

NEW EUROPE COLLEGE



*Cosmopolitanism and Philosophy
in a Cosmopolitan Sense*

Proceedings of the International Workshop,
organized at
the New Europe College, Bucharest
on 21- 22 October, 2011

Edited by
Áron Telegdi-Csetri and Viorela Ducu

Copyright © 2012 – New Europe College

ISBN 978-973-88304-5-5

New Europe College
Str. Plantelor 21
023971 Bucharest
Romania

www.nec.ro; e-mail: nec@nec.ro
tel: (+40-21) 327.00.35; fax: (+40-21) 327.07.74

THE PROBLEM OF THE “RIGHT TO COMPEL” IN THE PRESENT PERSPECTIVE OF A COSMOPOLITAN LAW

Alessio CALABRESE*

1. Origin and limitations of the “right to compel” in a republican state

What is the limitation of the “right to compel” in the Kantian perspective of cosmopolitan law? In this paper, proceeding from the moral foundation of the Kantian republic, I will attempt to analyze the consequences that such a turning point has had on

* Alessio Calabrese, holds a Ph.D. in Bioethics and works at University of Naples “Federico II” (Italy). His fields of interest are Bioethics, Moral Philosophy and Philosophy of Law. His main publications are: *Lo “stato vegetativo” tra “disabilità” e diritto. Nuove ricerche medico-scientifiche e ipotesi giuridiche nel “caso italiano”* (About the condition of ‘vegetative state’: new medical perspectives and legal hypothesis in the Italian debate) in press, in “Atti del Convegno Il diritto alla fine della vita. Principi, decisioni, casi”, Napoli 19-21 May 2011; *A proposito del saggio di G. Marini, La filosofia cosmopolitica di Kant* (About the essay of G. Marini, *La filosofia cosmopolitica di Kant*), in “Archivio di storia della cultura”, XIII, Napoli, 2010, Liguori Ed., pp. 257-278; *Tra neokantismo e positivismo giuridico: diritto e Stato nella riflessione giovanile di Carl Schmitt* (Between neokantism and legal positivism: law and State in the youthful reflection of Carl Schmitt), in “Atti dell’Accademia di Scienze Morali e Politiche”, CXIX, Napoli, 2009, Giannini Ed., pp. 155-190.

modern international law and finally to trace the framework of the current, contemporary juridical-political situation.

As is it is well known, the constituent concept of the republic is represented by the separation of legislative power from executive power. Whenever this should not be the case, we would be under a despotic *forma regimis* and, as in the case of Rousseauian-inspired direct democracy, faced with a real juridical “*Unform*” in which the possibility exists of all deliberating on one.¹

Ultimately, the republic is for Kant the only ordered and structured form of political organization in which *law*, *force* and *freedom* are coordinated, subordinated and united. Therefore, as guarantor of this connection between freedom and the law, the republic may legitimately act co-actively towards those who use their particular freedom to undermine the universality of juridical law.

But how is the relationship between law and politics characterized in the Kantian republican system? And in particular, what are the origins and the legitimate limitations of political action as a “right to compel?” Let us say immediately that in Kant’s framework, the argument on the legitimacy and the legal coercion of the State stems, on the one hand, directly from the denial of the right to resistance and, on the other hand, from the Kantian formulation of the concept of right.

As regards the first aspect, the reasons leading Kant to decry, in no half measure, regicide as a “*crimen immortale, inespabile*” are emblematic.² This means that regicide is not considered a particular crime but rather as an extreme case of the exercise of the right of resistance by the people – a revolutionary act that translates into the dismissal and denial of the current juridical order, restating *temporarily* the state of nature. Therefore, should the right of resistance be legitimized, the coercion of the state itself would not have the power and

authority which allows it to ensure its citizens protection and at the same time to guarantee freedom for all. Hence, for Kant, the juridical meaning of state coercion has its origins in the need to overcome the temporary condition of the laws established by the *jus gentium*, which is characteristic of a state where there is no *public justice*. Escaping this state of *iniustus*, typical of natural societies, is therefore a moral duty which humanity must accept in order to achieve a *legal state*.

Secondly, the meaning and limitations of the coercive state in a republican perspective should be found in the transcendental formulation of the concept of right. To this end, Kant, in *Perpetual peace*, states that the origin of the republic “springs from the pure concept of right”,³ or rather from an *interest* in freedom that belongs to legislative reason which operates in the juridical and political sphere. Therefore, the condition legitimizing the republican model is the formulation of the concept of right “in its double meaning of ‘idea of freedom’ and ‘authorization to use coercion’”.⁴

Despite this, in *Metaphysics of Morals* Kant frequently claims the equivalence between right and constriction and he seems to leave in shadow the indissoluble relationship between legal phenomena and the “Kingdom of Ends”.

However, in *Perpetual peace* there is a *mitigation* of this equivalence thanks to the construction of the republican cosmopolitan order. In fact, the latter can be achieved only through politics as the *art of prudence and wisdom* which is mandated with the task of balancing the two faces of the juridical phenomenon, freedom and constriction.

According to critical method, two different spheres of competence belong to law and politics: they are not disconnected because there is an indissoluble bond that binds the political sphere to the universality of moral imperatives and, specifically, to those that concern the external freedom of the individual.

Therefore, if the task of politics is the application of juridical principles, then politics is no other than *realized right*. Yet, Kant maintains that it is necessary for whoever governs in the republic to *integrate* moral observance with knowledge of *pragmatic anthropology*, which is the way people behave *concretely* following their empirical inclinations. Thus, from this *integration*, the “moral politician” will learn a theorization of prudence which will help him to apply better, in practice, what is imposed by moral theory.

So, in a republican perspective, on one hand, the legal coercion by the state comes from the need to overcome the state of nature, on the other hand, the use of force finds its own limitations in the idea of freedom which is present in the transcendental formulation of the concept of the right.

2. The “right to compel” in the cosmopolitan order

In the two years separating the writing of *Über den Gemeinspruch: Das mag in der Theorie richtig sein, taugt aber nicht für die Praxis* from *Perpetual peace*, Kant perfected the concept of republic becoming the “theorist of a representative democracy extended to all its citizens and extended to all the peoples of the earth in a cosmopolitan perspective”.⁵ The republican state, in fact, legitimizing its authority in order to safeguard the principles of external freedom for citizens, brings about the concept of right which for Kant consists “in the possibility of connecting universal reciprocal coercion with the freedom of everyone”.⁶

As we said before, this idea of an agreement between freedom and constriction defines the Kantian concept of right which, though distinct from ethics, remains indissolubly tied to morality. From this point of view, it is possible to affirm with Habermas that

the cosmopolitan law is a logical consequence of the idea of the constitutive rule of law; it is established for the first time a symmetry between the juridification of social and political relations both within and beyond the state's borders.⁷

In other words, just as the republican state is the overcoming of a condition in which individuals live in a state of nature, in the same way the construction of legitimate cosmopolitan law represents the overcoming of *jus gentium* based on the legal recognition of war between sovereign states. In prevailing international law, the relationships between nations are viewed as being in the condition of *wild freedom* that, if not deprived of right, remains a perpetual *jus belli*, or rather, legal status without *jurisdiction* (*iustitia vacuus*). And not just this: since laws are established and agreed between sovereign states, they have a positive and "temporary" character being the fruit of circumstances of the moment.

So, according to Kant, coming out "of such an abject condition",⁸ should be the fundamental interest of the states themselves since they are always exposed to the danger of war. On the contrary, by *moralizing* their policies, the states would have both the opportunity to put an end to a situation of permanent belligerence between them and the chance to modify their own constitutions, directing it towards the *republican spirit*. Cosmopolitan law, in fact, has a "durable" nature because its validity is not established through international agreements but rather is the direct result of pure reason in its practical use.

Indeed, the necessity to overcome the *jus gentium* as *jus belli* did not prevent Kant from oscillating sometimes in favor of a "federation of nations", other times in favor of a Republican "State of nations";⁹ in both cases the progressive transformation of international law into cosmopolitan law inevitably carries along with it the overcoming of the State as the only source of right.¹⁰

However, as members of a “federation of nations”, the states can at any time rescind such a contract, being only *morally* obliged to remain together for the civil resolution of any possible controversy or for the abolition of war. On this argument Habermas states that Kant

cannot have legal obligation in mind here, since he does not conceive of the federation of nations as an organization with common institutions that could acquire the characteristics of a state and thereby obtain coercive authority.¹¹

Conversely, the hypothesis of a “world-republic” brings about not only the progressive and complete cessation of the sovereignty of each nation’s *jus ad bellum*, but also their submission to a central government whose aim is to ensure, using force at times, long-lasting global peace.

What would happen though, if some states refused to adhere to a similar universal federal system and rejected both hypotheses? Clearly denying the possibility of using military force to impose their participation, Kant responds that the construction of world federal community would take place only through stipulating treaties and through the ability of republican forms to spread themselves, thanks to the force of example.¹² Besides being founded on extraordinary faith in the “infallible ability of public opinion to become enlightened”,¹³ such an answer seems to be the expression of the knowledgeable use of tools of political diplomacy. More precisely, the role played by “moral politicians” requires their being able to manage, especially in the cosmopolitan sphere, the correct mediation between freedom and constriction aimed at bringing about *perpetual peace* between nations.

Consequently, despite his numerous turnabouts¹⁴ and his monistic plan for his cosmopolitan project, Kant strongly condemns every type of punitive war (*bellum punitivum*) and

extermination (*bellum internecinum*) towards another state. Even when the latter threatens peace and world stability, he claims that

the states are called upon to unite against such misconduct in order to deprive the state of its power to do it; but they are not called upon *to divide its territory among themselves* and to make the state, as it were, disappear from the earth, since that would be an injustice against its people, which cannot lose its original right to unite itself into a commonwealth.¹⁵

In other words, if from a *moral* point of view Kant justifies the building of a political project that unites all the people of the earth as “an immediate duty”,¹⁶ from a *juridical* viewpoint he remains fixed upon certain principles of *jus publicum europaeum* and, first of them, the *principle of non-interference in the internal affairs of another state*.

Therefore, in my opinion, international law as the “right to compel” through military intervention or simply through humanitarian interference, is in no way justifiable nor even less compatible with a cosmopolitan perspective. Nowadays in fact, the question on whether it is still possible to achieve political unity in the world requires us to keep in mind that the two transcendental conditions of the Kantian plan are still unsatisfied. That is to say, firstly, the conviction that the republican model of modern democracy has in itself fostered the peace process; secondly, the overturn of the *principle of non-interference* (*Charter of the UN*, art. 2, § 7, Chapter I) in an alleged *right of intervention* by the International Community.

3. The idea of cosmopolitanism and the crises of contemporary democracy

As far as regards the first point, it can be said that influential philosophers of law and politics of the XXth century (such

as Kelsen and Habermas) have frequently criticized the fact that Kant's *moral cosmopolitanism*, leaving untouched the Westphalian dogma of the sovereignty of states, has not been able to fully develop the idea of *juridical cosmopolitanism* in which there is a single superior authority enjoying a "monopoly on violence". On the contrary, Kelsen, after the First World War pronounced himself in favor of the construction of a *civitas maxima* governed by a single institution and regulated by *universal common law*, as well as under the jurisdiction of the International Court of Justice.¹⁷ In other words, the Austrian jurist believed that maintaining a state's sovereignty, even though it were a republican form of government, constituted a legitimate impediment in the hands of individual governments since they could not be constrained to respect international legality.

However, according to Habermas, if it is *historically* true that the republican constitution (not only in the West) has undergone a marked nationalistic regression during the last two centuries, it has nonetheless contributed toward a modification of aggressive foreign policy, particularly by democratic states, and to conduct *different kinds of war* which favor the development of non-authoritative states.¹⁸ For this reason, despite the indecision between world-republic and federation, "the moral universalism that informed Kant's proposal remains the authoritative normative intuition" for the construction of a future world society.¹⁹

Therefore, aware of having in front of his eyes a historical reality which was profoundly different from that of the XVIIIth century, Habermas states that a necessary update of Kantian "intuition" requires, in the first place, the institutionalization of cosmopolitan law, through which the individual governments are compelled to respect international legality and in the second place, this update should deal with the institution of a global

government which gathers, under its own command, military force and police functions.²⁰

In this sense, hoping for major reform in the Security Council of the United Nations, Habermas argues that it should be entrusted with the task of *global domestic politics* (*Weltinnenpolitik*) capable of achieving not so much the definitive abolition of war but rather an effective defense of human rights on a planetary scale. In fact,

the police actions of a politically competent and democratically legitimated world organization would better merit the title of a 'civil' regulation of international conflicts than would war, however limited. For the establishment of cosmopolitan order means that violations of human rights are no longer judged and combated immediately from the moral point of view, but rather are prosecuted, like criminal actions within the framework of a state-organized legal order, in accordance with institutionalized legal procedures.²¹

In Habermas' terms, the historical evolution of the cosmopolitan idea as well as that of world institutional bodies and their application procedures, is based on the immediate legal validity of human rights which may be safeguarded or disregarded by national laws. Thus, the proposal of cosmopolitanism based on human rights seems to leave behind the crisis of the role of contemporary democracies: protected during the XXth century by the laws of nation-states, these rights nowadays are waiting to be recognized, in concrete terms, within a cosmopolitan legal project.

Despite strong calls for radical reforms of supranational bodies, to gamble on the fulfillment of a true "cosmopolitan democracy"²² means, first of all, supporting the recognition of a *global rule of law*, or rather, to accomplish in a practical sense, the respect by each individual state, of certain fundamental

juridical rules, even in the absence of last instance coercive power.

However, in my opinion, the fulfillment of this *scenario* involves a greater problem of *ethical universalism*²³ and consequently requires a denunciation without appeal of the instrumental use of human rights which, in the last twenty years, the entire International Community has made use of with the aim of justifying real wars of aggression. One clear position regarding this point was completely unexpected, even by those, like Habermas, who maintain that it is possible to trace a clear line between a moral fundamentalism of human rights²⁴ and an authentic cosmopolitan spirit.

The human rights politics of a world organization – he states – becomes inverted into a human rights fundamentalism only when it provides a moral legitimization under the cover of a sham legal legitimization for an intervention which is in reality nothing more than a struggle of one party against the other. In such cases, the world organization (or an alliance acting in its name) engages in deception, because it passes off a military conflict between two warring parties as a natural police measure justified by enforceable law and by the judgments of a criminal court.²⁵

In reality, as underlined by T.M. Frank, even by adopting rigorous, legal criteria, it seems impossible to be able to distinguish between “true” and “false” humanitarian interventions,²⁶ since human rights policies have overturned the principle of non-interference. Since resolution 688 of April 1991 regarding the 1st Gulf War, we have witnessed the first reformulation of the “prohibition on intervention”: the UN, in fact, appealed for a right of intervention (article 39, *The Charter of UN*) in the case of “a threat to international security” thus getting round the criticism of interfering in the internal affairs of a sovereign

state.²⁷ Since then, respect for international *legality* and the principle of non-intervention have lessened in the face of the need to affirm at all costs the *legitimacy* of armed intervention for humanitarian reasons.²⁸

This distinction between the concepts of *international legality* and *legitimacy of intervention* has undergone further variation after the 1999 NATO-led war in Kosovo in which the *domestic jurisdiction* of a sovereign state was clearly violated. As Archibugi and Croce have written, “the NATO intervention was considered to be illegal under current international law since what happened in Kosovo was under the jurisdiction of a sovereign state, but legitimate in terms of its aim to prevent an imminent humanitarian calamity”.²⁹

Therefore, military intervention, unauthorized by the UN Security Council, because it was not possible to establish whether or not there was a real “threat to international security”, was deemed necessary as it was supposed that violations of human rights were being carried out in Ex-Yugoslavia. And so a few jurists on this occasion, though considering NATO’s military intervention “illegal”, proposed to update international law by introducing new laws allowing for the juridical discipline of armed intervention for humanitarian reasons. One of these jurists was A. Cassese, who, recognizing that NATO had committed a violation of the United Nations Charter by attacking the Republic of Serbia, argued however, that the use of force was legitimate because the war in Kosovo was the proof that a “new legitimization of international law for the use of force” was being created.³⁰

During subsequent wars in Afghanistan and in Iraq, these two forms of legitimization of armed intervention, “threat to international security” and “violation of human rights”, were alternated and superimposed, up to the point that it was claimed that all those states that did not respect human rights,

constituted *potentially*, a threat to world stability. So, the waiver of the principle of non-intervention may include the presumption of authorization for “coercive regime change” within the so-called “failed states”.³¹ In this context, Kofi Annan and the other members of the *High Level Panel* together argued, in December 2004, that the use of force by the Security Council, covered by Chapter VII of the *Charter of UN*, should also include “*the collective international responsibility to protect*”.³² It was therefore necessary to allow a new means of intervention, legitimized this time by the Security Council, against a state which violated the fundamental rights of its citizens, even though this did not compromise peace and geopolitical order.

From a legal point of view, this latter argument, put forward for the first time in 2001 by the Canadian government in its report *The Responsibility to Protect*, was finally included in UN resolution 1674 of 28 April 2006³³ in which articles 4 and 26 deal with the possibility of the Security Council having to treat violations of human rights by member states of the UN as if they were, *in themselves*, a threat to peace and international security and, by dint of this, consider itself legitimized to adopt appropriate measures.³⁴

Nowadays, this path toward the “legalization” of the UN’s right to intervene, based on the doctrine of R2P³⁵ has been favorably met not only by the Catholic Church,³⁶ but also by others. A few months ago, in fact, this doctrine was cited as the *post factum* reason to justify intervention in Libya by the USA, UK and France. On the other hand, Germany, Russia, India, China and Brazil, affirmed that what was happening in Libya was an effect of a “civil war” which did not represent a threat to peace or world order. Conversely, with resolution 1973,³⁷ the Security Council offered an aspect of international legality to a war of aggression which is totally contrary to the United

Nations Charter. In this regard it is worthwhile restating that the Security Council, according to the Charter of the United Nations, has neither the competence to promulgate new norms of international law, nor may it behave as if it were a real “Council of War” which can arbitrarily decide *where* and *when* to intervene. Should this be the case, one might legitimately wonder why the UN have decided not to intervene in those areas of the world where, for years, there has been well-documented ethnic cleansing. Palestine immediately comes to mind.

Therefore, the doctrine of the R2P seems like a sort of juridical astuteness which comes dangerously close to including the right to interfere in international law. From this point of view of much greater seriousness is the fact that the use of such a doctrine risks provoking greater instability in international relations and, at a political-philosophical level, distorting the profound meaning of the cosmopolitan proposal, thus reducing it to a purely intellectual posture through which imperialistic maneuverings are legitimized and which, instead of resolving conflicts, creates them, erecting new *borders* between peoples instead of bringing them into democratic *boundaries*.

Consequently, in my opinion, reinvigorating the cosmopolitan project, means today, more than supporting a generalized right/duty of intervention by the state, fighting for full recognition of “universal hospitality” since “the right to present themselves to society belongs to all mankind in virtue of our common right of possession on the surface of the earth”.³⁸

It is thus a case of promoting a non-destructive alternative to the reformulation of the principle of non-interference in the internal affairs of a sovereign state; an alternative which would probably constitute an opportunity for contemporary democracies to give another meaning to the notion of “sovereignty is responsibility”.³⁹

Nowadays, this opportunity seems to me nothing more than a hope, much more feeble than those held by many progressive-minded intellectuals following the fall of the Berlin Wall. However, this is not necessarily bad since the force with which it presented itself then, probably did not allow them to see what was in front of their eyes. In fact, the historic defeat of Communism in Russia did not so much open the doors to a new world republican order as offer the possibility of a new geopolitical division of the world.⁴⁰

After twenty years the world scene appears noticeably changed: the characteristic enthusiasm of the early 1990s to construct a lasting world peace has been replaced by a darker and more sinister feeling. However, the political realities and cynicism of the “new millennium” do not prevent a sincere declaration of faith in the progressive realization of that peaceful condition described by Kant that, although the last two centuries have not confirmed, “cannot even be denied”.⁴¹

NOTES

- ¹ KANT, I., *Zum ewigen Frieden* (1795), in Id., *Gesammelte Schriften*, hrsg. von Königlich-Preußischen Akademie der Wissenschaften, Berlin, 1902 sg., Bd. VIII, p. 352.
- ² KANT, I., *Die Metaphysik der Sitten* (1797), in Id., *Gesammelte Schriften*, hrsg. von Königlich-Preußischen Akademie der Wissenschaften, Berlin, 1902 sg., Bd. VI, p. 321.
- ³ KANT, I., *Zum ewigen Frieden*, p. 351.
- ⁴ KANT, I., *Die Metaphysik der Sitten*, p. 232.
- ⁵ MARINI, G., *La filosofia cosmopolitica di Kant*, Laterza, Roma-Bari, 2007, p.93.
- ⁶ KANT, I., *Die Metaphysik der Sitten*, p. 232.
- ⁷ HABERMAS, J., "Kant's Idea of Perpetual Peace: At Two Hundred Years' Historical Remove", in Id., *The Inclusion of the Other: Studies in Political Theory*, MIT University Press, Cambridge, 2000, p. 199.
- ⁸ KANT, I., *Zum ewigen Frieden*, p. 354.
- ⁹ KANT, I., *Zum ewigen Frieden*, p. 353.
- ¹⁰ Kant underlines that as far as the first hypothesis is concerned, that of a "permanent congress of states," this should not be conceived of as a model of that of the United States of America in which each of the states is constrained to maintain the stability of the alliance through being obliged coercively by the presence of a common public constitution. It is clear that by criticising this structure Kant has in general tried to save the autonomy of sovereign states that, even in a despotic form, possess a domestic constitution and juridical structure and thus are something more than just a state of nature (Cf. Kant, I., *Die Metaphysik der Sitten*, p. 350).
- ¹¹ HABERMAS, J., "Kant's Idea of Perpetual Peace", p. 169.
- ¹² KANT, I., *Zum ewigen Frieden*, p. 355.
- ¹³ SCHMITT, C., *Die geistesgeschichtliche Lage des heutigen Parlamentarismus* (1923), Duncker & Humblot, Berlin, 1985, p. 49.
- ¹⁴ Emblematically is the ambiguous definition of the "unjust enemy" (Cf. KANT, I., *Die Metaphysik der Sitten*, p. 347-351). In regards to the Kantian doctrine of "unjust enemy" on the development of the Nineteen Century War Theory, see SCHMITT, C., *Der Nomos der Erde im Völkerrecht des Jus Publicum Europaeum* (1950), Duncker & Humblot, Berlin, 1974, pp. 140-143.
- ¹⁵ KANT, I., *Die Metaphysik der Sitten*, p. 349.
- ¹⁶ KANT, I., *Zum ewigen Frieden*, p. 355.

- ¹⁷ See KELSEN, H., *Das Problem der Souveränität und die Theorie des Völkerrechts. Beitrag zu einer reinen Rechtslehre*, J. C. B. Mohr, Tübingen, 1920.
- ¹⁸ HABERMAS, J., "Kant's Idea of Perpetual Peace", p. 169.
- ¹⁹ HABERMAS, J., "Kant's Idea of Perpetual Peace", p. 188.
- ²⁰ HABERMAS, J., "Kant's Idea of Perpetual Peace", p. 188.
- ²¹ HABERMAS, J., "Kant's Idea of Perpetual Peace", p. 193.
- ²² These political reforms should include the establishment of a global parliament, a global judicial system and the reform of the Security Council (Cf. ARCHIBUGI, D., "From the United Nations to Cosmopolitan Democracy", in D. Archibugi, D. Held (eds.), *Cosmopolitan Democracy: an agenda for a new world order*, Polity Press, Cambridge, 1995, pp. 121-162).
- ²³ Since I cannot here develop this argument in detail, referring to the analysis of Danilo Zolo for which the need for a *global rule of law* must be balanced with the maintenance of certain strategies such as the *jus gentium* bilateral agreements (Cf. ZOLO, D., "Universalismo etico e pacifismo cosmopolitico nella tradizione kantiana. Una critica realista", in L. Tundo, A. Colombo (eds.), *Cosmopolitismo contemporaneo: moralità, politica, economia*, Morlacchi Editore, Perugia, 2009, pp. 39-62).
- ²⁴ In my opinion, expression of this fundamentalist view of human rights is the position taken by M. Walzer (Cf. WALZER, M., *Just and Unjust Wars*, Basic Books, New York, 1992).
- ²⁵ HABERMAS, J., "Kant's Idea of Perpetual Peace", p. 200.
- ²⁶ Cf. FRANK, T.M., "Interpretation and change in the law of humanitarian intervention", in J.L. Holzgrefe, R.O. Keohane (eds.), *Humanitarian Intervention*, Cambridge University Press, Cambridge, 2003, pp. 204-231.
- ²⁷ United Nations Security Council, S/RES/0688 (1991).
- ²⁸ Cf. IGNIATIEFF, M., *Human Rights as Politics and Idolatry*, Princeton University Press, Princeton, 2001, pp. 37-48.
- ²⁹ ARCHIBUGI, D., CROCE, M., "Legality and Legitimacy of exporting democracy", in R. Falk, M. Juergensmeyer, V. Popovski (eds.), *Legality and Legitimacy in World Politics*, Oxford University Press, Oxford, 2011 (forthcoming).
- ³⁰ Cf. CASSESE, A., "Ex iniuria ius oritur", in *European Journal of International Law*, 10, 1, (1999), pp. 23-25.
- ³¹ OREND B., *The morality of war*, Broadview Press, Toronto, 2006, p. 190.

- ³² *A more Secure World: Our Shared Responsibility*, Report of the High-level Panel on Threats, Challenges and Change, United Nations, 2004.
- ³³ United Nations Security Council, S/RES/1674(2006).
- ³⁴ ICISS, *The Responsibility to Protect. Report of the International Commission on Intervention and State Sovereignty*, 2001.
- ³⁵ See BANDA, M., *Crystallising R2P: the evolution, interpretation and implementation of the responsibility to protect*, University of Oxford, Oxford, 2006; COOPER, R.H., VOINOV KOHLER, J. (eds.), *Responsibility to Protect: The Global Moral Compact for the 21st Century*, Palgrave Macmillan, New York, 2009; PATTISON, J., *Humanitarian Intervention and the Responsibility to Protect*, Oxford University Press, Oxford, 2010.
- ³⁶ *Address of His Holiness Benedict XVI*, Meeting with the members of the General Assembly of the United Nations Organizations, New York, Friday, 18 April 2008 (http://www.vatican.va/holy_father/benedict_xvi/speeches/2008/april/documents/hf_ben-xvi_spe_20080418_un-visit_en.html).
- ³⁷ United Nations Security Council, S/RES/1973(2011).
- ³⁸ KANT, I., *Zum ewigen Frieden*, p. 356.
- ³⁹ Cf. ICISS, *The Responsibility to Protect*, cit.
- ⁴⁰ Cf. Bush, G. (The President of the United States), *National Security Strategy of the United States*, Washington, The White House, 1991.
- ⁴¹ MARINI, G., *La filosofia cosmopolitica di Kant*, p. 209.

REFERENCES

- ARCHIBUGI, D., CROCE, M., "Legality and Legitimacy of exporting democracy", in R. Falk, M. Juergensmeyer, V. Popovski (eds.), *Legality and Legitimacy in World Politics*, Oxford University Press, Oxford, 2011 (forthcoming).
- ARCHIBUGI, D., "From the United Nations to Cosmopolitan Democracy", in D. Archibugi, D. Held (eds.), *Cosmopolitan Democracy: an agenda for a new world order*, Polity Press, Cambridge, 1995, pp. 121-162.
- BANDA, M., *Crystallising R2P: the evolution, interpretation and implementation of the responsibility to protect*, University of Oxford, Oxford, 2006.
- CASSESE, A., "Ex iniuria ius oritur", in *European Journal of International Law*, 10, 1, (1999), pp. 23-25.
- COOPER, R.H., VOINOV KOHLER, J. (eds.), *Responsibility to Protect: The Global Moral Compact for the 21st Century*, Palgrave Macmillan, New York, 2009.
- FRANK, T.M., "Interpretation and change in the law of humanitarian intervention", in J.L. Holzgrefe, R.O. Keohane (eds.), *Humanitarian Intervention*, Cambridge University Press, Cambridge, 2003, pp. 204-231.
- HABERMAS, J., "Kant's Idea of Perpetual Peace: At Two Hundred Years' Historical Remove", in Id., *The Inclusion of the Other: Studies in Political Theory*, MIT University Press, Cambridge, 2000.
- IGNIATIEFF, M., *Human Rights as Politics and Idolatry*, Princeton University Press, Princeton, 2001.
- KANT, I., *Zum ewigen Frieden* (1795), in Id., *Gesammelte Schriften*, hrsg. von Königlich-Preußischen Akademie der Wissenschaften, Berlin, 1902 sg., Bd. VIII.
- KANT, I., *Die Metaphysik der Sitten* (1797), in Id., *Gesammelte Schriften*, hrsg. von Königlich-Preußischen Akademie der Wissenschaften, Berlin, 1902 sg., Bd. VI.
- KELSEN, H., *Das Problem der Souveränität und die Theorie des Völkerrechts. Beitrag zu einer reinen Rechtslehre*, J. C. B. Mohr, Tübingen, 1920.
- MARINI, G., *La filosofia cosmopolitica di Kant*, Laterza, Roma-Bari, 2007.
- OREND B., *The morality of war*, Broadview Press, Toronto, 2006.
- PATTISON, J., *Humanitarian Intervention and the Responsibility to Protect*, Oxford University Press, Oxford, 2010.

Cosmopolitanism and Philosophy in a Cosmopolitan Sense

- SCHMITT, C., *Der Nomos der Erde im Völkerrecht des Jus Publicum Europaeum* (1950), Duncker&Humblot, Berlin, 1974.
- SCHMITT, C., *Die geistesgeschichtliche Lage des heutigen Parlamentarismus* (1923), Duncker & Humblot, Berlin, 1985.
- WALZER, M., *Just and Unjust Wars*, Basic Books, New York, 1992.
- ZOLO, D., "Universalismo etico e pacifismo cosmopolitico nella tradizione kantiana. Una critica realista", in L. Tundo, A. Colombo (eds.), *Cosmopolitismo contemporaneo: moralità, politica, economia*, Morlacchi Editore, Perugia, 2009, pp. 39-62.

Documents

- Address of His Holiness Benedict XVI*, Meeting with the members of the General Assembly of the United Nations Organizations, New York, Friday, 18 April 2008, http://www.vatican.va/holy_father/benedict_xvi/speeches/2008/april/documents/hf_ben-xvi_spe_20080418_un-visit_en.html
- A more Secure World: Our Shared Responsibility*, Report of the High-level Panel on Threats, Challenges and Change, United Nations, 2004.
- BUSH, G. (President of the United States), *National Security Strategy of the United States*, The White House, Washington, 1991
- ICISS, *The Responsibility to Protect. Report of the International Commission on Intervention and State Sovereignty*, 2001.
- United Nations Security Council, S/RES/0688 (1991).
- United Nations Security Council, S/RES/1674(2006).
- United Nations Security Council, S/RES/1973(2011).