

Defending the Plurality of States: Clouts, Kant, and Rawls

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Over the past two decades, it has become a familiar complaint to say that political theorists (aside from anarchists) have too long taken the sovereign nation-state system for granted. Often, the complaint is not just that the focus on the nation state constitutes undue neglect of issues pertaining to the relations between states, but, more fundamentally, that the various kinds of political theories themselves, when thought through to their logical conclusions, do not suffice to justify or support the very world of sovereign nation states that they presuppose. This complaint is leveled against many types of political theory, but I will here limit my discussion to the social contract tradition.

The reassessment of the status of the state is often prompted by the huge increase in international and transnational interaction at economic, political, and other levels. The idea is not so much that states lose the power of self-determination to the global market, if not to transnational institutions, although this may well be the case. Rather, the idea, important within the social contract tradition, is that where there is interaction there should be regulation. Given increasing globalization, there should be increasing transnational regulation and therefore a diminishing importance of the state. After all, the required regulations at the transnational or international level siphon many of the traditional powers of sovereignty away from the states—and, on this view, rightfully so.

Thus, within the Kantian strand of the social contract tradition, there has been considerable criticism of the line attributed to Immanuel Kant himself, namely, the defense of a merely voluntary league of states. Instead, many authors have argued, a consistent Kantian approach should adopt the view that states should transfer their external sovereignty to a transnational federation of states, such as a stronger United Nations with military powers to coerce disobedient members. Some have even argued that a consistent Kantian view should include a

mandate for strong states to force other states into such a body. The reason lies in the analogy with the authority, granted by Kant to individuals in the state of nature, to force others into a state (unless these others leave them alone).

A second social contract line of reasoning that leads to a reconsideration [560] of the importance of the state emerges from a cosmopolitan moral theory. If one takes seriously the claim that all humans have a fundamentally equal moral standing, then, it is argued, one should model the social contract at the *global* level and not regard *states* as the pre-eminent political institutions in which power is concentrated. For example, the current state system shields despots against interference in their ugly internal affairs and entrenches staunch forms of unjust inequality that history has bequeathed to us (such as inequalities of natural resources, inequalities of opportunity having to do with geographical location, or the legacy of colonial history). From this perspective it is important to re-think the global political landscape and conceive of other political arrangements that better protect the interests and legitimate claims of all individual world citizens. This claim is often directed against John Rawls's view on the plurality of states, as developed in most detail in his *The Law of Peoples*.¹ Many commentators have shown the inconsistencies in Rawls's arguments for a two-stage original position, some even arguing for a "Law of Persons" instead of a "Law of Peoples."

Thus, the importance of the state within the social contract tradition has been challenged on a variety of grounds. In this paper I aim to provide an argument in defense of the state, justifying the importance of the state in a globalized world in which we have cosmopolitan responsibilities. I start by discussing the most radical opposing position on this score, namely, the position found in the work of an eighteenth-century social contract theorist who advocates doing away with the plurality of states altogether and who advocates instead the establishment of a Republic of the United Individuals of the World. Drawing on under-appreciated remarks made by Kant, I construct an argument to bolster the theoretical underpinning for the role of the state. This argument can also be used to answer the criticisms directed against Rawls's two-stage original position. I argue that the globalist perspective fails to adequately appreciate the importance of just, democratic states, and especially that their perspective loses sight of the importance of democratic citizenship to the individuals who are citizens of just states.

¹ John Rawls, *The Law of Peoples* (Cambridge, Mass.: Harvard University Press, 1999).

Anacharsis Cloots

Writing in the eighteenth century, Anacharsis Cloots (1755-1794) already points out that the social contract tradition, by its own logic, should lead one to defend world-state cosmopolitanism. Importantly, Cloots does not mean this as a *reductio ad absurdum*. On the contrary, he was an ardent defender of social contract theory. But he regards the unquestioned [561] acceptance of a world with a plurality of states as an old prejudice that should be eradicated: “The prejudices spring from such deep roots that no one has even thought of asking: *Why is there more than one state?*” (RU 166).²

Cloots advocates the establishment of a “republic of the united individuals of the world.” He argues that the 1789 “Declaration of the Rights of Man and Citizen,” the central ideas of social contract theory, and the notion of popular sovereignty all support the thesis that the only consistent political theory is one that maintains that there should be only one state.

Anacharsis Cloots was an antinationalist, antireligious, francophile citizen of Prussia who became the right-hand man to Robespierre. It is rather overdetermined that he is a figure that history has been intent on forgetting. Because he is now practically unknown, and more importantly, because his theory is intimately related to his political practice in a way that is relevant to my argument, I start with a few words about the person behind the theory.

Even his name is a political statement. Born Jean-Baptiste Baron du Cloots de Val-de-Grâce, he abdicated his noble title out of anti-feudalism and dropped his baptismal name out of anti-Christianism. Instead, he adopted as a first name the name of the legendary Scythian prince Anacharsis, who went to Athens to study Greek culture and Athenian democracy and became known as the “barbarian sage” (O, III, 134-35) and who was the hero of a best-selling French novel in Cloots’s day.³

Cloots was the son of wealthy Dutch parents who had moved to Prussian territory. After his father died, he inherited an enormous fortune and moved to Paris to immerse himself in salon life and pursue philosophical studies, cultivating his “barbarian sage” persona. He wrote a

²I use the following abbreviations for Cloots’s works: O = *L’orateur du genre humain* (1791); RU = *La république universelle ou Adresse aux tyrannicides* (1792); B = *Bases constitutionnelles de la république du genre humain* (1793). All texts in Anacharsis Cloots, *Oeuvres* (München: Kraus Reprint, 1980).

³Jean-Jacques Barthélemy, *Voyage du jeune Anacharsis en Grèce*, 7 vols. (Paris: Bure l’Ané, 1757-88). Cloots had met Barthélemy in the salons in Paris.

defense of Voltaire and a work seeking to undermine the truth claims of revealed religions.⁴ With the outbreak of the French Revolution, however, his attention shifted to political issues. He defended the Revolution against Burke⁵ and developed his signature cosmopolitan views.

Cloots's cosmopolitanism made him famous. A member of the Jacobin [562] Club since its foundation in 1789, he became an instant celebrity when, on June 19, 1790, he led a delegation of 36 foreigners to the National Assembly, requesting that they be allowed to take part in the ceremony of the first anniversary of the revolution on July 14.⁶ The members of the Assembly were flattered by the thought that France was liberating not just itself but humanity, and that tyrants were their only opponents. Cloots's foreign delegation, presumptuously labeled the "Embassy of the Human Race," was a triumphant symbol of the universal validity of the Declaration of the Rights of Man and Citizen. The Assembly printed and distributed no fewer than half a million copies of Cloots's request, and a thousand foreigners took part in the anniversary festivities.

Encouraged by his enormous success, Cloots started signing all his publications as the "Speaker of the Human Race in the National Assembly." In *L'orateur du genre humain* [The Speaker of the Human Race] (1791), he lays out his ideal of a world republic for the first time. He further develops his position in *La république universelle ou Adresse aux tyrannicides* [The Universal Republic, or: Address to the Tyrannicides] (1792). This work was presented to the legislative assembly one day after the declaration of war against Austria, which marked the beginning of the revolutionary wars and which had Cloots's enthusiastic support. He published his argument again, radicalizing it in important respects, in *Bases constitutionnelles de la république du genre humain* [Constitutional Foundations of the Republic of the Human Race] (1793).

During 1791 and 1792, Cloots's cosmopolitan views were widely applauded by those in the revolutionary movement, not just because they were flattering to the French, but also because they provided the theoretical support for a political practice that had gained some truly

⁴*Voltaire triomphant ou les prêtres déçus*, written soon after Voltaire's death in May of 1778, but not published until 1786, in Cloots's *Voeux d'un Gallophile* (Amsterdam, 1786); *La Certitude des Preuves du Mahométisme, ou Réfutation de l'Examen critique des Apologistes de la Religion Mahométane*, under the pseudonym Ali-Gier-Ber (Amsterdam, 1779 (but lists London, 1780)).

⁵*Adresse d'un Prussien à un Anglais* (s.l.n.d. [Paris, 1790]).

⁶"Discours prononcé à la barre de l'Assemblée Nationale, par M. de Cloots du Val-de-Grâce, Orateur du comité des Étrangers, à la séance du 19 juin 1790, imprimé par ordre de l'Assemblée Nationale," *Oeuvres*, vol. 3. Cloots is here listed as "a Prussian," p. 24.

cosmopolitan traits. For example, foreign authors (“all thinkers of the earth”) were invited to comment or collaborate on the project of developing a new constitution. In 1791, Jews were admitted to citizenship, and in 1792, a law was passed to grant French citizenship to foreign authors supportive of the revolution in order that they could be elected as deputies to the National Convention. Cloots was the first to be put on the list of eligible candidates. In the summer of 1792, Thomas Paine, Joseph Priestley (who declined), and Cloots were indeed elected to the Convention.

The year 1792 also marked the beginning of the revolutionary wars and the abolition of the monarchy, and Cloots was at the center of political activity. He soon became the president of the committee in charge of [563] foreign affairs (i.e., the war efforts). He served on the committee that inspected the secret papers of the royal family found in the Tuileries, and starting in February 1793, he was on the committee charged with drawing up a republican constitution (together with Paine, Condorcet, Robespierre, Danton, Sieyès, St. Just, and others).

While Cloots led the committee on foreign affairs, the French forces conquered Belgium. The Gironde wished to turn it into a federated republic, but Cloots wanted it to become part of France. This had everything to do with his version of cosmopolitanism: by growing in this way, Cloots hoped, France would ultimately become one huge republic encompassing the entire world.

In 1793, the general climate for cosmopolitanism grew chilly. The French revolutionaries had received a cold reception from the local populations abroad, and foreign royalists were mobilizing an alliance. The increasing tensions quickly led to xenophobia. Mere allegations of foreign connections frequently sufficed for a conviction on the charge of espionage.

Although Cloots still became the chair of the Jacobin Club in November of 1793, Robespierre had him removed a few weeks later. Ironically, he was convicted on the basis of both his Prussian origin and his cosmopolitanism.⁷⁷ Cloots wrote an *Appel au genre humain [Appeal to the Human Race]* (20 December), demanding that because “the Abbé de St. Pierre did not get hanged for his universal aristocracy, I shall not be guillotined for my universal sans-culotterie.”⁸ He was guillotined anyway (in March of 1794), but not before he had bowed in all directions to pay a final homage to humanity everywhere.

⁷ See Albert Soboul, preface to Cloots’s *Oeuvres*, xxvii-xxviii.

⁸ *Oeuvres*, 689-708; here p. 701.

Cloots's Argument for the Republic of the United Individuals of the World

There is hardly any literature on Cloots. But what little there is does praise his theoretical coherence. Most recently, Francis Cheneval, the author of a recent book on the history of cosmopolitanism, has published an essay on Cloots's cosmopolitan republicanism in which he argues that it was Cloots's great merit to have applied social contract thinking *consistently*.⁹

The starting point of Cloots's political thought is the notion of the freedom and equality of all human beings. What he means by this has to be understood in terms of the 1789 Declaration. On Cloots's view, the [564] only justifiable political system is a republic based on the human rights mentioned in the Declaration (B iii). In line with the Declaration, he identifies these rights as liberty, property, security, and the freedom to resist oppression (RU 59; B 37). Furthermore, Cloots argues that the fundamental equality of all citizens, stipulated in the Declaration, requires not just the abolition of the aristocracy but also the introduction of democracy through universal suffrage (though he seems to want to restrict the latter to adult males¹⁰).

Cloots also subscribes to the idea, expressed in the second, eighth, and ninth articles of the Declaration, that the aim of political association is the preservation of the human rights of its members, and that guaranteeing these rights requires the authority to coerce. This authority to coerce is thus instituted "for the advantage of all," and not for the advantage of those entrusted with it. All members of the political commonwealth benefit from being protected against violations of their rights, as compared with the state of nature or a tyranny. In this sense, "every political constitution must be founded on the general interest" (RU 13).

When social contract theorists argue on the basis of a notion of human rights, they generally invoke these principles (and the need to protect them) in justifying the authority of the state. The

⁹ Francis Cheneval, "Der kosmopolitische Republikanismus—erläutert am Beispiel Anacharsis Cloots'," *Zeitschrift für philosophische Forschung* 58 (2004): 373-96, at pp. 392-94.

¹⁰As a self-declared sans-culotte, Cloots does not tie citizenship to property, and he enthusiastically supports the 1792 broadening of suffrage. He prominently mentions on the first page of *Bases Constitutionnelles* those who work the fields and those who fill the workshops as "concitoyens" (B 1). Whether this means that all adult human beings would have full citizenship rights in the world republic, however, remains to some extent an open question, because it is unclear at best whether he intends to include women. The 1789 Declaration was not meant to apply fully to women, and Cloots does not take issue with this restriction. Given Cloots's otherwise uninhibited attitude toward exposing social evils, this almost certainly means that he saw no reason to improve women's political status. In fact, while Cloots was still at the center of political power, clubs of women were among the first groups to be hit by the terror. Olympe de Gouges, playwright and author of the "Declaration of the Rights of Woman and the Woman Citizen" (*Déclaration des droits de la femme et de la citoyenne*, Paris 1791), was arrested in July of 1793 and executed by guillotine that autumn.

basic idea is that individuals decide to leave the state of nature and voluntarily submit to common laws and the authority to enforce those laws, thereby establishing a state with coercive powers. But these theorists generally conceive of the state as one among many, not as a single, all-encompassing world state. The 1789 Declaration, too, indicates that it assumes a plurality of states by claiming, in its third article, that the source of all sovereignty resides in the “nation.”

According to Cloots, however, social contract theory has been inconsistent in limiting the scope of this argument to the nation state. Instead, the logic of the argument should lead to the conclusion that a world state is the only real solution. A well-functioning state ends the threat of war [565] between individuals in its territory and protects their human rights, but as long as this state does not encompass all humans, its establishment does not by itself end the threat of war between this state and its neighbors. The organization of humans into a plurality of states does not end the state of nature, but merely shifts it to the international realm, and human rights cannot be fully secure under the threat of war. Cloots also sketches the other negative effects this has and argues that all peoples would be better off if they did not have to be on the alert against attacks all the time, if they did not have to waste money maintaining an army, and if they did not erect barriers to trade (RU 13-14). The only true solution to the threat of war in the state of nature is to establish a world republic.

Traditional modern political theory has not been completely oblivious to this problem, and Cloots is aware of the fact that “many political authors have presented projects for perpetual peace, for a confederation of states, of nations,” claiming to solve the problem by suggesting that states form a federation in order to promote and maintain peace (RU 42).

He regards the federalist strategy as problematic, however, for two reasons. If the states are still sovereign, there is no real federal government with the power to force the states to comply with the laws. Conversely, if they give up their sovereignty, they should no longer be called states. Cloots sees this as the fatal flaw of the peace proposal of the Abbé de St. Pierre, whose work in his eyes failed to give an account of how war between the different federated powers could be prevented or ended effectively (RU 17). Thus, he thinks we face the following dilemma: either the existing states merge into a world republic, or they retain their purported sovereignty and the threat of war remains. Traditional political theory, according to Cloots, is unwilling to face this dilemma. Its arguments are as inconsistent as its ad hoc solutions are ineffective.

In keeping with his radical antifederalism, Cloots argues against *any* kind of intermediate

political level between the individuals and the world state. Individuals should be directly subsumed under a single government with worldwide jurisdiction. The legislature should be a house of elected representatives from all over the world.

I will leave matters of implementation aside here, except that I would like to point out that when Cloots speaks of “all humans” or the “human race,” he really does mean a global world state. He does not focus his proposal on Christian Europe in the way the Abbé de St. Pierre had done.¹¹ He makes a point of explaining that the world republic also comprises the tropical zones (RU 20). He accuses those who limit the applicability of the principles of the Declaration of the Rights of Man and Citizen of being flagrantly inconsistent. The articles of the Declaration [566] apply to all human beings, in all climates, and there is no reason to assume that there are any human peoples that have significantly different capacities warranting a lesser status (RU 39, 194-95). He criticizes the “sophists” who come up with bad-faith justifications for slavery (RU 21), and he argues that slavery, colonialism, and religious imperialism should be abolished. Instead of suffering under the yoke of Spanish and Portuguese religious imperialism, Dutch and English trade monopolies, and American slavery, people all over the world should (and will) be free under the reign of human rights (RU 20-21; cf. B 27). Closer to home, he enthusiastically greets the 1791 granting of citizenship to Jews (RU 186).¹²

A Kantian Answer to Cloots

As mentioned, Cloots gets credit for being consistent where others are not. But is this assessment correct? Are the alternatives *inconsistent*? Is it possible for authors in the social contract tradition to be consistent *and* avoid advocating a world state? Should they *want* to avoid the “republic of the united citizens of the world”? Why? And how? For a contrasting answer to these questions, I turn to Kant—Cloots’s contemporary, a social contract theorist in his own right, and the author of one of the best-known defenses of a league of states.

It is especially instructive to look at Kant because he has often been charged with inconsistency on precisely the point pressed by Cloots. In his normative ideal as we find it in *Toward Perpetual Peace* and *The Metaphysics of Morals*, Kant does preserve a plurality of

¹¹ "Abbé Charles-Irénée Castel de Saint-Pierre, *Projet pour rendre la paix perpétuelle en Europe* (1713).

¹²Cloots praises the Jews for helping to eradicate tyranny, RU 187.

states.¹³ Whether he is read as advocating merely a loose and voluntary league of sovereign states or as *also* advocating the further ideal of an international federation to which states transfer part of their powers of sovereignty— either way, he retains a plurality of states in the ideal.

Kant sharply criticizes the kind of model Cloots advocates, as is clear from his critique of the “universal monarchy.” The universal monarchy is the hegemonic state that swallows up all others and in this way brings about a single world state. According to Kant, this leads to “soulless despotism” (PP 8:367). Kant is here referring to the older discussions of the universal monarchy in the literature, which often referred to the aims of Charles V or Louis XIV. Cloots was of course vehemently opposed to any kind of monarchy, and he aimed at a universal republic, not a universal monarchy. Yet insofar as the target of Kant’s criticism is the state that [567] enlarges itself by swallowing up all others, it also fits exactly the expansionist model Cloots had in mind when he was involved with the French war effort.

The inconsistency that Kant is accused of has to do with his solution for abolishing the state of nature among states. It has to do with the fact that he claims that states should establish a loose voluntary league of states because they do not want to join a federation of states (which, Kant says, is the real ideal that reason prescribes). Commentators criticize Kant for being inconsistent, arguing that if the state of nature among individuals should be ended by individuals jointly submitting to the common laws of a state with the authority to enforce these laws coercively if necessary, then states should exit their state of nature by jointly submitting to the common laws of a federative state of states with the authority to enforce its laws coercively. Kant’s defense of a league of states, in this view, is an unKantian capitulation to realism. It is seen as inconsistent especially because Kant himself says that although reason demands a federative state of states (*Völkerstaat*), states *do not want* to join such an organization, and therefore we should focus on establishing a voluntary league (PP 8:357). This sounds like watering down the theory on the basis of alleged impracticality, something Kant himself is usually very critical of.

I wish to look at this issue a bit more closely and argue that Kant’s position can in fact be interpreted as coherent in a way that provides an answer to Cloots. As far as the Kant

¹³ "Immanuel Kant, *Toward Perpetual Peace* (PP), and *The Metaphysics of Morals* (MM), in vols. 8 and 6, respectively, of *Kants Gesammelte Schriften*, ed. Königlich Preußische Akademie der Wissenschaften (Berlin: de Gruyter, 1900-). Citations to Kant’s works below are by volume:page number(s) of this edition.

interpretation goes, I have argued for this point at greater length elsewhere. I will be using elements of that argument here but focus on the philosophical point that can be made on its basis.¹⁴

In his political theory of the 1790s, Kant argues that the analogy between the two levels of the state of nature fails in an important respect. The disanalogy, he writes in *Toward Perpetual Peace*, is that “states already have an internal legal constitution, and thus they have outgrown the coercion of others to subject them to a broader legal constitution according to their [viz., others’] conceptions of right” (PP 8:355-56). This passage is cryptic, and Kant’s growth metaphor is not helpful. Why would having an *internal* legal constitution have a bearing on the specific form of the states’ *external* legal relationships? One might be tempted to invoke the second and fifth Preliminary Articles in *Toward Perpetual Peace*, which formulate versions of the principle of noninterference. But an appeal to this principle does not yet explain *why* Kant regards it as wrong to coerce states to join a state of states.

[568] There is, however, a way of understanding the importance of states *wanting* to join that makes good sense of the problematic passages and explains in what sense states have “outgrown” the coercion by others. According to Kant, a state, ideally conceived, is a union of individuals for the purpose of self-legislation. On his account, the state is normatively required because the external freedom (i.e., freedom in the sphere of outward behavior, as opposed to inner, moral freedom) of individuals should be protected by jointly self-given laws that determine their spheres of external freedom. This form of collective self-legislation in the state can be called *political autonomy*, as distinct from moral autonomy, which concerns the individual’s determination of the will. Thus, individuals do not lose their freedom when they join a democratic state: in a just state each “has emerged from the state of wild, lawless freedom in order to find his freedom as such undiminished in a dependence upon laws, that is, in a juridical condition, because this dependence arises from his own, legislating will” (MM 6:316).¹⁵ In the hypothetical original state of nature, according to Kant, individuals should either submit to the common laws of a state or leave each other alone. If someone refuses to join me in entering into a state but does not leave me alone, I am, in Kant’s view, entitled to coerce that person into a state with me, in order to establish a situation in which my freedom and that of others can be

¹⁴ The argument here draws on my essay, “Approaching Perpetual Peace: Kant’s Defence of a League of States and his Ideal of a World Federation,” *European Journal of Philosophy* 12 (2004): 304-25.

¹⁵ I thank Sarah Holtman for her suggestion to include this passage.

secured and protected.

As such, and again ideally conceived, the people associated in (and into) a state should be regarded as politically autonomous and be respected as such by other states. *Individuals* in the state of nature do not yet have anything analogous to this political autonomy. In exiting the state of nature, they first bring it into the world. When *states* exit the state of nature, however, there is a normative constraint on the way in which they exit it, namely, the political autonomy of the peoples: that is, of the individuals who collectively compose the states. This normative constraint is that, unlike individuals in the state of nature, other states (peoples in the political sense) ought not to be coerced into a higher-order political body with coercive powers.

Kant's insight that there is an important disanalogy between the state of nature among individuals and that among states is worth developing. It can be elaborated more clearly, I believe, with the following hypothetical scenario.

Imagine that my friends and I live in the state of nature: there are no states. At some point we decide we want to leave the state of nature, and we establish state X. When confronted with others, we tell them the Kantian rule: join us or leave us alone. As a result, a number of people [569] wander off into the woods and leave me and my fellow-citizens alone. Later, some of the others decide to establish state Y. Perhaps they find the particular legal setup of Y more attractive than that of X. Or perhaps the woods have become so crowded with people who wanted to avoid joining X that they now make each other's lives so dangerous or miserable that they feel it is in their interest after all to start state Y. However that may be, from that moment on there are two states, X and Y. Let us assume that these states initially have nothing to do with each other and do not interact. As long as this is true, they are not normatively required to change this situation. Perhaps the people in X do not even know about the existence of Y. In any event, as long as X and Y do not interact they are under no obligation to leave the state of nature that does indeed exist between them.

If X and Y do start interacting at some later point in time, does X have the right militarily to coerce (the people of) Y into a federation or a Clootsian world state, in order to secure and protect their freedom? If one's political philosophy is fundamentally individualistic and if one allows that individuals ideally protect their own and each other's external freedom and rights by self-organizing into a democratic polity, then it is not possible to answer that question affirmatively. For that would be to run roughshod over the political autonomy of the *individuals*

involved. If the people of X decide to force the people of Y into a federation or a world republic on *their* conception of what is right, the people of Y will rightly regard this as a violent form of political heteronomy. This is why Cloots's military exploits were indeed perceived as the imperialist endeavor to bring the rest of the world under French rule, despite Cloots's own repeated assertion that he merely wanted to bring them under the rule of the "formerly called French," now properly called "world republic" (O 147, B 29-30).

Thus, if one were to grant states a right to force other states into a federation with coercive powers, analogous to the right of individuals to force others into a state, this would mean that the strongest state (or group of states) would end up setting the terms, subjecting other states to its laws and interests. Kant believes that in the case of *individuals* leaving the state of nature, there is progress even if the newly formed state is not a republic, because at least there is the rule of law. In the case of *states* leaving the state of nature, by contrast, a despotic state of states might quash any already existing rights that are secured internally by the subjected states, and hence such a state of states can severely violate previously established lawful freedom. There is no reason to assume that the strongest state (or group of states) acts in accordance with the requirements of right, or that it acts *more* so than the dominated ones. The states with less power may be the ones that are the most in accord with justice. The [570] state of states may be governed by laws that are inconsistent with the freedom (autonomy) of the member states, and a non-republican federal state of states could, for example, destroy the republican institutions through which the citizens of a particular member state give laws to themselves.

This does not mean that the risk of these bad consequences is itself the reason why Kant objects to coercing unwilling states into a federation. Kant does not say that it is, and indeed if he did, this would open him up to the objection that this consequentialist line of argument would commit him to *endorsing* cases in which a group of powerful "republican" and rights-respecting states coercively forces unwilling despotic states into the federation. After all, such coercion would expand the external freedom of the population of such despotic states and it would seem that if the risk to freedom is a reason not to coerce just states into a federation, the chance to expand freedom would be a reason to coerce unjust states. But this is a strategy that Kant clearly does not endorse.

In short, what does explain the importance of states *wanting* to join is Kant's view of the ideal

state as the union of individuals for the purpose of being under common, self-given laws, along with his conviction that forcing states to join a state of states against their will would violate the political autonomy of the people involved (both collectively as an association of individuals and individually because the political autonomy of the individuals is violated at the same time). Forcing them into a state of states would run counter to the basic idea of the polity as a self-determining and self-legislating union of individuals.

This is most clearly true in cases in which a despotic state of states would destroy rights and freedoms secured within relatively just states. But it holds true even in cases in which the coercion is intended to be for the sake of the population's own good. Even if it seems that citizens of brutally oppressive states would prefer to live under a republican federation rather than their oppressive rulers, and hence that their autonomy might seem to be served by coercing their state into a federation, it may in fact be that what they really want is to be in a position to decide for themselves in this matter. The people may well want to get rid of their despot, but it does not follow that they will want to join a particular self-proclaimed "liberator" state of states with its particular conception of justice. Thus, coercive inclusion of a state for the good of the population comes down to an essentially paternalistic line of reasoning that passes over the political autonomy of the people it purports to serve, and Kant's objections to paternalism are well known.

This point is well illustrated by the various unsuccessful attempts on the part of strong states that understand themselves as "republican" or "democratic" to impose their version of republicanism or democracy on the populations of heretofore despotic states—this was the experience of, [571] for instance, the Soviet Union and continues to be the experience of the United States. It was also the experience of Cloots's revolutionary France at the end of the eighteenth century. Cloots initially approached the war as a war of liberation of the neighboring peoples. He expected to be greeted enthusiastically by the populations of the countries which he claimed to be liberating. This did not happen, however, and from that moment on, Cloots would argue that these populations were so enslaved by their despots that their judgment was impaired. France would first have to liberate them against their will, and only after proper education in the world republic would they start to recognize that the growing world republic had indeed liberated them (B 40-42).

The importance of the political autonomy of a people ("people" again in the political, not

nationalist, sense), then, seems to be the rationale behind the passage, already quoted above, in which Kant claims that states have “outgrown the coercion of others to subject them to a broader legal constitution according to their [viz., others’] conceptions of right” (PP 8: 355-56). This claim does not mention risks, but rather indicates that the existence of peoples (in the political sense, constituted as states with internal legal constitutions) puts normative constraints on the way that states exit the international state of nature. There is no parallel at the international level to a right that is granted to individuals in the state of nature, namely, the right to force other individuals to either enter into a state with them or leave them alone (cf. PP 8:349, n.).¹⁶ As Kant puts it in the *Vorarbeiten to Toward Perpetual Peace*, states are allowed to resist the attempt by others to force them to join a federative state of states “because within them public law has already been established, whereas in the case of individuals in the state of nature nothing of the kind takes place” (23: 168).

It is worth noting here that commentators who criticize Kant for downplaying the analogy between the state of nature among individuals and that among states often themselves fail to take seriously the problems connected with a strict analogy. Most of them inconsistently allow for voluntary joining and secession. The few authors who do follow the alleged analogy to its logical conclusion expose the dangers connected with their own view. According to Thomas Carson, for example, in an essay entitled “*Perpetual Peace: What Kant Should Have Said*,” neither democracy nor consent are required for the creation of a state of states:

[I]f ... the creation of a world government would require that all nations have democratic or “republican” forms of government, then the prospects for the creation of a world government are not good. It may seem unlikely that all nations would ever agree to a particular [572] form of a world government. But this is not necessary for the creation of a world government. It would be enough if all great powers (or all nuclear powers) agreed to the idea of a world state. They could then unite and compel other nations to join.¹⁷

If the state of states were based on the sheer power of a few states with the weaponry that can compel all others, it is clear that the political autonomy of the citizens of the states that are so

¹⁶One may wish to disagree with the noninterventionist conclusions that Kant draws from this line of reasoning, but the reasoning itself does not need to be read as flagrantly inconsistent. For a critique of Kant’s noninterventionism, see Fernando Teson, “The Kantian Theory of International Law,” *Columbia Law Review* 92 (1991): 53-102, pp. 67-68.

¹⁷Thomas Carson, “*Perpetual Peace: What Kant Should Have Said*,” *Social Theory and Practice* 14 (1988): 173-214, p. 211. The world government would have “military forces sufficient to dismantle and defeat any national army in the process of creation” (p. 185; note also the “far reaching intelligence network” (ibid.) of the world government, and Carson’s assumption that one can prevent a military take-over just by having rules against it, pp. 203-4).

compelled has evaporated.¹⁸

Cloots not only underestimates the importance of democratic self-determination of other peoples, he also makes a second mistake. He fails to theorize the historical emergence of individual states. He starts his social contract theorizing on the basis of a conception of the state of nature as a *world*, in the sense of the entire earth, populated with individuals who interact with each other. In contrast to the hypothetical scenario of X and Y, whose citizens left the state of nature at different times and as a result of independent decisions, Cloots pictures all individuals of the world as having to leave the state of nature simultaneously and as a result of one joint decision. On this conception, there is indeed no good reason to divide these individuals up into separate groups forming independent states, only to exist in the state of nature again at a second level. The plurality of states then seems nothing more than a big mistake, and its unquestioned retention the result of a fateful prejudice.

This picture needs to be nuanced, however, as soon as one adds to the basic democratic view of the state¹⁹ the acknowledgment that states *have* developed as part of a historical process and that political associations of individuals have to some degree developed independently of each other. If states developed before the global perspective was available, and if the autonomy of peoples (i.e., individuals jointly constituted as states) is to be taken seriously, then a Clootsian approach is not permissible.²⁰ Before there were states, the truly global perspective was not available; and [573] when the truly global perspective became available, states were already there.²¹ If this is taken seriously, it is possible to give a coherent account, in terms of social contract theory, not only of the formation but also of the legitimate persistence of a plurality of states, namely, insofar as these states are, ideally, the embodiment of the political autonomy of the citizens, and hence important to these individuals.²²

¹⁸ "Commentators who criticize Kant's defense of the league of states on the grounds that the league is likely to have many flaws and who argue that only a state of states would be able to solve these problems often overlook the fact that the state of states itself is also likely to be flawed.

¹⁹ Clearly, this argument may not convince Hobbesians.

²⁰ A similar point can be made with regard to the issue of sovereignty. Cloots contends that sovereignty is indivisible and hence should be attributed to the human race as a whole. This claim presupposes a "whole" of humanity. But if states can be theoretically conceived as having originated independently—that is, not as simultaneously emerging and (therefore) irrational partitions of an already existing greater whole—then there is a way of conceiving of a plurality of peoples as simultaneously sovereign.

²¹ It does not matter for my line of argument that the stylized picture of states emerging independently corresponds to the historical facts only to a small degree.

²² None of this implies that states do not have *duties* toward each other, as will become clear in the next section.

Rawls's Two-Stage Original Position and its Critics

The point about the importance of political autonomy for the collective of individuals that has institutionalized the democratic state can be put to further use. It can be used to answer those who criticize the state for a different reason, namely, as a barrier to justice, as an instrument of exclusion and privilege (with regard to distributive justice and the division between rich and poor countries), and as an instrument of oppression (in the hands of dictators). This criticism plays a significant role in the critique of John Rawls's *The Law of Peoples*. Ever since the first publication of his thoughts on the matter, authors have argued that Rawls should have modeled the social contract at the *global* level and not regard *states* ("peoples," in his vocabulary²³) as the pre-eminent political institutions in which power is concentrated.²⁴ What follows from that line of argument, then, is a strict cosmopolitan account of the duties of individuals toward others elsewhere in the world, and a proposal to divert power away from the level of the states.

It must be said that *The Law of Peoples* contains very little in the way of an articulate defense of a possible plurality of states. What I would like to argue, however, is that although the critics are right in their assessment that there is a lacuna in Rawls's account, it does not follow that a single, global original position of individuals is the answer. I believe there is way to show that democratic states should be taken seriously enough that a two-stage original position is warranted, even if Rawls's [574] own account does indeed contain serious gaps.

Rawls repeatedly claims to "follow Kant's lead"²⁵ in a number of respects: both in what he takes to be Kant's rejection of any kind of world government and in his thesis that the model of the original position should first be applied at the level of the individuals forming a constitutionally democratic regime, and then at the level of "peoples."

There are a number of unclarities in Rawls's defense of this two-level procedure, however. These prompt questions such as the following: *Why* should we presuppose states ("peoples") in a second procedure? *Why* should we not rather adopt a cosmopolitan one-level procedure?²⁶

²³Rawls's reason to prefer "people" to "state" is that he views the latter term as blemished by the connotations of absolute internal sovereignty and the right to wage war. Many commentators have already pointed out that Rawls could simply retain the term "state" with the proviso that it should not have those undesirable connotations. In this sense, I keep using the term in this essay.

²⁴See, for example, Charles Beitz, *Political Theory and International Relations* (Princeton: Princeton University Press, 1979); Thomas Pogge, "Cosmopolitanism and Sovereignty," *Ethics* 103 (1992): 48-75; Andrew Kuper, "Rawlsian Global Justice: Beyond *The Law of Peoples* to a Cosmopolitan Law of Persons," *Political Theory* 28 (2000): 640-74.

²⁵E.g., Rawls, *The Law of Peoples*, pp. 10, 19, 21, 22, 36, 54.

²⁶Also, the way Rawls represents his "global-original-position"-opponents misses its mark. Whereas they often argue

Rawls claims to be “taking historical conditions into account” in his two-level approach, and he asserts that “the law of peoples proceeds from the international political world as we see it” (83).²⁷ But for all those who use the social contract as a model that provides a normative criterion against which to measure existing and possible social and political arrangements, the claim that the plurality of states (or, in Rawls’s terms, peoples) should be respected *just because it exists* is not going to be convincing (if this is how Rawls’s claim is to be understood). This may explain the common critique that Rawls’s theory should have been more strongly individualist.²⁸

On the other hand, one could also argue that Rawls should have conceived of the second original position as more similar in results to the first, and that he should have argued for a federative world state. Rawls takes great pains to show that the procedures at the first and second levels are almost entirely parallel (part 1, sec. 1-4). Yet the *results* of the second original position are dissimilar in unexpected ways. For example, it seems strange that Rawls assumes that the representatives in the first original position are willing to enter a liberal society, whereas he claims, without further comment, that the representatives of peoples, in the second original position, are not willing to take the analogous step and enter a world state because they want to protect their political independence as one of their “fundamental interests” (34, 41). One would have expected Rawls to say that it is a fundamental interest of peoples to join a common [575] legal system. This would be a supranational constitutional regime, in which the principles of the Law of Peoples, suitably revised, are enforced. Rawls, however, forcefully rejects this view, claiming that any kind of world government would be despotic (36). This is a strange assumption to make in his exposition of “ideal theory,” the stated aim of which is to establish a normative ideal assuming full compliance and favorable conditions.

In order to address these striking unclaritys in Rawls’s account of the two-stage original position, the Kantian line explicated above can be made fruitful. *If* the original position among individual deliberators leads to the formation of multiple states (which the description of the original position procedure does not rule out or prohibit)—for example, on contingent grounds

their point with an appeal to the greater *justice* that is achieved by adopting a one-level procedure, Rawls insists on construing them as being concerned merely with the *welfare* of world citizens (*The Law of Peoples*, p. 119).

²⁷ Parenthetical references in this section are to Rawls, *The Law of Peoples*.

²⁸ If one searches for other arguments in Rawls’s book that can justify the plurality of states independently of the original position procedure, one does not find much, either. At some point, Rawls seems to imply an argument for the plurality of states that starts from the rejection of the world state: “In the absence of a world state, there *must* be boundaries of some kind” (p. 39). But this is plainly question-begging.

such as the ones mentioned in the hypothetical case of X and Y presented in the previous section—*then* there needs to be a subsequent procedure to establish the rules governing the relationships among states (peoples). Because the specific institutional requirements for just states include that these states are democracies, however, we are justified in assuming that the peoples involved are invested in the functioning of their democratic states as institutions of justice. (Note that we are dealing here with ideal theory.) This in turn implies that the citizens are invested in the proper functioning of their democratic state. In other words, as citizens, these individuals are invested in the process of democratic self-legislation and self-government, and their democratic state (or society, as Rawls might say) matters to them.²⁹ If this is so, however, even in an individualist theory just democratic states should take on an importance of their own and not be disregarded in theorizing global justice (as happens when only a single, global original position of individuals is allowed). The conclusion, then, is that the two-level original position procedure can be defended on Rawlsian grounds, at least for the first step of ideal theory.

A few short comments may serve to provide further clarification and avoid misunderstandings. First, the two-step original position procedure and its results do not have the implication feared by some of Rawls's critics, and drawn by Rawls himself, *viz.*, that states or peoples have no obligations of distributive justice toward each other and only very limited duties of mutual aid (105-20). On the basis of Rawls's own premises, it is possible to argue for a much stronger theory of international duties.³⁰ |576| Even though many of his critics themselves defend a one-stage global original position,³¹ several have argued (in the main successfully, I believe) that Rawls's own two-stage procedure can and should accommodate an egalitarian concern with international distributive justice.³² The defense of a plurality of states by itself does not diminish cosmopolitan duties at all.

Furthermore, the conception of the just (democratic) state used here does not imply a

²⁹Rawls himself stresses the importance of democratic self-government and self-determination to peoples but does not explicitly relate this to the defense of the two-level original position procedure (cf. pp. 61-62).

³⁰Brian Barry, *The Liberal Theory of Justice* (Oxford: Clarendon Press, 1973), pp. 128-33, and *Theories of Justice* (London: Harvester-Wheatsheaf, 1989), pp. 183-84; Thomas Pogge, "An Egalitarian Law of Peoples," *Philosophy and Public Affairs* 23 (1994): 195-224.

³¹Thomas Pogge, *Realizing Rawls* (Ithaca: Cornell University Press, 1989); Darrel Moellendorf, *Cosmopolitan Justice* (Boulder: Westview Press, 2002).

³²Pogge, "An Egalitarian Law of Peoples." Allen Buchanan has argued that a "global basic structure" exists that warrants applying the difference principle at the international level. See his "Rawls's Law of Peoples: Rules for a Vanished Westphalian World," *Ethics* 110 (2000): 697-721.

“communitarian” turn,³³ and neither do peoples need to be homogeneous, in the sense of being without conflict or ethical diversity. Rawls certainly invites a communitarian reading with his talk of “common sympathies” as a “cultural” characteristic of a people (23-25). But on the Kantian line I have sketched here, these are not necessary (though they may exist and may be beneficial). The conception is phrased in terms of common citizenship and civic ties, that is, in terms of citizens being involved in a joint project of legally regulating their shared sphere of interaction. They need to share a sense of *political* community, but that is far less than Rawls seems to have in mind when he speaks of common sympathies.

I have here focused on Rawls’s “ideal theory,” and only on its first part. Questions that naturally arise at this point, but which I cannot take up in this essay, concern the possibility of extending the account (as Rawls does) to what he calls “decent” peoples,³⁴ and of moving on to “nonideal” theory.

I mention the focus on ideal theory, because if we now look more closely at the alternative sketched by some of Rawls’s critics, who argue in favor of a single, “cosmopolitan,” global original position, their description of the state is taken not from Rawls’s ideal theory but from the reality of our current world. Some of them see in states nothing but a danger, a harmful legacy from a history of violence—bad things that theorists concerned with cosmopolitan justice should jettison. Andrew Kuper, who proposes a “Law of Persons” instead of a Law of Peoples, is a good example here.³⁵ In his eyes, states are a source of oppression, starvation, [577] nationalist wars, xenophobia, and so on.³⁶ He tends to see states as problematic per se, and he aims to move beyond them in his own theory of justice. In his view, Rawls is insufficiently individualistic, and the proper theory of global justice should be developed exclusively on the basis of a global original position of persons (and this theory then leads to an argument for reducing the role of states).

It is important to realize, however, what notion of the state is at work here. Kuper describes the essence of states in terms of governments and rulers who do not necessarily have the interests of their subjects in mind, and who are unable to represent their subjects properly in the

³³Kok-Chor Tan, *Justice without Borders: Cosmopolitanism, Nationalism and Patriotism* (Cambridge: Cambridge University Press, 2004), p. 75.

³⁴Here, too, Rawls has met with much criticism. See, for instance, Chris Naticchia, “Human Rights, Liberalism, and Rawls’s Law of Peoples,” *Social Theory and Practice* 24 (1998): 345-74.

³⁵Kuper, “Rawlsian Global Justice.”

³⁶*Ibid.*, pp. 660, 663.

second stage of the original position.³⁷ States, on Kuper's conception, are not democratic unions of individuals for the purpose of self-legislation and the common determination of their mutual spheres of freedom—a notion of the state as a just democracy in which the individuals themselves are invested. Rather, Kuper claims, we should “jettison” the idea that states are fundamentally important. Instead, we should start from (and stick with) a single “global original position that represents all the persons of the world.”³⁸

This “jettisons” states too soon, however. For if one conceives of just states as democratic and as embodying the political autonomy of the individuals they are composed of, there can be adequate representation (in the ideal) and there is no reason to *oppose* the interests of individuals to those of (democratic) states. In fact, because democratic self-legislation is important to individuals, and because as the world is currently institutionalized as a plurality of states many of which are democracies (even if none of them is perfect), this should be taken into account in one's theory of global justice. The people have a legitimate interest in having their own political community and its institutions taken seriously and, if there is a plurality of such communities, in having this plurality respected (instead of being theoretically jettisoned or violently coerced into a world state).

As mentioned above, Rawls's own argument concerning the plurality of states is unclear. I do not wish to imply here that there is a simple patch for all the problems with the argument as found in *The Law of Peoples*. But I do think that a Rawlsian project can be developed along the lines I have sketched in this essay, and that there are good reasons to run the argument in two stages. I also do not wish to imply that we can or should leave the rest of Rawls's views intact. There are more problems with his account than I have mentioned here explicitly. Notorious is his rather curtailed list of human rights, from which democratic individual [578] rights of political participation are conspicuously absent.³⁹ If my argument above is convincing, this list should likely be altered as well, which then in turn has consequences for the theory as extended (by Rawls) to “decent” peoples. Addressing these issues, however, lies beyond the scope of this essay.

In sum, even though Cloots's complaint is still valid, namely, the complaint that political

³⁷Cf. *ibid.*, pp. 646-47.

³⁸*Ibid.*, p. 647.

³⁹For criticism of Rawls's arguments concerning human rights, see Pogge, “An Egalitarian Law of Peoples,” esp. p. 215, and Victoria Costa, “Human Rights and the Global Original Position Argument,” *Journal of Social Philosophy* 31 (2005): 49-61.

theory wrongly regards the existence of a plurality of states as natural and obvious, more can be said to defend the plurality of states than Cloots assumed. Furthermore, Rawls would have done well to “follow Kant’s lead” in at least one more regard.⁴⁰

⁴⁰ This paper was first presented during the 2006 Werkmeister Conference on Cosmopolitanism at Florida State University, and I am very grateful to Joshua Gert and Victoria Costa, who organized this event. I would also like to thank Sarah Holtman for her incisive comments, and the participants in the conference, as well as Thomas Fossen and Alyssa Bernstein, for many helpful questions and criticisms.