time. A typical example of a right that belongs to the law of nations is immunity of the ambassadors, accepted universally. This immunity does not have a basis in the civil law of the particular states, but only in the law of nations. This custom indicates consent in the law of nations.

Vitoria writes about the use of the law of nations in a way that he justifies Spanish conquest of America but denying that conquest was a crusade against immoral barbarians and the idea that war is lawful against those who offend the natural law. This natural community of humankind marks hospitality to strangers as one of the most important duties of the law of nations. The right to travel (*Ius Peregrinadi*) must apply to all nations. It is the opportunity to move freely through the lands and to engage others in an exchange of goods and ideas is seemingly a precondition to the progress of civilization.\(^{10}\) It would be breaking the law of nations to prohibit travelling as long as it caused no harm, and to those who are innocent of any crime.

Vitoria’s work, although not fully consistent, is still an important part of the theory of the law of nations, especially if we consider the fact that they originate from the late 16\(^{th}\) century.

**Renaissance of the Law of Nations**

","Franciscus de Victoria has pretended to transfer the Right of taking up arms to the inhabitants of a town, even without such a case of necessity, in order to have satisfaction for those injuries, which the Prince neglects to revenge; but others justly reject his opinion".\(^{11}\) This passage is one of many in which Grotius criticizes his predecessors. It is obvious that their thinking was a starting point for the development of his own theory of the law of nations.

In his book *The Rights of War and Peace (De Iure Belli ac Pacis)* Grotius criticizes Vitoria’s thought on this subject, but otherwise, he was significantly influenced by the Dominican author, when it comes to the defence of the rights of travel, trade, and access to the seas. Somehow, he synthesized the old and the new. Grotius was a thinker of an early modern philosophy, but despite his writing style full of ancient poets and biblical quotations, some of the ideas he presented are indeed recognizable even today.

\(^{10}\) G. Scott Davis, „Conscience and Conquest: Francisco de Vitoria on Justice in the New World” *Modern Theology* 13:4, (1997): 484.

\(^{11}\) Hugo Grotius, *The Rights of War and Peace* (2005 ed.) vol. 1 (Book I) [1625] (Liberty Fund, Indianapolis, 2005.), 252.
Grotius defines the law of nations in this way: „But as the laws of each state respect the benefit of that state. So amongst all or most states, there might be, and in fact, there are laws agreed on by common consent, which respect the advantage not of one body in particular, but of all in general. This is what is, called the law of nations when used in distinction to the law of nature.‟

Because of that, we can regard him as the initiator of the modern international law. In his work, he presents the theory of natural law according to which individual interest and self-preservation are foundations of the civil society. Every law has to be based on the fundamentals of natural law. We can derive the law of nations from the natural law. Positive law is always laying in some sort of real power, while the natural law provides dignity and freedom to man because it is a principle higher than any human codes. Society of nations operates under and it is constituted by the law of nations.13

Society of nations is in Grotius work seen more like the state of devils in Kant’s „Towards Perpetual Peace”. Grotius’s political thought was in some extent determined by his role in one of the greatest sources of Dutch wealth and power, the overseas trading and military activity of the Dutch East India Company, the first enormous corporation that dominated the European overseas expansion in the 17th century. As the title of his ground-work clearly says, he was above all, the philosopher in search of just war arguments.

Sorry Comforters

In 1672, Samuel Pufendorf published De iure naturale et Gentium, influenced by Grotius’s ideas on the law of nations. He argues that the natural law does not extend beyond the limits of this life and merely regulates only external acts. In this way, he is trying to form a new natural law, free from Aquinas’s conception. For him, the state of nature (Ius Naturale) is the state of peace. Nevertheless, this peace is weak and uncertain. Because of this, the roles of state and supreme sovereignty are necessary for developing the law of nations.

In terms of public law, which recognizes the state as a moral person, Pufendorf argues that the will of the state is nothing more than the sum of the individual wills that are associated with it. One of his ideas was to build a natural law that suits civil philosophy free from eternal eschatology and acknowledge the secular state, deriving political and juridical norms from no higher source than humans who need to live in the society.14 The state (Status Civilis) is a community based on social actions and

12 Ibid., 94.
13 Daniel Schwartz, „Grotius on the Moral Standing of the Society of Nations”, Journal of the History of International Law 14 (2012): 127.
14 Ian Hunter, „The Figure of Man and the Territorialisation of Justice in ‘Enlightenment’ Natural Law: Pufendorf and Vattel”, Intellectual History Review, Vol. 23, No. 3 (2013): 292.
human interactions. Man’s prime goal is to strive toward welfare and moral perfection. Hence, the state needs to submit to a discipline, which is essential for human safety. This submission, in the sense of obedience and mutual respect, is for him the fundamental law of reason, which is the basis of the natural law. Nevertheless, humans have numerous characteristics that make them antisocial.

Consequently, a series of contracts have to be formed in order to offer effective protection against harm, both from others within the state and from outside. This situation creates the following, the duty of obedience for the citizen and the duty of protection on the part of the sovereign. He also distinguished natural law from the civil law and moral theology. The duties of a man and the citizen will unite in a system where a superior established the right to govern others in exchange for protection and security. The authority of superior arises from his capacity to protect and secure citizens from each other and from external enemies.\(^\text{15}\)

In the absence of a superior, men often act egoistically, at the expense of others around them. In addition, an agreement to which one had once agreed may later become corrupt, so that men strive for departing from what they had consented to originally. Men should gain for themselves as much protection and security against the wickedness of their fellows as possible. However, in order to achieve protection and security, it is not enough that few men form a company of mutual aid and exchange promises that they will direct actions to the common good. Something more solid has to be formed, union of wills and strength. Pufendorf adds that the law of nations must create a common link between all peoples, as a humanity.

Pufendorf made a great breakthrough in the theory of the law of nations with his arguments concerning basic metaphysical position (in a way influenced by Hobbes), but his ideas on this topic are remaining in the frame of his time. In any event, Pufendorf’s major work on „The Law of Nature and of Nations” still has an influence on various theories in current social sciences and for this reason, it has to be evaluated constantly in the same way as the work of his successor, Emerich de Vattel.

Vattel seems to be an author who had his own philosophy, his own ethics and political theory. His metaphysical background, unlike Pufendorf, is in Aquinas’s natural law thought. In the centre of his philosophy lies the notion that human nature consists of goods and virtue, the rules for perfection rooted in the natural law. Justice is in harmony with the natural law. Applying this structure to the term of nation Vattel argues that, if by the natural law individuals are required to perfect their natural goods or cultivate their virtues, then, as collective individuals, the same applies to the nations, who arise here as corporate nation-persons. Moreover, just as the natural law drives individuals to enter political society in order to perfect and protect their rational and

\(^{15}\) Ibid., 293.
sociable nature, so too, for the same reason, it requires nation-persons to enter a society of nations governed by a law of nations (Ius Gentium).\textsuperscript{16}

Hunter sees this as Vattel’s territorial justice concept. Nations cannot be just in their relation because it will break their sovereignty and nationally built morality. Every nation claims that justice is on its side in every case of the quarrel that happens and it is not possible that the nations judge other nation in this case. In his Law of Nations, Vattel develops a theory of the domestic state in which a member of one folk seeks justice as virtue through his national state inside their borders. This eventually leads to a Voluntary Law of Nations observed as a scope of rules, conventions, contacts and treaties through which the states organize control of war and peace procedures without any obligatory principle of international justice.

His view on domestic state is based on an idea of building a nation as a collective agent according to the natural legal obligation to preserve and perfect their inner nature. The nation is observed as a being, determined by its essential attributes, and it has its own nature and can act in accordance with it. Unlike Pufendorf’s, Vattel’s superior needs to execute the will of a corporate national people who naturally want to be a part of a larger community and not only to protect and secure. Vattel’s law of nations is the conception of a society of nations with a goal to protect itself and each nation is bound to contribute everything in her power to the happiness and perfection of all others.\textsuperscript{17}

National state, as the coercive instrument through which people want to cooperate and perfect their national virtues, is the foundation of the republican theory with territorial architecture. Vattel makes a theory of state and nation by introducing the term territory in Aquinas’s natural law theory. From this theory, he derives the argument that every nation has to determine what is the best for her, find her own way of building virtue, and conclude what is justice. On the international level, the natural law’s principle of justice would be in contradiction with national sovereignty and national interest. Nations should cooperate and search for common virtue and this will lead them to a necessary and natural law of nations.

The fundamental hypothesis of this Voluntarily Law of Nations is that it has to be promulgated by the same civil laws, which govern the state. This law has to incline towards the universal principle of justice. We can see that Vattel’s book „Law of Nations” operates as a diplomatic casuistry of his time and that his arguments rely on the self-consciousness of the national ruler, and not on applied moral philosophy. His point is different from Immanuel Kant’s position of inner moral development of an agent.

\textsuperscript{16} Ian Hunter, „Kant and Vattel in Context: Cosmopolitan Philosophy and Diplomatic Casuistry”, History of European Ideas, Vol. 39, No. 4 (2013): 492.

\textsuperscript{17} Ian Hunter, „The Figure Of Man and the Territorialisation of Justice in ‘Enlightenment’ Natural Law: Pufendorf and Vattel”, Intellectual History Review, Vol. 23, No. 3,(2013): 299.
who will build moral community on the Republican ground, and look for similar communities around, in a wish to create a Federation of Free states.

Kant’s Position

The structure of „Towards Perpetual Peace” follows the model of many peace treatises written before, with a preamble, six preliminary articles, three definitive articles, a secret article and an appendix; however, its content is quite diverse. At the beginning of his philosophical sketch, Immanuel Kant had a different idea than his predecessors and sorry comforters, as he called them. He thinks that international law and international relations can be perceived from an alternative perspective that aims at a peaceful organization of the states. He expresses contempt on those whose work justifies military aggression, although their diplomatic and philosophically formulated codes do not and cannot have any legal force, since the states as such, are not obliged to a common external constraint. As one see from the title of his work, his intention is not to write a new peace treaty (Pactum Pacis) or just a war theory, diplomatic or jurist academic piece of work, but to give to humanity a new perspective about these issues. He clearly knows that all the peace treaty arguments are spent in the vast work of his forerunners. Even a cursory perusal of the Emerich De Vattel extensive book „The law of nations” is enough to conclude that motives and starting hypothetical positions between them are very different and that the gap between diplomatic case-study theory (casuistry) and cosmopolitan philosophy is wide.18

We can also discern that, like in his epistemology, Kant makes a Copernican twist concerning his predecessors. His idea is peace, established very strongly as a metaphysical category. Peace is in his work in the same corpus of ideas with the truth, justice and freedom. Peace is the first, ground philosophical term, and then later a juridical-political concept. He is fully aware that no philosophical knowledge, moral acting or aesthetic judgment, is possible in the state of war. There is no legitimate solution for the peace between people in the field of jurisprudence and politics only. Peace is, before anything else, a philosophical category.

For Kant, no peace treaty, which includes issues of a future war, is valid. Silence about true causes of war and real pretensions of enemies are usually a characteristic of such peace arrangements. Therefore, he suggests that this is not a step towards perpetual peace but only a temporary cease-fire. Especially because all the decisions about the future war are still in the hands of the mighty authority rulers and their ministers who will always follow their own interest in these matters and not the general will of their people.

18 Emerich De Vattel, The Law of Nations or the Principles of the Law of Nature Applied to the Conduct and Affairs of Nations and Sovereigns (T. & J.W. Johnson, Law Booksellers, successors to Nicklin & Johnson, no.5 Minor Street, Philadelphia, 1844.), 192.
The state is not a property (*patrimonium*), a piece of land, which can be an object of trade, but a community of people independent of all external influences. The idea behind the statement is „No independently existing state (whether small or large) shall be acquired by another state through inheritance, exchange, purchase or donation”. This also means that renting of standing army to another against fighting the mutual or different enemy is not justified. In Kant’s opinion, governments are using people as objects and they can do with them whatever they like. This is the reason why standing armies (*miles perpetuus*) should disappear with time.

Standing armies pose a constant threat of war towards other states since they force those states into an arms race. This demands huge costs and peace eventually becomes even bigger torment than a brief war. Such armies become the cause of war themselves, with a goal to accomplish relief of their own forces. Besides that, if people are trained and paid to kill or be killed, this means that they are nothing but machines without free will, but in the hands of someone else, in this case, their own government. In accordance with the natural right of men this is dishonourable and something completely different from the situation in which people voluntarily practice army training with the goal of preserving their homeland from foreign attack.

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

Kant is more than clear about this matter: „The ingenious invention of a commercial people in this century. Dangerous power of money, namely a treasury for carrying on war that exceeds the treasuries of all other states taken together and that can only be exhausted by the deficit in taxes that is inevitable at some time (but that is postponed for a long time because trade is stimulated by the reaction of such loans, on industry and earnings). This facility in making war, combined with the inclination of those in power to do so, which seems to be implanted in human nature, is, therefore, a great hindrance to perpetual peace. There would have to be a preliminary article forbidding it- even more because the bankruptcy of such a state, finally unavoidable, must entangle the other states in the loss without their having deserved it, and this would be doing them a public wrong. Hence, other states are at least justified in allying themselves against such a state and its pretensions.”

19 Immanuel Kant, (1795) *Toward perpetual peace: A philosophical sketch* in *Kant Practical Philosophy*, (Cambridge university press, 1996), 318.

20 Immanuel Kant, (1795) *Toward perpetual peace: A philosophical sketch* in *Kant Practical Philosophy*, (Cambridge university press, 1996), 319.
Republican Constitution

Next step in developing arguments toward perpetual peace is the idea that no state shall interfere by force in the constitution and government of another state, and it cannot be justified by any mean. Kant sees only one exception: if one state with internal disagreement would divide into two parts so that both parts can represent themselves as states. In this case, another state from aside can help the newly founded state. Different behaviour will lead to international scandal.

Kant highlights the fact that the only proper way of establishing perpetual peace is building the civil constitution in every individual state on Republican basis. The civil condition, regarded merely as a rightful condition, is a priori based on the following principles:

- The freedom of every member of the society as a human being.
- His equality with every other as a subject.
- The independence of every member of a commonwealth as a citizen.21

Then again, slightly differently mentioned in the first definitive article of „Towards Perpetual Peace”22: „A constitution established, first on principles of the freedom of the members of a society (as individuals). Second, on principles of the dependence of all upon a single common legislation (as subjects). Third, on the law of their equality (as citizens of a state). The sole constitution that issues from the idea of the original social contract, on which all-rightful legislation of a people is based, is a republican constitution”.23 Kant emphasises the same idea in various places. The crucial fact for development of the Right of nation’s lies in a Republican-organized state that can, as such, subsequently join the Federation of Free States. To avoid republicanism to be confused with the democratic constitution, Kant describes forms of the state. He is dividing these forms in the following way: either by number or by way of governance. According to the number of persons who have supreme power, the state could be:

- Monarchy
- Aristocracy
- Democracy

According to the way, the superior of the state governs people:

- Despotic

The main attribute of republicanism as the political principle is the separation of the executive and legislative power. On the other hand, despotism is autocratic

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21 Ibid., 291.
22 Ibid., 322.
23 Ibid.
managing of the state with laws superior has given to himself. In this state, a regime is handling the public will as its private. Of all three forms of sovereignty, that of democracy in the strict sense of the term is necessarily a despotism because it establishes an executive power in which majority will always outvote the one who does not agree, and this is in contradiction with the general will itself and the principle of freedom, states Kant.

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

**Right of Nations**

Kant starts with building an argument of necessity of the right of nations in part 3 of his work „On the common saying: That may be correct in theory, but it is of no use in practice”, as a reply to Moses Mendelssohn’s view that the human race will never make any moral progress. The right of nations is seen as a condition in „which alone the predispositions belonging to humanity that make our species worthy of love can be developed”. Kant emphasises that nowhere human nature appears less loveable than in relations between nations and that no state is safe from the other, neither its independence nor its property. The will for conquering has always existed. In Kant’s philosophical position, the right of nations has to be designed on the federalism of free states. The only possible solution for this is international law, based on public laws accompanied by the power of the republican constitution. Federalism of Republican states is building a peaceful alliance.

We observe the states with their people as free agents in their state of nature, independent from outer coercive power. On the other hand, this presumes that all the states of the alliance are having their own Republican governance, which guarantees all the basic human Rights to every single man. This alliance should be, in Kant’s view, a union of people, which does not have to be a multinational state blended in one single entity.

Alternatively, Kant points out: „This would be a league of nations, which, however, need not be a state of nations. That would be a contradiction. In as much as every

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24 Immanuel Kant, (1793) On the common saying: That may be correct in theory, but it is of no use in practice, in Kant Practical Philosophy, (Cambridge university press, 1996), 305.
state involves the relation of a superior (legislating) to an inferior (obeying, namely the people). However, a number of nations within one state would constitute only one nation, and this contradicts the presupposition (since here we have to consider the right of nations in relation to one another insofar as they comprise different states and are not to be fused into a single state)”.25 Once it is implemented, republican governance of the state determines the individuality of its people. Kant has in mind the Right of individual people in the universal relation and not people melted in one giant state with despotic governance.

In the “Metaphysics of Morals” (Doctrine of rights), he puts the same idea in another phrase: „By a congress is here understood only a voluntary coalition of different states which can be dissolved at any time, not a federation (like that of the American states) which is based on a constitution and can therefore not be dissolved. Only by such a congress can the idea of a public right of nations be realized, one to be established for deciding their disputes in a civil way, as if by a lawsuit, rather than in a barbaric way (the way of savages), namely by war”.26

Regardless of which phrase Kant is using, the idea remains the same. The idea of the right of nations assumes that many neighbouring countries are existing independently and divided from each other. Although such condition means war per se, it is still, according to the ideas of our reason, better than the state of nature in which one of the countries takes over and conquers others, and blends them in one universal despotic monarchy. Because, if the extent of such power is higher and bigger, the effect and influence of the civil laws and rights start to weaken, and we will have mindless despotism leading toward anarchy in the end. Therefore, to conclude, the republican system of government is the necessary condition (conditio sine qua non) for the next step in developing perpetual peace, which is for Kant, the Federation of Free states.

Although Kant repeatedly compares external state relations to the interpersonal state of nature, he draws different conclusions with regard to how the state of war between persons and the state of war between the states should be overcome.27 The crucial phase of the establishment of perpetual peace is the Federation of Free States. Similar to the social contract theory in which people live in a state of nature prior to the founding of the civil society, the states exist in a natural state prior to the Federation of Free states. Just as individuals, who can be final referees of their decisions and behaviour, governments in a natural setting can decide about their way of interaction

25 Immanuel Kant, (1795) Toward perpetual peace: A philosophical sketch in Kant Practical Philosophy, (Cambridge university press, 1996), 326.
26 Immanuel Kant, (1797) „Metaphysics of Morals” in Kant Practical Philosophy, (Cambridge university press, 1996), 488.
27 Kjartan Koch Mikalsen, „Kant and Habermas on International Law”, Ratio Juris. Vol. 26 No. 2 June (2013): 305.
with the other governments. Likewise, similar to individuals in the natural state, which end in war and struggle, governments in a natural state end up in mutual hostility. Thus, governments in a natural state, a type of state that could just as well be recognized as the war of all against all (*Bellum omnium contra omnes*) - will enter into hostility with other states upon feeling obligated. The only outcome of such a state of affairs will be accumulative destruction, just as relations between individuals will end in wrongdoing and uncertainty. Regimes in a natural state view themselves as being in a persistent state of war with other countries. However, their interactions are much more complex than interactions of individuals who live under a natural state. Therefore, individuals and governments existing under a natural state have both, similarities and differences. Before their agreement with the Federation of Free States, the regimes deal with the following types of interactions:

- Bilateral relation between two states,
- Multilateral relation between the states that are members of the federation,
- The relationship of the people of one state with the government of another.

Kant describes the states as moral agents, which have obligations towards others. According to his moral philosophy, here lies the following model of reasoning: each state (like each moral agent) should treat another in a universal way. Kant thinks that the same moral law, which drives agents from the state of nature to a juridical society, will drive nations toward *Federation*, a form of worldwide *Republicanism*.

Kant sums the aspects affecting the right of nations. In the field of international relations, governments act with no respect for justice and rights. This state of affairs is fundamentally unfair since powerful states benefit even without actual conflict. Besides, no government is willing to go beyond others in terms of reaching the moral plateau. Therefore, the states have to arise from the state of nature (*Ius Naturale*). The creation of the Federation of Free States is a necessary measure, so that, within a setting of non-interference, national regimes would be able to provide common safety against external attack. The Federation of Free States must have no leader. This has to be a part of the constitution of a future Congress, where countries would be free to join as members or get out of the Congress.

Countries make the association with the federation in order to leave behind their previous natural lawless state and conflict and to preserve their security and stability. Two major duties in case of security are set: non-interference in the internal activities of the member states and joint front against aggression. It is clear that, if non-interference duty of member states is working right we do not need the latter one, within the field of international relations. As long as the governments subscribe to the notion of non-interference, the idea of a joint defensive alliance is not an issue, regardless of the aggressor is a member of Federation or outsider.

A world *Federation* is different from a peace treaty. A peace treaty may serve as a mean of ending of hostilities, but it will not change the circumstances, which in some
way can lead to a new war. Kant calls on all people and governments to hold the notion of rights and moral responsibility as means of rejecting war and fighting. The reason, as the definitive source of ethical regulation, levels an absolute disapproval against a war and, on the other hand, creates peace as a demanding obligation. To establish peace, there has to be a mutual contract among the nations, which Kant denotes as a pacific league. A peace treaty (Pactum Pacis) may lead to another war, while a pacific league will seek to end all wars. Kant claims next: „Reason, from the throne of the highest morally legislative power, delivers an absolute condemnation of war as a procedure for determining rights. On the contrary, makes a condition of peace, which cannot be instituted or assured without a pact of nations among themselves, a direct duty. There must be a league of a special kind, which can be called a pacific league (foedus pacificum), and what would distinguish it from a peace pact (pactum pacis) is that the latter seeks to end only one war whereas the former seeks to end all war forever”.28

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

The right of nations consists of four elements:
✓ State of nature is a state of war
✓ States are in the state of war in their external relations with each other
✓ Federation of Free States is based on the social contract
✓ This federation may have no form of sovereign power29

Cosmopolitan Goal

The third condition of perpetual peace is providing citizens with the cosmopolitan right. Human relations on earth are founded on the principle of right. People can travel and cooperate without being treated with aggression. In the third definitive article of „Towards Perpetual Peace” Kant affirms universal hospitality within the context of cosmopolitan right. Not philanthropic one, but the one bared in the natural right. „Hospitality means the right of a foreigner not to be treated with hostility because he has arrived on the land of another. The other can turn him away if this can be done without destroying him, but as long as he behaves peaceably where he is, he cannot

28 Immanuel Kant, (1795) Toward perpetual peace: A philosophical sketch in Kant Practical Philosophy, (Cambridge university press, 1996), 327.
29 Immanuel Kant, (1797) Metaphysics ofMorals in Kant Practical Philosophy, (Cambridge university press, 1996), 482.
be treated with hostility”.\(^{30}\) What he can claim is not the right to be a guest, but the right to visit. With his notion of hospitality, Kant is actually developing the right to travel (*Ius Peregrinadi*) which is already discussed in the article above. He was a historical witness of conflicts brought by the process of colonization and he was aware of its consequences. However, such acts of exploitation and manipulation did not pose an obstacle to people for entering other societies and interrelating with their fellow humans. Even if they were savages, they could find themselves in the particular piece of land (earth). The people of one continent can visit other continents, and establish common relations.

In Kant’s philosophy, the notion of a world federation reflects the idea of the cosmopolitan whole. According to Kant’s view, nature reaches its ultimate goal only when mutual relations, in the context of a civil society and human freedom, are not in a position of war. Under such conditions, natural capacities will accomplish their maximum abilities. Vital for the creation of such conditions is the establishment of a *Cosmopolis* as a safety net against countries’ pretension threats to each other. The desire for wealth and greedy regime leaders are an obstacle for founding a *Cosmopolis*. If this continues, war and destruction will ruin chances for the cosmopolitan goal.

Finally, Kant summarizes:” Now we come to the question concerning what is essential to the purpose of perpetual peace. What nature does for this purpose, with reference to the end that the human being’s own reason makes a duty for him? Hence to the favouring of his moral purpose, and how it affords the guarantee that what man ought to do in accordance with laws of freedom but does not do, it is assured he will do, without prejudice to this freedom, even by a constraint of nature, and this in terms of all three relations of public right: *the right of a state, the right of nations and cosmopolitan right*”.\(^{31}\) His idea is that natural providence will lead to this end.

**Objections and Modifications of Kant’s Right of Nations Theory**

There are many possible ways of discarding Kant’s ideas of perpetual peace. Objections came right after Kant published his work at the end of the 18\(^{th}\) century. His German idealism fellow, J.G. Fichte, was the first to comment Kant’s work. This review is particularly interesting because it was written in the same year and in the same place, without any historical gap. We could observe this review as a proper examination of what Kant actually thought without any historical interspace. In this review, Fichte\(^{32}\) evaluates Kant’s arguments, sees this work as a complete result of Kantian Philosophy of Right (*Rechtsphilosophie*) and comes to the following conclusions.

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30 Immanuel Kant, (1795)*Toward perpetual peace: A philosophical sketch* in *Kant Practical Philosophy*, (Cambridge university press, 1996), 329.

31 Ibid, 334.

32 Daniel Breazeale „Fichte, J. G. Review of Immanuel Kant, Perpetual Peace: A Philosophical Sketch” (KÖNIGSBURG: Nicolovius, 1795), *The Philosophical Forum, Volume XXXII, No. 4, Winter* (2001): 312.
Fichte as a Contemporary of Kant

After interpretation of preliminary articles of "Towards Perpetual Peace", Fichte offers the insight: "In passing, Kant calls attention to the concept of a *lex permissiva*, which is possible only insofar as the law does not extend to certain cases. From this, the reviewer believes, one should already have been able to see that the ethical law, this categorical imperative, cannot be the source of natural right, since it commands without exception and unconditionally. Natural right, however, provides us only with rights, of which one may or may not avail oneself". Fichte further examines the next sequence of Kant’s theory. According to Kant, every rightful constitution, with regard to the persons within it:

- Obeys to the right of the state citizenship (civil right) of human beings within a nation (*Ius Civitas*);
- Obeys to the right of the nations of states in their relations with one another (*Ius Gentium*);
- Obeys to the right of the world citizenship, insofar as human beings and states stand in the relation of externally influencing one another and as citizens of a universal state of humanity (*Ius Cosmopoliticum*).

Fichte detects that there is no Natural right (law) in the proper sense of the term, no rightful relationship between human beings, except under a positive law and under some authority, and that the condition of being in a state is the sole, true natural condition or state of human beings. It is not possible to avoid the natural law if you want a proper deduction of the concept of right. In Fichte’s opinion, Kant did not explain the division of legislative from executive power with sufficient precision.

However, when he clarifies the arguments for the Federation of Free States he stresses the following view. The states can have no other means for escaping from the lawless condition of war in relation to one another than those that are available to individuals. Namely, just as individuals unite in a civil state, so these warring states must unite in a state of nations, in which their conflicts will be judged in accordance with the positive laws. This is, anyway, the decision of pure reason, and the Federation of nations proposed by Kant for the preservation of peace is not more than an *intermediary condition*, through which the humankind may have to pass on its way to peace, just as the states undoubtedly firstly arose from the protective alliances of individual persons.

It seems like Fichte does not share Kant’s idea that peace has to go over the borders of a national state and that peace is the foundation for all further political development.

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33 Ibid., 315.
34 Ibid., 319.
His assessment does not go outside of the frames of the natural law and republican governance. Later critics of Kant have an even narrower view of the Rights of nations, however, due to the scope of this article, they will not be discussed in detail. Kantian theory gets full revival after the fall of the Berlin wall, an event that triggered a fundamental political change and new theoretical approaches to this question.

Present Day Reconsiderations of Kant’s Right of Nations Theory

The first significant thinker who will revive Kant’s ideas from “Towards Perpetual Peace” in this era is Jürgen Habermas, the German social philosopher. His work “Kant’s Idea of Perpetual Peace: At Two Hundred Years Historical Remove” is a profound critic of the sketch with proper historical distance. He speaks about the importance of grasping Kant’s theory with all of its historical background and without the state of nature concept because they are not anymore consonant with our historical experience. Kant’s theory is described only by three main arguments:

- Perpetual peace as a final goal
- The Federation of Free States as a project
- Idea of the cosmopolitan order as the solution of the proposed project

The second argument is the most important for this article. Habermas is developing arguments in the subsequent direction. First, he thinks that the idea of the Federation of Free States and the right of the nations need reformulation in the light of the contemporary global situation. Although perpetual peace is a vital characteristic of the cosmopolitan order, it is still only the indicator of the final consequence. The main problem is how to specify the differences between the classical view of the law of nations as a right to have a just war, and the cosmopolitan law, which is yet to come. In other words, what is specific for the ius cosmopoliticum? Kant, as we have already seen, is proposing a League of Nations, the Federation of Free States or a Congress of Sovereign States. He also draws an analogy between the state of nature and the social contract and the future forming of the federation. Just as the social contract drives the state of nature between self-reliant individuals to an end, so the state of nature between aggressive states should end as well. From now on, the order described as cosmopolitan is supposed to be different from an internal legal constitution since the states, unlike individual citizens, do not submit themselves to the public coercive laws of a superordinate power, but hold their independence. The predicted Federation of Free States that rejects war forever is supposed to maintain the sovereignty of its followers.

35 Jürgen Habermas, The Inclusion of the Other: Studies in Political Theory (Cambridge, MA: MIT Press, 1998), 165.
36 Ibid.,
in their foreign relations. The perpetually-connected states hold their highest constitutional authority and do not incorporate into a world republic. Instead of the positive idea of a world republic, Kant is building the negative substitute of a Federation of Free States whose goal is to prevent war.

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

The contradiction here is obvious. Kant wants to preserve the sovereignty of the Federation of Free States members. He keeps them in a soft voluntary alliance without any coercive power. On the other hand, the federation that establishes a perpetual peace is supposed to differ from the merely intermediate condition, like Fichte remarks. According to Habermas, the members of the Federation of Free States have to subordinate their own sovereignty to the mutually stated goal of not resolving their disagreements by war, but by a process similar to a court of law. Habermas clearly notes „Without this element of obligation, the peace congress of nations cannot become permanent, nor can its voluntary association become enduring; instead, it remains hostage to an unstable constellation of interests and will inevitably fall apart, much as the League of Nations would years later”.  

Kant does not comprehend the Federation of Free States as a union with common institutions, and therefore this organization does not have any coercive authority. This means that the relationship between the states relies purely on moral grounds, but such trust even in his time, and especially today, is nothing but philosopher’s sweet dream. Nevertheless, in the historical sense, Kant’s project of the Federation of Free States remains realistic.

Today we have a requirement for reformulating the Federation of Free States and blending it into the present situation. Novel institutional design of the right of nations ranges from minimal intergovernmental models to proposals advocating a world government with full coercive authority. Proponents of the minimal intergovernmental prototype still hold clean Kantian position and advocate a league of states without coercive authority. We can see that this is not a reformulation of Kant’s theory and that all arguments Kant established are similar. Two different types of reasoning are present among those who invoke a world government. We have philosophers who are promot-

37 Daniel Breazeale „Fichte, J. G. Review of Immanuel Kant, Perpetual Peace: A Philosophical Sketch” (KÖNIGSBURG: Nicolovius, 1795), The Philosophical Forum, Volume XXXII, No. 4, Winter (2001): 319.
38 Jürgen Habermas, The Inclusion of the Other: Studies in Political Theory (Cambridge, MA: MIT Press, 1998), 169.
ers of the state of states model, and those who are trying to establish a theory of cosmopolitan democracy.

**Minimal intergovernmental model**

One of the notable proponents of the minimal intergovernmental theory of the Right of the nations is famous American philosopher, John Rawls. In his article „*The Law of Peoples*” he says: “I assume that the outcome of working out the law of peoples for liberal democratic societies only will be the adaptation of certain familiar principles of justice and will allow for various forms of cooperative association among democratic peoples and not for a world state. Here I follow Kant’s lead in *Perpetual Peace* in thinking that a world government, by which I mean unified political regime with the legal powers normally exercised by central governments, would be either a global despotism or else fragile empire torn by frequent civil strife as various regions and peoples try to gain their political autonomy.”

**The state of states model**

Proponents of the world government have a different opinion than Rawls and they are more than willing to change and reformulate Kant’s theory of the Federation of Free States. In the work of Sharon Byrd and Joachim Hruschka, we find a different interpretation of Kant’s arguments. Their first thesis is that Kant changed his own opinion from „*Towards Perpetual Peace*” (1795) and that his ideas matured over time. Their line of thinking claims that the real right of nation’s arguments is laying in the first part of „*The Metaphysics of Morals*” called Doctrine of Right. After long and detailed analysis of the first part of Doctrine of right, the authors concluded that Kant drastically changed his position since the first edition of the „*Towards Perpetual Peace*”. These arguments are in relation to Kant’s explanation of exiting the state of nature and entering the juridical state with Republican governance.

Sharon Byrd’s and Joachim Hruschka’s approach in their commentary on Kant’s Doctrine of Right is analytical and very detailed. Their analysis of the text, word by word, sometimes distract us from the whole picture and the reader gets the feeling of not seeing the „*tree*” because of the „*forest*” of Kant’s quotations. They seem to agree that „*Metaphysics of Morals*” is a higher authority than „*Towards Perpetual Peace*”

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39  John Rawls, „The Law of Peoples” *Critical Inquiry, Vol.20, no. 1* (autumn, 1993): 46.
40  Sharon B. Byrd and Joachim Hruschka „From The State Of Nature To The Juridical State Of States” *Law and Philosophy 27*, Springer 2008), 600.
in defining Kant’s attitude toward warfare. In their commentary, they adopt thinking that the statements Kant made on legal philosophy were unsatisfactory before the Doctrine of Right. Kant’s lectures in 1784, in “On the common saying: That may be correct in theory, but it is of no use in practice”, 1793, in “Towards Perpetual Peace” of 1795, and in his short comments in many other works, are steps toward the system of legal philosophy that unfolds in the „Metaphysics of Morals” (Doctrine of Right) of 1797. They are steps towards his system, but they do not already contain the system itself.41

Byrd and Hruschka suggest that it is plausible that Kant makes mistakes while he is trying to establish his theory of the Right of Nations. The system is in their opinion refined to perfection in the „Metaphysics of Morals”. They presume that this is Kant’s final position and that he should be perceived as a just war theorist. In particular, they appear to endorse the extremely subverting idea that Kant allows for wars to be waged to force other states into „peaceful” federation of states or what they describe as a juridical state of states. By taking this view, they open the way for Kant’s doctrine to be arranged by those enthusiastic proponents of the democratic peace thesis who wish to extend the democratic system to new territories by force if necessary.42

If one takes a closer look at these two different pieces of Kant’s work, he will immediately see that in the „Metaphysics of Morals” (Doctrine of Right), we could find only several paragraphs dedicated to the problem of war. Then again, „Towards Perpetual Peace” is fully dedicated to this problem. Even though there are discrepancies between the Doctrine of Right and Perpetual Peace in the way they adopt the possible legitimacy of war, they are far from being entirely incompatible with one another.43

**Cosmopolitan Democracy and multi-level approach**

On the other hand, Jürgen Habermas is going in another direction with his theory of cosmopolitan democracy. His critic of the Federation of Free States does not imply that he supports the idea of the world republic. In the „Kantian Project and the Divided West”, he is pointing out the thesis about the process of constitution of international law. 44 Through careful analysis of Kant’s arguments, he is trying to create space for implementation of his theory of cosmopolitan democracy. This implies reformulation of contemporary international legislation according to the idea of protection of basic

41 Williams, Howard. *Kant and the End of War A Critique of Just War Theory* (Palgrave Macmillan, 2012.), 54.
42 Ibid., 55.
43 Ibid., 7.
44 Jürgen Habermas, *The Divided West* (Polity Press Ltd, 2006), 115.
human rights. Individual human rights are the cornerstone of Kant’s cosmopolitan law (*Ius Cosmopoliticum*). This is for him a proper synthesis between the world republic on one side and voluntary League of Nations on the other.

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

The final point of the process of legislation of political power is the very idea of a constitution that a community of free and equal citizens gives itself. At this point, we must differentiate between a state and a constitution. A *state* is a complex of hierarchically organized capacities that can exercise political power or implement political programs; a *constitution*, by contrast, defines a horizontal association of citizens by placing the fundamental rights that free and equal founders mutually grant each other.

The Republican conversion of the state power is a necessary change toward a constitution of the international law. The completion of the process of legislation of the international law sets the seal on the problem of the initial situation in which law serves as an instrument of power. Accordingly, constitutional state means that all authority mechanisms originate from the autonomously formed will of the civil society. In other words, rational general will of individuals is creating the constitution. Subsequent to the logic of the social contract, the initial argument for the inner rationalization of governmental authority is legally constituted, but still not constitutionally guaranteed. Only fully developed democratic societies can solve this. Now, when he has a pattern, Habermas is explaining the transition from the law of nations to the cosmopolitan law. This process is not the only constitution of international relations.

International relations are viewed as the logical continuation of the evolution from national to global state. What is missing is a supranational power above the competing states that would provide the international community with the executive and

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45 Ibid., 127.
46 Ibid., 131.
47 Ibid.
sanctioning powers required to implement and enforce its rules and decisions. The classical international law is already a kind of constitution in the sense that it creates a legal community between parties with formally equal rights. This international proto-constitution is essentially different from a republican constitution. It is composed of collective participants rather than individual persons, and it shapes and coordinates powers rather than founding new governmental authorities. Compared with a constitution in the strict sense, the international community of sovereign states has no mandatory force of joint legal requirements. Only voluntary restrictions on sovereignty, the rejection of its core element, and the right to go to war can transform parties to treaties into members of a politically constituted community. A league of nations and the prohibition of war are logical extensions of a development connected with the membership status of the subjects of the international law.

At the beginning of the reformulation process, there is only a softly constituted community of states. These states have to be supplemented at the supranational level by legislative and adjudicative bodies. In addition, they need sanctioning powers if they want to become a community capable of taking political initiatives and executing joint decisions. In the progression of the process of constitution of the international law, the priority of horizontal relations between member states over centralized practical competences points to an opposite evolutionary direction, to that of the ancestors of the constitutional state. It proceeds from the non-hierarchical association of collective participants to the supranational and transnational organizations of a cosmopolitan order.

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

The reference to collective participants acknowledges the prominent position, which they will retain, as the driving subjects of the development in a peaceful global legal order. The reference to individuals, by contrast, draws attention to the actual bearers of the status of the world citizen. The multilevel system outlined would fulfil

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48 UN Charter (Art. 2, Para. 1)
49 Ibid., 135.
the peace and human rights goals of the UN Charter at the supranational level and address the problems of global domestic politics through compromises among domesticated major powers at the transnational level. This is merely an illustration of a conceptual alternative to a world republic.

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

Response to Different Reconsiderations of the Kant’s Theory

Habermas’s multi-level model is a plan that assigns different responsibilities to different institutional levels. On the supranational level, Habermas sees a reformed and strengthened UN that is to serve, among other things, as an executive authority responsible for securing peace and protecting human rights. He supports reorganizing the Security Council and limiting the veto power of its permanent members in order to make the UN a more representative and effective organization.50

He defends the formation of perpetual international courts, where states, and individuals, have legal standing. In addition to settling conflicts between the states and conflicts between private actors and a state, the function of such courts is to prosecute individuals for criminal acts performed in the service of a state. We have to mention Habermas’s proposition that, in addition to the consolidation of core institutions like the Security Council and the General Assembly, reforms should aim at separating these institutions from specialized UN organizations, such as FAO, IAEA, UNESCO, WTO and the World Bank. This way, the world organization would become an institution whose responsibilities are narrower compared to the present-day UN. The main difference between a world organization reformed along these lines and a world republic is that the former lacks sovereign powers to define the reach of its own responsibilities. Unlike Kant’s league, a reformed world organization has powers that are more extensive. It is supposed to serve as a supranational executive authority providing the international community with effective means to put into effect its rules and decisions, even if Habermas emphasizes that the states are to remain in control of the means of coercion. His model also extends the scope of responsibilities. The league is

50 Kjartan Koch Mikalsen, „Kant and Habermas on International Law“, Ratio Juris 26, 2, (2013): 308.
established for the sole purpose of dealing with conflicts between the states, whereas
the world organization is additionally supposed to protect basic human rights globally.
Finally, the division of the General Assembly into two chambers would make the UN,
in contrast to Kant’s intergovernmental league, an organization that recognizes two
types of actors as legal subjects by international law, namely states and individuals.
The feature that particularly distinguishes Habermas’s proposal from both a league of
states and a world republic is the institutional mid-levelling between the supranational
and the national levels. At this level, global players, such as the US, China, India,
Russia, and politically integrated regional administrations following the model of the
EU, are considered as the central participants. Operating within a transnational nego-
tiation system, such participants are supposed to work out binding compromisesto
important transnational issues—particularly economic, ecological, and energy is-
ssues—that increasingly overreach the capacities of the national states. In addition, the
delegation of transnational topics to interregional negotiations is supposed to reduce
the amount of work of the world organization, thus enabling it to deal more efficiently
with the global peace and human rights enforcement. Habermas seems to have two
main reasons for rejecting the world republic, and these explain why he thinks there
is a need for his multi-level system instead.

Civil solidarity argument

The first issue of the multi-level model is the argument from civil solidarity. 51
Habermas thinks that a world republic can never become democratic in any meaning-
ful sense. The key obstacle is the absence of a clear global collective identity that can
adequately ground a strong civil solidarity. World republic would not have basic le-
gitimacy. A political community that wants to recognize itself as a democracy must at
least distinguish between the members and non-members. Civil solidarity is a part of
the collective language, culture and religious identity. Cosmopolitan solidarity, on the
other hand, gathers humanity around public reactions of indignation, when confronted
with violations of human rights and acts of aggression, as well as sympathy for those
who suffer due to natural and humanitarian disasters. Because of the latter, an all-in-
clusive world organization could be empowered to pursue goals like human rights
protection and international peace and security.

Further establishment of political goals and projects will be fragile because of the
frail social links between the world citizens. It is hard for the citizens of one sovereign
state to perceive themselves as a part of the worldwide community involved in the
cooperative practice of (self) legislation. This is similar to Mikalsen’s claim that the

51 Ibid., 310.
The cosmopolitan democracy concept is not self-contradictory in a formal-analytical sense. The claim is that a global democratic state should be able to, but in fact, cannot link up with the actual self-understanding and motivations of the world citizens. Therefore, it would fail to be a realization of the idea of a society of self-determining free and equal persons.52

**Imbalance argument**

Argument of the world republic is not necessary for creating the obligatory international law. Habermas develops this argument against the background of Kant’s interpretation. Kant rejects the world republic because of the despotic governance possibility in favour of the negative surrogate of the League of Nations. Apparently, Kant has come to this conclusion by observing the similarity between the state of nature among individuals and lawless international relations. According to Habermas, if the only way of overcoming the individual state of nature is Republican governance, then the solution for differences between sovereign states goes toward a world republic.

Contrary to this type of reasoning, there are significant variances between the interpersonal and the international levels when it comes to developing necessary legal institutions. Habermas’s objection has two aspects. The first is that one must consider that the states have established legal orders internally. National legal orders consequently make an institutional model for the international law. One cannot simply copy national legal orders on the relationship between the states. Nor can the rights of individuals be the only reference point for an international legal order.

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

In this connection, Habermas draws a distinction between the concept of a state and the concept of a constitution.53 The state is defined as a complex of hierarchical organizations capable of using political power. The constitution is defined as a horizontal association of citizens. In view of these definitions, he points to the unbalanced relationship between the state and the constitution at the national and international

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52 Ibid., 310.
53 Ibid., 311.
levels. Nationally, the hierarchical state component comes first. Internationally, one must think differently. If one tries to bring international constitution in a horizontal way, he will confront with the lack of an authoritarian state power. The classical international law does not have a worldwide power over challenging states that would provide the global community with the executive and sanctioning powers required to implement and enforce its rules and decisions.

Deficiency of executive and sanctioning powers implies that what is necessary for forming a cosmopolitan legal order is, in the end, a world republic. However, the point of emphasizing the priority of the horizontal associations among the states is actually conflicting. First, Habermas tries to show that a legal constitution can be detached from a hierarchical state construction not only conceptually, but also in practice. For this reason, Habermas speaks of the classical European order of states as a *proto-constitution* that „creates a legal community among parties with formally equal rights”.54 Second, and more crucially, emphasizing the imbalance between the national and the international cases is meant to show that the challenge of binding state power by law externally is essentially different from the challenge of binding state power by law internally, and subsequently the former calls for a different solution than the latter.

**Conclusion**

This article aims to answer whether we should endorse or repudiate Kant’s theory of the Rights of Nations. The concluding hypothesis is that the arguments for endorsing Kant’s ideas outweigh the arguments against doing so. Kant’s contribution to building the international law is immeasurable. Kant offers a strong, steady, gradual theory of the right of nations if we follow his philosophical system. He was the first philosopher who perceived peace on a metaphysical level as a priori category and tried to find a solution for the reformed law of nations. Law of nations with a cosmopolitan goal. The peaceful solution for the whole humanity. Kant’s approach is different from his *sorry comforters*, who observed this problem from a perspective of war justification and in the frame of their national societies.

One could easily link Kant’s thought with the conception of *sovereignty*. However, for Kant, it is more than a juridical principle of international relations. For countries and peoples, it is an acknowledgement of their equality and dignity, a defence of their identity and national freedom. Sovereignty has a dual duty. First, to respect the sovereignty of other countries. Second, to respect the dignity and human rights of all the people of the country. The best way to protect sovereignty is a form of republican constitution. Kant grasps the state on the national level as the main character in this

54 Ibid., 312.
project, and in case of failure, the main responsibility lies with the government of that state and its citizens. Free moral agents (citizens) of every sovereign state have to build this constitution, without any foreign interference, just as Kant suggests in the fifth preliminary article of "Towards Perpetual Peace". Furthermore, the relations of moral agents in the republican constitution are analogue to relations of sovereign states. Every other possibility would be to treat others simply as means and not as ends. The next step of Kant’s theory, the Federation of Free states, is the one with the most objections.

Kant’s Federation of Free states, Congress of states, and League of Nations or Pacific league are vulnerable to criticism. Firstly, because of terminological confusion, and secondly because it has some paradoxical inconsistencies in its structure and rules. Besides, its moral grounds as the only argument for justification provide even more problems. Kant constantly tries to resolve problems in a similar way to its transition from pure to practical reason. He is fully aware that the notion of peace has some antinomian issues and because of this, he builds the voluntary negative surrogate approach in his theory of the Rights of Nations. Peace is the final and ultimate goal of humanity and the only acceptable means for that goal need to be peaceful. Right of Nations - International law has to establish the Cosmopolitan law. From Kant’s universalistic perspective, every human life has equal moral value. In this way, Kant’s theory of the Rights of Nations offers an option for founding a doctrine of universal human rights. This is a starting point of his inner debate, but also academic debate, which is still ongoing. Proofs for such claim could derive from various attempts of reformulation, improving, „perfecting” and reconsideration of this part of Kant’s theory.

From all objective arguments presented above, the one called cosmopolitan democracy attracts the most of the attention. Habermas constantly tries to modify Kant’s theory and solve paradoxical arguments presented above. In this struggle with Kant’s arguments, his own opinion has altered several times during the last 20 years. From the devoted supporter of the concept of the cosmopolitan democracy and international law with supranational and transnational coercive powers, his opinion slides into a less drastic position. He realised that not every humanitarian intervention is necessarily compatible with the Kantian platform and that this kind of cosmopolitan democracy does not help less developed nations to advance toward a proper civil constitution. This point of view is also unfamiliar with Kant’s analogy amongst moral citizen and the state. Implementation of international laws by force is alien to Kant’s moral theory and theory of the Right of Nations. If we indeed have a moral responsibility toward others and we are concerned how their governments treat citizens of other states, we have to find a peaceful solution instead of punishment and just war.

On the other hand, today’s globalized world is the reality. In this fast shifting world, there is a need for changes in the current situation and in consequence, we have
to accept some of the arguments Habermas offers. If we do not continue to elaborate those arguments in searching for better solutions and try to find an answer for Kantian arguments, the possibility of ending up in some sort of world republic remains plausible.

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**Kantova vizija prava naroda**
(Apstrakt)

Kantova teorija o „pravu naroda” neizostavan je deo debate u okviru savremene teorije međunarodnog prava. U delu „Večni mir”, Kant ispituje uslove koji su neophodni za postizanje međunarodnog mira. Prema Kantu, postoje tri osnovna uslova koja vode ka „večnom miru” i to su:

1) Republikansko uređenje
2) Federalizam slobodnih država
3) Kosmopolitsko pravo čoveka na svetsko građanstvo

U radu će biti razmatran drugi od gore navedenih uslova, Federalizam slobodnih država, koji zauzima značajno mesto unutar Kantove vizije „prava naroda” i večnog mira kao krajnjeg cilja ovog diskursa. Federalizam je ujedno i ključ za bolje razumevanje Kantove pozicije u teoriji „prava naroda”. Zanimljivo je da se najveći broj prigovora i kritika savremenih teoretičara međunarodnog prava odnosi upravo na ovaj deo Kantove teorije. Stoga ova oblast zahteva dodatna istraživanja i analize. Kako bi razumeli pozadinu Kantove teorije, u prvom delu rada prikazana je kratka istorija ideja vezanih za pojam međunarodnog prava kao i značajnih mislilaca iz ove oblasti. Sledi istraživanje Kantove pozicije, i analiza njegovih dela u kojima se bavi problemom”prava naroda”. Prikazani su i argumenti koji podržavaju Kantovo stanovište, ali i kritike ovog stanovišta i pokušaji reformulacije Kantove početne pozicije. U zaključku se razmatra mogućnost prihvatljivog i pomirljivog rešenja Kantove teorije.

**KLJUČNE REĆI:** Kant, „pravo naroda”, federalizam slobodnih država, međunarodno pravo, večni mir