

# Continuity of Political Philosophy: War and Peace in Secularized Politics

*Francisco S. Naishtat*

I propose to examine here, at the outset, what I call the asymmetry in Thomas Hobbes's thought between his treatment of civil war and war between states, that is to say, between the departure from the state of nature – when that is a condition prevailing between individuals – and the permanency in the state of nature when it forms a condition existing between states. Secondly, I will address the Kantian progression beyond this asymmetry through the dual introduction of the idea of progress and of 'cosmo-political' peace. The attention given in recent years by Habermas to the Kantian idea of perpetual peace [Habermas, 1996], the recent events in Kosovo and Chechnya, and their implications for the shape of an international penal tribunal to judge crimes against humanity, invigorate the questions of civil peace and of rights which transcend state frontiers.

## The asymmetrical treatment of war in Hobbes

We know the terms in which Hobbes condemns war, which is the correlative of the state of nature between individuals, in chapter XIII of the first book of *Leviathan*: 'continual fear, and danger of violent death; and the life of man, solitary, poor, nasty, brutish, and short.' [Leviathan, 1. 13. 9] This aversion to physical death goes hand in hand with the worth attributed by Hobbes, in the following chapter, to the self-preservation of human life. Life is transformed into an inalienable right for every individual to the extent that the contract emerging from the original social pact does not alienate the right of individuals to resist physical death at the hands of the state. This could lead us to believe that the preservation of life is the crux of Hobbes's reasoning, but for the fact that he adopts a notably different tone when he moves on from the condition of the individual to that of states between themselves. In chapter XXX of *Leviathan*, Hobbes explicitly admits that this condition is that of the state of nature:

Concerning the offices of one sovereign to another, which are comprehended in that law, which is commonly called the *law of nations*, I need not say any thing in this place; because the law of nations, and the law of nature, is the same thing. [Leviathan, 2.30.30]

That this state of nature between states cannot be interpreted otherwise than as a state of potential everlasting war is what Hobbes explicitly concerns himself with from chapter XXI onwards, while contemplating the question of liberty and establishing that the only subjects to preserve their liberty, in a positive and absolute sense, are evidently not individuals but states.

For as among masterless men, there is perpetual war, of every man against his neighbour; no inheritance, to transmit to the son, nor to expect from the father; no propriety of goods, or lands; no security; but a full and absolute liberty in every particular man; so in states, and commonwealths not dependent on one another, every commonwealth, (not every man) has an absolute liberty, to do what it shall judge (that is to say, what that man, or assembly that representeth it, shall judge) most conducing to their benefit. But withal, they live in the condition of a perpetual war, and upon the confines of battle, with their frontiers armed, and cannons planted against their neighbours round about. [*Leviathan*, 2.21. 8]

In the same chapter, and following on from this position, Hobbes admits, in apparent contradiction to the inalienable character of the law of nature in the preservation of life established in chapter XIV, that when state security is threatened from outside, individual rights vary according to circumstances. In particular, an individual is obliged to risk his life in combat with foreign enemies of the state: 'And when the defence of the commonwealth requireth at once the help of all that are able to bear arms, everyone is obliged . . .' [*Leviathan*, 2. 21. 16] We thus witness the appearance in *Leviathan* of a clear and evident asymmetry concerning the treatment of war and of the state of nature. How is it possible that Hobbes does not prescribe for states what he prescribes for individuals, that is, the obligation to conclude a pact? It is tempting, first of all, to argue *ad absurdum*: if Hobbes prescribes for states the obligation to conclude a pact (and here we speak of the contract of absolute alienation and not of a reversible voluntary agreement which predominates in classic international law), they will lose their liberty, and with it their sovereignty, ceasing henceforth to be states (one recalls the condition of absolute freedom attributed to states by Hobbes in chapter XXI of *Leviathan* as a definitive condition of their existence). But although the individual does not lose his individual condition as a result of a pact, given that he is always autonomous in his private conscience, which distinguishes him from an automaton, the state, as a simple contrivance, lacking interiority, would merely lose its condition. A pact between states with the character of a pact between individuals would annihilate the state, bringing down Hobbes's theory with it.

But this brief discussion resolves nothing, in as much as we have not demonstrated that it does not follow from the situation between states that they should conclude a pact. If this were the case, then, in effect, Hobbes's political theory would be inconsistent. For Hobbes, states are agents of decisions defined by analogy with individuals except for the distinction between private conscience and public conscience. They take decisions, seek alliances, exercise rights, etc. Their sphere of existence is entirely public, and their reason public reason. Why do these mortal gods not require, for Hobbes, a pact similar to that of individuals in order to escape from an analogous natural condition? Especially as these states also aspire to self-preservation. The difference cannot therefore lie in this premise. Does it then rest in the type of rationality? Would there be, in Hobbes's mind, an individual rationality distinct from the institutional rationality of the state? We have seen that, for Hobbes, the state cannot resign its rights without losing its condition. It would henceforth be logical that states would seek their survival by means of the logic of hegemony and power, and not through contractual logic. This gives rise to a dichotomy in rationality according to its application at the level of the individual or of the state. If individuals and states are both moved by a premise of self-preservation, individuals respond to it by means of the consensual rationality of the contract, while states respond through a logic of differentiation defined by the quest for hegemony. Now, what is it that, in this generalized

search for hegemony by states, makes it possible to remove the reciprocal destruction which threatens individuals in the state of war of everyone against everyone else? The reply is suggested by Gauthier:

But more generally the state of nations proves tolerable because it lacks the fundamental equality Hobbes finds in the state of nature – that the weakest has strength enough to kill the strongest. [Gauthier, 1979, p. 207]

In other words, at the level of international relations known to Hobbes, and which are not those of the nuclear deterrent, the strongest can destroy the weakest but not vice versa; this suggests that the logic of differentiation defined by power politics, which is consequent upon the pluralism of the situation between states, is for Hobbes not an outcome of the state of nature, but a form of logic (although not the only one) allowing survival in this condition. What prevents the exercise of the same rationality in the state of individual nature is quite simply the axiom of equality inherent to it and which is stated in chapter XIII of *Leviathan*:

Nature has made men so equal, in the faculties of the body, and mind . . . that . . . the weakest has strength enough to kill the strongest, either by secret machination, or by confederacy with others, that are in the same danger with himself. [*Leviathan*, 1. 13. 1]

This axiom has, for Hobbes, no equivalent in the case of states. Henceforth, if the state of nature between individuals is defined by equality of rights and conditions, which produce its inalienable status, the state of nature between states is defined by equality of rights and inequality of conditions, which in Hobbes's eyes render it tolerable. This allows us to grasp the dualism of Hobbes's solution to the problem of social and political order: war is not eliminated but secularized and transferred from the civil sphere, where it loses all legitimacy, to that of relations between states, where it is presently legitimate and natural. In other respects, the political equality which defines the civil state in its relation with subjects is parallel to the inequality which defines the relation between states as far as nations are concerned. The asymmetry which we noted at the beginning of this study is not only not a *non sequitur*, but is a constituent part of the political redefinition which will admit conflict and pluralism in its international dimension. Hobbes, from this point of view, could pride himself on reconciling Galileo and Machiavelli; in effect, he attempts at the same time to base the reality of the state on laws of nature inspired by mechanics, and the reality of inter-state relations on the Machiavellian rationality of virtue, which would find its element in an international sphere defined by insurmountable conflicts.

### War in secularized politics

The origin of secularized politics is found in the turning-point marked by the European Renaissance of the sixteenth century, with Machiavelli, and which, under the influence of unprejudiced observation of historical facts, develops a realistic and disenchanting view of human nature. Machiavelli, in opposition to the finalist cosmology of religious origin, and to the *jus naturalisme* inherent in it, affirms the autonomy of political virtues in

relation to moral and religious virtues. He thus formulates the origin of *raison d'état*. He was convinced that without a state authority capable of imposing its orders in compelling fashion, the perverse and egoistical nature of man would end by eroding public order, bringing decadence and, in its wake, the dissolution of society.

But it is with Hobbes, in the course of the following century, that the secularization of politics was fully established in the epistemological framework of the new science of nature begun by Bacon and Galileo; in the historical framework of the formation of absolute states in Europe it formed both a response to the religious wars that had preceded them and an expression of a political power aspiring to independence in the face of papal authority. Framed in this new historical and epistemological universe, the political philosophy of Hobbes elaborated a theory of the state whose aim was no longer the empirical lessons of *raison d'état* but their philosophical foundation. Hobbes, unlike Machiavelli, favours the question of the rational origin of all political power and the function of the state as such, above the question of good government. It is in this sense that Leo Strauss considers that Hobbes was not deceived in inserting his political theory into the tradition begun by the questions found in Plato's *Republic*, namely, 'What is a law?', and 'What is a community?', although their replies were completely different [Strauss, 1965, p. 168]. Whereas for Plato the radical nature of the rational method was expressed by the demands for a basis of political power according to the idea of the Just and the Good as transcendent and autonomous realities in relation to every possible empirical limitation stemming from man's perceptible inclinations, for Hobbes, on the contrary, the radical character of the rational method was found in the need to make the perceptible passions and inclinations of individuals the point of departure, as anthropological limits, for the basis of the nature of the state. Man's egoistical passion, his instinct for survival, his lust for power, his fear, and his desire, which were for Plato and Aristotle a residual deviation from a society well ordered by an idea of justice and good, became for Hobbes the basis of his political theory. The author of *Leviathan* considered that classic political theory, because it excluded man's passionate nature 'was a dream rather than a science' [Hobbes, chapters XXXI and XLXVI]. But that is not to say that Hobbes takes exception to the question of good and evil by excluding it from politics; as in the tradition of classical antiquity, it was only in the political community that moral obligation has, for Hobbes, a chance of being anything more than a simple intention. The sense of subordination is meanwhile inverted: politics no longer submits to morality to rediscover its meaning in the latter, but morality finds its place in politics, since moral obligation is subordinated by Hobbes to the desire for individual preservation, a desire uniquely guaranteed by man's political condition.

The historical and conceptual period which began with the formation of absolute states in Europe during the seventeenth century and culminated with the French Revolution has been very well described by Koselleck in *Kritik und Krise* [Koselleck, 1988]. At the conceptual level, this phase is situated between the formation of the inherent matrix for *raison d'état*, consecrating the primacy of politics over morality by separating the private conscience of private reason from the public conscience inherent in public reason, and a critical matrix which undertakes a conceptual rehabilitation of the normative dimension in the public sphere, a rehabilitation reflected in the notion of the rights of man and the emergence of a public and political space with decisive power.

The progression from the wars of religion to civil pacification by means of a state policy neutralizing religious conflicts corresponds historically to the first phase of this evolution.

This policy put the interest of the state above conflicting factions and supported a policy of autonomous power in relation to the Roman papacy. In France, the Edict of Nantes, signed by Henri IV in 1598, granting the right of Protestants to live in certain provinces of the kingdom, to be represented politically, and to practise their form of worship, was a reflection of this state policy. At the European level, the Peace of Westphalia put an end to the Thirty Years' War, and inaugurated classic international law, depenalizing inter-state war as a secular and limited component of international politics.

We know that this phase of modern secularization was to enter a crisis with the emergence of a public and political sphere in the eighteenth and nineteenth centuries. The eruption of the rights of man, and the formulation of the new rational language of certain classic questions of Christian *jus naturalisme*, the idea of historical progress and the reinterpretation in normative terms of natural equity, threw the matrix of *raison d'état* into crisis, as it was embodied in the politics of the absolutist states. The French and American Revolutions, with their respective *Declaration of the Rights of Man and Citizen* and *Bill of Rights*, represented a juridicization of questions rooted in morality and political ethics.

This critical development did not represent a de-secularization of politics and a return, even if only *de jure*, to some *status quo ante*. It was a case, rather, of a major complexity in the same process of secularization and rational differentiation of politics. Morality, politics, and law would not be mixed in their respective spheres but, always separately maintained with the development of modernity, would assume structuration that the new democratic institutionalization of politics had to respect. This process was to be the bearer of the two matrices that we recognize as the source of the democratic political ideal, that is, the liberal and republican moulds. Beyond their profound differences concerning the role of politics and the state in relation to citizenship, and the separation of private and public space, the two matrices incorporated a normative limitation of politics from rights recognized as universal and of which juridicization, as the basic norm of the institution of the state, is an integral presupposition.

One may therefore speak, despite the discontinuities and breaches between the modern matrix of *raison d'état* and the republican and liberal moulds, of a common process of secularization of politics. What the social contract theories of Locke and Rousseau owe to Hobbes is well known, especially concerning the legitimacy of the state and the source of its sovereignty. On the other hand, modern democratic states were to uphold the operation of classic international law centred in the recognition of state sovereignty and the legitimation of power politics in the form of conventional limited war. The asymmetry between the abolition by the state of civil war and the acceptance of war between sovereign states as a natural aspect of international politics (which here became the 'continuation of politics by other means') is exactly the element which makes it possible to identify a continuity in the process of secularization of politics, begun in the sixteenth century with the formation of absolutist states, and which was to apply until the escalation of war at the beginning of the twentieth century overturned the classic concept of limited war.

The dynamic inaugurated by the politics of the rights of man, embodied historically in the French and American Revolutions, also expressed itself by theoretical and political advances against the cynical logic of a *raison d'état*, raised over and above society, and against the tolerance of classic political thought for external war. This theoretical movement was undoubtedly broached by Rousseau, but it was Kant, through his critical understanding of the relation between the empirical and normative dimensions of politics, who

gave it a non-dogmatic content. In *The Idea for a Universal History with a Cosmopolitan Intent* (1784), as well as in *To Perpetual Peace* (1795), Kant supported his denial of war by means of normative presuppositions. This Kantian 'cosmo-political' logic is different from the internationalist logic of the European labour movement, in particular with the work of Marx, who, through the legitimation of civil war to the detriment of inter-state war, effected a change in direction, without outlawing it, in the treatment of war. Kantian 'cosmopolitanism', on the other hand, was closer to the kind of pacifism that has become familiar today, after the devastating effects on a global scale of the last two world wars and as a reaction against the possibility of total unlimited war.

This pacifism in fact attempted to restore the Kantian tradition of unconditional opposition to war to a humanist perspective. It recovered certain themes of Kantian juridical pacifism, in a worldwide context, aggravated by the emergence of nuclear weapons. In effect, the last two world wars, on the one hand, and the balance of powers resting on the nuclear deterrent during the Cold War, on the other, produced a critical challenge to the notion of partial limited war. This crisis entailed the need to set the normative foundations of international politics on a new basis. It is in this sense that Habermas, in a recent work on the Kantian idea of perpetual peace [Habermas, 1996], asserts that the actual context worsened the crisis of classic international law on different planes, enabling him to define our situation as a transitional period, characterized by the progression of classic international law towards a phase of juridicization of rights on a 'cosmo-political' scale [Habermas, 1996, 1999]. In this respect, Habermas considers, over and against Carl Schmitt, that the claim of the rights of man at the level of international politics does not constitute a moral subordination of politics but, on the contrary, a strictly political tendency in modern democratic societies and states. Habermas sees a clear expression of the transitory nature of our current juridical situation in the trials of Pinochet in Spain and the United Kingdom, as well as in the Yugoslav conflict. This situation demonstrates the narrowness of the juridical and international structure in place at a global level to combat the international violations of the rights of man.

The process just described leads us to pose our problem in the following manner: does the politics of the rights of man, supported at a global level by Kantian pacifism, involve a moral resubordination of politics – according to Carl Schmitt's interpretation – or, rather, does it envisage a new relationship between the moral and the political which preserves the relative autonomy of the two spheres?

Is a 'cosmo-political' juridicization of the rights of man possible without a supra-national state which exercises a coercive force with extra-territorial powers?

### **The Kantian progression from Hobbesian asymmetry**

The first question leads us to return to Kant's first work on the progression of the potentially chronic state of war between nations. Contrary to what one is led to believe, Kant's most radical position on the subject of world peace is not to be found in the famous *To Perpetual Peace*, but in an earlier essay entitled *The Idea for a Universal History with a Cosmopolitan Intent*. This work was composed in 1784, that is, three years after the appearance of the first edition of *The Critique of Pure Reason* and almost a year before the publication of *Grounding for the Metaphysics of Morals*. Its publication followed that of the celebrated

text *What is Enlightenment?* The question of world peace, of the progression not only from civil wars but also from wars between states, was not a fantasy devoid of foundation in the Europe of the Enlightenment which preceded the French Revolution. It is well known that Leibniz was concerned with this question in his irenic treatises and, fifty years later, the Abbé de Saint-Pierre established the necessity of peace for the development of civilization in his writings. Kant's innovation lay in his approach to the question from the perspective of the theories of contract introduced by Hobbes. The German author's point of departure was a situation he considered unresolved in Hobbes, even though it was true that his philosophical perspective was that of the interest of humanity and no longer merely that of the rational basis of state politics. Certain philosophers, notably Alain Renaut and Jürgen Habermas, arguing against the view of Hannah Arendt, who tended to remove all deep philosophical interest from these Kantian writings on peace, found an inherent interest in them for the interpretation of the political philosophy of criticism, which is not, according to them, unrelated to the issues posed by our global situation [Arendt 1991].

In his 'Seventh Thesis' of the text in question, Kant wrote:

The problem of establishing a perfect civil constitution depends on the problem of law-governed external relations among nations and cannot be solved unless the latter is. What use is it to work for a law-governed civil constitution among individual men, i.e. for the organization of a commonwealth? The same unsociability that forces men to do so in turn causes every commonwealth to adopt for itself, i.e. as a nation in relation to nations, an unrestricted freedom in its external relations; consequently, one commonwealth must anticipate from others the same evil that oppressed individual men, forcing them to enter into a law-governed civil state. [Kant, *Perpetual Peace and Other Essays*, p. 34]

The tone is announced straightaway; on the one hand, it is not a question of the moral support for world peace but of considering its possibility from the juridical point of view; on the other (and this is fundamental to the understanding of Kant's position), the juridical point of view is not a return to the pre-modern *jus naturalisme*, as an example of a voluntarist model of the ideal universal republic in a platonic or Augustino-Thomist sense. It is, rather, the result of the same secularized logic which led Hobbes to conceive of the state as a product of man's unsociability. In his eighth and penultimate proposition, Kant leaves no doubt as to the nature and result of this process:

In the end, even war gradually becomes not only a very artificial undertaking, so uncertain for both sides in its outcome, but also a very dubious one, given the aftermath that the nation suffers by way of an evergrowing burden of debt (a new invention) whose repayment becomes inconceivable. At the same time, the effect that any national upheaval has on all the other nations of our continent, where they are all so closely linked by trade, is so noticeable that these other nations feel compelled, though without legal authority to do so, to offer themselves as arbiters, and thus they indirectly prepare the way for the great body politic [*Staatskörper*] of the future, a body politic for which antiquity provides no example. Although this body politic presently exists only in very rough outline, a feeling seems none the less to be already stirring among all its members who have an interest in the preservation of the whole, and this gives rise to the hope that, finally, after many revolutions of reform, nature's supreme objective – a universal, *cosmopolitan state*, the womb in which all of the human species' original capacities will be developed – will at last come to be realized. [Kant, *Perpetual Peace and Other Essays*, pp. 37–8]

The Kantian solution to the situation pertaining among states is found in the framework of this essay on peace; that is to say, at this level of Kant's thought, the 'cosmo-political' state. This state emerges, according to Kant, at the end of a natural process, analogous to the Hobbesian state of nature, and not as a voluntarist example of a moral and political programme. It is the logic of rational egoism, this time as conceived on the scale of the *Magni Homines* (*De Cive* XIV; *Leviathan*, 2. 30) which the states are. This logic, according to Kant, leads from the *bellum omnium contra omnes* to the 'cosmo-political' state of world citizenship. We can therefore ask how what is apparently the same logic – that of natural egoism – is liable to lead, in Hobbes, to tolerance of the situation prevailing between states but, in Kant, to its being superseded by a supra-rational state. It seems that in the same guise as rational egoism the two forms of logic are not truly the same, because the perspectives, the *Weltanschauungen*, which provide the framework in which rational egoism is considered, are not the same. Hobbes adopts the non-historical perspective of the contemporary absolutist state; Kant takes up a position within the framework of the philosophy of history. One must not forget the title of Kant's work: *The Idea for a Universal History with a Cosmopolitan Intent*. For Hobbes who, in tune with his times, had no concept of the logic of the invisible hand, devised in the eighteenth century by Adam Smith and Bernard de Mandeville, neither invisible progress nor the acuity of reason existed. His epistemological model was not that of biology, nor of the fable of the bees, but the more foreseeable and pre-determined model of Galileo's mechanics; the logic of rational egoism could then allow him to ground in reason an order which already existed, that of the absolute state, but it did not allow him to conceive of the exit from the chaos which also exists and co-exists with the absolute state, that of relations between states. Leaving such a state of chaos poses the question of the first move and, in the situation of generalized distrust underlying the war of all against all, no one can make the first move towards trust. It is in this that the logic of rational egoism, as seen in human society, reproduces in Hobbes a balance which is not absolutely that of the prisoner's dilemma (which characterizes the state of nature) but that of the issue of security (which characterizes the absolute state). Hobbes's question is that of knowing why I should obey the sovereign, and not that of knowing how I departed from the state of nature. Logical procedure operates in favour of an order, in those situations previously structured as an order, but in situations where the structure corresponds to that of the state of nature, Hobbes's logic can only favour the development of such a state. This explains logically and philosophically the asymmetry between the intra-state order and inter-state disorder. This is what modern game theory recognizes as Nash's equilibria [Elster, 1986]. Kant's perspective is very different. Kant wrote his short piece about ten years after the appearance of Adam Smith's *Wealth of Nations*, and knowing Mandeville's famous fable of the bees. *The Idea for a Universal History with a Cosmopolitan Intent* and *What is Enlightenment?* were inspired entirely by the logic of the invisible hand; I cite the famous passage on unsociable sociability:

The means that nature uses to bring about the development of all of man's capacities is the antagonism among them in society, as far as in the end this antagonism is the cause of law-governed order in society. In this context, I understand antagonism to mean men's unsocial sociability, i.e. their tendency to enter into society, combined, however, with a thoroughgoing resistance that constantly threatens to sunder this society. [Kant, *Perpetual Peace and Other Essays*, pp. 31–2]



A little earlier, before this point, Kant writes in a manner which clearly shows the influence of the bees:

Individual men and even entire peoples give little thought to the fact that while each according to his own ways pursues his own end – often at cross purposes with each other – they unconsciously proceed toward an unknown natural end, as if following a guiding thread; and they work to promote an end they would set little store by, even if they were aware of it. [Kant, *Perpetual Peace and Other Essays*, p. 29]

In other words, Kant found himself at a stage in which he could reabsorb Hobbes and inscribe him into a teleology of history, just as he could reabsorb the mechanics of Galileo, Kepler, and Newton and re-inscribe it in a teleology of nature. The problem that Hobbes, in a Kantian perspective, did not resolve – the chaotic relationship between states – and could not resolve, because his model did not allow him to find an exit from the state of nature, Kant resolves by means of an invisible teleology of progress. From the point of view of progress, it is not necessary to explain how somebody is going to make the first move to break the prisoner's dilemma, for it is the logic of egoism that leads men, according to Kant, progressively to modify their preferences, by a dialectic of trial and error, and to transform the 'game' of the prisoner into one of inter-state security. Thus, Kant can conclude:

This guiding thread will also clear the way for (what, without presupposing a plan of nature, one cannot reasonably hope for) a comforting view of the future, one in which we represent from afar how the human species finally works its way up to that state where all the seeds nature has planted in it can be developed fully and in which the species' vocation here on earth can be fulfilled. [Kant, *Perpetual Peace and Other Essays*, p. 39]

One must take care not to confuse this teleology in the Kantian sense with a pre-critical reification of reason. Kant uses Adam Smith's model, but not in his pre-critical sense. Natural teleology is not an ontic law of nature but a subjective and moral perspective upon history: it is the perspective which political reason prescribes, or rather, in terms of the neo-Kantian Heinrich Rickert, the *Wertbeziehung*, the inherent value that operates in the scrutiny of history. We can in this sense say that Kant refutes Hobbes in that he judges his resignation in the fact of the violence between states at three simultaneous levels: at the political level, by taking up the theory of the invisible hand on which to base a viable pacifist programme; at the juridical level, by conceiving of the 'cosmo-political' state; and at the moral level, by means of the universalist perspective of humanity in which he places his philosophical and political reflections. A decade later, in the last phase of his work, Kant was to weaken his position in relation to the 'cosmo-political' state, and substitute for it the idea of a federation of republican states interlinked by international law. But the conceptual foundations remained the same. Even though the consequences of the French Revolution and its violent sequels led him to moderate his vision of republican politics, his teleology of progress remained, in itself, essentially unchanged.

There is insufficient space here to attempt to reconsider the problem of inter-state relations and the relationship between morality, law, and politics once the Enlightenment's teleology of progress had broken down. It is undoubtedly impossible today to resurrect the Kantian programme *mutatis mutandis*. But this impossibility does not necessarily imply

a return to the classic international law of belligerent powers and conventional limited war. This kind of case has also been overtaken by the facts. The reality of a conventional and regulated war, which in Hobbes's century replaced the religious civil wars of the preceding century, and which is expressed by the phrase, 'Fire first, English sirs!', no longer represents current reality. In this sense, the attempt made by Jürgen Habermas to consider the transition of classic international law towards a new form of juridicization of classic international relations is fully compatible, if not with the letter, at least with the spirit of the Kantian solution. Thus, as Habermas stresses:

The correct response to the risk of a moralization of power politics does not lie in an amoral definition of politics, but in a democratic transformation of ethics into a positive system of laws, with juridical procedures permitting their application and imposition. To avoid the fundamentalism of the rights of man, one should not renounce any kind of politics which envisages their realization, but, on the contrary, in the name of 'cosmo-political' law it is necessary to transform the state of nature existing between states into a legal state. [Habermas, 1996, pp. 121–2]

Francisco Samuel Naishtat  
*University of Buenos Aires*

(translated from the French by Juliet Vale)

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