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National State, Postnational Constellations and democracy: Kant after Habermas?

The present paper looks into the recent texts of J. Habermas¹, which serve as a critical “commentary” of the present conjuncture of the so-called globalization. Avoiding both its uncritical doxology as well as its “autistic” demonology, Habermas’s attitude vis-à-vis globalization and more specifically, vis-à-vis the democratic content of today’s “postnational constellations” – to use his own term – is characterized by moderation and restrained optimism. The Habermasian source of hope regarding the physiognomy of the present “post-Enlightenment” era is paradoxically supplied by the Enlightenment tradition itself, and particularly, by Kant’s famous text, “Perpetual peace”².

For Habermas, the present networks of the global markets could be the conditions of the possibility of a cosmopolitan law and therefore, of a perpetual peace, as Kant envisaged it, provided a transnational constitution strengthening our democratic institutions as well as a legal Charter of Human Rights are instituted.

Yet, the following questions arises: could today’s globalization be identified with the cosmopolitan law anticipated by Kant? Moreover, are both the so-called “postnational constellations” and the present Declarations of Human Rights sufficient and necessary conditions of bringing about the “perpetual peace”?

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¹ I mainly refer to the following recently published texts: J. Habermas, *Die Postnationale Konstellation: Politische Essays*, Suhrkamp Verlag, Frankfurt am Main 1998 (J. Habermas, *Postnational Constellation: Political Essays*, in M. Pensky (ed. by), Polity Press, Cambridge 2001), and J. Habermas, *Die Einbeziehung des Anderen*, Suhrkamp Verlag, Frankfurt am Main 1996 (J. Habermas, *The Inclusion of the Other*, in C. Cronin, P. De Greiff (ed. by), Cambridge University Press, Cambridge MA 1998).

² I. Kant, *Perpetual Peace: A philosophical Sketch*, in H. Reins (ed. by), *Kant’s Political Writings*, Cambridge University Press, Cambridge 1970, pp. 93-131.

The present paper will maintain the opposite: at present, not only did the universal discourse of human rights fail to be the catalyst of the democratization of our “cosmopolis”, but on the contrary, it often seemed to be a reasonable and lawful pretext for the “humanitarian interventions” – oxymoron it might sound – with intent to export democracy by means of bombing.

Hence, Habermas’s appropriation of the Kantian cosmopolitan Law fails to be an “enlightened” reminder in a post-Enlightenment but rather unenlightened era. It runs the risk, by contrast, to legitimate unwillingly the present conjuncture.

The paper will attempt to demonstrate that if there is anything in which the relevance and re-appropriation of Kant’s political thinking consists, that might be its critical edge against globalization and its status as an axiological yardstick assessing today’s political practices. The concept of the Cosmopolitan Law, especially developed in Kant’s text *The Metaphysics of Morals*³, contains an anti-paternalistic or – even more so – anti-imperialist dimension sustained both by Kant’s theory of property as well as by a somewhat peculiar conception of the social contract.

In what follows, I will take the following steps:

First, I will expose Habermas’s argument, mainly developed in his *Postnational Constellation*, about the possibility and the ways of safeguarding and preserving the democratic potential of the nation-state after its decline and fall within the “postnational constellations”. The proposal he puts forward points to the necessity of a European Constitution as well as a Human Rights Chart as the only viable means of preserving the democratic achievements of the modern national state. Furthermore, for Habermas this is the only way of re-reading, re-translating and realizing Kant’s cosmopolitan law as guaranteeing perpetual peace today.

Second, I will attempt to disclose a different dimension of the Kantian political thought, articulated in his *Metaphysics of Morals*, which by developing a different account of the concept of property, contract and *jus ad bellum*, points to an “anti-empire” argument sustained by his account of the idea of Humanity. Paradoxically, Kant becomes more “modern” than Habermas insofar as he no longer remains trapped in the narrow frame of a republican national state as the sole guarantee of cosmopolitanism.

³ Id., *The Metaphysics of Morals*, Cambridge University Press, Cambridge 1996.

1. Democracy and the modern nation-state.

In post-war Germany every talk about nation was far from obvious. The concept of nation most often fell victim to an informal censorship, governed by fresh memories of horror: fascism, genocide, Holocaust. And that is because the nation had been identified with the *Volksgeist*, i.e., the Spirit of the People whose *raison d'être* had been considered the historical continuity founded upon the common descent and language.

Nevertheless, Habermas dares to approach the issue of nation from a diametrically opposite standpoint. For Habermas, the nation, like the Roman God Janus, has two faces or interpretations, the relation of which, although seemingly contradictory, is in fact, dialectical, that is, each interpretation contains within itself its opposite. Each derives its identity via its negative. Thus, the concept of nation refers not only to the imaginary, quasi-organic whole of the like-minded people who share the same descent and language but also to the legal construct of the so-called nation of citizens. It is not only “the usual suspect” behind the most atrocious crimes against humanity but also the motivating force of the insurrections and revolutions of all those who had been oppressed by various Empires. As Hardt and Negri pointedly observe in their book, *Empire*: “It appears that whereas the concept of nation promotes stasis and restoration in the hands of the dominant, it is a weapon for change and revolution in the hands of the subordinated”⁴.

Yet, according to Habermas’s interpretation, the former interpretation completes rather than contradicts the latter. Thus, nation is a modern Janus to the extent that its cultural perception as the “spirit of the people” becomes a sort of solder, that is, the functionalist presupposition of solidarity between strangers whose only *locus communis* is their co-belonging to a state. Nation as the imaginary community of all those of the same descent and “destiny” becomes therefore the first modern mechanism of social integration and cohesion for the members of the national republican state, which guarantees their rights as men and citizens.

Habermas claims that the idea of a constitutional and self-governed republic as the political correlate of the legal and to a major extent philosophical ideal of the autonomy as self-legislation, has been realized historically within the context of the modern nation-state and has been the flesh and blood of the American and the French Revolution⁵. Admittedly, “not all nation-states were, or are, democratic; that is, constituted according to the principles of an association of self-governing free and

⁴ M. Hardt, A. Negri, *Empire*, Harvard University Press, Cambridge MA 2001, p. 106.

⁵ J. Habermas, *The Postnational Constellation and the future of Democracy*, in M. Pensky (ed. by), *The Postnational Constellation*, cit., pp. 60-61.

equal citizens. But wherever democracies on the Western model have appeared, they have done so in the form of the nation-state”⁶.

How and why is this the case?

In his *Postnational Constellation*, Habermas attempts a detailed exposition and analysis of the necessary presuppositions of democratic governing and control. These are the following:

First, the so-called administrative state in the form of positive law which consists, on the one hand, in the state’s power to levy taxes while on the other, in the legitimate use of force⁷.

Second, the state’s territory. That means that the membership in a state should also be viewed in terms of territoriality. In Habermas’s words: “Within the borders of the territorial state the population of a state is defined as the potential subjects of self-legislation, as democratically united citizens, while society is defined as the potential object of their control”⁸. Moreover, the state’s territory distinguishes between foreign and domestic policy, foreign and international relations⁹.

Third, the nation. The democratic government, according to Habermas, can only be realized when the state population transforms itself into the nation-state, the nation of the citizens, i.e., the “people” who decides over his/her future. The political awareness and mobilization of the above subjects is, therefore, supported by a new form of collective identity, which is called “nation”. The symbolic construction of “the people”, the imaginary reality of “the nation” as founded upon the common origin, language and history is what brings about the solidarity between strangers and the sole means of transforming a so far abstract and legal property, that of the state membership, into a solid cultural identity. In Habermas’s own words: “While remaining strangers to one another, members of the same ‘nation’ feel responsible enough for one another that they are prepared to make ‘sacrifices’ – as in military service or the burden of redistributive taxation”¹⁰.

Fourth and final, the realization of free and equal legal subjects can only be completed via the democratic constitutional state. The latter is not only created but also legitimated by the people via procedures of a democratic will formation, the guiding principle of which is the following: the author of the law is at the same time the addressee of the law¹¹.

However, the question that inevitably arises at this point concerns the

⁶ Ivi, p. 62.

⁷ Ivi, p. 63.

⁸ *Ibidem*.

⁹ Ivi, p. 64.

¹⁰ Ivi, pp. 64-65.

¹¹ Ivi, p. 65.

extent to which the discourse of the nation-state as the sole political and cultural guardian of democracy and its attendant institutions, such as, the rights of Man and Citizen, the public sphere and the 20th century post-war welfare state, is simply an anachronism. And if the modern nation-state is the sole terrain upon which democracy realizes itself, what can compensate for the loss of the latter provided the gradual decline of the former? Would it suffice a nostalgic appeal to or a resuscitation of the national state? Would it suffice a sort of entrenchment in the reified shell of an era irrevocably gone? Or could it be claimed that there are other possibilities of safeguarding the democratic achievements of modernity in a different shape and form? It is precisely to these questions that Habermas's late corpus attempts to respond. Before elucidating his strategy, in the next section I will give a brief account of Habermas's diagnosis of the spirit of own time.

2. Globalization and the end of the national state: A democratic deficit?

Habermas makes use of the term “globalization” for delineating a process rather than a fixed and static state of affairs, a sort of final stop of history's itinerary¹². If the hallmarks of the 19th century – amidst modernity – are the rail, the locomotive and the telegraph, the emblem of the present conjuncture is the net. If the above 19th century achievements, which, to be sure, become the most eloquent metaphor of the ideology of progress or its illusion, accelerated tremendously the trading of commodities by changing radically the sense of time and space, today's immaterial and smooth networks need no longer to confront time and space simply because they eliminated it. They gave it pray to the virtual reality. And if the most representative image of the 19th century metropolis which inspired the most prominent authors of that age – from Victor Hugo to Baudelaire and Proust – is that of the crowd as the sum total of monads rather than a collectivity, as an automaton which streams into the streets empty from thoughts with the sole concern not to impede the traffic¹³, our own *Zeitgeist* is rather represented by the immaterial reality of the electronic junctions as the sites of trading inanimate and animate commodities.

For Habermas, the present state infringes upon the four above pillars

¹² Ivi, pp. 65-66.

¹³ For an excellent interpretation of the “crowd” as the hallmark of the radical change of experience brought about by modernity, see Walter Benjamin's texts, in particular, his *On some Motifs in Baudelaire*, in H. Arendt (ed. by), *Illuminations*, Schocken Books, New York 1968, pp. 165-176.

of democracy, which have been indissolubly interwoven with the modern national state.

Insofar as the public administration is concerned: the free movement of capital, goods, services and humans reduces dramatically the state's capacity to levy taxes upon which its survival depends. According to Habermas, the neoliberal inspired slogan "less state" has to do more with the dire necessity and to a major extent uncontrollable capital mobility which has long since broken into the national borders than the usual reproaches against an inflexible bureaucracy¹⁴. The most dramatic consequence of that was the gradual elimination of the welfare state, which, for Habermas, was one of the most significant achievements of the postwar national states mixed economies¹⁵.

With respect to the state's territory, Habermas makes the following remark: although the above remains formally intact, the interrelations and interdependences brought about by globalization virtually undermine the possibility of mapping out a national policy while they gradually tend to be replaced by international organisms, such as the World Bank, the World Trade Organism, the International Monetary Funding, ecc.

Regarding nation: if the nation is both a symbolic construct and the factual substrate, i.e., the *raison d'être* of the solidarity of the citizens of the democratic constitutional state, the question arising concerns the possibility of securing and preserving the solidarity in question in the present multi-cultural societies. The enormous immigration explosion set off by the free movement not only of inanimate but also of animate commodities such as the living labor power altered the anthropogeography of the globe to such an extent that the common descent and language as the very foundations of nation and national consciousness are no longer at issue. Anticipating the Habermasian response which will be developed in the next section, one could justifiably ask whether or not the national consciousness governed by the common origin, language and doxa becomes the sole means of solidarity among citizens who are otherwise strangers among each other.

Last, the operation of the global financial markets, the transnational neoliberalism of the market, marked by labor flexibility and capital mobility hits hard the quintessence of the democratic, constitutional state which is that of the direct participation of the citizens to the government and legislation. Globalization becomes the gravedigger of politics in the sense of the active involvement of legally free and

¹⁴ J. Habermas, *The Postnational Constellation and the future of Democracy*, cit., p. 69.

¹⁵ Ivi, p. 48.

equal citizens in the public affairs. For that decline of politics in the above sense is not only responsible the structural transformation of the public sphere of citizens into the semantically degenerated virtual reality of the media¹⁶ but first and foremost the “freedom” of the world market which functions as a natural law or a big Other outside and beyond the wills of the individual agents. The anthropological corollary of that global market is a Hobbesian inspired agent who acts on the basis of his own self-interest within the limits of a legally permissible state. Thus, the concept of the Kantian person both as a moral agent acting on the basis of the universal interest as well as a citizen obeying laws he himself has instituted via a process of democratic will-formation is forever gone¹⁷.

3. Postnational Constellations and the legacy of Modernity

Habermas seems however to keep his optimism and exhorts to sobriety. Globalization should neither be uncritically applauded nor anathematized. Paraphrasing the well-known Stalinist doctrine, Habermas writes: “Keynesianism in one’s own country just won’t work any more”¹⁸. A viable solution is neither the unconditional acceptance of the world market nor the resuscitation of the national state¹⁹.

Habermas’s optimism however, derives from two sources: first, the priority he gives to the rules of politics against the “iron laws” of the economy. The second source of his optimism lies in his unshakeable faith in the “unfinished project of Enlightenment” which we ought to complete.

According to the first: for Habermas, the demonology of globalization is mainly governed by the ideological hoax that the latter is inevitable and irreversible. From that perspective globalization is viewed as a kind of post-modern “fate” which, by enjoining the renunciation of the conception of politics as the capacity of man to shape his social relations, it signals the definite abandonment of normative principles and values governing social and political life. In Habermas’s own words:

¹⁶ J. Habermas, *Kant’s Idea of Perpetual Peace, with the Benefit of Two Hundred Years’ Hindsight*, in J. Bohman, M. Lutz-Bachmann (ed. by), *Perpetual Peace: Essays on Kant’s Cosmopolitan Ideal*, MIT Press, Cambridge 1997, p. 124.

¹⁷ Id., *The Postnational Constellation and the future of Democracy*, cit., p. 93.

¹⁸ Ivi, p. 51.

¹⁹ Ivi, p. 81.

“The successful use of political power has to be measured by criteria other than economic ones: money can’t simply replace power”²⁰.

Globalization is not merely an inevitable economic process subjugating liberal democracy.

The second source of his optimism, i.e., his faith in the completion of the “unfinished project of Enlightenment”, sounds rather odd if one bears in mind the definite end of the Enlightenment ideals brought about by globalization and about which Habermas himself seems to be fully aware. How then, is it possible to interpret a post-Enlightenment era by means of Enlightenment arguments? Habermas’s main concern has been the following: Given that the national state as the synonym of democracy has been eroded today by the global financial networks, the only way to secure the democratic institutions putting thereby the uncontrolled move of the global market under control is by arraying the democratic content of modernity’s nation-state in a different form, that of a postnational constellation.

In his article, entitled “Why Europe needs a Constitution”, published in *New Left Review*, Habermas stresses the clumsiness of the attempt to compare the present conjuncture with that of the 18th century in France and America which gave birth to the first Constitutions. For Habermas, the issue is no longer to invent anew but on the contrary, to preserve the great democratic achievements of the European national state beyond its own limits. As he himself writes: “These achievements include not only formal guarantees of civil rights, but levels of social welfare, education and leisure that are the precondition of both an effective private autonomy and of democratic citizenship”²¹.

It is precisely at this point, that Habermas opens a double front: on the one hand, he opposes himself to the neoliberal inspired conception of European Union. According to that, European Union should rely exclusively on a unified European market, and “a common monetary poly overseen by an independent central bank”²².

Habermas claims, however that “the economic advantages of European unification are valid as arguments for further construction of the EU only if they can appeal to a cultural power of attraction extending far beyond material gains alone”²³. The thesis about the material gains and economic advantages as a case for the expansion and reinforcement of the EU is being valid only insofar as it is underlined by a conception of European cultural identity. And it is at this point that Habermas is

²⁰ Ivi, p.81.

²¹ J. Habermas, *Why Europe needs a Constitution*, in “New Left Review”, n.11, 2001, p. 6.

²² Id., *The Postnational Constellation and the future of Democracy*, cit., p. 95.

²³ Id., *Why Europe needs a Constitution*, cit., p. 26.

confronted vis a vis his second front which is that of the Euro-skeptics. According to the latter, since there is no such a thing as European people, a European Constitution can never take place²⁴.

4. From the national consciousness to the patriotism of the Constitution

As mentioned before, from a historical point of view, national consciousness seen as “belongingness” to a community underlined by common history, language and origin, constitutes modernity’s first form of social integration, the very condition of the possibility of social solidarity. Yet, the present reality of transnational formations, such as the European Union as well as the multicultural and multinational cities which corrode, for sure, national “purity”, refutes in fact the above account of nation and inaugurates a new, fluid and incessant formation process of new collectivities and identities²⁵. The question that inevitably arises concerns, therefore, whether or not the solidarity of citizens otherwise strangers to each other could realize itself only within the context of the national state. Habermas’s answer is “no”. This is so for the following two reasons:

First, any reference to nation as the sole birthplace of political solidarity fails, for Habermas, to perceive the voluntarist and constructivist character of the nation of citizens which takes place neither before nor independently of the democratic process which brings it to light. That political account of nation as opposed to an ethnic-cultural account is precisely what gives birth to the democratic citizenship grounded upon an abstract, legally mediated solidarity among strangers²⁶.

Second, the formation of national consciousness has been marked by an

²⁴ Id., *The Postnational Constellation and the future of Democracy*, cit., p. 100. It should be mentioned at this point, that the argument about the inexistence of a European “people” presupposes a particular definition of people according to which people “is the essence of all those who speak the same language”. The above definition, which originates in 19th century, belongs to Jacob Grimm, one of the Germanists who participated in the Frankfurt Germanists’ Assembly of 1846 with the intent to promote and found the union of the three disciplines of German law, German history, and German language. That attempt of course, should be seen as a pretext for the discussion on the formation of a German nation-state. See J. Habermas, *What is a People*, in M. Pensky (ed. by), *Postnational Constellation*, cit., p. 6. See also G. Delanty, *Models of Citizenship: Defining European Identity and Citizenship*, in “Citizenship Studies”, vol.1, n.3, 1997, pp. 285-304.

²⁵ The current bibliography regarding the new multicultural identities is particularly rich. See – inter alia – the following: W. Kymlicka, *Multicultural Citizenship*, Oxford University Press, Oxford 1995; D. Miler, *Worlds Apart: Modernity through the prism of the local*, Taylor & Francis Ltd, London 1995 G. Baumann, *Contesting Culture: Discourses of Identity in multiethnic London*, Cambridge University Press, Cambridge 1996.

²⁶ J. Habermas, *Why Europe needs a Constitution*, cit., pp. 15-16.

extremely abstract and hence, painful transition from “the local and dynastic to national and then to democratic consciousness”²⁷. In Habermas’s own words, then, “if this form of collective identity was due to a highly abstractive leap from the local and dynastic to national and then to democratic consciousness, why shouldn’t this learning process be able to continue?”²⁸

Apparently, Habermas defends vigorously the transposition of citizens solidarity “into the more abstract foundation of a ‘constitutional patriotism’”²⁹. Democracy no longer needs to seek foundations in the nation interpreted as a pre-political community. On the contrary, the vigor of the democratic constitutional state consists in its capacity to “close the holes of social integration through the political participation of its citizens”³⁰. The historical-empirical corroboration of that thesis is not only the undeniable fact of the cosmopolitan identities of the so-called post-industrial societies but also – and despite its weaknesses – the European Union. Under a Constitution, the latter could become the model par excellence of a post-national democracy, flourishing on the fertile soil of a transnational public sphere, which would give citizens the opportunity to participate equally to a political communication process³¹. Not the nation then, but the European public sphere is the linchpin of a post-national or “postmodern” civil solidarity whose foundation, according to Habermas, is no longer the commonality of blood, language and doxa but some historical experiences and crises which gave birth to a modern enlightened Reason, the quintessence of which is the critical self-reflection of norms and values, that is, whatever detaches itself from the givenness, ethos and traditions of pre-modern communities. In the European Modernity, for Habermas, it is no longer valid the de facto acceptance of claims and norms because they are merely dictated by the tradition, God and Authority. What holds instead, is the critical assessment by means of discussion and deliberation within the limits of a public sphere. After all, it is not a mere coincidence that the critique of Enlightenment is internal, i.e., an integral part of itself and the critique of Eurocentrism took place within European geographical borders.

5. “Kant’s Idea of Perpetual Peace, with the Benefit of Two Hundred

²⁷ J. Habermas, *The Postnational Constellation and the future of Democracy*, cit., p. 102.

²⁸ *Ibidem*.

²⁹ Ivi, pp. 74-76.

³⁰ Ivi, p. 76.

³¹ Ivi, p. 100. See also J. Habermas, *Why Europe needs a Constitution*, cit., p. 17.

Years' Hindsight³²: Towards a post-Enlightenment Cosmopolitan State?

Habermas derives – paradoxically enough – his case for a European, post-national and post-Enlightenment constellation from the most outstanding philosopher of the Enlightenment, i.e., Immanuel Kant.

In his well-known essay, *Perpetual Peace: A Philosophical Sketch*³³ Kant elaborated and formulated the following idea: the state of a perpetual peace meaning the forever ending of the war, the ending of the so-called right to war *-ius ad bellum*, which, as Kant rightly points out, is no right at all insofar as it is assigned to individuals in the state of nature³⁴, that is, in a state of lawlessness, can only be realized in a cosmopolitan state. The latter refers to a federation of republican, free states that forgo war in their external relations.

Although, for Kant, the federation of the states takes the character of a “permanent congress of states”, the sovereignty of each of its members remains inviolable. Yet, the problem arising at that point, at least according to Habermas’s interpretation of the Kantian text is the following: how could the federation at issue be preserved when the states comprising it do not give up their sovereignty? Furthermore, for Habermas, in the absence of a common legal framework governing the above federation, its dissolution or permanence will exclusively rely upon the good will or the moral self-binding of its members. As Habermas writes himself: “Kant cannot have any legal obligation in mind here, since his federation of nations is not organized around the organs of a common government that could acquire coercive authority”³⁵.

Why then, Kant assumed that the so-called cosmopolitan state – at least as he envisioned it – could safeguard the perpetual peace? There are three reasons behind it:

First, Kant took for granted the peaceful nature of the modern constitutional state.

Second, he embraced the dominant view in his time that the interstate commercial exchanges will replace the war.

Third, in a republican polity, politics takes place within the public sphere. According to Kant, Enlightenment is identified with the public use of Reason.

Nevertheless, history itself belied all the above theses. Thus, national

³² The title belongs to Habermas. See his *Kant's Idea of Perpetual Peace*, cit.

³³ I. Kant, *Perpetual Peace: A philosophical Sketch*, cit..

³⁴ Ivi, p. 98. (“A state of peace among men living together is not the same as the state of nature, which is rather a state of war. For even if it does not involve active hostilities, it involves a constant threat of their breaking out”).

³⁵ J. Habermas, *Kant's Idea of Perpetual Peace*, cit., pp. 117-118.

state had been indeed the birthplace of democracy but not for sure that of peace. What lies behind many genocides, civil wars, let alone world wars or “humanitarian interventions” or bloodstained exports of democracy is the Western republican state.

Furthermore, when Kant was attracted by the liberal-inspired slogan of the commerce as the substitute of war, he possibly had not taken into account the gloomy reality of imperialism or colonialism.

Finally, and insofar as the public sphere is concerned, he could not anticipate its degeneration into a virtual reality or the so-called “reality shows”, which today are inundating the media, where the publicizing of private lives, personal traumas, secret desires and wreckages infringe upon any concept of the public use of Reason.

A small but significant “amendment” to the Kantian cosmopolitan state constitutes, therefore, Habermas’s solution to the problem of securing peace and democracy within the limits of the present post-national formations. He exhorts then, to the institutions of a cosmopolitan Right such that it would bind each of the states. The establishment of a Charter or a Constitution, of an International Court of appeal as well as the advancement of the Security Council are some of the suggestions put forward by Habermas³⁶.

2. The Rights of Man and the Rights of Citizen with “two hundred years’ hindsight”

The most significant reformulation of the Kantian idea of a cosmopolitan legal state as a prerequisite of peace passes through the institution of a global citizenship. The latter will no longer be mediated by nationality but by a universal institutional framework of human rights.

But what is the nature of those famous human rights?

The historical origins of human rights are to be traced to the American Declaration of Independence in 1776 as well as in the French Declaration of the Rights of Man and Citizen in 1789. Admittedly, the philosophical source of inspiration of the above rights are the text of Locke and Rousseau.

Furthermore, it is not a mere coincidence that the Human Rights become the core of the first modern Constitutions. That means that it is only the context of the legal order of the nation state which guarantees their realization and exercise³⁷. Yet, that already discloses their dual dimension:

Thus, to the extent that they refer to each person as human being they

³⁶ Ivi, pp. 127-128. See also Id., *The Postnational Constellation and the future of Democracy*, cit., p. 107.

³⁷ J. Habermas, *Kant’s Idea of Perpetual Peace*, cit., p. 137.

are nothing but moral imperatives. But insofar as they operate at the same time, as the Articles of the Constitution, that is, as legal norms, they protect human beings only when the latter are the members of a legal community; in other words, citizens of a national state.

Habermas rejects forcefully the moralization of the human rights precisely because the latter runs the risk of making a politics of human rights disintegrate into their very fundamentalism. That mainly happens in cases of the moral legitimation – covered up with a quasi-legal cloak – of military interventions, which in fact, are motivated by economic or strategic interests. The supposedly depoliticized politics of human rights has become recently the official ideology of military interventions. As Habermas himself pointedly writes: “Quite different from morality, the legal code in no way requires unmediated moral evaluation according to the criteria of ‘good’ and ‘evil’”³⁸. And a few lines later, referring to Guenther as well as to Kant, Habermas stresses the difference between law and morality:

The difference between law and morality that Guenther insists upon does not in any way signify that positive law has no moral content [...] As Kant already saw, law is distinguished from morality through the formal properties of legality. This means that some aspects of morally evaluated action (for example, intentions and motives) ought not be the proper subjects of legal regulation. Above all, the legal code makes binding the judgments and sanctions of the agencies authorized to protect those affected through narrowly interpreted, intersubjectively testable conditions of the procedures of the constitutional state [...] The correct solution to the problem of the moralization of power politics is therefore ‘not the demoralization of politics, but rather the democratic transformation of morality into a positive system of law with legal procedures of application and implementation’³⁹.

Despite the protective legal cloak Habermas resorts to, it would be necessary at this point to formulate an anti-essentialist thesis according to which the man presupposes the citizen rather than vice versa⁴⁰. That thesis is quite reminiscent of the well-known Foucauldian account of sex as the product of a variety of sexual practices.

Human rights, that is, rights referring to human being as such, are finally the rights of the “non-human”, of the *Homo Sacer*, i.e., that “obscure figure” that Agamben pulls out of the archaic Roman Law in his book under the same title, who, by being ostracized and excluded by his

³⁸ Ivi, p. 148.

³⁹ Ivi, p. 149.

⁴⁰ That claim has been supported by Etienne Balibar in his *Is a philosophy of human civic rights possible?*, in “South Atlantic Quarterly”, vol. 103, nn. 2-3, 2004, pp. 320-321.

community, the only “right” he has been left with is that of the mere fact of his biological existence⁴¹.

As Arendt once bitterly remarked, the discourse of human rights thought of as the rights pertaining to human being as such “broke down at the very moment when those who professed to believe in it were for the first time confronted with people who had indeed lost all other qualities and specific relationships except that they were still human”⁴².

Nevertheless, for Habermas, even if the universal language of human rights pertaining to all human beings as such, i.e., beyond historically specific time and space, turned out to veil a *de facto* “unequal treatment” of the hopeless and the excluded, that should no way lead to the identification of the use of the term with its misuse⁴³.

Yet, even the very legal idiom Habermas invokes in order to prevent war operations aiming at exporting “rights” in the name of a politics inspired by the “Good/Evil”, “Friend/Enemy” polarities, becomes, at times, the pretext of the exercise of sheer violence. In the end, the Gulf War had been applauded by Habermas as a necessary step towards the development of a global public sphere while eight years later he greeted enthusiastically NATO’s onslaught against Yugoslavia as a humanitarian intervention aiming at saving the people from Milosevic’s bloodstained regime⁴⁴. The question arising, however, is the following: is a military intervention the necessary means of imposing a good and just end? And to what extent such “humanitarian interventions” for the human rights protection, even if they are in most cases legitimate, anticipate that cosmopolitan ideal for which they are supposed to be fighting and agonizing?

Ironically enough, attempting to justify the case of Yugoslavia NATO’s self-authorization when it bypassed the U.N, Habermas resorted not to his hero Kelsen but to his strongest opponent: Carl Schmitt. In his work *Political Theology*, Schmitt maintains that the foundations of every legal order are not the rules and the institutions but the decisions taken by the Sovereign. And who is the Sovereign? “Sovereign is he who decides the exception” runs the opening sentence of *Political Theology*⁴⁵.

⁴¹ G. Agamben, *Homo Sacer: Sovereign Power and Bare Life*, Stanford University Press, California 1998. pp. 8-9.

⁴² H. Arendt, *The Origins of Totalitarianism*, Schocken Books, New York 1958, p. 297.

⁴³ J. Habermas, *Remarks on Legitimation through Human Rights*, in M. Pensky (ed. by), *Postnational Constellation*, cit., p. 119.

⁴⁴ Id., *Bestialität und Humanität: ein Krieg an der Grenze zwischen Recht und Moral*, in “Die Zeit”, 29 April 1999.

⁴⁵ C. Schmitt, *Political Theology*, The University of Chicago Press, Chicago 2005, p. 5.

Finally, it would be worth focusing upon Habermas's response to the charge of Eurocentrism inherent in the Human Rights discourse the individualist model of which seems to conspicuously ignore other community-based cultures. Habermas considers inevitable the adoption of the legal context of the Western-inspired human Rights by the entire globe precisely because even the far-East countries are gradually incorporated into the global financial markets⁴⁶.

Is not then, in that case, the Human Rights Discourse the legal correlate of global capitalism? And one could not but wonder in amazement whether the Habermasian version of the "perpetual peace" entailed by the cosmopolitan state is nothing but the "perpetual peace" of the victims of the humanitarian interventions, which together with human rights exported also liberal markets and bombs.

The U.N, born out of the ruins of the second World War, could be seen as the historical realization of the Kantian Cosmopolitan Law and more specifically, as the application of the theoretical insights of the Kantian Hans Kelsen. Ever since '10s, Kelsen exhorted to the creation of an international legal system, insofar as the national state put insuperable barriers to the realization of the idea of Right, which would be marked not only by a rational but also by a moral dimension. Thus, Kelsen's legal construct is animated by the Kantian-inspired identification of Right and Morality. In his own words: Right could refer to "the organization of humanity and (would) therefore be one with the supreme ethical idea"⁴⁷.

The awareness of the unbridgeable gap between the theoretical conception of a cosmopolitan law and its historical realization in the U.N would probably be a truism. By giving evidence to a series of compromises dictated by strategic interests and the dominant power relations, the history of the U.N renders Kelsen's vision a chimera. And it is precisely that ambivalence of the notion of the U.N that becomes – at least according to Negri and Hardt, the birthplace of an account of Right pertaining to what has come to be called today "Empire"⁴⁸.

If it is true that each juridical form crystallizes into a set of values and norms, could it not be, in the end, the case that the "perpetual peace" brought about by the cosmopolitan law and its contemporary re-inscriptions refer to the very abrogation of history by an eternal, immutable, incessant present which becomes the canvass upon which the reproduction of the global market takes place?

⁴⁶ J. Habermas, *Remarks of Legitimation through Human Rights*, cit., p. 119.

⁴⁷ H. Kelsen, *Das Problem des Souveranitat und die Theorie des Volkerrechts: Beitrag zu einer Reinen Rechtslehre*, Mohr, Tübingen 1920, p. 205.

⁴⁸ M. Hardt, A. Negri, *Empire*, Cambridge MA, Harvard University Press 2001, p. 6.

“I am a citizen of the world”, claimed Diogenes the Cynic⁴⁹, whereas the pillar of the Stoic cosmopolitanism was the thesis that nature enjoins the respect of our fellow-beings as such, i.e., as rational creatures irrespectively of nation, gender, social status, race, ecc. It is then, a mere coincidence that the cosmopolitanism of the Stoics is born and bred at the heart of the Roman Empire? Rather, the contrary holds, that is, Stoicism is nothing but the moral core of the Empire’s Law insofar as the latter relies upon the person as the abstract bearer of rights, forever uprooted from the *ethos* of an organic community, a city-state as his substance and end, according to Aristotle. By analogy then, to Stoic Cosmopolitanism, Kant’s debt to which is well-known, as many scholars have pointed out⁵⁰, could it not be claimed that the various re-translations and revisions of the Kantian Cosmopolitan Law as the condition of today’s eternal peace become merely the Procrustean bed which makes Kant fit the Right of our contemporary Empire the cornerstone of which is the identification of Right and Morality?

It is true that the moral fabric of the Right of the present Empire seems to be founded upon the idea of an orchestrated attempt under the conduct of a single power center to safeguard peace and realize moral ends even by means of “just wars” against the “barbarians” outside the borders and the “agitators” inside⁵¹.

The Empire’s source of Right is the right to police so that the existing state preserves itself and the right to intervene when the order seems to be disturbed by opponents who are demonized by appearing as banal incarnations of radical evil. Thus, Right degenerates into the mere capacity and effectiveness of managing crises. Furthermore, the question arising concerns the subject of decision-making. Who is really the one who adjudicates or decides over the accounts of justice, peace or legal order?

7. Kant after Habermas? Re-defining Cosmopolitan Right

As mentioned before, Habermas resorts to and appropriates Kant’s Cosmopolitan Right as the hermeneutical framework of the present conjuncture with a small “correction”: the Kantian federation of the national states the Constitution of each should be republican transforms itself into a post-national constellation which compensates the lack of democracy

⁴⁹ Diogenes the Cynic, in Diogenes Laertius, *Lives of the Philosophers*, VI, 63.

⁵⁰ See mainly M. Nussbaum, *Kant and Cosmopolitanism*, in J. Bohman, M. Lutz-Bachmann (ed. by), *Perpetual Peace: Essays on Kant’s Cosmopolitanism*, MIT Press, Cambridge 1997, pp. 25-59.

⁵¹ M. Hardt, A. Negri, *Empire*, cit., p. 10.

entailed by the wither of the modern national state by means of a common Constitution.

However, if, at present, democracy is still to be sought after are not in the end, Habermas's claims, like those of Kelsen, condemned to be a sheer wishful thinking? Could it be that on the one hand, Kant's insistence on a federation of states each of which will not abolish its republican Constitution while on the other, his renunciation of the idea of a world state to the extent that the latter runs the risk of transforming itself into a soulless despotism⁵², is finally due to the fact that Kant anticipated the lack of democracy brought about by a post-national constellation?

Let us follow Kant's argument as it has been elaborated in "Perpetual Peace" as well as in the *Metaphysics of Morals*⁵³.

In paragraph 62 of the *Metaphysics of Morals*, Kant attempts a definition of the cosmopolitan right as that concerning the possible union of the states with a view to their peaceful interaction via the institution of universal laws⁵⁴.

The state prior to the States Federation pertains, for Kant, to the state of nature among individual human beings before concluding the contract by which they enter into the political and hence, lawful condition⁵⁵.

That States union aiming at the preservation of peace should be interpreted as a voluntary congress which can be dissolved any time rather than a federation such as U.S.A the union of which is bound by a Constitution rendering thereby its dissolution impossible⁵⁶. The constituting principle of the congress is, however, the republican state, namely, "the union of a multitude of human beings under laws of right"⁵⁷, and therefore, their transmutation into citizens enjoying the rights of legal freedom, which is the freedom to obey only to the laws to which they concede, of equality in the sense of isonomy and that of independence⁵⁸ which refers to the "dignity of the citizen" who, in opposition to the bondsman or the

⁵² That line of argument has been developed in his essay, *On the Common Saying: That may be true in theory, but it does not apply in practice*, in "Kant's Political Writings", Cambridge University Press, Cambridge 1992, pp. 61-93.

⁵³ Id., *The Metaphysics of Morals*, Cambridge University Press, Cambridge 1996.

⁵⁴ Ivi, p. 121.

⁵⁵ Ivi, p. 119.

⁵⁶ "By a congress is here understood only a voluntary coalition of different states which can be dissolved at any time, not a federation (like that of the American states) which is based on a constitution and can therefore not be dissolved". (I. Kant, *The Metaphysics of Morals*, cit., p. 120).

⁵⁷ Ivi, p. 90.

⁵⁸ "[...] of owing his existence and preservation to his own rights and powers as a member of the commonwealth, not to the choice of another among people". (ivi, p. 91).

serf who are made the mere tool or the property of another⁵⁹, is in possession of himself⁶⁰.

The quintessence, for Kant, of the republican state is not the subjection but the freedom as the “principle and indeed the condition for any exercise of coercion, as is required by a rightful constitution of a state in the strict sense of the word”⁶¹. This is why “the united people does not merely represent the sovereign: it is the sovereign itself”⁶².

It is obvious then, why, according to the first definitive article of a perpetual peace, “the civil constitution of every state shall be republican”⁶³. As Kant himself writes:

The republican constitution is not only pure in its origin (since it springs from the pure concept of right); it also offers a prospect of attaining the desired result, i.e., a perpetual peace, and the reason for this is as follows. – If, as is inevitably the case under this constitution, the consent of the citizens is required to decide whether or not war is to be declared, it is very natural that they will have great hesitation in embarking on so dangerous an enterprise. For this would mean calling down on themselves all the miseries of war, such as doing the fighting themselves, supplying the costs of the war from their own resources, painfully making good the ensuing devastation, and, as the crowning evil, having to take upon themselves a burden of debt which will embitter peace itself and which can never be paid off on account of the constant threat of new wars. But under a constitution where the subject is not the citizen, and which is therefore, not republican, it is the simplest thing in the world to go to war. For the head of state is not a fellow citizen, but the owner of the state, and a war will not force him to make the slightest sacrifice so far as his banquets, hunts, pleasure palaces and court festivals are concerned⁶⁴.

Nevertheless, what lies behind Kant’s defense of the republican state is his unshakable belief in the need to exit the state of nature characterized by private right and enter a lawful or political state of public right.

Unlike many social contract theorists, the natural state is neither antisocial nor a state of anomy rent by the Hobbesian “war of all against all”. The natural state is merely marked by a lack of Right resulting to the inexistence of distributive justice⁶⁵.

The opposite of natural condition is therefore, civil condition where

⁵⁹ Ivi, p. 104.

⁶⁰ Ivi, p. 94.

⁶¹ Ivi, p. 112.

⁶² Ivi, p. 113.

⁶³ Id., *Perpetual Peace*, cit., p. 99.

⁶⁴ Ivi, p. 100.

⁶⁵ Id., *The Metaphysics of Morals*, cit., p. 85.

by the latter Kant refers to “the condition in which the will of all is actually united for giving law”⁶⁶. In Kant’s own words: “A rightful condition is that relation of human beings among one another that contains the conditions under which alone everyone is able to enjoy his rights, and the formal condition under which this is possible in accordance with the idea of a will giving laws for everyone is called public justice”⁶⁷.

In the *Metaphysics of Morals* the transition from the natural to the political or lawful condition, which, for Kant, is set as a duty, is becoming the context within which the right to property is grounded. In his treatment of private right pertaining to the natural state Kant already mentions sensible or physical and intelligible or rightful possession⁶⁸. The fact that I hold an object or my body dwells a piece of land is not necessarily a condition of property. Property for Kant, refers on the contrary, to the intelligible possession, which, in his own words, consists in “a merely rightful connection of the subject’s will with that object [...] independently of any relation to it in space and time”⁶⁹. In other words, something is mine even if it is not in the same place with me.

Yet possession in the state of nature is only natural or sensible possession and, therefore, provisionally rightful possession⁷⁰. Conclusive possession is possible instead, only in a lawful condition, namely one governed by public law⁷¹. And that is because, for Kant, the right to property is not only conceived of as a right to a thing but as a right to the private use of a thing. And by the latter is meant the right versus any other person who possesses that thing with others in common. The idea of the common possession becomes the condition of the possibility of the exclusion of every other possessor from the private property of an object⁷².

The above mentioned idea of the original or primitive common possession just as the idea of the contract which renders possible the exit from the natural condition and the entrance into a lawful, political condition are not empirical or historical categories. On the one hand, the original possession in common is “a practical rational concept which contains a priori the principle in accordance with which alone people can use a place on the earth in accordance with principles of right”⁷³.

Accordingly, the contract, as he writes in *On the Common Saying*:

⁶⁶ Ivi, p. 52.

⁶⁷ Ivi, pp. 84-85.

⁶⁸ Ivi, p. 37.

⁶⁹ Ivi, p. 43.

⁷⁰ Ivi, p. 45.

⁷¹ *Ibidem*.

⁷² As the title of par. 8, ivi, p. 44 suggests.

⁷³ Ivi, p. 51.

That may be true in theory, but it does not apply in practice, “is in fact merely an idea of reason, which nonetheless has undoubted practical reality; for it can oblige every legislator to frame his laws in such a way that they could have been produced by the united will of a whole nation and to regard each subject, in so far as he can claim citizenship, as if he had consented within the general will. This is the test of the rightfulness of every public law”⁷⁴.

If one bears in mind that for many social contract theorists, the natural state as well as the social contract are not mere metaphors or ideas of reason which serve as the yardstick of legitimating the constitution of political authority but instead, historical images of the savage – albeit “noble” – past of the West; and if one bears in mind that the travels in the vast space of the new continents were at the same time, travels in time, i.e., in the past to the extent that the indigenous could be viewed as the incarnations of our European ancestors, then, the Kantian conceptions of the natural state, the social contract and the original possession in common are not getting trapped into the Enlightenment stereotype of the “exotic” or the “noble savage”. The portrayal of the latter by the Enlightenment thought as the “different” or the “Other”, although often dictated by good intentions, it renders him as something inferior from human beings and paves the way to colonial and imperialist practices.

Nevertheless, the questions arising insofar as Kant is concerned are the following: What happens with the land property? When a land is mine? And if the *sine qua non* of property is the political condition what happens with those who do not wish to constitute civil society? Can anyone usurp their land? Does finally, the Kantian theory of property on the one hand, and the Kantian thesis that the constitution of a republican state is a duty on the other, legitimate unwillingly colonial practices or “humanitarian” interventions in the name of the “noble” mission of civilizing the “savages”? The answer to that presupposes on the one hand, the Kant’s theory of the land property while on the other, his definition and elucidation of the cosmopolitan right.

Starting from the idea of the original possession in common, Kant maintains first that all human beings, before proceeding to any act of instituting rights, possessed and not dwelled that land upon which they were found by nature or chance. And that possession is common because “the spherical surface of the earth unites all the places on its surface; for if its surface were an unbounded plane, people could be so dispersed on it that they would not come into any community with one

⁷⁴ Id., *On the Common Saying: That may be true in theory, but it does not apply in practice*, cit., p. 79.

another, and community would not then be a necessary result of their existence on the earth”⁷⁵.

Second, the right to the land property is established by the temporal priority of its possession⁷⁶. In other words, the first possessor of a piece of land is entitled to resist anyone trying to usurp it.

And it is precisely at this point, that Kant formulates a theory of property in stark opposition to that by John Locke. For if, according to Locke, labor and use in general are becoming the conditions of property, for Kant, the opposite holds: property is the condition of use. Kant’s argumentation at this point, is inspired by the Aristotelian pair of Substance and Accident – *Ousia / Symbebekos* –. The cultivation, the enclosure, the transformation by and large, of a piece of land through labour are considered Accidents – *Symbebekota* – which cannot found the right to the possession of the Substance. Thus, the labour expenditure in a Land, which is not already considered as property is merely a waste of time and effort⁷⁷.

The Kantian interpretation of the land property on the basis of the temporal priority of its possession rather than its use and appropriation condemns unequivocally the foundation of colonies under the pretext of the vast, unexploited by the natives, pieces of land the use and development of which would be a significant step to material progress.

But “it is easy to see through this veil of injustice (Jesuitism), which would sanction any means to good ends. Such a way of acquiring land is therefore to be repudiated”⁷⁸.

Nevertheless, there seems to be a contradiction at this point. According to Kant, in the state of nature, that is, in the absence of public law, the property of land is regarded provisional. And if the foundation of political state is a duty, just as the incessant struggle for perfection of the human being is a moral duty, would that not legitimise the foreign occupation of land with the intent to integrate – even by violence – the “savages” into a lawful, political condition?

Kant claims that despite their supposedly good intention the European colonialist practices are to be condemned for the following two reasons:

First, because of their morally unacceptable means. As Kant himself writes in “Perpetual Peace”:

⁷⁵ Id., *The Metaphysics of Morals*, cit., p. 50.

⁷⁶ Ivi, p. 51.

⁷⁷ “Moreover, in order to acquire land, is it necessary to develop it (built on it, cultivate it and so on)? No. For since these forms (of specification) are only accidents, they make no object of direct possession and can belong to what the subject possesses only insofar as the substance is already recognized as his” (I. Kant, *The Metaphysics of Morals*, cit., p. 52. See also p. 55).

⁷⁸ Ivi, p. 53.

America, the Negro countries, the Spice Islands, the Cape, ecc. were looked upon at the time of their discovery as ownerless territories; for the native inhabitants were counted as nothing. In East India (Hindustan), foreign troops were brought in under the pretext of merely setting up trading posts. This led to oppression of the natives, incitement of the various Indian states to widespread wars, famine, insurrection, treachery and the whole litany of evils which can afflict the human race [...] and all this is the work of powers who make endless ado about their piety, and who wish to be considered as chosen believers while they live on the fruits of iniquity⁷⁹.

Second, the colonial practices infringe upon the idea of the cosmopolitan Right. By encouraging a sense of co-belonging the latter confines itself in a right of hospitality. For Kant,

The stranger cannot claim the right of a guest to be entertained, for this would require a special friendly agreement whereby he might become a member of the native household for a certain time. He may only claim a right of resort, for all men are entitled to present themselves in the society of others by virtue of their right to communal possession of the earth's surface. Since the earth is a globe, they cannot disperse over an infinite area, but must necessarily tolerate one another's company⁸⁰.

However, the contradiction still remains. For on the one hand, Kant regards as the moral duty of every single human being the development of his capacities while on the other, he grounds as a kind of a Categorical Imperative the exit of man from the state of nature. But is it also a duty of a whole people to perfect himself? And furthermore, is it a duty of a human being to improve his fellow human beings? And accordingly, is it a duty of a people to civilize another people?

Kant's answer is "no". And that is because in the *Metaphysics of Morals*, he maintains that it is at people's own discretion to choose the way they want to live upon earth. The choice of a nomadic, pastoral, rural way of life can never be the subject of absolute moral judgments. At this point, Kant resorts to the sole, innate right every human being bears in virtue of his "humanness", which is that of freedom conceived of as emancipation from the constraints brought about by the others' choices and as the possibility of our freedom to co-exist with another's freedom according to a universal law.

Furthermore, the transition from the private to public right, the transition from the natural to the lawful condition is rendered necessary only in

⁷⁹ Id., *Perpetual peace*, cit., pp. 106-107.

⁸⁰ Ivi, p. 106.

case that one “cannot avoid living side by side with all others”⁸¹. Apparently, Kant had in mind the problems entailed by the permanent property pertaining to the rural societies which are the precursors of civil societies rather than the nomads or the inhabitants of the New World.

Last but not least, one could wonder today, in a supposedly postcolonial and post-imperialist era, whether the reference to Kant’s opposition to the colonies is obsolete and anachronistic. Indeed, today we come across the exotic or the “noble savages” only in the pages of the discourses by Rousseau, Diderot and Voltaire. The “barbarians” of the present are maybe those who refuse to comply with the rules of the global market and become thereby civilized. What is for sure, is that the Kantian “perpetual peace” remained an unrealised goal or disintegrated into the doctrine of the “just wars” – an oxymoron that even Kant himself criticized since it would never be possible to speak of the right of a state of anomy –.

The Kantian texts, however, could be the reminder of what are regarded as the “unjust wars” par excellence. For Kant, unjust wars are first, the punitive wars. For “punishment occurs only in the relation of a superior to those subject to him, and states do not stand in that relation to each other (unless there are “rogue-states”)”. Second, the wars of extermination or of subjugation, which would be “the moral annihilation of a state (the people of which would either become merged in one mass with that of the conqueror or reduced to servitude)”⁸².

But since even the Kantian republican state is not so self-evident today, in our era of the “just wars”, let Kant’s definition of the “unjust enemy” work as a reminder. Thus, for Kant an unjust enemy “is an enemy whose publicly expressed will (whether by word or deed) reveals a maxim by which, if it were made a universal rule, any condition of peace among nations would be impossible and instead, a state of nature would be perpetuated”⁸³.

Bibliography

- Arendt H., *The Origins of Totalitarianism*, Schocken Books, New York 1958.
 Agamben G., *Homo Sacer: Sovereign Power and Bare Life*, Stanford University Press, California 1998.
 Balibar E., *Is a Philosophy of Human Civic Rights Possible? New Reflections on Equaliberty*, in “South Atlantic Quarterly”, vol. 103, nn. 2-3, 2004, pp. 311-322.
 Baumann G., *Contesting Culture: Discourses of Identity in multiethnic London*, Cambridge University Press, Cambridge 1996.

⁸¹ Id., *The Metaphysics of Morals*, cit., p. 86.

⁸² Ivi, p. 117.

⁸³ Ivi, p. 119.

- Benjamin W., *On some Motifs in Baudelaire*, in H. Arendt (ed. by), *Illuminations*, Schocken Books, New York 1968, pp. 165-176.
- Delanty G., *Models of Citizenship: Defining European Identity and Citizenship*, in "Citizenship Studies", vol.1, n.3, 1997, pp. 285-304.
- Habermas J., *Postnational Constellation: Political Essays*, in Pensky M. (ed. by), Polity Press, Cambridge 2001.
- Id., *The Inclusion of the Other*, in Cronin C., De Greiff P. (ed. by), Cambridge University Press, Cambridge M.A 1998.
- Id., *Kant's Idea of Perpetual Peace, with the Benefit of Two Hundred Years' hindsight*, in Bohman J., Lutz-Bachmann M. (ed. by), *Perpetual Peace: Essays on Kant's Cosmopolitan Ideal*, MIT Press, Cambridge 1997, pp. 113-153.
- Id., *Why Europe needs a Constitution*, in "New Left Review", n.11, 2001, pp. 5-26.
- Id., *Bestialitaet und Humanitaet: ein Krieg an der Grenze zwischen Recht und Moral*, in "Die Zeit", 29 April 1999.
- Hardt M., Negri A., *Empire*, Cambridge MA, Harvard University Press 2001.
- Kant I., *Perpetual Peace: A philosophical Sketch*, in Reins H. (ed. by), *Kant's Political Writings*, Cambridge University Press, Cambridge 1970, pp. 93-131.
- Id., *The Metaphysics of Morals*, Cambridge University Press, Cambridge 1996.
- Kelsen H., *Das Problem des Souveranitat und die Theorie des Volkerrechts: Beitrag zu einer Reinen Rechtslehre*, Mohr, Tübingen 1920.
- Kymlicka W., *Multicultural Citizenship*, Oxford University Press, Oxford 1995.
- Miler D., *Worlds Apart: Modernity through the prism of the local*, Taylor & Francis Ltd, London 1995.
- Nussbaum M., *Kant and Cosmopolitanism*, in Bohman J., Lutz-Bachmann M. (ed. by), *Perpetual Peace: Essays on Kant's Cosmopolitanism*, MIT Press, Cambridge 1997, pp. 25-59.
- Schmitt C., *Political Theology*, The University of Chicago Press, Chicago 2005.