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THE STRUCTURE OF PEACE♦

In *Metaphysics of Morals*, paragraph 44, Kant notes that "before a public law condition is established ... individual human beings, peoples and states can never be secure against the violence from one another, since each has its [?!] own right to do *what seems right and good to it* (aus jedem seinem eigenen Recht, zu tun, *was ihm recht und gut dünkt)* and not to be dependent upon another's opinion about this."[1]

We should note that here we have an array of "individual human beings", "peoples", and "states". The rest of the paragraph, however, seems to deal with us as individuals, in a direct manner, and only indirectly with the "peoples" and "states".[2]

There is a powerful ambivalence here, especially if we compare the very strong wording at the beginning of the paragraph 44: "It is not experience from which we learn the maxim of violence..., it is not some deed (Faktum) that makes coercion through public law necessary....—on the contrary... it lies *a priori* in the rational idea of such a condition (a condition that is not rightful)." The ambivalence is here perhaps not yet visible, except in the shift from a set of three (individuals, peoples, and states), *none of which* can be secure from violence, to a formulation which seems to shrink to individuals who must leave the state of nature and, at all costs, enter a civil condition. This paragraph in *Metaphysics of Morals* is in full accord with the Seventh Thesis from the "Idea for Universal History with a Cosmopolitan Intent": "...establishing a perfect civil constitution is dependent on foreign relations," because the state of nature present in existing anarchical international affairs is making security against violence

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still very far ahead—and there is no "civil condition", i.e. "rightful condition" in the international arena.[3] The concepts of "*a priori*" and "*independence of any factuality*"—very strong concepts, to be sure – appear to have the same validity on all three levels: of individuals, peoples, and states. It seems that abandoning the state of nature at only one level of those three would not suffice for a rightful, lawful condition to be established before the state of nature has been abandoned at all three levels. This means that before the state of nature has been overcome in international affairs, domestic rights in states are doomed to be provisional, tentative and uncertain, which is the opposite of what they are supposed to be. Does this mean that at an international level each may compel the other by force to leave the state of nature by introducing universally obligatory, peremptory, laws?[4] The "other" here are states with established internal civil conditions and valid and effective laws (Cavallar, 1999:5). Accordingly, peoples and states should also leave the state of nature for peace to be secured. Until then, there will be a right to impel them to it by force. This means, quite in line with the definition of the state of nature, that war is a default state of affairs, whereas peace is only a goal for which to strive. Consequently, a peace that exists within states only, one which is not also a world peace, would be both incomplete and uncertain.

The ambivalence seems to become visible in a tension between this "a priori" approach *and* the logic by which the laws, necessary to leave the state of nature and enter a civil condition, have to be articulated: they have to be articulated in *freedom*, in autonomy of the agents which "enter" the new condition, and this manifests itself through *consent.* We know this fact, but it is still odd: in order to be just, the laws must be endorsed, authorized, *not imposed*, and this regardless of all other characteristics or features they have. Laws relate to our *external* freedom, but external freedom is still freedom: it is part of the totality of freedom, the same one that we brought (actually have to bring) from the state of nature (as the same freedom that we had, or have had, in that state). External freedom is not supposed to be a kind of slavery, or a domain in which freedom has lost its essence of being the capacity to decide, a capacity which is a kind of power. In a civil condition, freedom is limited. It is only part of what it was in the state of nature—but that part is still freedom and the best part of it indeed. In a practical sense, freedom is efficiently, in a practical sense, working in *both parts,* designating the legitimate freedom part (1) and the restricted part (2). In the area of legitimate freedom we can freely set our goals and attempt to realize them—resuming responsibility for the success and failure in their realization.

In the area of freedom that is restricted by laws, freedom is present in the structure of the necessity of consent: without consent the restriction is not *valid*, but at the same time the consent has to be free, not enforced by compulsion or coercion. There is no requirement for the consent to be given, and the act of giving consent is a fact, not a matter of analytical truth! The normative reasoning power driving for the provision of consent contains necessity, but of a normative kind. Moreover, the necessitation we have in the "necessity" contained in duty, as Kant says: "Duty is the necessity of an action from respect for the law"—is not a real necessity but only a normative one [not that something necessarily will be realized but that it is necessary that it *ought* to be realized, and this independently of the difference "from duty"/"in accordance with duty" distinction] (Kant, 4:400n). But, of course, it did not have to be realized. Thus, the normative necessity to give consent to laws is not a factual necessity but only *a pressure* of reasons directing our decision to a rational conclusion to give consent.

This pressure is not even primarily of a moral kind but rather purely rational, based in autonomy but expressing our (best) heteronomy: rational self-interest. All that pressure, however, is not sufficient to entail a real necessity in the sense that the result, the act of giving consent, could be "derived" from the content of the laws. What laws will be, will depend in a crucial part on what the real interests are. And the real interests depend on *who's* interests these are, and what *happened* before. Too many uncertainties, and one variable is determining the most basic interests of anyone. Uncertainties refer to the events that "happened before," and the variable is the identity of the person(s) who is or are the holder(s) of freedom. We may conclude that the "necessity" we deal with here is at most an urgency *to give* consent, without specifying what the content of this consent is. Taking this into account, it is arrogant to presume that everyone's decision will be the same, that the interests and their hierarchy will be the same in all humans. The pressure to make a civil condition should suffice to facilitate the decision, but which decision it will be in full precision has not yet been determined in this process.

Hence, on one side we have a normative thesis setting up *a priori* principles that say that before we leave the state of nature we do not have full peace (Kant, 6:312), that any legal constitution is better than none at all (Kant, 6:320), that we must leave the state of nature and establish true peace, thereby overcoming war (Kant, 6:344). This is a demand of reason (Kant, 6:312). The realization of this demand takes time, and it can be incomplete or deficient. These problems, i.e. deficiency and incompleteness, are signs of the presence of some remnants of the state of

nature. This is most visible in the international arena where we still have a kind of anarchy. The demand of reason is to put an end to such a state of affairs by establishing a truly global juridical condition.

On the other side, we have what Kant calls "truce", a "mere truce, a suspension of hostilities, not peace" (Kant, 8:343), a state of temporary peace, even if it is a result of a peace treaty with the victory of one and capitulation of the other side (Kant, 8:355). Truce is a solid concept in Kant, much richer in content than our first impression might suggest. It also might be different from the dictionary meaning of the term. It is a concept worth exploring. There are *two* moments I have in mind here. ***First,*** Kant's peace treaty, or peace pact (depending on the translation) as the end of a particular war, may have as a result that "a current war can be brought to an end but not a *condition* of war" (Kant, 8:355, my emphasis). Our normal linguistic intuition is that truce is only a pause in an ongoing war. According to Kant, however, a peace treaty cannot end the condition of war, because "right cannot be decided by war and its favourable outcome, *victory*".[5] A possibility of future conflicts, namely, always remains an option. Even after the end of war (concluded with a peace treaty) we still have only a "truce," a kind of state of nature, not real peace.[6] ***Second,*** states *have already abandoned* the state of nature, and "what holds in accordance with natural right for beings in a lawless condition, [i. e.] 'they ought to leave this condition', *cannot* hold for states in accordance with the right of nations (since, as states, they already have a rightful constitution internally and *hence* have *outgrown* the constraint of others to bring them under a more extended law-governed constitution..." (Kant, 8:355, my emphasis). Thus truce, which characterizes the anarchical international society, is *not* a state of nature! And the ambivalence is fully visible now. Truce of this kind is the true nature of the world: wars are always possible, and peace, which actually is a truce, is a state of affairs in which that possibility has been successfully avoided. War is a latent but real possibility—a very expensive and often also unnecessary, immoral, even absurd possibility, similar to many related ones we all always have within our reach, in the domain of our freedom (but not such to be considered as the objects of prospective decisions). Nearly all of these options, however, can in some extraordinary circumstances become feasible (like, for example, to cry and shout aloud: it would be very improper for me to do that here at my desk, or in the middle of the lecturing, but if I am falling from a cliff it would suddenly become very proper and feasible).

In other words, being in a state of truce is in a way sufficient for us to say that we are not in a pure state of nature. Truce is more than the

absence of any constraint. Precisely because of that the right "to impel the other by force to leave the state of nature by introducing obligatory, peremptory, laws," which is a feature of the state of nature, does not seem to be applicable in the state of truce. Truce seems to be more a kind of peace than a segment of a war. Were it not, we would have a right to impel (all?) others to abandon this condition in order to reach true peace. It would have to proceed in two steps: first, individuals would need to relinquish their wild, unrestricted freedom for a limited but guaranteed freedom provided by the laws of the state. Afterwards, the states, which are to be taken as (artificial?) moral persons, would need to move further and finalize the process by entering a lawful state of cosmopolitan peace which would not be any kind of "truce." The problem with this is the following: it would be hard to avoid destroying internal law and order in the process of creating a viable global juridical condition. This might be the reason why Kant claims that, in regarding the state of nature, what holds for individuals cannot hold for states: it seems very unlikely, or impossible, not to destroy the structure of order and peace already created by the abandonment of the lawless natural condition in the renewed process on the second level (Maus, 2010). Strictly speaking, if this new world order is to be created according to the demand of reason, *all* states and their laws should be reconsidered and revised. Otherwise, the strongest state(s) would impose its (their) laws as the unquestioned authority of what is to be considered as the sole normative standard. In the process all other authorities would have to withdraw or be cleared. Many pitfalls are looming here. For example, no one would know if one is obeying the law, if in what she is doing she is acting in accordance with any domestic law, because it could turn out later that this is different from the newly, *ex post facto,* created global law. The result would be utter uncertainty regarding any transitional period (except perhaps the ones buried in the deeper past). But this is only one example.

The main point is that the internal, domestic laws, by losing their normative authority, would lose their role in facilitating "the abandonment of the state of nature." It seems that any attempt to realize a world peace would then imply a kind of revolution which necessarily would destroy most of order and peace attained so far. This would be at odds with Kant's claim that "any legal constitution, even if it is only in small measure lawful, is better than none at all" (Kant, 8:373n). The other, even more far-reaching problem, could be the question whether the goal of a world state is attainable at all. Another issue is: is such a goal worthwhile - a point which finds its explicit corroboration in Kant's idea of "soulless

despotism" of a world empire.[7] Either way, this is a subject worth of further exploration.

My own thesis is that "peace" is a name for a state of affairs which acquires its meaning only in relation to its opposite, i.e. to the absence of peace. According to Kant, that absence is the state of nature defined as the state of war (Kant, 6:344). What really is "eternal" here are only possibilities, both of peace and war. Peace and war are to be defined in relation to each other. Peace is, *prima facie*, positive, war negative. But this is only *prima facie*; because peace can be unjust, contain slavery, humiliation, discrimination, inequality, exploitation, disrespect, etc. We may object that all these are features of peace as truce—not of real, true peace, which would be the total opposite of anything contained in war. But what is contained in war? What is the purpose and meaning of war, the purpose and meaning which may lead to some justification of it? Putting aside notions of the (possible) eschatological purpose of war (according to which war is a necessary and appropriate *means that leads to ultimate peace*),[8] adequate descriptions of peace and war ought to be connected with a specification of the role laws play in both schemes. More to the point, both war and peace have to be articulated in two ways in the context of time. First, in time as the frame of possibilities at a specific chronological point defined through previous time and thus determining what is possible and feasible at that point (context). Second**,** in time that is generally understood as the basis of *changes and differences*.

Laws are susceptible to all these influences of time. They are the result of previous traditions, which are subject to change. This fact establishes the *content* of what peace is and why it has to be *temporary***.** Temporariness is a very important component of the structure of peace. It brings changes which produce differences. War is a borderline point of some of those changes in its potential to produce some of those differences. From the other side, war can thus also be regarded as a defence of the *status quo*. From the point of established justifications—those justifications that are based in accepted reasons and the justificatory force of those reasons—there is a certain *asymmetry* which gives a principled primacy to the *status quo* in comparison to a change: an existing state of affairs, as *already* established, presumably has some justificatory reasons at its base, and the force of those reasons (the way that reasons function when they direct us to decide and do what we do) has already functioned as a motivational force for this state of affairs to be formed and accepted. The entire process is in a way accomplished in the past and what we have at the present moment thus has its *raison d'être.* Change-in-view, however, is not real, and as a process change at first is only a beginning

(or even something that precedes beginning, something only conceived), its reality in the future and uncertain. The power of some reasons to direct the action to its production is not in the same position as the same power of the justificatory reasons contained in something that already exists, it is necessarily *underprivileged*, and this power has to be proportionately *stronger, strong enough*, to facilitate the change.

Opening a process of change implies opening a conflict with the *status quo*. And it is possible that this conflict *at some point* cannot proceed in a purely rational way and therefore will be unable to avoid violence, or rely only on the rational strength of reasons at some point of time. It is also possible that the conflict is such that it is not easy, or even possible, to end it and return to the starting point (or rather to the point before the starting point of the conflict). This is why it may be much easier to start an action such as a war than to stop it. In that case we may resort to violence as a path that allows the continuation of the conflict until its resolution. Thus, the defence of the *status quo* is rather obvious: the constitution, the laws, have to be defended. If one is under attack, defence is not just one of many options standing at his disposal, equal to all other options—it is the default action in response. One may give up defence, of course, but not in advance. This means that the *status quo*, which is always a particular peace with a specific structure of power distribution, is the subject of defence by default. This implies, however, that recourse to force is an option at all times; that war, not peace, has a priority here in a sense in which means have a priority over ends. *Hence, part of the definition of peace is that it is a state of affairs in which war has been avoided*. "Avoided" does not denote any necessity here: we just have been successful in not allowing war to occur. But we cannot say that war is an "avoided peace". Peace is the goal, war is not. War is only a means—a means to peace. There is no possibility of success in "avoiding peace," comparable to that of avoiding war: in a way this dialectical aspect of their relation is their dynamics. But the dynamics is strong: peace presupposes war, as a shield, as a refuge, as a defence.

Unlike war, which is per definition temporary as a state of affairs that should end (the aim of war is to reach its conclusion!) peace has been normatively conceived as a permanent state of affairs. If we associate war with death, as we often do, we may associate peace with *life*. Let us therefore say that peace is the home of life. Obviously we do not think of *absolute peace*, one we have in graveyards, as Kant would say (Kant, 8:343)—we have peace there, even absolute peace, but no life!—but a more dynamic state of affairs, one resembling life as usual. What makes peace so valuable is that it gives what is most important for and in life. For

our purposes here and phrased in the shortest way, *peace is giving us control of time:* through peace, we attain predictability. If we define *life* as *the activity of setting goals and attempting to realize them*, then it is obvious that life is future oriented and dependent on (some) capacity to control our future time. This is what laws give to us. Laws require and are dependent on peace. The main part of the definition of war corroborates this: it is per definition a suspension, a temporary suspension, of some important laws, and for that matter of some important rights and liberties. *There is no controlled future in war*: it is more as if the future during war resides in two periods, divided by a single point. That point is the end of war—the point of victory or defeat, the point of established peace. By giving us control of (future) time, peace is a central issue of social power, as well as an expression of its articulation and structure.

The entire mechanism functions in the following way: the constitution and the laws in general have to be considered as worth the defence and defendable, and as in fact defended (as if the peace is the result of a successful defence, regardless of the fact that the peace is an outcome of a factual war). The attempt to defend the laws is always a strong motivational underpinning. Laws cannot function if they are proclaimed to be non-enforceable. Moreover, accepting non-defence would destroy all their enforceability. Every state has a legal duty to defend itself. This duty is also a moral duty, as long as the existence of (some, or any) laws has a moral justification. Hence, the interpretation of Kant's text as one implying a right (and duty?) to impel all (other) states to comply to one unique and unified law, to compel recalcitrant states to comply in order to "enter" a global juridical condition analogous to the civil condition, while proclaiming noncompliant states as outlaws (because they have *a different articulation of their peace*) and presuming the very reason that stands behind it—appears very totalitarian! For the freedom contained in laws, peace has to be taken as a "truce"—not as a perfect, final, ideal state of affairs from the end of time! That would destroy the difference between jurisprudence and morality, as well as the difference between legality and morality that is founded in the Categorical Imperative. Such morality states that the perfection of others must not be my concern, meaning that others may have whichever different motives for their actions as long as their actions conform to my external freedom. Consequently, privacy would be destroyed, while our lives would be policed. Furthermore, our entitlement to interfere in the domain of the freedom of others would be our right, even our duty. This logic is quite visible in the contemporary practice of humanitarian military interventions. Such actions strongly resemble police actions where the distribution of power and entitlement is

totally asymmetrical: all legitimate power and authority are exclusively on one side.

Peace is a thick web of constraints created through mutual agreements, established expectations, threats of sanctions, laws, etc. All these constraints make many of our less than good ends much harder to realize, but they do not make those ends really impossible to achieve. The power of restricting freedom contained in laws is not perfectly efficient—freedom always will be a reservoir of both of autonomy and violence. That is so because the civil condition is one of a *repressed* state of nature—repressed but not "abolished" and "overcome." Hence, if it is confronted with the abovementioned totalitarian ideal of pure and absolute peace, this repressed state of affairs might *erupt* as either total resignation, apathy (implying a passively approached lack of any possible consent), or as pure violence—being an expression of despair and helplessness, thereby indicating a lack of consent in an even stronger way. This would signal that peace has lost its formative power. It would be a sign that control has become unbearable and akin to slavery. The point of being free is to be what you are, not to be something else, nor to be under the control of something you do not identify with, something that is not you. And to be *ruled* is even more than to be controlled. If you are ruled by others without your (sincere) consent – regardless whether "you" are an "I" or a "we", an individual human being or a people (and for that matter a state)—you are not free.

The remedy here is simple: *tolerance*. There is no necessity, real or normative, that my constitution must be everyone's constitution. There is a pluralism of our appetites and desires (to survive, to be safe, to prosper—quite Hobbesian)[9] and what is necessary is not universal obedience but universal tolerance. *It is the limits of possible identification that make tolerance necessary*: I, as an autonomous individual, can delegate or transfer *my* freedom through *my* laws (confirmed through my consent) to *my* state, and in doing so I identify myself with a "we" for whom these laws are "***our***" laws**.** Universal identity does not seem to be possible: it would make any difference impossible and, what is more important, it would preclude dissent. This *preclusion of dissent would make any consent redundant and irrelevant.* The difference between my *voluntary* (free) participation in a collective legislative "we" and my *involuntary* participation in it would be on a par, while my contribution in making collective decisions would become completely negligible and also redundant. Thus, the difference between freedom and slavery would be lost—not because it is empirically difficult for humankind to become that legislative "we" that we all identify with, but because of a stronger logical

matter: because there is *a need for others* in a process of identity formation (and identity is what a holder of autonomy has).

It is easy to conceive that *humans* on Earth would unite in a possible defence against some danger coming from outer space. But the nature of this unification seems to be rather different depending on the nature of this danger: in case of a natural danger some form of cooperation and joint action would suffice. We should then expect the old system (or at least some state of affairs similar to the old one) to be re-established after the looming danger passes Only if the danger were an *attack*, meaning an attack carried out by some other rational beings, only then would it make sense to conceive of a unification which would create one nation on Earth, forcing all of us to unite not only in cooperation but also politically. And it is equally easy to conceive that this union, the result of this unification, would survive if the assaulting party also continues to constitute a threat. But, if we were to succeed in destroying the attackers entirely, it is very questionable whether the memory of what happened would suffice to transform the newly created union into a lasting nation!

We can find a very fine corroboration of this in Kant. In paragraph 61 of his *The Metaphysics of Morals* he says the following: "...if an *international* (my emphasis) state... extends over too wide an area of land, it will eventually become impossible to govern it and thence to protect each of its members, and *the multitude of corporations this would require* (my emphasis) must again lead to a state of war. It naturally follows that *perpetual peace*, the ultimate end of all international right, is an idea incapable of realization" (Kant, 6:350; Nisbet's translation (Reiss, 1971:§171).

My own stance is that war is a necessary means to defend laws and peace. It is the matter of an articulation of the structure and distribution of social power: what will be the structure and the hierarchy of possibly legitimate ends, what will be the structure of the legitimate distribution of results and achievements, as well as which criteria will be accepted and applied to this. This defines who will rule and how, and what will be prohibited. In the end we can conclude that the structure of peace consists in who and what we are, what the content of our life is: which ends we set and attempt to realize. Those ends have to be rational (based on reasons) to be realizable, even if we were a society of devils (Kant, 8:366). They have to be arranged and ordered in a web of achievements and holdings, and this all is *a specific structure and articulation of power*. But all of this is possible because existence of laws allows predictability. Thus, this structure is in fact our—a very important part of us. It also includes a real possibility of war. Peace is what we are, but war is its part. The capacity to

choose evil is an inevitable and necessary part of our freedom (Babić, 2004:248). We have good reasons not to fall prey to that part, but it will always be with us—as long as we are free. Therefore, despite peace being a state of affairs that successfully avoids war, its achievement is by definition temporary. It cannot become permanent. Kant seems to say the same, at least in *The Metaphysics of Morals* and *Toward Perpetual Peace*.

Notes

* A version of this paper was read at the Symposium "Law, Democracy, and Kant's Three Dimensions of Right", held at NTNU, Trondheim, Norway, December 12-13, 2008. I wish to thank Audun Oefsti and the audience for all their comments.

1. Kant, (1999:456); Kant, "Metaphysik der Sitten (1797)," hereafter quoted in an abbreviated form according to the pagination in *Kant's Werke, Akademie Ausgabe*, Bd. VI, S. 312 as: (Kant, 6:312) or for "Grundlegung der Metaphysik der Sitten (1785)" in Bd. IV, S. 400 as (Kant, 4:400).

2. Kant (6:312). Mary Gregor, whose translation has been used regularly throughout this article if not indicated otherwise, obscures this by translating both the German "ihm" and "man" by "it": "Mithin das erste, was ihm zu beschliessen obliegt, wenn er nicht allen Rechtsbegriffen entsagen will, der Grundsatz sei: man muesse aus dem Naturzustande, in welchem jeder seinem eigenen Kopfe folgt, herausgehen...—"So, unless it wants to renounce any concept of right, the first thing it has to resolve upon is the principle that it must leave the state of nature, in which each follows its own judgment...."—cf. two other and different translations, first an older one, afterwards one among the latest: 1) Nisbet (in Reiss, 1971:137) translated this part as follows: "Thus the first decision the individual is obliged to make, if he does not wish to renounce all concepts of right, will be to adopt the principle that one must abandon the state in nature in which everyone follows his own desires"; 2) David L. Colclasure's translation (Kleingeld, 2006:111-112) of the same is: "Hence the first principle that one must decide upon if one is not to renounce all concepts of right is the following: one must emerge from the state of nature in which each follows only his own thoughts...". It is in order to note that Mary Gregor's and David Colclasure's translations are less precise than Nisbet's. Nisbet distinguishes between the German "ihm" and "man", rightly translating them with "him" and "one". Gregor and Colclasure conflate the two German terms, translating them exclusively by "it" and "one" respectively.

3. Kant (8:24). Nisbet's translation (Reiss, 1971:47); D. L. Colclasure's translation, (Kleingeld, 2006:11). Cf. also Cavallar (1999:5).

4. This can mean two very different things: 1) "ideal" law—one law, final peace, no war possible (after one successful final war to introduce this universal and ideal law in the whole world), or 2) impelling "others"—i. e. other states—to enforce some viable law, i. e. their own law, and not allow a territory to be without any law; in this second case a lawlessness, or for that matter the incapacity to enforce the law, but not a fact that it is a different law, can be a *casus belli*.

5. Kant (8:355); but see also Nisbet translation: "rights cannot be decided by military victory" (Reiss, 1971:104).
6. Kant (8:348-9): "A State of peace among men living together is not the same as the state of nature, which is rather a state of war." Nisbet's translation: Reiss, 1971:98).
7. The translation here is Nisbet's, which again seems to be more appropriate than Mary Gregor's. The opposite standpoint would clearly violate the principle of moral equality of all those past, present and future humans with those who live prior to the establishment of the final lawful state of affairs, regarding respecting the decisions contained in their laws, including any feature of obligatoriness implied in those decisions and laws.
8. Kant (8:365, my emphasis): "Even if a people were not forced by internal discord to submit to the constraint of public laws, war would still force them from without to do so…" Cf. Ludwig (2004:74ff).
9. Cf. for instance, Hobbes, 1981: Part I, Chapter VI, § 6.

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