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Abstract

This paper presents a defence of Kant's idea of a voluntary league of states. Kant's proposal that rightful, or just, international relations can be achieved within the framework of such a league is often criticized for being at odds with his overall theory. Given Kant's view on the institutional preconditions for justice in the domestic sphere, where subjection to a public authority with coercive power is seen as constitutive of rightful interaction between persons, as well as the analogy he draws between an interpersonal and an international state of nature, it is often argued that he should have opted for the idea of a world state. Agreeing with this standard criticism that a voluntary league cannot establish the institutional framework for international justice, others also suggest an alternative stage model interpretation. According to this interpretation, Kant's true ideal is in fact some sort of world state, whereas the league is merely introduced as a temporary and second best surrogate. In contrast to both the standard criticism and the stage model interpretation, this paper argues that fundamental normative concerns speak in favour of a voluntary league rather than a world state. It is also argued that Kant's defense of such a league is consistent with his position on the conditions of justice in the domestic case due to crucial differences between the state of nature among individuals and external state relations.

Keywords

International Justice – Kant – League of States – Perpetual Peace – Philosophy of Right – World State

I. Introduction

While commentators often applaud Kant's claim that 'universal and lasting peace' is not only a part of, but rather constitute 'the entire final end' of his theory of right (6: 355),[2] they are nearly just as often dissatisfied with the seemingly weak institutional arrangement which Kant proposes for the purpose of achieving a just and peaceful international order. Some find his position on this latter issue 'extraordinarily unsettled' (Pogge 1988: 428). Others find it pervaded by 'troubling questions' and 'perplexities' (Wood 1995: 11). In view of the explicit parallels between the original state of nature among individuals and the external relations between states drawn by Kant, these critics argue that there is a problematic mismatch with regard to what obligations are said to hold for individuals and what obligations are said to hold for states. The problem arises because Kant says that in contrast to individual persons, who have an enforceable duty to leave the state of nature and to subject themselves to a public authority enacting and enforcing positive laws, state communities, although they too ought to leave the state of nature, neither can be compelled to do so nor should do so by establishing a state of states with coercive powers. Rather than subject themselves to a second order state unit, states should voluntarily join a league of independent states which is to maintain peace between its member states without subjecting them to enforceable public laws. Many critics find this move inconsistent with Kant's overall theory. As Otfried Höffe puts it: 'According to the international state of nature argument, the establishment of a state-like union is already needed between existing states', and 'the thesis about the federalism of free states […] is clearly incompatible with the analogy it rests on' (Höffe 2006: 193).[3]

This alleged inconsistency has also given rise to an alternative stage model interpretation of Kant's position on international justice. On this reading, the league of states is not the final institutional scheme for establishing rightful international relations, but merely a first step to be superseded by some sort of world state when time is ripe.[4] Although they agree that a voluntary league cannot establish the necessary institutional framework for international justice, proponents of such a stage model interpretation claim that the standard criticism is based on a misunderstanding regarding the specific role of the league of states. According to Pauline Kleingeld, 'the standard view of Kant's position is mistaken' and does not recognize that he 'combines the defence of a voluntary league with an argument for the ideal of a world federation with coercive powers' (Kleingeld 2004: 304). While Kleingeld emphasizes that the transition from the league of states to the world state cannot be forced upon

[1] I would like to thank Kristian Ekeli, Ståle Finke, Helga Varden and Audun Øfsti for valuable comments to earlier drafts of this paper. Also, thanks to the participants at an internal seminar at the Department of Philosophy, NTNU, for comments on a very early draft, and to the participants at a collocqium at ARENA, UiO, for comments on a next to final draft.

[2] All references to Kant in this paper are according to the Prussian Academy (PA) pagination (PA pagination includes volume and page number, eg. 6: 203 for volume 6, page 203). I have made use of the following of his works: *The Metaphysics of Morals*, PA 6:203-493; 'Idea for a Universal History with a Cosmopolitan Intent', PA 8:15-31, in *Perpetual Peace and Other Essays*; 'On the Common Saying: 'This may Be True in Theory but It Does not Apply in Practice', PA 8:273-313, in Kant (1983); 'To Perpetual Peace – a Philosophical Sketch', PA 8:341-386, in Kant (1983).

[3] Similar claims are also found in Lutz-Bachmann (1997) and Carson (1988).

[4] Some examples of such an interpretation include Byrd (1995), Cavallar (1999), McCarthy (2002), and Kleingeld (2004).

states, an alternative version of the stage model interpretation is defended by Sharon Byrd and Joachim Hruschka in a recent article in *Law and Philosophy*. In their view, Kant does not only defend the league of states as an intermediary stage in the process leading towards the world state. He is also assumed to mean that 'all states may use force to coerce all other states to make this move' (Byrd and Hruschka 2008: 624).
In this paper, I contest both versions of the stage model interpretation, as well as the underlying assumption which they share with the standard criticism of Kant, namely that overcoming the international state of nature requires a world state. In contrast to adherents of the stage model interpretation, I argue that the league is Kant's final conception rather than an intermediary step on the road towards a global state authority. In contrast to adherents of both the stage model interpretation and the standard criticism, I argue that systematic normative considerations suggest that the league is the rational ideal whereas the world state is in conflict with right, or justice.

In my view, the asymmetries between the domestic and the international case can be explained with reference to the fact that peace is an end internal to the doctrine of right, and that its realization therefore must not oppose the formal principle of equal freedom which is at the centre of Kant's theory. Peace among nations is a condition of right, not a goal external to it. Being such a condition, any conceptualisation of and attempt at achieving lasting peace must cohere with what is right. In order to see why this implies a rejection of the world state, it is necessary to examine more closely Kant's justification for his non-voluntarist view of political obligations, which is the view that a state's authority to impose duties on its subjects rests on an enforceable right and duty to enter civil society, and not on the actual or hypothetical consent of its subjects.[5] In this connection, a crucial point is that irresolvable structural problems in the state of nature make a public authority vested with coercive powers an ideal precondition of rightful relations between persons. But in so far as a public institutional framework is an ideal precondition of rightful relations it is possible to show that states cannot, as can individuals, be forced to subject to a public authority and why the public institutional framework constitutive of the international civil condition should not establish a global monopoly of violence. In addition, focusing on Kant's justification for non-voluntarism in the domestic case helps us see more clearly why this view is consistent with the proposal for a voluntary league of states. By considering to what degree the structural problems with regard to interpersonal relations in ideal cases apply also to the external relations between states it can be shown that the international state of nature is similar to the former only in some respects and therefore does not necessarily call for a world state.

In order to explain why Kant regards a coercive public authority as constitutive of rightful relations between persons and therefore adheres to a non-voluntarist conception of domestic political obligations, I will give a brief presentation of his conception of right in section II, and then, in section III, show what structural problems make the state of nature a condition incompatible with right. In section IV, I introduce Kant's idea of a voluntary league of states, and discuss what critics often find problematic about this idea. Here I also make clear why I find the stage model interpretation regarding Kant's position on rightful relations between states unconvincing on a purely textual basis. In this connection, I take special issue with the arguments put forward by Byrd and Hruschka. In section V, I first argue that states

[5] On Kant's non-voluntarism, see Varden (2008b).

cannot be rightfully forced to leave the state of nature, which is also why a world state with coercive powers is a problematic goal. Thereafter, I explain why there is only a partial parallel to the interpersonal state of nature in the external relations between states, which is why there is a need for a voluntary league, but not a world state.

II. Kant's conception of right

Kant's conception of right can be described in terms of the familiar idea of reciprocal and coercively protected spheres of personal freedom, spheres within which everyone is free to choose as they please. This idea is expressed in his definition of right as 'the sum of the conditions under which the choice of one can be united with the choice of another in accordance with a universal law of freedom' (6: 230), a definition which is rooted in each person's innate right to freedom, the right to 'independence from being constrained by another's choice […] insofar as it can coexist with the freedom of every other in accordance with a universal law' (6: 237).

While this emphasis on equal freedom places Kant within the tradition of liberal political thought, there is also an affinity with the so-called republican tradition, in particular with this tradition's notion of 'freedom as non-domination.'[6] Despite the emphasis on choice (*Willkür*) and independence, Kant's idea of free choice is distinct from Isaiah Berlin's 'negative' concept of liberty, even if the latter's depiction of this concept as 'the area within which a man can act unobstructed by others' (Berlin 2006: 169) comes close to Kant. Different from negative liberty, innate right does not track interferences with regard to goal attainment, but interferences with regard to the capacity to choose freely, understood as the ability to set and pursue purposes of one's own.[7] On Berlin's account, any act by other human beings that frustrates a person's wishes is an obstruction of this person's freedom. By contrast, Kant says that right does not concern the 'relation of one's choice to the mere wish […] of the other' (6:230). In his view, to be independent is to be able to set ends of one's own without the interference of other people. It is to have the final word with regard to how one's own powers or means are to be used, but not necessarily to be unaffected by the choices other people make. Since the actions of other people lead to changes in the world their actions may indeed frustrate the pursuance of whatever end we choose, but as long as they do not interfere with our capacity to pursue ends they do not restrict our innate right to freedom. It is perfectly possible to be hindered by others in achieving what one strives for without thereby having one's freedom of choice restrained. And, since the crucial issue is whether other persons interfere with our capacity to pursue ends rather than whether one is hindered in achieving one's ends, Kant need not, as does Berlin, draw a sharp conceptual line between freedom and justice.[8] Freedom means having the final word with regard to the use of one's own powers. It does not entail the use of other people's powers. Restrictions that prevent

[6] For an account of this notion, see Pettit (1997).

[7] Arthur Ripstein defends the idea of equal freedom against critics who argue that liberty is not a self-limiting concept by stressing this point, in Ripstein (2009: 31-9).

[8] Referring to Hobbes' view of the free man as the man who is not hindered in doing what he has a will to, Berlin sees any restriction as external to freedom. Although he recognizes that the legitimate area of free action must be limited, it is characteristic that political liberty is conceived as conceptually distinct from justice: 'Everything is what it is: liberty is liberty, not equality or fairness or justice' (Berlin 2006: 172).

some person from arrogating or damaging some other person's ability to make free choices are therefore strictly speaking not restrictions on freedom. More appropriately, they should be seen as conditions that enable the equal freedom of everyone, that is, universal restrictions that secure each person's independence from the arbitrary choices of others.
The indifference with regard to the relation between one person's choice and another person's wishes is a reflection of a more general aspect of Kant's conception of right: the emphasis on the form of the relationship between interacting persons rather than on substantive standards such as basic human needs, purposes, interests and the like. The rightfulness of an action does not depend on it being favorable for the promotion of basic values or fundamental human interests. The only requirement is that it accords with universal laws, meaning rules which, first, restricts every person in the same way and, second, does not merely represent the choice of one particular person or group.

There is an obvious structural similarity between Kant's theory of right and his ethics. In both cases he stresses formality and universality. At the same time there is an essential difference between the two insofar as the sphere of right is restricted to 'what is external in actions' (6: 232), or to 'the external […] relation of one person to another, insofar as their actions […] can have (direct or indirect) influence on each other' (6: 230). From the perspective of right our inner dispositions for acting in a particular way are not of interest. Whereas virtuous action requires the right kind of motivation, justice is agnostic on this question. In both cases we are obliged vis-à-vis universal laws of freedom. But as far as right is concerned, it cannot be demanded that we make the fulfillment of moral laws the incentive of our action.

This restriction of right to the external sphere must be seen in relation to the conceptual link between right and coercion. Even if coercion as such is an impediment to or hindrance of external freedom, right is still analytically, 'by the principle of contradiction' (6: 231), connected to an authorization to coerce. Whoever hinders rightful use of freedom does wrong by laying arbitrary constraints on the innate right of some other person. Coercion that prevents such arbitrary constraints is legitimate, 'as a *hindering of a hindrance to freedom*' (ibid.). It is therefore no surprise that the ethical requirement of a moral motive, or good will, must be abandoned in the sphere of right. Since questions of right are essentially questions of legitimate coercion, there cannot, as a matter of principle, be any rightful regulation of morality. For one thing, if coercion is allowed to reach beyond the external sphere to the internal motivations of people we seem to have no substantial barrier against paternalistic, not to say authoritarian or totalitarian, intrusions by governments with regard to how one should lead one's personal life, how one should think, what one should desire, etc.[9] Moreover, such efforts would also be self-defeating for the simple reason that virtuous action is beyond the reach of possible coercion. Virtuous or moral action implies that what is done is done out of a sense of duty, i.e. because one recognizes

[9] Ingeborg Maus praises Kant's 'enormous rationality' in contrast to 'the frightening irrationality of the growing tendency to erode the differentiation between law and morality', and points to how 20th century totalitarian regimes 'appointed the state apparatuses as terrorist administrators of morality, because possession of the state's monopoly on force enabled decisionistic definitions of moral contents, and the 'higher value' of (even perverted) moral norms permitted the dissolution of all limitations to the rule of law' (Maus 2002: 109).

that it is the right thing to do. Hence, whatever a person does because he or she is externally compelled to do so is not a virtuous action, and so the attempt to enforce morality would be misguided in the first place. With this in view, Kant writes: 'Strict right rests […] on the principle of its being possible to use external constraint that can coexist with the freedom of everyone in accordance with universal laws' (6: 232).
The boundaries of each person's sphere of freedom demarcate what powers or means belong to whom, and thereby designate what empirical objects other people are obliged to refrain from using without our consent. Among the objects which we can coercively exclude other people from using, our body is the only thing to which we have an innate right. Since we are embodied beings, our bodies are by nature inseparable from our person. In conjunction with the innate right to freedom, it follows analytically that any use of some person's body not consented to by this person or any intentional injury caused by one person on another is wrong; it is a hindrance to freedom in accordance with universal laws. Beyond this entitlement to be in control of the powers of one's own body, it must also be possible to be in rightful control over objects separate from us. The latter Kant calls 'intelligible' possession, 'possession of an object *without holding it* (*detentio*)', and distinguishes this from 'sensible' or 'empirical' possession, which implies physically holding an object (6: 245f.).

Kant recognizes three kinds of external objects which can be mine or yours, corresponding to the division in the section on private right of his *Doctrine of Right*: corporeal things (property right), other persons' deeds (contract right), and another's status in relation to me or you (domestic right) (6: 247). Being separate from us, external objects, unlike our body (with which we are one), are not innately ours. From the perspective of right, entitlements to things separate from our bodies must nonetheless be possible to acquire in situations where they are available. Given the availability of external objects, a general prohibition against their use would in Kant's view be an arbitrary restriction of external freedom, and therefore in conflict with what is right, that is, just. So, even if entitlements to external objects are not conceptually implied in the universal principle of right, the treatment of 'any object of my choice as something which could objectively be mine or yours' is what Kant calls a 'postulate' or 'permissive law (*lex permissiva*) of practical reason' (6: 246f.; cf. also Ludwig 2002: 175f.). This implies that we are permitted to put others under contingent obligations, obligations which they would not have had if we had not in fact made some specific thing our own, which further means that a new set of possible wrongs is generated. Since entitlements to external objects extend our sphere of external freedom beyond our own body it is possible for a person to do wrong without physically interfering with another person, for instance by using what rightfully belongs to the other without permission, or by failing to perform a certain deed which the other has a contractual right to.

On Kant's account, then, a rightful condition is a condition of equal independence where each of us is required to refrain from non-consensually using the persons or possessions of others for our own purposes, as well as to fulfill contractual agreements. The state of nature cannot, however, possibly be such a condition. Absent a public authority that enacts, enforces and judges in accordance with positive law, there is in Kant's view no way consistent with the principle of right in which each person's entitlements could be properly guaranteed or delimited. In the state of nature some persons will unavoidably be exposed to arbitrary and non-reciprocal

restrictions due to what is sometimes referred to as problems of assurance and indeterminacy.[10] And this is what leads Kant to the conclusion that choosing to remain in the state of nature is to do wrong in the highest degree, as well as to its corollary: that entering civil society is an enforceable duty.

III. The assurance and indeterminacy problems

The assurance problem can be related to the title of the first chapter of the section on private right in Kant's *Doctrine of Right*: 'How to *Have* something External as One's Own' (6: 245). In some respects the problem is akin to Hobbes' problem of finding a proper remedy for the war of all against all. Kant too characterizes the state of nature as a state of war where no one can be secure that other people will not encroach on what belongs to them. In such a condition, he argues, one is not obliged to refrain from using others' objects of choice: 'I am […] not under obligation to leave external objects belonging to others untouched unless everyone else provides me assurance that he will behave in accordance with the same principle with regard to what is mine' (6: 255f.). Even if Kant thereby appears to come close to Hobbes, there is an important difference between them, insofar as Kant is less concerned with the (rational) causes of conflict in the state of nature as with what can be rightfully demanded of us in this condition. The problem of assurance is in other words not primarily a problem of the 'prisoner's dilemma' kind, i.e. avoiding conditions under which non-cooperative strategies are dominant. For Hobbes, the challenge is to establish an institutional arrangement where the violent clashes of rational egoists are avoided in favor of cooperative behavior. In contrast, Kant is concerned with the normative problem of enabling the right kind of relationship between independent persons with regard to external objects. More specifically, the challenge is to establish conditions under which we are under a rightful obligation not to interfere with what belongs to others.

Considering that right is only concerned with external use of choice, a rightful obligation is necessarily an external obligation. For this reason, the solution to the assurance problem entails creating a power strong enough to secure compliance from everyone. Note that this demand does not rest on the assumption that human beings are made of such 'warped wood' that they cannot be expected to respect the boundaries between mine and yours virtuously. The problem of assurance does not arise because we are 'phenomenal beings' that 'need to be reminded by a physical incentive that we should obey the law'.[11] Instead, the fundamental problem is that

[10] I borrow the terms 'assurance' and 'indeterminacy' from Ripstein (2004) and Varden (2008a, 2008b).

[11] Williams (2003: 83). Rather than seeing coercive measures as physical incentives necessitated by our phenomenal nature, I think the more adequate account is to conceive of them in terms of precautionary concerns. According to such an account, which is different from but compatible with Kant's, the real challenge is not to provide incentives for doing the right thing, but to provide barriers that prevent others from taking advantage of us whenever we act rightfully. In a certain sense positive law, as opposed to morality, is therefore 'other-directed'. From an actor's first person perspective, coercive rules are not directed at one's own phenomenal nature, but should merely ensure that the others, the second and third persons, do what they are supposed to do, so that I, the first person, can do what is right without worrying about becoming a sucker. I am indebted to Audun Øfsti for this particular way of making the point, which also is central to Thomas Nagel's argument that justice presupposes a sovereign authority with a monopoly of coercion in Nagel (2005: 116).

reliance on mere trust in other people for the purpose of providing a rightful guarantee is to make oneself dependent on their arbitrary choice.[12] Even in an ideal world, where everyone keeps their part of any agreement, reliance on someone's promise that she would not infringe on one's own acquired rights would make it her choice whether something external is yours or hers. And since an anarchical condition where no one is subjected to external constraints fails to guarantee each person independence from the choice of other people such a condition is necessarily deficient from the perspective of right.

But if virtuous promising does not suffice to provide a rightful guarantee, so neither does creating a power that simply serves as an irresistible external constraint. Apart from the capacity to restrain all others without itself being restrained, the power providing assurance must also be a power that puts everyone under the same restraints. It is clear that no private agent can serve the role as enforcer of justice. As private, such an enforcer is what Kant calls a 'unilateral will' (6: 256), a particular will among many other wills, and such a will cannot possibly establish a system of reciprocal restrictions. Not only would its acts of enforcement be arbitrary from the perspective of everyone else, since they represent the choice of the private enforcer. A further problem is that a private enforcer can at most obligate everyone but itself, which means that the assurance problem remains unsolved with regard to the relation between the enforcer and other agents.[13] But if a private enforcer necessarily fails to obligate everyone equally, then justice is impossible outside civil society, because in the state of nature any use of force is private use of force. The state of nature is essentially a non-rightful condition, which is why Kant says that whoever chooses to not enter civil society does 'wrong in the highest degree' (6: 307f.).

If the assurance problem resembles Hobbes' problem of finding the proper remedy for a state of war, so the problem of indeterminacy is similar to Locke's concerns about the 'inconveniences' of a condition 'where men may be judges in their own case' (Locke 1986: 13). But just as in the former case, Kant also gives this problem his own twist. At issue is the question of how the distinction between mine and yours can be rendered accurate in a way compatible with each person's innate right to freedom. In part, this is a problem of specifying what the abstract principles of private right prescribe generally, and, in part, it is a problem of applying these principles to particular cases.[14] In relations of private right there may be disagreement concerning just what a person is entitled to, i.e. what is the determinate content of their rights. Such disagreement need not stem from the natural biases of human agents, as in

[12] On this, see Varden (2008b: 8f.).

[13] The latter point is emphasized by Varden (2008a: 8; 2008b: 10-11), who argues convincingly that any private remedy to the assurance problems necessarily fails because it leads to an infinite regress.

[14] At this point, Ripstein (2009: 145-176) distinguishes between the problems of unilateral choice, concerning first acquisition, and indeterminacy, concerning application of general rules to particulars. By adding the assurance problem, he ends up with three structural problems which make the state of nature a non-rightful condition. The advantage of distinguishing between these three problems is that one can see more clearly how a tripartite republican constitution is conceptually linked with the concept of right, since each problem corresponds to one of the three authorities which make up a state: legislature (problem of unilateral choice), executive (assurance problem), and judiciary (indeterminacy problem). I choose to stay with the bipartite distinction between the problems of assurance and indeterminacy, partly due to considerations of space, and partly because singling out the assurance and indeterminacy arguments is sufficient for my main argument.

Locke. The more fundamental problem is that general principles of right are indeterminate with regard to what belongs to who, what counts as the fulfillment of a contracted service, or whether a certain act is exploitative or not, and thus under certain circumstances leave room for a plurality of equally reasonable, yet incompatible interpretations. Although there may be easy cases, there are also circumstances which give room for reasonable disagreement concerning where the boundary between mine and yours is to be drawn. The challenge is to resolve such conflicts of interpretation in a rightful way.[15]

As is the case with the problem of assurance, so Kant's view on this second, but logically prior, issue is that there is no way in which we could actually solve problems related to indeterminacy in the state of nature. The reason is that there is no authority that could rightfully decide what interpretation is to prevail: '[T]here would be no judge competent to render a verdict having rightful force' (6: 312). Again, the heart of the problem is that in the state of nature any judgment about the appropriate distinction between what is mine and what is yours would necessarily be a private judgment. In this condition, whoever decides where the line is to be drawn inevitably subjects everyone else to one-sided restrictions, and thus acts contrary to their right to be restricted by universal laws only. There is, of course, the possibility of coming to bi- or multilateral agreements on the issues. While this is preferable to the unilateral imposition of one person or group's will, it would still not be satisfactory from the perspective of right. If our rights were made contingent on agreements with other people we would fail to give one another what is our due. Since we would still be subject to the choices other people make whether to consent or not, we would not have the independence implied in the innate right to freedom. But if there is no solution to the problem of indeterminacy in the state of nature, then we have a second reason why justice is not possible outside civil society, and why choosing to remain in the state of nature is to do wrong in the highest degree.

The only way to overcome the problems of assurance and indeterminacy is in Kant's view to establish a public authority that organizes legislative, executive and adjudicative bodies, i.e. a state. As a *public* authority, a state is an authority that represents the will of all united. It is a 'collective general (*common*) and powerful will' (6: 256), what Rousseau calls a *volonté générale*, that has no partial interest vis-à-vis its subjects. It is only such a will that can, by means of legislation and adjudication, determine the boundaries of mine and yours in a rightful way, and, through its

[15] It is sometimes claimed that the problem of indeterminacy arises only with regard to acquired rights, and not with regard to the right to one's own body. This view is defended by Varden (2008a: 8) on the ground that the innate right to freedom necessarily entails a right to our own bodies, since there is an analytical connection between our person and our body in terms of right. Similarly, Paul Guyer (2002: 62) seems to assume that the problem of indeterminacy can only come up with regard to property and contract right because our bodies have determinate boundaries. However, none of this implies that what is covered by innate right is completely determinate in every possible case. As Ripstein (2009: 176-9) points out, it is not a purely factual question whether startling a person standing at the edge of a cliff by shouting out loud is to wrong this person, or whether a certain use of force should be judged as an act of aggression or as preventive self-defense. I also believe there is room for reasonable disagreement with regard to the authorizations which Kant says are implied in the innate right to freedom. For instance, it is not unlikely that the right to communicate one's thoughts may come into conflict with the right to be beyond reproach, at least if the latter is taken to entail a prohibition against libel (cf. Kant, 6:238). Hence, there may be cases involving neither property nor contract right where there is a potential indeterminacy problem.

coercive powers, ensure that everyone is made subject to reciprocal restrictions. And since a public authority representing everyone subject to its restrictions equally is a precondition for rightful interaction, there follows the enforceable duty to 'subject […] to a public lawful external coercion, […] that is, […] to enter a civil condition' (6: 312). To refuse to do so is to 'renounce any concepts of right' (ibid.) and to choose to 'remain in a condition that is not rightful, that is, in which no one is assured of what is his against violence' (6: 308). The refusal to leave the state of nature is in other words tantamount to denying others the possible enjoyment of freedom in accordance with universal laws. Coercing a person to enter civil society must therefore be permitted as a hindering of a hindrance to freedom.

It is important to note that Kant's non-voluntarist conclusion with regard to political obligations is linked to a non-prudential view of the transition from the state of nature to the civil condition. Despite similarities with Hobbes and Locke, Kant does not think of this transition in terms of rational self-interest.[16] Nor does he reduce the problems inherent in the state of nature to a morally corrupt or problematic human nature. Had the latter been the case, he could not have argued that there is a strict duty to enter civil society. At best, he could have argued in line with Locke that given the biased and passionate nature of human agents, civil society is the best way of avoiding the 'inconveniences' of the state of nature. Even if it would be incredibly hard, it would not in principle be impossible to interact rightfully absent a public authority, if only we were more virtuous and benevolent. On Kant's account, however, the problems of assurance and indeterminacy cannot be overcome through the perfection of humanity's moral faculty, simply because his analysis, as presented here, does not depend on assumptions about contingent human dispositions. Although he at times refers to human beings' malevolence and desire for dominating others, seemingly in order to substantiate the claim that one ought to leave the state of nature (6: 307 and 6: 312), he also emphasizes that it is 'not some fact that makes coercion through public law necessary' (6: 312). Indeed, he is also willing to admit that 'the state of nature need not […] be a state of *injustice*' (ibid.). It is not unthinkable that there could be societies based on consensual and peaceful conflict resolution, or societies where conflicts incidentally did not take place. But in contrast to the prudential view, which reduces problems of justice to problems of virtue or benevolence,[17] Kant upholds that

[16] This view may appear to be contradicted by Kant's own claim that 'the problem of organizing a nation is solvable even for a people comprised of devils' (8: 366). Seemingly Kant here envisages that a functional legal order could arise out of the interaction between egoistic actors with a purely instrumental-theoretical reason. Yet, even if this reading of the passage is correct, one does not need to regard it as a rejection of the interpretation presented in the main text above. It could, as Karl-Otto Apel has argued, be regarded as an unresolved conflict between two different perspectives: on the one hand, the perspective from which the founding of a state is explained (in Hobbesian terms), and, on the other hand, the perspective from which political obligations are justified. See Apel (1988: 69-102). I cannot deal satisfactory with Apel's critique of Kant's dualism here. Still, it is important to note that Kant's claim about the devils is presented as a reply to the objection that a 'republic must be a nation of *angels*' and therefore is not apt for human beings unless they undergo moral improvement. In this connection, the reply that even devils are up for the task may rather point to the distinction between morality and law, insofar as the latter is not concerned with whatever motives people have for adhering to the law.

[17] A prominent contemporary representative of such a reductionist position is the Lockean A. John Simmons. Proceeding from the assumption that justifying the state amounts to 'showing that some realizable type of state […] is rationally preferable to all feasible nonstate alternatives' (2001: 126), Simmons argues, in explicit opposition to Kant, that there is no reason we could not support just arrangements without 'binding ourselves to one of them' (op.cit: 153). There are at least two problems with this view. First, Simmons presupposes that justifying the state implies showing only that it is the

a pre-civil condition 'would still be a state *devoid of justice*' (6: 312). Even under the presupposition that human beings happen to agree on what is each person's fair share and also are well-disposed toward each other in such a way that no one is inclined to violate other persons spheres of external freedom, it would in his view still be wrong in the highest degree to deny entrance to civil society, because in doing so one fails to provide the only framework within which rightful independence is possible. In the state of nature even good-natured persons cannot avoid subjecting others to their arbitrary choice. For this reason, one cannot think of a public coercive framework merely as the best among other possible means for providing justice. It should rather be regarded as the condition for the possibility of rightful interaction among persons, that is, as an enabling condition for freedom in accordance with universal laws.

IV. From the right of a state to the right of nations: the puzzling rejection of the world state

The unconditional and enforceable duty to enter civil society is grounded in the structural problems which make subjection to arbitrary choice rather than universal law unavoidable in the state of nature. As regards the ideal form of the state constitutive of civil society, the republic, two institutional features are characteristic: first, institutional separation and hierarchical organization of sovereign (legislative), executive (ruler), and judicial (judge) powers,[18] and, second, ascription of legislative power 'to the united will of the people' (6: 313), that is popular sovereignty. This institutional structure is what Kant calls '*the state in idea*, as it ought to be in accordance with pure principles of right', and 'serves as a norm (*norma*) for every actual union into a commonwealth' (ibid.). It is not a fact, or a description of a state of affairs, but a postulate of practical reason that demands the greatest possible approximation to the ideal of a hierarchically organized tripartite public authority where legislative power belongs exclusively to the subjects of law. Yet, even if conceived in ideal terms, a republican constitution constitutes only part of the conditions that as a sum are to enable the free choice of every person to be united with the free choice of everyone else in accordance with universal laws. According to Kant, the establishment of 'a perfect civil constitution' is dependent on the solution to 'the problem of law-governed *external relations among nations*' (8: 24). Similar to the state of nature among persons, the external relations between states are also characterized as a non-rightful condition of war which can only be overcome by entering a civil condition of which an international public authority is constitutive (6: 344; 8: 354).

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most efficient means through which we can promote justice, rather than arguing that the state is a necessary prerequisite for rightful interaction. But this is to beg the question. Second, Simmons tends to speak of justice in terms of advancing or distributing 'goods', such as welfare and security (ibid.). Thereby he overlooks that Kant's argument is not directed at what goods can or cannot be provided in the state of nature, but rather at the form of the relationship between interacting persons absent a public authority. The problem is not that people cannot act benevolently in the state of nature, but that the state of nature is a condition where arbitrary and non-reciprocal restrictions on freedom cannot be avoided.

[18] In *Toward Perpetual Peace* Kant stresses the separation of executive and legislative power, whereas the judiciary is not mentioned (8: 352). In his *Doctrine of Right* the tripartite hierarchical structure is compared with 'the three propositions in a practical syllogism: the major premise, which contains the *law* of that will; the minor premise, which contains the *command* to behave in accordance with the law […]; and the conclusion, which contains the *verdict* (sentence), what is laid down as right in the case at hand' (6: 313).

Although he draws repeated parallels between the original state of nature among individuals and interstate relations in order to argue that we have a duty to establish an international legal order 'resembling the civil one' (8: 354; cf. also 8: 24 and 6: 344f.), Kant's views regarding the conditions of justice in the international sphere differs in important respects from his views regarding the conditions of justice in the domestic sphere. In contrast to what he says with regard to the domestic case, Kant does not say that the international public authority should be a state authority. Nor does he say that states have an enforceable right and duty to leave the state of nature. Rather than a global sovereign, he proposes a treaty-based '*league of peace*' that 'seeks to end *all* wars forever', but without requiring member states to 'subject themselves to civil laws and their constraints (as men in the state of nature must do)' (8: 356). The league is not to have legislative or executive powers, as it is not founded in order 'to meddle in one another's internal dissensions but to protect against attacks from without' (6: 345). Furthermore, entrance and exit to the league, as opposed to entrance to the primary state units, must be voluntary. The league is 'a *permanent congress of states*', which neighboring states are 'at liberty to join', and which can 'be *dissolved* at any time' (6: 350f; cf. also 6: 345). In other words, the institutionalization of an international civil condition differs from the civil order among persons in two ways. First, the public authority is no sovereign power, only an international organization with arbitration capacities. Second, no state may be legitimately forced to join this organization. Hence, Kant adheres to voluntarism at the international level.

It is particularly the rejection of the world state which motivates the standard criticism. In the critics' view, Kant, in drawing an analogy between the state of nature among individual persons and external relations between states, also ought to favor an institutional structure at the international level analogous to the institutional structure at the domestic level: if the state of nature among individuals can only be overcome by establishing a state authority, so overcoming the international state of nature requires some kind of world state. What seems primarily to trouble these critics is that the league of peace cannot solve an assurance problem assumed to exist in the international realm. Since the league does not possess coercive powers it cannot ensure compliance from the first-order state units, and therefore it is up to each state to decide whether or not to comply with the league's judgments. According to the standard criticism, this means that states will continue to subject one another to arbitrary choice rather than universal restrictions authorized by the international public authority. Consequently, interaction at the international level will in important respects remain in a state of nature: 'Agreements are no doubt better than a state of war. But since a federation lacks the instruments requisite for securing that which is to be agreed on, namely, world peace, there can be peace only with reservations and qualifications […]. Without the 'sword of justice,' a federation remains a (modified) state of nature' (Höffe 2006: 200; see also 195).[19]

[19] The lack of coercive power is also emphasized as the league's main deficiency in the light of Kant's overall theory by Pogge (1988), Wood (1995), Byrd (1995), and Byrd and Hruschka (2008). Although he is no proponent of the world state, a similar objection is raised by Jürgen Habermas: 'Just how the permanence of this union, on which a 'civilized' resolution of international conflict depends, can be guaranteed without the legally binding character of an institution analogous to a state constitution Kant never explains. […] Kant cannot have *legal* obligation in mind here, since he does not conceive of the federation of nations as an organization with common institutions that could acquire the characteristics of a state and thereby obtain coercive authority' (1998: 169).

Few, if any, of these critics think of the world state in terms of a unitary state that reduces existing states to parts which it may fuse together or split up at will. What is usually held up as an alternative to both the unitary world state and the league of peace is the idea of complementary statehood, a limited federal state with a restricted set of powers that leave the primary state units intact. Just as individual persons do not give up, but rather affirm, their freedom by entering the civil condition, so the freedom of every state should be affirmed by its subjection to an international public authority with narrow competencies.: '[T]he correctly formed analogy demands that the 'republic of states' […] not be organized in opposition to its members' rights of liberty and equality. […] [T]he 'republic of states' would have a mandate for action only in those spheres individual states could not regulate on their own' (Lutz-Bachmann 1997: 71).[20]

But even if the international public authority should not be established at the expense of the first order state communities' right to territorial integrity and self-determination, Kant's analogy is still said to categorically require an authority with legislative, executive and judicial powers, i.e. a state of states. Otherwise, there seems to be something wrong with the foundations of the entire theory. If one can deny that a second order state unit is constitutive of an international civil condition, then one should also deny that first order state units are constitutive of rightful relations among individuals: '*Either* the imperative of individuals to renounce their freedom in leaving the state of nature already involves a contradiction […] *Or* […] international statehood […] is a condition that makes possible the state of international lawfulness' (Höffe 2006: 197).

The distinction between a unitary world state where already existing states are fused together into one global sovereign power and a minimal world republic where individual states are left intact is also the backdrop of the stage model interpretation. According to this line of interpretation the league of peace should not be conceived as a replacement for the idea of a world state altogether, but merely as the first stage in a process that is ultimately to result in a global government. On this reading, Kant's arguments against a unitary world state, that it dissolves rather than solves the problem of guaranteeing the right of nations (8: 354), and that it will lead to a 'soulless despotism' which 'finally degenerates into anarchy' (8: 367), are simply mistaken for arguments against any form of global statehood. The real motive behind the introduction of the league of peace, it is said, is not to reject global statehood as such, but to accommodate to the political realities of his times. Since the obstinate unwillingness of political leaders to comply with a priori principles of right makes it unrealistic to expect the realization of the superior alternative in the near future, Kant suggests that a voluntary league of states may be the first step in a process that ultimately is to result in the establishment of a global government. Although the league is seen as insufficient for the purpose of establishing the sought for international civil condition, it may serve as a temporary surrogate to be superseded by a world state when time is ripe: 'The core of Kant's argument […] is that the full realization of perpetual peace does require a federal state of states […], but that this goal should be pursued mediately, via the voluntary establishment of a league, and

[20] For similar claims in Höffe, see Höffe (2006: 197).

not via premature attempts to institutionalize a state of states immediately' (Kleingeld 2004: 318).[21]

As for the second difference between the domestic and the international cases, Kant's voluntarism with regard to international political obligations, it has not only been argued he should have opted for the opposite view on this point as well, namely that subjection to the international authority must be compelling.[22] As mentioned, there are alternative interpretations in the secondary literature here as well. In a recent article, Sharon Byrd and Joachim Hruschka ascribe the view that any capable state can force any other state to enter an international civil condition to Kant (2008: 624-6). In the view of Byrd and Hruschka, Kant takes a more mature stance in his *Doctrine of Right* than he did two years earlier in *Towards Perpetual Peace*, where states are said to 'have outgrown the compulsion to subject themselves to another legal constitution that is subject to someone else's concept of right' (8: 356f.). They see textual evidence for such a change of mind in the discussion of 'the original right that free states in a state of nature have to go to war with one another (in order, perhaps, to establish a condition more closely approaching a rightful condition)' (6: 345), as well as in the discussions of the right to go to war, right during a war, and right after a war in the later work. In addition, Byrd and Hruschka find support for the same conclusion by pointing to a parallelism between states and individuals similar to what we have seen in connection with arguments in favor of the world state. Against the background of Kant's characterization of states as moral persons, they claim that states can acquire analogues to property, contract, and status rights, and conclude that the enforceable right and duty to leave the state of nature applies also to state actors.

I think there are good reasons to question both versions of the stage model interpretation in favor of the more traditional reading, where Kant is seen as rejecting any model of global statehood and, consequently, non-voluntarism at the international level. In the next section, I set out the principled normative considerations that support this view. However, before I turn to this issue some textual considerations are in place.

Proponents of the stage model interpretation may find some support in the often cited passage at the end of the second definitive article of *Toward Perpetual Peace*, where Kant seemingly makes an unequivocal judgment in favor of the world state, and the voluntary league of states is characterized as a '*negative* surrogate' brought forward so that 'everything is not to be lost' (8: 357).[23] Still, I find it hard to square this reading with the main tendencies and arguments in this work as well as in the *Doctrine of Right*. Clearly, Kant does not want an international civil condition to end the system of independent and territorially based states. This view is in part supported by direct statements throughout his work, such as the claim that a state of states contradicts the idea of rightfully regulated international relations, because it would abolish rather

[21] See also Byrd and Hruschka (2008: 637-8); Cavallar (1999: 113-131).

[22] See, for instance, the account of Carson (1988), who, against the background assumption of a likely full scale nuclear-war in the (at that time) near future, even would prefer a global tyranny to Kant's voluntary federation.

[23] It is possible, however, to exaggerate just how unambiguous the passage is. For an account that challenges the prevailing assessment that Kant here makes a clear statement in favor of the world state as the only institutional framework sufficient for establishing an international civil condition, see Maus (2004: 84-9).

than solve the problem of guaranteeing the rights of states in so far as all states are fused into one state (8: 354). In addition, it is corroborated by Kant's systematic division of public right into three complementary dimensions: (a) the right of a state (*Staatsrecht*), which concerns the relations between co-citizens as well as the relation between the state and its subjects, (b) the right of nations (*Völkerrecht*), which concerns the external relations between states, and (c) cosmopolitan right (*Weltbürgerrecht*), which concerns the relations between a state and strangers, that is, non-citizens. Given Kant's emphasis on these three aspects as separable but mutually dependent dimensions of public right (6: 311), already the distinction between the two former aspects indicates a preference for a non-world state solution, which is further confirmed by the introduction of the third aspect. Being a separate domain of public right, dealing partly with the phenomenon of private subjects crossing national borders and partly with relations between states and non-state peoples (polemically directed against justifications for colonialism[24]), cosmopolitan right too presupposes a plurality of independent states.

This is not in itself a decisive objection against the stage model interpretation. Like the proponents of the standard criticism, the advocates of this model reject the notion of a unitary world state, where all right is reduced to *Staatsrecht*, in favor of the notion of a limited world state which leaves room for relations covered by *Völkerrecht* and *Weltbürgerrecht*, and thereby seems to take the concern for a political world consisting of a plurality of states into consideration. There is, however, the further complication that Kant does not just reject the world state in the form of a unitary state. At the end of the chapter on the right of nations in the *Doctrine of Right*, he also rejects the idea of a federal world state on the model of the US, on the ground that the federation of the American states 'is based on a constitution and can therefore not be dissolved' (6: 351). The fact that this federation is presented as a contrast to a congress of states suggests that his arguments against the world state also covers the more modest proposals for global statehood. Moreover, it is of importance to note that Kant, directly before the passage where he is often assumed to reduce the league of peace to a second rate surrogate, says that the league 'is necessarily tied rationally to the concept of the right of nations' (8: 356). Later in the same text he also says that 'a federative state [*föderativer Zustand*]' is 'the only state of *right* compatible with their *freedom*' (8: 385). Against this background, it seems highly implausible that he thought of the voluntary league of states as a temporary surrogate for a future world state. It should rather be conceived as the ideal institutional framework through which perpetual peace can be continually approximated.

Even if Byrd and Hruschka point to some interesting differences between *Toward Perpetual Peace* and the *Doctrine of Right*,[25] it is also hard to find support for their non-voluntarist interpretation with regard to the right of nations in the passages which they refer to from the latter work. Consider first the 'original right' to go to war which

[24] For an account of cosmopolitan law related to Kant's critique of colonial appropriation of distant lands by European powers, see Eberl (2008: 220-254).

[25] See, in particular, their argument that Kant changes his mind regarding preventive defense against powerful neighbors from the one to the other work (Byrd and Hruschka 2008: 600-604). Although the formulations they refer to are striking, I am not entirely convinced that there is a radical change of view on Kant's part. I suspect that the differences can be explained with reference to the fact that Kant in the one case speaks of public right and in the other case speaks of the state of nature, but the issue is interesting and should be clarified further.

Kant ascribes to 'free states in a state of nature'. What Byrd and Hruschka do not mention is the context of the quote. In the relevant paragraph (§55), Kant considers primarily the question whether a state has a right to use its subjects for war against other states, a question which he answers only conditionally in the positive, since citizens cannot be treated as mere means and therefore must consent to 'each particular declaration of war' if they are 'to serve in a way full of danger to them' (6: 346). In other words, the argument does not revolve around the question whether a state can force other states to enter an international civil condition. The question is only raised hypothetically as an introduction to a discussion about another topic, and therefore does not seem to have any direct impact on the issue dealt with by Byrd and Hruschka. Nor is there much support for their interpretation in the proceeding paragraphs (§§56-58), on the right to go war, right during a war, and right after a war. Rather than indicate that Kant 'foresees and accepts the right states have to coerce other states to move to a juridical state of nation states' (Byrd and Hruschka: 625), the discussion in these paragraphs seems to affirm much of what is contained in the preliminary articles of *Toward Perpetual Peace* which addresses questions pertaining to acceptable and non-acceptable conduct of states in a pre-civil condition, but not the issue of whether states can be forced to leave this condition. As far as the parallelism of the domestic and the international case is concerned, it suffices to say at this point that its soundness depends on the assumption that all the structural problems identified in the state of nature between persons also applies to the state of nature between states. As I argue in the next section, this assumption should be doubted.

V. Why the voluntary league is and why the world state is not an ideal precondition for perpetual peace

Beyond the textual considerations discussed at the end of the previous section, there are also principled normative considerations which make non-voluntarism an inadequate ideal of international political obligations, even though states do wrong in the highest degree if they choose to remain in a state of nature. The crucial problem is that a non-voluntarist ideal of international political obligations would entitle every capable state to force other states to become members of a league of peace or a world state. Such an entitlement is problematic, first, because it allows the stronger state to set the terms of cooperation unilaterally, which would be an obvious injustice, since it contradicts the requirement that every restriction is to be a universal restriction.[26] Second, non-voluntarism in the international sphere implies a right to wage war in order to enforce exit from the state of nature. This is of course not to say that war is the only coercive means available to states in their relations to other states. Yet, in the international sphere non-voluntarism implies in the final resort a right to go to war against those states that refuse to leave the state of nature. It is therefore tantamount to a right to put already existing state sanctioned legal orders at risk, one's own as well as that of the other state. But there can be no right to do this. First and foremost

[26] Pauline Kleingeld seems to have a similar point in mind when arguing that forcing a state to join a state of states is a form of paternalism that violates the political autonomy of the people that is forced to join (Kleingeld 2004: 309). Cf. also Kant's verdict on the traditional understanding of a state's external sovereignty as implying a right to declare war: 'The concept of the right of nations as a right to go to war is meaningless (for it would then be the right to determine the right not by independent, universally valid laws that restrict the freedom of everyone, but by one-sided maxims backed by force)' (8: 356f.).

we have a duty to establish a state, not to risk its dissolution. The latter would jeopardize the necessary precondition for rightful interaction among persons, and is therefore incompatible with right. Coercing an unwilling state to leave the international state of nature is not a hindering of a hindrance to freedom, but employment of unilateral force that is opposed to our primary duty to leave the state of nature among persons. I believe this is the main reason why Kant says that states have 'outgrown the compulsion to subject themselves to another legal constitution' (8: 355f.). The original subjection to any international public authority must be based on consent, since the opposite 'is analogous not to founding a state but to a revolution which fails and leads to a state of nature' (Maus 2004: 91).

In view of the preceding considerations, one can also see why conceiving individuals as the central normative units in a theory of justice does not imply a non-statist conception of international law or that statist conceptions of international law are based on illiberal or authoritarian theories of the state.[27] Placing state sovereignty at the centre of international law is not in conflict with emphasizing the rights of individuals, which in any case forms the normative ground of Kant's theory. Rather than reflect illiberal authoritarianism, prohibiting aggressive wars and interventions in the internal affairs of a state confirms the state's role as an ideal precondition for each person's independence vis-à-vis other persons.

I take it that concerns similar to those which underscore voluntarism in the international sphere also motivate Kant's opposition to a permanent union of states. This is at least indicated by the claim that the possibility of dissolving or renouncing the league of peace 'is a right *in subsidium* of another original right, to avoid getting involved in a state of actual war among the other members' (6: 345). When some member states fight among themselves, any other state must be allowed to withdraw from the league at will in order to remain neutral. If there were no such right to remain neutral, every member of the league could be legitimately commanded by the international political authority to become entangled in conflicts between or within other states. But this would imply that the international public authority has a right to put the lives of its member states' citizens at risk. Again: there can be no such right. The founding idea of the state is to guarantee the rightful use of freedom among interacting persons. In order to provide this guarantee, the state can legitimately demand that its citizens act in a way that is consistent with the perpetual existence of the state. However, citizens are not obliged to risk their lives in wars against other states as long as their own state is not directly threatened. If they are forced to fight to assist other states, they are used for purposes that are not their own. They are thereby used as mere means, which violates their innate right to freedom.[28] Besides, a state's duty to establish rightful relations between itself and other states does not imply any obligation to assist other states whenever they are in conflict with external enemies or

[27] For the opposite view, see Tesón (1997: 1-2).

[28] In line with this, Kant concludes his discussion in §55 of the *Doctrine of Right* concerning what right a state has to use its subjects for war against other states the following way: '[F]or they must always be regarded as co-legislating members of a state (not merely as means, but also as ends in themselves), and must therefore give their free assent, through their representatives, not only to waging war in general but also to each particular declaration of war. Only under this limiting condition can a state direct them to serve in a way full of danger to them. / We shall therefore have to derive this right from the *duty* of the sovereign to the people (not the reverse); and for this to be the case the people will have to be regarded as having given its vote to go to war' (6: 345f.).

are afflicted by internal violence. To do wrong is to hinder external use of freedom in accordance with universal laws, and whoever abstains from taking part in an ongoing conflict does no wrong.

In light of similar considerations, Helga Varden has argued that the public authority constitutive of rightful international relations 'cannot ever establish a perpetual monopoly on coercion' (Varden 2008a: 21).[29] While this seems like a sound conclusion, we still need to explain why consent can do a job in the international sphere which Kant says it cannot do in the domestic sphere. Given Kant's non-voluntarist conclusion with regard to domestic political obligations, it is not yet clear why a voluntary league of nations can be sufficient for the establishment of an international civil condition. Why is the 'sword of justice' dispensable in the international realm? In order to give a satisfactory answer to this question we have to consider in what respect the international state of nature is a non-rightful condition of war.

At this point, it can be useful to recall that for Kant the term 'state of nature' does not refer to a previously existing condition in historical time that could only be overcome by means of a contract establishing the state. Rather than describing a previous state of affairs, it is a theoretical fiction that shows why certain structural problems make rightful interaction among persons impossible absent a public authority.[30] As such, the notion serves the normative-practical purpose of displaying that it is pragmatically inconsistent for agents possessing practical reason to renounce obligations towards any such authority. Similarly, the characterization of external relations between states as a state of nature is a proposition about the ideal preconditions for justice in the international sphere: in this sphere too there are irresolvable structural problems which make rightful interaction impossible unless there is established a second order public authority. The crucial question is therefore in what respect the structural problems in the latter case are similar to and in what respect they are different from those in the former case.

We saw in the previous section that the proponents of the world state assume there is an assurance problem in the international sphere which a league of states cannot possibly solve. Given this assumption, the conclusion that a second order public authority with coercive powers is constitutive of an international civil condition is convincing. Insofar as the major concern is to provide rightful assurance, and no particular state can serve as an external guarantor, since each state, considered in opposition to other states, in such a case would represent a particular will whose relation to the others is also in need of regulation, a world state appears necessary in order for states to interact rightfully. However, the premise that there really is an assurance problem to be solved in the external relations between states is false.

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[29] Puzzlingly, Varden also says that this authority should have a 'tripartite republican constitution' (ibid: 23). I do not see how this claim can be squared with the rejection of a supranational monopoly of coercion. An international public authority without coercive powers is an authority which lacks one of the powers constitutive of a republican constitution, namely the executive power, and could therefore at most have a bipartite constitution.

[30] Correspondingly, the contract that founds the public authority should not be conceived of as an actual agreement explicitly or tacitly consented to by state citizens: 'it is by no means assumed as a *fact* […] that this contract effects a coalition of every particular and private will within a people so as to form a common and public will […] Instead, it is a *mere idea* of reason […] that has indubitable (practical) reality' (8: 297).

In his recent book *Force and Freedom*, Arthur Ripstein observes that there is in fact no reference to such a problem in Kant's discussion of conflicts between states (Ripstein 2009: 227-8). What we find is a partial analogue to the problem of indeterminacy, but there is no analogue to the claim that we are not obliged to leave what belongs to others untouched unless we are provided assurance that they will behave accordingly with regard to what is ours (cf Kant, 6: 255f.). According to Ripstein, this deviation from the domestic case reflects two features of states which distinguish them from persons in important respects: first, states do not have external objects of choice, and second, states have a fundamentally public nature.

Unlike Byrd and Hruschka, who conceives of a state's territory as the property of the state, Ripstein argues that territory, in Kant's view, 'is just the spatial manifestation of the state' (2009: 228). This is to say that territory constitutes the state's person in its external relation to other states, and therefore should be conceived as analogous to a person's body rather than as analogous to her possessions. If this is correct, it explains why Kant does not speak of an assurance problem in the international state of nature. As argued in section III, there is an irresolvable assurance problem in the state of nature between individual persons because these persons have enforceable rights to external objects of choice which no one is in position to rightfully enforce. The problem does not, however, arise with regard to the right person's has to their own bodies. Since we are necessarily in physical possession of our own body, others are always obliged to not violate our bodily integrity. Resisting potential violations against it with force is therefore not contrary to right. In fending off aggressors one does not impose unilateral force on others, but merely hinders a hindrance to freedom. Similarly, if territory is what a state is, perceived externally, then there is no assurance problem in the international sphere, because there are no external objects of choice with regard to which assurance must be provided.[31] Any wrongdoing done by one state against another state is comparable to the wrong one person does against the body of another person, and can rightfully be resisted with force by the aggrieved party. Acknowledging defensive wars as legitimate, Kant speaks of 'the *right to go to war*' in the state of nature as 'the way in which a state is permitted to prosecute its right against another state […] when it believes it has been wronged by the other state' (6: 346).

The other difference between a state and an individual person pointed out by Ripstein, the public nature of the state, leads to similar conclusions. In contrast to a person, a state does not have ends of its own. Its sole function is to provide a coercive institutional framework which enables citizens to interact in a rightful way. For this reason a state can only act for specifically public ends, such as continually approximating an ideal republican constitution and sustaining the already established public order. In our context, the crucial implication of this notion of a state is that it is conceptually impossible for any state to wage aggressive wars. The only cause for which wars can be fought is to defend the state as a rightful condition. As argued above, not only do aggressive wars violate the rights of the state under attack. Waging

[31] By the same token, Byrd and Hruschka's inference from non-voluntarism in the domestic case to non-voluntarism in the international case is undermined. In Kant's view, it is the normative requirement that it must be possible to have rightful possession which justifies the use of coercive means for the purpose of establishing a civil condition among individuals (6: 256). But if states do not have external objects of choice a crucial premise is missing, and a mere parallelism of the one case with the other will not do.

war is to put the entire public order at risk, and therefore at odds with our primary duty to leave the state of nature, unless required for the state's survival. Consequently, genuine states can only fight defensive wars, since fighting non-defensive wars is irreconcilable with their status as public authorities.

In view of these reflections regarding states' lack of external objects of choice as well as their essentially public nature one can see why a 'sword of justice' is not needed for establishing an international civil condition. Both aspects imply that there is no assurance problem in the international sphere, and so rightful interaction among states is possible without a strong physical power securing compliance from everyone. This further means that an important premise for the stage model reading of Kant's position on international right is undermined. If it is possible for states to interact rightfully without subjecting to a world state with coercive powers, then there seems to be no reason why a voluntary league of states should be seen as a temporary surrogate for a more satisfactory institutional framework to be implemented at a later point in time. The league, however, is still needed in order to overcome an indeterminacy problem in the external relations between states. This problem arises with regard to at least two different kinds of issues: rightful use of defensive force,[32] and rightful determination of national borders.[33]

Even if every state has a right to fight defensive wars, it is not necessarily clear what acts amount to aggression in every particular case. Discussing a state's right to execute its own right against other states, Kant does not only recognize 'active violations', or 'first aggression', as legitimate grounds for defensive use of force. A state may also be threatened by another state, either by the other state's preparations for war, or by its '*menacing* increase in […] power (by its acquisition of territory)' (6: 346). This makes it possible for states to reasonably disagree whether certain uses of force are aggressive or defensive. What one state considers an act of first aggression, the other state may consider as preemptive action covered by its right to self-defense. In the state of nature there is no rightful way to settle such conflicting right claims. As long as there is 'no judge competent to render a verdict having rightful force' (6:312), each state is in its right to follow its own judgment. Yet, thereby they employ force on the basis of their own arbitrary choice, which is contrary to right.

The same problem applies to disputes about borders. Whenever there is disagreement in the state of nature concerning where the lines between different states' jurisdiction is to be drawn, any judgment made on the issue is the particular judgment of one state. This again means that states in the state of nature unavoidably are subjected to arbitrary choice rather than universal law. Irrespective of whether a particular state's judgment is forced through or the parties to the dispute come to an agreement, the relation between the states is not one of rightful independence.

Even if a world state is not required, the existence of an indeterminacy problem in the international sphere still makes an international public authority with judicial powers

[32] This is emphasized by Ripstein (2009: 227).

[33] This is emphasized by Varden, who also points to the need for rightful regulation of interaction governed by cosmopolitan right, such as migration, trade and travel, although it is not clear whether she thinks such relations generate an assurance problem, an indeterminacy problem, or both. See Varden (2008a: 18f.). Below, I only discuss the two issues which concern the right of nations.

necessary in order to overcome the international state of nature. The league of states is such an authority, and can therefore be seen as an ideal precondition for rightful relations between states. Of course, being a voluntary congress which can be dissolved at any time, the league cannot provide a guarantee that existing states will accept its decisions. Individual states may very well be dissatisfied with specific decisions and thus choose to act on their own unilateral judgment. Yet, this circumstance does not challenge the view that a voluntary league provides the institutional framework constitutive of an international civil condition. In refusing to comply with the verdict of the public authority, a state does wrong. It does not, however, do so unavoidably. In the state of nature the irresolvable problem is that each state, however just and right-loving it might be, has no other choice but to either act on its own unilateral judgment or else yield to that of another state. As an arbiter, the league provides the means by which conflicting claims made by states vis-à-vis each other can be resolved in a rightful way. This way it establishes the minimal conditions required for states to decide 'disputes in a civil way, as if by a lawsuit, rather than in a barbaric way (the way of savages), namely by war' (6: 351).

VI. Conclusion

In this paper, I have defended Kant's league of states as a rational ideal constitutive of international justice against the standard criticism and the stage model interpretation. Against the latter position, I have considered some textual evidence which indicates that the league is not merely the first stage of a process leading towards an international civil condition, which eventually has to find its final form in a world state. More importantly, however, I have challenged the common premise of both competing positions, namely that a league of states is insufficient for establishing rightful relations between states. In contrast to this view, I have argued that normative concerns related to the rationale for establishing states in the first place leads Kant to deviating conclusions with regard to international justice compared to the conclusions he draws in the domestic sphere. In addition, I have argued that there is no contradiction involved here.

In view of the state's position as an enabling condition for the rightful independence of persons, both a non-voluntarist conception of international political obligations and the idea of a world state are problematic. An enforceable duty on the part of states to subject to a world government is in conflict with right, understood as an order of external freedom in accordance with universal law. By focusing on structural problems under ideal conditions, it can also be explained why the conditions of justice are different in the domestic and the international sphere. Since states essentially are public orders and have no acquired rights, there arises no assurance problem with regard to their external relations. Consequently, there is no need for a world state with coercive powers to overcome the international state of nature. The only international parallel to the state of nature between individuals is an indeterminacy problem which can be overcome by establishing an international public authority with judicial authority, i.e. a voluntary league of states. In other words, if my arguments are sound, there are not only good reasons to think that the ideal institutional structure for approaching perpetual peace Kant has in mind is indicated by the three definitive articles of *Towards Perpetual Peace*: an order of independent

republican states[34] whose disputes are dealt with in a common intergovernmental organization, and whose citizens have a right to make attempts at contact across borders without thereby being treated as enemies. There are also good reasons to endorse this structure as a rational ideal as well as to reject the claim that it is at odds with Kant's overall theory.

[34] By this I do not imply that an internal republican constitution is a criterion for membership in the league, only that the republican constitution is the ideal toward which states should strive as far as their internal order is concerned.

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