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IN DEFENSE OF KANT'S LEAGUE OF STATES

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ABSTRACT. This article presents a defense of Kant's idea of a 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. In view of 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 state of states. Agreeing with this *standard criticism* that a league of states 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 a state of states, whereas the league is merely introduced as a temporary and second best solution. In contrast to both the standard criticism and the stage model interpretation, I argue that fundamental normative concerns count in favour of a league rather than a state of states. I also argue that Kant's defense of such a league is consistent with his position on the institutional preconditions for just interaction in the domestic case because of crucial relevant differences between the state of nature among individuals and the external relations between states.

I. INTRODUCTION

The starting point for this article is a contested issue among Kant researchers: What kind of institutional arrangement does or should Kant prefer for the achievement of a just international legal order? While there is broad agreement that the idea of a global unitary state which merges all states into one state should be rejected, the disagreement concerns which of two models is the more adequate: (a) a league of states vested with judicial, but no coercive, power which states are free to join and leave at will, or (b) a state of states which leaves the primary state units as separate entities, but which permanently establishes coercive power over its members. In this article, I defend the league of states against two competing positions

which I call the *standard criticism* and the *stage model interpretation*. According to proponents of both these positions, such a league is a too weak institutional arrangement for achieving a just international legal order. In their view, the only institutional model consistent with Kant's own theory is a state of states.

Despite this agreement between the standard criticism and the stage model interpretation concerning the necessity of establishing a state of states, they disagree on how Kant's idea of a league of states should be understood. Proponents of the standard criticism understand the introduction of this idea as a rejection of a state of states, and argue that there is a problematic mismatch with regard to what obligations Kant says hold for individuals and what obligations he says hold for states. The problem arises because Kant draws a parallel between the original state of nature between individuals and external relations between states, and at the same time rejects that overcoming the international state of nature calls for a solution parallel to the solution to the interpersonal state of nature. With regard to the latter, Kant claims that persons that cannot avoid interacting with other persons have an enforceable right and duty to subject themselves to a public authority enacting and enforcing positive laws, i.e., a state. By contrast, state communities can neither be compelled to do so, nor should they do so by establishing a state of states. Instead, they should voluntarily form a league of states. This move is seen as 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'.[1]

Although proponents of the stage model interpretation agree that a voluntary league cannot establish the necessary institutional framework for international justice, they claim that the standard criticism is based on a misunderstanding regarding the role of the league. 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'.[2] On this reading, the league

[1] Höffe (2006, p. 193). For similar claims, see Lutz-Bachmann (1997) and Carson (1988).

[2] Kleingeld (2004, p. 304).

of states is not the final institutional scheme for establishing rightful international relations, but merely a first step to be superseded by a state of states when the time is ripe.[3] While Kleingeld emphasizes that the transition from the league of states to the state of states cannot be forced upon states, an alternative version of the stage model interpretation is defended by Sharon Byrd and Joachim Hruschka in a recent article in this journal. In their view, Kant does not only defend the league of states as an intermediary stage in the process leading towards the state of states, but also holds the view that 'all states may use force to coerce all other states to make this move'.[4]

In the following, I contest both versions of the stage model interpretation, as well as the underlying assumption that they share with the standard criticism of Kant – namely that overcoming the international state of nature requires a state of states. In contrast to adherents of the stage model interpretation, I argue that the league is Kant's final conception. 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 state of states is in conflict with right or justice.[5]

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 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 conceptualization of and attempt at achieving lasting peace must cohere with what is right. In order to see why this implies a rejection of the state of states, it is necessary to examine more closely Kant's justification for his non-voluntarist view of domestic 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.[6]

[3] This view is also defended by Byrd (1995), Cavallar (1999), and McCarthy (2002).

[4] Byrd and Hruschka (2008, p. 624).

[5] In this article I use the terms 'right', 'justice', and 'rightful relations' interchangeably.

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

In this connection, a crucial point is that irresolvable structural problems[7] in the state of nature make a public authority vested with coercive powers a necessary precondition of rightful relations between persons. But insofar as a public institutional framework is a necessary precondition of rightful relations it is possible to show that states cannot, as can individuals, be forced to subject themselves to a public authority and that 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 why this conclusion is consistent with the proposal for a league of states. By considering to what degree the problems with regard to interpersonal relations 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 state of states.

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 first give a brief presentation of his conception of right in section II. Thereafter, in section III, I show what structural problems make the state of nature a condition incompatible with right. In section IV, I introduce Kant's idea of a league of states, and discuss what critics find problematic about this idea. Here, I also argue that the stage model interpretation is unconvincing on a textual basis. In this connection, I consider in particular the arguments put forward by Byrd and Hruschka. In section V, I first argue that states cannot be rightfully forced to leave the state of nature, which is also why a state of states with coercive powers is a problematic goal. Then, I explain why there is a need for a league, but not a state of states, arguing that there is only a partial parallel to the interpersonal state of nature in the external relations between states.

II. KANT'S CONCEPTION OF RIGHT

Kant's conception of right can be described in terms of the familiar idea of coercively protected spheres of freedom within which

[7] These are the problems of assurance and indeterminacy treated in section III below.

everyone is equally 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',[8] and is grounded 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'.[9]

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'.[10] In contrast to Isaiah Berlin's 'negative' concept of liberty, the innate right to freedom does not track interferences with regard to goal attainment.[11] Whereas Berlin considers any act by other human beings that frustrates a person's wishes as an obstruction of that person's freedom, Kant says that right does not concern the 'relation of one's choice to the mere wish … of the other'.[12] In his view, to be independent is to be able to set ends of one's own without the interference of other people,[13] but not necessarily to be unaffected by the choices other people make. Since the actions of other people lead to changes in the world they may indeed frustrate the pursuit of whatever end we choose, but as long as they do not arrogate or damage our ability to make free choices they do not restrict our innate right to freedom.

The indifference with regard to the relation between one person's choice and another person's wishes reflects a 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 to the

[8] Kant (6:230). All references to Kant in this article are according to the Prussian Academy pagination. I have made use of the following of his works: *The Metaphysics of Morals*, PA 6:203–493, in Kant (1996); 'Idea for a Universal History with a Cosmopolitan Intent', PA 8:15–31, in Kant (1983); '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).

[9] Kant (6:237).

[10] See, for instance, Pettit (1997).

[11] Cf. Berlin (2006, p. 169).

[12] Kant (6:230).

[13] 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, pp. 31–39).

promotion of basic values or fundamental human interests. The only requirement is that it accords with universal laws – that is, rules which, first, restrict every person equally and, second, do not merely represent the choice of one particular person or group.

There is a 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'.[14] From the perspective of right, our inner dispositions for acting in a particular way are not of interest. Virtuous action requires the right kind of motivation, whereas 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 is related to the conceptual link between right and coercion. Even if coercion is an impediment to or hindrance of external freedom, right is still analytically 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, and coercion that prevents such constraints is legitimate, 'as a *hindering of a hindrance to freedom*'.[15] It is therefore no surprise that the requirement of a moral motive must be abandoned in the sphere of right. 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.[16] 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 because one recognizes that it is the right thing to do, so whatever a person does because he or she is externally compelled to do so is not a virtuous action.

The boundaries of each person's sphere of freedom demarcate what powers or means belong to whom. They designate what

[14] Kant (6:230).

[15] Kant (6:231).

[16] Cf. Maus (2002, p. 109).

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, and 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. 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.

Kant recognizes three kinds of external objects which can be mine or yours: corporeal things (property right), other persons' deeds (contract right), and another's status in relation to me or you (domestic right).[17] Being separate from us, external objects are not innately ours. Entitlements to such objects must nonetheless be possible to acquire. A general prohibition against the use of things separate from us would be an arbitrary, and thus illegitimate, restriction of external freedom. The treatment of 'any object of my choice as something which could objectively be mine or yours' is therefore what Kant calls a 'postulate' or 'permissive law (*lex permissiva*) of practical reason'.[18] 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 to which the other has a contractual right.

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, as well as to fulfill contractual agreements. However, the state of nature cannot possibly be such a condition. Absent a public authority that enacts, enforces and arbitrates 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

[17] Kant (6:247).

[18] Kant (6:246 f.). Cf. also Ludwig (2002, p. 175 f.).

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.[19] And this leads Kant to the conclusion that to choose to remain in the state of nature is to do 'wrong in the highest degree',[20] as well as to its corollary: that entering civil society is an enforceable right and duty.

III. THE ASSURANCE AND INDETERMINACY PROBLEMS

The assurance problem is a problem regarding rightful possession. If a person is in rightful possession of something external, others are obliged not to make use of it as long as they have not been given permission to do so by the possessor. The core of the assurance problem concerns under what conditions people are so obliged. According to Kant, we are not obliged to leave objects belonging to others untouched unless they provide us assurance that they will behave equally with regard to objects belonging to us.[21] The question then becomes: How can we rightfully provide such assurance?

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. This claim 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 is not that we are 'phenomenal beings' that 'need to be reminded by a physical incentive that we should obey the law',[22] but that reliance on mere trust in other people for the purpose of providing rightful assurance is to make oneself dependent on their arbitrary choice.[23] Even in an ideal world, where everyone keeps their part of any agreement, reliance on someone's promise that she will not infringe on your acquired rights makes it her choice whether something

[19] Ripstein (2004) and Varden (2008a and 2008b).
[20] Kant (6:307 f.).
[21] Kant (6:255 f.).
[22] Williams (2003, p. 83).
[23] On this, see Varden (2008b, p. 8 f.).

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 deficient from the perspective of right.

But if virtuous promising does not suffice to provide a rightful guarantee, 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 restrains everyone equally. This implies that no private agent can serve the role as enforcer of justice. As private, such an enforcer is what Kant calls a 'unilateral will',[24] and such a will cannot possibly establish a system of reciprocal restrictions. For one thing, its acts of enforcement would be arbitrary from the perspective of everyone else, since they represent the choice of the private enforcer. Moreover, 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.[25] But if a private enforcer 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 problem of indeterminacy concerns how the distinction between mine and yours can be rendered accurate in a way compatible with the 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.[26] In relations of private right there may be disagreement concerning the determinate content of each person's rights. General principles of right are indeterminate with regard to what belongs to whom, 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

[24] Kant (6:256).

[25] The latter point is emphasized by Varden (2008a, p. 8, 2008b, pp. 10–11).

[26] At this point, Ripstein (2009, pp. 145–176) distinguishes between the problems of unilateral choice and indeterminacy, and thus ends up with three structural problems which make the state of nature a non-rightful condition. While this is more adequate in certain respects, I stay with the bipartite distinction between the problems of assurance and indeterminacy, partly due to considerations of space, and partly because it is sufficient for my main argument to single out these problems.

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.

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.[27] 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 is a private judgment. Whoever decides where the line is to be drawn inevitably subjects everyone else to one-sided restrictions, and thus acts contrary to everyone else's 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 accord with what is right. We would still be subject to the choices other people make whether to consent or not, and would therefore 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.

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',[28] 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 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,

[27] Kant (6:312).
[28] Kant (6:256).

… that is, … to enter a civil condition'.[29] To refuse to do so is to 'renounce any concepts of right'[30] 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'.[31] Refusing 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 according to the interpretation presented here, Kant's non-voluntarist conclusion with regard to political obligations does not depend on the assumption of a morally corrupt or problematic human nature. The claim is that in the state of nature even good-natured persons cannot but subject others to their arbitrary choice due to the problems of assurance and indeterminacy. 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 still be wrong in the highest degree to deny entrance to civil society, because in so doing one fails to provide the only framework within which rightful independence is possible. For this reason, a public coercive framework is in Kant's view more than a mere remedy for the 'inconveniences' of the state of nature, as in Locke.[32] It is rather a condition for the possibility of rightful interaction among persons, that is, 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 STATE OF STATES

The ideal form of the state authority that in Kant's view is constitutive of civil society, the republic, has two essential institutional features: first, separation and hierarchical organization of legislative (sovereign), executive (ruler), and judicial (judge) powers, and, second, ascription of legislative power 'to the united will of the people',[33] that is, popular sovereignty. This institutional structure

[29] Kant (6:312).
[30] *Ibid.*
[31] Kant (6:308).
[32] Locke (1690, p. 13).
[33] Kant (6:313).

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'.[34] 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 a solution to 'the problem of law-governed *external relations among nations*'.[35] Similarly to the state of nature among persons, the external relations between states are characterized as a non-rightful condition which can only be overcome by entering a civil condition of which an international public authority is constitutive.[36]

Although he draws repeated parallels between the original state of nature among individuals and interstate relations,[37] Kant's view regarding the institutional presuppositions for just interaction in the international sphere differs in important respects from his view regarding the institutional presuppositions for just interaction 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 state authority, 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)'.[38] 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'.[39] Furthermore, entrance and exit 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'.[40] In other words, the institutionalization of an international civil condition differs from the civil order among persons in

[34] *Ibid.*

[35] Kant (8:24).

[36] Kant (6:344; 8: 354).

[37] Kant (8:354; cf. also 8:24 and 6:344 f.).

[38] Kant (8:356).

[39] Kant (6:345).

[40] Kant (6:350 f.; cf. also 6:345).

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, which means that there is no parallel to Kant's non-voluntarist view of domestic political obligations at the international level.

It is the rejection of a state of states with coercive power that motivates the standard criticism. In the critics' view, Kant, in drawing an analogy between the interpersonal state of nature and external state relations, also ought to favor an institutional structure at the international level analogous to the institutional structure at the domestic level. What seems primarily to trouble these critics is that the league of states 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 its members, and thus leaves it for each state to decide whether or not to comply with the league's judgements. 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: '[S]ince 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'.[41]

Few, if any, of these critics think of the state of states in terms of a global 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 global unitary state and the league of states is the idea of complementary statehood, where the second order state authority is vested with a restricted set of powers and leaves the primary state units intact. Just as individual persons do not give up, but 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

[41] Höffe (2006, p. 200; see also p. 195). The lack of coercive power is also emphasized as the league's main deficiency by Byrd (1995), Byrd and Hruschka (2008), Pogge (1988), and Wood (1995).

action only in those spheres individual states could not regulate on their own'.[42]

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 require some kind of state authority with coercive powers. 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'.[43]

The distinction between a global unitary state and a limited state of states is also the backdrop of the stage model interpretation. According to this line of interpretation, the league of states should not be seen as an alternative to the state of states altogether, but merely as the first stage in a process that is ultimately to result in a state of states. On this reading, Kant's arguments against a global unitary state, that it dissolves rather than solves the problem of guaranteeing the right of nations,[44] and that it will lead to a 'soulless despotism' which 'finally degenerates into anarchy',[45] are misunderstood if they are taken to be arguments against any form of global statehood. The real motive behind the introduction of the league of states, 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 league of states may be a first step that prepares for the eventual establishment of a coercive state of states. 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 state of states when time is ripe: 'The core of Kant's argument … is

[42] Lutz-Bachmann (1997, p. 71).
[43] Höffe (2006, p. 197).
[44] Kant (8:354).
[45] Kant (8:367).

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 not via premature attempts to institutionalize a state of states immediately'.[46]

As for the second difference between the domestic and the international cases, the voluntary membership in the league, it has not only been argued that Kant should have opted for the opposite view, namely that subjection to the international authority must be compelling[47]; there are, as mentioned, alternative interpretations in the secondary literature on this point as well. Recently, Sharon Byrd and Joachim Hruschka have ascribed the view that any capable state can force any other state to enter an international civil condition to Kant.[48] According to Byrd and Hruschka, Kant takes a more mature stance in the *Doctrine of Right* than in *To 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'.[49] They see 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)',[50] 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, they find support for the same conclusion by pointing to a parallel between states and individuals similar to the one we have seen in connection with arguments in favor of the state of states. 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

[46] Kleingeld (2004, p. 318). See also Byrd and Hruschka (2008, pp. 637–638), and Cavallar (1999, pp. 113–131).

[47] See, for instance, Carson (1988).

[48] Byrd and Hruschka (2008, esp. pp. 624–626).

[49] Kant (8:356 f.).

[50] Kant (6:345).

support this view. Yet before I turn to this issue some textual considerations are in order.

Proponents of the stage model interpretation may find some support in the often cited passage from *To Perpetual Peace*, where Kant seemingly makes an unequivocal judgment in favor of the state of states, and the league of states is characterized as a '*negative* surrogate' brought forward so that 'everything is not to be lost'.[51] Nevertheless, 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*. Even if the proponents of the stage model interpretation take Kant's concern for a political world consisting of a plurality of states into consideration, there is the further complication that Kant seems to reject global statehood in any form, and not just in the form of a unitary state. For instance, at the end of the chapter on the right of nations in the *Doctrine of Right*, Kant contrasts the idea of a congress of states, i.e., the league, with a federation like the US, which 'is based on a constitution and can therefore not be dissolved'.[52] The fact that he immediately afterwards says that '[o]nly by such a congress can the idea of a public right of nations be realized',[53] suggests that he also rejects more modest proposals for global statehood. Moreover, directly before the passage where he is often assumed to reduce the league to a second rate surrogate, Kant says that the league 'is necessarily tied rationally to the concept of the right of nations'.[54] Later in the same text he also says that 'a federative state [*föderativer Zustand*]' is 'the only state of *right* compatible with their *freedom*'.[55] Against this background, it seems implausible that he thinks of the league of states as a temporary surrogate for a future state of states.

Even if Byrd and Hruschka point to some interesting differences between *To Perpetual Peace* and the *Doctrine of Right*, it is also hard to find support for their non-voluntarist interpretation with regard to the right of nations in the passages they refer to from the latter work. Consider first the 'original right' to go to war which Kant ascribes to 'free states in a state of nature'. What Byrd and

[51] Kant (8:357). It is possible, however, to exaggerate just how unambiguous the passage is. See, for instance, Maus (2004, pp. 84–89).

[52] Kant (6:351).

[53] *Ibid.*

[54] Kant (8:356).

[55] Kant (8:385).

Hruschka do not mention is the context of the quote. In the relevant paragraph (§55), Kant discusses 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'.[56] 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 to war, right during a war, and right after a war. Rather than indicate that Kant 'accepts the right states have to coerce other states to move to a juridical state of nation states',[57] the discussion in these paragraphs seems to affirm much of what is contained in the preliminary articles of *To Perpetual Peace* which address 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 parallel between the domestic and the international cases 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 apply to the state of nature between states. This assumption ought to be doubted. I return to this issue in the following section, after first explaining why states cannot be rightfully forced to subject themselves to an international public authority.

V. WHY THE LEAGUE OF STATES IS AND WHY THE STATE OF STATES 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. The main reason is that such an ideal of

[56] Kant (6:346).

[57] Byrd and Hruschka (2008, p. 625).

international political obligations would entitle every capable state to force other states to become members of a league of states or a state of states. Such an entitlement is problematic, first, because it allows the stronger state to set the terms of cooperation unilaterally. This would be an obvious injustice, since it contradicts the requirement that every restriction is to be a universal restriction.[58] 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 not to say that war is the only coercive means available to states in their relations to other states. Yet in the international sphere an analogue to the enforceable right and duty of individuals to enter civil society would in the final resort imply a right to go to war against states that refuse to leave the state of nature voluntarily. It is therefore tantamount to a right to put existing state sanctioned legal orders at risk, one's own as well as those of the other states. But there can be no right to do this. First and foremost we have a duty to establish a state, since it constitutes a necessary institutional framework for rightful interaction among persons. Jeopardizing this framework by going to war 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 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'.[59] 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'.[60]

In view of these considerations, one can also see why conceiving individuals as the basic normative units 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.[61] Rather than reflecting illiberal authoritarianism, prohibiting aggressive wars and interventions in the internal affairs of a state

[58] Kleingeld seems to have a similar point in mind when arguing that forcing a state to join a state of states violates the political autonomy of the state that is forced to join (Kleingeld 2004, p. 309). Cf. also Kant (8:356 f.).

[59] Kant (8:355 f.).

[60] Maus (2004, p. 91).

[61] For the opposite view, see Tesón (1997, pp. 1–2).

confirms the state's role as a necessary precondition for each person's independence *vis-à-vis* other persons.

I take it that concerns similar to those which lead to the rejection of an enforceable right and duty to enter an international civil condition 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 states 'is a right *in subsidium* of another original right, to avoid getting involved in a state of actual war among the other members'.[62] 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, every member of the league could be commanded by the international public authority to become entangled in conflicts between or within other states. But this would imply that the international public authority had 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 demand that its citizens act in a way that is consistent with the perpetual existence of the state. But 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.[63] 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 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'.[64] While

[62] Kant (6:345).

[63] Cf. Kant (6:345 f.).

[64] Varden (2008a, p. 21). Puzzlingly, she also says that this authority should have a 'tripartite republican constitution' (Varden 2008a, p. 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.

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 league of states is 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. As such, it is a term that 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 state of states assume that there is an assurance problem in the international sphere which a league of states cannot 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 state of states appears necessary in order for states to interact rightfully. However, the premise that there is an assurance problem to be solved in the external relations between states is false.

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.[65] 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. According to Ripstein, this deviation from the domestic case reflects two features of states which distinguish them from persons: first, states do not have external objects of choice, and second, states have a fundamentally public nature.

Unlike Byrd and Hruschka, who conceive 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'.[66] That is to say that territory constitutes the state's person in its external relation to other states and therefore should be conceived of 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 a position to rightfully enforce. This problem does not arise with regard to the right persons have to their own bodies. Other persons are always obliged to not violate our bodily integrity. Resisting 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.[67] Any wrong 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

[65] Ripstein (2009, pp. 227–228).

[66] *Ibid*., p. 228.

[67] 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. 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 parallel from the one case to the other will not do.

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'.[68]

Against this, one can object that states are artificial entities that have no natural borders comparable to a person's body. For one thing, it is not always clear just where the borders between neighboring states are, whereas it is generally easy to tell whether something is part of a specific person's body. Also, territory can be divided and disposed of more easily than can body parts. The latter difference seems to be the main reason why Byrd and Hruschka speak of territory as property.[69]

While the artificiality of a state's borders certainly makes the relation of state and territory different from the relation of person and body, I do not think it suffices for arguing that the former relation is structurally the same as the relation of person and property. As a category of right, property is most appropriately described as means with which a person has an exclusive right to pursue whatever end he or she chooses. Property therefore stands in a means-end relation to the choices of persons. For reasons which have to do with the second difference between a state and a person, the public nature of the state, we cannot think of territory in the same way. Being a public authority, 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. Therefore it is not appropriate to speak of territory as some means with which a state can pursue private purposes. Territorial borders should rather be understood as the demarcation of the sphere of validity of the public order constituted by the state. In this perspective, borders are the limits of a state's 'inner' lawgiving. Externally, from the perspective of other states, these limits make up the person of the state, which is to say that territory counts as embodiment and not as property.

Beyond this, there is also a separate reason why the public nature of the state supports the view that there is no assurance

[68] Kant (6:346).

[69] Byrd and Hruschka (2008, p. 625 f.).

problem in the international sphere. In virtue of being a public rightful condition, a state can only act for 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 genuine state to wage aggressive wars. The only rightful or just cause for which a state can fight wars is to preserve itself as a public order. As argued above, not only do aggressive wars violate the rights of the state under attack. To wage war is to put the necessary institutional framework for rightful interaction at risk, and is therefore at odds with our primary duty to leave the state of nature, unless required for the state's survival. Consequently, just 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 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 themselves to a public coercive authority, then there seems to be no reason why a 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,[70] and rightful determination of national borders.[71]

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

[70] This is emphasized by Ripstein (2009, p. 227).

[71] This is emphasized by Varden (2008a, pp. 18 f.).

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)'.[72] This makes it possible for states to reasonably disagree on whether certain uses of force are aggressive or defensive. What one state considers an act of first aggression, the other state may consider a preemptive action covered by its right to self-defense. In the state of nature there is no rightful way to settle such conflicting rights claims. As long as there is 'no judge competent to render a verdict having rightful force',[73] each state is within 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' jurisdictions are 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 are unavoidably subjected to arbitrary choice rather than universal law. Irrespective of whether a particular state's judgment is forced through or the parties in the dispute come to an agreement, the relation between the states is not one of rightful independence.

Even if a state of states is not required, the existence of an indeterminacy problem in the international sphere still makes an international public authority with judicial powers 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 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, but it does not do so unavoidably. In the state of nature the irresolvable problem is that each state,

[72] Kant (6:346).
[73] Kant (6:312).

however just and right-loving it might be, has no 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. In 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'.[74]

VI. SUMMARY

In this article, I have defended Kant's league of states as a rational ideal constitutive of international justice against proponents of the standard criticism and the stage model interpretation. Against the latter position, I have considered textual evidence which indicates that the league is not merely the first stage of a process leading towards an international civil condition which has to find its final form in a state of states. More importantly, 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 lead Kant to conclusions with regard to international justice that differ from the conclusions he draws in the domestic sphere. In addition, I have argued that there is no contradiction involved here. By focusing on structural problems under ideal conditions, it can be explained why the institutional preconditions for rightful interaction are different in the domestic and the international sphere. 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 league of states. In other words, if my arguments are sound, there are good reasons to think that the ideal institutional structure for approaching perpetual peace which Kant has in mind is indicated by the three definitive articles of *To Perpetual Peace*: an order of independent republican states[75] whose disputes are dealt with in a common

[74] Kant (6:351).

[75] 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.

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.

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