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Contractarian approaches to legitimacy in normative international relations theory: Hobbes, Rousseau, Kant, and Rawls

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Contractarian Approaches to Legitimacy in Normative International Relations Theory:
Hobbes, Rousseau, Kant, and Rawls

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Contents

Introduction

'Legitimacy [....] comes from having acted in our own self-defense', says Paul Wolfowitz with regard to the war in Iraq; only 'the U.N. system creates legitimacy', says Joschka Fischer. These are two fairly common logics of legitimacy found in practical international politics. Yet certainly, this does not help very much when studying international legitimacy since the logics behind (international) legitimacy do tend to change. This brings me to the heart of my endeavour – namely: to argue for the *necessity* of studying the phenomenon legitimacy in international relations in International Relations (IR); to argue for studying it strictly *normatively*; to argue for its *moral* nature; and not only to argue that legitimacy criteria must be derived from *social contract* theory, but to argue that they must be derived from KANT. In short: KANT ought to reside as a judge for international legitimacy.

Laying the foundations, chapter one deals with the concept of legitimacy – legitimacy in general; in international relations; and in International Relations Theory. Legitimacy is needed in any social relationship, and as an object of study in IR. It is too powerful and its meaning too diverse to be neglected. IR must address the question of international legitimacy and must address it adequately. And adequately means to study it normatively. Why a normative approach? Because when speaking of legitimacy, one is necessarily speaking of morality; it is a moral concept – both domestically and internationally. Jurisprudence commonly fails to acknowledge this and so do the descendants of WEBER. Only a normative approach does do justice to its moral nature. Yet, normative study requires us to have criteria against which certain cases can be judged. And these criteria are provided most suitably by moral and political philosophy; in particular by social contract theory. Legitimacy understood properly cannot be found in positivist international system theory; it is located in normative international society theory. And since a society needs a contract, the focus shifts to social contract theory as *the* source for legitimacy criteria.

Chapter two deals with the social contract. My affirmative standpoint towards it rests mainly on the fact that the social contract is a fairly well-established idea in IR. However, and undoubtedly: a HOBBESian social contract is very different from that of a KANT; and one of the middle ages very different from that of a twentieth century RAWLS. Hence, in the quest for a proper source for 'legitimacy criteria', a pre-selection among social contract theories must be made. And there are very many to choose from

as the investigation into its ideal-types and history will reveal. HOBBES, ROUSSEAU, KANT, and RAWLS are used here for the following reasons. Firstly, the social contract is a modern phenomenon; and all four of them are deeply rooted in modernity. Secondly, criteria must be found for *international* legitimacy; and all four of them are well-established figures in IR. On the whole, I consider them to be relatively easily defensible sources for legitimacy criteria. Certainly, this is not a revolutionary selection; yet normative IR theory is not a radical enterprise, and neither is social contract theory.

Chapters three and four dive into the social contract theories of HOBBES and ROUSSEAU, as well as into those of KANT and RAWLS, respectively. The former two are rejected as sources for legitimacy criteria; the latter two, and in particular KANT, offer a superior basis for progress in this area. This justifies the bipartite organization: pessimists versus optimists. "'Optimist" and "pessimist" are tricky words, yet it is difficult to find better ones'[1], WALTZ says (albeit in a different context); I agree. HOBBES and ROUSSEAU are pessimists: they do not picture even the most primitive form of an international society; there is no international social contract in sight; legitimacy is limited to the domestic. This clearly separates them from KANT and RAWLS, the optimists: they do envisage both an international society and an international social contract; they take legitimacy beyond borders. To verify this argument, all four are examined and approached similarly: each first sub-section deals with the domestic social contract and its methodological-philosophical premises; each second sub-section then deals with the implications for the international sphere and/or the international social contract. It is virtually impossible to understand why, for instance, HOBBES rejects an international social contract between all his Leviathans when not considering the idea behind Leviathan in the first place.

Thus far then I will have argued that international legitimacy needs to be studied; that it needs to be studied normatively; that its moral nature must be properly acknowledged; that only normative international society theory is able to engage in this endeavour; in addition, that legitimacy criteria must be derived from a social contract; and that HOBBES and ROUSSEAU are somewhat inadequate sources, while KANT and RAWLS surely are adequate – or in other words: the optimists provide an excellent point of reference. Chapter five defends all these positions. Yet it does more. It defends international legitimacy against another 'enemy' within IR theory; against the post-modern

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[1] *Man, the State and War: a theoretical analysis* (1959), 2nd edition (New York: Columbia University Press, 2001), 18.

attack – an attack precisely against such 'excellent points of reference'. And also, it defends, by evaluating the four social contracts and their meanings for international legitimacy, KANT's social contract theory as the most promising source for the purposes of enquiring into legitimacy in international relations, and of deriving proper legitimacy criteria from it.

1. Legitimacy, international relations, and International Relations Theory

1.1 Legitimacy needed: its diversity and power

The question of legitimacy is found wherever 'striving for a share of power or for influence on the distribution of power'[1] takes place. It may be true that politics is the struggle for power, where power is the 'probability that one actor within a social relationship will be in a position to carry out his own will despite resistance'[2] over others, but having mere or naked power is insufficient; it lacks the sense of rightfulness. While power is not more than one's capability to achieve, or better, to compel compliance by means of coercion or force, authority is qualitatively different. Although the result is the same, namely, the successful exercise of one's will over others, authority entails 'the right to command, and correlatively, the right to be obeyed.'[3] What transforms power into authority or what accounts for this qualitative difference is legitimacy; or put differently: authority is legitimate power.[4]

What makes power legitimate? As so often, the simpler the question, the more difficult the answer. One very first idea of the complexity and diversity of legitimacy becomes available when exploring its etymological roots. Derived from the Latin adjective *legitimus*, it means: concerned with the law; legal; legally prescribed or recognized; born in lawful wedlock; lawful; prescribed by custom, usage, natural law; regular; proper.[5] An example illustrates the difficulty when speaking of legitimacy: assessing, for instance, the legitimacy of the Nazi regime in Germany, one would obtain completely different results when the applied yardstick is *legality* instead of, for example, *propriety*; and this then has also severe consequences for assessing whether the commands of such regime have to be obeyed or not. Certainly, what is decisive here is the yardstick that is used, whether it be, for example, some juridical-procedural standards a legalist may employ or the moral standards of a moral philosopher. What goes without saying is

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[1] MAX WEBER, 'The Profession and Vocation of Politics' (1919), in his *Political Writings*, edited by PETER LASSMANN AND RONALD SPEIRS (Cambridge: CUP, 1994), 311.

[2] IDEM, *The Theory of Social and Economic Organization* (1915), edited by TALCOTT PARSONS (London: William Hodge, 1947), 139.

[3] ROBERT P. WOLFF, 'The Conflict between Authority and Anarchy', in JOSEPH RAZ (ed.), *Authority* (Oxford: Basil Blackwell, 1990), 20.

[4] Cf. R. B. FRIEDMAN, 'On the Concept of Authority in Political Philosophy', in RAZ (ed.), *Authority*, 60.

[5] Cf. WALTER W. SKEAT, *An Etymological Dictionary of the English Language*, 2nd edn. (Oxford: Clarendon Press, 1884), 328; *Oxford Latin Dictionary*, 8th edn. (Oxford: Clarendon Press, 1982), 1014.

nevertheless worth mentioning since it is *the* challenge with legitimacy: depending on the lenses through which one sees it, even the most evil regime, to remain with the example, could be conferred legitimacy. The problem with the diverse meanings legitimacy can have applies basically to any relationships of command and obedience. It does not matter whether one looks at, for instance, classrooms, families, sport clubs, project teams, or executive boards; to have the mere power to command is one thing, to have the *right* to command and therefore the *right* to be obeyed is quite another. And regardless of the viewpoint – the view of a power holder or a power subject or an academic, etc. – various ways exist how to convert power into authority, that is, to make power legitimate: by conventions or norms; by a *social contract*; by power's conformity with some universal principles; by the sacredness of authority or of the norms; by the special expertise the power holder possesses; by popular approval; by personal relations or ties between power holders and power subjects; and by some personal qualities of the power holder.[6] How every single way functions in detail is not important here. What is important is the fact that this catalogue is far from exhaustive. And even if it were possible to agree, for instance, on the idea of a social contract as *the* legitimizing factor, there would not be available any coherent or 'single unbroken [social contract] tradition stretching back from Rawls and Gauthier through Hobbes to the ancient Greeks'[7] to draw on. This is why matters get even more complicated: which social contract?

The main argument thus far is the following. The social contract is only *one* way of transforming power into authority or, to speak with MAX WEBER again, only one of many 'grounds *legitimating* any rule'[8] – employed from only *one* particular point of view, namely, from moral and political philosophy. There are not only many other different ways, but also many other different viewpoints. The next section deals with these matters in more detail focussing on the three academic disciplines jurisprudence, social sciences, and moral and political philosophy. Why these three? The etymological roots of legitimacy imply its juridical (among its moral) character; from MAX WEBER, 'one of the founders of twentieth-century social science and probably its greatest practitioner'[9],

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[6] Cf. CRAIG MATHESON, 'Weber and the classification of forms of legitimacy', *The British Journal of Sociology*, Vol. 38 (1987).

[7] DAVID BOUCHER AND PAUL KELLEY, 'The social contract and its critics: an overview', in their (eds.) *The Social Contract from Hobbes to Rawls* (London: Routledge, 1994), 1.

[8] 'The Profession and Vocation of Politics', 311.

[9] SHELDON S. WOLIN, 'Max Weber: Legitimation, Method, and the Politics of Theory', in WILLIAM CONNOLLY (ed.), *Legitimacy and the State* (Oxford: Basil Blackwell, 1984), 63.

we derive a notion of legitimacy that 'has proved to be the dominant model for empirical investigations of legitimacy'[10]; and, the social contract is a (one) analytical tool of moral and political philosophy. Although I find DAVID BEETHAM's comment that 'the whole Weberian theory of legitimacy has to be left behind as one of the blindest of blind alleys in the history of the social science, notable only for the impressiveness of the name that it bears, not for the direction in which it leads'[11] too harsh, I will nonetheless argue against the WEBERian and in favour of a normative approach when studying legitimacy.

Legitimacy, as I understand it, is a through and through moral concept. Broadly speaking, the next section demands a normative approach for a moral concept. The argument for a normative approach to legitimacy is the connecting point to the subsequent section. Despite the fact that IR 'has been dominated by positivism'[12] and although it is often claimed that IR 'must be viewed under the category of power and that the conduct of nations is, and should be, guided and judged exclusively by the amoral requirements of the national interest'[13], I will pursue a different position. Following the tradition which argues 'that the subject needs to concern itself more with normative issues [...and] that the subject is unavoidably normative'[14], the overall aim is to show that legitimacy, social contract, morality and normativity – terms that are not standard vocabulary in IR – have (to have) their place within the wider IR language. Legitimacy will be located in normative international society theory. Only when all these tasks are successfully completed, can we proceed to chapter two where the idea of the social contract – very basically the idea of 'political obligation [...] as a contractual obligation'[15] – enters the stage. Here it begins to perform its leading role as *the* source for legitimacy. The remaining part of this section deals with the meaning and significance of legitimacy both generally and particularly in the international realm. Beginning with STANLEY

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[10] ROBERT GRAFSTEIN, 'The Failure of Weber's Conception of Legitimacy: Its Causes and Implications', *The Journal of Politics*, Vol. 43 (1981), 456.

[11] DAVID BEETHAM, *The Legitimation of Power* (London: Macmillan, 1991), 25.

[12] STEVE SMITH, 'Positivism and beyond', in STEVE SMITH, KEN BOOTH AND MARYSIA ZALEWSKI (eds.), *International theory: positivism and beyond* (Cambridge: CUP, 1996), 11.

[13] MARSHALL COHEN, 'Moral Skepticism and International Relations', in CHARLES R. BEITZ ET AL. (eds.), *International Ethics* (Princeton: PUP, 1985), 4.

[14] STEVE SMITH, 'The Forty Years' Detour: The Resurgence of Normative Theory in International Relations', *Millennium: Journal of International Studies*, Vol. 21 (1992), 490.

[15] MICHAEL LESSNOFF, *Social Contract* (Houndsmills: Macmillan, 1986), 2.

MILGRAM and HANNAH ARENDT may seem odd; however, they perfectly reveal the power of legitimacy as a mechanism of social control.

MILGRAM focussed on the act of obeying orders. What caused his interest in the Nazi epoch is obvious: a system of command and obedience 'has been reliably established' during the Nazi period, when 'millions of innocent people were systematically slaughtered on command', possible only because 'a very large number of people obeyed orders.'[16] His well-known obedience experiment has the following logic: ordinary people are told by the experimenter to administer electric shocks to a person, a professional actor only pretending to suffer; when do people, increasingly 'hurting' the person, stop administering shocks, stop obeying the orders given? Since most people did not stop altogether, the question of *why not?* naturally arises. The key for understanding their behaviour is legitimacy. They perceived the experimenter as a 'legitimate authority' and thus felt somehow obliged to obey; the mere sense of legitimacy made them perform sadistic actions. This provides a very first idea of the significance of legitimacy: even where naked power or coercion obviously plays no role – the people are only *told* to administer, they are not even explicitly told to obey – nevertheless, 'ordinary people [...] without any particular hostility on their part, can become agents in a terrible destructive process'. This is why MILGRAM states 'that Arendt's conception of the *banality of evil* comes closer to the truth than one might dare imagine'.[17] He refers to ARENDT's controversial *Eichmann in Jerusalem: A report on the banality of evil* where she makes the point that the dilemma with Adolf Eichmann was 'precisely that so many were like him, and that the many were neither perverted nor sadistic, that they were, and still are, terribly and terrifyingly normal.'[18]

Having shown the power and influence legitimacy can have on human actions, the same power applies to international legitimacy. What at first sight may seem to be rather peculiar becomes clearer when focussing on one particular parallel between MILGRAM's experiment and the international sphere: there exists a rule in the experiment – that to administer shocks – which is not enforced but is nevertheless obeyed; the same phenomenon applies internationally. Rules and norms do exist, and they are hardly en-

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[16] STANLEY MILGRAM, *Obedience to Authority: An experimental view* (New York: Harper & Row, 1974), citations on p. 1.

[17] IBID., 6-8.

[18] HANNAH ARENDT, *Eichmann in Jerusalem: A report on the banality of evil* (London: Faber and Faber, 1963), 253.

forced but usually obeyed.[19] This leads to the so-called 'compliance question'[20]: what causes states to follow and obey international law, rules, norms, commitments, and treaties? Or, asked from a different perspective: how can compliance with norms be secured or at least, in a first step, accomplished? What 'remains among the most perplexing questions in international relations'[21] is indeed of greatest interest and importance since the 'international social system does not possess an overarching center of political power to enforce rules.'[22] It is for that reason why THOMAS FRANCK quite concisely asks: 'Why do powerful nations obey powerless rules?'[23] Here, the focus must shift to three reasons – which are applicable not only to the international sphere but to any social system – why states obey: firstly, coercion (or force); secondly, self-interest (or reward-based or price); and, thirdly, legitimacy. In case of coercion, states follow norms, or compliance can be secured, only because they fear the potential punishment they face for non-conformity. When states comply by reasons of self-interest their submission 'ha[d] to be "purchased" through the offer of rewards'[24]. The third mechanism of these ideal-types of social control, legitimacy, makes states comply because they acknowledge a duty to obey – whatever, worth mentioning here, this sense of duty rests on.[25] And for FRANCK, legitimacy is the key for answering the compliance question. What must sound fairly ridiculous in the ears of orthodox IR scholars is that powerful nations obey powerless rules '[b]ecause they perceive the rule and its institutional penumbra to have a high degree of legitimacy'[26], and *not* for reasons of coercion or self-interest – with the latter two explanations falling into the neorealist and neoliberal

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[19] Cf. THOMAS M. FRANCK, *The Power of Legitimacy among Nations* (New York: OUP, 1990), 3; HAROLD H. KOH, 'Why do Nations obey International Law', *The Yale Law Journal*, Vol. 106 (1997), 2603.

[20] IBID., 2600.

[21] IBID., 2599.

[22] IAN HURD, 'Legitimacy and Authority in International Politics', *International Organization*, Vol. 53 (1999), 379.

[23] *The Power of Legitimacy among Nations*, 3.

[24] MATHESON, 'Weber and the classification of forms of legitimacy', 200.

[25] The threefold standard classification is, e.g., employed or used (but sometimes labelled differently) in: RODNEY BARKER, *Political Legitimacy and the State* (Oxford: OUP, 1990), 11; BEETHAM, *The Legitimation of Power*, 38; HURD, 'Legitimacy and Authority in International Politics', 379; MATHESON, 'Weber and the classification of forms of legitimacy', 200; JOHN PARKINSON, 'Legitimacy Problems in Deliberative Democracy', *Political Studies*, Vol. 151 (2003), 182; ALEXANDER WENDT, *Social Theory of International Politics* (Cambridge: CUP, 1999), 250.

[26] FRANCK, *The Power of Legitimacy among Nations*, 25 [italics omitted].

school, respectively.[27] Worth mentioning here, FRANCK sees legitimacy through legal lenses. But nevertheless: legitimacy in the international realm, too, exercises its power. Yet, there is another important meaning of legitimacy in the international sphere. Somewhat relating to the idea when enquiring into state legitimacy domestically, it implies that 'we sometimes count states as legitimate if they achieve certain kinds of international recognition'[28]. MARTIN WIGHT uses the term in this way, and by explicitly speaking of international legitimacy he links legitimacy to the 'the collective judgement of international society about rightful membership of the family of nations'[29]. What makes it sound differently to the way it was used when approaching the compliance question does, of course, follow the same logic: where it is neither coercion nor self-interest that makes states obey or comply or accept a rule, a law, a structure, an order, etc., it must be the sense of legitimacy; it must be the sense of the commands' or obligations' rightfulness.

Indeed, legitimacy is a powerful tool: it is able to transform naked power into authority; it is able to make people do sadistic things; it is able to even govern the behaviour of states; and it is able to regulate which state can have access to the family of nations. Since it is so powerful, everyone wants to possess it in one way or another; but: 'Legitimacy means different things at different times and in different places'[30]. This naturally leads to the next section and its attempt to categorize the main lenses through which legitimacy is seen and how it is approached and studied. Arguing for its moral character, it illustrates where in each case legitimacy is grounded; the social contract is only *one* source.

1.2 Legitimacy studied: a normative approach for a moral concept

There is a need for establishing a taxonomy since legitimacy is at least as confusing as it is powerful; there is not one coherent idea of what legitimacy is or what it means and how it is used and studied. Instead, it is an 'unfortunately ambiguous'[31] and 'rather

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[27] Cf. HURD, 'Legitimacy and Authority in International Politics', 380; WENDT, *Social Theory of International Politics*, 250.

[28] JOHN SIMMONS, 'Justification and Legitimacy', *Ethics*, Vol. 109 (1999), 747.

[29] 'International Legitimacy', in HEDLEY BULL (ed.), *Systems of States* (Leicester: LUP, 1977), 153.

[30] JOHN WILLIAMS, *Legitimacy in International Relations and the Rise and Fall of Yugoslavia* (Basingstoke: Macmillan, 1998), 3.

[31] ALLEN BUCHANAN, *Justice, Legitimacy, and Self-Determination* (Oxford: OUP, 2003), 146.

nebulous'[32] term which is 'rarely defined except by implication'[33] and, when defined explicitly, 'defined [...] in many different ways'[34]; it is 'employed loosely and in several senses'[35], and is 'neither very clear nor easy to apply'[36]; summing it up in BEETHAM's words, legitimacy needs to be 'rescue[d] [...] from the confusion into which it has sunk'[37]. The following taxonomy corresponds to the standard classification found in the domestic context where investigations into ruler vs. ruled or government vs. governed relationships have been traditionally made by three academic disciplines, namely, political theory/moral and political philosophy, jurisprudence and constitutional theory as well as the social sciences, especially political science and sociology.[38] Hence, it involves the three major positions that are taken up when legitimacy and its grounds are approached and studied: jurisprudence; social sciences, with special focus on WEBER; and moral and political philosophy. Examining legitimacy according to this classification reveals that jurisprudence and the WEBERian approach are flawed; both approaches do not acknowledge the innermost quality of legitimacy, namely its moral character, as well as the need (only consequently) to study it normatively; it reveals that the legitimacy criteria, necessary for the normative method, must be sought in moral and political philosophy, and in the social contract theory in particular.

To begin with jurisprudence, (international) lawyers 'tend simply to translate legitimacy as *legality*'[39]. A few centuries ago, legitimacy was used according to one of its original meanings: where, at the times of hereditary monarchy, power was inherited, the transfer of it became merely a question of lawful descent; this meant that a child, to be qualified for taking over the rule from its parent rulers, must have been born in lawful wedlock,

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[32] DAVID D. CARON, 'The Legitimacy of the Collective Authority of the Security Council', *The American Journal of International Law*, Vol. 87 (1993), 556.

[33] JOHN PARKINSON, 'Legitimacy Problems in Deliberative Democracy', 182.

[34] JOHN FRASER, 'Validating a Measure of National Political Legitimacy', *American Journal of Political Science*, Vol. 18 (1974), 117.

[35] WIGHT, 'International Legitimacy', 153.

[36] JAN PAKULSKI, 'Legitimacy and Mass Compliance: Reflections on Max Weber and Soviet-Type Societies', *British Journal of Political Science*, Vol. 16 (1986), 37.

[37] *The Legitimation of Power*, vii.

[38] Cf. BEETHAM, *The Legitimation of Power*, 4f.; RODNEY BARKER, *Political Legitimacy and the State*, 8-14. BEETHAM speaks of political philosophy, BARKER of political theory, yet both mean the same kind of discipline.

[39] INIS L. CLAUDE, JR., 'Collective Legitimization as a Political Function of the United Nations', *International Organization*, Vol. 20 (1966), 368.

that the 'parents of the child must have been lawfully married'[40]. Things are, at least in democratic states, different today; however, the basic principle from the viewpoint of jurisprudence remains the very same: something is legitimate if it is *lawful*; legitimacy is 'equivalent to *legal validity*.'[41] A prominent example of this understanding of legitimacy certainly is FRANCK; and the lenses through which he sees legitimacy are characteristic for most international legal scholars. When enquiring into the compliance question, a question which is definitely among 'the meat and potatoes of jurisprudential inquiry'[42], FRANCK suggests that legitimacy is 'a property of a rule or rule-making institution which itself exerts a pull toward compliance on those addressed normatively because those addressed believe that the rule or institution has come into being and operates in accordance with generally accepted principles of right process.'[43] The distinctive yardstick for conferring legitimacy is, then, a right process; the right process of how, for instance, a rule or law has come about. What those juridical-procedural accounts of legitimacy, which reduce legitimacy to a mere 'matter of satisfying *some* legal criteria'[44], fail to see is 'whether the law itself is justifiable, and whether it conforms to moral or political principles that are rationally defensible.'[45] Followers of this approach must live with the accusation of being 'fundamentally positivistic and process-oriented'[46] and FRANCK, interestingly, has made a significant shift in his later work *Fairness in International Law and Institutions*: instead of asking why nations obey international norms and laws, he raises the question whether international law is fair.[47] But be it as it may: legitimacy must not be confused with pure legality; it is more than a juridical label.

With WEBER, to arrive at the social sciences, it gets even worse; here, legitimacy has nothing to do with anything close to fairness or morality at all. His theory of legitimacy

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[40] MARGARET PUXON, *Legitimacy and Legitimation* (London: Oyez Publications, 1965), 7.

[41] BEETHAM, *The Legitimation of Power*, 4.

[42] THOMAS FRANCK, 'Legitimacy in the International System', *The American Journal of International Law*, Vol. 82 (1988), 706. The literature on the compliance question is large; see, e.g., FRANCK's *Fairness in International Law and Institutions* (Oxford: OUP, 1995) and ABRAM CHAYES AND ANTONIA H. CHAYES, *The New Sovereignty: Compliance with International Regulatory Agreements* (Cambridge: HUP, 1995).

[43] *The Power of Legitimacy among Nations*, 24 [italics omitted].

[44] FRASER, 'Validating a Measure of National Political Legitimacy', 118.

[45] BEETHAM, *The Legitimation of Power*, 4.

[46] KOH, 'Why do Nations obey International Law', 2644.

[47] Cf. *Fairness in International Law and Institutions* (Oxford: OUP, 1995), 6.

– held as the 'source of the confusion'[48], and having provoked 'almost universal criticism by [...] political philosophers'[49] – constructs legitimacy around the mere belief people have in it (or not). One must speak in circles to explain WEBER's view: power is legitimate when the people believe it to be legitimate (and *vice versa*); and what sounds so straightforward is at the same time exactly the core of the problem, namely, that it mistakenly does 'dissolve legitimacy into belief or opinion.'[50] WEBER's almost obsession to more or less equate legitimacy with the people's beliefs shines through in his three 'typical claims to legitimacy made by authorities'[51], namely, the rational, traditional, and charismatic claim. Firstly, what WEBER calls legal authority rests 'on a *belief* in the "legality" of patterns of normative rules and the right of those elevated to authority under such rules to issue commands'; secondly, traditional authority is based 'on an established *belief* in the sanctity of immemorial traditions and the legitimacy of the status of those exercising authority under them'; and lastly, charismatic authority means that it is the charismatic 'leader as such who is obeyed by virtue of personal trust in him and his revelation, his heroism or his exemplary qualities so far as they fall within in the scope of the individual's *belief* in his charisma.'[52] For WEBER, these three claims – worth mentioning that 'none of these three ideal types [...] is usually to be found in historical cases in "pure" form'[53] – are made when power is to be transformed into authority; and it is (t)his three-fold classification that has 'achieved classical status in the literature of political-science and political sociology'[54].

This is the ideal place to show again the power of legitimacy and its superiority as a mechanism of social control; to show why WEBER states that 'every such system [of authority] attempts to establish and to cultivate the belief in its "legitimacy".'[55] Taking on the view of the power holder, letting legitimacy do the work, i.e. to ensure compli-

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[48] BEETHAM, *The Legitimation of Power*, 7.

[49] GRAFSTEIN, 'The Failure of Weber's Conception of Legitimacy...', 456.

[50] JOHN H. SCHAAR, 'Legitimacy in the Modern State', in WILLIAM CONNOLLY (ed.), *Legitimacy and the State* (Oxford: Basil Blackwell, 1984), 108.

[51] GRAFSTEIN, 'The Failure of Weber's Conception of Legitimacy...', 462.

[52] WEBER, *The Theory of Social and Economic Organization*, pp. 300-1 [italics added].

[53] IBID., 301. For the concept of 'ideal type' see MAX WEBER, '"Objectivity" in Social Science and Social Policy' (1904), in his *The Methodology of the Social Sciences*, edited by EDWARD A. SHILS AND HENRY A. FINCH (New York: The Free Press, 1949).

[54] MARTIN E. SPENCER, 'Weber on Legitimate Norms and Authority', *The British Journal of Sociology*, Vol. 21 (1970), 123.

[55] *The Theory of Social and Economic Organization*, 298.

ance, is less costly (not only monetary) than coercing or buying it: coercion is inefficient and costly insofar as only persistent observation ensures obedience; self-interested actors constantly assess their pay-off for obedience and withdraw from it as soon as the rewards seem to be inadequate. Legitimacy, however, provides not only voluntary compliance but also the stabilizing effect power holders are appealed to.[56] Power subjects want it to see and power holders need it to have. It is this with legitimacy that only underlines my opening words: 'Politics is not merely a struggle for power but also a contest over legitimacy'[57]. Another aspect of the power lying behind legitimacy is shown by HURD: he (rightly) reasons, that if anarchy is seen as the missing of an authority and if legitimacy means that a norm, internalized by an actor because of the perception of it as legitimate, takes on an authoritative character over the actor, then it follows that, '[i]f we accept that some authoritative international institutions exist, by virtue of their being accepted by states as legitimate, then the international system is not an anarchy.' Legitimacy then even leads to a 'call for a political theory of international relations "after anarchy"'.[58] No doubt, legitimacy must be an object of study in IR; with a proper place in IR theory and a proper methodological approach.

The belief-centric WEBERian approach – usually referred to as descriptive (or empirical or explanatory) account of legitimacy, in opposition to the prescriptive version which I will turn to shortly – is widely employed in IR. This has led to the comment, implying dissatisfaction with it, that legitimacy '[w]hen applied in IR, virtually all commentators begin by recognising some such distinction [between descriptive and prescriptive theories of legitimacy], and most end up by adopting a loosely-based WEBERian approach.'[59] One well-known example is HENRY KISSINGER: when writing about the Concert of Europe in the nineteenth century and conceding that the legitimate order manufactured by the diplomats at the Vienna congress was the essence of stability after 1815, he defines an order to be legitimate, when its 'structure is accepted by all major powers'[60]. Another example makes the WEBERian approach even more clear. Legitimacy, here, 'refers to the normative belief by an actor that a rule or institution ought to be

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[56] Cf. IBID., 298; HURD, 'Legitimacy and Authority in International Politics', 383f; MATHESON, 'Weber and the classification of forms of legitimacy', 200.

[57] CLAUDE, JR., 'Collective Legitimization as a Political Function of the United Nations', 368.

[58] HURD, 'Legitimacy and Authority in International Politics', citations on pp. 401, 404.

[59] CLARK, 'Legitimacy in a global order', *Review of International Studies*, Vol. 29 (2003), 80.

[60] *A World Restored* (New York: Grosset & Dunlap, 1964), 145.

obeyed'[61], and the author explicitly says that he 'make[s] no moral claim about the universal legitimacy, or even less the moral worth, of any particular international rule; I am interested strictly in the subjective feeling by a particular actor or set of actors that some rule is legitimate.'[62] Legitimacy in this descriptive WEBERian sense means that it 'becomes [...] a matter of fact, the fact that [...actors] hold a certain belief'[63] and implies that it is the task of the social scientist, when studying this phenomenon, to 'make a report (which may be empirically true or false) about other [...actors'] *beliefs*.'[64] The WEBERian approach is, although widely used, not the only way of studying legitimacy within the social sciences and is far from uncontroversial. Its twin sister, the so-called normative (or prescriptive) approach to legitimacy, is highly critical of WEBER's technique and follows a quite different, much more promising method: legitimacy principally 'refers to a set of norms and values [...] that are sufficiently shared to make a[ny] political system possible'; this means for the researcher that the first task is 'to find out the content and sources of these values in every political system'.[65] How this normative approach functions is illustrated best by considering the criticism its proponents make of the descriptivists.[66]

One of the main criticisms, especially from moral and political philosophers, is evoked by the separation of legitimacy from any sense of morality; indeed, the WEBERian belief-centrism mistakenly implies an anything-goes-mentality. Where anything can be legitimate only because the people or the actors believe it to be legitimate, even the Nazi regime, to come back to this early example, could be conferred legitimacy. What else is erroneous with this descriptive reductionism or oversimplification? The work of the social scientists is reduced to ask relevant actors – besides: who are the relevant actors? – whether they believe something to be legitimate or not, and to formulate a report about all the beliefs. This research strategy is too narrow insofar as it leaves aside or cannot explain important and relevant political phenomena such as obeying a specific

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[61] HURD, 'Legitimacy and Authority in International Politics', 381.

[62] IBID., 381.

[63] GRAFSTEIN, 'The Failure of Weber's Conception of Legitimacy...', 456.

[64] BEETHAM, *The Legitimation of Power*, 8.

[65] G. HOSSEIN RAZI, 'Legitimacy, Religion, and Nationalism in the Middle East', *The American Political Science Review*, Vol. 84 (1990), 70.

[66] The following criticism is mostly drawn from: BEETHAM, *The Legitimation of Power*; GRAFSTEIN, 'The Failure of Weber's Conception of Legitimacy...'; MATHESON, 'Weber and the classification of forms of legitimacy'; SCHAAR, 'Legitimacy in the Modern State'.

norm out of self-interest while at the same time finding the norm itself illegitimate (or *vice versa*). In addition, although it is the belief of the actors, i.e. the power subjects, that confers legitimacy, it nevertheless gets a power centric notion; the notion of legitimacy being merely the product of proper persuasion of the power subjects by power holders. One must keep in mind that power holders do 'seek legitimization not only to satisfy their consciences but also to buttress their positions.'[67] Lastly, legitimacy is not only reduced to almost a matter of mere sentiment but it seems also to be irrelevant how these sentiments have come about – which may be, for instance, the 'product of conditioning [or] the fruit of symbolic bedazzlement'[68]. In contrast to these four shortcomings, the normative approach provides what was asked for, namely, that a 'fuller view is needed.'[69]

This 'fuller view' does not operate on the surface. Instead of asking actors about their beliefs it does look beyond them; what is important are the values or norms or expectations which underpin their beliefs. The social scientist following this approach is setting out general criteria for legitimacy with regard to the actors' values, and then, in a second step, judges the relevant power relation it is focused on against these criteria. What seems to be very similar to the way philosophers would approach legitimacy is different; the normative social scientist, when making a judgement about legitimacy, does assess the power relations not against ideal or universal principles the philosopher employs: 'Legitimacy for social scientists is always legitimacy-in-context, rather than absolutely, ideally or abstractly.'[70] For BEETHAM, as an example, power is legitimate when it meets the following criteria: firstly, that power 'is acquired and exercised in accordance with established rules'; secondly, that these rules 'can be justified in terms of beliefs shared by both dominant and subordinate'; thirdly, that there is 'demonstrable expression of consent on the part of the subordinate'.[71] Whether these legitimacy criteria are sufficient is not important here but they show that, when the social scientist uses certain criteria which were set out before, then the 'question "do [...actors] believe in the legitimacy of a given power?" becomes redundant'[72]. To put it generally, the prefer-

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[67] CLAUDE, JR., 'Collective Legitimization as a Political Function of the United Nations', 368.

[68] SCHAAR, 'Legitimacy in the Modern State', 110.

[69] IBID., 110.

[70] BEETHAM, *The Legitimation of Power*, 11-23, citation on p. 14.

[71] See IBID., chap. 3, citations on pp. 16-18.

[72] IBID., 13.

able normative study of legitimacy is pursued best 'through the belief systems of the relevant actors.'[73] This is something done by JOHN WILLIAMS[74]. Being one of the rare exceptions employing a normative approach to legitimacy in IR[75], he focuses not 'upon compliance with a variety of legal, procedural and institutional standards'[76] but on the values (or beliefs) of the actors – in his case, the involved actors in Yugoslavia's collapse in the early 1990s – which have underpinned their judgements of what is legitimate and what not. In building an 'Orthodox Western Model of Legitimacy', WILLIAMS concentrates on three values and their implications being, firstly, the Westphalian states-system; secondly, the liberal state; and, thirdly, a liberal international economic order. In other words, in his model these three values function as the general criteria or factors against which certain questions of legitimacy can be judged. Additionally, in order 'to help link these three spheres together', WILLIAMS refers to two further ideas acting as fourth and fifth value: the phenomenon of nationalism and the idea of the social contract.[77]

The idea of a social contract as a source of legitimacy finally leads to moral and political philosophy. Legitimacy from this point of view 'entails the *moral justifiability* of power relations'[78], and morality becomes the decisive yardstick. The source for legitimacy are moral categories and an 'entity has *political legitimacy* if and only if it is morally justified in wielding political power'[79]. What is it, then, that can be morally justified? What is right and wrong, the good, or ethical? Here, besides the social contract tradition, three other traditions instantly come into mind: firstly, the view of virtue ethics, one of the oldest normative ethical traditions and closely associated with PLATO and ARISTOTLE, that morality merely comes as a by-product of developing good habits and a generous personality; secondly, the consequentialist view of utilitarians, such as JEREMY BENTHAM and the two MILLS, proposing that moral conduct derives from maximizing utility and happiness for the greatest number; and, lastly, its utmost opponent, deontological theories, where ethics and moral conduct is based on duties that are independent

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[73] CLARK, 'Legitimacy in a global order', 80.

[74] See *Legitimacy in International Relations and the Rise and Fall of Yugoslavia*.

[75] CLARK, 'Legitimacy in a global order', 80, fn 28.

[76] WILLIAMS, *Legitimacy in International Relations...*, 3.

[77] Cf. IBID., chapter 2, citation on p. 9.

[78] BEETHAM, *The Legitimation of Power*, 5.

[79] BUCHANAN, *Justice, Legitimacy, and Self-Determination*, 146.

of any outcomes – thus also called non-consequentialist theories – and where the KANT-ian categorical imperatives is *the* exemplar.[80]

Having classified legitimacy according to the three major viewpoints with their particular lenses that are employed, I must emphasize again that legitimacy is a moral concept. It might have legalistic etymological and practical roots but it is the notion of propriety that is the distinguishing quality. Therefore, it is misleading and erroneous to study legitimacy in a descriptive WEBERian fashion or to approach it by employing juridical-procedural standards. Instead, it must be studied normatively; normatively in order to do justice to its moral nature. Correspondingly, the legitimacy criteria, which need to be elaborated to properly judge questions of legitimacy, must be sought in what is provided by moral and political philosophy. And for legitimacy in the international realm, the social contract theories seem to be the most promising source. But before developing this further, the moral concept of legitimacy needs to be located within IR theory first.

1.3 Legitimacy located: normative international society theory

Legitimacy plays almost no role in orthodox IR theory: neo-realism focuses on power and coercion as the guiding principles of how states behave; and neo-liberalism focuses on self-interest. So, who does, for reasons of ontology and methodology, become involved in a normative approach to legitimacy; does properly respect its moral nature; and does possibly ground it in the idea of a social contract? In the widest sense, it is that 'body of work which addresses the *moral* dimension of international relations'; it is what is labelled normative IR theory, and its two basic characteristics are: firstly, it operates ontologically within the framework of an international society; and, secondly, it methodologically follows a normative approach.[81] For this reason, this section is constructed around the dichotomy positivist international system theory versus normative international society theory.[82] I argue that legitimacy understood properly can only have

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[80] Cf. GERTRUDE E. M. ANSCOMBE, 'Modern Moral Philosophy' (1958), in her (ed.) *The collected philosophical papers of G. E. M. Anscombe*, Vol. III (Oxford: Basil Blackwell, 1981); TERRY NARDIN AND DAVID R. MAPEL (eds.), *Traditions of International Ethics* (Cambridge: CUP, 1992); JAMES RACHELS, *The Elements of Moral Philosophy* (Philadelphia: Temple University Press, 1986); STRAUSS, 'What is Political Philosophy?', in his *An Introduction to Political Philosophy: Ten Essays*, edited by HILAIL GILDIN (Detroit: Wayne State University Press, 1989).

[81] Cf. CHRIS BROWN, *International Relations Theory: New Normative Approaches* (New York: Columbia University Press, 1992), chapter 1, citation on p. 3 [italics added].

[82] 'This distinction marks an academic rift which runs down the middle of international studies dividing (normative) international society theorists, such as Martin Wight and Hedley Bull, from (positivist)

its place within the latter theory; that only normative international society theory is able to acknowledge the moral quality of legitimacy, is able to study it normatively, and is able to engage with moral and political philosophy for deriving proper legitimacy criteria.

Beginning with positivist international system theory – that is, orthodox IR in the forms of neo-realism and neo-liberalism – the meaning and implication of an international system, to start with ontology, is best explained by introducing the idea of an international society first. According to HEDLEY BULL, an international society exists 'when a group of states, conscious of certain common interests and common values, form a society in the sense that they conceive themselves to be bound by a common set of rules in their relations with one another, and share in the working of common institutions.'[83] An international system is 'logically the more basic, and prior, idea'[84], and it can exist without an international society but not *vice versa*; it means that a group of states 'may be in contact with each other and interact in such a way as to be necessary factors in each other's calculations without their being conscious of common interests or values, conceiving themselves to be bound by a common set of rules, or co-operating in the working of common institutions.'[85] This implies that in an international system states behave or operate according to mechanisms completely different to that of accepting certain normative ideas of what ought to be, i.e. common interests and values and set of rules; those kinds of ideas only exist in an international society. An international system functions according to mechanisms different from legitimacy; here, states (must) play the game of coercion and self-interest. By coercion I refer to WALTZian neo-realism and to the idea of systemic constraints placed upon states;[86] to the idea that 'systemic forces are responsible for the remarkable similarities of foreign policy behaviour.'[87] What

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international system theorists, such as Kenneth Waltz.' ROBERT JACKSON, 'The Political Theory of International Society', in BOOTH AND SMITH (eds.), *International Relations Theory Today*, 112.

[83] *The Anarchical Society: A Study of Order in World Politics*, 3rd edn. (Basingstoke: Palgrave, 2002), 13.

[84] BARRY BUZAN, 'From international system to international society: structural realism and regime theory meet the English school', *International Organization*, Vol. 47 (1993), 331.

[85] BULL, *The Anarchical Society...*, 13.

[86] For the following see BARRY BUZAN, 'The timeless wisdom of realism?', in SMITH, BOOTH AND ZALEWSKI (eds.), *International theory: positivism and beyond*; ROBERT O. KEOHANE (ed.), *Neorealism and its critics* (New York: Columbia University Press, 1986); ANDREW LINKLATER, 'Neo-realism in Theory and Practice', in KEN BOOTH AND STEVE SMITH (eds.), *International Relations Theory Today* (Cambridge: Polity Press, 1995); and KENNETH N. WALTZ, *Theory of International Politics* (Reading, MA: Addison-Wesley, 1979) as his *magnum opus*.

[87] LINKLATER, 'Neo-realism in Theory and Practice', 243.

makes the system, i.e. the systemic forces, so powerful is its precise structure: firstly, anarchy as its ordering principle; secondly, the functions of the states as the primary units and actors; and, thirdly, the relative power of the units and its distribution within the system. Defining the international system as anarchic, the units are forced by virtue of the system and its structure to perform similar functions, which is basically securing themselves against external threats; and this, importantly, despite the differences in their internal make-ups and constitutions. Hence, the distribution of power among the units remains the sole variable. Being trapped in this 'self-help system, units worry about their survival and the worry conditions their behaviour'; and WALTZ continues that these '[s]tructural constraints cannot be wished away, although many fail to understand this.'[88]

It is fairly obvious that legitimacy cannot and does not play here any role whatsoever. But how does this fit together with the KISSINGERian definition of a legitimate order cited earlier? And even more puzzling must be CLARK's remark that 'legitimacy is not a concept that belongs to any school in particular.'[89] Leaving aside the differences between realism and neo-realism worth neglecting here, KISSINGER sees an order as legitimate when it is accepted by all major powers. Indeed, legitimacy obviously does play a role, the role as a stabilizing factor; but the important point is the following: legitimacy in this version is grounded or based on power – to be more precise: on a particular distribution or relation of power among the units in the system – and does certainly not have anything to do with morality; as loosely as it is used and employed here, legitimacy is reduced to nothing more than a label for power – power wrapped up and sold as legitimacy. Where the system's structure and the distribution of power determine and control states' behaviour, there is definitely no place (and no need) for legitimacy and for moral categories; the only thing that really counts for a state in the system are relative gains; indeed: 'In a condition of anarchy [...] relative gain is more important than absolute gain!'[90]

The question, whether states pursue relative or absolute gains, leads to neo-liberalism, and its focus on self-interest as the driving force behind states' actions in the international system. In contrast to neo-realism's focus on relative gains, neo-liberalism as-

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[88] WALTZ, *Theory of International Politics*, citations on pp. 105, 109.

[89] 'Legitimacy in a global order', 82.

[90] WALTZ, *Man, the State and War...*, 198.

sumes 'that states focus primarily on their individual absolute gains and are indifferent to the gains of others. Whether cooperation results in a relative gain or loss is not very important [...] so long as it brings an absolute gain.'[91] This means that here, too, states' behaviour does not follow the logic of legitimacy; instead, it follows a much simpler logic, that of benefit calculation. Despite their differences and their diametrically opposed historical roots, neo-realism and neo-liberalism nevertheless share some common ground today: they both can be seen as assimilating formations of a state-centric rational choice realism focussing on an anarchic international system, which comprises of rational egoistic units, and as being descendents of a broad and an essentially Anglo-American liberal tradition; in addition, their methodology is underpinned by deeply positivist assumptions.[92] This implies that orthodox IR, when studying 'legitimacy' – whether they 'ground' it on coercion or self-interest – follows a value-free or ethically neutral approach; it follows an approach which LEO STRAUSS, one of the foremost critics of social science positivism I will soon turn to with regard to his three waves of modernity[93], condemns as being 'neutral in the conflict between good and evil, however good and evil may be understood.'[94] And this belief in social science positivism is the reason why orthodox IR adheres to the descriptive, belief-centric WEBERian approach. Although, there is a light normative element to be found in neo-liberal accounts, that is, that they see 'the emergence of a norm of reciprocity as a critical factor in minimizing "cheating"'[95], the main argument remains the same: in positivist international system theory, for reasons of ontology and methodology, there is definitely no place for a normative approach to legitimacy based on whatever moral grounds.

The situation is entirely different when following normative international society theory; only within this framework – 'the idea that states are not [...] strangers to the moral world'[96] – legitimacy does contain moral worth, and this is because '[t]here exists an

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[91] ROBERT POWELL, 'Absolute and Relative Gains in International Relations Theory', *American Political Science Review*, Vol. 85 (1991), 1303.

[92] Cf. CHRIS BROWN, *Sovereignty, Rights and Justice: International Political Theory Today* (Cambridge: Polity Press, 2002), chapter 4; and his 'Review Article: Theories of International Justice', *British Journal of Political Science*, Vol. 27 (1997), 278f.; SMITH, 'Positivism and beyond', 11.

[93] See 'The Three Waves of Modernity', in his *An Introduction to Political Philosophy: Ten Essays*, edited by HILAIL GILDIN, 81-98.

[94] STRAUSS, 'What is Political Philosophy?', 13.

[95] BROWN, 'Review Article: Theories of International Justice', citation on p. 279.

[96] TIM DUNNE, *Inventing International Society: A History of the English School* (Basingstoke: Macmillan, 1998), 10.

idea of what *ought to be.*[97] Societies, whether it be domestically or internationally, have an idea of what ought to be insofar as they acknowledge three elementary or primary goals, namely, making sure that, firstly, life is secured against threats; secondly, agreements and promises are kept; and, thirdly, possessions are protected.

Brought into the international sphere, these goals revolve around the ideas of self-preservation, sovereignty and peace. In an international society, albeit anarchical as it is, order is the consequence not, for example, because of a balance of power at a certain time, but because of the common interest in these primary goals. These three primary goals not only reflect particular ideas of what ought to be; the 'rules prescribing behaviour that sustains these goals' – that is, the principles an international society is based on – too, are normative-laden.[98] The point is, that states share common interests, aim at common goals, and follow rules not because of coercion or self-interest, but because they perceive those norms – e.g. *pacta sunt servanda* or respecting others' sovereignty (as two of the 'rules that play a part in the maintenance of international order'[99]) – as being legitimate. States perceive it as legitimate to 'act within a system of norms which, most of the time, they regard as [even] constraining', and to voluntarily subordinate themselves under norms that are 'created by the states themselves'.[100]

Legitimacy in an international society reflects shared ideas of what ought to be, derived from normative principles. The answer to FRANCK's compliance question is that legitimacy is *the* driving force why states comply with certain norms without being forced by an overarching authority. That in an international society legitimacy is grounded in normative principles also becomes clear in WIGHT's usage of the term. His notion of international legitimacy refers not to the norms of how states ought to behave in the family of nations but to the normative 'principles governing admission to, and recognition by, international society [and the] criteria for rightful membership'.[101] Until the French Revolution international legitimacy was grounded in the dynastic principle, which basically reflects the (other) original meaning of legitimacy 'born in lawful wedlock'; since then, the principle of international legitimacy has shifted to the popular, that

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[97] WILLIAMS, *Legitimacy in International Relations* ..., 3 [italics added].

[98] Cf. BULL, *The Anarchical Society...*, chapters 1 and 4, citation on p. 63.

[99] IBID., 65.

[100] CHRIS BROWN, *Understanding International Relations*, 2nd edn. (Basingstoke: Palgrave, 2001), both citations on p. 54.

[101] CLARK, 'Legitimacy in a global order', 84.

is contractual, principle which is concerned with the consent of the governed. There exists an idea among states how they internally ought to be constituted in order to be given access to the society by the others; and this is why WIGHT comments that these 'principles of [international] legitimacy mark the region of approximation between international and domestic politics.'[102] Even if the ideas of what ought to be and their underlying principles may change from time to time or remain constant over a longer period, within the framework of an international society they *do* exist; and it is their existence, together with the behaviour-constraining effects they exert on states that explains why it is only here, in normative international society theory, that legitimacy relates to its original meaning of propriety.

Viewed from the methodological perspective, the result is the same since international society theorists 'never bought into the positivist assumption that dominated the discipline'[103]; instead, they adhere to the strong belief that international relations, and legitimacy, must be studied normatively. This is why positivism's dominance in IR gradually has declined[104]: what is referred to as the third or the post-positivist debate followed the first debate between realism and liberalism (or CARRian 'utopianism'[105]) held in the 1920s, 30s and 40s, and the second debate between traditional and scientific approaches to IR held in the 1950s and 60s. In this third 'discipline-defining debate'[106] starting in the late 1980s, orthodox IR, and its underlying methodological positivism, has come under severe attack from many different sides; summarized as the post-positivists, they have introduced the so-called post-positivist era. Diverse and different strands such as critical theory, historical sociology, feminism, and post-modernism, are placed under this umbrella. Going hand in hand with the normative international society theorists and political philosophers, all of them reject making use of positivistic methods in IR (and in the social sciences generally). Since positivism 'is no longer what it desired to be

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[102] Cf. 'International Legitimacy', citation on p. 153.

[103] SMITH, 'Positivism and beyond', 11.

[104] For the following see YOSEF LAPID, 'The Third Debate: On the Prospects of International Theory in a Post-Positivist Era', *International Studies Quarterly*, Vol. 33 (1989); SMITH's 'Positivism and beyond', 'The Forty Years' Detour...', and 'The Self-Images of a Discipline: A Genealogy of International Relations Theory', in BOOTH AND SMITH (eds.), *International Relations Theory Today*.

[105] See EDWARD H. CARR, *The Twenty Years' Crisis, 1919-1939* (1939), 2nd edn. (New York: Perennial, 2001).

[106] LAPID, 'The Third Debate...', 236.

when Auguste Comte originated it'[107] and 'has been largely stripped of whatever agreed meaning it may once have had'[108], here, I am not able to give a detailed account of the diffuse concept of positivism. Yet quintessentially, the normative critics reject formulating value-free and law-like if-then-relations; reject employing simply quantitative methods; reject mainly testing hypotheses; and reject WALTZ's argument 'that a theory is not a statement about everything that is important in international-political life, but rather a necessarily slender explanatory construct'[109]; they reject the idea of a theory merely explaining what is, and propose, instead, the idea of theorizing about how the world ought to be. In addition, they are certain that 'there is no more normative theorist than one who proudly boasts that he or she will simply deal with "the facts". The problem with this is which "facts".'[110]

The strong turn to normative claims during the third debate, even denying the mere possibility of non-normative theorizing, has restored what had almost vanished from the IR scene during the positivist era, namely, political philosophy. Besides this, two other factors played an important role in the 'striking revival of political philosophy [that] has taken place': firstly, real-world events, particularly in connection to Vietnam and the Six-Days-War of 1967, have generated a new interest in the older philosophical question whether wars can be just – an issue addressed in MICHAEL WALZER's *Just and Unjust Wars* (1977)[111]; and, secondly, 'the return of Grand Theory to political philosophy' most prominent in JOHN RAWLS's *A Theory of Justice* (1971)[112] has placed the issue of international justice on the IR agenda (again).[113] And, indeed, where methodologically normative approaches are pursued, where scientific enquiries are made by setting and applying standards of how the world ought to be, then, political philosophy must be near.

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[107] STRAUSS, 'What is Political Philosophy?', 13.

[108] ANTHONY GIDDENS (ed.), *Positivism and Sociology* (London: Heinemann, 1974), ix.

[109] Cf. KENNETH WALTZ, 'Realist Thought and Neorealist Theory', *Journal of International Affairs*, Vol. 44 (1990), citation on p. 32; WALTZ, *Theory of International Politics*, chapter 1; BARRY BUZAN, 'The Level of Analysis Problem in International Relations Reconsidered', in BOOTH AND SMITH (eds.), *International Relations Theory Today*.

[110] SMITH, 'The Self-Images of a Discipline: A Genealogy of International Relations Theory', 30.

[111] 3rd edition (New York: Basic Books, 2000).

[112] Revised edition (Oxford: OUP, 1999); hereafter: *Theory of Justice*.

[113] Cf. and citations from BROWN, *International Relations Theory...*, pp. 9, 10.

By having shown the ontology and methodology of both positivist international system theory and normative international society theory, I must conclude that only the latter theory is capable of approaching legitimacy appropriately: normative international society theory does see legitimacy functioning in the international realm; it does acknowledge its moral nature; and it does study legitimacy normatively. And since it is sympathetic towards political philosophy, it is able when seeking proper legitimacy criteria to explore what moral and political philosophy has to offer – for instance, social contract theory. Legitimacy, then, has been located in normative international society theory; it has not only been brought together with IR theory, but also with international relations in general. Legitimacy means not only different things at different times but also different things to different people; it is an extremely diverse concept. And so diverse it is, so powerful is it. It does not only control the behaviour of people, but even that of states; in addition, it also determines who is a member of the international society and who is not. Undoubtedly, legitimacy is needed – not only in any social relationship since social control definitely ought not to follow the logic of the right of the stronger, but also as an object of study in IR. When studying legitimacy, jurisprudence usually equates legitimacy with legality; WEBER with people's beliefs; and moral and political philosophy with morality. However, jurisprudence and descriptive WEBERian approaches entirely miss the crucial point. Legitimacy, certainly, is a moral concept through and through. It entails what is good and bad; what is right and wrong; ideas of what ought to be. And legitimacy as a moral concept needs to be studied normatively. Yet, legitimacy, ideas of what ought to be, morality, normative methodology, and political philosophy have a tough stand in IR; orthodox IR is almost obsessed with scientific positivism and focuses on coercion and self-interest as the main determinants of how states behave. Surely, legitimacy needs to be studied in IR, and it needs to be studied normatively. But by whom? Who could possibly derive proper legitimacy criteria from social contract theory? It must be a theory which ontologically assumes an international society and which methodologically prefers normative approaches.

2. The Social Contract and Legitimacy

2.1 The Social Contract situated: its international significance

When JOHN GOUGH's *The Social Contract* was published in 1936, he almost apologized in his introductory words for writing a book-length study about the historical development of the social contract; GOUGH wrote that although 'for all of the accoutrements of liberty [...the social contract] is perhaps the most outworn, the most derided by critics, the least likely to serve it to-day in its struggle for existence [...but] it will not be a waste of time if we study anew the part played by the social contract in the struggle for popular freedom.'[1] Only a few decades later, from the 1970s onwards, such an apology has not been necessary anymore; the social contract tradition, definitely having its glory days – but not its origins – in the seventeenth and eighteenth century and closely associated with the names JOHANNES ALTHUSIUS[2], THOMAS HOBBES[3], SAMUEL FREIHERR VON PUFENDORF[4], JOHN LOCKE[5], JEAN-JACQUES ROUSSEAU[6], and IMMANUEL KANT[7], has managed to get both feet back on the ground again – ground which it has lost during the nineteenth century.[8] Mainly responsible for this come-back are the works (or 'contracts') of 'the new contractarians' RAWLS[9], ROBERT NOZICK[10], and JAMES M.

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[1] *The Social Contract: A critical study of its development* (Oxford: Clarendon Press, 1936), citation on p. 1.

[2] See *The Politics of Johannes Althusius* (1603), translated by FREDERICK S. CARNEY (London: Eyre & Spottiswoode, 1965); hereafter: *Politica Methodice Digesta...*.

[3] See *Leviathan, or The Matter, Forme & Power of a Common-Wealth Ecclesiasticall and Civill* (1651), revised student edn., edited by RICHARD TUCK (Cambridge: CUP, 1996); hereafter: *Leviathan*.

[4] See *De Jure Naturae et Gentium Libri Octo* (1672), translated by C. H. OLDFATHER AND W. A. OLDFATHER (Oxford: OUP, 1934) and *De Officio Hominis et Civis Juxta Legem Naturalem Libri Duo* (1673), translated by FRANK G. MOORE (Oxford: OUP, 1927); hereafter: *De Jure Naturae et Gentium, De Officio Hominis et Civis*.

[5] See *Two Treatises of Government* (1690), edited by PETER LASLETT (Cambridge: CUP, 1960); hereafter: *Two Treatises, First Treatise, Second Treatise*.

[6] See 'Of the Social Contract or Principles of Political Right' (1762), in his *The Social Contract and other later political writings*, edited by VICTOR GOUREVITCH (Cambridge: CUP, 1997); hereafter: *Contrat Social*.

[7] See 'Perpetual Peace: A Philosophical Sketch' (1795) and 'The Metaphysics of Morals' (1797) in his *Political Writings*, 2nd, enlarged edn., edited by HANS REISS (Cambridge: CUP, 1991); hereafter: *Perpetual Peace, Metaphysics of Morals*.

[8] Cf., e.g., GOUGH, *The Social Contract...*; PETER KOLLER, 'Die neuen Vertragstheorien', in KARL GRAF BALLESTREM AND HENNING OTTMANN (eds.), *Politische Philosophie des 20. Jahrhunderts* (München: Oldenbourg, 1990); DAVID G. RITCHIE, 'Contributions to the History of the Social Contract Theory', *Political Science Quarterly*, Vol. 6 (1891).

[9] See *Theory of Justice* and *The Law of Peoples; with "The Idea of Public Reason Revisited"* (Cambridge, MA: HUP, 1999); hereafter: *Law of Peoples, Public Reason Revisited*, respectively.

BUCHANAN[11], with each of them following KANTian, LOCKEian, and HOBBESian foot steps, respectively;[12] the social contract tradition owes the widespread attention it has regained essentially to these three Anglo-American writers.

Yet, the social contract tradition is much less straightforward than these opening remarks may suggest; with its roots dating back to the Greek sophists, it is characterized by great diversity. Many different people have 'written' many different 'contracts' with many different names. One finds, for instance, a 'social contract proper' or 'contract of society'; a 'contract of government' or 'contract of submission'; an 'original contract'; an 'implicit contract'; an 'explicit contract'; a 'tacit contract'; a 'hypothetical contract'; a 'political contract'; and, even, an 'utilitarian contract'. Instead of contract, one finds the use of covenant or pact or compact. And all of this has grown out of so-called civil, constitutional, integrated, moral, and philosophical contractarianism, and, not to mention, contractualism. To put it short: social contract does not equal social contract; there is not one or *the* social contract.

When it is said that legitimacy was based on a social contract, one question instantly comes into mind: which social contract? Its diversity, its long history, and its almost disappearance especially during the nineteenth century make the next section so indispensable; it explores the social contract tradition and predominantly deals, firstly, with the ideal-types of the social contract, how each of them works, and how they are interrelated; secondly, with the flaws and main lines of criticism (e.g. BENTHAM[13], EDMUND BURKE[14], GEORG W. F. HEGEL[15], DAVID HUME[16]) launched against them; and, thirdly,

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[10] See *Anarchy, State, and Utopia* (New York: Basic Books, 1974).

[11] See *Limits of Liberty: Between Anarchy and Leviathan* (Chicago: CUP, 1975).

[12] For the label(s) see SCOTT GORDON's more critically driven review 'The New Contractarians', *Journal of Political Economy*, Vol. 84 (1976), and KOLLER, 'Die neuen Vertragstheorien'. Additionally noteworthy and important in this context are: JAMES M. BUCHANAN AND GORDON TULLOCK, *The Calculus of Consent: Logical Foundations of Constitutional Democracy* (Ann Arbor: University of Michigan Press, 1962), DAVID GAUTHIER, *Morals by Agreement* (Oxford: Clarendon Press, 1986), GEOFFREY R. GRICE, *The Grounds of Moral Judgement* (Cambridge: CUP, 1967), and THOMAS M. SCANLON, 'Contractualism and utilitarianism', in AMARTYA SEN AND BERNARD WILLIAMS (eds.), *Utilitarianism and beyond* (Cambridge: CUP, 1982).

[13] See *A Fragment on Government* (1776), edited by F. C. MONTAGUE (Oxford: Clarendon Press, 1891); hereafter: *Fragment on Government*.

[14] See *Reflections on the Revolution in France...* (1790), edited by CONOR C. O'BRIEN (London: Penguin, 1986).

[15] See *Philosophy of Right* (1821), translated by T. M. KNOX (Oxford: Clarendon Press, 1942).

where the idea of a social contract historically derives from and how it has developed from ancient Greece through the middle ages until now. This provides a better understanding for the selection and the 'contracts' of HOBBES, ROUSSEAU, KANT, and RAWLS. But before this investigation and the actual selection of these four social contract theorists takes place, it has to be clarified why the criteria for legitimacy in IR must be derived from a social contract theory at all. In this section I argue that the social contract provides a proper source for legitimacy criteria since it already is a well-established idea in IR; its international significance speaks for the social contract.

The social contract plays an important role when constituting an international society and in questions of international ethics. Among legal positivism, natural law tradition, KANTian ethics, and cosmopolitanism, contractarianism is one of the philosophical angles[17] which pro-actively enquires into the constitution of and into the 'basic principles governing [...an] international society'[18]. KANT's *foedus pacificum* is definitely a fine example of a genuine contractarian theory of international society;[19] it is established, founded, and constituted by a social contract among the participating states, by an international social contract. When states form a society, this naturally raises the question of which states are entitled to membership of this society and which are not. And this latter aspect leads directly to WIGHT's notion of international legitimacy. As already mentioned, roughly at the end of the eighteenth century, the popular principle substituted the dynastic, hereditary dogma, and the internal, contractual arrangement of states became the admission ticket for membership. Two international constitutions, namely, the Covenant of the League of Nations and its successor, the Charter of the United Nations, are profoundly influenced by the popular principle, since 1919 better known as national self-determination.[20] The consent of the governed was supposed to be *the* solution to all international problems; in what could be WOODROW WILSON's words: 'Liberal democracy replaces the irrational desire to be recognized as greater than others with a rational

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[16] See 'Of the Original Contract' (1752), in his *Essays: Moral, Political, and Literary,* Vol. 1, edited by T. H. GREEN AND T. H. GROSE (London: Longmans, Green, and Co., 1898); hereafter: *Of the Original Contract.*

[17] See DAVID R. MAPEL AND TERRY NARDIN (eds.), *International Society: Diverse Ethical Perspectives* (Princeton: PUP, 1998).

[18] DAVID R. MAPEL AND TERRY NARDIN, 'Introduction', in THEIR (eds.) *International Society: Diverse Ethical Perspectives,* 3.

[19] Cf. CHRIS BROWN, 'Contractarian Thought and the Constitution of International Society', in MAPEL AND NARDIN (eds.), *International Society: Diverse Ethical Perspectives,* 136-7.

[20] Cf. WIGHT, 'International Legitimacy'.

desire to be recognized as equal. A world made up of liberal democracies, then, should have much less incentive for war, since all nations would reciprocally recognize one another's legitimacy.'[21] This classical liberal, WILSONian perspective is also a question of international ethics (and, not to mention, practical politics). And any idea about what ought to be and not, or what is right and wrong, or moral and immoral, or just and unjust in international affairs draws, in one way or another, explicitly or implicitly, 'on established traditions of ethical discourse [of international relations]'[22], that is, on moral and political philosophy; here, on social contract theory.

However, international ethics is frequently equated with international justice. And here, the 'old' contractarians must be somewhat distinguished from the contemporary; the latter argue predominantly that there is 'greater scope for principles of justice in international society than has frequently been thought.'[23] In general, social contract theorists presume 'that principles of justice are determined, or perhaps legitimated, by an agreement freely entered into under ideal conditions by the parties concerned.'[24] Additionally, they tend to equate justice with distributive justice. Justice usually has a procedural-formal notion focussing on 'impartial rules impartially applied'[25], 'irrespective of what the substantive content of the rules may be'[26]. Theories of distributive justice, in contrast, do 'focus on outcomes rather than the rules which have generated those outcomes.'[27] Contemporary contractarians' belief in international justice together with their preference for distributive justice lets them, in the case of RAWLS for instance, 'focus more directly on specific issues in international ethics such as [...] global [or international] distributive justice.'[28] Interestingly, 'virtually no one is happy with Rawls's reasoning on this issue', with him, the 'most influential modern contractarian'.[29] Without

[21] FRANCIS FUKUYAMA, *The End of History and the Last Man* (New York: Perennial, 2002), xx.

[22] TERRY NARDIN, 'Ethical Traditions in International Affairs', in NARDIN AND MAPEL (eds.), *Traditions of International Ethics*, 1.

[23] DAVID R. MAPEL, 'The Contractarian Tradition in International Ethics', in NARDIN AND MAPEL (eds.), *Traditions of International Ethics*, 181.

[24] BROWN, 'Review Article: Theories of International Justice', 287.

[25] IDEM, *Sovereignty, Rights and Justice...*, 167.

[26] BULL, *The Anarchical Society...*, 76.

[27] BROWN, *Sovereignty, Rights and Justice...*, 167.

[28] MAPEL, 'The Contractarian Tradition in International Ethics', 191.

[29] BROWN, *Sovereignty, Rights and Justice...*, 170; BROWN, 'Review Article: Theories of International Justice', 287.

going into detail now, CHARLES BEITZ is one of the contractarians profoundly rejecting RAWLS's idea of two contracts, one domestic contract producing the difference principle and one international contract which does not.[30] Be it as it may, social contract theory plays an important role in the field of international justice theories. Within international ethics – what is right and wrong? – the Reagan Doctrine is another example of the significant role of the social contract.[31] This doctrine allows for provision of military aid to insurgents rebelling against repressive, non-democratic regimes, but does not in cases where rebellion takes place against democratic regimes. LLOYD N. CUTLER explicitly refers to LOCKE (and, implicitly, to his social contract) in order to legitimize this policy: 'Our Declaration of Independence, influenced by Vattell, Locke and other apostles of the eighteenth-century Enlightenment, proclaimed the right of any people to rebel by force against a tyrannical regime. This principle has inspired many such revolutions'; and he continues: 'Is there a parallel right to rebel against a democratic regime that gives all its people the opportunity to vote in free elections open to any candidate? John Locke thought not.'[32]

The social contract is, so to speak, not new in IR. But it is not only not new, it is also already well-established. It is employed when constituting an international society, and it also has its say in international ethics; therefore, to justify social contract theory as the source for legitimacy criteria is fairly straightforward. An international society is a complex creation and almost everything it involves, i.e. its constitution, its membership principle, its guiding norms, its concern for international justice, etc., 'mark[s] the region of approximation between international and domestic politics'. Considering the significance and status the social contract has in the domestic context, the utilization of social contract theory for legitimacy criteria in IR makes even more sense; and makes the use of this kind of thought even more defensible. In addition, social contract theory *per se* is theorizing about what is right and wrong; it *per se* inherits the notion of morality, which is important since legitimacy is a moral concept. The basic idea behind a social contract is that of 'political obligation [...] as a contractual obligation'. This is not a mistaken view, but it is too narrow. The difficulty of social contract theory is 'to deter-

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[30] Cf. CHARLES R. BEITZ, *Political Theory and International Relations*, 2nd edn. (Princeton: PUP, 1999); BROWN, 'Contractarian Thought and the Constitution of International Society', 138; DAVID MILLER, 'The Limits of Cosmopolitan Justice', in MAPEL AND NARDIN (eds.), *International Society: Diverse Ethical Perspectives*, 170-1.

[31] Cf. MAPEL, 'The Contractarian Tradition in International Ethics', 195-6.

[32] 'The Right to Intervene', *Foreign Affairs*, Vol. 64 (1985), 102-3.

mine precisely what the nature of such a contract is'[33], that is, what the 'proper ingredients'[34] are. Yet still, despite its diversity, social contract theorists do share some common ground, namely, 'that no one has rightful political authority and no one is morally obliged to yield political obedience except in consequence of a social contract.'[35] This illustrates the two major components the involved agents are primarily contracting about: firstly, about the legitimation of coercive political power, that is, turning political power into political authority; and, secondly, about the nature and origins of morality. These two constituents are solidly interrelated insofar as 'the state exists to enforce the most important rules necessary for social living, while morality consists in the whole set of rules that enhance social living.'[36] The answer to social contract theories' ever present underlying question, how governments can justly have and exercise coercive power over free individuals, is that they exclusively 'derive their just powers from the consent of the governed.'[37] Social contract theories are so promising as source for legitimacy criteria since they recognize 'that morality is deeply implicated in the very notion of agreement, and *vice versa*, so that whether an action is right or wrong must depend on whether the act accords with or violates principles that are, or would be, the object of a suitable agreement between equals.'[38] At this point, an important distinction between contractarians and contractualists must be introduced: both understand the 'principles of right conduct as the object of a rational agreement'; however, contractarians, such as HOBBES and GAUTHIER, see moral principles as a result of 'rationally self-interested bargaining', whereas, contractualists, such as ROUSSEAU, KANT, and RAWLS assume 'the relevant agreement as governed by a moral ideal of equal respect, one that would be inconsistent, indeed, with bargaining over fundamental terms of association in the way contractarianism proposes.'[39]

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[33] VICENTE MEDINA, *Social Contract Theories: Political Obligation or Anarchy?* (Savage: Rowman & Littlefield, 1990), 5.

[34] HARRO HÖPFL AND MARTYN P. THOMPSON, 'The History of Contract as a Motif in Political Thought', *American Historical Review*, Vol. 84 (1979), 922.

[35] P. F. BROWNSEY, 'Hume and the Social Contract', *The Philosophical Quarterly*, Vol. 28 (1978), 132.

[36] RACHELS, *The Elements of Moral Philosophy*, 128 [italics omitted].

[37] K. GREENAWALT, 'Promissory Obligation: The Theme of Social Contract', in RAZ (ed.), *Authority*, 269.

[38] STEPHEN DARWALL, 'Introduction', in his (ed.) *Contractarianism/Contractualism* (Oxford: Blackwell, 2003), 1.

[39] Cf. IBID., citations on p. 4.

Considering that legitimacy is a moral concept; that it must be studied normatively; and that international legitimacy can only have its place in normative international society theory, the task of this section was to argue that legitimacy criteria must be sought in social contract theory. It is the idea of a contract between free and equals which is not only already well-established in IR, but also in the domestic context; in addition, the social contract does also represent *the* proper source for morality. Now, the social contract must be investigated more thoroughly, focussing on its ideal-types and history.

2.2 The Social Contract investigated: ideal-types and history

Beginning with the ideal-types[40], I start with the distinction between 'contract of society' and 'contract of government'; turn then to the three sub-categories 'original contract', 'implicit contract', and 'hypothetical contract', thereby taking into account the major lines of criticism; and finish the section by briefly exploring the historical development of social contract theory. This provides the necessary background for the selection of HOBBES, ROUSSEAU, KANT, and RAWLS, and the examination of their 'contracts'.

The central question for social contract theorists of 'how governments can justly have and exercise coercive power over free individuals' implies that a society must exist which is to be governed. This explains why two contracts, the 'contract of society' and the 'contract of government', are required: 'the first to bring the state into existence, the second to regulate its government.'[41] The former is a 'contract of each with all' that provides the origin and foundation of a society; in order to create 'a State in the sense of a political society'[42], individuals, irrespective of their motivations, enter into a contractual agreement with each other to leave a pre-societal state of nature – irrespective whether this be, for instance, a HOBBESian war of all against all or a LOCKEian 'perfect freedom'[43]. This is where the name 'contract of society' (or 'social contract proper',

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[40] For the following cf. GOUGH, *The Social Contract...*; KARL GRAF BALLESTREM, 'Vertragstheoretische Ansätze in der Politischen Philosophie', *Zeitschrift für Politik*, Vol. 30 (1983); BROWNSEY, 'Hume and the Social Contract'; LESSNOFF, *Social Contract*; MEDINA, *Social Contract Theories...*; HENNING OTTMANN, 'Politik und Vertrag. Eine Kritik der modernen Vertragstheorien', *Zeitschrift für Politik*, Vol. 33 (1986); PATRICK RILEY, *Will and Political Legitimacy* (Cambridge, MA: HUP, 1982); RITCHIE, 'Contributions to the History of the Social Contract Theory'.

[41] GOUGH, *The Social Contract...*, 3.

[42] ERNEST BARKER's note on p. 48 in OTTO GIERKE, *Natural Law and the Theory of Society: 1500 to 1800* (1913), translated by ERNEST BARKER (Cambridge: CUP, 1950) for both citations.

[43] *Second Treatise*, § 4.

Gesellschaftsvertrag, pacte d'assocation, pactum sociale) derives from; in KANT'S words, a contract 'by which a large group of men unites to form a society'[44]. The other, second ideal type contract, the 'contract of government' (or 'contract of submission', 'contract of rulership', *Herrschaftsvertrag, pacte de gouvernement, pactum subjectionis*), is a contract made not between 'each with all' but between the ruler and the ruled; it 'creates a State in the sense of a government.'[45] It builds on the foundation the first one has laid down; or better: might have laid down, since these two contracts are 'logically independent. Neither contract implies or presupposes the other'[46]. A society must exist to make a 'contract of government' possible, but this society does not necessarily have to be founded by a 'contract of society'. However, PUFENDORF, as a picture perfect example, demands the consecutive use of the two contracts: in order 'to establish a new state, it is necessary for the future citizens, as the first step, to enter into an agreement [...] that they are desirous of entering into a single and perpetual group', and he continues, that, in a second step, 'after such a group [...] has been formed by the pact mentioned, it is yet further necessary for a decree to be passed upon the form of government that shall be introduced [...and this will be done] by [...] agreement'.[47]

Confusingly, the term social contract is often used when speaking of either the 'contract of society', or the 'contract of government'; this distinction is as important as it is interesting since the 'contract of government', as logically *post*erior as it is, appeared historically earlier, i.e. in the middle ages, than the 'contract of society'.[48] In addition, irrespective of its label – i.e. covenant, pact, compact, *foedus, pactum*, or *pactio* – the general idea is the same; these terms can, to the regret of many critics, be regarded as being synonymous.[49] Yet, a social contract confers legitimacy to the state in the two senses just mentioned only if all individuals of this 'state' as free and equals either have consented to it, or are repeatedly consenting to it, or could and would consent to it; this corresponds to the ideas of an 'original contract', 'implicit contract', and 'hypothetical contract', respectively.

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[44] 'On the Common Saying: "This May be True in Theory, but it does not Apply in Practice"' (1793), in his *Political Writings*, edited by HANS REISS, part II, 73; hereafter: *On the Common Saying....*

[45] BARKER's note on p. 48 in GIERKE, *Natural Law and the Theory of Society: 1500 to 1800.*

[46] MEDINA, *Social Contract Theories...*, 6.

[47] *De Jure Naturae et Gentium*, bk. VII.ii.7.

[48] Cf. HÖPFL AND THOMPSON, 'The History of Contract as a Motif in Political Thought', 924; GOUGH, *The Social Contract...*, 2-3.

[49] Cf. IBID., 4-6; RITCHIE, 'Contributions to the History of the Social Contract Theory', 665.

The main characteristic of the 'original contract' (or *Urvertrag, contractus originarius*) is its unambiguous requirement of the contractors' explicit consent to it. They must have consented to it; hence, it is often labelled 'explicit contract'. Probably the most-cited and best example of an 'original contract' is the Mayflower Compact the Pilgrims entered into on their way to Massachusetts in 1620: 'We do solemnly and mutually, in the presence of God and of one another, covenant and combine ourselves together into a civil body politic.'[50] And for LOCKE, it is this 'original compact, whereby he [man] with others incorporates into one society'; it is 'by consenting with others to make one Body Politick under one Government' that creates and legitimizes a state; and he continues, trying to underline the practical relevance, that one 'must shew a strange inclination to deny evident matter of fact [...] that the beginning of Rome and Venice were by the uniting together of several Men free and independent one of another, amongst whom there was no natural Superiority or Subjection.'[51]

There were, and still are, people having such 'strange inclinations' since the idea of an 'original contract' faces at least three lines of criticism; sure of the triumph over the 'original contract', BENTHAM writes that 'this chimera had been effectually demolished by Mr. HUME.'[52] The first problem lies in the fact that the mere existence of such contracts cannot be proven since they were, as HUME remarks, not 'written on parchment, nor yet on leaves or barks of trees.'[53] A second strand of criticism, closely connected to and similarly history-related as the first one, contests that states have their origins in contracts; more the contrary is the case: 'Almost all the governments, which exist at present, or of which there remains any record in story, have been founded originally, either on usurpation or conquest, or both, without any pretence of a fair consent, or voluntary subjection of the people.'[54] And even if it were so that states evidently are founded on a contract – for HUME an 'idea far beyond the comprehension of savages' – the 'original contract' still cannot solve its third, main dilemma, also seen by LOCKE himself and BENTHAM: supposing 'the consent of the fathers to bind the children'.[55] For the critics, an 'original contract' must head into complete failure: either because of its

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[50] GOUGH, *The Social Contract...*, 2.

[51] *Second Treatise*, §§ 97, 102 [italics omitted].

[52] *Fragment on Government*, chap. I.xxxvi.

[53] *Of the Original Contract*, 445.

[54] IBID., 447.

[55] IBID., 445, 447; Cf. *Second Treatise*, § 116; *Fragment on Government*, chap. I.xlvii.

historical irrelevance; or because, even if such a contract was to exist, it stumbles over the question whether future generations would be bound by it.

Struggling not to get caught in the traps laying ahead of the 'original contract', the construction of the 'implicit contract' leaves the demand for an explicit, one-time consent aside, and makes the legitimacy of a state dependent on the repeated consent; more generally: dependent on the existence of the possibility to give it or withhold it for any individual within this territory. This type of contract is primarily based on the idea of, what LOCKE calls, 'tacit Consent', in contrast to 'express Consent' – a fairly common distinction that follows HOBBES's assertion that 'Signes of Contract, are either *Expresse* or *by Inference*.'[56] LOCKE's tacit consent is to a certain extent comparable to ROUSSEAU's 'universal silence'[57], and it assumes that consent for obedience to any government's jurisdiction is given by 'every Man, that hath any Possession, or Enjoyment, of any part of the Dominions of any Government [...] during such Enjoyment'; whether it be 'possessing land' or 'lodging for a week' or 'travelling on a highway' or, importantly, just the 'very being on the territory', as long as one does not make use of his 'liberty to go', one is bound to submission, and repeated consent, hence, legitimacy, is inferred.[58]

Although the 'liberty to go', i.e. the right to emigrate[59], ought neither to be treated with disdain nor to be underestimated, HUME, quite rightly, ridicules the idea that legitimacy could solely depend on whether one 'goes' or not: 'Can we seriously say', he asks, 'that a poor peasant or artizan has a free choice to leave his country, when he knows no foreign language or manners, and lives from day to day, by the small wages which he acquires?' And, appropriately, against this background, HUME, not denying his scorn and derision, continues that '[w]e may as well assert, that a man, by remaining in a vessel, freely consents to the dominion of the master; though he was carried on board while asleep, and must leap into the ocean, and perish, the moment he leaves her.'[60] The much weightier problem, probably the biggest, is the 'implicit contract's' logical circularity. This revolves, especially, around the idea of tacit consent, but also around the 'right to

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[56] *Second Treatise*, § 119; *Leviathan*, chap. xiv.

[57] *Contrat Social*, bk. II.i.

[58] *Second Treatise*, § 119-122

[59] Cf. also PUFENDORF, that 'in such a pact the individuals usually reserve to themselves the privilege of emigration.' *De Jure Naturae et Gentium*, bk. VII.ii.7.

[60] *Of the Original Contract*, both citations on p. 451.

emigrate': it should be indubitable that only in free and open societies consent can be inferred from 'universal silence'. Independent from the puzzling question whether 'universal silence' could stand for either tacit consent or tacit dissent, the possibility to express consent or dissent presupposes the existence of a more or less open society with all the social institutions that guarantee the right to do so or the 'right to emigrate' if one dissents. This is the criticism that the 'implicit contract' (and all others, too) is flawed: either because it mistakenly assumes the existence of certain rights and 'contracts' without having the required social institutions and legal systems; or because, according to HEGEL[61], it presupposes what it is about to create – hence, a logical circularity.

Where the 'original contract' fails on historical grounds, and where the 'implicit contract' is unpersuasive for practical reasons and completely circular in its argument, it is left to the 'hypothetical contract' to overcome these dilemmas; by detaching the contract from reality, it makes the legitimacy of a state dependent on the consent that could and would be given; the contract becomes an as-if-construction. Even though BENTHAM believes that the 'indestructible prerogatives of mankind have no need to be supported upon the sandy foundation of a fiction'[62] – fictional, hypothetical elements shine through in, for instance, HOBBES, PUFENDORF, and ROUSSEAU[63] –, it is KANT who explicitly states and accepts the fictional, and only fictional character of the social contract. He says that 'we need by *no* means assume that this contract [...] actually exists as a *fact*, for it cannot possibly be so. [...] It is in fact merely an *idea of reason*, which nonetheless has undoubted practical reality'; for KANT the social contract '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 [...] as *if* he had consented within the general will.'[64] It seemed that the days of this as-if-contract, the 'sandy foundation', were numbered; it seemed that the 'season of *Fiction* is now over'[65]; but BENTHAM was wrong: this was proved not only by KANT's idea of reason, roughly two

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[61] Cf. GEORG W. F. HEGEL, 'Über die wissenschaftlichen Behandlungsarten des Naturrechts, seine Stelle in der praktischen Philosophie und sein Verhältnis zu den positiven Rechtswissenschaften', in his *Werke II: Jenaer Schriften 1801-1807* (Frankfurt am Main: Suhrkamp, 1970), 447.

[62] *Fragment on Government*, chap. I.xxxvi.

[63] Cf. GOUGH, *The Social Contract...*, 107, 154; PUFENDORF, *De Jure Naturae et Gentium*, bk. II.ii.4.

[64] *On the Common Saying...*, part II, 79 [italics added]; cf. also *Perpetual Peace*, 99.

[65] *Fragment on Government*, chap. I.xxxvii.

decades later, but also by RAWLS's idea of an 'original position' roughly two centuries later.

One argument that applies negatively to all types of the social contract operates on the very nature of what a contract is: it is the fact that contracts are the product of 'the parties' purely arbitrary will'[66]. For HEGEL, it is almost absurd that one 'reduces the union of individuals in the state to a contract and therefore to something based on their arbitrary wills'; the 'intrusion' of a contractual relationship between individuals and the state is erroneous; it is erroneous to 'have transferred the characteristics of private property into a sphere of a quite different and higher nature', the state.[67] This is the argument that undoubtedly follows to a certain extent BURKE, namely, that the state is much more 'than a partnership agreement in a trade of pepper and coffee, calico or tobacco, or some other such low concern' and must not 'be dissolved by the fancy of the parties'; it is of a different and higher quality: it is a partnership – a partnership in 'all science', in 'all art', in 'every virtue', and in 'all perfection', a partnership 'not only between those who are living, but between those who are living, those who are dead, and those who are to be born.'[68]

The accusation of the contract's arbitrariness shines through best in the 'hypothetical contract'. Here it all depends on the fundamental assumptions about anthropology and the state of nature: whether one assumes (or believes in) the ARISTOTLEian *zoon politikon*, or in the HOBBESian 'wolf', or in the ROUSSEAUian 'noble savage', or in the KANTian *animale rationabile*, or in the RAWLSian fairness and rationality of human beings; whether one assumes the state of nature as being a 'State of Peace, Good Will, Mutual Assistance, and Preservation' or as being a 'State of Enmity, Malice, Violence, and Mutual Destruction'[69], it is virtually possible to legitimize anything, any time, any place. Depending on the seed, the harvest ranges from a HOBBESian power of the sword state to a RAWLSian liberal welfare state. While still being served as the fillet from the menu of many contract theorists, for the critics the 'hypothetical contract' has a bad taste; or better, it has no taste at all and it never had one, because it is not being served at all; it is only said, in each case, to be good. The contract, and everything it entails, is

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[66] HEGEL, *Philosophy of Right*, § 75.

[67] Cf. IBID., § 75 and part III.iii, citations from §§ 75, 258.

[68] *Reflections on the Revolution in France...*, 194-5.

[69] *Second Treatise*, § 19, for both citations.

a fiction; it is hypothetical and it, therefore, fails all along the line: '*What is rational is actual and what is actual is rational.*'[70] So, if at all – for HEGEL definitely not – in order to confer *real* legitimacy to a *real* state it needs *real* people having *real* wills with *real* consent in a *real* contract. But a *real* contract, then, is exactly the kind of contract where it has all started from, namely from the 'original contract'. And this is a vicious circle *par excellence*.

Yet still, despite being in one way or the other so unhistorical, almost not provable, highly illogical, completely circular, fully fictional, and dangerously arbitrary, the social contract tradition, nevertheless, can claim deep roots. The philosophical theory of the social contract, that is so closely associated with modernity, 'had already been antici- pated by the Greek Sophists' and, more generally, by Greek political thought.[71] Con- tractual thinking, both societal and governmental, surfaces, for instance, with LYCROPHON and his assertion that law simply arises out of a contract; and with GLAUCON and his view that it is in the interest of all, especially of the weaker, to enter into a law-creating contractual agreement in order to escape the injustices in the state of nature.[72] However, the Greek origin is probably best represented in SOCRATES's dia- logue with CRITO: being imprisoned and facing the cup of hemlock, SOCRATES, reject- ing his friend's help for fleeing prison, indicates what the laws of the city were to tell him: 'Consider, Socrates, if we are speaking truly, that in your present attempt you are going to do us a wrong. For, having brought you into the world, and nurtured and edu- cated you, and given you and every other citizen a share in every good which we had to give, we further proclaim to any Athenian by the liberty which we allow him, that if he does not like us, the laws, when he has become of age and has seen the ways of the city, and made our acquaintance, he may go where he pleases and take his goods with him.' And the laws continue: 'But he who has experience of the manner in which we order justice and administer the state, and still remains, has by so doing entered into an im-

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[70] HEGEL, *Philosophy of Right*, Preface, 10.

[71] Cf. GOUGH, *The Social Contract...*, chapter II; and, RITCHIE, 'Contributions to the History of the Social Contract Theory', citation on p. 656.

[72] Cf. ERNEST BARKER, *Greek Political Theory: Plato and his predecessors* (London: Methuen, 1918), 159; PLATO, *Republic*, translated by ROBIN WATERFIELD (Oxford: OUP, 1998), 359a.

plied contract that he will do as we command him.'[73] The laws' argument mirrors exactly LOCKE's tacit consent.

When turning to the middle ages, one must quasi-stumble over MANEGOLD OF LAUTENBACH who explicitly expresses, wherein the social contract theories real roots lie, namely, 'in the popular consciousness of medieval society.'[74] Although he was not the only one in his days, roughly the eleventh century, writing about contractual relationships with regard to the state, MANEGOLD was the first 'to offer a general contractual theory of political authority'[75]. His thoughts must be (but must not only be) seen in the context of the Investiture Contest, where he, a priest from Lautenbach in Alsatia, unsurprisingly, stood up against the Emperor, Henry IV, in support of the Pope, Gregory VII. MANEGOLD's metaphor of the swineherd summarizes his views about the relationship between the ruler and the ruled; he is concerned with a 'contract of government': 'If a man has given his swine for a suitable wage into the charge of a swineherd, who, in place of keeping them safe, steals, slays, or loses them, he will refuse to pay the wage, and will dismiss him from his service.' This means, that for the ruled the duty to submission ends exactly there, where an Emperor, elected by them via a contract, begins to act like a tyrant destroying justice and peace.[76] MANEGOLD was an 'innovator' as for him monarchy was 'elective and conditional, and erected on that basis a definitive theory of popular sovereignty.'[77]

As close as the Greek antique is associated with GLAUCON and SOCRATES's death, and the middle ages is with MANEGOLD, the Reformation period is with ALTHUSIUS, 'the greatest of the Calvinist contract theorists'[78]. Although there is a thick bond between Calvinism and contract theory, it would be wrong to assume that it was only tied to Calvinist thinkers; in fact, quite the opposite is true. But Calvinism set the ground for the social contract's success in the subsequent seventeenth and eighteenth century. It is ALTHUSIUS who enjoys 'epoch-making importance in the history of political thought,

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[73] PLATO, 'Crito', in his *The Dialogues of Plato*, Vol. I, 4th edition, edited by B. JOWETT (Oxford: OUP, 1953), 51c.

[74] RITCHIE, 'Contributions to the History of the Social Contract Theory', 656.

[75] LESSNOFF, *Social Contract*, 12.

[76] Cf. R.W. CARLYLE AND A.J. CARLYLE, *A History of Medieval Political Theory in the West*, Vol. III (London: William Blackwood and Sons, 1915), 160-9, citation on pp. 166-7.

[77] GOUGH, *The Social Contract...*, 29.

[78] LESSNOFF, *Social Contract*, 35.

and of the social contract in particular'; in addition, he is the one who first 'created a real theory of the social contract'.[79] He employs not only the 'contract of government', but also the 'contract of society'. Similarly to PUFENDORF roughly 50 years later, the latter contract is used to set up the society, while the former is used to set up the government governing this society. For ALTHUSIUS a civil society is an 'association of lesser associations'[80]: having five different associations – i.e. the family, the fellowship, the local community, the province, and the state – each association must contract into the next higher association until the state is finally created. Any kind of human association follows, for ALTHUSIUS, 'the principle of contract, tacit or expressed, as the fundamental juridical basis'[81] in order to contract out 'whatever is useful and necessary for the harmonious exercise of social life.'[82] With ALTHUSIUS it ends now, but of course, not for the social contract. Roughly half a century later its heyday begins with the writings of HOBBES, PUFENDORF, BENEDICT DE SPINOZA[83], and LOCKE, and, then, in the eighteenth century, reaching its peak with ROUSSEAU, JOHANN G. FICHTE[84], and KANT, who, as GOUGH said in 1936, 'brings us within sight of the end of the history of the contract theory'[85] – indeed, a rather premature statement in the light of the success of the theories of a group with whom this chapter has started: the 'new contractarians'.

2.3 The Social Contracts selected: Hobbes, Rousseau, Kant, and Rawls

The preceding section, with its investigation into the ideal-types, criticisms, and history of the social contract, has shown that even when focussing on only this particular tradition, the quest for the proper source for legitimacy criteria is still problematic: there are too many social contract theories available to choose from. Necessarily, a selection must be made. Before diving into the contracts of HOBBES, ROUSSEAU, KANT, and RAWLS, it is now time not only to face the question: *Why them?*, but also *Why them schemed as pessimists and optimists?* HOBBES and ROUSSEAU are pessimists because they lack an

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[79] GOUGH, *The Social Contract...*, both citations on p. 72; cf. also HÖPFL AND THOMPSON, 'The History of Contract as a Motif in Political Thought', 935.

[80] IBID., 935.

[81] GOUGH, *The Social Contract...*, 72.

[82] *Politica Methodice Digesta...*, 12.

[83] See 'Theologico-Political Treatise' (1670) and 'A Political Treatise' (1677), in his *The Chief Works of Benedict de Spinoza*, Vol. 1, translated by R. H. M. ELWES (New York: Dover, 1951).

[84] See *The Science of Rights* (1796), translated by A. E. KROEGER (London: Routledge, 1970).

[85] *The Social Contract...*, 173.

international social contract in their contract theory. And what they also lack is the idea of an international society. For them legitimacy remains in the domestic sphere. KANT and RAWLS are optimists because they do employ a social contract on the international level. They operate within the framework of an international society and for them legitimacy is of greatest importance beyond borders. Trying to derive legitimacy criteria from them seems promising since the social contract is an essentially modern phenomenon. And HOBBES, ROUSSEAU, KANT, and RAWLS are thoroughly modern as well. Even more importantly, all of them are well-established figures in IR.

The social contract has its roots in ancient Greece, but its glory days in the seventeenth and eighteenth century. It certainly is an idea closely associated with modernity. However, and the following analogously holds true for the social contract tradition, '[n]othing is more characteristic of modernity than the immense variety and the frequency of radical change within it', hence, STRAUSS speaks of 'three waves of modernity'.[86] These three waves are more than a labelling instrument for justifying the selection of the four theorists; instead, they have significant implications both for social contract theory and hence for the meaning of legitimacy.

HOBBES is the important figure of the first wave. It was he who – what was done before him by NICCOLÒ MACHIAVELLI[87] – 'rejected all earlier political philosophy as fundamentally insufficient and even unsound'; this is an attitude archetypical for the first wave, and also for the project of modernity itself which implies 'not to hope for life in heaven but to establish heaven on earth by purely human means'; or put differently: 'Modernity started from the dissatisfaction with the gulf between the *is* and the *ought*, the *actual* and the *ideal*'.[88] By putting moral and political philosophy on scientific foundations (*more geometrico*), criticising the classic's utopias, HOBBES, self-declaredly, was the first real and true political philosopher[89]. He provided philosophically and politically the most impressive and innovative social contract theory[90] in his *Leviathan*,

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[86] See STRAUSS, 'The Three Waves of Modernity', citation on p. 83.

[87] See, e.g., *The Prince* (1532), edited by QUENTIN SKINNER AND RUSSELL PRICE (Cambridge: CUP, 1988).

[88] STRAUSS, 'The Three Waves of Modernity', citations on pp. 83-4, 82, 91 [italics added].

[89] Cf. the Epistle Dedicatory to the Earl of Newcastle, in his *The English Works of Thomas Hobbes*, Vol. IV, edited by WILLIAM MOLESWORTH (London: John Bohn, 1840).

[90] Cf. LESSNOFF, *Social Contract*, 46.

'one of the great books of the world'[91]. (T)his 'masterpiece of English political thought'[92], made him for some the first true liberal, for others the greatest apostle of absolutism. Whether these are true or false, fair or unfair descriptions of a man who 'always stood on his own legs', who 'possessed boundless self-confidence' and an 'intellect of extraordinary power, sharp as a razor', one thing is certain: the 'Leviathan was burned at Oxford in 1683, but it proved impossible to put out the flame.'[93] And this flame is still flickering, probably more intense than ever before. The 'new contractarian' BUCHANAN draws heavily on HOBBES, and HOBBESian language, such as *homo homini lupus* or *bellum omnium contra omnes*, is often spoken in IR; this combined with the way of thinking exemplary for the first wave of modernity, namely, 'to bring the *ought* nearer to the *is* by *lowering* the *ought*'[94], makes it not hard to see why 'Hobbes has now become the rival of Machiavelli in lending his name to a distinct tradition of thought'[95] in IR, that is, realism.

ROUSSEAU is no less modern, nor less prominent in IR; but a much more fascinating figure. He inaugurates the second wave of modernity. It was he who 'changed the moral climate of the west as profoundly as Machiavelli', and, instead of lowering the ought, showed 'how the gulf between the *is* and the *ought* can be overcome'; namely, by his concept of the *volonté générale* – the general will that cannot err.[96] But one can err about ROUSSEAU, the dreamer of Geneva, the 'contradictory thinker'[97], the ' proto-totalitarian'[98], the apostle of Jacobinism, *the* apostle of freedom[99], the 'deepest of the Realists'[100], the neo-realist[101], the realist and rationalist and revolutionist[102], the 'uto-

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[91] G. P. GOOCH, *Hobbes* (London: Humphrey Milford, 1939), 17.

[92] Editor's introduction to *Leviathan*, ix.

[93] GOOCH, *Hobbes*, citations on pp. 6, 1, 40.

[94] STRAUSS, 'The Three Waves of Modernity', 91.

[95] DAVID BOUCHER, *Political Theories of International Relations* (Oxford: OUP, 1998), 145.

[96] STRAUSS, 'The Three Waves of Modernity', 89 [italics added], 91.

[97] CARR, *The Twenty Years' Crisis, 1919-1939*, 176.

[98] BOUCHER, *Political Theories of International Relations*, 291.

[99] Cf. MEDINA, *Social Contract Theories...*, 43.

[100] STANLEY HOFFMANN AND DAVID P. FIDLER (eds.), *Rousseau on International Relations* (Oxford: Clarendon Press, 1991), lxxvii.

[101] Cf. WALTZ, *Man, the State and War...*, chap. vi.

[102] Cf. MARTIN WIGHT, *International Theory: The Three Traditions*, edited by GABRIELE WIGHT and BRIAN PORTER (London: Leicester University Press, 1994), chaps. 1, 12.

pian', the 'most famous of [all] social contract theorists'[103]. One can easily err about the declared disciple of HOBBES[104], a label that probably would have hurt ROUSSEAU most since he speaks of 'the horrible system of Hobbes', of 'his absurd doctrine', of 'the error of Hobbes and of the philosophers [...] to confuse natural man with the men they have before their eyes'[105]; they fail to see what natural man in the state of nature *really* is: not a wolf but a noble savage. Indeed, ROUSSEAU's 'ambiguity that surrounds many of his most important doctrines'[106] invites one to err, to get lost in him. However, among all the certain uncertainties about him, with regard to international relations, 'it is hard to see Rousseau as an optimist.'[107] HOBBES and ROUSSEAU are put under the pessimist's umbrella.

I leave it open whether KANT, the great admirer of ROUSSEAU, is the 'greatest of all theorists of international relations'[108]. But it is quite clear that he – like HOBBES, but on a very different side – acts as a father-figure in IR, namely, for the 'Kantian or universalist tradition'[109] or the 'Revolutionists'[110], for the 'cosmopolitans'[111], and for 'utopians'[112]. And as much as he admired ROUSSEAU, he did oppose HOBBES whose propositions KANT found 'quite terrifying.'[113] KANT, like ROUSSEAU, belongs to the second wave of modernity and what makes him, among many other things, so interesting, is that his social contract is 'for the first time clearly and explicitly [...] not an actual event, but a regulatory ideal'[114], i.e., an idea of reason. Additionally, he brings into being a contractual theory of international society in his *Perpetual Peace*. KANT is also *the*

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[103] LESSNOFF, *Social Contract*, 74.

[104] Cf. GEORG JELLINEK, 'Die Politik des Absolutismus und die des Radikalismus. (Hobbes und Rousseau.)', in his *Ausgewählte Schriften und Reden*, Vol. II (Aalen: Scientia Verlag, 1970), 13.

[105] 'The State of War' (c. 1755-6), (hereafter: *State of War*) in his *The Social Contract and other later political writings*, citations on pp. 163-4.

[106] BOUCHER, *Political Theories of International Relations*, 291.

[107] CHRIS BROWN, TERRY NARDIN AND NICHOLAS RENGGER (eds.), *International Relations in Political Thought* (Cambridge: CUP, 2002), 386.

[108] BROWN, *International Relations Theory...*, 14.

[109] Cf. BULL, *The Anarchical Society...*.

[110] Cf. WIGHT, *International Theory: The Three Traditions*.

[111] Cf. BROWN, *International Relations Theory...*, 28-41.

[112] Cf. CARR, *The Twenty Years' Crisis, 1919-1939*.

[113] *On the Common Saying...*, part II, 84.

[114] LESSNOFF, *Social Contract*, 90.

apostle for the second image view[115] and for liberalism: 'The republican constitution [...] offers a prospect of attaining the desired result, i.e. a perpetual peace'[116], he says. This democratic peace theory shines through, for instance, in FUKUYAMA when he speaks of the 'fundamentally un-warlike character of liberal societies'[117] and, similarly prominent, also in RAWLS when he says that 'when liberal peoples do go to war, it is only with unsatisfied societies, or outlaw states'[118].

As the first wave of modernity is associated with HOBBES, and as the second wave is associated with ROUSSEAU and KANT, the third wave of modernity is with FRIEDRICH NIETZSCHE; he has his entry later when defending legitimacy against the post-modern challenge. RAWLS, definitely, belongs to the second wave and his indebtedness to KANT is made obvious when he introduces his *Law of Peoples*, his contractual theory of international society, with the remark that its 'basic idea is to follow KANT'; when he believes 'KANT's hypothesis of a *foedus pacificum*' to be 'correct' and thinks it 'underwrites the Law of Peoples as a realistic utopia.'[119] It is RAWLS, the chief 'new contractarian', who is mainly responsible for the renaissance and reawakening of social contract theories. In contrast to HOBBES and ROUSSEAU, the 'contracts' of KANT and RAWLS, then, will be more closely examined under the label optimists.

In order to verify this taxonomy of pessimists and optimists, and to underpin my argument that KANT is the most promising source for legitimacy criteria in IR, all four social contract theorists are approached similarly. Each first sub-section deals with, so to speak, the domestic social contract and focuses on its crucial ground premises, especially anthropology; its structure follows the 'argumentative triad'[120], so significant for seventeenth and eighteenth century social contract theory, arguing from the state of nature via the social contract to political society. Each second sub-section deals with the social contract theory's implication for the international sphere and, in KANT's and RAWLS's case, with the international social contract.

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[115] Cf. WALTZ, *Man, the State and War...*, chap. iv.

[116] *Perpetual Peace*, 100.

[117] *The End of History and the last Man*, 262.

[118] *Law of Peoples*, § 5.2.

[119] IBID., Introduction, § 5.4.

[120] WOLFGANG KERSTING, 'Kant's Concept of the State', in HOWARD WILLIAMS (ed.), *Essays on Kant's Political Philosophy* (Cardiff: University of Wales Press, 1992), 144.

Before beginning to explore into the 'contracts', this is an ideal place to sum up the argument thus far: legitimacy is powerful and it must have its place in IR; it needs to be studied normatively and its moral nature must be properly respected; within IR theory such an endeavour is only possible for normative international society theorists; only they are able to become involved with moral and political philosophy, and in particular with social contract theory; legitimacy criteria must be sought in this tradition; since social contract theory is as complex and diverse as legitimacy, and there is not *the* social contract, I argued in this section for seeking the criteria in HOBBES, ROUSSEAU, KANT, and RAWLS – the four theorists who are divided into two groups, pessimists versus optimists.

3.   The Pessimists: Legitimacy limited, in an international system

3.1   Hobbes – Leviathan makes peace, Leviathan perpetuates war

3.1.1   Wolves, the state of war, and the 'mother of Peace'

HOBBES is anything but a suitable source for legitimacy criteria. Surely, he is deeply modern, a well-known figure in both political philosophy and IR, and a distinguished social contract theorist; but to him, international relations simply is a state of war – and will ever be. To derive legitimacy criteria from his social contract theory only makes sense if one wants to legitimize the right of the stronger; it certainly makes no sense when understanding legitimacy as set out thus far, namely, as a moral concept for an international society. He is a pessimist: legitimacy is only a question within the domestic, not in the international sphere – hence, legitimacy limited. This section illustrates the role of the social contract and legitimacy domestically, and why and how the Leviathan makes peace; the next section shows why this Leviathan perpetuates war internationally.

HOBBES's political philosophy – mainly presented in his three works *De Corpore Politico, or The Elements of Law*, *De Cive*, and *Leviathan*[1] – invites the reader to many interpretations. In general, HOBBES's reception in the twentieth century can be seen as two-fold: one strand, comprising of the 'new contractarians', follows (some more, some less) the liberal elements of his contract theory; the other strand, represented for instance by CARL SCHMITT[2], remains faithful to HOBBES's anti-liberal thoughts. Additionally, HOBBES 'is variously seen as a forerunner of both utilitarianism and contractarianism.'[3] In IR there seems to exist only *one* interpretation: it essentially emerges from HOBBES's pessimistic assertion that the nature of the 'relations between commonwealths' is equal to 'Man is a wolf to Man.'[4] It may not be wrong to speak of a clear-cut and also powerful 'HOBBESian tradition' in IR which regards HOBBES as its 'spiritual

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[1] Cf. LAURENCE BERNS, 'Thomas Hobbes', in LEO STRAUSS AND JOSEPH CROPSEY (eds.), *History of Political Philosophy*, 3rd edition (Chicago: CUP, 1987); see HOBBES's 'De Corpore Politico, or the Elements of Law'(1640), in his *The English Works of Thomas Hobbes*, Vol. IV, hereafter: *De Corpore Politico*; his *On the Citizen* (1642/51), edited by RICHARD TUCK (Cambridge: CUP, 1998), hereafter: *De Cive*; and his *Leviathan*.

[2] See his *The Leviathan in the state theory of Thomas Hobbes: meaning and failure of a political symbol* (1938), translated by GEORGE SCHWAB AND ERNA HILFSTEIN (London: Greenwood, 1996).

[3] See RUSSELL HARDIN, 'Hobbesian Political Order', *Political Theory*, Vol. 19 (1991), citation on p. 156.

[4] *De Cive*, Epistle dedicatory.

father'[5], and that IR sees him as 'the quintessential realist'[6]. However, when encountering HOBBES, one faces at least two particular problems. Firstly, HOBBES himself has not written extensively on international relations; indeed, 'what he has to say about relations among states does not occupy more than a small cupboard.'[7] Hence, it is quite surprising how HOBBES has managed to exert such a huge influence within IR theory. The second problem is that 'the reading of Hobbes as the supreme realist of (at least) international political theory rests on a handful of his most striking phrases arbitrarily lifted out of a very carefully crafted and interdependent whole.'[8] The first problem is a given fact, the second may be overcome by considering the 'whole'. Here, a good starting point is the criticism some of HOBBES's contemporaries[9] delivered to the 'Monster of Malmesbury'[10], namely, that he is 'a man who questions *basic* assumptions'[11].

HOBBES's radical break with the past, so archetypical for the first wave of modernity, shines through both in his geometrical method, and in his questioning of ARISTOTLEian thinking. The two major influences on HOBBES's political philosophy were the English Civil War[12], and the natural science revolution taking place on the Continent and, to HOBBES, exemplified by GALILEO.[13] In saying that 'what moral Philosophers have written up to now has contributed nothing to the knowledge of truth', he rejects their mere 'rhetorical discourse';[14] Scholastic philosophers, and especially ARISTOTLE, produced not more than 'hasty and superficial opinions' and were never able to 'end the war of the sword and the war of the pens';[15] therefore, HOBBES thought to find truth, certainty,

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[5] DOYNE DAWSON, 'The Origins of War: Biological and Anthropological Theories', *History and Theory*, Vol. 35 (1996), 4.

[6] DONALD W. HANSON, 'Thomas Hobbes's "highway to peace"', *International Organization*, Vol. 38 (1984), 329.

[7] HEDLEY BULL, 'Hobbes and the International Anarchy', *Social Research*, Vol. 48 (1981), 717-8.

[8] HANSON, 'Thomas Hobbes's "highway to peace"', 332.

[9] For contemporary criticism (17th century) on HOBBES see, e.g., JOHN BOWLE, *Hobbes and his Critics* (London: Jonathan Cape, 1951); SAMUEL I. MINTZ, *The Hunting of Leviathan* (Cambridge: CUP, 1962).

[10] MINTZ, *The Hunting of Leviathan*, vii.

[11] BOWLE, *Hobbes and his Critics*, 13 [italics added].

[12] See HOBBES's 'Behemoth: the History of the Causes of the Civil Wars of England' (1679), in his *The English Works of Thomas Hobbes*, Vol. VI.

[13] Cf. TOM SORELL, *Hobbes* (London: Routledge, 1986), 1.

[14] *De Cive*, Preface to the Readers.

[15] IBID., Epistle dedicatory.

and exactness in geometry, the 'Mother of all Naturall Science'.[16] Arguing that 'a thing is best known from its constituents' – be it an 'automatic Clock', a 'commonwealth', or 'men'; be it either artificial or natural – it is necessary to analyse or resolve the whole into its constituent components; this reveals the causes of its properties and the relations among them; once the causes and relations are discovered, one is enabled, starting from the constituents, to recompose the whole.[17] By employing this Galilean resoluto-compositive method, combined with relying on experience[18], HOBBES sought to arrive at incontestable conclusions.

HOBBES's political philosophy *more geometrico* is the foundation for his attacks on classic ARISTOTLEian ideas; he attacks, firstly, that man 'by nature [is] a political animal' (*zoon politikon*), and, secondly, that political associations (*polis*) are part of 'the class of things that exist by nature'.[19] HOBBES challenges ARISTOTLE's image of a *natural* political association full of *natural* political animals; he reduces man to a deeply a-political animal and focuses on the *artificial* character of political associations. He insists that 'all men [...] are born unfit for society' and is certain that '[c]loser observation of the causes why men seek each other's company and enjoy associating with each other, will easily reach the conclusion that it does not happen because by nature it could not be otherwise, but by chance'.[20] While to ARISTOTLE the political association naturally and logically is prior to man for the reason that the 'whole is necessarily prior to the part'[21], for HOBBES, instead, the political association is (some critics, for instance HEGEL and BURKE, would say: is reduced to nothing more than) 'a voluntary arrangement'[22].

Typically for all social contract theorists, he profoundly rejects natural explanations for political associations. The 'commonwealth' is merely manufactured by men: it is an *artefact*; the product of a social contract. Denying the ARISTOTLEian ideas of the *zoon*

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[16] *Leviathan*, chap. xlvi; Cf. GREGORY S. KAVKA, *Hobbesian Moral and Political Theory* (Princeton: PUP, 1986), chap. 1.

[17] Cf. and citations from *De Cive*, Preface to the Readers; Cf. IBID.

[18] Cf. DAVID P. GAUTHIER, *The Logic of Leviathan* (Oxford: OUP, 1969), 3.

[19] Both citations from ARISTOTLE, *Politics*, translated by ERNEST BARKER (Oxford: OUP, 1998), bk. I.ii (1252^{b}27, 1253^{a}2).

[20] *De Cive*, chap. I.ii.

[21] *Politics*, bk. I.ii (1253^{a}18).

[22] *De Cive*, chap. I.ii.

politikon and the natural political association and, instead, proposing the a-political character of men and the artificial quality of the 'commonwealth', HOBBES follows the 'argumentative triad' so typical for social contract theories. Certainly, 'all civil societies must have grown out of presocial and prepolitical states of nature, i.e., the state of nature must have existed among the progenitors of all men now living in civil society.'[23] So closely connected the state of nature is to any social contract theory, so closely interwoven is it with anthropology. HOBBES's image of the state of nature and its underlying anthropology are pessimistic. And since his social contract is hypothetical, where it all depends on the ground premises, it is crucial to examine his state of nature; and it is even more crucial since the international state of nature closely resembles the logic of the domestic state of nature.

In order to compose or to manufacture the right and proper state, HOBBES begins, by applying the resoluto-compositive method, with resolving the political association into its components, the individuals; '[t]o describe the Nature of this Artificiall man, [commonwealth,] I will consider First, the *Matter* thereof, and the *Artificer*; both which is *Man*.'[24] And, indeed, it is human nature that determines the character of the state of nature. Man is solely driven by passions. HOBBES calls them desire, when it is 'towards something *Good*'; and what is good is a matter of personal preference. Hence, good and evil are words 'ever used with relation to the person that useth them'.[25] This subjectivity implies that 'there is no such [...] *Summum Bonum*, (greatest Good,) as is spoken of in the Books of the old Morall Philosophers'. Hereby rejecting another essential ARISTOTLEian idea, HOBBES, instead, proposes that: 'Felicity is a continuall progresse of the desire'. What is of greatest importance for the domestic and international is that 'the object of mans desire, is not to enjoy once onely, and for one instant of time; but to assure for ever, the way of his future desire.' In short: men are steadily and unendingly striving for 'procuring' and 'assuring' objects of their desire.[26] This makes it not hard to see why HOBBES's anthropology traditionally is brought in connection with psychological egoism, the 'doctrine that all human action is selfishly motivated.'[27]

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[23] BERNS, 'Thomas Hobbes', 399.

[24] *Leviathan*, The Introduction.

[25] Cf. and citations from *Leviathan*, chap. vi.

[26] Cf. and citations from IBID., chap. xi.

[27] KAVKA, *Hobbesian Moral and Political Theory*, 29.

Assuming such an image of man, the way from this particular HOBBESian anthropological premise to defining the prepolitical state of nature as a *bellum omnium contra omnes* is not very far. The state of nature is a 'condition which is called Warre; and such a warre, as is of every man, against every man'[28]. Since men are driven by their passions, always seeking to satisfy their desires, they need to acquire power; only by having power are they able to 'obtain some future apparent Good.'[29] And, for this reason, power becomes the end itself; becomes the 'desired good' which is steadily sought by all men. It is exactly this logic that underlies HOBBES's proclamation: 'So that in the first place, I put for a generall inclination of all mankind, a perpetuall and restlesse desire of Power after power, that ceaseth onely in Death.' Indeed, the desire for power becomes restless because only the acquisition of more and more power secures both one's present power, and a contented life now and in the future.[30]

However, this does not necessarily imply war; it needs another HOBBESian assumption to fully reach the state of war, namely, the natural equality of men. 'Nature hath made men [...] equall', HOBBES says; this is seen in the fact that 'the weakest has strength enough to kill the strongest'. It is this equality of abilities which makes men become bitter enemies; they fear and 'endeavour to destroy, or subdue one another'. HOBBES explains this, at (first sight odd) step from equality of men to war, by stating that only the equality of abilities leads to the 'equality of hope in the attaining of our Ends'. The ends, the desired goods, become realistically attainable for all, i.e. become worth fighting for. This makes men diffident to each other. In this struggle one has no greater thing to fear than the superior power of the others. This makes it one's end to restlessly obtain more and more power; to 'master the persons of all men he can, so long, till he see no other power great enough to endanger him'. For these reasons, HOBBES sees the competition among men about desired goods, their diffidence among each other, and the ever-present striving for glory inherent in the human nature as the 'three principall causes of quarrell' in the state of nature, the state of war. However, according to HOBBES, remaining in such a state of nature would mean to act in contradiction to one's overall desire, because 'no one believes that the *war* of all against all, which naturally belongs to such a state, is good for him.' And it is the passions – 'fear of violent death' and 'Desire of

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[28] *Leviathan*, chap. xiii.

[29] IBID., chap. x.

[30] Cf. and citation from IBID., chap. xi.

commodious living' – as well as the 'Dictate of *right Reason*' that leads men out of the state of nature into '*civil Society*', into peace.[31] HOBBES speaks of a 'general rule of Reason': firstly, 'to seek Peace'; and secondly, to 'defend ourselves by all means'. The first part of this rule corresponds to the first and fundamental law of nature (*lex naturalis*), while the latter part resembles the right of nature (*ius naturale*) which is 'the Liberty each man hath, to use his own power, as he will himselfe, for the preservation of his own Nature'; from this HOBBES deduces that in the state of nature 'every man has a Right to every thing; even to one anothers body'; as long as this 'right to everything' is claimed by men, war is perpetual and security becomes a mere impossibility.[32]

In order to gain peace and security, the second law of nature requires men to 'be willing, when others are so too, as farre-forth, as for Peace, and defence of himselfe he shall think it necessary, to lay down this right to all things; and to be contented with so much liberty against other men, as he would allow other men against himselfe'; however, when the others are not willing to do so, from man is not expected the irrationality of voluntarily giving away his right since this means he must 'expose himselfe to Prey'. Indeed, to lay down a right – whether it be by renouncing or transferring – which in consequence obliges one 'not to hinder those, to whom such Right is granted, or abandoned, from the benefit of it', is a voluntary act; and indeed, for man it is irrational to do what is *not* 'Good to himselfe'. It is only consequent that HOBBES declares certain rights as unalienable; these rights are subsumed under the umbrella-like right of self-preservation; and it is this right which stands not only in the centre of the domestic, but also of the international context.[33]

'The mutuall transferring of Right', then, is what HOBBES calls a contract. Yet although the third law of nature demands from men 'to stand by their agreements' in the state of nature contracts are nothing more than empty words since 'the bonds of words are too weak to bridle mens ambition, avarice, anger, and other Passions'; since 'most men are of evil character'.[34] And HOBBES sees exactly men's passions as the only and most-promising exit from the entire dilemma. There are two possibilities to secure that men

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[31] Cf. *De Cive*, chaps. I.xiii and I.xv, citation from I.xiii; Cf. also *Leviathan*, chap. xiii.

[32] Cf. and citations from *Leviathan*, chap. xiv; Cf. also *De Cive*, chap. II.i-ii.

[33] Cf. and citations from *Leviathan*, chap. xiv [italics omitted]; Cf. also *De Cive*, chap. II.iii-iv.

[34] Cf. *Leviathan*, chap. xv and also *De Cive*, chap. III.i.; first two citations from *Leviathan*, chap. xiv, last one from *De Cive*, chap. II.xi.

keep their contracts: firstly, by 'fear of the consequence of breaking it'; and secondly, by 'gaining glory for not being in the need to break it'. Since the latter passion is 'too rarely found', the only passion that can be utilized remains nothing but fear.[35] By fear, HOBBES means the 'fear of some coercive power'; it coerces men equally to *pacta sunt servanda* by 'the terrour of some punishment' which must be greater than the antici-pated benefit of violating their contractual obligations. Yet, such a coercive power does *not* exist in the state of nature, before 'the erection of a Common-wealth'; what also does *not* exist in the state of nature is justice: where justice is attached to the third law of nature, i.e. it arises from 'keeping contracts', there cannot be justice when there is no assurance that this imperative is kept; hence, 'before the names of Just and Unjust can have place, there must be some coërcive Power', i.e. a 'commonwealth'. This leads HOBBES to the assertion that 'where there is no Common-wealth, there nothing is Un-just.'[36]

Again, for the 'hypothetical contract' it is the ground premises that really count and, unsurprisingly, HOBBES deduces his political conclusion from *his* anthropology and the image of the state of nature. Men are evil, selfish, driven by passions, and wolves to other men. This leads him to draw a pessimistic and depressing picture of the state of nature. The state of nature is a condition not of injustice, but a condition without any justice or injustice; the only 'rule' that exists is the right of self-preservation. This is not acceptable to HOBBES and it is via a social contract that man can escape his fate. HOBBES now constructs or composes – artificial as states are to him in contrast to his great opponent ARISTOTLE – his saviour, the great Leviathan[37].

This 'coercive power' is erected by a 'hypothetical contract'; however, this contract does not simply create the Leviathan in the two senses of a 'contract of society' and a 'contract of government', but does also confer legitimacy to him. The HOBBESian social contract is a contract 'of every man with every man' in such a way 'as if every man should say to every man' – this only underlies the *hypothetical* character – that '*I Authorise and give up my Right of Governing my selfe, to this Man, or to this Assembly of men, on this condition, that thou give up thy Right to him, and Authorise all his Ac-*

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[35] Cf. and citations from *Leviathan*, chap. xiv.

[36] Citations from IBID., chap. xv.

[37] On the origins of the name *Leviathan* see SCHMITT, *The Leviathan in the state theory of Thomas Hobbes...*, chap. I.

tions in like manner.' From this collective transfer of all the rights and power to 'this man or assembly of men', which merges all the individual wills into one will, results the 'commonwealth'; the 'Mortall God' called Leviathan, which is the 'Multitude so united in one Person'. And whoever this person represents or embodies is the sovereign; the holder of absolute and sovereign power over each man who then is nothing more than the sovereign's subject. Since in HOBBES's case, the sovereign himself has not contracted with 'every men or the whole multitude', leaving him outside the contractual arrangement, the sovereign is capable of acting completely unconstrained by it. Whether one likes the HOBBESian Leviathan, or not, is not important here; what is important, is the fact, that the Leviathan derives his legitimate power from the 'consent of the governed'. This means, that he has rightful political authority and the subjects are morally obliged to obey. Important, too, is the fact, that if the ground premises were different, there would be no absolute Leviathan, but possibly a republic. Yet still, the HOBBESian contract erects such Leviathan and provides his legitimacy; however, by all his absolutism, there was a purpose behind the contract. Therefore, the legitimacy of him being the sovereign power, however, ends exactly at this point where he fails to provide his only duty, that is, bring 'Peace at home', security and protection 'against other men' and their 'enemies abroad'.[38]

Saying that the Leviathan must provide security against external enemies, leads from domestic to international relations. The way how and why the Leviathan, 'the mother of *Peace*'[39], is legitimized and erected within the domestic sphere with his duty to protect, to protect, and only to protect, is precisely the dilemma for IR. Ironically, it leaves all these many mothers of peace remaining in the *bellum omnium contra omnes* – with the consequence of there being no place for anything such as legitimacy in the international realm. And this is why HOBBES, as pessimist, would be a rather bad source for seeking legitimacy criteria. The next section aims to show the HOBBESian logic behind the alleged absence and impossibility of legitimacy in international relations.

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[38] Cf. IBID., chaps. xvii, xviii, xxi, citations from chap. xvii; Cf. also *De Cive*, chaps. V,VI.

[39] *Leviathan*, chap. xlvi.

3.1.2 Leviathans and the war of all against all

HOBBES did not enquire at length into international relations. The centre of his interest was to 'show us the highway to peace'[40] domestically, to reveal the 'royal road'[41] to civil society. Nevertheless, HOBBES's impact on IR has been enormous and everything that HOBBES (or his interpreters) has to say on international relations entirely derives from the 'whole', his method, anthropology, state of nature, and the social contract. Paradoxically, (t)his immense influence is grounded in no more than a very few, throughout his writings scattered, and short – yet probably most-cited and most-famous – remarks. However, it does not need many words for HOBBES to explain what international relations look like since he simply equates the relations among states with the relations among men in the state of nature, an anarchical condition.

HOBBES declares that 'the state of commonwealths towards each other is a *natural* state, i.e. a state of hostility'[42]; he not only thinks international relations to be equal with the state of nature, but also makes explicit what the consequences are, namely, that the relations among states must be inescapably war-like. HOBBES is certain that 'in all times, Kings, and Persons of Soveraigne authority, because of their Independency, are in continuall jealousies, and in the state and posture of Gladiators; having their weapons pointing, and their eyes fixed on one another; that is, their Forts, Garrisons, and Guns upon the Frontiers of their Kingdoms; and continuall Spyes upon their neighbours, which is a posture of War.'[43] And to all those who deny his words he self-confidently says – this emphasizes his methodological reliance on experience – that states simply 'admit by their actions what they deny in their words.' To HOBBES, it is a matter of fact 'that all commonwealths, even if they are at peace with their neighbours, still defend their borders with garrisons of soldiers, their cities with walls, gates and guards' and he, therefore, ironically asks: 'What would be the point of this if they had nothing to fear from their neighbours?'[44]

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[40] From The Author's Preface to the Reader of HOBBES's 'Philosophical Rudiments concerning Government and Society' (1651), in his *The English Works of Thomas Hobbes*, Vol. II. This text is a translation of the original, Latin version of *De Cive* and is commonly and confusingly also referred to as *De Cive*. Cf. A. P. MARTINICH, *Hobbes: A Biography* (Cambridge: CUP, 1999), 118.

[41] *De Cive*, Preface to the Readers.

[42] *De Cive*, chap. XIII.vii.

[43] *Leviathan*, chap. xiii.

[44] *De Cive*, Preface to the Readers.

The proper starting point for elucidating HOBBES's logic, that states – like men in the state of nature before their creation of a commonwealth – necessarily end up in a war of all against all, is to show where the general selfishness of states and their egoistic interests and motives come from. Instead of following a *summum bonum*, states, egocentric as they are, permanently pursue what they regard as to their greatest benefit with being their 'private Appetite the measure of Good, and Evill'[45]. The greatest benefit is to follow the duty HOBBES ascribes to a commonwealth's sovereign, i.e. that '*the safety of the people is the supreme law*'[46] and that they must secure a contented life for their subjects. These duties derive from the domestic social contract as set out in the last section. With 'safety' being synonymous for national security and 'contented life' synonymous for economic well-being, these 'greatest benefits' or 'desired goods' resemble what is usually referred to as the national interest of a state. In order to achieve these self-centred objectives, states need to obtain power; and power itself becomes a 'desired good'. This is identical to the domestic sphere and, similarly, HOBBES's 'three principall causes of quarrell', i.e. competition, diffidence, and glory, leave their mark in international relations, too. The competition for the 'desired goods' – as incompatible and scarce as they often are internationally – still would not necessarily lead to war, unless the states were not of 'equal ability' in their means; and only this equality leads then to the equality of their chances in 'attaining the ends'. Here, according to BEITZ, HOBBES's analogy between the domestic and the international seems to fail: contemporary international relations would clearly show that states are not of equal abilities, i.e. equal power; quite the contrary, he argues, is the case: states do vary greatly in their capabilities. BEITZ also rejects GAUTHIER's counter-argument, that the spread of nuclear weapons around the globe makes nations 'dreadfully equal', as 'too simple'; it is simply not a fair description of international relations 'that all or most states are developing or will develop operational nuclear arsenals.'[47]

Both arguments may be true, but they certainly miss HOBBES's own point. He made it explicitly clear, that men do differ in their capabilities but that this could be neglected since everybody was still be able to kill everybody – one must add: to *somehow* kill everybody; even the weakest has enough strength to kill the strongest. According to

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[45] *Leviathan*, chap. xv.

[46] *De Cive*, chap. XIII.ii.

[47] Cf. and citations from BEITZ, *Political Theory and International Relations*, 41; cf. GAUTHIER, *The Logic of Leviathan*, 207.

HOBBES this is possibly to be done 'either by *secret machination*, or by *confederacy with others*'[48]. Hence, the question of the equality of abilities, i.e. the equal abilities to kill, whether it be of men or of states, does not rest solely on actual physical means, but includes other means, such as allying with partners, as well. It is generally possible for weaker states to *somehow* 'kill' stronger ones; HOBBES's analogy here does not seem to be flawed at all, and it can be continued. It is the competition among states for their desired goods, in combination with their equal abilities, that leads to diffidence; every state constantly has to fear, precisely because of this equality, that the others might *use* all their power in order to gain most in this struggle: and this fear 'converts potential enmity into actual enmity'[49]. Competition and diffidence is joined by the ever-present striving for glory; states permanently try to gain recognition and to avoid undervaluation by others.

It is easily recognizable that these three HOBBESian causes of war, competition, diffidence, and glory, resemble THUCYDIDES's three motives profit, fear, and honour, respectively. And HOBBES follows him also in their order of significance; to use THUCYDIDES's words: states fight wars 'chiefly for fear, next for honour, and lastly for profit'[50]. Accordingly, it is primarily their diffidence or fear – their 'rational apprehension of future insecurity' – that leaves states with no other choice than to enter the race for power. They must seek power after power in order to secure themselves the necessary means for obtaining their ends, mainly security.[51] However, since an increase in security for one state goes hand in hand with increasing the insecurity for the other, states find themselves soon trapped in an action-reaction pattern: a condition which HOBBES describes as the 'known disposition to fight' and which today would be referred to as a cold war.[52] HOBBES deduces the *bellum omnium contra omnes* between states entirely from the domestic state of nature. He concludes that in the international sphere one is 'not to expect [...] peace between two nations'[53] since '[e]ven when the fighting between them stops, it should not be called Peace, but an intermission during

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[48] *Leviathan*, chap. xiii.

[49] GAUTHIER, *The Logic of Leviathan*, 208.

[50] THUCYDIDES, 'The History of the Grecian War', translated by THOMAS HOBBES, in his *The English Works of Thomas Hobbes*, Vol. VIII, bk. 1.75.

[51] Cf. BULL, 'Hobbes and the International Anarchy', citation on p. 721.

[52] Cf. GAUTHIER, *The Logic of Leviathan*, 208.

[53] Citation on p. 7 of HOBBES's, 'A Dialogue between a Philosopher and a Student of the Common Laws of England' (1681), in his *The English Works of Thomas Hobbes*, Vol. VI.

which each watches the motion and aspect of its enemy and gauges its security'[54] – this being, after all and to close the circle, 'a posture of War'.

After having drawn such an analogy thus far, it would be plausible to expect HOBBES to develop his domestic argument further and apply it to the international sphere. This would involve introducing a peace-making social contract between all the common-wealths, in order to escape this – what he domestically thought to be so intolerable – state of war. One would expect him to create a World-Leviathan. However, HOBBES will *not* do so, will not even say anything about it, and stops here: he cannot think of the 'idea of a [...contract] among sovereigns [...or] consider the possibility of a contract of world government among all individual persons in the world'[55]; he cannot think of an international social contract and an international society. International legitimacy is neither needed, nor possible.

Two lines of arguments seem to be important why HOBBES does not do this leaving the states inescapably trapped in the state of war: one is historical, the other logical.[56] In seventeenth century England, any plea away from national power in favour of a supra-national sovereign must have been seen as both ridiculous and even dangerous; and the horrors of the English Civil War directed the attention of HOBBES, and most of his con-temporaries, to the establishment of an effective, *national* government. Hence, HOBBES entirely ascribed himself to the theme of 'domestic security' since 'the greatest incon-venience that can happen to a commonwealth, is the aptitude to dissolve in to civil war';[57] and he did not attach any great importance to international relations. Addition-ally, HOBBES was certain that the state of nature states are facing is, in comparison, qualitatively less 'horrible' than the natural condition men are exposed to. He thought the price for being in such a 'posture of war' worth paying in order to achieve the greater goal, i.e. inner security and well-being: 'But because they uphold thereby [i.e.

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[54] *De Cive*, chap. XIII.vii.

[55] BULL, 'Hobbes and the International Anarchy', 726.

[56] For the *historical* line cf. ROBINSON A. GROVER, 'Hobbes and the Concept of International Law', in TIMO AIRAKSINEN AND MARTIN A. BERTMAN (eds.), *Hobbes: War among Nations* (Aldershot: Ave-bury, 1989), 79-80; for the *logical* argument cf. BOUCHER, *Political Theories of International Rela-tions*, 161-2; BULL, 'Hobbes and the International Anarchy', 726; and BERNARD WILLMS, 'World-State or State-World: Thomas Hobbes and the Law of Nations', in AIRAKSINEN AND BERTMAN (eds.), *Hobbes: War among Nations*, 133-4.

[57] *De Corpore Politico*, II.v.8.

'posture of war'], the Industry of their Subjects; there does not follow from it, that misery, which accompanies the Liberty of particular men.'[58]

However, this is not sufficient to explain HOBBES's lack of enthusiasm for a World-Leviathan erected via an international social contract. The great Leviathan has been contractually set up in order to escape the state of nature, a condition of war, which stands diametrically opposed to the people's desired goods, i.e. self-preservation and contented life. The sovereign's duty, therefore, was to provide 'peace at home' and protection 'against enemies abroad'. Hence, the duty of a World-Leviathan would also involve to secure against internal and external threats. However, in such a case, there would be no external enemy existent any longer the World-Leviathan could provide security against. Therefore, the reason for its creation is missing. For HOBBES, reasoning that international relations equal the state of nature and denying for states any possibility of escape from this state of war, it follows, that '[i]ronically, states remain in a war of all against all at the international level because the state has successfully eliminated that war at the domestic level.'[59] Thus, one can easily see the interplay between the domestic and the international sphere as well as the implications the legitimacy of the Leviathan has for both international relations, and international legitimacy. In short: the Leviathan makes peace domestically and perpetuates war internationally; his legitimacy domestically causes the lack of legitimacy internationally.

In the domestic context, HOBBES used the social contract to confer legitimacy on the sovereign. The legitimacy of the Leviathan rests on the 'hypothetical contract' made between free and equals in order to flee the state of war. And while the state of nature is a moral vacuum, it is only by contracting into the civil state when moral categories such as justice and injustice are born. Peculiar for HOBBES, once the contractual arrangement has taken place, the sovereign decides what justice and injustice means: 'Legitimate kings therefore make what they order just by ordering it, and make what they forbid unjust by forbidding it.'[60]

Yet, there are limits. The sovereign lacks legitimacy when he fails to provide either the purpose of his creation, i.e. to provide security, or when he demands obedience to orders that contradict men's inalienable right of self-preservation. Although HOBBES

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[58] *Leviathan*, chap. xiii.

[59] MAPEL, 'The Contractarian Tradition in International Ethics', 188.

[60] *De Cive*, chap. XII.i.

draws an analogy between the domestic and the international, the result with regard to legitimacy is anything but analogous. States not only find themselves being in a state of war, but worse, they find themselves being trapped in this. HOBBES never conceived of them entering into a contractual agreement creating a World-Leviathan. Paradoxically, only the logic behind the domestic legitimacies of all the contractually generated Leviathans create and uphold a global environment without anything even close to international legitimacy possible. There can never be an international social contract, and there can never be an international society. HOBBES leaves the states in a world where any sense of what ought to be is missing, where states 'are strangers to the moral world'. In their relations states are guided not by a *summum bonum*, but by their 'selfish private appetites', which are their 'measures of good and evil'; by 'force and fraud' which are their 'two Cardinall virtues'[61]; by their fears and by their striving for glory and profit. States follow the Law of Nations, which declares that 'every Soveraign hath the same Right, in procuring the safety of his People, that any particular man can have, in procuring his own safety'[62] – one must add: to procure his safety by all means.

Considering such an international state of nature, HOBBES, unsurprisingly, suggests states be permanently 'forwarned' by collecting intelligence, and 'forarmed' by maintaining sufficient military resources.[63] And even if HOBBES does not deny the potential value of a contract between states to establish a League of Commonwealths, this has nothing to do with international legitimacy. This League must be a farce since HOBBES considers it as perfectly reasonable and acceptable to withdraw from this contract as soon as states do not benefit from such a society anymore, or it becomes more advantageous to act unconstrained.[64] Hence, even if such a League of Commonwealths were to exist (for a certain period of time), again, its guiding principle is not legitimacy, but simply power and self-interest. HOBBES ascribes every commonwealth the '*absolute Libertie*, to doe what it shall judge [...] most conducing to *their* benefit.'[65] Indeed, HOBBES is a pessimist. He operates in the framework of an international system and since no international social contract is employed, legitimacy remains limited to the

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[61] *Leviathan*, chap. xiii.

[62] IBID., chap. xxx.

[63] Cf. *De Cive*, chap. XIII.vii-viii.

[64] Cf. BOUCHER, *Political Theories of International Relations*, 159, and *Leviathan*, chap. xxii.

[65] IBID., chap. xxi [italics added].

domestic sphere. At this point, I must conclude that HOBBES certainly is not a social contract theorist who provides a good source for legitimacy criteria in IR.

3.2 Rousseau – from nature to society, from 'society' to nature

3.2.1 Noble Savages, their corruption, and the *volonté générale*

ROUSSEAU is a pessimist, too. Like HOBBES, he certainly is not a suitable source for legitimacy in IR; and like HOBBES, ROUSSEAU is deeply modern, well-established in IR, and a distinguished social contract theorist. He does not take the necessary step to bring legitimacy into the international sphere; no contract theory of international society is produced, and legitimacy remains within state borders; again: legitimacy limited. While domestically ROUSSEAU uses the social contract, i.e. a 'hypothetical contract', to bring men from nature into society, internationally he does the opposite: states ought to take the road from an alleged society back to nature. This section deals not with wolves, a brutish state of nature, and a Leviathan, but with noble savages, a peaceful state of nature, and the *volonté générale*. The next section deals with the alleged brotherhood of the nations of Europe, the plea for independence, and explains why legitimacy does not play any role in international relations.

ROUSSEAU is not only puzzling in political philosophy, but also with regard to IR. While HOBBES's interpretation as *the* realist finds almost universal acceptance, the *causa* ROUSSEAU is less straightforward. This, however, could not entirely prevent associating him with this particular tradition, and it is said to be his general pessimism about international relations in general 'why Rousseau has been routinely placed in the realist camp.'[66] And while some authors, indeed recognising ROUSSEAU's pessimism – but not to the extent comparable with that of HOBBES – only see him being part of a milder realism[67], or as a 'reluctant realist'[68], others do offer essentially '*anti*-realist'[69] interpretations. These interpretations range from putting ROUSSEAU in the tradition of 'historical

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[66] TORBJØRN L. KNUTSEN, 'Re-reading Rousseau in the Post-Cold War World', *Journal of Peace Research*, Vol. 31 (1994), 248. For this realist interpretation are largely responsible: IAN CLARK, *The Hierarchy of States* (Cambridge: CUP, 1989), chap. 4; HOFFMANN AND FIDLER (eds.), *Rousseau on International Relations*, Introduction; STANLEY HOFFMANN, *The State of War* (London: Pall Mall Press, 1965), chap. 3; and WALTZ, *Man, the State and War...*, chap. vi.

[67] Cf. STEVEN FORDE, 'Classical Realism', in NARDIN AND MAPEL (eds.), *Traditions of International Ethics*, 78.

[68] CHRISTINE J. CARTER, *Rousseau and the Problem of War* (New York: Garland Publishing, 1987), 205.

[69] BROWN, NARDIN AND RENGGER (eds.), *International Relations in Political Thought*, 386.

reason' together with HEGEL and MARX;[70] to placing him together with KANT in the utopian corner;[71] to appreciating him as the one 'who provides the basis for a profoundly critical theory of international politics.'[72] When someone is being 'read' (both in political philosophy and IR theory) as differently and diversely as it is in ROUSSEAU's case, two possibilities naturally arise why this is so: firstly, interpreters accuse ROUSSEAU as being 'notoriously ambiguous'; secondly, it is largely due to the shortcomings of the interpreters themselves why one 'may err about Rousseau'.

The latter explanation seems to be more convincing since most of the ROUSSEAU-scholars perceive his thoughts anything but ambiguous, but instead, incredibly coherent;[73] nevertheless, '[m]any thinkers have suffered at the hands of commentators, but few have had to endure as much as Rousseau.'[74] Whether ROUSSEAU is a realist is in doubt. Realist readings, it is said, are nothing but highly mistaken interpretations, which are 'based upon a series of conceptual, methodological and philosophical errors'.[75] Without being able to ultimately assess this particular point of view, it, therefore, may be appropriate to recognise certain pessimistic elements in ROUSSEAU's thoughts and, despite labelling him, to appreciate that he 'offers a unique, alternative, approach.'[76] As was the case with HOBBES, instead of picking out small pieces here and some bits there, one only understands ROUSSEAU when appreciating that his works form an intertwined whole. Therefore, to understand the social contract, and to understand why there is no international social contract, one must explore into four of his major and interconnected writings: *Discourse on the Sciences and Arts* (1750)[77]; *Discourse on the Origin and Foundation of Inequality among Men* (1755)[78]; *Émile* (1762)[79]; and *Contrat Social*

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[70] Cf. BOUCHER, *Political Theories of International Relations*, chap. 12.

[71] Cf. JONATHAN HASLAM, *No Virtue like Necessity: Realist Thought in International Relations since Machiavelli* (New Haven: Yale University Press, 2002).

[72] MICHAEL C. WILLIAMS, 'Rousseau, Realism, and *Realpolitik*', *Millennium: Journal of International Studies*, Vol. 18 (1989), 186.

[73] Cf. ROUSSEAU, *The Social Contract and other later political writings*, Editor's Introduction, x.

[74] ERNST CASSIRER, *The Question of Jean-Jacques Rousseau* (1932), edited by PETER GAY (New York: Columbia University Press, 1954), Editor's Introduction, 4.

[75] WILLIAMS, 'Rousseau, Realism, and *Realpolitik*', 185.

[76] KNUTSEN, 'Re-reading Rousseau in the Post-Cold War World', 248.

[77] Hereafter: *First Discourse*, in JEAN-JACQUES ROUSSEAU, *The Discourses and other early political writings*, edited by VICTOR GOUREVITCH (Cambridge: CUP, 1997).

[78] Hereafter: *Second Discourse*, in ROUSSEAU, *The Discourses and other early political writings*.

[79] Translated by BARBARA FOXLEY (London: Dent, 1969).

(1762).[80] ROUSSEAU in his *Contrat Social* presents a 'hypothetical contract', like HOBBES. The necessary basic premises, anthropology and the image of the state of nature, must be sought in his *First* and *Second Discourse*.

ROUSSEAU's *First Discourse* won the prize of the Academy of Dijon on the question 'whether the restoration of the Sciences and Arts has contributed to the purification of morals'; this is his *entrée* into political philosophy, and made him not only famous overnight, but also provides more or less the basis for all his other writings. ROUSSEAU introduces the second wave of modernity, where the modern project becomes more and more self-reflective. It is the positive portrait drawn by most of his contemporaries, his fellow *encyclopaedists* and *philosophes*, that is the source of his revolution in political thought, namely, his attack on the Enlightenment.[81] 'The ancient politicians forever spoke of morals and of virtue; ours speak only of commerce and money'[82], ROUSSEAU protests, and makes the sciences and arts responsible for this present state of moral decay. Unlike HOBBES, who sought his philosophical well-being in the exactness of geometry, ROUSSEAU, on the contrary, shows that 'the progress of the sciences and the arts has added nothing to our genuine felicity'[83]. And it gets worse: 'our souls have become corrupted in proportion as our Sciences and our Arts have advanced toward perfection'[84]!

This moral corruption is not primarily a phenomenon of the eighteenth century, but one which 'has been observed at all times and in all places.'[85] In the end, this is not simply a historical fact for ROUSSEAU; he goes further and proves that it is *not* historically coincidental, but that a 'necessary connection'[86] between the promotion of sciences and arts and moral corruption of men does exist.[87] However, the *First Discourse* almost entirely lacks the philosophical base of his radical, often polemic, attack on the spirit of the Enlightenment: 'Of all the works, I ever wrote', ROUSSEAU admits, 'this is the weakest

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[80] Cf. CARTER, *Rousseau and the Problem of War*, 1-2; ROGER D. MASTERS, *The Political Philosophy of Rousseau* (Princeton: PUP, 1968), Preface.

[81] Cf. ALLAN BLOOM, 'Jean-Jacques Rousseau', in STRAUSS AND CROPSEY (eds.), *History of Political Philosophy*, 560.

[82] *First Discourse*, part II, 18.

[83] IBID., part II, 26.

[84] IBID., part I, 9.

[85] Cf. IBID., part I, 9-11, citation on p. 9.

[86] 'Preface to *Narcissus*', in ROUSSEAU, *The Discourses and other early political writings*, 97.

[87] See, especially, *First Discourse*, part II.

in reasoning'[88]. On the occasion of another question proposed by the Academy about the 'Origin of Inequality among Men', ROUSSEAU, then, did endow his thoughts with the necessary philosophical foundation. In his *Second Discourse*, the 'work of greatest importance', ROUSSEAU 'boldly traced the history' of mankind, he 'confounded the pitiful lies of men', and 'dared to unveil their nature' – only proving once again the self-made moral decay of men: '"Madmen! know that all your evils proceed from yourselves!"'[89]

ROUSSEAU sees two inequalities among men: one physical, which is basically natural because of variations in age, health, and body strength, but also mind and soul; and one moral or political inequality, which is conventional, i.e. 'established [...] by Men's consent', and 'consists in the different Privileges [...] some enjoy to the prejudice of the others'. He is primarily concerned with the latter form of inequality, and since this inequality is *not* natural to men, ROUSSEAU in fact explores into the very question about the origin of civil society; and for a social contract theorist necessarily, the origins of society must be sought in the state of nature. What ROUSSEAU has to offer here are 'hypothetical and conditional reasonings'.[90]

When ROUSSEAU declares: '[h]ere is your history such as I believed I read it, not in the Books by your kind, who are liars, but in Nature, which never lies'[91], these 'wicked books' metaphorically stand especially for the thoughts of ARISTOTLE and, even more so, for HOBBES. ROUSSEAU's anthropology and the state of nature look quite different to that of HOBBES; chiefly addressing him, ROUSSEAU claims that 'all of them, continually speaking of need, greed, oppression, desires, and pride[,] transferred to the state of Nature ideas they had taken from society; They spoke of Savage Man and depicted Civil man.' Only ROUSSEAU went back far enough and reached the state of nature, in order to investigate into the human nature of 'Savage Man'; this is why he introduces this discourse with the words: 'It is of man that I am to speak'.[92]

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[88] *The Confessions of Jean-Jacques Rousseau* (London: William Glaisher, 1918), bk. VIII, 280; hereafter: *Confessions*.

[89] Cf. and citations from *Confessions*, bk. VIII, 312.

[90] Cf. and citations from *Second Discourse*, Exordium.

[91] IBID.

[92] IBID.

Savage man, according to ROUSSEAU, wandered the forests alone and nourished himself; was without any foresight, curiosity, education, reason, nor any contact; was completely independent; was concerned only with his self-preservation, and envisioned only the most basic needs; showed pity and compassion for the sufferings of others and had no desire to harm them whatsoever.[93] This distances him clearly from both ARISTOTLE, since savage man is definitely not a *zoon politikon*, and from HOBBES, since he also is far from being a wolf. ROUSSEAU accuses HOBBES failing to recognise 'that the same cause that keeps Savages from using their reason [...] at the same time keeps them from abusing their faculties'; and he argues 'that Savages are not wicked precisely because they do not know what is to be good'. This leads to the rejection of depicting the state of nature as a HOBBESian *bellum omnium contra omnes*. Contrary to HOBBES, for ROUSSEAU it follows that this natural state – by virtue of being inhabited by noble savages, who only know self-preservation and pity – was a state of pure freedom and perfect equality. The natural physical inequalities had no effect on men's lives; indeed, equality came from freedom. Hence, it is not civil society but the state of nature that 'was the most conducive to Peace and the best suited to Mankind'.[94]

ROUSSEAU gave an explanation in his *First Discourse* of why present society is flawed. However, he must walk the historical path further 'that must have led man from the Natural state to the Civil state'[95] in order to explain what has happened between this perfect state of nature and the corrupt civil society. ROUSSEAU's 'history of mankind' is primarily the history of decay and is split into five *post*-state-of-nature periods.[96] Here, the crucial factor is the notion of independence, to be more precise: the loss of independence. It stands in the centre of ROUSSEAU's analysis of moral corruption and inequality; and it plays an important part in his thoughts on international relations. This loss of independence which is largely caused by the loss of self-sufficiency had two effects: firstly, men began more and more to compare themselves to each other causing the development of men's self-love (*amour-propre*), i.e. the relative sentiment that 'inspires men with all the evils they do one another'[97]; secondly, the physical inequalities

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[93] Cf. IBID., part I.

[94] IBID., part I, 151.

[95] IBID., part II, 186.

[96] Cf. IBID., part II; For a lengthy discussion of these five periods see MASTERS, *The Political Philosophy of Rousseau*, chap. IV.

[97] *Second Discourse*, Rousseau's Notes, n. xv.

among men, which were existent in the state of nature but had no effect, now became, by way of the division of labour, an integral part of men's life. The loss of independence inaugurated the beginning of the end of the equality of men since 'the cleverer or the stronger now enjoy advantages at the expenses of the duller or weaker'[98].

The greatest advantages enjoyed by the former stemmed from the foundation of private property. 'From the [professional and surplus-oriented] cultivation of land, its division necessarily follows', ROUSSEAU reasons; and goes on: 'The first man who, having enclosed a piece of ground, to whom it occurred to say *this is mine*, and found people sufficiently simple to believe him, was the true founder of civil society.'[99] The physical inequalities quasi-automatically created a situation of a few 'haves' and many 'have-nots'; predictably, this lead to the state of war. The 'haves' found themselves soon in a position of struggle against the poor, 'and under the pressure of necessity' they were clever enough to even utilize the poors' power to their own benefit; in order to leave this unsatisfying state of war, fully conscious of the permanent threats to their properties, one among the 'haves' suggested a social contract: 'Let us unite', one 'have' proposed, 'to protect the weak from oppression, restrain the ambitious, and secure for everyone the possessions of what belongs to him: Let us institute rules of Justice and peace', and he continued: 'instead of turning our forces against one another, let us gather them into a supreme power that might govern us according to wise Laws'.[100] Since these 'wise laws' were then exclusively set up by the 'haves' in order to favour only the 'haves' at the expense of the poor, ROUSSEAU rightly argues that inequality among men, 'almost nonexistent in the state of Nature, owes its force and growth to the development of our faculties and the progress of the human Mind, and finally becomes [even] stable and legitimate by the establishment of property and Laws.'[101]

This is the short sketch of ROUSSEAU's history of mankind, i.e. the evolution from the state of nature, where the noble savage is equal and free, to the civil society, where this equality and freedom is 'legitimately' taken away from men; the 'worst that can happen to one', indeed, gradually has taken place, namely, 'to find himself at the other's discre-

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[98] Editor's introduction, xxii, in ROUSSEAU, *The Discourses and other early political writings*.

[99] *Second Discourse*, part II, 169, 161.

[100] Cf. and citations from *Second Discourse*, part II, 172-73.

[101] *Second Discourse*, part II, 188.

tion'.[102] And certainly, ROUSSEAU did prove to the 'Madmen' that all the evils proceed only from themselves.

The corrupt society, which is in fact the HOBBESian state of nature, cannot be satisfactory for ROUSSEAU. It needs, so to speak, a 'real' social contract to provide for men a proper society; this involves the idea of the *volonté générale*. ROUSSEAU's *Émile* and the *Contrat Social* seem to be two completely different endeavours; yet in fact, they are clearly interwoven with the two *Discourses* but also with each other. In short, *Émile* is more than a treatise about proper education for men; facing the historical facts of the history of mankind presented in his two *Discourses* – 'God makes all things good; man meddles with them and they become evil'[103] – it is ROUSSEAU's attempt to show the *natural* education which could create the *natural* man. It is a treatise on 'how can the Natural Man be formed?'[104], and ROUSSEAU, here, traces not only the history of mankind, but the history of natural *man*. *Émile's* Émile is the invented noble savage of present times.[105] However: 'I had perceived everything to be radically connected with politics, and that, upon whatever principles these were founded, a people would never be more than that which the nature of the government made them'[106], ROUSSEAU realistically admits; and while in *Émile* he attempted to create the good man, in the *Contrat Social* he attempts to create the corresponding good society. Why 'Men is born free and everywhere he is in chains' ROUSSEAU provides historical-analytical evidence for in his two *Discourses*, and in making the 'detour' via the *Émile*, he is to answer in the *Contrat Social* the question: 'What can make it legitimate?'[107] Since the aspiration to enter into a civil society is born out of necessity, namely, to flee the state of war; and since entering into society means for men surrendering freedom which in turn is equivalent to surrendering his inborn quality; the essential aim for ROUSSEAU is to '"find a form of association that will defend and protect the person and goods of each associate with the full

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[102] *Second Discourse*, part II, 176.

[103] *Émile*, bk. I, 5.

[104] IBID., Introduction, vi.

[105] Cf. MASTERS, *The Political Philosophy of Rousseau*, chap. I.

[106] *Confessions*, bk. IX, 326.

[107] *Contrat Social*, both from bk. 1.i.

common force, and by means of which each, uniting with all, nevertheless obey [sic] only himself and remains as free as before.'''[108]

In order to accomplish this, ROUSSEAU uses a social contract which involves the construction of the *volonté générale*. The terms of this contract are its striking force: everyone entirely 'alienates' all of his rights to the whole; everyone gives everything; the condition is equal to all; no one reserves any rights; no one is superior to others and no one inferior; at last, everyone 'puts his person and his full power in common under the supreme direction of the general will'[109]. The *volonté générale* is the sovereign's will and is the will that is willed by all. However, what is willed by all is not the sum of all *volontés particulières* (i.e. the particular wills of men), which only produces the *volonté de tous* (i.e. the will of all); only the residue after, so to speak, having passed all the *volontés particulières* through a sieve is the *volonté générale* – and it reveals itself through laws.[110] Obeying to laws in a civil society, which one has given himself, is to be remaining as free as before. Hence, it is the *volonté générale* that 'can make it legitimate'.

Here another crucial difference to HOBBES becomes apparent: while HOBBES's Leviathan was bound by the right to self-preservation, ROUSSEAU's *volonté générale* has no extra-territorial limitations. It is pure, man-made will; it does *itself* contain morality and this morality solely originates from man's freedom – man makes morality.[111] ROUSSEAU's, like HOBBES's, 'hypothetical contract' is in no need of two consecutive contracts – one 'contract of society', then 'contract of government'; it establishes not only civil society but also its government.[112] Yet, it does more: it confers legitimacy, and man is morally obliged to obey the *volonté générale*. It is not hard to see why, to ROUSSEAU, '[e]very *legitimate* Government is *republican*', for only a Republic provides freedom and equality, the essential idea behind the construction of the *volonté générale*.[113] While providing security stands behind legitimacy in HOBBES, so does freedom and equality in ROUSSEAU. Seeing that men cannot go back to the good state of nature, ROUSSEAU showed the 'Madmen' the way from the corrupt into the good soci-

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[108] Cf. IBID., bk. I.iv, vi; citation from bk. I.vi.

[109] IBID., bk. I.vi [italics omitted].

[110] Cf. IBID., bk. II.iii, vi.

[111] Cf. IBID., bk. I.iv, vi, viii.

[112] Cf. IBID., bk. I.vi.

[113] Citation from IBID., bk. II.vi [italics added]. In fact, ROUSSEAU defines a republican government as a 'government guided by the general will'. IBID., Fn.

ety, from nature into society. Internationally, he recognizes a corrupt society, i.e. the alleged brotherhood of nations, too. However, he does not propose an international social contract to make this corrupt society good; instead, states must go from society back to nature.

3.2.2 The 'brotherhood' of nations and the plea for independence

It is fairly difficult to understand ROUSSEAU's view on legitimacy in international relations when not considering his notion of the good life domestically. Following the general approach, and by having laid down ROUSSEAU's anthropology and the image of the state of nature as the two basic premises for the creation of the contractual state, the focus must now shift to the question why he does not employ an international social contract; why he is a pessimist. While HOBBES was more or less uninterested in international relations, ROUSSEAU, on the contrary, showed great interest in the problem of war and peace. In the last chapter of the *Contrat Social*, he recognises that '[a]fter setting down the true principles of political right and trying to found the State on its basis, it would remain to buttress the State by its external relations', and concludes, almost apologizing, with the very last sentence: 'But all this forms a new object too vast for my short sight; I should always have fixed it nearer to myself.'[114] But certainly, international relations were not too vast for him; had ROUSSEAU succeeded in finishing his *Institutions Politiques*[115] – his planned *magnum opus*, where the *Contrat Social* had been only one part of it – his thoughts on international relations, interesting and coherent as they are, would simply have not been presented as scattered and fragmented.[116]

Nevertheless, this section aims to illustrate the following: like HOBBES, ROUSSEAU does not do what one would expect him to do, namely, to propose an international social contract. HOBBES wanted nothing more than to release men from the state of nature, to him, the state of war, in order to give them peace. However, while the creation of the Leviathan brought peace domestically, it is paradoxically all these Leviathans that must perpetuate an international state of nature; while he uses the social contract to bring peace domestically, there is no corresponding international social contract. ROUSSEAU denied the possibility of men going back to the state of nature – to him a state of peace; there-

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[114] IBID., bk. IV.ix.

[115] See *Confessions*, bk. IX, 326.

[116] Cf. HOFFMANN AND FIDLER (eds.), *Rousseau on International Relations*, xii.

fore, he sought freedom and peace in his *volonté générale*-state. Yet internationally, he exactly proposes the solution which was impossible domestically, namely, returning from the corrupt society to the state of nature. They both suggest internationally the complete opposite of what they put forward domestically. Both do it by drawing on different cause-and-effect logics. Like HOBBES, ROUSSEAU is deeply pessimistic about legitimacy functioning in international relations. They go along different routes, yet arrive at the same destination: legitimacy limited, in an international system.

The following remark made by ROUSSEAU is a fairly good description and summary of his thoughts on international relations: 'The historic union of the nations of Europe has entangled their rights and interests in a thousand complications; they touch each other at so many points that no one can move without giving a jar to all the rest; their variances are all the more deadly, as their ties are more closely woven', and he argues 'that the powers of Europe stand to each other strictly in a state of war, and that all the separate treaties between them are in the nature rather of a temporary truce than a real peace'.[117] Basically too much dependence, too little independence, must be blamed for the misery among nations.

This is a harsh attack on the very idea of liberal Enlightenment philosophers à la ADAM SMITH, DAVID RICARDO, and, above all, KANT, that interdependence is the guarantor for harmony and peace. ROUSSEAU pleas for independence. The 'historic union of the nations of Europe' is nothing but a farce to ROUSSEAU; one must only look behind the curtains to realize what the reality of this so-called society – 'united by identity of religion, of moral standard, of international law; by letters, by commerce, and finally by a species of balance [of power]' – is: one will observe wars, robberies, usurpations, revolts, murders; one will listen to 'fair speeches' and witness 'abominable acts'; one will consider the 'boundless humanity of our maxims' and spot the no less 'boundless cruelty of our deeds'; one will catch a glimpse of even more paradoxes, ironies, and absurdities, so that ROUSSEAU rhetorically asks whether 'this alleged brotherhood of the nations of Europe is anything more than a bitter irony to denote their mutual hatred.'[118]

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[117] 'Abstract and Judgement of Saint-Pierre's Project for Perpetual Peace' (1756) in HOFFMANN AND FIDLER (eds.), *Rousseau on International Relations*; hereafter either *Abstract Saint-Pierre* or *Judgement Saint-Pierre*; citation from *Abstract Saint-Pierre*, 60.

[118] IBID., 56, 59.

Merely a product of the Peace of Westphalia – whose treaty, ROUSSEAU says, 'will perhaps for ever remain the foundation of our international system'[119] – the newly, and by the states themselves cemented, concept of sovereignty has led the 'alleged brotherhood' into fragmentation and anarchy. The ensuing balance-of-power mechanism and international law are both judged negatively, too. ROUSSEAU acknowledges the functioning of the balance-of-power, and recognises that even 'if it were to break for a moment on one side, it would soon restore itself on another'. However, and here arguing against realist assumptions, it causes instability and its effects are meaningless; it is neither useful to the states, nor to the system. ROUSSEAU compares the shocks that are produced by the balance-of-power mechanism to 'waves which forever trouble the surface of the sea without ever altering its level.'[120] And international law is a *chimera* anyway since 'its decisions are respected only as long as self-interest confirms them.'[121] Unsurprisingly, ROUSSEAU – once he has unmasked the 'brotherhood of Europe', the balance-of-power mechanism, and the 'mass of contradictory rules' – paints for international relations no less pessimistic picture than HOBBES: states find themselves in a state of war; the only law is the 'right of the stronger'; and 'states are bound to obey the promptings of self-interest–which, in itself, would make war inevitable, even if all parties desired to be just.'[122] And for ROUSSEAU, it is obvious: as with the domestic context, the state's loss of independence must be blamed for this international state of war.

ROUSSEAU clearly favoured independence among men more than everything else: independence is the prerequisite for freedom. For the reasons mentioned, especially natural catastrophes and division of labour, man has lost this independence, and freedom was in danger. ROUSSEAU thought it impossible for men to return to a state of true independence; therefore, a form of civil society was needed that offers men, if not perfect independence, 'at least' freedom. The social contract state with the *volonté générale* was needed in order to eliminate the defects that the loss of independence had generated. ROUSSEAU spots all these defects at the international level as well: more and more interdependence enhances inequality and fuels *amour-propre*. While the inequalities among men are set to 'natural bounds', the inequalities among states can potentially 'grow end-

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[119] IBID., 65.

[120] IBID., 62, 65.

[121] *State of War*, 163.

[122] Cf. and citations from *Abstract Saint-Pierre*, 60.

lessly'. Since the state is an *artefact*, it is without 'determinate measure' and without 'definite proper size'. This variability continually forces each state 'to compare itself in order to know itself'. Moreover, the state 'depends on everything around it, and has to take an interest in everything happening around it': states feel weak as long as stronger states are in sight. According to ROUSSEAU, this must lead to a chain reaction: each state, in order to secure itself, wishes to 'make itself more powerful than all of its neighbors.'[123]

ROUSSEAU follows HOBBES in recognizing a 'perpetuall and restlesse desire of Power after power'. However, while HOBBES sought to find an explanation in the equality of abilities among states, ROUSSEAU holds the inequalities among states responsible. And with increasing inequality comes also increasing *amour-propre*. ROUSSEAU, when presenting the history of mankind, made it clear on many occasions that *amour-propre* is *not* natural to men; it must be sharply distinguished from *amour de soi*, the inborn and unproblematic love of oneself. In the domestic context, *amour-propre* was fuelled, and in a sense institutionalized, by private property; in the international domain, the corresponding role is played by sovereignty. And like private property, the concept of sovereignty has not come from nowhere: it is man-made, i.e. the outcome of the Treaty of Westphalia which guaranteed each sovereign 'protection against foreign invasion' and that his 'authority shall be upheld against the rebellion of his subject.'[124] The problem with *amour-propre* is, that it bewilders reason; it takes away from the sovereign the capacity to 'distinguish [...] between real and apparent interests'; and for ROUSSEAU the depressing consequences are: 'The whole life of kings, or of those on whom they shuffle off their duties, is devoted solely to two objects: to extend their rule beyond their frontiers and to make it more absolute within them.' And he continues to stress that these objects are *the* two guiding principles lying behind any action or policy.[125]

Via the instability of balance-of-power politics; the worthlessness of international law; the ever-present 'right of the stronger'; the self-created interdependence; the intense inequality; and the aggressive character of *amour-propre*, we see ROUSSEAU's frightening road from the 'brotherhood of Europe' to the state of war. This reflects – if not the way, but certainly the end – HOBBES's portrayal of international relations as a *bellum*

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[123] Cf. and citations from *State of War*, 169.

[124] *Abstract Saint-Pierre*, 81.

[125] Cf. and citations from *Judgement Saint-Pierre*, 89-90.

omnium contra omnes. And with ROUSSEAU's version of the international state of war, and especially the way it has come about, one has at the same time also presented all the causes and reasons why, to him, legitimacy plays no role in international relations. All the causes can be reduced to the simple fact, that ROUSSEAU considers states as simply too corrupt to be able to conceive and pursue a common interest, to share an idea of what ought to be.

This reason for the rejection of any legitimacy ever possible shines through best in his criticism of the ABBÉ DE SAINT-PIERRE's *Project for Settling an Everlasting Peace in Europe* (1713)[126]. In fact, ROUSSEAU ridicules the ABBÉ's idea of creating an 'European Society' by a voluntary agreement among the potential members. The 'very princes' guided solely by *amour-propre* 'would resist with all their might any proposal for its creation' and 'they will as infallibly throw obstacles in the way of its establishment'.[127] Moreover, he denies any possibility of 'universal solutions' to the international dilemma.[128] This must undoubtedly lead to the conclusion that ROUSSEAU shakes hands with HOBBES in seeing any notion of legitimacy as neither functioning, nor ever being possibly derived from anything close to an international social contract.

Yet, they are pessimists of different quality. HOBBES viewed the price of being in a state of war worth paying for the sake of domestic security and well-being; he ascribed each state the right 'to doe whatever it shall judge most conducing to its benefit'. ROUSSEAU, quite contrary, regards this state of war as the 'worst state possible'[129] – more: as a 'moral scandal'[130]– which is *not* worth paying but simply *must* be paid. He sees the potential value and merits of a contractual arrangement between states. With regard to the ABBÉ's idea, ROUSSEAU says: it must fail 'not because it is utopian', but because 'men are crazy';[131] it 'was too good to be adopted.'[132] Surely, this does neither alter the condition states find themselves in, nor ROUSSEAU's argument. Yet, it makes a difference, not only of tone or style, but of ethics to acknowledge, praise, and universalize the 'right of

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[126] See BROWN, NARDIN AND RENGGER (eds.), *International Relations in Political Thought*, 394-8.

[127] *Judgement Saint-Pierre*, 89.

[128] Cf. HOFFMANN AND FIDLER (eds.), *Rousseau on International Relations*, lx.

[129] *State of War*, 163.

[130] HOFFMANN AND FIDLER (eds.), *Rousseau on International Relations*, xlix.

[131] *Abstract Saint-Pierre*, 88.

[132] *Judgement Saint-Pierre*, 100.

the stronger', i.e. the HOBBESian logic, or, as ROUSSEAU seems to do, honour the benefits of a true international society[133] whilst recognising that it can never be realized.

Although the international environment cannot be altered, ROUSSEAU at least 'considered a number of mechanisms whereby conflict and hostility could be reduced.'[134] Indeed, the likelihood of an international social contract between states ever being set up almost equals zero. But states, which are not yet too corrupt, can be saved from the 'public calamities'[135]. Considering ROUSSEAU's enthusiasm for freedom, it should not be surprising that he suggests these few states to become both republican *volonté gé-nérale*-states, and independent.[136] States ought to focus on agriculture since this is the only means for securing independence;[137] they ought to keep their territories small in size and compact since small states are proportionately stronger than larger ones;[138] they ought to maintain a militia since they are 'the best and most reliable troops' and 'will cost the republic little';[139] and they ought to uphold a spirit of patriotism: 'A single thing suffices to make it impossible to conquer [a state], namely love of country and of liberty, animated by the virtues inseparable of that love.'[140]

In the domestic context, ROUSSEAU recognized the impossibility for men to return to the state of nature, and therefore sought to gain freedom and peace through the *volonté gé-nérale*-state. However, his suggestions for states only prove that ROUSSEAU, in the international realm, proposes exactly the opposite: he 'advocated for nations a return to an isolation'[141] similar to the state of nature – to a state where legitimacy would not be needed. This is a noble idea. But still, it cannot rescue ROUSSEAU from being an unsuitable source for legitimacy criteria in IR. He still remains a pessimist, and it is still justified to put him, together with HOBBES, under the pessimist umbrella. Both reject the

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[133] Cf. BOUCHER, *Political Theories of International Relations*, 302.

[134] BROWN, NARDIN AND RENGGER (eds.), *International Relations in Political Thought*, 387; see especially ROUSSEAU's 'Constitutional Project for Corsica' (1765) and his 'Considerations on the Government of Poland' (1772), both in HOFFMANN AND FIDLER (eds.), *Rousseau on International Relations*; hereafter either *Corsica* or *Poland*.

[135] *State of War*, 163.

[136] Cf. HOFFMANN AND FIDLER (eds.), *Rousseau on International Relations*, lxii.

[137] Cf. *Corsica*, 145; *Poland*, 176.

[138] Cf. *State of War*, 170;

[139] *Corsica*, 145; *Poland*, 184.

[140] *Poland*, 191.

[141] HOFFMANN AND FIDLER (eds.), *Rousseau on International Relations*, lxvii.

possibility of an international society and both reject the possibility of an international social contract. Ontologically, they remain in the framework of an international system where legitimacy remains limited within state borders. They certainly are the wrong place to look for legitimacy criteria. All this will be different when turning to KANT and RAWLS, to the optimists.

4. The Optimists: Legitimacy without borders, in an international society

4.1 Kant – 'There shall be no war', reason tells us

4.1.1 The *contractus originarius*: a product of reason

It is almost a *must*, after having discussed HOBBES and ROUSSEAU, to turn the attention now to KANT. Similarly to the two pessimists, KANT, too, follows the 'argumentative triad', arguing from the state of nature via the social contract to political society and, not to mention, its legitimacy; similarly to them, he is profoundly modern, a philosopher of notable rank, and well-established in IR.

Yet KANT is no pessimist, but an optimist. He goes one step further in his political philosophy. In writing the 'most famous peace project'[1], his *Perpetual Peace*, he brings into being an international social contract; he takes legitimacy beyond borders into an international society. KANT, together with ROUSSEAU, belongs to the second wave of modernity and with him one sees not only the end of the contractarian era coming (before its revival in the twentieth century), but one reaches also the 'intellectual climax of European Enlightenment'[2]. To KANT, *'Enlightenment is man's emergence from his self-incurred immaturity'*, while immaturity is 'the inability to use one's own understanding without the guidance of another'; hence, his message is clear, impressive, and demanding alike: the 'motto of enlightenment is therefore: *Sapere aude*! Have courage to use your *own* understanding!'[3] Another reason, why KANT is a *must*, has to do with his affinity to ROUSSEAU. He once admitted himself: 'Rousseau brought me into the right shape'[4]; indeed, the 'boring' KANT, leading a highly habitual and customary life, even forgot about his obligatory afternoon-walk when he lost himself in the *Émile* of the eccentric ROUSSEAU.[5] However, with regard to IR theory it is suggested that the 'struggle' between the two orthodoxies realism and liberalism is in the end nothing more than a

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[1] BROWN, *Understanding International Relations*, 140.

[2] OTTFRIED HÖFFE, *Immanuel Kant*, translated by MARSHALL FARRIER (New York: State University of New York Press, 1994), 1.

[3] 'An Answer to the Question: "What is Enlightenment?"' (1784), in his *Political Writings*, edited by HANS REISS, 54; hereafter: *What is Enlightenment?*.

[4] From PIERRE HASSNER, 'Immanuel Kant', in STRAUSS AND CROPSEY (eds.), *History of Political Philosophy*, 585.

[5] Cf. Editor's introduction to KANT, *Political Writings*, edited by HANS REISS, 4; for an authoritative and extensive biography of KANT see ERNST CASSIRER, *Kant's Life and Thought* (1918), translated by JAMES HADEN (New Haven: Yale University Press, 1981).

'profound dialogue' between ROUSSEAU, the 'deepest of the Realist', and KANT, the 'most profound of the Liberals'.[6] So questionable this judgement of ROUSSEAU seems to me, so unquestionable is the judgement of KANT. But still, both remain poles apart by their views on the possibility of an international social contract. 'There shall be no war', KANT tells us; and this could also be ROUSSEAU's words. Yet, the way to accomplish this is very different. Domestically, KANT employs the *contractus originarius*, and internationally, the *foedus pacificum* is based on a social contract, too. And importantly: both contracts are products of reason.

This section deals with domestic legitimacy; the next with international legitimacy. What makes KANT a promising source for legitimacy criteria in IR is his refusal to accept a MACHIAVELLian 'decoupling of morality and politics'[7]; therefore, it is by comparison with HOBBES and ROUSSEAU even more important to start with his moral philosophy. Indeed, KANT's 'theory of morals provides the foundation for his political philosophy, including its international dimension.'[8]

It is suggested that we can summarize KANT's political philosophy in the phrase: 'republican government and international organization'[9]; its foundation, his moral philosophy, could well be headlined with: 'Reason replaces nature'[10]. KANT almost radicalizes the belief in reason. Rejecting any conception that grounds morality in natural law, the pursuit of happiness, or religion, the KANTian theory of morality must be located diametrically opposed to utilitarianism or any other form of consequentialism. To him, 'it is clear that all moral concepts have their seat and origin in *reason* completely *a priori*'[11].

A priori refers to KANT's idea, which he developed in the *Critique of Pure Reason* (1781)[12] within the context of philosophy of science; and this idea, self-declaredly,

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[6] HOFFMANN AND FIDLER (eds.), *Rousseau on International Relations*, Introduction, chap. v.

[7] KERSTING, 'Kant's Concept of the State', 143.

[8] THOMAS DONALDSON, 'Kant's Global Rationalism', in NARDIN AND MAPEL (eds.), *Traditions of International Ethics*, 136.

[9] HASSNER, 'Immanuel Kant', 581.

[10] STRAUSS, 'The Three Waves of Modernity', 92.

[11] 'Groundwork for the Metaphysics of Morals' (1785), edited by THOMAS E. HILL, JR. AND ARNULF ZWEIG (Oxford: OUP, 2002), chap. II.xx [italics added]; hereafter: *Groundwork*.

[12] See *Critique of Pure Reason* (1781/87), edited by PAUL GUYER AND ALLEN E. WOOD (Cambridge: CUP, 1998).

comes close to the Copernican revolution[13]: in order to understand both the phenomenal and noumenal world, universally-valid principles are needed that exist prior to and independent of the experience of it, so-called '*a priori* principles' or 'ideas of reason'. It is left to his *Groundwork*, *Metaphysics of Morals*, and the second Critique, his *Critique of Practical Reason* (1788)[14], where KANT fully applies this method to the noumenal world. For KANT, the 'categorical imperative' and the 'autonomy of the will' are the two cornerstones for his theory of morality. Only a *free* will, stripped off from any natural inclinations, allows to make moral decisions. In addition to the pre-requisite of a free will, a criterion is needed against which certain actions, or alternatives of actions, can be judged, in order to assess their moral quality; that is to distinguish between right and wrong. This criterion is the 'categorical imperative' – for KANT the 'supreme principle of morality', or the 'general moral law'; yet one essential qualification must be made: 'For if any action is to be morally good, it is not enough that it should *conform* to the moral law–it must also be done *for the sake of that law*.'[15] This categorical imperative provides the answer to men's basic question *what ought I do?*; it is formal, universally-valid, good without any qualification, and independent from experience. Hence, it is 'reason completely *a priori*', and requires us to '"[a]ct only on that maxim by which you can at the same time will that it should become a universal law."'[16]

Having in mind that KANT's political philosophy is based on his moral philosophy, it is easily conceivable what role the social contract plays for KANT. It takes on exactly the same role the categorical imperative plays with regard to morality; the social contract, never actually happened to occur in history, is simply an *a priori* idea of reason, that makes civil society comprehensible and 'allows us to say something about the kind of state which ought to exist'.[17]

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[13] Cf. IBID., Preface to the second edition.

[14] Edited by MARY GREGOR (Cambridge: CUP, 1997).

[15] *Groundwork*, Preface [sic].

[16] IBID., chap. II.xxv.

[17] Citation from Editor's introduction to KANT, *Political Writings*, 28; Cf. IBID.; HÖFFE, *Immanuel Kant*, chaps. 8-9; HOWARD L. WILLIAMS, *Kant's Political Philosophy* (Oxford: Basil Blackwell, 1983), chap. 2.

As closely as KANT's political philosophy is founded on his moral theory, so is it also based on his 'philosophy of history'[18]. What had been done before him by ROUSSEAU and has strongly influenced FICHTE, HEGEL, FRIEDRICH W. J. SCHELLING, and MARX after him, is the attempt to create a 'universal history of mankind'. KANT proposes a 'hidden plan of nature'[19] which unfolds itself progressively towards a *telos*, i.e. 'from the guardianship of nature to the state of freedom'[20], from men's 'unsocial sociability' and the state of war to 'a perfect civil union of mankind'[21]. KANT sets himself the task to dig out 'a purpose in nature' which lies beneath the apparently 'senseless course' of historical events.[22] In the nine propositions of his *Universal History*, he exposes an *a priori* principle guiding this teleological historical progress, i.e. the 'progress of law', the 'progress of legal or political justice'. And KANT sees this progress as being carried by men's 'natural capacities which are directed towards the use of his *reason*'.[23]

Here, it becomes apparent why KANT's anthropology differs sharply from that of both HOBBES and ROUSSEAU. Man in the state of nature is depicted neither as driven by pure instincts and egoism, nor as a lonely but noble wanderer. Instead, man is 'the only rational creature on earth'[24], and it is nature that 'gave man reason, and freedom of will based upon reason'[25]. However, this does not mean that man is necessarily good. ROUSSEAU considered the natural man, due to lack of reason, as being unable to distinguish between good and bad; in contrast, KANT's *animale rationabile* is perfectly able to make this distinction: he is able to behave morally, but also immorally.

KANT also sees an 'antagonism' at work within men; he speaks of the 'unsocial sociability' of men – ARISTOTLE's *zoon politikon* and ROUSSEAU's noble savage, somewhat combined. On the one hand, human nature inclines men to 'live in society', and to actively seek and enjoy the company of others; on the other hand, he wants to 'live as an individual', and isolates himself from his fellow men as far as possible, 'wanting to di-

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[18] See his *What is Enlightenment?*, 'Idea for a Universal History with a Cosmopolitan Purpose' (1784) (hereafter: *Universal History*), 'Conjectures on the Beginning of Human History' (1786) (hereafter: *Human History*), and 'The Contest of Faculties' (1798), all in his *Political Writings*.

[19] *Universal History*, Eighth Proposition.

[20] *Human History*, 226.

[21] *Universal History*, Ninth Proposition.

[22] IBID., Introduction.

[23] IBID., Second Proposition; Cf. HÖFFE, *Immanuel Kant*, chap. 10.

[24] *Universal History*, Second Proposition.

[25] IBID., Third Proposition.

rect everything in accordance with his own ideas.'[26] KANT breaks with ROUSSEAU's idea of men's natural predisposition to individuality insofar as it is exactly this 'unsociability' that leads not to a ROUSSEAUian state of nature, which is 'most conducive to Peace and best suited to Mankind', but, quite contrary, to a HOBBESian state of war.

Since each man has his own opinion of what is right and wrong and actively seeks to pursue 'what seems right and good to him'[27], self-interest soon becomes the dominant guiding principle. Since this guiding principle is not constrained by any rule or law whatsoever in this anarchic condition, men do solely follow their 'own desires' and try to steadily increase their power in order to reduce the uncertainty inherent in this state of nature. Since there are no enforceable rules that could guarantee and secure the property man has acquired so far, the fellow men pose a permanent threat to it. In ROUSSEAU's words, only 'particular wills' reign in this entirely law-less state where each man is the sole interpreter of justice and the sole judge in his own case. For KANT, it is fairly obvious that the state of nature, albeit inhabited by rational animals, is in no way a state of peace and happiness, but rather a state of war. What makes him follow HOBBES even more closely, is his assertion that 'even if it does not involve active hostilities, it involves a constant threat of their breaking out'[28]; and when men do fight, 'they tend to fight among themselves until an external coercive legislation supervenes.'[29]

This KANTian version of anthropology and the state of nature seems to fit perfectly into the general arguments of previous social contract theorists, i.e. into the 'argumentative triad'. However, KANT must be carefully distinguished from them: the justification of a state must not be derived from experience or historical circumstances; it must not be derived from a certain view – be it a HOBBESian or ROUSSEAUian – of how the state of nature might have looked like and why it needs to be escaped. For KANT, it is wrong to make the state a product of certain presumed motives such as fear and diffidence, put forward by HOBBES, or inequality and *amour-propre*, put forward by ROUSSEAU. The state must strictly be rationally justified completely *a priori*; hence, for KANT, the state of nature cannot be anything but an *a priori* idea of reason itself, too. So when KANT

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[26] Cf. and citations from IBID., Fourth Proposition.

[27] *Metaphysics of Morals*, § 44.

[28] *Perpetual Peace*, Introduction to Second Section.

[29] *Metaphysics of Morals*, § 44.

describes the state of nature as a HOBBESian *bellum omnium contra omnes*, he does not intend to justify the escape from this unacceptable condition by such motives of fear, etc. Instead, he uses this *a priori* idea of reason, i.e. the state of nature, in order to provide the fictional story about a law-less pre-societal stage. And since this story is told by reason, it is also reason that tells us why we are in need of a state. To KANT, the state must not be justified by any pragmatic motives, but instead solely and *a priori* by its legal necessity.[30] He justifies the state, as no social contract theorist had done before, exclusively by reason. KANT must be distinguished from HOBBES and ROUSSEAU (and other contractarians) insofar as they simply provide good and understandable reasons for escaping the state of nature. In sharp contrast to them, he stresses the *obligatory* character of the need – grounded in legal necessity – to do so; he has in mind 'men's *duty* to civil society'. This is the peculiarity of KANT as a social contract theorist. He does not follow his predecessors in grounding the state in 'individual arbitrariness' and rejects this voluntaristic approach to the state. This KANTian 'anti-voluntarism' seems to be in line with the criticism of HEGEL and BURKE. Instead of reducing the state as simply being a product 'based on individual's purely arbitrary wills', compared to his fellow contractarians, KANT 'awards a higher value and greater significance to the state'.[31]

It is legal necessity that 'forces' men to leave the state of nature and to enter into a 'civil state, regarded purely as a lawful state'[32]; legal necessity alone drives men into this 'lawful state'. This leads to KANT's assertion that 'as hard as it may sound, the problem of setting up a state can be solved even by a nation of devils'; it does not need 'angels', but men – no matter how wicked they might be – who possess 'understanding', i.e. reason.[33] And it is also legal necessity that 'forces' men into a contractual agreement, which is 'based on a coalition of the wills of all private individuals in a nation to form a common, public will for the purposes of rightful legislation'; this social contract is what KANT calls the *contractus originarius*.[34]

However, when KANT speaks of an 'original contract', he does not mean that anything close to a contract has ever taken place in history. He concedes, going hand in hand with

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[30] Cf. WILLIAMS, *Kant's Political Philosophy*, chap. 7.

[31] Cf. and citation from KERSTING, 'Kant's Concept of the State', 145-7.

[32] *On the Common Saying...*, part II, 74; Cf. *Universal History*, Fifth Proposition.

[33] Cf. and citation from *Perpetual Peace*, Second Section, First Supplement.

[34] Cf. and citation from *On the Common Saying...*, part II, 79; Cf. also *Metaphysics of Morals*, § 44.

the critics of the 'original contract', that it would need 'authentic record' or 'legal instruments', either in 'writing' or 'orally', to prove that such a contract was conducted; and, in a second step, to prove that it could bind men to 'pre-existing civil societies'. Hence, the KANTian *contractus originarius* must neither be confused with the 'original contract' in the historical sense, nor with a 'hypothetical contract' in the sense of HOBBES and ROUSSEAU. Instead, KANT's social contract is of 'exceptional nature': it sets up the state in the form as it establishes 'a union of an aggregate of men under rightful laws'[35]; but it is unhistorical since 'it is in fact merely an *idea of reason*'. Yet it nonetheless has 'undoubted practical reality'.[36] The social contract being merely an idea of reason or an *a priori* principle has practical purpose insofar as it 'enables us to consider [any state] valid in terms of right'[37]; no matter how states historically have been established, their legitimacy must be exclusively judged against the normative *a priori* idea of a contractual foundation.

There is no doubt to KANT that 'this idea can serve as an internal guide (*norma*) for every actual case where men unite to form a commonwealth.'[38] And having KANT's moral philosophy in mind, it becomes clear: the social contract is the logical pendant of the categorical imperative. KANT lends more weight to the social contract than HOBBES and ROUSSEAU since this idea of reason also functions as a tool to assess the justice of laws, i.e. their legitimacy.[39] In this way, the KANTian *contractus originarius* becomes not only the 'test' (*Probierstein*; engl. touchstone) of the legitimacy of the state as such, but it is also 'the test of the rightfulness of every public law.' Considering the social contract as the 'test' of the legitimacy of laws, it is obvious that it 'oblige[s] 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 [...] as if he had consented within the general will': a law is just only when a people could and would possibly consent to it. Yet such an assessment is left only to the 'judgement of the legislator'[40], and this has striking consequences.

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[35] IBID., § 45.

[36] Cf. and citation from *On the Common Saying...*, part II, 73, 79.

[37] *Metaphysics of Morals*, § 47.

[38] IBID., § 45.

[39] Cf. LESSNOFF, *Social Contract*, 92.

[40] Cf. and citations from *On the Common Saying...*, part II, 79.

That KANT speaks of a 'general will' shows only his indebtedness to ROUSSEAU; it seems that he 'finds particularly persuasive ROUSSEAU's account of the role played by the general will in the social contract'[41]. However, since it is impossible for KANT to conceive of a people reaching consensus and unanimous agreement in any question, he proposes that 'majority decisions' must be sufficient.[42] While speaking of a 'general will', it seems that KANT follows not ROUSSEAU's *volonté générale*, but instead 'merely' a form of the *volonté de tous*. And this has been entirely insufficient for ROUSSEAU as a base for legitimacy. Yet still, KANT leaves the judgement of a potential consent of the people in the hands of the legislator. And this means nothing different than renouncing the right of resistance. ROUSSEAU and HOBBES consider it as entirely legitimate to disobey the sovereign as soon as he fails to act according to the social contract; KANT does not: 'even if the power of the state or its agent, the head of state, has violated the "original contract" by authorising the government to act tyrannically, and has thereby, in the eyes of the subjects, forfeited the right to legislate, the subject is still not entitled to offer counter-resistance.'[43] This would seem utterly absurd to ROUSSEAU. And it is this unquestioning obedience that makes KANT's political philosophy for some 'strongly authoritarian.'[44]

However, one must not forget that KANT attaches, throughout his writings, great(est) importance to freedom. The social contract as an *a priori* idea, which assesses the legitimacy of a state and its laws, is certainly not an empty formula. Quite on the contrary, KANT explicitly bases the civil state on three *a priori* principles: firstly, '*freedom* as a human being'; secondly, '*equality* as a subject'; and, thirdly, '*independence* as a citizen'.[45] This means that the *contractus originarius* shapes the 'structural characteristics' of the civil state as much as it does its 'constitutional norm'.[46] Taken these three *a priori* principles together – which KANT regards as the 'inseparable rights of every citizen' –

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[41] HOWARD WILLIAMS, 'Kant on the social contract', in BOUCHER AND KELLEY (eds.), *The Social Contract from Hobbes to Rawls*, 134.

[42] Cf. *On the Common Saying...*, part II, 79.

[43] IBID., part II, 81.

[44] GOUGH, *The Social Contract...*, 172.

[45] *On the Common Saying...*, part II, 74-9; *Metaphysics of Morals*, § 46.

[46] KERSTING, 'Kant's Concept of the State', 150.

he has no alternative but to allow no other constitutional form to be derived from the *contractus originarius* than a 'republican constitution'.[47]

Finishing this section on KANTian domestic legitimacy here, I must conclude that not only his moral philosophy deserves being headlined with 'Reason replaces nature'; his political philosophy certainly deserves this soubriquet, too. Indeed, KANT uses the social contract in a peculiar way, and i t must be sharply distinguished from that of HOBBES and ROUSSEAU. Like them, he follows the 'argumentative triad' so typical for any social contract theory, but he clearly has a different understanding of the social contract. It is neither the product of certain experiences, nor of practical motives; very much on the contrary, the *contractus originarius* is a product of reason, pure reason. And, now turning to international relations, the contract which KANT employs for his *foedus pacificum* is a product of reason, too.

4.1.2 The *foedus pacificum*: a product of reason, too

HOBBES and ROUSSEAU come to halt with their social contracts at the border to the international sphere; KANT certainly does not: he '*does* produce a contractarian theory of international society'[48] and takes the social contract beyond state borders; he does use an international social contract for constituting an international society and for setting out its basic governing principles. The two pessimists argue that such a venture is neither desirable nor possible; KANT, on the other hand, is sure that 'it is necessary to establish a *federation of peoples* in accordance with the idea of an *original social contract*'[49]. Bearing in mind the suggestion to summarize KANT's political philosophy with the phrase 'republican government and international organization', this section aims to illustrate how KANT arrives at the idea of 'international organizations' and how this intermingles with 'republican government'; here, 'international organizations' must be understood in the light that '[a]fter the First World War, Kant's idea [of a *foedus pacificum*] became godfather to the League of Nations'[50]. Yet again: KANT is an optimist. Legitimacy remains not limited to the domestic; instead, it becomes an issue in an international society. All this clearly separates him from HOBBES and ROUSSEAU. Moreover,

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[47] *Perpetual Peace*, First Definitive Article.

[48] BROWN, 'Contractarian Thought and the Constitution of International Society', 136.

[49] *Metaphysics of Morals*, § 54.

[50] HÖFFE, *Immanuel Kant*, 187.

it was he who 'took political philosophy beyond the borders of states and saw its fore-most object in the "highest political good" of a just order of world peace.'[51] Indeed, in contrast to the pessimists, KANT is a fairly good source for legitimacy criteria in IR.

However, before KANT speaks of an international social contract and world peace, he draws, as did HOBBES and ROUSSEAU, a gloomy-looking picture of international relations. KANT somewhat equates the international state of nature with the state of nature men find themselves in;[52] and this does not mean a natural state in the ROUSSEAUian sense. Contrary, this condition among states resembles the HOBBESian state of war (which was, of course, also seen so by ROUSSEAU). When KANT says that this international state of nature is a state of war and says that it does not mean permanent warring but 'involves a constant threat of its outbreak', his contentions are in no way different from HOBBES's when he spoke of a 'Warre of every man against every man' and of a 'known disposition to fight'. Yet to KANT, the presence of this international state of nature is, put mildly, a paradox: the (supposedly) civilised peoples consider a situation where savages – who 'prefer freedom of folly' to 'freedom of reason' – prefer living in a state of nature as 'barbarism', 'coarseness', and 'brutish debasement of humanity'. Yet paradoxically, with regard to the international state of nature, 'each *state* sees its own majesty [...] precisely in not having to submit to any external legal constraint'.[53] Similar to HOBBES, it is the creation of the state which brings about a condition 'whereby each commonwealth, in its external relations (i.e. as a state in relation to other states), is in a position of *unrestricted freedom*'; and because of this 'freedom', KANT suggests that each state 'must accordingly expect from any other [state] precisely the same evils which formerly oppressed individual men'.[54] In agreement with HOBBES and ROUSSEAU, the international state of nature is a state of war; is a state 'devoid of right'; is a condition where the only rule seems to be the 'right of the stronger'.[55]

Yet, one significant qualification must be made. It was HOBBES's view that any means either man, or state employs to achieve a certain goal would be just because 'where there is no Common-wealth', i.e. wherever there is no law, 'there nothing is Unjust'.

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[51] WOLFGANG KERSTING, 'Politics, freedom, and order: Kant's political philosophy', in PAUL GUYER (ed.), *The Cambridge Companion to Kant* (Cambridge: CUP, 1999), 362.

[52] Cf. *Perpetual Peace*, Second Definitive Article.

[53] Cf. and citation from IBID.

[54] *Universal History*, Seventh Proposition.

[55] *Metaphysics of Morals*, § 54.

Surely, such a line of argument must be rejected by KANT: the state of nature, domestically or internationally, is a law-less condition for 'law-less savages'; and precisely because there exists no law, this 'state is itself one of injustice'[56]. Accordingly, KANT proposes that states 'ought to abandon' this condition as soon as possible by entering into a condition which is 'governed by law'.[57] KANT must think it absurd to leave the states, as HOBBES does, in such a hostile environment; he must think the ROUSSEAUian way to be equally flawed, who suggests the few uncorrupted states to return to the noble state of nature; KANT must reject, what ROUSSEAU does as well, the European balance-of-power system as a 'pure illusion'[58]. KANT must also reject the approaches to international law put forward by the so-called 'sorry comforters' – he explicitly names HUGO GROTIUS, PUFENDORF, and EMMERICH VON VATTELL – whose legal 'codes' are invoked when 'justifying military aggressions', but which 'cannot have the slightest *legal* force' since states as such are not even 'subject to a common external constraint'.[59] And by a 'common external constraint' KANT does not mean to establish something like a 'world state', but to institute 'the rule of law among nations within the context of a properly organized confederation based upon agreement'[60]; that is, in other words, to set up a *foedus pacificum* by an international social contract.

The driving force that leads states out of this deprived state of nature is nothing else but war. It is the 'wars', the 'tensions', the 'unremitting military preparations', and the 'resultant distress' why states find it a necessity to leave behind such a 'lawless state of savagery' and to enter into a federation 'in which every state, even the smallest, could expect to derive its security and rights not from its own power or its own legal judgement, but solely from this great federation'. However, to KANT, these motives only lead merely to 'initially imperfect attempts'.[61] And here, reason enters the stage again. Similarly to the domestic context, he does not deduce from the experience of states the reasons why they must leave the international state of nature. Again, KANT uses this as a

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[56] IBID., § 60.

[57] IBID., § 61.

[58] *On the Common Saying...*, part III, 92.

[59] *Perpetual Peace*, Second Definitive Article.

[60] BOUCHER, *Political Theories of International Relations*, 269.

[61] Cf. and citations from *Universal History*, Seventh Proposition.

'rhetorical device' in order to put into words the problem states are confronted with.[62] Hence, the driving force is not experience, i.e. not the experience of war etc.; instead, it is solely reason.

However, this type of reason must not be confused with HOBBES's 'Dictate of right Reason', i.e. reason based on experience. It must be seen strictly in the non-empirical sense which is so typical for KANT: it is rigorously reason *a priori*. And being as such 'the highest legislative moral power', reason *a priori* 'absolutely condemns war'[63]; it 'pronounces the following irresistible veto: *There shall be no war*'[64]. And at this point, KANT's philosophy of history comes to surface again: the historical progress towards a 'perfect civil union of mankind' is not yet finished with the establishment of a 'perfect civil constitution', i.e. the republican constitution; indeed, the *telos* cannot have been reached since the problem of 'establishing a perfect civil constitution is subordinate to the problem of a law-governed external relationship with other states, and cannot be solved unless the latter is also solved'[65]. This then is another peculiarity of KANT: the domestic well-being is dependent upon the international (and not only *vice versa*). For KANT, 'all natural capacities of mankind can be developed completely' only after the creation of an 'internally–and for this purpose externally–perfect civil constitution'.[66] Thus, the *telos* is reached when the problem of international relations is solved; the 'end of history' is reached when the 'supreme political good'[67] is attained – and this is 'perpetual peace'.

This KANTian peace project has 'the form of a contract describing the legitimacy and principles of the voluntary union of all nations which reason demands.'[68] KANT's 'highway to peace', to speak in HOBBES's phrase, sketched out in his *Perpetual Peace*, leads over six Preliminary and three Definitive Articles. The division into these two

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[62] Cf. CHIARA BOTTICI, 'The Domestic Analogy and the Kantian Project of *Perpetual Peace*', *Journal of Political Philosophy*, Vol. 11 (2003).

[63] *Perpetual Peace*, Second Definitive Article.

[64] *Metaphysics of Morals*, Part II: Public Right, Conclusion.

[65] *Universal History*, Seventh Proposition [italics omitted].

[66] IBID., Eighth Proposition [italics omitted].

[67] *Metaphysics of Morals*, Part II: Public Right, Conclusion.

[68] HÖFFE, *Immanuel Kant*, 187.

categories must be understood in an evolutionary sense[69] leading basically to two different types of international societies[70]. The former six articles contain the norms that states ought to see as first steps towards peace and are merely 'codes for imperfect times'[71]; they do not rule out the possibility of war under certain circumstances. The latter three articles, evolutionary in themselves, are qualitatively of a higher value: they are grounded in the *a priori* postulate of reason 'that all men who can at all influence one another must adhere to some kind of civil constitution' in the sense of a 'legal constitution'.[72] While the first six articles constitute an international society based merely on these 'imperfect codes', the three Definitive Articles do so by an international social contract. KANT's three Definitive Articles are not only that extra-something because they involve the social contract. Much more, they stand for KANT's closure of the separation between the domestic and the international sphere: KANT operates in 'the unique domain of right'.[73] He ascribes to each of these three articles a particular type of constitution: the first article corresponds to the constitution based on *ius civitatis*; the second to the constitution based on *ius gentium*; and the third to the constitution based on *ius cosmopoliticum*. And these three forms of rightful constitutions are clearly interwoven: 'if even only one of these [constitutions]', KANT says, 'lacks a principle which limits external freedom by means of laws, the structure of all the rest must inevitably be undermined, and finally collapse.'[74]

According to the *First Definitive Article*, 'The Civil Constitution of Every State shall be Republican'. This form of civil constitution derives solely from the *contractus originarius*, and 'offers a prospect of attaining perpetual peace': while the 'heads of states can never have enough of war'[75], an assertion resembling ROUSSEAU's view, KANT considers it as 'very natural' that citizens reject declaring war. In case their consent was required in such a matter, they would never give it for 'this would mean calling down on themselves all the miseries of war'. However, this first article must not be under-

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[69] Cf. GEORG CAVALLAR, *Kant and the Theory and Practice of International Right* (Cardiff: University of Wales Press, 1999), chaps. 2, 8.

[70] Cf. Brown, 'Contractarian Thought and the Constitution of International Society', 136.

[71] IBID.; see *Perpetual Peace*, First Section.

[72] *Perpetual Peace*, Introduction to Second Section, Fn.

[73] Cf. BOTTICI, 'The Domestic Analogy and the Kantian Project of *Perpetual Peace*', 407.

[74] *Metaphysics of Morals*, § 43.

[75] *Perpetual Peace*, Introduction.

stood as the solution to gain 'the desired result'; as KANT himself made clear, it only 'offers a prospect'. Hence, a republican constitution is the first, albeit indispensable, step towards the formal institution of the state of peace, i.e. perpetual peace.[76]

This naturally leads to the *Second Definitive Article*, proposing that 'The Right of Nations shall be based on a Federation of Free States'. Peace is not simply the product of a republicanization of states, even if achieved throughout the world; it can only be the result of 'a general agreement between them', forming a *foedus pacificum*. Only this 'particular kind of league', which must be established according to the idea of an *'original social contract'*[77] – thereby conferring legitimacy to this federation – 'would seek to end *all* wars for good'. Only states with republican constitutions, that naturally are tending to seek peace, are entitled to membership of this federation; and since this 'idea of *federalism* is extending gradually to encompass all states', perpetual peace, indeed, is feasible, yet only possible, in such an international society. What would be unthinkable to HOBBES and ROUSSEAU, states *do* form an international society in the sense that they share a common idea of what ought to be; and this idea is institutionalized by an agreement, i.e. by an international social contract. They share not only the idea that 'There shall be no war' but that 'there shall be peace'; peace becomes a duty and the rights of each are reciprocally acknowledged and secured within this form of constitution. KANT prototypically uses the social contract as a tool to constitute an international society, and derives from this contract the legitimacy not only of this society itself, but also that of its guiding principles. Importantly, KANT's *foedus pacificum* is not the 'same thing as an international state or world republic' which would lead, as ROUSSEAU argues as well, to the 'most fearful despotism'[78] and would stand in contradiction to the spirit of republicanism; it must be viewed solely as a 'lawful federation under a commonly accepted international right'[79] – yet without having a common coercive power residing over the states.[80]

KANT, in addition to the *ius civitatis* and the *contractus originarius* as well as the *ius gentium* and the international social contract, envisions also a *ius cosmopoliticum*; and

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[76] Cf. IBID., First Definitive Article.

[77] *Metaphysics of Morals*, § 54.

[78] *On the Common Saying...*, part III, 90.

[79] IBID.

[80] Cf. *Perpetual Peace*, Second Definitive Article.

this, posed in the *Third Definitive Article*, 'shall be limited to Conditions of Universal Hospitality'. However, KANT does not employ anything such as a cosmopolitan social contract. Instead, he derives the cosmopolitan right from the 'spirit of commerce'. In stark contrast to ROUSSEAU, he ascribes a positive function to it as it 'cannot exist side by side with war', thereby facilitating peace.[81] Since he bases the cosmopolitan right on every man's 'right to communal possession of the earth's surface', it is obvious why KANT ascribes to every man the right 'not to be treated with hostility when he arrives on someone else's territory.' And the right of a stranger to hospitality is the sole right which can be derived from this third article. It is therefore fairly conceivable that KANT's cosmopolitanism is not of 'radical kind' since he left state sovereignty untouched;[82] that it is 'far more limited than some modern Kantians would wish'[83]. Nevertheless, this is the third and last of the 'three interdependent pillars of peace'[84], and it is only by virtues of them why KANT thinks 'can we flatter ourselves that we are continually advancing towards a perpetual peace.'[85]

With regard to international relations, KANT does persistently speak of morality, of an international and cosmopolitan right, of an international social contract, of a *foedus pacificum*, of a 'universal union of mankind', and of perpetual peace. Certainly, this must sound fairly ridiculous to HOBBES and ROUSSEAU, the two pessimists who cannot even imagine the most primitive form of an international society. To them, there cannot exist a common idea among states of what ought to be; legitimacy plays no role in the international domain, an international system; it remains and will ever remain in the domestic sphere. This makes them such an inappropriate source for deriving proper legitimacy criteria. With KANT, the matter is entirely different. As shown, he has all that it takes to be an appropriate source. Yet, he has more to offer: KANT is neither naïve, nor a fantasist; he definitely does not dream of establishing a 'community of brotherly love and harmony.'[86] This shines through when considering his *Perpetual Peace* as an evolutionary project, when considering that he sees the *foedus pacificum* not as an undertak-

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[81] IBID., Second Section, First Supplement.

[82] Cf. BOUCHER, *Political Theories of International Relations*, 270.

[83] BROWN, *International Relations Theory...*, 37.

[84] WADE L. HUNTLEY, 'Kant's Third Image: Systemic Sources of the Liberal Peace', *International Studies Quarterly*, Vol. 40 (1996), 49.

[85] Cf. and citations from *Perpetual Peace*, Third Definitive Article.

[86] HÖFFE, *Immanuel Kant*, 198.

ing which can be accomplished over-night, but more as a phenomenon based on a certain kind of time-consuming chain reaction among states. Moreover, for KANT, 'it is no longer a question of whether perpetual peace is really possible or not'; what is important, and here, one must bear in mind his moral philosophy, is, that 'even if the fulfilment of this pacific intention were forever to remain a pious hope, we should still not be deceiving ourselves if we made it our maxim to work unceasingly towards it'; and KANT makes it explicitly clear that 'it is our duty to do so'.[87] It is KANT's 'realism' which I consider to make a major contribution to the task of defending him as a proper source for legitimacy criteria in IR. And indeed, it is his idea of a *foedus pacificum* which RAWLS self-admittedly closely follows in his *Law of Peoples*, a 'realistic utopia'.

4.2 Rawls – the veil of ignorance unveils justice

4.2.1 The original position: creating a just society

RAWLS faithfully steps into KANTian footsteps; especially because of the utilisation of an international social contract. Like KANT, he brings the social contract and legitimacy into the international sphere; not into an international system, but into an international society. He may not be as well established in IR as KANT (and HOBBES and ROUSSEAU), yet still, he is a contemporary philosopher, who has had immense impact: RAWLS's *Theory of Justice*, his *magnum opus*, is 'very widely considered the most important work in political philosophy and perhaps even in moral philosophy since the end of World War II' and many conceive it to be the 'most important work in political philosophy since the writings of John Stuart Mill.'[88] There are certainly several reasons for RAWLS's impact; among these, there is a 'historical' explanation, which needs to be addressed very briefly: with KANT, the end of the contract era was (thought to be) reached; but it was also reached the peak of the belief in reason as the guiding principle of what men ought to do. While in the first wave of modernity, especially with MACHIAVELLI and HOBBES, the *ought* was derived from the *is*, i.e. from human nature, the second wave, especially with KANT, sought not to derive 'moral and political ideals' from the *is*, but derived the *ought* from reason: men became, so to speak, 'radically lib-

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[87] *Metaphysics of Morals*, Part II: Public Right, Conclusion.

[88] Both citations from BURTON DREBEN, 'On Rawls and Political Liberalism', in SAMUEL FREEMAN (ed.), *The Cambridge Companion to Rawls* (Cambridge: CUP, 2003), 316.

erated from the tutelage of nature'[89]; KANT made it clear that no longer 'the ought has no basis whatever in the is.'[90]

Simply asserting that RAWLSian thinking belonged to the second wave of modernity, would mean to undervalue him. One must not forget modernity's third wave; here, and closely connected with the writings of NIETZSCHE, a quite different understanding of the sentiment of existence, namely, the experience of 'terror and anguish' rather than the second wave's of 'harmony and peace', arose.[91] In addition, one must not forget that modern moral philosophy has been mostly preoccupied with utilitarian theories, and that political philosophy has somewhat faded away since it lost the struggle against its powerful opponents positivism and historicism[92]. And with regard to his *Law of Peoples*, the extension of his *Theory of Justice* to the international realm, one must not forget, that since KANT history has – with the Napoleonic wars, the colonialism of most of the European states competing among themselves for a place in the sun, the First World War and the failure of the League of Nations, and World War II with the Holocaust – certainly not painted an optimistic picture of world affairs. It is under these historical circumstances, RAWLS's *Theory of Justice*, the book 'he became so world famous for'[93], must be viewed: he not only reawakens the 'familiar theory of the social contract as found, say, in Locke, Rousseau and Kant'[94]; not only offers an 'alternative systematic account of justice that is superior [...] to the dominant utilitarianism of the tradition'[95]; not only presents a theory that 'is highly Kantian in nature'[96]; and not only brings back the writing of a Grand Theory to political philosophy. Moreover, RAWLS revitalized the question of justice in international relations.

It is this topic that he later develops further in his *Law of Peoples*; here, in KANTian fashion, he 'extends the idea of a social contract to the Society of Peoples, and lays out the general principles that can and should be accepted by both liberal and nonliberal

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[89] STRAUSS, 'The Three Waves of Modernity', 92.

[90] IBID.

[91] Cf. IBID., 94.

[92] Cf. STRAUSS, 'What is Political Philosophy?', 3-24.

[93] DREBEN, 'On Rawls and Political Liberalism', 317.

[94] *Theory of Justice*, § 3.

[95] IBID., Preface.

[96] IBID.

[...] societies as the standard for regulating their behaviour toward one another.'[97] Indeed, RAWLS can claim to have merits on several fronts and while the next section deals with RAWLS's international social contract, the remainder of this section lays down its prerequisites. Here, the focus must be on *Theory of Justice*[98] and on his 'much-neglected' *Political Liberalism* (1993).[99] It seems appropriate to begin straight away with RAWLSian anthropology and his version of the state of nature, i.e. with the two constituent parts not only for HOBBES, ROUSSEAU, and KANT (and in essence any social contract theory), but also for RAWLS's peculiar utilization of an 'original contract'. Instead of applying the 'original contract' in order to leave a state of nature, in order to 'enter a particular society' or to 'set up a particular form of government', the 'guiding idea' of his *Theory of Justice* is 'that the principles of justice for the basic structure of society are the object of the original agreement.'[100]

It is unavoidable not to begin with criticism. Any social contract must live with the accusation of being a highly arbitrary enterprise. It is simply the anthropological ground premises – whether it be ARISTOTLE's *zoon politikon* or HOBBES's wolf or ROUSSEAU's noble savage – that determine, via the deduction of a particular state of nature, the particular form of the social contract, and therefore, the particular state that evolves. And the allegation of arbitrariness especially applies to RAWLS – much more than to HOBBES and ROUSSEAU; for the reasons mentioned, KANT must be left out here.

While HOBBES's and ROUSSEAU's anthropology and the image of the state of nature were a quite uncomplicated matter, RAWLS needs to draw on numerous assumptions to be able to deduce from the 'original agreement' the two principles of justice. This grants the RAWLSian state of nature a particular significant status within his theory. It must be noted that RAWLS does not speak of a state of nature, but of an original position. This is not a matter of phraseology but is deeply connected to his concept of 'justice as fairness', i.e. 'the idea that the principles of justice are agreed to in an initial situation that

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[97] *Law of Peoples*, Preface.

[98] For the most original account of it, see *Journal of Philosophy*, Vol. 54 (1957); see *Philosophical Review*, Vol. 64 (1958), for its more detailed version. For his fourth book see *Collected Papers*, edited by SAMUEL FREEMAN (Cambridge, MA: HUP, 1999).

[99] Cf. DREBEN, 'On Rawls and Political Liberalism'; See RAWLS's *Political Liberalism* (1993), revised paperback edition (New York: Columbia University Press, 1996); hereafter: *Political Liberalism*.

[100] Cf. and citations from *Theory of Justice*, § 3.

is fair.'[101] And these two principles derive from the 'original agreement' made in a fair original position, which is by no means an 'unsatisfactory state of affairs from which the contractors wish to escape'[102], such as a HOBBESian state of war.

To RAWLS, the usual escape-logic of the state of nature plays no role whatsoever; as he says, the state of nature as a 'historical or hypothetical benchmark is simply irrelevant to the question of justice.'[103] Hence, RAWLS's original position corresponds to the idea of a state of nature only insofar as it functions as the 'initial situation' in the contract theory; and by considering the original position to be a 'purely hypothetical situation'[104], he makes it clear that he offers a 'hypothetical contract'. RAWLS depicts men as being equal and assumes '*mutually disinterested rationality*'[105] among them. Yet since these characteristics *per se* do not guarantee a fair initial situation, the contracting individuals are placed under a 'veil of ignorance'. Being almost *the* defining feature of any social contract theory, RAWLS ascribes two meanings to equality: men are equal in the sense of being 'moral persons'; and men are equal insofar as each is awarded with the same right for making, accepting, and rejecting any proposals during the procedure of choosing the two principles of justice.[106] Moreover, in the original position men do act 'rationally' and are 'mutually disinterested'. Connecting his theory with that of rational choice, the individual is assumed to 'have a coherent set of preferences between the options open to him'; to be able to 'rank these options according to how well they further his purposes'; to try to pursue the option that 'will satisfy more of his desires rather than less'; and to be realistic in the sense that he will follow the option which 'has the greater chance of being successfully executed'. Yet, he additionally introduces a 'special assumption', that of the 'non-envious' character of these rational actors: they are solely concerned with absolute gains and are indifferent to the potential or actual losses of others.[107] It is this indifference that leads to, what RAWLS calls, the 'mutual disinterestedness'; these rational persons are 'conceived as not taking an interest in one another's interests.'[108] At

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[101] IBID.

[102] LESSNOFF, *Social Contract*, 135.

[103] Cf. and citation from RAWLS, 'Distributive Justice' (1967), in his *Collected Papers*, 134-5.

[104] *Theory of Justice*, § 20.

[105] IBID., § 25.

[106] Cf. IBID., § 4.

[107] Cf. IBID., § 25.

[108] IBID., § 3.

first sight, it may seem that RAWLS presents an 'egoistic theory'; and it may seem correct that 'the parties in the original position are rational self-interested individuals who are nonenvious and *nonaltruistic*.'[109] However, this provides only half of the story. Altruism – more precise: a 'limited altruism' or 'benevolence' – indeed does play a role in RAWLS's theory. It is correct that altruism *expressis verbis* is not a defining characteristic of men. The reason for this is, according to RAWLS, that a theory of justice based on 'benevolence' would be too complex and unworkable. Yet, the benevolent attitude of men, albeit thin and limited as it is, is introduced through the backdoor since it is the product of the notion of 'mutual disinterestedness' and the veil of ignorance.[110]

This latter and last feature of the original position is probably the most important, yet also the most controversial. As said, 'justice as fairness' requires an 'initial situation that is *fair*'; hence, in the original position, the contracting individuals must be 'fairly situated'. Only proving that his theory is not an 'egoistical theory', RAWLS says: 'Somehow we must nullify the effects of specific contingencies which put men at odds and tempt them to exploit social and natural circumstances to their own advantages'; and the utensil to accomplish this is the veil of ignorance. Covering the parties with such a veil provides them only with particular kinds of information or facts; it restricts certain knowledge in order to ensure that 'they are obliged to evaluate principles solely on the basis of general considerations': the parties know, for instance, the 'general facts about human society', and the 'basis of social organization', as well as understand 'political affairs and the principles of economic theory'; they do not know 'particular facts' such as their 'place in society', 'class position', 'social status', or their 'intelligence and strength'. In addition, they do not know the 'particular circumstances of their own society' in the sense of not knowing its 'economic or political situation' or 'the level of civilization and culture'. The veil of ignorance completes the characterisation of RAWLS's initial situation, and its implications are substantial. It not only secures but also fosters equality; it prevents the assumed mutually disinterested rationality becoming accused of crude egoism; it supports designing the original position as a fair situation; and it prohibits that the contract theory's 'outcome is biased by arbitrary contingencies'. Furthermore, RAWLS believes that without the veil of ignorance, he 'would not be able to

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[109] MEDINA, *Social Contract Theories...*, 84 [italics added].

[110] Cf. *Theory of Justice*, § 25.

work out any definite theory of justice at all.'[111] Neither HOBBES, nor ROUSSEAU, nor KANT needed to draw on as many premises with regard to the pre-contractual situation as RAWLS does. In order to arrive at the desired result, he has to depict men as being mutually disinterested, non-envious, and limitedly altruistic rational animals who are equal with respect to their quality as moral persons, to their right to choose, and to their highly restricted knowledge under the veil of ignorance. It goes without saying, 'that the parties in the original position are theoretically defined individuals.'[112]

RAWLS's contract theory is concerned with the 'social justice' of the 'basic structure of society'; it aims to develop the 'principles of justice' – the principles that regulate how the 'major social institutions', i.e. the 'political constitution' and the primary 'economic and social arrangements', ought to distribute the so-called 'primary social goods', i.e. 'rights', 'liberties', 'opportunities', and 'income and wealth', among society's members. These principles of justice derive from a social contract, that is, from the contracted 'fair agreement' over these principles which were chosen behind the veil of ignorance.[113] Considering all the circumstances and qualifications of the original position, the contracting parties, according to RAWLS, would never 'agree to a principle which may require lesser life prospects for some simply for the sake of a greater sum of advantages enjoyed by others'[114], i.e. the utilitarian logic. Instead, and rather diametrically opposed to that, they consent to the two principles of justice.

The first principle states that every person has to have an 'equal right to basic liberties': these are the right to vote and to hold public office (i.e. 'political liberty'); the freedom of speech and assembly, of thought, and from psychological oppression; and the right to hold personal property. The second principle requires that social and economic inequalities are arranged in such a way that they are to the 'greatest benefit of the least advantaged', i.e. the 'difference principle'. In addition, these two principles of justice are hierarchical: the first is, so to speak, superior to the second. According to the rule of the 'priority of liberty', the 'basic liberties can be restricted only for the sake of liberty' and must never be sacrificed for economic advantages.[115] Adding to the argument that

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[111] Cf. and citations from IBID., § 24.

[112] IBID., § 25.

[113] IBID., §§ 2, 3, 11.

[114] IBID., § 3.

[115] IBID., §§ 11, 46.

RAWLS requires too many prerequisites, he needs to introduce one further assumption for the original position. In order to arrive at these two principles – which contribute to 'make a constitutional democracy'[116], or more precise: to make a 'liberal welfare state'– he assumes general 'risk-averseness' on part of the individuals. The contracting parties are driven by the 'maximin rule' which makes them, when having to choose between alternatives, 'to adopt the alternative the worst outcome of which is superior to the worst outcome of others.'[117] Politically, RAWLS's approach might be well interpreted as a combination of 'principles of social and economic equality associated with European socialism with [...] principles of pluralistic toleration and personal freedom associated with American liberalism'; yet in the end, it is 'closer in spirit to European social democracy than to any mainstream American political movement'.[118] And leaving aside the massive criticism evoked by the political implications of his justice as fairness, now, the contractarianism-contractualism divide must come to light again. Whereas HOBBES offers the proto-typical social contract being a result of rationally self-interested bargaining, i.e. the contractarian line, ROUSSEAU and KANT clearly represent the contractualist approach; and RAWLS follows them.

In view of all the prerequisites and qualifications the original position is equipped with, and taking further into consideration RAWLS's emphasis that it must not be seen as a 'general assembly'; that it 'must be interpreted so that one can at any time adopt its perspective'; and that, therefore, the 'restrictions must be such that the same principles are always chosen'; from this it naturally follows, what RAWLS explicitly states himself, 'that the parties have no basis for bargaining in the usual sense.' Instead, in the RAWLsian initial situation 'each is forced to choose for all'; and while this resembles ROUSSEAU's *volonté générale*, the key to such a conception must be found almost solely in the veil of ignorance. The veil is in effect similar to KANT and his categorical imperative insofar as he, too, when employing his (*a priori*) universal-law logic, has denied the

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[116] IBID., § 39.

[117] IBID., § 26.

[118] Both citations from THOMAS NAGEL, 'Rawls and Liberalism', in FREEMAN (ed.), *The Cambridge Companion to Rawls*, 63. Considering these remarks, it should not be surprising why RAWLS is, among others, under attack from both libertarians and socialists (see, e.g., NOZICK's *Anarchy, State, and Utopia*, and BRIAN BARRY's *The Liberal Theory of Justice* (Oxford: Clarendon Press, 1973), respectively). For a good overview of RAWLS's critics see CHANDRAN KUKHATAS AND PHILIP PETTIT, *Rawls: A Theory of Justice and its Critics* (Cambridge: Polity Press, 1990); for specific criticism see NORMAN DANIELS (ed.), *Reading Rawls: Critical Studies on Rawls' A Theory of Justice*, revised edition (Stanford: SUP, 1989).

role of knowledge about personal circumstances.[119] Hence, for many critics, due to a lack of rationally self-interested bargaining, RAWLS's *Theory of Justice* does not involve a contract theory at all.[120] However, his two principles of justice do derive from a fair agreement; yet from a contract in the contractualists' sense à la ROUSSEAU and KANT. Additionally, the RAWLsian version of the original agreement with its peculiar subject matter, i.e. the 'principles of justice for the basic structure of society', involves neither an 'original contract' in the historical sense, nor a 'hypothetical contract' in the HOBBE-sian and ROUSSEAUian sense. Instead, it somewhat resembles the unhistorical KANTian contract being an idea of reason. In RAWLS's 'justice as fairness', the legitimacy of the 'basic structure of society' solely stems from the fair contractual agreement made by the parties in the original position behind the veil of ignorance; they consented to the two principles of justice according to which the society ought to be arranged.

Now, before turning to RAWLS's international social contract, it is necessary to address the distinction between legitimacy in the sense of *Theory of Justice* and what he calls the 'liberal principle of legitimacy' worked out in *Political Liberalism*; that is the distinction between 'ideal theory' and 'non-ideal theory', respectively, and which is so important in his *Law of Peoples*. RAWLS's *Theory of Justice* aimed at working out 'from the idea of the social contract, represented by Locke, Rousseau, and Kant, a theory of justice that is no longer open to objections often thought fatal to it'[121]; it operated within the context of a 'perfectly just society', i.e. a 'well-ordered society'.[122] Turning, so to speak, from ideal to non-ideal theory he changes the focus in *Political Liberalism* insofar as he 'considers how the well-ordered democratic society of justice as fairness may establish and preserve unity and stability given the reasonable pluralism characteristic of it'[123]; while the picture of the 'perfectly just society', according to RAWLS himself, 'contradicts the facts of reasonable pluralism', his *Political Liberalism* not only 'regards that society as impossible' but also develops the solution to that problem.[124]

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[119] *Theory of Justice*, § 24, see § 40.

[120] See, e.g., JEAN HAMPTON, 'Contracts and Choices: Does Rawls Have a Social Contract Theory?', *Journal of Philosophy*, Vol. 77 (1980).

[121] *Political Liberalism*, Introduction to the Paperback Edition; *Public Reason Revisited*, § 7.3.

[122] Cf. *Theory of Justice*, §§ 1, 2.

[123] *Political Liberalism*, Lecture IV, Introduction.

[124] Citations from *Public Reason Revisited*, § 7.3.

The idea of the liberal principle of legitimacy is closely intertwined with the idea of 'public reason', which, in turn, is only feasible within the framework of a 'constitutional democracy' (for which, in turn again, he provided the philosophical conception[125] in his *Theory of Justice*). In addition, it is intertwined with the question of exercising political power – i.e. the traditional subject matter of any contract theory and legitimacy – since, exactly because of granting pluralism in a society, some individuals 'may not accept the reasons widely said to justify the general structure of political authority'[126]; or, in a broader sense, may not accept the basic structure of society. Based on the 'criterion of reciprocity', the liberal principle of legitimacy considers the exercise of political power as legitimate only when it is carried out 'in accordance with a constitution the essentials of which all citizens as free and equal may reasonably be expected to endorse in the light of principles and ideals acceptable to their common human reason.'[127] This is the RAWLSian version of the legitimacy of political power, rooted in, what he calls, 'public reason', when assuming a constitutional democratic society with 'reasonable pluralism'. It is, so to speak, the idea of legitimacy in the light of his non-ideal theory which must not be confused with legitimacy in the sense of justice as fairness, his ideal theory.

Having these two meanings of legitimacy in mind, we must now turn to RAWLS's contract theory and the question of legitimacy on the international sphere. Not only envisaging an international social contract like KANT, he also follows him insofar as he recognizes the interplay – yet of course not in the HOBBESian sense – between the domestic and the international; indeed, a 'constitutional regime must establish an effective Law of Peoples in order to realize fully the freedom of its citizens.'[128] It may be appropriate to say that, because of the great many premises RAWLS draws, it is in fact the original position which creates the just society. The next section aims to show why it may be appropriate to speak of RAWLS's 'Society of Peoples' as being 'KANT light'.

4.2.2 The Society of Peoples: Kant light

The very fact that KANT employed an international social contract for setting up his *foedus pacificum* made him an optimist; and in this sense RAWLS is an optimist, too.

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[125] Cf. *Theory of Justice*, Preface for the Revised Edition.

[126] *Political Liberalism*, Lecture IV, § 1.2.

[127] IBID., § 1.3; see also *Public Reason Revisited*, § 1.2.

[128] *Law of Peoples*, Introduction.

Like KANT, he also uses an international social contract in order to constitute an international society, his 'Society of Peoples', and to define the 'basic principles governing it', his 'Eight Principles of the Law of Peoples'. Hence, two questions naturally arise: Who are the legitimate members of this Society of Peoples? and What is legitimate foreign policy behaviour regulating this Society? In his endeavour to take legitimacy beyond borders, RAWLS draws heavily on KANTian assumptions; but he also departs from him on crucial points.

His Society of Peoples, as sketched out in the *Law of Peoples*[129], must be seen in the light of the procedural account of justice as fairness; and it involves the concepts of the original position with its peculiar qualifications such as the veil of ignorance. As it was domestically: it is the veil of ignorance that unveils justice. Yet the Society of Peoples also involves the fact of reasonable pluralism among peoples, the fact he acknowledged in his *Political Liberalism* with regard to the domestic context. Interestingly and controversially, the Eight Principles – the shared ideas of the peoples agreed to via a social contract – are somewhat based on the *Theory of Justice*'s first principle, the equality principle. Much to the regret of many cosmopolitan liberals, they entirely do leave aside the 'difference principle'. And indeed, this is questionable when simply considering the 'two main ideas' that 'motivate the Law of Peoples'. Firstly, RAWLS concedes that the 'great evils of human history' – he names: unjust war, oppression, religious persecution, denial of liberty of conscience, starvation, poverty, genocide, and mass murder – do 'follow from political injustice'; and, secondly, he proposes, that 'once the gravest forms of political injustice are eliminated by following just (or at least decent) social policies and establishing just (or at least decent) basic institutions, these great evils will eventually disappear.'[130] Yet still, BEITZ, one of the most prominent critics, acknowledges RAWLS's 'duty of assistance', i.e. the international 'substitute' for the domestic difference principle, as 'highly progressive', given the current political circumstances.[131]

The Society of Peoples includes 'all those peoples who follow the ideals and principles of the Law of Peoples in their mutual relations'; in other words: legitimate members of this Society are so-called Peoples who simply follow the Eight Principles of the Law of

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[129] For the original (quite different) version of 1993, see his *Collected Papers*.

[130] *Law of Peoples*, Introduction.

[131] Cf. CHARLES R. BEITZ, 'Rawls's Law of Peoples', *Ethics*, Vol. 110 (2000), 694.

Peoples. And according to RAWLS, both 'constitutional liberal democratic governments', i.e. 'reasonable liberal peoples'[132], and, controversially, non -liberal governments, i.e. 'decent peoples', do follow the Law of Peoples. These two types of domestic societies — RAWLS distinguishes in total between five — are subsumed under the label of 'well-ordered peoples'.[133] Hence, it is the well-ordered peoples that are the legitimate members of the Society of Peoples.

Importantly, RAWLS deliberately differentiates between peoples and states. In contrast to the realist understanding of states, which 'are often seen as rational [actors], anxiously concerned with their power–their capacity (military, economic, diplomatic) to influence other states–and always guided by their basic interests'[134], he wishes to emphasize the 'moral character' and the ability of, what he calls, 'moral learning' of the peoples. Therefore, only peoples, not states, e.g. 'outlaw states', are capable of becoming a member of the Society of Peoples, and they are the primary actors in that Society.[135] The basic idea of RAWLS is to situate all the 'liberal peoples', like the individuals in the domestic case, in an original position. Here, the contracting parties, i.e. the 'rational representatives of liberal peoples', elaborate and agree to the Eight Principles. The parties, while being assumed as being free, equal, and rational actors, find themselves under the veil of ignorance. In the initial situation, under this veil, they are deprived of a certain kind of information about the liberal people whose interests they represent: they do know that they represent liberal peoples; yet, they do not know, for instance, its 'size of territory and population', its 'relative strength', its 'extent of natural resources', and its 'level of economic development'.[136]

As in the domestic context, the contract the liberal peoples enter into is non-historical and hypothetical; again, 'hypothetical' understood somewhat in the KANTian sense; certainly not in sense of HOBBES and ROUSSEAU. The parties, according to RAWLS, do agree to the following Eight Principles which 'would be honored, if not all the time, then most of the time, so that it would be recognized as governing the relations among

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[132] Hereafter: liberal peoples.

[133] Cf. and citation from *Law of Peoples*, Introduction. The other three types of societies, namely, *outlaw states*, *burdened societies*, and *benevolent absolutisms*, are, on the contrary, non-well-ordered.

[134] IBID., § 2.2.

[135] Cf. IBID., §§ 2.1, 2.2, 5.1.

[136] Cf. IBID., § 3.2.

them'[137]. The principles they consent to are: firstly, that 'Peoples are free and independent, and their freedom and independence are to be respected by other peoples'; secondly, that 'Peoples are to observe treaties and undertakings'; thirdly, that 'Peoples are equal and are parties to the agreement that bind them'; fourthly, that 'Peoples are to observe treaty of non-intervention'; fifthly, that 'Peoples have the right to self-defense but no right to instigate war for reasons other than self-defense'; sixthly, that 'Peoples are to honour human rights'; seventhly, that 'Peoples are to observe certain specified restrictions in the conduct of war'; eighthly and lastly, that 'Peoples have a duty to assist other peoples living under unfavorable conditions that prevent their having a just or decent political or social regime'.[138]

Thus far, RAWLS's Society of Peoples shows a remarkable similarity to KANT: liberal peoples, i.e. 'constitutional democracies' whose 'basic structure' became just via a social contract, engage with each other in societal relations; they do so by virtue of an international social contract, and agree on certain principles that govern this society and 'make room for various forms of cooperative associations and federations among peoples'[139]. In addition, RAWLS follows KANT in rejecting a 'world-state' leading to nothing more than 'global despotism'; and he does also when presuming that liberal peoples do not go to war with each other, hereby paying his respect to the democratic peace argument.[140] He seems to fully approve KANT's reasoning that the way to peaceful relations among peoples can only lead over an international social contract made among peoples, which are in turn the product of a social contract between its citizens – in KANT's case the constitutional republics,- in RAWLS's case the constitutional democracies. He also seems to approve that only social-contract-states obeying the Eight Principles are entitled to (legitimate) membership of the Society of Peoples. Yet, decent peoples, too, obey the Eight Principles.

Decent peoples are 'member[s] in good standing in a reasonable Society of Peoples'; they are, so to speak, 'legitimate' members of the Society. RAWLS makes it very clear that decent peoples must be distinguished from liberal peoples; he considers a people to be decent when it fulfils at least the following criteria: non-aggressiveness towards

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[137] IBID., § 18.1.

[138] IBID., § 4.1.

[139] IBID.

[140] Cf. IBID., §§ 4.1, 5.

other peoples and respect for their political and social order; appreciation and protection of human rights on part of their members; guidance of the law 'by a common good idea of justice'.[141] Procedurally analogous to the practice known from the liberal peoples, RAWLS employs a second international social contract, in which the decent peoples agree to exactly the Eight Principles; they, too, contract from behind the veil of ignorance. And here, RAWLS departs from KANT significantly. In the case of decent peoples there is 'no original position argument deriving the form of its basic structure'[142] as it was, naturally enough, the case with liberal peoples. Hence, the Society of Peoples involves merely three contracts: one domestic social contract for the liberal peoples, and one international social contract for each of the liberal and decent peoples.

Since decent peoples accept the Eight Principles, which make them members of the Society of Peoples, RAWLS gives up a crucial KANTian notion, namely, that of making a people's legitimacy dependent on a domestic social contract. RAWLS offers good reasons to do so, and although he still is much in concord with KANT, this marks a significant break with him. Yet this is also the point where the divide within international liberalism in the context of international distributive justice begins shining through more and more: RAWLS, as a proponent of social liberalism, on one side; cosmopolitan liberals (not to mention libertarians) on the other.[143]

By accepting decent peoples, which lack a social contract domestically, RAWLS takes into consideration what he domestically needed his *Political Liberalism* for, i.e. the 'fact of reasonable pluralism'. Domestically, peoples' citizens follow different, sometimes incompatible religious, philosophical, and moral comprehensive doctrines; therefore, it was necessary to employ the conception of public reason leading to the criterion of reciprocity, i.e. the liberal principle of legitimacy. RAWLS, correctly, sees the same kind of pluralism, though probably even stronger in its effect, functioning on the international level. Hence, liberal peoples must respect the comprehensive doctrines of non-liberal peoples, provided they meet the criteria as set out for the decent peoples and respect the Eight principles. To require all peoples to be liberal and to make non-liberal peoples

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[141] Cf. and citation from IBID., § 8.2; for the description of a hypothetical decent people named *Kazanistan* see § 9.3.

[142] IBID., § 8.4.

[143] For a classification of the different perspectives on international distributive justice see CHARLES R. BEITZ, 'International Liberalism and Distributive Justice: A Survey of Recent Thought', *World Politics*, Vol. 51 (1999).

subject of 'politically enforced sanctions' would mean to disrespect the decent peoples (and their citizens) causing only 'great bitterness and resentment'. Instead, it is RAWLS's strong belief that '[l]iberal peoples must try to encourage decent peoples and not frustrate their vitality by coercively insisting that all societies be liberal'; he considers it as most important to 'maintaining mutual respect among peoples.'[144] This is why RAWLS extends the Society of Peoples to non-liberal peoples; contrary to KANT, he makes them, together with the liberal peoples, equally legitimate members of this international society.

Yet, the Law of Peoples also describes how the well-ordered peoples ought to deal with their non-well-ordered counterparts. Taking into consideration the 'highly nonideal conditions of our world with its great injustices and widespread social evils', it offers guidance for well-ordered peoples when engaging with, what RAWLS calls, outlaw states and burdened societies. When moving from ideal to non-ideal theory, he takes it as a 'basic characteristic of well-ordered peoples that they wish to live in a world in which all peoples accept and follow the (ideal of the) Law of Peoples';[145] more so, they actively, albeit not aggressively, 'seek a world in which all peoples have a well-ordered regime.'[146] The Eight Principles are 'familiar and traditional principles of justice among free and democratic peoples' and resemble not only KANT's Six Preliminary Articles but also the principles of international law. Yet, particularly the eighth principle with its duty to assist burdened societies – i.e. societies 'whose historical, social, and economic circumstances make their achieving a well-ordered regime [...] difficult if not impossible'[147] – has come under fire. As RAWLS himself admits: 'This principle is especially controversial.'[148] In the domestic context, individuals were concerned with the equality of the 'primary social goods'; in the original position on the international level, both liberal and decent peoples are interested in the 'equality of and the equal rights of all peoples'. Domestically, the difference principle was then agreed to in order to justify inequalities among individuals; internationally, a corresponding principle is simply irrelevant: peoples strictly 'insist on an *equality* among themselves as peoples' and want

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[144] Cf. *Law of Peoples*, §§ 7.1, 7.2; citations from § 7.2.

[145] Cf. and citations from IBID., § 13.1.

[146] IBID., § 15.5.

[147] IBID., § 13.1.

[148] Cf. and citations from IBID., § 4.1.

nothing more than 'to preserve the equality and independence of their own society.'[149] Taking this assumed supremacy of equality together with the well-ordered peoples' aspiration for ever-expanding the Society of Peoples, it becomes clear why they do not contract into something similar to a global 'Difference Principle', but – to the regret of cosmopolitan liberals[150] – merely into a duty of assistance.

This duty to assist a burdened society endures until it has become a well-ordered people; and once it follows the Eight Principles and becomes a (legitimate) member of the Society of Peoples, and once it is capable to determining its own course, any 'further assistance is not required, even though the now well-ordered society may still be relatively poor.'[151] Yet although the duty of assistance may for some not go far enough; although his extension of the Society of Peoples to decent peoples is in dispute with regard to its implications for the meaning and value of human rights; and although RAWLS constantly speaks of peoples and not of states and of their limited sovereignty, his theory is still said to be Westphalian in nature[152]. Nevertheless, given current world affairs, RAWLS's *Law of Peoples* indeed is 'highly progressive'; and not only this: it is also optimistic since he takes the social contract and the concept of legitimacy beyond borders. That makes him, in general, an appropriate source for legitimacy criteria in IR.

HOBBES and ROUSSEAU, this goes without saying, and RAWLS are worlds apart: the former two were never able to envisage something similar to a Society of Peoples, an international society where its members, being moral in nature, have contracted on common principles which ought to govern their relations. RAWLS does exactly this; he extends the idea of the social contract, hypothetical as it is, to the international level. Indeed, he is not so strict in the requirements for (legitimate) membership of the Society of Peoples as KANT was; only constitutional republics were allowed to join the *foedus pacificum* whereas RAWLS opens the door for peoples lacking a domestic social contract. This is: 'KANT light'. Nonetheless, RAWLS follows KANT closely, both domestically and internationally. More than KANT, RAWLS emphasizes his belief that such a

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[149] Cf. and citations from IBID., § 4.4.

[150] For an affirmative view of such a global difference principle see BEITZ, *Political Theory and International Relations*, part III; see also BARRY's *The Liberal Theory of Justice*, chap. 12; THOMAS W. POGGE, 'An Egalitarian Law of Peoples', *Philosophy and Public Affairs*, Vol. 23 (1994).

[151] Cf. *Law of Peoples*, § 16.2; citation from § 15.4.

[152] See, e.g., BEITZ, 'Rawls's Law of Peoples'; ALLEN BUCHANAN, 'Rawls's Law of Peoples: Rules for a Vanished Westphalian World', *Ethics*, Vol. 110 (2000).

Society of Peoples is possible: it is not that it must exist, or that it will exist, but it is possible. He says that '[r]ejecting the idea of a just and well-ordered Society of Peoples as impossible will [...] determine our politics in a significant way'[153]; and this is simply a different narrative for KANT's commanding that even if the *foedus pacificum* were a 'pious hope' then it was 'still our maxim to work unceasingly towards it' – in RAWLS's case: 'work unceasingly towards' a world where all the 'great evils have been elimi-nated and just (or at least decent) basic institutions established by liberal and decent peoples who honor the Law of Peoples'.[154] This world that RAWLS envisages is not a mere utopia; is not the product of an 'utopian realism'[155]; but it is a 'realistic utopia'. RAWLS has drawn on several 'basic facts', such as reasonable pluralism and, probably most importantly, liberal democratic peace; according to him, these 'can be confirmed by reflecting on history and political experience' and 'were not discovered by social theory'. This makes the utopia a '*realistic* utopia'. And with this approach he admittedly follows ROUSSEAU who has taken 'men as they *are*' and the 'laws as they *might be*' when asking what social order could 'make the chains legitimate'.[156] In the end, it must be said that RAWLS is, akin to his fellow optimist KANT, certainly 'neither naïve nor a fantasist'; and exactly this makes the closing remark in RAWLS's *Law of Peoples* even more truthful and credible: 'If a reasonably just Society of Peoples whose members sub-ordinate their power to reasonable aims is not possible, and human beings are largely amoral, if not incurably cynical and self-centered, one might ask, with Kant, whether it is worthwhile for human beings to live on the earth.'[157]

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[153] *Law of Peoples*, § 18.3.

[154] IBID., § 18.2.

[155] For this difference see CHRIS BROWN, 'The construction of a 'realistic utopia': John Rawls and inter-national political theory', *Review of International Studies*, Vol. 28 (2002), 20-1.

[156] Cf. *Law of Peoples*, Introduction; see *Contrat Social*, bk. 1, para. 2.

[157] *Law of Peoples*, § 18.3.

5. Defending Kant, the Social Contract, and Legitimacy

5.1 Defending Legitimacy: a modern concept under post-modern attack

The question RAWLS leaves the reader with whether it was worthwhile for human beings to live on an earth where power and amorality reign is a rhetorical question; it is in no need of an answer. Yet, the focus of this concluding chapter must be of a different kind: it defends KANT's social contract; it defends KANT as *the* proper source for legitimacy criteria in IR. And although having already 'defeated' positivist international system theory, it must defend legitimacy against another 'enemy' residing in IR theory: post-modernism. This is why this section has its starting point in NIETZSCHE, in his loss of belief in reason and rationality; he is as closely connected to the third wave of modernity as HOBBES is to the first wave and ROUSSEAU, KANT, and ideologically RAWLS are to the second. From here to IR, especially to post-modern 'theories' of IR, the way is not very far.

The main point is to demonstrate the attack legitimacy and the social contract are facing from this direction. Yet, post-modernism does not stand in the way of the overall argument: legitimacy needs to be studied in IR; it needs to be studied normatively bearing in mind its moral nature; and it is only normative international society theorists who are able to become engaged with international legitimacy for only they can get engaged properly with moral and political philosophy. It was also argued that legitimacy criteria must be derived from social contract theory; that HOBBES, ROUSSEAU, KANT, and RAWLS are a representative selection; and that only the latter two, the optimists, are an adequate source for such criteria. The further course of the chapter corresponds to these claims. The second section focuses on the social contract. It critically assesses the 'contracts' of these four theorists against the ideal-types and criticisms as they were laid out earlier, and demonstrates their major similarities and differences. It argues that in the endeavour to find a proper source for legitimacy criteria, KANT's *contractus originarius* is superior. The last section leaves, to some extent, the level of the social contract and concentrates on the concept of legitimacy and its role in IR. Maintaining the argument against orthodox IR and supportive of normative approaches, I relate the pessimists, HOBBES and ROUSSEAU, to positivist international system theory and the optimists, KANT and RAWLS, to normative international society theory. The pessimists are rather

inappropriate reference points for international legitimacy; the optimists are a rather reasonable and fitting source – particularly, KANT.

It is certainly true, though not good, that international legitimacy is not a core issue of scientific enquiry in IR, at least when understood as a moral concept. Unfortunately, there are many other topics that are given priority – not least because of the dominance of orthodox IR, which is ontologically and methodologically unable to study legitimacy in IR, and to study it normatively. And even if it was possible to shake off the chains put on by orthodox IR, the next 'enemy' is already waiting. This 'enemy', oddly the arch-enemy of orthodox IR, of (neo)-realism in particular, poses an even 'greater threat' to international legitimacy; and it may be rather well described as IR's 'latest *bête noire*'[1]: namely, post-modernism.[2]

The 'threat', that comes from it, is two-fold, but interrelated: first, the attack on progress and reason; second, the attack on legitimacy. The proper starting point is NIETZSCHE. It is he who 'inaugurates' the third wave of modernity; he is the intellectual father of '[t]his last epoch' with its radical questioning of the project of modernity.[3] This NIETZSCHEan epoch or wave is seen as the 'turning point' into post-modernity. NIETZSCHE, according to HABERMAS, renounces the HEGELian 'hope in a dialectic of enlightenment' and, in his peculiar way, '*bids farewell*' to it altogether.[4] As a result – and despite its other philosophical origins, esp. German romanticism[5] – it is NIETZSCHE, the 'counterauthority to reason'[6] who almost habitually stands as *the* 'prophet of the postmodern'[7]. 'The' post-modernity – nothing could be more contradictory in the eyes

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[1] RICHARD DEVETAK, 'Postmodernism' in SCOTT BURCHILL ET AL. (eds.), *Theories of international relations*, 2nd edn. (Basingstoke: Palgrave Macmillan, 2001), 181.

[2] It almost goes without saying that the following on *post-modernism* can be nothing more than a tiny sketch of an incredibly large and diverse whole.

[3] STRAUSS, 'What is Political Philosophy?', 56-7; Cf. STRAUSS, 'The Three Waves of Modernity', 94-8.

[4] Cf. JÜRGEN HABERMAS, 'The Entry into Postmodernity: Nietzsche as a Turning Point', in his *The Philosophical Discourse of Modernity: Twelve Lectures*, translated by FREDERICK LAWRENCE (Cambridge: MIT Press, 1987), pp. 84, 86.

[5] For an philosophic-historical overview, see, e.g., MICHAEL DROLET, 'Introduction', in his (ed.) *The Postmodernism Reader: Foundational texts* (London: Routledge, 2004), 13-8; and, GERALD HOLTON, 'The Rise of Postmodernisms and the "End of Science"', *Journal of the History of Ideas*, Vol. 61 (2000).

[6] HABERMAS, 'The Entry into Postmodernity: Nietzsche as a Turning Point', 94.

[7] KEN GEMES, 'Postmodernism's Use and Abuse of Nietzsche', *Philosophy and Phenomenological Research*, Vol. 62 (2001), 337. For a critical standpoint on this matter, see IBID. It is worth mentioning that in the following the terms 'postmodern', 'post-modernism', and 'post-modernity', are, despite their different connotations, used interchangeably; for their specific nuances see, e.g., DROLET, 'In-

of 'the' post-moderns, which in turn is no less contradictory – is often understood as a particular historical period. However – following JEAN-FRANÇOIS LYOTARD, besides JACQUES DERRIDA[8] and MICHEL FOUCAULT[9] one of the most influential devotees of post-modernism – to be post-modern does not mean to be part of a certain epoch; but instead, to be part of a certain 'mood' or to possess and employ a certain 'state of mind.'[10] To understand the post-modern 'state of mind', one may look at the modern 'mood' first: it is modern to prefer 'the quantitative over the qualitative'; to favour 'the objective over the subjective' and 'the sceptical over the mystical'; to disconnect 'the natural from the supernatural'; to connect scientific knowledge with evolution; to elevate knowledge to truth; to equate the truth with the good; and to correlate *ratio* with progress. Since the lack of knowledge is the source of any misery and despair, the continual striving for and employment of knowledge, education, and reason frees men from suppression and leads them into liberation – leads them from moral decay to overall human progress.[11]

With KANT, the 'intellectual climax of European Enlightenment' reaches its peak; hence, so does the belief in an indispensable positive correlation of *ratio* and progress. This leads to the post-modern 'mood': in general, it denies the idea of necessary progress; it denies the teleological character of history; and it denies that there is one 'truth'. What does exist is neither the product or the creation of God, nor of history, nor of *reason*, instead, it is the result of the arbitrary actions made by human beings; everything is nothing more than: 'Choice posing as truth'.[12]

Although many other characteristics of the post-modern 'state of mind' could be pointed out – and certainly more cautiously – this is surely sufficient for turning now to the post-modern attack on legitimacy. Here, and in post-modern circles in general,

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troduction'; JOCHEN SCHULTE-SASSE, 'Modernity and Modernism, Postmodernity and Postmodernism: Framing the Issue', *Cultural Critique*, No. 5 (1986-87).

[8] See, e.g., his *Of Grammatology* (1967), translated by GAYATRI CHAKRAVORY SPIVAK (Baltimore: John Hopkins University Press, 1976).

[9] See, e.g., his *The Archaeology of Knowledge* (1969), translated by A. M. SHERIDAN SMITH (London: Tavistock, 1972).

[10] 'Rules and Paradoxes and Svelte Appendix', *Cultural Critique*, No. 5 (1986-87), 209.

[11] Cf. ROBERT HOLLINGER, *Postmodernism and the Social Sciences: A Thematic Approach* (London: Sage, 1994), 7-13; HOLTON, 'The Rise of Postmodernisms and the "End of Science"', 329.

[12] Cf. JOHN A. VASQUEZ, 'The Post-Positivist Debate: Reconstructing Scientific Enquiry and International Relations Theory After Enlightenment's Fall', in BOOTH AND SMITH (eds.), *International Relations Theory Today*, 219-21; citation from p. 220.

LYOTARD's term 'grand narrative'[13] (or 'meta-narrative') plays *the* crucial role. Any modern science that 'seeks the *truth*' needs to '*legitimate* the rules of its own game'; it must declare, justify, and defend what is ontologically, methodologically, and epistemologically proper conduct in order to achieve universally valid results. Thus, it needs a point of reference for what proper conduct is, and what it is not. These reference points are found in the grand narratives, i.e. the grand theories of philosophy, of philosophy of science. In this sense, LYOTARD employs the term modern to refer to 'any science that *legitimates* itself with reference to a metadiscourse of this kind making an *explicit* appeal to some *grand narrative*'.[14] And science, especially the social sciences, is powerful: it is not only the scientific enquiry in certain matters human beings somehow have to deal with, but it is also 'a practice that creates a mode of life'; and consequently, a practice that simultaneously 'destroys other ways of thinking and living'.[15] This is why the post-modern becomes deeply sceptical about any science's reference points. Thus, post-modern is, according to LYOTARD (and self-admittedly 'simplified to the extreme'), defined as 'incredulity toward metanarratives.'[16] It is then only a small step for the post-moderns to be not only concerned with the rules of the science game, but also with the rules of the legitimacy game in the political sense; with regard to IR, with the 'games' of IR theory and international legitimacy.

Within IR, many post-modern scholars[17] – mainly by means of deconstructing texts and by employing a NIETZSCHEan genealogical method – are trying their best 'to disturb habitual ways of thinking and acting in international relations'[18]; they are trying their best to prove how (neo-)realism, which they unsurprisingly have identified as the 'dominant discourse' within IR, 'structures and constitutes reality, ordering the world to the advantage of some and to the disadvantage of others'[19]. They constantly have in

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[13] 'Rules and Paradoxes and Svelte Appendix', 209.

[14] Citations from JEAN-FRANÇOIS LYOTARD, *The Postmodern Condition: A Report on Knowledge* (1979), translated by GEOFF BENNINGTON and BRIAN MASSUMI (Manchester: MUP, 2001), xxiii [italics added].

[15] Both citations from VASQUEZ, 'The Post-Positivist Debate...', 222.

[16] LYOTARD, *The Postmodern Condition: A Report on Knowledge*, xxiv.

[17] The *post-modern* 'pioneer work' was certainly, among others, done by RICHARD K. ASHLEY, DAVID CAMPBELL, JAMES DER DERIAN, MICHAEL J. SHAPIRO, and R. B. J. WALKER.

[18] JAMES DER DERIAN, 'The Boundaries of Knowledge and Power in International Relations', in JAMES DER DERIAN AND MICHAEL J. SHAPIRO (eds.), *International/Intertextual Relations* (New York: Lexington, 1989), 4.

[19] BOUCHER, *Political Theories of International Relations*, 376.

mind that the ways how international relations are scientifically approached 'are not just matters of epistemology and ontology'; instead, they are products 'of power and authority'.[20] Post-modernists not only relentlessly question (neo-)realism's legitimacy, but also the way it legitimizes itself within IR theory. This then finally leads to the question of international legitimacy.

It is not the case, as it was with orthodox IR, that post-modern theorists are generally hostile to the idea that something like legitimacy actually does exist in the international realm. However, and this makes it the 'greater threat': any enquiry into international legitimacy the way it was suggested throughout, i.e. to treat it as a moral concept and to study it normatively, needs a point of reference, and this must certainly provide an almost ideal-typical point of attack. To derive legitimacy criteria from a grand narrative is bad; to derive them from a contractarian grand narrative is even worse; but to derive them from a KANTian contractarian grand narrative whose social contract is solely grounded in reason completely *a priori* must be the worst. Admitted, HOBBES, ROUSSEAU, KANT, and RAWLS, and social contract theory in general, is the broader perspective of 'western white male'. And it is contestable whether the social contract theory or utilitarianism or deontological theories provide a good foundation for legitimacy; it is contestable whether legitimacy ought to be treated as a moral concept or a legal concept or an 'empty' concept à la WEBER; it is contestable whether it ought to be studied normatively or descriptively; but it is incontestable that there must *be* reference points. I argued for the moral nature of legitimacy, and for its normative study, which requires us to elaborate criteria for the assessment. And just like legitimacy in an empirical sense does not develop in a vacuum, legitimacy criteria for a normative study – criteria for what is good and bad, right and wrong, just and unjust – do not grow on trees. I argue that they must be derived from social contract theory; and from KANT's in particular. And this is what needs to be defended.

5.2   Defending Kant part I: the four Social Contract theories evaluated

The social contract is essentially a *modern* phenomenon. Although it has its roots in ancient Greece, it undoubtedly had its heyday in the seventeenth and eighteenth century; to be more precise and having the distinction between 'contract of society' and 'contract of government' in mind, the former had gained in strength and success, while the latter

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[20] Both citations from DEVETAK, 'Postmodernism', 186.

was constantly loosing its influence. The four social contract theorists clearly reflect this nearness to modernity – not only historically but also both in the context of their 'contracts' and their general systems of thought. RAWLS must be omitted here; his contract theory deals with principles of justice for the basic structure of a society and not with entering into or establishing a society or state. Yet the others – HOBBES, ROUSSEAU, and KANT– are, naturally enough when considering their whole political philosophy, solely concerned with (and do employ) a 'contract of society', a contract of 'each with all', and do leave behind the 'contract of government' as a relic from the middle ages. And secondly, particularly HOBBES functions as a textbook-example for how modern social contract theory radically breaks with the past, especially with the ARISTOTLEian assumptions of a '*natural* political association full of *natural* political animals'. Instead, he relies on the Galilean resoluto-compositive method and on geometry in order to find truth and certainty. HOBBES therefore develops a radical and distinctive understanding of the political association as an *artefact* – and its 'Artificer is Man'. While ROUSSEAU is more sceptical about the role science plays for men than HOBBES and develops in his *First Discourse* the 'necessary connection' between the promotion of the sciences (and arts) and the moral corruption of men, he is nevertheless completely in line with him in considering the state as, in HOBBES's words, 'a voluntary arrangement'. KANT and RAWLS are similarly connected to (the second wave of) modernity: RAWLS self-admittedly presents a theory that is 'highly Kantian in nature', and KANT indeed does radicalize the belief in *ratio*.

And it is this KANTian belief in *ratio* that leads to the next, probably most significant, point, namely, to the role anthropology plays in their contract theories. It was mentioned and argued all the way through that anthropology is a central ingredient of any social contract theory. Even though KANT speaks of a *contractus originarius*, he, together with HOBBES, ROUSSEAU, and RAWLS, does not denote an 'original contract' in the historical sense; instead, all four of them lay much emphasis on the imaginary character of the contract. Hence, each does make use of an ideal-typical 'hypothetical contract'. Trying to avoid the traps lying ahead of both the 'original contract', i.e. so unhistorical and almost not provable; and the 'implicit contract', i.e. highly illogical and completely circular, the 'hypothetical contract' was accused (and so were the other two, too) of being dangerously arbitrary. Indeed, for HEGEL and BURKE, for example, the state is of a much a higher value and quality than being simply made a product of a contract, i.e. of

the 'parties' purely *arbitrary* will'. And, undoubtedly, where, as it is especially the case for social contract theorists, *man* must become the focus of attention, there, almost naturally, must be developed diverse underlying anthropological premises, which in turn then have an affect on the overall outcome.

For HOBBES, to bring his anthropology to the point, 'most men are of evil character' – they are driven solely by their passions; they constantly seek to meet their needs, and are continually concerned with securing their future desires. In order to do this, they need nothing but power; and since its value is always relational to that of the others', HOBBES ascribes to men 'a perpetuall and restlesse desire for Power after power, that ceaseth only in Death'. This alone, however, does not cause the state of nature being a *bellum omnium contra omnes*; ironically, it needs the assumption of man's natural equality: everyone is able to kill everyone, and therefore everyone has the equal chance to accomplish his primary goal to meet his own desires, now and in the future. Hence, man is not only driven by his passions, desires, and the struggle for power but also determined by competition, diffidence and the strive for glory.

Of a completely different nature is ROUSSEAU's man: the noble savage solitarily roams the forests; possesses neither foresight, curiosity, education, nor reason; and while enjoying (t)his wonderful independence, he nevertheless proves both to have pity and compassion for the suffering of other human beings, and to lack the desire to harm his fellows whatsoever. Of a completely different nature, then, is his state of nature, too – who, except ROUSSEAU, can claim that it 'was the most conducive to Peace and the best suited to Mankind'; and that civil society (and the sciences and the arts) corrupted man. The only thing that unites HOBBES and ROUSSEAU is the profound rejection of man as being an ARISTOTLEian *zoon politikon*; though their images of the state of nature are indisputably poles apart.

The KANTian anthropology is at odds with ARISTOTLE's, HOBBES's, and ROUSSEAU's: man is neither necessarily political, nor solely driven by passions, nor a compassionate wanderer. Instead, he is 'the only rational creature on earth'; however, he is also struggling with his inner ambivalence. KANT's *animale rationabile*, on the one hand, enjoys the company of others, while on the other, he wants (self-interestedly and by all means) to pursue 'what seems right and good to *him*'. Although, man is blessed with reason, his unsocial sociability soon sees him trapped in a HOBBESian state of nature, a war of all against all. And so, the situation occurs where three theorists employ three entirely dif-

ferent anthropologies, creating two different kinds of pre-societal states of nature: one hell, one heaven.

Although RAWLS social contract theory serves a different purpose, his premises must not be omitted here; indeed, in the original position – used by him not as a matter of phraseology, but to clearly distinguish it from the usual connotation 'state of nature' – men are characterised as mutually-disinterested, non-envious, limitedly altruistic, and generally risk-averse.

Accordingly then, as many different anthropologies are underlying, as many different 'social contract states' can be legitimized: HOBBES, seeing men's passions only controllable by passions, namely fear, legitimizes the over-powerful Leviathan since nothing but the 'terrour of some punishment' can coerce men to keep the contract – which otherwise, exactly because of men's passions, would be worth no more than the parchment it is written on. ROUSSEAU, seeing men lying everywhere in chains because of the loss of independence, which progressively has taken place, legitimizes, out of his almost obsessive concern with freedom and equality, a republican state governed by the *volonté générale*. KANT, seeing clearly the miseries of the law-less and war-like state of nature, legitimizes a *Rechtsstaat* with a republican constitution, which is grounded solely on right and law. RAWLS, finally, legitimizes in principle no other form of society than a liberal welfare state.

The observation cited earlier that 'it was common to all forms of social contract theory that no one has rightful political authority and no one is morally obliged to yield political obedience except in the consequence of a social contract' must be somewhat refined. This description does not fit to all – not to the 'new contractarians' such as RAWLS who is, again, concerned with principles of justice within a society – but is at least common to the classical forms of social contract theory. Nonetheless, the question arises: obedience to whom; to what type of state; to a HOBBESian Leviathan or to a RAWLSian welfare state of western provenience? So, indeed, the 'hypothetical contract' is arbitrary – arbitrary in two senses. Firstly, it can hardly be denied that in social contract theories the state becomes a product of, in BURKE's words, 'the fancy of the parties'; certainly, the question whether one likes this or not is of entirely different character though definitely not insignificant. And, secondly, on a meta-level, too, the accusation of arbitrariness seems to be justified; this holds true particularly for the 'hypothetical contract' exactly because of its 'sandy foundation of a fiction' (BENTHAM) – since, depending on

the (fictional) input, i.e. mainly the anthropological assumptions leading to this or that state of nature, it is 'virtually possible to legitimize anything, any time, any place'.

Here then, an essential qualification must be made. Thus far, several aspects have been mentioned according to which the four theorists could be classified: so, for instance, their connection to the first or second wave of modernity, that is, HOBBES vs. ROUSSEAU, KANT, and RAWLS, respectively; or their preoccupation with a contractarian or contractualist view, which exactly follows the categorizations just mentioned. However, there is another demarcation line – one which I consider to be probably most important and decisive; it separates them into two groups: HOBBES and ROUSSEAU on the on side, and KANT (and, to some extent, RAWLS) on the other. All four of them stress the hypothetical character of the state of nature and the social contract; and all four of them stress the irrelevance of the question whether such a contract could be proven to have existed historically or not. Yet, while the former two bring the state into existence out of certain conditions men have experienced or some historical circumstances – be they as hypothetical as they can possibly be –, KANT, in particular, does not make the state a product of a variety of 'pragmatic motives'. RAWLS logically follows KANT; yet the problem with his social contract theory is that it still needs to draw on many basic premises – too many, making him simply an easy target. For KANT, instead, the state is to be justified *a priori*; the social contract is not hypothetical, it is an *a priori* idea of reason. KANT's *contractus originarius* is the 'logical pendant of the categorical imperative' for the political; it is the *Probierstein* ('test') of the legitimacy of the state – completely detached from what historically or hypothetically historically has happened. This is the ideal place to come back to the waves of modernity it has been steadily referred to. Again: the *contractus originarius* is an *a priori* idea of reason. And it cannot be anything else bearing in mind how the second wave was characterised: 'Reason replaces Nature'. The first wave, as exemplified by HOBBES, derived the *ought* from the *is*, from the state of nature, from human nature. On the contrary, the second wave, as it was carried to the extreme by KANT, derived the *ought* from reason. Here, man became 'radically liberated from the tutelage of nature' and the ought had no basis whatsoever in the is any longer; instead, the only basis for the *ought*, the social contract, and legitimacy has become reason., i.e. reason completely *a priori*. And all this makes his social contract not only exceptional, but also his whole social contract theory so charming.

5.3   Defending Kant part II: Optimists versus Pessimists

Any social relationship, some sooner and some later, faces the question of legitimacy: those subject to power usually demand to catch a glimpse of it; those who hold power, therefore, need to provide evidence that they have it. Since being subordinated to naked power seems to be unacceptable, at least for most, power must be transformed into authority – and this is the function legitimacy provides: authority is legitimate power, and only this implies 'the *right* to command, and correlatively, the *right* to be obeyed.' One can command by employing strategies of coercion or self-interest, and one, analogously, can obey because out of fear or out of reward-based motives. However, one can also comply with norms by means of sensing a 'duty to obey'. And, indeed, it is legitimacy, the acknowledgement of a duty to obey, that lets MILGRAM's test subjects shoot electric shocks through an innocent, and it is legitimacy, too, that lets 'powerful nations obey powerless rules'. Even more interesting than these two cases is to find where the judgment of something being legitimate (or illegitimate) stems from. Among the more than a dozen different bases mentioned so far, the social contract is only *one* possibility – yet the most superior – where legitimacy can have its source; and, the social contract, in turn, is only *one* theory among many others, employed by only *one* particular viewpoint among many others. The lenses through which one sees it is the decisive aspect, i.e. the distinguishing feature, when enquiring into legitimacy.

Following its etymological roots to jurisprudence, the meaning of legitimacy often seems simply to mean nothing more than legality; legitimacy grounds in 'legal validity', and it often involves a 'juridical-procedural' approach. Failing to see the moral connotation of legitimacy, however, those lines of enquiries must be rejected as too 'positivistic and process-oriented'. Moving on to social sciences, and starting with the belief-centric WEBERian approach, legitimacy obtains an almost absurd undertone. Although being still widely used across political science and sociology, but also in IR, this method bases legitimacy on people's beliefs and opinions; as bizarre as it sounds: 'power is legitimate when the people believe it to be legitimate'; or, in IR, when states believe it to be legitimate. Here, the separation of legitimacy from any sense of morality is made absolute.

Fortunately, adherents of normative social sciences tackle the question of legitimacy not only differently but also much more promisingly; prescriptive approaches to legitimacy look beyond actors' beliefs and offer a 'fuller view'. Employing this type of technique

means for the social scientist to put into place, as a first step, certain criteria which make clear what legitimacy means and what exactly it means for it to be conferred; in a following step, then, relevant cases must be judged and assessed against these criteria. Together with how moral and political philosophy view legitimacy – namely, where 'morality becomes the decisive yardstick'– and in stark contrast to jurisprudence and the descriptive WEBERian approach, it does do justice to legitimacy as a morally significant concept; its etymology speaks of 'propriety', too. These are the three, rather: four, main lenses through which legitimacy is seen – and, one must not forget, also judged. And it also needs no extensive explanation to see that it has enormous implications for political life whether one follows, for example, a WEBERian line or the prescriptive approach when assessing, for example, the legitimacy of a state. This then leads to the role the concept of legitimacy plays in IR. It was shown that legitimacy does belong to normative international society theory, solely – and, as a result, so does the social contract, too.

The case with positivist international system theory, or orthodox IR, seems to be quite straightforward. Following both a WALTZian neo-realism or neo-liberalism, states in their conduct towards other states or institutions behave completely different from one that the logic of legitimacy would suggest; instead, they manoeuvre themselves through world politics according to the principles coercion and self-interest, respectively. The question whether something was legitimate or not does not even arise in this context; and with legitimacy obviously being non-existent in the state-*system*, the part of the social contract – in its function as one source – is equally zero.

This significantly changes when adhering to normative international society theory; only when adhering to the view that states feel themselves 'to be bound by a common set of rules in their relations with one another', legitimacy – as a normative concept which is not simply a label for power wrapped up – is able to unfold itself and to show its potential muscles. The very basic notion of society entails that ideas of what ought to be must be sufficiently shared among its members. And here, the social contract enters the stage. Where an international society is said to exist, two questions naturally and instantly arise: What are the principles, rules, norms, etc. which govern this society? And, secondly: Who is entitled to be a member? For the normative social scientist in IR, then, these questions must be reformulated: What *ought to* be the principles, rules, norms, etc. which govern this society? Secondly: Who *ought to* be entitled to be a mem-

ber? The scientist needs to set up criteria which she or he can use to judge certain cases – whether it be, for instance, assessing the legitimacy of certain forms of state behaviour or the legitimacy of certain state's membership of international society. Where legitimacy is thought to be based on the social contract, the criteria must, unavoidably and unsurprisingly, be sought in and derived from social contract theory. Yet since there is not *the* social contract theory but a great many, and since most theories work with (sometimes fairly, sometimes extremely) different underlying objectives and premises producing (again: sometimes fairly, sometimes extremely) different results one must inevitably ask: *legitimate according to which social contract theory?* It almost goes without saying that when deriving the criteria one works with from, say, the HOBBESian theory, one will come to significantly different end results on the topic of (international) legitimacy compared to when underlying, say, a ROUSSEAUian or RAWLSian theory. This is the place now where I come back to the point made in the previous section, namely, that KANT's social contract theory was 'charming'. The remainder of this section defends why KANT's theory, among the four, ought to be given priority when enquiring into legitimacy in IR; why his theory is the most appropriate source for legitimacy criteria in IR.

HOBBES and ROUSSEAU, the pessimists, are anything but suitable for legitimacy in IR and their social contract theories analogously are of no use when searching for legitimacy criteria. As argued, legitimacy is a moral concept, which is closely connected to the idea of an international society. Only within such a framework is it possible to become engaged with it, and, in a second step, with its possible sources, of which one is the social contract.

However distinguished they are as social contract theorists, both HOBBES and ROUSSEAU do not present a contract theory of international society. They cannot (or do not) even conceive the most primitive form of an international society – as pessimistic as this is – and stop with their contract theory, so to speak, at state-borders. Yet, each does it for different reasons. HOBBES is in no doubt that the international sphere resembles the state of nature he has already envisaged within the domestic context; that this condition is a 'state of hostility'; and that 'relations among states must be inescapably war-like'. Being entirely egocentric, states in the international system do not follow a common *summum bonum*, but, instead, do 'permanently pursue what they regard as to their greatest benefit'. The criticism HOBBES earns for such a portrayal of world affairs

is being discarded by him: 'Kings' and 'Persons of Soveraigne Authority' constantly, he says, would 'admit by their actions what they deny in their words.' Surprisingly, and in sharp contrast to the domestic sphere where HOBBES even let the wolves contract to the all-encompassing Leviathan to finish the *bellum omnium contra omnes*, he does not follow his own domestic logic. Instead, he leaves the states in this unpleasant environment; he does not introduce a social contract between the common-wealths in the international sphere; and does – seemingly for the eternal future – furnish the states with the '*absolute Libertie*, to doe what it shall judge [...] most conducing to *their* [sic] benefit.'

ROUSSEAU, too, is a pessimist – but one of different quality. Being, when considering his *vita*, probably the most interesting and fascinating social contract theorist among the four, he also comes to the conclusion that we should view the international arena simply as a state of war. He ridicules the idea of an 'European Society', and is certain that the 'very princes' whose *ratio* is befuddled by *amour-propre* would do anything they possibly are capable of to 'throw obstacles in the way of its establishment'. Yet, while HOBBES, for the benefit of domestic safety and well-being, accepts the international state of war, ROUSSEAU looks upon it in disgust and views it as the 'worst state possible'. But still, ROUSSEAU, like HOBBES, does not bring into being an international social contract; he also does not see an international society as either functioning or achievable, and constantly attacks the 'brotherhood of Europe' which is nothing more than a farce to him. However, he seems at least to 'honour the benefits of a (true) international society'; in the end, for ROUSSEAU, all efforts to set one up must fail since there is one dilemma: 'men are crazy'.

What unites HOBBES and ROUSSEAU is their pessimism about the international system – and 'international system' seems to be the proper term in this context. These two writers definitely reject the notion of an international society, and, instead, see international politics driven solely by power and self-interest. Legitimacy has no place whatsoever in their thoughts. The close relationship, then, to positivist international system theory is quite obvious – definitely in the case of HOBBES. However, as obvious as it is with him, the more nebulous is the *causa* ROUSSEAU. Putting him in the system-corner is one thing, but placing him in the (neo-)realist camp is another. While definitely not having any affiliations with (neo-)liberalism, ROUSSEAU's descriptive international thoughts may sound fundamentally realist, but taken together with his whole political philosophy, it is doubtful whether he can be put in a tradition associated essentially with figures

such as MACHIAVELLI and HOBBES. Yet, undeniably, ROUSSEAU does not belong to normative international society theory. Therefore, he cannot play, together with HOBBES, any role in the quest for legitimacy criteria. This role is reserved to KANT – he provides a picture-perfect social contract theory for international relations.

KANT's descriptive analysis of the relations between states is, similarly to HOBBES and ROUSSEAU, more than depressing; and it most closely resembles the HOBBESian state of nature. But while HOBBES argues that in this law-less natural state 'there nothing is Unjust', KANT, somewhat following ROUSSEAU's line, who thinks of it as being a 'moral scandal', claims that this 'state is itself one of injustice'. And furthermore, to KANT, the existence of this kind of international state of nature is rather absurd: indeed, why do allegedly civilised people accept, some even prefer, a hostile international environment whose underlying logic they perceive to be entirely intolerable – what they regard as a 'brutish debasement of humanity' – in the domestic context? Without a doubt, this international state of war must be left behind. However, and likewise to the domestic context, it is not experience, in this case the experience of war with all its consequences, which pushes states into the 'federation of peoples', but solely *reason*. Although declaring the 'resultant distress' of war to be the main factor that let states leave the state of nature, in fact, this is no more than KANT's use of a 'rhetorical device' to make the need of such a federation more intelligible. Instead, the 'driving force' is, not surprisingly, reason *a priori* – it tells us that 'There shall be no war'. And this, at the most abstract level, is the shared idea among states of what ought to be.

In order to put the shared idea into practice, KANT sees the need to establish a *foedus pacificum*, and to him it is necessary to establish a *federation of peoples* in accordance with the idea of an *original social contract*. Hence, states do contract to 'constitute' this federation; do contract to set out the 'basic principles governing it'; and do contract to determine 'who is entitled to be its member'. This simply means, that they contract about the legitimacy of the 'society'; that they contract about the legitimacy of its principles; and that they contract about the legitimacy of its members, respectively. Thus, legitimacy here solely stems from a social contract. But not only this; many other reasons speak for KANT, too.

Firstly, and as just mentioned, his contract theory embraces all three crucial aspects when encountering the question of legitimacy in international relations. Secondly, since one must keep in mind WIGHT's assertion that the 'principles of [international] legiti-

macy mark the region of approximation between international and domestic politics', it is a big plus for KANT that he also intermingles the domestic sphere with the international; 'establishing a perfect civil constitution is subordinate to the problem of a law-governed external relationship with other states, and cannot be solved unless the latter is also solved', he says. Thirdly, since KANT exclusively works with *a priori* principles or ideas of reason, his contract theory is not in the need of many premises or presuppositions – as it is the case with RAWLS – which only makes his social contract look less arbitrary (in the two ways mentioned) and, hence, in general more defensible.

This is, what I consider the most significant hurdle standing in the way of RAWLS. Indeed, he is an optimist, too. He brings legitimacy in the international realm; he uses an international social contract to constitute the Society of Peoples and to set out the principles and norms that ought to govern it. Yet still, RAWLS is somewhat unsuitable as a source for legitimacy criteria in IR. That he is modern is certainly true, and that he is well-established in political philosophy, too; that he is not so well-established in IR is also true, and although this must not be underestimated when having to defend him, it certainly does not play the crucial role; that he offers an imitation of KANT's *foedus pacificum*, not to mention a 'light' version of it, does not make it easier to defend him, although this is not decisive either. The problem with RAWLS lies elsewhere: namely, in his contract theory. As simple as it sounds: RAWLS must draw on too many basic premises or assumptions for creating the original position as fair; so many that the actual contract is being pushed somewhat into the background. He seems to be so concerned with the initial situation, that some even deny that his theory is a social contract theory at all. Certainly, it is a contract theory, but it does not help very much when legitimacy criteria are derived from a social contract theory which constantly faces accusations whether it actually is one or not; and having in mind that one must defend every single one of all his great many premises, too, RAWLS seems to be anything but an appropriate source. It is his model KANT who remains superior to HOBBES and ROUSSEAU, but also to RAWLS.

What also speaks for KANT is, fourthly, considering the moral connotation of legitimacy, that it is convenient to have his political philosophy founded on his moral theory. Fifthly, since legitimacy seems to have no place within orthodox IR, it is even more convenient for the purpose of its defense within IR theory, to have legitimacy and the social contract in international relations not to be brought up by someone who dreams

of a 'community of brotherly love and harmony', but by someone who may be well described as a quite rational and realistic philosopher. And sixthly and probably most importantly, KANT grants legitimacy a higher and significant value. He does not make the mistake, as it was done in the first wave of modernity, to attach legitimacy more to the *is* which in effect simply reduced legitimacy to a tool of justifying the existing order leaving virtually no space for change. Instead, by detaching legitimacy from the *is* whatsoever and making it a product of reason *a priori*, KANT's legitimacy must be seen as a critical tool steadily challenging the *is* to work towards the *ought*. And with all this having said, I must conclude that KANT's social contract theory is the most promising source for the purposes of enquiring into legitimacy in international relations, and of deriving proper legitimacy criteria from it; for legitimacy in IR, KANT, indeed, is 'charming'.

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