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Kant's *Perpetual Peace* and Current International Law Philosophy¹

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1. In paragraph 54 of the *Rechtslehre*, Kant defines "the elements of international rights", by contrasting them with the opposite situation, i.e., "a condition devoid of right" between states, which is a "condition of war [...], even if there is no actual war or continuous active fighting". Such situation constitutes a state of nature between states to which the same imperative should be applied as between persons, namely, that it must be abandoned. Instead "it is necessary to establish a federation of peoples in accordance with the idea of an original social contract, so that states will protect one another against external aggression while refraining from interference in one another's internal disagreements. [...] This association – concludes Kant – must not embody a sovereign power as in a civil constitution, but only a partnership or *confederation (foedus Amphicthyonum)*" (Ak VI, 344).

As Kantian commentators have clearly pointed out, this was not his first thought on this matter. In his essay *On the Common Saying* (1793) Kant claimed that "the principle of right [...] recommends to us [...] the maxim that we should proceed in our disputes in such a way that a *universal federal state* may be inaugurated" (Ak VIII, 313). It is not until the publication of *Perpetual Peace* in 1795 that a new insight in the Kantian conception of the international right appears. Before that, the civil right (*staatsbürgerliches Recht*), the international right (*Völkerrecht*) and the cosmopolitan right (*weltbürgerliches Recht*) tend to merge in a *cosmopolitan constitution and state* (Ak VIII, 310; Gerhardt, 1995, 106). But, already in the 'Second Section' of *Perpetual Peace* we find three distinct levels of law that are fully articulated from civil to cosmopolitan rights:

«[T]he postulate on which all the following articles are based is that all men who can at all influence one another must adhere to some kind of civil constitution. But any legal constitution, as far as the persons who live under it are concerned, will conform to one of the three following types:

(1) A constitution based on the *civil right (Staatsbürgerrecht)* of individuals

within a nation (*ius civitatis*).

(2) A constitution based on the *international right* (*Völkerrecht*) of states in their relationship with one another (*ius gentium*).

(3) A constitution based on *cosmopolitan right* (*Weltbürgerrecht*), in so far as individuals and states, coexisting in external relationship of mutual influences, may be regarded as citizens of a universal state of mankind (*ius cosmopolitanicum*)»²(Ak VIII, 349).

Kant insists that this classification is “not arbitrary but necessary” to the very idea of a perpetual peace, such that he distinguishes from the beginning between the three types of rights mentioned above, and especially between the law of peoples and a cosmopolitan right. Therefore, it is not surprising to find a progression in the essay, starting from mere empirical matters belonging to political relations between states in the ‘Preliminary Articles of a Perpetual Peace’, most of which would belong nowadays to positive international law (for example, to art. 2, items 1–4 of the *Charter of the UN*³), to the more philosophical normative prescriptions for the future organization of the world’s peoples in the first and second ‘Definitive articles’, and reaching its highest point in the third, properly cosmopolitan, ‘Definitive article of a Perpetual Peace’. This three-level architectonic has opened an unfinished discussion about the relative significance of each level and their conciliation. As a matter of fact, there are three different interpretations, each emphasizing a different part of the essay: on one side, a *realist* interpretation, and on the other, two *normative ones*. The realist interpretation considers the ‘Preliminary articles’, especially 1, 2, 5 and 6, as the most important ones, as far as they introduce a set of prudential rules, such as the principle of sovereignty of states, the prohibition of interference in the internal affairs of other states, and the obligation to honor treaties signed by independent states, which, driven only by the self-interest of peoples, would bring about a peaceful condition among them (Tesón, 1998, 9–24). This interpretation receives further support in a somewhat confused text of the ‘First Supplement: on the Guarantee of a Perpetual Peace’, where Kant clearly claims that:

«Thus that mechanism of nature by which selfish inclinations are naturally opposed to one another in their external relations can be used by reason to facilitate the attainment of its own end, the reign of established right. *Internal and external peace* are thereby furthered and assured, so far as it lies within the power of the state itself to do so. We may therefore say that nature *irresistibly wills* that right should eventually gain the upper hand»⁴ (Ak VIII, 366–67).

By contrast, the normative interpretations envisage the matter in a completely different light, for they emphasize the pre-eminence of the three definitive articles over the preliminary ones. In general terms we can call both lines of interpretations 'liberal', but we must be aware of the marked differences between them. Charles Beitz has suggested the following labels for each one: 'social' and 'cosmopolitan' liberalism (Beitz, 2000, 677). Pauline Kleingeld has called our attention to the different weight that each attributes to one's own country, and has baptized them 'civic patriotism' and 'cosmopolitanism' respectively (Kleingeld, 2000, 324 ff.). I prefer to emphasize the common ground on which both normative proposals stand up and call them 'weak' and 'strong' cosmopolitanism (Guariglia, 2007, forth.).

Twenty years ago Michael Doyle argued cogently in two well known articles that the realist view, by putting aside the 'Definitive articles', disregarded one of the major contributions of *Perpetual Peace*, namely the two century successful prediction that conflict of interests between liberal-republican states would never be settled by war (Doyle, 1983, 225 ff; 1986, 1157 ff). But, as Doyle rightly claims, such prediction is precisely based on the normative assumptions made in the three definitive articles and their methodological consequences. Moreover Charles Beitz (1999, 13–50), Fernando Tesón (1998, 47 ff) and, more recently, J. Habermas (2004, 113 ff) have displayed compellingly the manifold shortcomings of a Hobbesian or Schmittian vision of world politics at large. Therefore, I believe that we can set aside the realist interpretation and focus only on the normative interpretations of *PP* and their continuous influence upon the contemporary philosophy of international law.

2. Kant bases his threefold scheme of right in the postulate quoted above, according to which "all men who can at all influence one another must adhere to some kind of civil constitution". The three definitive articles that follow from this postulate, are in tension among themselves: 1) "the civil constitution of every state shall be republican"; 2) "the right of nations shall be based on a federation of free states", and 3) "cosmopolitan right shall be limited to conditions of universal hospitality"⁵. The first principle clearly establishes the foundation of every civil constitution on *three human rights: freedom, dependence, and equality*. *Freedom* involves the liberty of all individuals who partake in the same society. "*Dependence* for everyone upon a single common legislation" is a principle which, as most commentators have pointed out, refers at first sight to *equality* before the law, but also to

the right to belong to some nation-state, such as Gerhardt (1995, 82–84) has remarked. This right belongs today to the inventory of acknowledged human rights proclaimed by the UN⁶. Indeed, being deprived of a nationality is, in effect, almost tantamount to being deprived of any protection by the law, which is contrary to the very notion of a rightful civil constitution. As a third principle, Kant proposes “the principle of legal *equality* for everyone (as citizens)”, which has two main targets: on one side, the relationship among the citizens themselves, “whereby no-one can put anyone else under a legal obligation without submitting simultaneously to a law which requires that he can himself be put under the same kind of obligation by the other person”. On the other side, Kant aims at claiming an equal opportunity principle open to all citizens without distinction of birth, class or whatever other attributes but merit (Ak VIII 351).

As all civil constitutions must be based on these three human rights which are an essential component of the original contract, so Kant’s claim that the civil constitution should be *a republic* can be read as a requirement that constitutional regimes all over the world *ought* to be based *in the future* on human rights. Thereupon, Kant’s second claim assumes that nations where people decide whether to declare war or not, are not prone to take easily such crucial decisions if they are not absolutely compelled to do so by extreme circumstances. Therefore, only the *expansion* of the republican constitutional regime among the world’s peoples can guarantee a permanent peace among them. This is indeed the way reason itself suggests men to “abandon a lawless state of savagery and enter a *federation of peoples* (*Völkerbund*) in which every state, even the smallest, could expect to derive its security and rights not from its own power or its own legal judgment, but solely from this great federation, from a united power and the law-governed decisions of a united will” (*Idee*, Ak VIII, 25)⁷. In a recent paper, Thomas McCarthy has illuminated how it is possible to reconcile both ideas of Kant, that of a strong world republic of national republics and that of a weaker confederation of sovereign states. (McCarthy, 2002, 242–252). It was just in *Perpetual Peace* that Kant tried to conciliate his first project of a world state that should be a federation of republics under coercive laws with his second thought of a weak confederation of sovereign states as a more feasible mean to achieve a permanent peace. In a well known and problematic locus, Kant asserts:

“There is only one rational way in which states coexisting with other states can emerge from the lawless condition of pure warfare. Just like individual men, they must renounce their savage and lawless freedom, adapt themselves

to public coercive laws, and thus form an *international state* (*civitas gentium*), which would necessarily continue to grow until it embraced all the peoples of the earth. But since this is not the will of the nations, according to their present conception of international right (so that they reject *in hypothesi* what is true *in thesi*), the positive idea of a *world republic* cannot be realized. If all is not to be lost, this can at best find a negative substitute in the shape of an enduring and gradually expanding *federation* likely to prevent war" (Ak VIII, 357)⁸.

Commentators have reacted differently to this text. Some regard it as a kind of *contradiction* between "the positive idea of a world republic" and the mere pact among dissimilar sovereign states that may be given up at any moment (Höffe, 2001, 231). Others consider it as an attempt to assemble the regulative idea of a world republic and the gradual coincidence of independent states within the same political regime (Gerhardt, 1995, 104; Kaufman, 2000, 177; McCarthy, 2002, 248). I think that both sides are right to some extent, because they are dealing with a dilemma of international law that has been put forward by Kant and must still be confronted. As Jeremy Waldron recently pointed out, Kant opened up a new horizon for our concept of 'right' when he used a term like '*cosmopolitan*' "as a label for a topic or a department of law and legal philosophy. He used the phrase '*cosmopolitan right*' rather in the way we use the phrase '*international law*' [...] as a way of designating an area of human life and interaction with which law, right and justice ought to be concerned" (Waldron, 2000, 229). In doing so, Kant connoted at the same time some "substantive view or attitude about the basis on which he thinks we ought to proceed when we are considering law and rights at a global level", as Waldron rightly asserts (2000, 230). In my own view, Kant did something more: he also exposed the basic dilemma between two alternative paths for the philosophical theorizing about international law. We can indeed put the full accent on the human rights of the individuals and dismiss national states as mere intermediaries that must in the long run fade away subsumed under a supranational authority such as the world republic, as the thesis of *strong cosmopolitanism* sustains. Or we can rely on a progressive construction of different levels of rightful legitimacy according to one and the same standard of human rights for all human beings: i) within the same republican and liberal state; ii) among republican and liberal states, and finally, iii) among all peaceful states, whether they are liberal and democratic or not. The latter thesis is represented by *weak cosmopolitanism*, already implicit in the 'particular kind of league' that Kant calls '*pacific federation*' (*foedus pacificum*) (Ak VIII, 356).

Let me have a look at this opposition in contemporary philosophical discussion before I finish.

3. There is no doubt that, by the end of the XXth century, one piece of work has displayed a full fledged defense of weak cosmopolitanism following Kant's inspiration. I refer of course to John Rawls's *The Law of Peoples*, which immediately after publication gave rise to a passionate debate that continues in our day. There is also no doubt about Rawls's intention to recreate with the means of his own theory of *political liberalism* a fully articulated philosophy of international law entirely congenial with Kant's *Perpetual Peace*:

«The basic idea is to follow Kant's lead as sketched by him in *PP* and his idea of *foedus pacificum*. I interpret this idea to mean that we are to begin with the social contract idea of the liberal political conception of a constitutionally democratic regime and then extend it by introducing a second original position at the second level, so to speak, in which the representatives of liberal peoples make an agreement with other liberal peoples [...] and again later with nonliberal though decent peoples. [...] All this also accords with Kant's idea that a constitutional regime must establish an effective Law of Peoples in order to realize fully the freedom of its citizens». (Rawls, 1999, 10).

I cannot go into details here of the Rawlsian theory but I will mention some of its features that show clearly its proximity to Kantian thought. First, Rawls does not take individual citizens as the subjects of international law, but 'peoples' whose representatives are the parties in the second level original position that must decide what principles are appropriate as a frame for this law. Although he avoids speaking of 'states', it is obvious that the parties representing peoples should have the status of constitutional elected representatives who are fully aware of the moral and political conceptions of the represented peoples (Rawls, 1999, 17). So the parties in the international original position are collective entities such as states with an additional attribute: "The idea of peoples rather than states is crucial at this point: it enables us to attribute moral motives – an allegiance to the principles of the Law of Peoples, which, for instance, permits wars only of self-defense – to peoples (as actors), which we cannot do for states" (17, see also 25 – 27). Further, in the 'First part of the *Ideal Theory*', which embraces all liberal peoples, the starting point of Rawls' construction is precisely the first and second definitive articles of *PP* requiring that the states that enter in a peaceful treaty should be constitutional republics and that the new international order should not be one state but rather a federation of states.

Given the fact of a reasonable pluralism among nations, the possibility of a peaceful life among them depends upon finding appropriate principles for ruling their living together on the basis of an extended consent. Rawls proposes eight principles, within which we find several 'Preliminary Articles' of *PP*, such as the 1st, the 2nd, the 5th and the 6th. The principles of the Law of Peoples are the following:

1. Peoples are free and independent, and their freedom and independence are to be respected by other peoples.
2. Peoples are to observe treaties and undertakings.
3. Peoples are equal and are parties to the agreements that bind them.
4. Peoples are to observe a duty of non-intervention.
5. Peoples have the right of self-defense but not the right to instigate war for reasons other than self-defense.
6. Peoples are to honor human rights.
7. Peoples are to observe certain specified restriction in the conduct of war.
8. Peoples have a duty to assist other peoples living under unfavorable conditions that prevent their having a just or decent political and social regime. » (Rawls, 1999, 37).

At first sight, it is obvious that these principles integrate already the most important obligations that the post- Second World War internationally created organization has imposed upon the participant states (Malanczuk, 1997, 209 ff; Charter of UN, art. 1, 2, and Chapter VII, Steiner & Alston, 2000, 1365-71). In doing so, Rawls did not avoid some tension between certain articles, for instance, the 4th vis-à-vis the 6th. Moreover, he introduced a last principle, the 8th, which has inflamed a long-lasting controversy, not only because it establishes a duty of assistance for the affluent liberal peoples in favor of burdened ones, but also because, contrary to strong cosmopolitanism, it sets a limit upon the scope of such duty. Indeed, articles six and eight significantly limit, on one side, the states' powers of sovereignty, and on the other, impose a more or less weighty burden upon the economies of developed countries on behalf of poor ones. But there is no attempt to introduce something like a world government with its own systems of law, because, following Kant, Rawls considers that it "would either be a global despotism or else would rule over a fragile empire torn by frequent civil strife" (1999, 36).

In the 'Second Part of Ideal Theory' Rawls presents the extension of the Law of Peoples to non liberal but *decent hierarchical societies* as an exercise of liberal *toleration* in order to recognize "these non liberal societies as equal participating members in good standing of the Society of Peoples, with

certain rights and obligations" (1999, 59). To be a member of the Society of Peoples, non liberal societies must satisfy two important criteria: 1) not to have aggressive aims and to recognize "that it must gain its legitimate ends through diplomacy and trade and other ways of peace" (Rawls, 1999, 64); and 2) to have "a decent hierarchical people's system of law, in accordance with its common good idea of justice" (1999, 65). This system of law must secure a set of basic human rights: to life, including to the means of subsistence and security; to liberty, including the liberty of conscience necessary to ensure freedom of religion and thought, although not on an equal basis for all members of society, and, finally, to formal equality before the law, that is, that all persons are to be treated as subjects of legal rights and duties, following the rules of natural justice according to which, in good faith, similar cases should be treated similarly (65-67).

Rawls' idea of cosmopolitan justice is different from the liberal conception that aims to unify political regimes all over the world according to the domestic institution of liberal democracy. He rather thinks of a progressive change within the political situation of each hierarchical society through its continuous contact with liberal peoples and permanent exposure to the prevailing liberal way of life (Rawls, 1999, 61-62, 82-83). Therefore, it is not by chance that there is an obvious parallel between this conception and the Kantian vision of a gradual extension of the republican constitution through trade and peaceful contact between citizens of different nations. Weak cosmopolitanism, as understood by Kant and Rawls, has full respect for what they call "patriotism" that belongs to the 'moral nature' of each member: "[t]his nature includes a certain proper pride and sense of honor [...] in their histories and achievements" (Rawls, 1999, 62; Kant, Ak VIII, 291)⁹. From an impartial point of view, there is a strong reason to acknowledge this kind of 'Kantian' patriotism, as Kleingeld called it (2000, 313 ff), because everyone is able to claim the fulfillment of whatever basic human right *if and only if* he or she is a citizen of a state bound by a cosmopolitan right to honor these rights.

4. We have now reached the other horn of the dilemma between a federation of states with different political regimes and a world-republic of constitutional republics exposed above. As Kant himself affirms without hesitation, "if the mode of government is to accord with the concept of right [that is, with human rights], it must be based on the representative system. This system alone makes possible a republican state, and without it,

despotism and violence will result, no matter what kind of constitution is in force" (Ak VIII, 353)¹⁰. Strong cosmopolitans can also find a common ground for their thesis in many similar passages of Kant's work. Indeed, as one of the most outstanding exponents of strong cosmopolitanism defines it,

"[t]he cosmopolitan view, in contrast to social liberalism [that is, weak cosmopolitanism], accords no moral privilege to domestic societies. At the deepest level, cosmopolitan liberalism regards the social world as composed of persons, not collectivities like societies or peoples, and insists that principles for the relations of societies should be based on a consideration of the fundamental interests of persons" (Beitz, 2000, 677).

This line leads straightforwardly to a reckless commitment to a full extension of liberal values all over the world. As another well known exponent of strong cosmopolitanism has asserted,

"[w]e should then work toward a global order that [...] is itself decidedly liberal in character, for example by conceiving of individual persons and of them alone as ultimate units of equal moral concern. This quest will put us at odds with many hierarchical societies whose ideal of a fully just world order will be different from ours" (Pogge, 1994, 218).

Such scarce tolerance for comprehensive doctrines of the good life in the global arena is balanced on the other hand by a more generous proposal of international distributive justice than the Rawlsian one. Rawls rejected any application of his principle of difference at an international level; claiming instead that for such a principle to be satisfied a precise target would fail, so that the redistribution principle should be applied continuously without end (Rawls, 1999, 117). But this is precisely what Beitz, Pogge and many others have argued for in their works in recent decades. It is impossible to give here in a few words even a glimpse of this intricate debate. What I have said already might be enough to show how far and how deep the controversy that Kant opened more than two centuries ago goes.

We may wonder what would have been the Kantian answer to this dilemma, provided that we acknowledge that there has really been such a dilemma. The first attempt by Kant to solve this difficult problem was, of course, exceedingly naïve from our present point of view, two centuries later. In the 'First Supplement' of *PP*, Kant writes:

"The *spirit of commerce* sooner or later takes hold of every people, and it cannot exist side by side with war. And of all the powers (or means) at the disposal of the power of the state, *financial power* can probably be relied on most. Thus states find themselves compelled to promote the noble cause of

peace, though not exactly from motives of morality" (Ak VIII, 368).

As Habermas has pointed out, Kant could not have foreseen the disastrous consequences that the expansion and development of capitalist economy would have – and continue to have nowadays – over many parts of the Earth during the XXth century (Habermas, 1997, 201–03). The present rapid transformation of global economy through the liberalization of capital markets and the selective liberalization of trade, most of the time for the huge benefit of developed countries, has brought about an unseen amount of poverty in developing and poor countries that must be considered a world catastrophe (Pogge, 2002, 1–26). Particularly, financial powers have a leading role in the globalization of the world economy but hardly ever for the best, as Joseph Stiglitz recently remarked (2002, 7). As a consequence we have learned by bitter experiences that also "the spirit of commerce and the financial power" – so hopefully evoked by Kant – are in urgent need of a universal regulative framework to promote peace and human rights. Thus, this attempt to trust only in the "means of nature" is to be dismissed.

Another possibility that has been recently put forward is not only more coherent with Kant's political philosophy as a whole but also better sustained from a Kantian point of view. Here I can only briefly state its main steps aiming at a multilayered structure from domestic to international right.

(i) the legal organization of the world nowadays has undergone a two centuries long process of change before arriving at the present situation of almost two hundred independent nation states. Most of these new states have adopted a liberal-democratic constitution which entails the following features:

«Constitutionalism generally involves a declaration of the individual rights associated with the liberal tradition, in the manner of the Bill of Rights of the US Constitution and many European constitutions as well as constitutions in a broad range of African, Asian and Latin American states. These rights are indispensable to setting limits to governmental action, particularly when they are coupled with judicial review of the constitutionality of legislation», (Steiner – Alston, 2000, 990).

Thus, following the a priori idea of a free and reasonable state a great part of the world has a moral and legal framework protecting, within its limits, each citizen's basic rights to life, liberty, freedom of thought, of expression, etc. Of course, it may not be a *real* state of affairs but "rather a merely hortatory instrument" (Steiner – Alston) which is not enforced through actual institutions. However, to acknowledge the supremacy of these rights even in

a hortatory way is a very important step towards their effective enforcement, because, as Kant affirmed at the end of the First Part of *MM*, it is better to have a defective constitution than no constitution at all, in which case "there would then be an interval of time [after a revolution] during which the condition of right would be nullified" (Ak VI, 355).

(ii) The principles involved in the arrangements among states are mainly rules of procedure that may be universalized to each member of an international association, regardless of its population, power or wealth. In order to be universally acceptable for all decent and peaceful countries, no substantive view of the good life must be introduced in the content of the common principles. This is the reason why Rawls emphatically maintains that the whole list of human rights must be reduced to a basic core including only security and subsistence for all citizens. The extension of human rights to all individuals on earth is to be achieved through a compromise among all nations that would enable those rights to be enforced progressively within each frontier. This is part of the Kantian view of a world republic not as a world state but as a federation of republics that assume the whole responsibility of self-governance in order to assure freedom and equality of their citizens (Macedo, 2004, 1729-31).

(iii) The path to an extension of an international law protecting individual human rights beyond national sovereignty must be necessarily difficult and slow, but several new events such as the creation of the International Criminal Court have shown that it is always an open possibility. In my view, something of the kind should also be urgently created for conflicts involving not only national states but also transnational corporations. This would enable states of developing or poor countries, or groups and individuals therein, to address dubious financial maneuvers, bribery of government officials and other corrupt practices that cause an enormous increase of deficit in the fulfillment of social and economic human rights for all peoples in these countries. Poverty and destitution along the earth are the greatest challenge that both, weak and strong cosmopolitanism, must confront. The old response imagined by Kant in the third definitive article, namely, the right to hospitality and to trade between peoples must be taken over by new institutions in order to guarantee fair conditions of commerce all over the world.

In conclusion, Kant opened with this booklet a thoroughly new argumentation in the field of ethical and political philosophy in which we are still involved and will be so in the future ahead.

Σύνοψη

Το μοντέλο της *αιώνιας ειρήνης* που προτείνει ο Kant, αποτελεί τελικά το όραμα της σύγχρονης ομοσπονδίας κρατών, όπως περίπου την βιώνουμε σήμερα μέσα από το πείραμα της ευρωπαϊκής ένωσης.

Ο φιλελευθερισμός του Kant, ως φιλελευθερισμός του δικαίου, σε αντίθεση με τον κυρίαρχο φιλελευθερισμό της ιδιοκτησίας, γίνεται στις μέρες μας αντικείμενο πολιτικού στοχασμού και οδηγεί πολιτικούς και φιλοσόφους να έρχονται κοντά στη δελεαστική προοπτική μιας διηνεκούς ειρήνης με καντιανούς όρους.

Ο Oswaldo Guariglia, μέλος του Εθνικού Συμβουλίου Επιστημών και Τεχνολογικής Έρευνας της Αργεντινής, επιχειρεί μια διαυγή κριτική ματιά στον τρόπο με τον οποίο η καντιανή θεωρία επιδρά στη σημερινή φιλοσοφία του διεθνούς δικαίου. Αρχικά εξετάζει τα προκαταρκτικά άρθρα της καντιανής μεθόδου, για να καταλήξει ότι στο οικοδόμημα της αιώνιας ειρήνης, συνυπάρχουν τόσο όροι πολιτικού ρεαλισμού όσο και κανονιστικοί όροι. Εστιάζει στους κανονιστικούς όρους -συγκεκριμένα στο αίτημα για σταδιακό αφοπλισμό και στο αίτημα για οικονομική ανεξαρτησία των κρατών- οι οποίοι και επιδρούν στις μέρες μας, ίσως περισσότερο από ποτέ, στη πολιτική φιλοσοφία και τη βάση του διεθνούς δικαίου.

Στη συνέχεια, αναφέρεται συνοπτικά στο πως οι θέσεις του Γερμανού φιλοσόφου επηρέασαν τον John Rawls, (στον οποίο οφείλεται εν πολλοίς η σύγχρονη αναζωπύρωση του ενδιαφέροντος της πολιτικής φιλοσοφίας για τον καντιανό φιλελευθερισμό) για να διακρίνει έναν *ισχυρό* και έναν *ασθενή* «κοσμοπολιτισμό» που διατρέχουν τη θεωρία, όπου ο τελευταίος, ο *ασθενής*, φαίνεται να αναπαράγει ένα είδος καντιανού πατριωτισμού, που υιοθετεί ο Rawls, αλλά γεννά εύλογους προβληματισμούς.

Τέλος, αναλύει το δίλημμα μεταξύ της οργάνωσης μιας συνομοσπονδίας κρατών ή της κυριαρχίας μιας παγκόσμιας δημοκρατίας και εξετάζει την επίδραση του φαινομένου της οικονομικής παγκοσμιοποίησης στην αυτονομία των κρατών. Μέχρι να απαντηθούν τα επίκαιρα αυτά ερωτήματα, η διαφωνία μεταξύ ηθικής και πολιτικής θα παραμένει ανοιχτή.

A.K. Γούναρης

Σημ. Η Ομιλία του καθηγητή Guariglia, έγινε στην Ελλάδα, το καλοκαίρι του 2006, στο πλαίσιο των διαλέξεων για τους μεταπτυχιακούς φοιτητές του Τομέα Φιλοσοφίας της Φιλοσοφικής Σχολής του Πανεπιστημίου Αθηνών

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greatly from corrections and comments by Helen Duffy and Julio Montero, to whom I express my gratitude. The remaining errors are of course mine.

2. «Das Postulat also, was allen folgenden Artikeln zum Grunde liegt, ist: Alle Menschen, die auf einander wechselseitig einfließen können, müssen zu irgend einer bürgerlichen Verfassung gehören.

Alle rechtliche Verfassung aber ist, was die Personen betrifft, die darin stehen,

1) die nach dem Staatsbürgerrecht der Menschen in einem Volke (*ius civitatis*),

2) nach dem Völkerrecht der Staaten in Verhältniß gegen einander (*ius gentium*),

3) die nach dem Weltbürgerrecht, so fern Menschen und Staaten, in äußerem auf einander einfließendem Verhältniß stehend, als Bürger eines allgemeinen Menschenstaats anzusehen sind (*ius cosmopolitanicum*). Diese Eintheilung ist nicht willkürlich, sondern nothwendig in Beziehung auf die Idee vom ewigen Frieden. Denn wenn nur einer von diesen im Verhältnisse des physischen Einflusses auf den andern und doch im Naturstande wäre, so würde damit der Zustand des Krieges verbunden sein, von dem befreit zu werden hier eben die Absicht ist.»

3. I refer, for example, to article 2, "no independently existing state, whether it be large or small, may be acquired by another state by inheritance, exchange, purchase or gift" or 5, "no state shall forcibly interfere in the constitution and government of another state" in comparison with Art. 2, 1 of the Charter: "The Organization [of the United Nations] is based on the principle of the sovereign equality of all its Members" or 2, 4: "All members shall refrain in the international relations from the threat or use of force against the territorial integrity or political independence of any state or in any other manner inconsistent with the Purposes of the United Nations", Steiner, H., Alston, Ph., 2000, *International Human Rights in Context*, Oxford, Oxford U.P., pg.1366).

4. «Man kann dieses auch an den wirklich vorhandenen, noch sehr unvollkommen organisirten Staaten sehen, daß sie sich doch im äußeren Verhalten dem, was die Rechtsidee vorschreibt, schon sehr nähern, obgleich das Innere der Moralität davon sicherlich nicht die Ursache ist, [...] mithin der Mechanism der Natur durch selbstsüchtige Neigungen, die natürlicherweise einander auch äußerlich entgegen wirken, von der Vernunft zu einem Mittel gebraucht werden kann, dieser //VIII367// ihrem eigenen Zweck, der rechtlichen Vorschrift, Raum zu machen und hiemit auch, soviel an dem Staat selbst liegt, den inneren sowohl als äußeren Frieden zu befördern und zu sichern. — Hier heißt es also: Die Natur will unwiderstehlich, daß das Recht zuletzt die Obergewalt erhalte.»

5. 1) «Die bürgerliche Verfassung in jedem Staate soll republikanisch sein» (Ak VIII 349); 2) «Das Völkerrecht soll auf einen *Föderalismus* freier Staaten gegründet sein» (Ak VIII 354); 3) «Das Weltbürgerrecht soll auf Bedingungen der allgemeinen *Hospitalität* eingeschränkt sein» (Ak VIII 357).

6. *Universal Declaration*, Art. 15, 1: "Everyone has the right to a nationality; 2: No one shall be arbitrarily deprived of his nationality".

7. «[W]as ihnen [den Menschen] die Vernunft auch ohne so viel traurige Erfahrung hätte sagen können, nämlich: aus dem gesetzlosen Zustande der Wilden hinaus zu gehen und in einen Völkerbund zu treten; wo jeder, auch der kleinste Staat seine Sicherheit und Rechte nicht von eigener Macht, oder eigener rechtlichen Beurtheilung, sondern allein von diesem großen Völkerbunde (*Foedus Amphictyonum*), von einer vereinigten Macht und von der Entscheidung nach Gesetzen des vereinigten Willens erwarten könnte».

8. «Für Staaten im Verhältnisse unter einander kann es nach der Vernunft keine andere Art geben, aus dem gesetzlosen Zustande, der lauter Krieg enthält, herauszukommen, als daß sie eben so wie einzelne Menschen ihre wilde (gesetzlose) Freiheit aufgeben, sich zu öffentlichen Zwangsgesetzen bequemen und so einen (freilich immer wachsenden) Völkerstaat (*civitas gentium*), der zuletzt alle Völker der Erde befassen würde, bilden. Da sie dieses aber nach ihrer Idee vom Völkerrecht durchaus nicht wollen, mithin, was *in thesi* richtig ist, *in hypothesis* verwerfen, so kann an die Stelle der positiven Idee einer Weltrepublik (wenn nicht alles verloren werden soll) nur das negative Surrogat eines den Krieg abwehrenden, bestehenden und sich immer ausbreitenden Bundes der Strom der rechtscheuenden, feindseligen Neigung aufhalten, doch mit beständiger Gefahr ihres Ausbruchs (*Furor impius intus — fremit horridus ore cruento*. Virgil»).

9. «Nicht eine väterliche, sondern eine vaterländische Regierung (*imperium, non paternale, sed patrioticum*) ist diejenige, welche allein für Menschen, die der Rechte fähig sind, zugleich in Beziehung auf das Wohlwollen des Beherrschers gedacht werden kann. Patriotisch ist nämlich die Denkkungsart, da ein jeder im Staat (das Oberhaupt desselben nicht ausgenommen) das gemeine Wesen als den mütterlichen Schooß, oder das Land als den väterlichen Boden, aus und auf dem er selbst entsprungen, und welchen er auch so als ein theures Unterpfand hinterlassen muß, betrachtet, nur um die Rechte desselben durch Gesetze des gemeinsamen Willens zu schützen, nicht aber es seinem unbedingten Belieben zum Gebrauch zu unterwerfen sich für befugt hält». (*Theorie u. Praxis*).

10. «Es ist aber an der Regierungsart*** dem Volk ohne alle Vergleichung mehr gelegen, als an der Staatsform (wiewohl auch auf dieser ihre mehrere oder mindere Angemessenheit zu jenem Zwecke sehr viel ankommt). Zu jener aber, wenn sie dem Rechtsbegriffe gemäß sein soll, gehört das repräsentative System, in welchem allein eine republikanische Regierungsart möglich, ohne welches sie (die Verfassung mag sein, welche sie wolle) despotisch und gewalthätig ist».