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Why Does Sovereignty Matter, Professor Kant?

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Abstract: For Kant, recognition of national sovereignty is constitutive of international law, and international law is the *sine qua non* for peace between Peoples. The article demonstrates how and why national sovereignty is inextricably connected to the self-determination of Peoples in Kant's philosophy of law and in international law. The principle of self-determination in turn is grounded in his idea of a normative dignity of Peoples. In Kant's theory, "People" and "state" are diachronically conceived. This allows him to define the state's primary function and foremost duty as securing the individual and collective dignity of its constitutive People against reification through external interference and manipulation, as well as against self-reification, by means of domestic and international law in a peace union of like-minded (i.e. ideally republican) states.

Keywords: Kant; international relations; peace; sovereignty; dignity

Russia's current war against Ukraine polarises political parties, media and academics throughout European democracies. While the majority condemn it as a war of aggression in violation of international law, the European left calls for appeasement and mostly opposes counteraction. The striking dissonance between its own comfortable embeddedness in liberal democratic systems and simultaneous support of a blatantly non-liberal system seems, however, to be rooted in more than mere ideological affinities. The official Russian rhetoric seeks to justify the war by a triple strategy. Firstly, by reference to a duty to protect the rights of the Russian minority in Ukraine, which, so the further-going claim, ultimately requires their self-determination and -government.¹ Secondly, by reference to Western interference in Ukraine's internal affairs through instigation of the

1 The same military and justificatory strategy is already being directed against other bordering countries with Russian minorities, thus posing a principal threat for all European countries with considerable allochthon communities.

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‘Orange Revolution’ which, it is claimed, resulted in Ukraine turning its allegiance from Russia to the West. Thirdly, by reference to this development’s threatening Russia by positioning NATO at its very borders. From an *empirical* perspective, considerable doubts are indicated regarding the Russian minority’s factual need for protection, and NATO – expressly conceived as a defence alliance – has yet to start a war of aggression, which suggests Russia’s human rights and sovereignty concerns to be mere pretext. From a *legal* perspective, self-determination claims on the Russian minority’s behalf are untenable; from a *political* perspective, interdicting Ukraine to freely choose its alignment discloses a return to bloc-politics in denial of its sovereignty.

Notwithstanding these counterindications, however, Russia’s justificatory allusions to surrogate human-rights protection, self-determination and threatened borders are welcomed by the Western left in support of their narrative about an ongoing capitalist conspiracy as driving force behind, and liberal universalism as substrate of, physical and epistemic Western colonialism.² In this, the reason of law as the most crucial achievement of the Enlightenment, which for many decades enabled wealth and stable peace within, between and beyond reasonably liberal states, is ousted by pseudo-moral indignation about insinuated injustices, and uncircumventable legal principles are degraded to serve as useful idiots.³ The anti-emancipatory emotional agitation – window-dressed as a so-called affective turn – withholds that the morally appealing idea of surrogate rights protection builds on elementary Lockean natural-rights principles and that the *volens volens* utilised principles of international law are grounded in insights formulated by the very thinkers of the European Enlightenment, whose works are at the same time vilified as borne by Eurocentrism and other -isms – particularly in Kant’s legal and political philosophy. Phenomenally most astonishing, however, is the fact that Russia’s justificatory strategy unwittingly ensnares its supporters in a complex web of normative principles, which is legally operational only through the principle of *national sovereignty*. Considering the Western left’s cosmopolitan verdict on national sovereignty as the root of all evil, which must be eradicated in favour of enlightened centralist governance,⁴ such as a United States of Europe – if not a cosmopolitan world state – or, at the very least, be dissipated by means of the reign of allegedly enlightened urbanism, they seem to fall prey to a performative self-contradiction.

In retracing the normative rationale of legal principles invoked by both sides, the following is an attempt to demonstrate how and why national sovereignty and self-determination of Peoples are both central for and inextricably connected in Kant’s legal

² An even older history of non-Western colonialism remains entirely unthematized in the debates.

³ For a comprehensive explication of the intertwining of reason and universalism in the Enlightenment, see Westphal 2021.

⁴ For new voices on sovereignty, see Santos Campos and Cadilha 2021.

philosophy and in international law, and why the emotional reactions triggered by their invocation in the debate about Russia's aggression rest on more than ideological affinities.

1 Birth Norm and Basic Norm of International Law: Kant's Legal Internationalism

For Kant, recognition of national sovereignty is constitutive of international law, and international law is the *sine qua non* for peace between Peoples. Phenomenally speaking, international law starts with the act of mutual recognition of independent states as legal subjects.⁵ Absent such recognition, it may be a precept of reason, but not a reality. Accordingly, and directly following his vindication of a republican civil constitution, Kant writes: 'Second Definitive Article of a Perpetual Peace: The Law of Peoples shall be based on a Federation of Free States'. (ZeF, AA 8:354) Free states are *sovereign states*. Already Preliminary Article (hereafter 'PA') 5 establishes national sovereignty as one of the very prerequisites for peace: 'No state shall forcibly interfere in the constitution and government of another state'. (ZeF, AA 8:346)⁶ To understand Kant's conception of international law based on sovereign states and why he believes it to be conducive to peace, it is crucial to clearly distinguish between the establishment and empirical existence of an order of international law on one hand and its deductive justification on the other; it is crucial to not only understand sovereignty's function in achieving peace through law, but its normative justification. Kant's justification of national sovereignty and, with it, of international law altogether is based on entirely normative considerations rather than grounded in the factuality of a state-ordered world as has frequently been claimed.⁷ From a structural perspective, his argumentation resembles Kelsen's legal syllogism.

According to Kant, there are only two forms of human coexistence: coexistence according to the principle of force (i.e. the state of nature) and coexistence according to the principle of law (i.e. the civil condition). Only coexistence according to the latter has the potential of grounding a stable – perpetual – peace, i.e. peace resting on mutual recognition and practical consideration of legitimate individual and collective claims. Reliable consideration of legitimate individual claims requires national

⁵ While determining the legal effect of recognition is not decisive for the current analysis, the most fruitful approach seems to be one that mediates between constitutive theory and declaratory theory.

⁶ Kant's further explication reverberates in international law on failed states (e.g. Epping 2024⁶, §7).

⁷ For a detailed discussion, see Freiin von Villiez 2021b.

legal frameworks,⁸ and reliable consideration of legitimate national claims resulting therefrom requires an international legal framework. National claims to juridification in the service of collective independence, so Kant's plausible underlying thesis, follow from and reflect constitutive Peoples' individual claims to juridification in the service of autonomy, thus grounding a collective moral personality – a moral personality of states. While the idea that the state thus embodies the collective moral personality of its individual members underlies various theory conceptions within the doctrine of international relations and international justice, the ensuing analogy between the rights of individuals and the rights of states has frequently been dismissed by pointing to elementary distinctions between states and individuals that seem to preclude the transferability of personality from one to the other.⁹ However, assertions of a categorical difference between individuals and states are not as convincing as they might *prima facie* appear. According to Jellinek's juridically still authoritative doctrine, states are characterised by three elements: a constitutive people [*Staatsvolk*], a defined state territory [*Staatsgebiet*] and a supreme state authority [*Staatsgewalt*] that organises the domestic order for its constitutive people on this territory.¹⁰ The critique of transferability mostly zeroes in on the territorial and political supremacy principles involved in the concept of national sovereignty. However, the notion of so called body boundaries indicates that we actually also attribute each and every individual a separate territory. The thus demarcated *individual territory* comes with claims to a form of territorial integrity and self-rule. That body boundaries even mark decisively more than merely the respective physical extensions of a body becomes apparent at the latest when others fail to maintain a certain physical distance. Legitimate crossings of body boundaries presuppose tacit or explicit consent to proximity, just as legitimate (collective or individual) crossings of state boundaries do. Moreover, discerning of one's own body boundaries through encounter with others is actually an indispensable precondition for individuation (self-knowledge [*Selbsterkennung*] in a cognitive as well as a material sense and, thus, self-realisation [*Selbstwerdung*]) – a central concept from child psychology with physiological, neurological and psychological relevance. Self-knowledge and -realisation involves becoming aware of (and asserting) one's own physical, mental and motivational distinctness from others – of one's own body-territory, individual will and personal interests. In this sense, it can be understood as realisation of personal sovereignty and autonomy – rightful supremacy over one's own body boundaries and the organisation of one's life in co-existence with others according to

⁸ For linguistic reasons, the adjective 'national' here refers to all state-like entities regardless of their socio-cultural grounding. For the (continued) relevance of the concept of nation, see Masala 2018.

⁹ E.g. Frein von Villiez 2005 Kapitel IV.

¹⁰ Jellinek 1914, 396ff.

self-chosen ends. Thus, the analogy between states and individuals cannot be refuted by mere reference to the principle of territoriality nor to that of political supremacy.

Kant grounds the fundamental claim to self-determination in the distinction between reasonable beings and things. While the latter are ascribed a market- or affection-price, the former are ascribed an absolute, inherent value, i.e. a dignity (GMS, AA 4:434f.). Human beings are understood as autonomous subjects because of their general capacity for acting according to self-formulated ends, i.e. for being *causae liberae*, which precludes treating them as mere means to an(-other's) end (RL, AA 6:227).¹¹ Only because they are – as a species and irrespective of individual pathological deviation – thus enabled by nature can they be held accountable and thus considered (moral and) legal subjects, e.g. (RL, AA 6:239). 'A *person* is a subject whose actions can be *imputed* to him'; while *moral* personality denotes 'the freedom of a reasonable being under moral laws [...] *psychological* personality' denotes 'the capacity [*Vermögen*] to be conscious of one's identity in different conditions of one's existence' (RL, AA 6:223), the latter making diachronic conceptions of legal entities imperative. As the general condition of earthly existence is one of co-existence with similarly constituted persons, consciousness of one's own self-being [*Selbsthaftigkeit*] – in Kant as well as in developmental psychology – is inevitably linked to the realisation of being one amongst equals in a kingdom of ends (RL, AA 6:237f., GMS, AA 4:429).¹² From this results an individual duty, to organise co-existence with others according to legal (and moral) principles (as indicated in the distinction between a *Doctrine of Law*¹³ and a *Doctrine of Virtue*).¹⁴ 'All men who can at all influence one another must be part of some kind of civil constitution' (ZeF, AA 8:350 Anm.). As, further, due to the spherical shape of the earth, humans cannot disperse infinitely (ZeF, AA 8:358, cf. Refl. 6593, AA 19:99f.), this duty allows no exceptions, but is an 'absolute command that practical reason [...] gives to every People' (RL, AA 6:372). Groups of individuals comply with their individual duty of juridification by constituting themselves as *constitutive Peoples* in space and time. The realisation of this fundamental individual duty of every human being who can impact others is a *collectively undertaken* (or posited as undertaken) *individual act of autonomy*, through which a People apprehends itself as such and substantiates itself as a *constitutive* People. It is an act through which it (in distinction to other such groups) asserts

11 That this does not categorically preclude treating others as means, but only treating them as *mere* means in violation of their self-purposiveness is obvious from Kant's discussion regarding marriage and sexual intercourse (e.g. Loudon 2021).

12 Kant's purely analytical explication is largely compatible with Smith's moral-psychological explanation (e.g. Freiin 2006).

13 As the first part of MdS exclusively addresses the fundamentals of law, this translation seems more appropriate than the common translation *Doctrine of Right*. See also Merle 2021, p. 95.

14 Both are subcategories of what in the Enlightenment is covered by the term 'Sitten'. Morality in our current usage trades under 'virtue' in Kant.

itself of its common legal liability [*Rechtspflichtigkeit*] and, thus, common legal accountability. Thus, Kant's deduction of national sovereignty is not exhausted by the indirect analogisation of individuals and states. While it lays the inner-systematic foundation, the legal subjectivity of states is grounded directly in the legitimate moral claims of collectives to self-constitution and -determination – both in Kant and in international law. Constituted states (nations) are legal realisations of the moral title and will of their members to identify themselves as one and the same People based on a set of features which they deem relevant, and to legally constitute themselves accordingly.¹⁵

International law provides no authoritative, substantial definition of the concept of People. Under reference to 'subjective criteria' and 'objective criteria' for the identification of Peoples, it rather operates with an indeterminate, 'vague legal concept', the 'application of which to a given statement of facts [...] in the individual case' also implicates a 'value infilling' (Heintze 1999, § 28, 9, 5). Thus, membership criteria are neither analytically contained in the concept itself nor are certain factually asserted criteria legally accentuated as normatively superior. Unsurprisingly then, ethnic identification is still (arguably even predominantly) common alongside with identification according to constitutional- and culture-national features currently favoured in Western Europe.¹⁶ Merely the self-certitude and -assurance – the 'awareness and the political will [...] to be one People' – are regularly emphasised as 'primary elements of a People'.¹⁷ Accordingly also the UN-special rapporteur on the self-determination of Peoples, Cristescu: 'The fact is that, whenever in the course of history a people has become aware of being a people, all definitions have proved superfluous'. (Heintze 1999, § 28, 5) The notion of national sovereignty claims is inseparably tied to that of a claim to self-determination of Peoples. The *state-constituting act* is an act of mutual political-legal recognition of Peoples (self-constituted according to their self-chosen defining features) within a common framework of international law. In other words, a collective defines itself in its self-certitude as a People, and it assures itself of its common will to be a constitutive People amongst other such constitutive Peoples by seeking recognition of its respective independent authority within a normative framework of sovereign states. 'Basically, a People posits its right of self-determination through creation of a state. As every People is equal in its right to self-determination no People needs to content itself with less than "sovereign statehood"' (Heintze 1999, §29, 3). For Kant, the only original human right, i.e. *freedom*, analytically involves the idea of an innate equality

¹⁵ The distinction between the noumenal state as a moral person and its phenomenal manifestation as a legal person is important with regard to ensuing duties.

¹⁶ Frein von Villiez 2005 Kapitel IV. The former does not necessarily require factual congruence of constituency and ethnic People. For a comprehensive discussion, see Mohr 2001.

¹⁷ (UN Doc. E/CN.4/Sub.2/404/Rev. 1, 17; Heintze 1999, §28, 9).

(RL, AA 6:237f.), wherefore he also considers such a framework of equal constitutive Peoples represented by their sovereign states to be the only ‘legal condition which can be reconciled with their freedom’ (ZeF, AA 8:385) and which, through legal fixation of their normative equality in international law, aims to warrant ‘the elimination of war’ (ZeF, AA 8:385). This state-constituting act is normatively preceded by the *People-constituting act*, i.e. the (counterfactual) ‘act of the general will whereby the mass becomes a People’ and on which the form of government or ‘way in which the state makes use of its plenary power’ (republican or despotic) is based (ZeF, AA 8:352). It is the act through which, as sketched above, individuals join into constitutionally composed relations with one another, the decision, ‘to submit to a legal constraint to be constituted by themselves’ and thus to prefer the ‘freedom of reason’ to the ‘freedom of folly’ (ZeF, AA 8:354). That the sovereign-freedom condition is to be found in *Appendix II. On the Agreement between Politics and Morality*, in no way diminishes its relevance. Rather, it even reaffirms the equal sovereign freedom of constituted Peoples – not only as each People’s *natural aspiration*, but moreover as a *moral precept of reason*, which Kant (following truthfulness from PA1) casts into political-legal form as a prerequisite to perpetual peace with PA2. The state is constituted through a (factually or counterfactually) self-governing People. For this reason, ‘no independently existing state [...] may be acquired by another state by inheritance, exchange, purchase or gift’ (ZeF, AA 8:344). A People, as a collective person constituted by its individual members, cannot agree to such an assignment of itself to others (states or principalities), because doing so would abrogate the ‘existence [of its state] as a moral person’ (ZeF, AA 8:344). As autonomous subjects, the individuals jointly constitutive of the collective moral person of the state are thus protected against reification¹⁸ through their own state authorities. Consequently, Kant admonishes that a state, as a ‘stem which had its own root’ is a ‘society of men [...] not a possession (*patrimonium*)’ over which others may mandate and dispose (ZeF, AA 8:344). This suggests that he also ascribes Peoples consolidated in states a *dignity*. While national sovereignty represents the *birth norm*¹⁹ of international law, a People’s collective claim to self-determination, as its transcendental-logical pre-supposition, represents its basic norm (in a figurative sense of Kelsen’s term; cf. Freiin von Villiez 2021b in Freiin von Villiez 2021a). Normatively preceding the mutual recognition of states as political-legal representatives of their Peoples, the latter is located on a different level of abstraction. Affirmation of the

¹⁸ Reification, whether of individuals or of groups or collective, means denial of their autonomy, hence also their freedom, their status as persons and their human dignity.

¹⁹ This birth-norm is juridified for the first time in the Briand-Kellogg Pact (27.8.1928) (RGB1. 1929, 97/ UN-Satzung von 1945; Ipsen 1999b, §2, 51/Ipsen 2024 §7, 31/Epping 2024, §7, 31), the ideas of the latter reverberating in the Friendly-Relations Declaration (1970), which spells out the implications of legal settlement through peaceful conduct for sovereignty and self-determination.

uncircumventable *basic norm* of international law: *The claim of self-constituted Peoples to self-determination is to be respected* (similarly Kant's PA2) recognises this foundational dignity of a People; this recognition seeks realisation through positive-legal juridification, i.e. through the positive legal *birth norm* of international law: *The sovereignty claims of state-authorities designated by their constitutive Peoples to realise their collective self-determination are to be respected* (similarly Kant's PA5 and 2. Definitive Article).²⁰ From an autonomist perspective, the justification of national and of international law is thus exclusively conceivable based on a mutual recognition as individual and collective legal subjects and the ensuing claims to self-legislation.²¹ In expression of its state-precedent character, collective self-determination is codified in international law as a so-called *collective human right*, i.e. a human right that can only be collectively exercised, but is irrevocably tied back to individuals.²²

Kant deduces the necessity and legitimacy of law from an abstract analysis of the nature of man as (principally) autonomous and, thus, accountable being and from concomitant legally relevant concepts. Law is the only instrument that can reliably secure dignity (and, *a fortiori*, stable peace), the only alternative for coordinating human coexistence being violence; the touchstone for its dignity-protective quality is aptness for being considered self-given, i.e. for permanently affording the positing of legitimate ends, ends that can coexist with the ends of all others.²³ It is 'the embodiment [*Inbegriff*] of the conditions under which the choice of one can be united

20 This principle follows analytically as annex to the supreme authority of the lawgiver, which steps into being with his authorisation. Just as the latter, it is an *a priori* implication of any idea of legal association – be it civil constitution or that of international law – as such, as 'a concept of practical reason' which, 'although it cannot be *adequately* supported by any example in experience, still none must contradict as a norm'. (RL, AA 6:372).

21 Kant's remarks allow both factual and counterfactual interpretations of domestic self-legislation. This vagueness is intended and owed to his distinction between form of sovereignty, i.e. 'the person(s) exercising supreme authority' and form of government, i.e. 'the way in which the state, setting out from its constitution [...], makes use of its plenary power'. (ZeF, AA 8:352). His insistence that the republican constitution is not a democratic constitution is not inconsistent. Reason – just like truth – is not a function of majorities, wherefore the enlightened monarch is as good according to Kant as would be an enlightened electorate. On the international level, this indeterminism allows legal recognition of Kant's enlightened monarchies or Rawls' 'benevolent absolutisms' (Rawls 1999, 4). While one could argue that the international law figure sketched above cannot be consistently carried through without procedures of periodical individual confirmation, i.e. some form of individual suffrage on the domestic level (Freiin 2019; Freiin von Villiez 2003), Kant's criteria for the legitimacy of law(s) – publicity-suitedness, logical consistency, etc. – ease the tension arising for a theory hinged on self-determining Peoples (e.g. ZeF, AA 8:381; WA, AA 8:39f.; TP, AA 8:304).

22 UN-Charter and UN Human Rights covenants 1966 (Fastenrath and Simma 1998, pp. 25–40).

23 The obligations implied in Kant's concept of dignity reflect legitimate individual and collective interests, satisfaction of which promotes domestic and international peace. This thought also

with the choice of another in accordance with a universal law of freedom', for which reason alone individual and collective liberty is limited 'in its idea [...] and may also be limited in fact by others' (RL, AA 6:230, 231). The factual legislator's and law's authority to protect individuals and collectives against violations of their dignity, i.e. *reification*, needs must rest on 'a natural law'. By virtue of being recognisable 'as obligatory *a priori* by reason even without actual external lawgiving', a natural law has the character of a transcendental-logical presupposition, which distinguishes it from such external laws 'that do not bind without actual external lawgiving' (RL, AA 6:224). As necessary conditions of the possibility of international law, the basic norm and the birth norm of international law following therefrom, while striving for codification, bind even before being codified. In the service of dignity, they supply the elementary norm-formulations of the 'universal principal of law' [*allgemeines Rechtsgesetz*] RL, AA 6:231) for the relations between individuals and collectives which 'can at all influence one another' (ZeF, AA 8:349). Their translation into positive legal rights and duties, while subject to circumstance and necessity, must always be directed by their function as the guardians of dignity and the requisite securing of equal autonomy and sovereignty. This imposes normative baselines on international law in delineating ends that Peoples *must* will if they are to *factually* prove autonomous and equal, i.e. *worthy* of their dignity; in doing so, it circumscribes such duties implied by moral personality²⁴ as must be legally accommodated through the law-giver's administration of external and internal sovereignty, both of which are entwined and implicated in the positive-legal status of a state. In a political-scientific sense, external sovereignty denotes the general integrity of a state's recognised boundaries, while in a legal sense, it denotes a state's *international law immediacy*. Internal sovereignty, in contrast, denotes the power of national self-organisation, resp. its *constitutional-autonomy*. Recognition of a state-like entity as a state according to international law endows this entity with so-called jurisdiction-competency [*Kompetenzen-Kompetenz*] – the entitlement to act as originary (or autonomous) subject of international law with unconditional international law subjectivity. It, in other words, designates this entity as international-law immediate [*völkerrechtsunmittelbar*] and constitutional-autonomous [*verfassungsautonom*], thus confirming the fundamental legal power of the state authority to defend its constitutive people and

underlies Rawls' notion of primary social goods from TJ and of satisfied Peoples (e.g. Rawls 1999, §5, p. 47).

²⁴ That, how and which intra- and inter-societal civic duties for Peoples and their individual members can be deduced from collective moral personality shall be demonstrated in a subsequent publication.

territory against external incursions and to organise the political-legal order on its territory.²⁵

2 Reification through Forcible Foreign Interference

The general independence of states from the will of other states as established in international law is given protected status by Kant with his designation of sovereignty as presupposition for international law in PA5 and at the same time confined through its inherently reciprocal nature. Sovereignty, also for Kant, comprises international-law immediacy as well as the state's ensuing fundamental legal sovereign powers to defend its constitutive People and territory against external incursions and to organise the political-legal order on its territory. His explications regarding *ius ad bellum*, *in bello* and *post bellum* in §§56–58 of the *Doctrine of Law* indicate that reification through forcible interference of other states or Peoples is hereby normatively strictly precluded. Thus, he disallows victorious states a political-legal extinction of defeated states through colonisation – even in their battle against an ‘unjust enemy’ (RL, AA 6:349), because such annihilation of a state's sovereign existence would represent an ‘injustice against [its constitutive] People’, would dispossess it of its incircumventable right to self-constitution and, thus, of its dignity (RL, AA 6:349). It would both deny the very transcendental preconditions of international law (esp. PAs 1, 5) and be contrary to international law itself according to the 2. Definitive Article (ZeF, AA 8:354). Thus, disempowerment even of the unjust enemy must never aim to abolish its state power but merely enable its constitutive People to ‘adopt a new constitution that by its nature will be unfavourable to the inclination to war’ (RL, AA 6:349). Kant's further remarks in the same context suggest that the ‘original right of a People’ (RL, AA 6:349) also prohibits economic and cultural elimination of an unjust enemy through annexation, thus anticipating the legitimate claims attached to self-determination in contemporary international law (Freiin von Villiez 2021b). Conversion of defeated states to colonies or provinces is equally impermissible – even if the respective People be granted ‘its own constitution, legislation, land’ and, thus, be ‘governed by itself (by its own parliament [...])’, withal ruled by its ‘mother state’; because ‘through the conquest of their country’ its subjects would ‘lose their civil freedom’ and be ‘degraded to bondsmen’ (RL, AA 6:348). Kant defines the unjust enemy from the perspective of international law as a party that

25 See also Ipsen ⁴1999a, §2, 37; Epping 1999, §5, 55f/Epping 2024, §7. While the dualistic legal doctrine confirms the general normative dependence of sovereignty claims to self-determination claims, the monistic legal doctrine seems to dangerously subvert the same.

breaches public contracts – be they explicit or based on convention – *a fortiori* violates the preliminary articles. Its ‘publicly expressed will (whether by word or deed)’ to do so ‘reveals a maxim by which, if it were made a universal rule, no condition of peace among Peoples would be possible, but instead a state of nature would be perpetuated’. (RL, AA 6:349) Although for want of a coercive international judicative such violations can only be empirically established, they threaten the liberty of all Peoples, thus giving them reason to unite against such mischief (RL, AA 6:349). Kant, thus, apparently allows for *surrogate action* – even preventively – in addition to defence of allied peace unionists (RL, AA 6: 348), but either must content itself with stopping aggression and refrain from further interference in other Peoples’ domestic affairs.²⁶

Clearly, this entitlement to preventive measures also applies to *covert* aggression. Digital attacks on, or physical sabotage of, foreign infrastructure – such as the deliberate damaging of undersea cables through Russian or Chinese shadow fleets or the disturbing of GPS signals over the Baltic Sea – also constitute forcible interference, for which reason they are rightfully labelled hybrid *warfare*. Even when such damage is not incurred on foreign sovereign territory, but on *res nullius* – the high seas and its airspace – it violates explicit agreements securing the shared, peaceful utilisation of the high seas.²⁷ As violations of all nations’ equal right to peaceful utilisation of a *res communis*, such acts ‘concern the affairs of all Peoples’ (RL, AA 6:349) and can, as other acts of covert warfare, even be subsumed under PA6: ‘No state at war with another shall permit itself such acts of hostility as must make mutual confidence impossible during a future time of peace [...]’. (ZeF, AA 8:346) By destroying faith in the principal respectability of the enemy’s mind-set, such practices, if admitted, would ultimately issue in a ‘war of extermination’ (ZeF, AA 8:346). As all parties to a conflict will habitually claim to be in the right, this again also holds for action against the purportedly unjust enemy, for the ensuing contradiction could only be legally resolved through the binding verdict of a superior court; and even then, one might add in Kant’s spirit, such verdicts merely settle legal disputes rather than ascertain irrefutable truths. Aside direct violent action, such as ‘employment of assassins (*percussores*), poisoners (*venfici*), breach of capitulation’, Kant also lists ‘the instigation of treason (*perdullio*) within the enemy state’ (ZeF, AA 8:346). The notorious difficulty of ascertaining the latter with certainty is reflected in the dissent regarding Russia’s covert agitation in Ukraine preceding its – allegedly protective – invasion as well as in counter-claims about Western instigation of the Orange Revolution. Providently, Kant strictly restricts proxy interference in foreign state’s

²⁶ Thought provoking in this context Merkel 2022.

²⁷ The idea of the high sea as international territory was first systematically formulated by Grotius 1609 and is covered by Art. 87 SRÜ (Heintschel v. Heinegg 2024, §45).

unsettled domestic strife with PA5 and states that also the ‘evil example’ another state’s behaviour might give is no lesion, but must be tolerated ‘as *scandalum acceptum*’, where any interference would itself constitute violation of an independent People’s rights and, thus, ‘threaten the autonomy of all states’ (ZeF, AA 8:346f.).

3 Reification through Non-Forcible Foreign Interference

International law’s *raison d’être* consists in guarding the dignity of Peoples through assuring the equal independence of their states and, by doing so, promoting peace. By outlawing forcible interference in other Peoples’ domestic affairs, it seeks to protect them from reification in violation of their dignity. While aiming at perpetual peace, international law suspends those nations in a state of latent *juridical war*, for which reason the provisions of PA6 for *ius in bello* reach beyond forcible interference. Kant’s ‘original right’ of a people ‘to unite itself into a polity’ (RL, AA 6:349) also prohibits reification through *non-forcible* foreign interference. Media campaigns to manipulate foreign elections or policy decisions are the most obvious current examples of such interference. Although technological advances clearly facilitate reaching and mobilising large numbers of people, the principle and practice of such non-forcible foreign intervention are probably as old as strife between nations, monarchies or tribes; and whereas recent studies suggest the factual influence of digital interventions to be rather limited, the financing of *transnationally active NGOs* seems to constitute a much more problematic – *qua* systematic long-term, at the same time largely untransparent – foreign interference. Despite its *prima facie* innocuous appearance, it represents a variant of cold war agitation through infiltration of popular movements (e.g. hijacking of the European 60s student revolts, peace and anti-nuclear movements through the Soviet Union) that jeopardises national independence by covertly manipulating an electorate’s public opinion to serve a foreign ideological or economic agenda. Even when directed by private, allegedly philanthropic, foreign actors, it treats electorates as pure means to (an)other’s end and violates collective dignity in much the same way that lying does on the individual level. The boundaries between legitimate influencing of opinion through liberal exchange of arguments and illegitimate manipulation or agitation are notoriously blurred and contested. As democratic legitimacy rests on the transparency and independence of deliberation-processes, one could draw the line where state or

private actors – overtly or covertly – *systematically* intervene in processes of a foreign electorate's political will-formation.²⁸

4 Self-Reification

Kant's theory also normatively precludes collective *self-reification* through voluntary conflation of sovereign states to one single world-state or dissolving into a regional supranational entity, as can be extrapolated from his arguments for a 'permanent congress of states' (RL, AA 6:350).²⁹ This congress, he explicitly confirms, is 'a

28 Practices of reification through systematic manipulation of electorates by their *own* governments are, unfortunately, no longer restricted to authoritarian regimes but increasingly also an issue for properly democratic states, as exemplified by the so-called 'Ampel-Regierung' (traffic light government, *qua* 'red-yellow-green') of Germany. Preceding the 2025 elections, several NGOs and trade unions organised marches against the political opposition, where they indiscriminately accused all conservative forces – including the Christian Democratic Party (in particular the soon to be chancellor Friedrich Merz) and the Free Democrats – of right-wing extremism. The vested rights of individuals and organisations constituting the so-called 'Zivilgesellschaft', i.e. a state's civil society, to expose potential encroachments on their civil liberties by their political authorities, and to demonstrate for their own political opinion are among the very touchstones for democratic states. These essential instruments for the critical monitoring of political power are, however, invalidated when the – allegedly *non-governmental* – NGOs (or similar agents) that (directly or indirectly) organise such protest marches actually turn out to be financed by the government in power or their ministries. Following this insight, the pre-election demonstrations were criticised by constitutional law experts as state financed activities aimed at manipulating public opinion against the political opponent – an anti-constitutional practice, in particular preceding elections. It violates legal principles that prohibit the authorities in power from autocratically utilising their state's infrastructure and revenues for promoting their party agenda and fortifying their political power against the opposition. These marches were celebrated by the government as manifesting the rightful concerns of the electorate, and they were even frequented by some high-ranking politicians. In light of the subsequently uncovered financial entanglements, however, they rather indicate a top-down instigated manipulation of public opinion in the service of the government parties' ideologies. The latter erases the distinction between political authorities on the one hand and civil society on the other in democratically critical processes of public opinion formation. The neutralisation of this distinction moreover invalidates an instrument of civil monitoring critical for protecting citizens against encroachments by their political authorities. Adding to these concerns, some constitutional law experts worry that recent legal developments indicate a transformation of civil rights from instruments for protecting citizens against encroachments by the state to instruments for protecting the ruling authorities from inconvenient critique by their citizens, fortified with a politicisation of law in the service of the government's ideological agendas. In the process, the state is more and more legally identified with the ruling government, thereby erasing the crucial distinction between the office and the person. Common to all of these developments is their delegitimising potential for the democratic state in theory and in practice. For details cf. e.g. Boehme-Nessler 2025a, 2025b; Drucksache 20/15035.

29 For a detailed discussion and justification, see Frein von Villiez 2021b.

voluntary [*willkürliche*] coalition of different states which can be dissolved at any time, not such a conjunction which [...] is based on a constitution and can therefore not be dissolved', and therefore, the form of organisation 'by which alone the idea of a public law of Peoples, for deciding their disputes in a civil way, as if by lawsuit, rather than [...] by war, can be realised'. (RL, AA 6:351)³⁰ A People which is either coerced into such a conglomerate mega-state by a victorious universal monarchy or enters it voluntarily, is stripped of, or renounces, two key capacities of its legal embodiment qua representative state: its immediate status within international law and its critical, constitutive sovereign capacities. Such an act would revoke its collective autonomy as one equal polity amongst others. Apart from representing a self-contradictory legal figure much the same way that individual self-enslavement does, a People voluntarily entering such conjunction would thus deny its own dignity. It would, moreover, commit an act that oversteps its authority.

Norm-logically, the state is not the result of a *factual* founding act. The factual act, 'by which a People forms itself into a state' (RL, AA 6:315) is law-constitutive only by virtue of the *counterfactual* idea of an *original contract*, i.e. as 'the idea of this act, in terms of which alone the legitimacy of a state can be thought' (RL, AA 6:315). As Kelsen convincingly demonstrated, the validity and *normative authority* of legal orders can only be justified, and so legitimised, by a properly normative syllogism (Kelsen 1934, §34 (g)). States acquire legal force only because they ground in this normative and norm-establishing idea of a counterfactual ideal social contract; this original contract is their *basic norm*. In Kant's conception of an original state-validating contract, the state – the function of which is to effectively secure everyone their right – is, as argued above (1), irrevocably tied to the collective legislative will of each individual to that state. Each norm-subject individually 'has relinquished entirely his wild, lawless freedom in order to find his freedom as such undiminished, in a dependence upon laws, that is, in a legal condition; since this dependence originates from his own lawgiving will'. (RL, AA 6:316) With respect to this lawgiving will it is, however, crucial to understand that Kant's notion of the constitutive People is one of a *continually persisting entity* in Renan's sense (cf. Renan 1995).³¹ Peoples in time and space are but representatives of their respective abstract ethnic groups, as is revealed by Kant's explicit use of the term 'Stammvolk (gens)' to

³⁰ While the UN are regularly cited as example, Kant's idea of democratic peace would presumably preclude the latter in its current form and rather apply to NATO as a defence and resistance alliance.

³¹ Rawls' institutional duty to intergenerational justice also builds on this non-voluntaristic notion of a constitutive people and counterfactual will to the state as basis of legal bindingness. This does not contradict Renan's plébiscite de tous les jours. For Rawls on sovereignty and self-determination, see Freiin 2019; Freiin von Villiez 2021c; on the difference between representing the transgenerational people and representing the electorate in Rawls and beyond, see Ferrara 2023.

signify a ‘(presumptive)³² inherited union’ (RL, AA 6:311). The German terms he uses not only clearly indicate the non-voluntaristic character of his concept of People (although they do not predefine the specifics of membership (1)), but moreover suggest the People as ‘the entire mass of subjects’ (RL, AA 6:329) to be a *counterfactual* factor. Likewise, concrete states are merely temporal legal embodiments of the abstract will of their diachronic Peoples to legal association (see RL, AA 6:313f.; similarly Pinzani 2008, 231). From a legitimation-theoretical perspective, the foundation or disbandment of the state is not authorisable through the summary will of a temporal constituent People, but a function of the abstract ‘general will of the People’, which ‘has united itself into a society which is to maintain itself perpetually; and for this end it has submitted itself to the internal authority of the state’ (RL, AA 6:326).³³ Established states as representatives of this general will *shall continue* to exist. This embeddedness of legal functions in perpetuity is not only inherent in Kant’s conception of People and state but also reflected in international law, in the designation of the people’s right to self-determination as a *collective human right* – i.e. a fundamental individual right that withal can only be exerted by a collective in light of the perpetuity of all other such collectives. To ward off arbitrary claims, general entitlement to self-determination is thus flanked by restrictions such as an explicit reference to decolonial processes and the securing of stable political boundaries by means of the *uti possidetis* principle (Gloria 1999, §23, 73).³⁴ Where *uti possidetis* as a ‘particular manifestation of the principle of effectiveness initially [means] the international legal recognition of factual possession at the moment of the cessation of hostilities or the peace settlement’, it is ‘primarily understood as guarantee of vested rights in the sense of a guarantee of the territorial integrity of states’ today (Gloria 1999, §23, 73). The justificatory reason for this practice, however, is exactly *not* the *factual* will of states to retain power over their boundaries, but rather the implications of a normative precept of dignity carried by the counterfactual justification of law. The mandate for founding or disbanding a state does not inhere in a factual government nor in a factual constitutive People but in their abstract entirety persisting throughout history. This is the very reason why colonialism is considered a violation of a People’s right to autonomy, and its abolition a restoration of justice. Based on a

32 Kant’s wording ‘anmaßlich’ is ambiguous. It can imply an assumption, presumption or a pretention. In his time, it can also mean ‘rightful according to one’s own opinion, justified only by self-claim, allegedly’ Grimm and Grimm (1965-2018) ²DWB Band 2, Spalte 1173, Zeile 13 [Petermann].

33 Kant clearly distinguishes between the state and a People (e.g. RL, AA 6:348). Perpetual preservation implies the non-transferability of core-sovereignty rights in contrast to reflexive-sovereignty rights, as the former are integral to securing factual dignity (Freiin von Villiez 2021b).

34 For a discussion of the legal problematics, see Murswiek 1993.

counterfactual understanding of these concepts, however, not even referenda could validate core-sovereignty transfers. For Kant, both state and People are *diachronic concepts*, the former's continued existence being secured by the principle of sovereignty, the latter's by the principle of self-determination. Without their diachronic – noumenal – identity, a distinction between the legitimacy of a state and the legitimacy of its government would not be intelligible nor would it make sense to speak of the historical responsibility of a state or a People in remediating past injustice. The properly diachronic understanding of these entities restricts not only what a temporary supreme lawgiver may rightfully decree but also what ends a temporary People may rightfully pursue (and how) by ascription of responsibility to maintain that People's dignity in compatibility with that of all other Peoples throughout history.

With his inextricable interconnection of People and state and, consequently, of self-determination and sovereignty, Kant provides a baseline of defence against unilateral absolutisation of one aspect at the expense of the other. Kant's legal concept of dignity attaches to individuals and collectives by virtue of their moral personality, i.e. as *noumena*, rather than being tied to their biological existence in history.³⁵ The normative dignity of an individual or collective moral person and the validity of the requirements implied by this concept as explicated above, *ergo*, are not at the free disposal of their embodied representatives. As bearers of this dignity in space and time, the latter are obligated to act according to what dignity demands. To what extent they prove themselves *worthy bearers* of this dignity by acting in accord with its implications is an entirely different, *empirical* question.

5 Conclusion

Kant's aim of promoting peace by securing the dignity of Peoples requires legal assurance of equally independent states grounded in self-determination, which will guard them against reification through their own authorities (1), open or covert foreign aggression (2), systematic manipulation (3) and self-reification (4). Sovereignty rights are irrevocably grounded in the claim to collective self-determination – both in Kant and in international law. The 'practicability (objective reality)' of his blueprint for international law in form of the *foedus pacificum* grounds in its *non-moralistic* basis (ZeF, AA 8:356). The proto-legal principles spelled out in the preliminary articles – general trustworthiness or steadfastness and a sense of honour – and ensuing necessities inhere in the reason and

³⁵ This is also the very reason why Kant's justification of capital punishment does not contradict his idea of human dignity.

logic of law just like the *pacta sunt servanda* principle does. The problem of establishing legal relations between nations is just as comprehensible and, thus, solvable, as the problem of ‘setting up a state’ – ‘even for a People of devils (so long as only they possess wits)’ (ZeF, AA 8:366), as it does not require a good or moral disposition, but merely rationality in light of self-preservation.

Both in Kant and in international law, a state power’s primary function and, thus, foremost duty is to protect the individual and collective dignity of its constitutive People, i.e. autonomy and sovereignty, by defining and asserting equal spheres of individual and collective freedom within a legal framework, which enables compliance with dignity’s demands. Most basically this involves protection against reification through external interference and manipulation or self-reification by means of domestic and international law in a union of republican states committed to peace and justice. The principle of self-determination – both in international law and in Kant – grounds in the normative dignity of a diachronically conceived People and state. This is why Peoples must neither be deprived of their enduring political, economic, social or cultural existence as a People (including possession of their own natural resources), nor voluntarily relinquish their political, economic, social or cultural self-determination. While Kant’s conclusion results from a logical analysis of the function of law in application to diachronic concepts of People and state in light of the *conditio humana*, it is inherent in the fundamental affects, attitudes, ideals and aims of liberal democracies. Understandably, then, Russia’s allegations regarding minority rights, self-determination and threats to its sovereign borders arouse indignation. However, (1) while human rights are *per se* universal, the exertion of *political rights* is for good reasons tied to citizenship. Legal residence in a foreign state does not ground political rights (unless expressly granted by that state). Even less does the mere fact of legal residence on another People’s territory entail claims to secession, for this would not only render international law meaningless in practice (even if *uti possidetis* might in some cases be contestable), but – in unravelling the intimate interdependence of self-determination of Peoples and sovereignty of states diachronically conceived – would contradict the inherent reason and logic of law in theory.³⁶ (2) Kant’s ‘law of peace’ has three components, the right to: ‘*neutrality*’, ‘*guaranteed* perpetuation of peace-compacts’ and ‘an alliance’ for ‘common defence against any external and internal attacks’, though ‘no league for attacking others and adding to their own territory’ (RL, AA 6:349). Ukraine is not guilty of a first strike, its Russian minority does not have rights to secession, and NATO has not attacked Russia, wherefore Russia’s war on Ukraine can be considered a war of aggression. Cool reason discerns Russia’s invasion of Ukrainian territories as a clear breach of

36 On theory practice and practice of secession e.g. Pavković and Radan 2016.

the most sacred principles – indeed the very transcendental presuppositions – of international law and, in this, a blatant violation of the Ukrainian People's dignity.

As unfounded as the Russian justificatory rhetoric may be, the polarisation within Western societies only confirms the deep emotional embeddedness of a Kantian concept of dignity and of the conviction that equal dignity as practically manifest in self-determined sovereignty must be legally armoured for the sake of peaceful co-existence. While disagreeing whether dignity is being violated or restored by the Russian aggression, both sides – if consciously or *volens* – agree on the irrevocability of the principle of national sovereignty as juridical manifestation of the self-determination and, thus, dignity of Peoples. Without mutual recognition of sovereignty, no legal relations between states that could replace their recourse to violent solution of conflicts. This is why sovereignty matters.

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 Refl. Reflexionen [Reflections] (AA 14–19).
 TP Über den Gemeinspruch: Das mag in der Theorie richtig sein, taugt aber nicht für die Praxis [On the common saying: That may be correct in theory, but it is of no use in practice] (AA 08).
 WA Beantwortung der Frage: Was ist Aufklärung? [An Answer to the Question: 'What is Enlightenment'] (AA 08).
 ZeF Zum ewigen Frieden [On Perpetual Peace] (AA 08).
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