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THE KANTIAN MODEL OF THE STATE UNDER THE RULE OF LAW

1. Introduction

In the philosophical system of Immanuel Kant considerations regarding a state under the rule of law are frequently present; they serve a significant role in understanding his complex practical philosophy. That is why they should be captured in a wider context starting from freedom, which is the idea of practical reasoning and the basis of morality, and finishing with “the kingdom of ends” and his idea of perpetual peace. In the Kantian philosophy law is an element which directly links all the fields (ethics, philosophy of law, philosophy of politics, and historical philosophy). That is why Kant has been presented as the one who gave inspiration to many contemporary theoretical and legal trends which differ from one another. On the one hand, he is presented as a precursor of the theory of the law of Nature of a changing content. On the other hand, he is presented as a precursor of legal positivism or normativism. Kant and his critical philosophy has been referred to by almost every following thinker engaged both in philosophy and the theory of law. Therefore, one may and should refer to Kant for his philosophy constitutes a never-ending source of interdisciplinary inspiration.

2. Freedom as a foundation of Immanuel Kant’s practical philosophy

Freedom is a leading term in the system of Kant and serves as a key to understand especially a practical part of his philosophy.¹ Freedom is one of the ideas of the practical reason which presumes that an individual has to

¹ See M. Żelazny, *Idea wolności w filozofii Kanta*, Toruń 2001.

be free for only after receiving that freedom can he be moral. Social freedom for Kant means only a different sphere of realization of moral freedom of an individual as a rational creature.² Along with the concept of freedom, treating an individual and every rational creature as “the end in himself” constitutes the main feature deciding about the shape and character of Kant’s social philosophy. For Kant, a human being constitutes the center, that is, the highest and also the most important element of his philosophical thought. A human being as an individual member of the human community has to be guaranteed by law an equal measure of freedom and safety through “perpetual peace” among all the nationalities and nations.

The two out of three questions posted in *Critique of Pure Reason* (*what ought I to do?* and *what may I hope?*) Kant answers creating his practical philosophy. It is in the answers to these questions that the very essence of the Kantian practical philosophy is revealed since they tackle the actions of a human being, who is a free moral subject and a citizen at the same time. In this manner Kant takes all considerations regarding the essence of human being into the sphere what should be or, in other words, to the ideal world, determined by nothing external.³ That approach was the result of the recognition of the primacy of pure possibilities and duties over the factual order.⁴ Just as a theoretical reason examines a conditionally determined phenomenon in the natural world, a practical reason, dominating over it, considers everything which is connected with the human world of freedom. Kant’s recognition of the autonomy of practical reason in relation to a theoretical reason led the Kantians to the division and opposition of the sphere of existence (*Sein*) and sphere of duties (*Sollen*).⁵ Elżbieta Wolicka argues that the basic strain of the Kantian practical thought is mostly obvious in the ethical and social spheres where a boundary between the utopian postulates of a pure reason and a life practice and history of the human being as the culture creator lies. “The philosophy of nature relates to that which is, that of the ethics to that which ought to be”.⁶ That is why the Kantian philosophy of duties always captures a human being as an individual moral subject and an individual member of the society.

² Compare P. Beylin, *Kanta moralna filozofia wolności*, [in:] *Antynomie wolności. Z dziejów filozofii wolności*, Warszawa 1966, p. 255.

³ M. Szyszkowska, *Europejska filozofia prawa*, Warszawa 1993, p. 62.

⁴ E. Wolicka, *Rozważania wokół Kanta. Prolegomena do filozofii kultury jako krytyki władz podmiotu*, Lublin 2002, p. 95.

⁵ Compare M. Szyszkowska, *Filozofia w Europie*, Białystok 1998, p. 156.

⁶ I. Kant, *The Critique of Pure Reason*, <http://www.gutenberg.org/dirs/etext03/cprn10.txt> (05.12.2009).

In a moral sense, what a human being remains or should remain is dependent on how he will create or has created himself.⁷ It is Kant's highest concern that people will never try to establish the rules of duties on the basis on what they actually do, basing on their experience, for the rules of duties cannot be deduced from the factual rules.⁸ In a social life a human being has the highest sense and awareness of his own humanity which he constantly builds as a rational, free and moral creature.⁹ For Kant, it was accompanied by some sense of pessimism in relation to the individual as the morality subject and optimism as related to the whole mankind.

3. Categorical imperative and its role

Kant used to say that there was only one categorical imperative which could be differently formulated.¹⁰ It was primarily formulated in *Grounding for the Metaphysics of Morals* I: "Act only on that maxim through which you can at the same time will that it should become a universal law".¹¹ Later in the text he formulates it differently but sticks to its basic character II: "Act as though the maxim of your action were to become, through your will, a universal law of nature".¹² This imperative as a total command should define the aim in itself which could be nobody else but a human being. Therefore, a categorical imperative, being a moral law potentially found in every rational creature as a free and law-making creature, transforms into the so-called practical imperative which was finally defined by Kant as the highest right of his whole moral philosophy.¹³ It results from the categorical

⁷ *Werke*, Bd. VI, Berlin 1914, hrsg. E. Cassirer, p. 184; quoted by B. Suchodolski, *Rozwój nowożytnej filozofii człowieka*, Warszawa 1967, pp. 760–761.

⁸ Compare L. Kołakowski, *Cywilizacja na lawie oskarżonych*, Warszawa 1990, pp. 73 and 76.

⁹ Compare J. Lacroix, *Historia a tajemnica*, trans. Z. Więckowski, Warszawa 1989, p. 45.

¹⁰ Compare F. Copleston, *Historia filozofii*, vol. VI, *Od Wolffa do Kanta*, trans. J. Łoziński, Warszawa 1996, p. 349; See Ch. Horn, *Człowieczeństwo jako cel obiektywny. Kantowska formuła imperatywu kategorycznego jako celu samego w sobie*, [in:] *200 lat...*, op. cit., pp. 255–271.

¹¹ I. Kant, *Groundwork of the Metaphysics of Morals*, trans. Jonathan F. Bennett, <http://www.earlymoderntexts.com/pdf/kantgw.pdf> (05.12.2009).

¹² *Ibid.* <http://www.earlymoderntexts.com/pdf/kantgw.pdf> (05.12.2009).

¹³ Compare B. Andrzejewski, *Inspiracje kantowskie w filozofii teoretycznej Władysława Kozłowskiego*, [in:] *Dziedzictwo Kanta. Materiały z sesji kantowskiej*, J. Garewicz (ed.), Warszawa 1976, p. 260; M. Żelazny, *Idea wiecznego pokoju w filozofii Kanta*, [in:] I. Kant, *Wieczny pokój*, trans. M. Żelazny, Toruń 1992, p. 3.

imperative because the practical imperative¹⁴ expresses what follows III: “Act in such a way as to treat humanity, whether in your own person or in that of anyone else, always as an end never merely”.¹⁵ At the same time, this is the most important definition of the categorical imperative being an order of practical way of conduct; it has a decisive influence on the humanistic formulation of Kant’s social philosophy, law and individual. Without that practical imperative which supplements it, in that context a categorical imperative would not make sense at all.

Other formulations of the categorical imperative, which are noticed by the researchers of the Kantian ethics, are IV: “Always choose in such a way that the maxims of your choice are incorporated as universal law in the same”,¹⁶ as well as V: “Act so that the maxim of thy will can always at the same time hold good as a principle of universal legislation”.¹⁷ Regardless of different formulations of the categorical imperative, it remains a moral right – as a “right of freedom”,¹⁸ resulting from the order of practical reason which allows a human will to behave in accordance with it.

In ethics a respect for law itself was the respect for a moral law, which was to dispose a will to act in accordance with an order of the categorical imperative.¹⁹ It was already the respect for law which was the impulse giving the act a real moral value.²⁰ The awareness of the duty as obedience towards law has to inform a rational creature about his ability of creating (together with other rational creatures) as well as the obedience of their common law.²¹ Indeed, a moral capability of living in accordance with the law is ingrained in human nature. For Kant, the ideal of law constitutes a linking unit in the framework of his practical philosophy and his views on freedom and morality, politics and state as well as the actions of mankind.

¹⁴ Compare H. Izdebki, *Historia myśli politycznej i prawnej*, Warszawa 1995, p. 177.

¹⁵ I. Kant, *Groundwork...*, <http://www.earlymoderntexts.com/pdf/kantgw.pdf> (05.12.2009).

¹⁶ *Ibid.*, p. 79; See V. J. Bourke, *Historia etyki*, trans. A. Białek, Warszawa 1994, pp. 171 and 172; F. Copleston, *Historia...*, op. cit., pp. 338 and following.

¹⁷ I. Kant, *The Critique of Practical Reason*, <http://www.gutenberg.org/dirs/etext04/ikcpr10.txt> (05.12.2009).

¹⁸ Compare *Encyklopedia filozoficzna*, trans. A. Banaszkiwicz, Kraków 2003, p. 423; See O. O’Neil, *Etyka Kantowska*, trans. P. Łuków, [in:] *Przewodnik po etyce*, P. Singer (ed.), Warszawa 1988, p. 216.

¹⁹ Compare M. Heidegger, *Kant a problem metafizyki*, trans. B. Baran, Warszawa 1989, pp. 177 and 178.

²⁰ Compare I. Kant, *Groundwork...*, <http://www.earlymoderntexts.com/pdf/kantgw.pdf> (05.12.2009).

²¹ Compare A. MacIntyre, *Krótką historia etyki. Filozofia moralności od czasów Homera do XX wieku*, trans. A. Chmielewski, Warszawa 2000, p. 248.

According to him, law is the construction of “rational order” in the sphere of human acts.²² In Kant’s system, it has the role which is strictly imposed by reason which subjects people to certain actions. Captured in this way, law, based on practical reason, has several functions; first, it creates and organizes; second, it provides an order and gives orders; third, it provides the aim and sense for both individual life of rational creatures as well as their organized life in communities, under the obliging rule and equal rights based on the principles of freedom and equality.

4. Immanuel Kant’s types of laws

Immanuel Kant differentiates between the law of Nature (based on intellect) and moral law (based on reason); next he differentiates between the law of Nature and the proclaimed law with a further differentiation between a private law and a public law. For law to be objective, common and necessary, the source of all the laws, both moral and legal, has to be reason totally freed from all the influences of experience.²³ Apart from that, moral rights have a completely different character than physical and natural rights for the former do not deal with any phenomena; instead, they are guidelines for defining a human way of moral conduct.²⁴ Therefore, law is an objective principle significant for every rational creature according to which a subject has to behave.²⁵ In other words, law always indicates regularities both for the determined natural world as well as for the human world of freedom.

Another significant achievement of the Kantian theory of law is a distinction between the interior law and the exterior law. This is a consequence of Kant’s isolation of the exterior freedom, which is possible due to the proclaimed law, from the interior freedom, necessary to lead a moral life due to the moral law.²⁶ Thus, in other words, the interior law is a mo-

²² Compare A. Bobko, *Kant i Schopenhauer. Między racjonalnością a nicością*, Rzeszów 1996, p. 59 and following.

²³ Compare R. A. Tokarczyk, *Filozofia prawa w perspektywie prawa natury*, Białystok 1996, p. 106.

²⁴ Compare J. Urbaniak, *Etyka Kantowska jako wymóg “praktycznego rozumu”*, [in:] *W kręgu inspiracji kantowskich*, R. Kozłowski (ed.), Warszawa – Poznań 1993, p. 57.

²⁵ Compare Z. Tobor, *Pojęcie legalności w filozofii Immanuela Kanta*, “Folia Philosophica”, p. 15, J. Bańka (ed.), Katowice 1997, p. 123; See I. Kant, *Groundwork...*, <http://www.earlymoderntexts.com/pdf/kantgw.pdf> (05.12.2009); I. Kant, *The Critique of Practical...*, <http://www.gutenberg.org/dirs/etext04/ikcpr10.txt> (05.12.2009).

²⁶ Compare H. Izdebski, *Historia myśli...*, op. cit., p. 177; M. Szyszkowska, *Europejska...*, op. cit., p. 52.

ral law whereas the exterior law is the law regulating mutual relations of people on the social and state levels. The notion of the exterior law (*lex*) results completely from the notion of freedom or, in other words, from the legislation (*ius*) of a pure practical reason.²⁷ In this way Kant formulates an intellectual notion of the law which, due to practical abilities of reason,²⁸ is possible to be generalized and make it commonly obligatory pointing out its values of the objective character.²⁹

Apart from the proclaimed law, the law of Nature refers to the interior range of human freedom.³⁰ This is not the Nature's law for it refers exclusively to a human, who, being a rational and free creature, is not determined by any cause-and-effect rules. Kant did not search for its essence in a human, social or natural world as his predecessors did. He searched for that essence in the notions of a pure reason constructed *a priori*.³¹ Therefore, it is reason and not a human creature that is the source of this law.³² Analyzing the relationships between the law of Nature and a moral law, Kant arrives at the conclusion that their subject is basically identical for both of them result from practical reason and are subjected to the application of the categorical imperative. The law of Nature as well a moral law is, therefore, a "general law of freedom", based on obligation, commonness and completeness of obligation.³³ The only difference between them is that the law of Nature is obliging for every rational creature defining the differences between them; on the other hand, a moral law tackles the interior sphere of motivation of an individual only.

The proclaimed law envelopes the norms which are obligatory exclusively due to the decision of the legislator whereas the law of Nature, being expressed in the *a priori* principles of consciousness, is obligatory due to its correspondence with the reason which discovers it, and does not rely on the

²⁷ See I. Kant, *The Saying: That a Thing May Be Right In Theory, but May Not Hold for Practice*, trans. William Hastie, http://oll.libertyfund.org/?option=com_staticxt&staticfile=show.php%3Ftitle=358&chapter=56090&layout=html&Itemid=27 (05.12.2009); Compare E. Wolicka, *Rozważania...*, op. cit., p. 183; A. Chmielewski, *Spoleczeństwo otwarte czy wspólnota*, Wrocław 2001, pp. 196–197; Z. Kuderowicz, *Kant*, Warszawa 2000, p. 77.

²⁸ See O. Höffe, *Immanuel Kant*, trans. A. M. Kaniowski, Warszawa 1995, pp. 210–218.

²⁹ See H. Pawlak, *Absolutyzm i relatywizm wartości. Spór Schelera z Kantem*, [in:] *Wokół Kanta i innych. Zbiór rozpraw*, S. Sarnowski, G. Dominik (ed.), Bydgoszcz 1998, p. 47.

³⁰ Compare Z. Tobor, *Pojęcie legalności...*, op. cit., p. 129.

³¹ Compare R. A. Tokarczyk, *Historia filozofii prawa w retrospektywie prawa natury*, Białystok 1999, p. 284; See M. Szyszkowska, *Europejska filozofia...*, op. cit., pp. 60–61.

³² See M. Szyszkowska, *Zarys filozofii prawa*, Białystok 1994, p. 118.

³³ Compare Z. Kuderowicz, *Kant*, op. cit., p. 79.

positive legislation.³⁴ According to Kant, a legal order, just as an order of the world, is the result of the creation by reason which generally commands for the order to be just as the legal reason commands a legal reason to be proclaimed in the world. For this reason, Kant formulates a new type of the imperative, the so-called legal imperative, and makes it a common principle of law: “Act externally in such a manner that the free exercise of thy will may be able to coexist with the freedom of all others, according to a universal law”.³⁵ A relation of the law of Nature to the proclaimed law is expressed in the relation to what is a priori and to what is a posteriori; to what should be and to what remains. The principles of the positive law should be established on the basis of the law of Nature. Therefore, the law of Nature, being both primary and a tool in relation to the proclaimed law, should be its basis, test and the measure of evaluation. “(...) If certain defects which could not have been avoided are found in the political constitution or foreign relations of a state, it is a duty for All, especially for the rulers of the state, to apply their whole energy to correcting them as soon as possible, and to bringing the constitution and political relations on these points into conformity with the Law of Nature, as it is held up as a model before us in the idea of reason (...)”.³⁶

Additionally, Kant divides a legal system into a private law and a public law due to their different legal subjects. “Private law regulates the relationships between individuals, being legal persons (or subjects) or, in other words, individuals capable of free acts which they take criminal responsibility of”.³⁷ A private law deals with different ways of agreements regarding the usage of items or human talents.³⁸ This is a law separating something which is exteriorly mine from what is yours.³⁹ For Kant, the exterior possession of mine and yours are: 1) material items (land and goods), 2) service agreements (contracts), as well as 3) a legal situation of another person in his/her relation to me.⁴⁰ The above-mentioned considerations are the main

³⁴ Compare E. Jarra, *Historia filozofii prawa*, Warszawa 1923, p. 174.

³⁵ I. Kant, *The Metaphysics of Morals*, trans. Thomas Kingsmill Abbott, <http://philosophy.eserver.org/kant/metaphys-of-morals.txt> (05.12.2009).

³⁶ I. Kant, *The Perpetual Peace*, trans. Mary Campbell Smith, M. A., http://files.libertyfund.org/files/357/0075_Bk.pdf (05.12.2009).

³⁷ Z. Kuderowicz, *Kant*, op. cit., p. 79.

³⁸ Compare Ibid., p. 79; S. Goyard-Fabre, *Kant et le problème du droit*, Paris 1975, p. 83 and following.

³⁹ Compare Cz. Porębski, *Umowa społeczna. Renesans idei*, Kraków 1999, p. 125.

⁴⁰ Compare O. Höffe, *Immanuel...*, op. cit., p. 220.

fields of the civil law such as: property right (possession), commitment right (agreements) and individual right (marriage, family and family control superior). Interesting is the fact that Napoleon's Civil Code, which appeared in the year of Kant's death (1804), considered the above-mentioned division in its internal system.⁴¹ The Kantian private law is the justification of private possession by the acknowledgment of the agreement as the basis of all legal relations taking place in the state. Therefore, at the beginning of the nineteenth Century Kant, among all, contributed to the grounding of the new capitalistic legal system getting rid of feudal institutions prevailing for centuries.

On the other hand, a public law regulates both the relations between the state and its citizens as well as relations between different states acknowledged to be individual legal subjects capable of the establishment of international law obligatory for them. The Kantian theory of public law deals with the justification of the state under the rule of law concentrating on the legality of the state power in the framework of the state law. When it comes to the rights of nations, it deals with the possibility of finding a durable "perpetual peace". In this context the issues of the philosophy of law start their integration with the issues of the philosophy of politics, their relations with morality and the issues of historiosophia through a further characteristics of the system of "kingdom of ends" and the discussion of the "perpetual peace" project.

5. Politics and the advancement of law

For Kant, politics as the art of ruling people was a practical wisdom⁴² which he connected with the theory of morality and a study of law.⁴³ That is why its basic aim was to build a reasonable society based on law.⁴⁴

⁴¹ *Civil Code dated 21.III.1804* consisted of 2281 articles organized into III parts: I About Persons; II About property and different types of human possessions; III About the ways of the possession acquisition; that was the beginning of modern codification.

⁴² Compare I. Kant, *The Perpetual...*, http://files.libertyfund.org/files/357/0075_Bk.pdf (05.02.2010).

⁴³ Compare M. Szyszkowska, *Europejska filozofia...*, op. cit., p. 63; also, *Kantowskie inspiracje w pojmowaniu polityki*, [in:] *Interpretacje polityki*, M. Szyszkowska (ed.), Warszawa 1991, pp. 101–109.

⁴⁴ Compare K. Bal, *Wprowadzenie do etyki Kanta. Wykłady z historii myśli etycznej*, Wrocław 1984, p. 85; see A. Kryniecka-Piotrak, *Filozofia prawa a filozofia polityki*, [in:] *Filozofia prawa*, M. Szyszkowska (ed.), Warszawa 2001, pp. 99–109.

True politics should reveal its reference to higher values or, in other words, ideas.⁴⁵ Its search for the aim, which was the achievement of that aim in the shape of “kingdom of ends” and “perpetual peace”, may take place only when it is expressed in the law to obligate.⁴⁶ The highest right as the final aim of all items is at the same time the highest political right,⁴⁷ which will be achieved only when a moral politician behaves in accordance with the law. Kant was certain that politics which is in accordance with law is just and useful; the opposite makes it false and ugly.⁴⁸

Philosophy of politics as an integral part of the Kantian practical philosophy is directed rather to the sphere of what should remain instead of what factually remains.⁴⁹ As M. Szyszkowska has noticed, the politics of law forms views regarding the subject of the law content which should be obligatory in a given state and in given time and circumstances. Philosophy of politics has a wider task for it prepares a complete vision of the rightly organized state and society. When comprehended in this way, politics should be captured both in its relation to morality and to the obligatory law. In this context the only right politics is the politics which treats legal regulations as sacred and inviolable, especially: “Right must be held sacred by man, however great the cost and sacrifice to the ruling power. Here is no half-and-half course. We cannot devise a happy medium between right and expediency, a right pragmatically conditioned. But all politics must bend the knee to the principle of right, and may, in that way, hope to reach, although slowly perhaps, a level whence it may shine upon man for all time”.⁵⁰ Law is an explicit element organizing the state and social life; politics has to rely on it and be practiced in its framework.⁵¹ Woe betide him who practices another politics than that which perceives obligatory legal regulations as sacred.⁵² Political

⁴⁵ Compare M. Szyszkowska, *Filozofia prawa i jej współczesne znaczenie*, Warszawa 2002, pp. 152 and 155.

⁴⁶ M. Zahn, *Kantowska teoria pokoju w świetle najnowszych dyskusji*, trans. M. Poreba, [in:] *Filozofia transcendentálna a dialektyka*, J. M. Siemek (ed.), Warszawa 1994, p. 37.

⁴⁷ Compare I. Kant, *The Saying: That a Thing May Be Right In Theory...*, http://oll.libertyfund.org/?option=com_staticxt&staticfile=show.php%3Ftitle=358&chapter=56090&layout=html&Itemid=27 (05.12.2009).

⁴⁸ I. Kant, *Wznowione pytanie...*, op. cit., p. 188.

⁴⁹ Compare M. Szyszkowska, *Filozoficzne interpretacje prawa*, Warszawa 1999, p. 116.

⁵⁰ I. Kant, *The Perpetual...*, http://files.libertyfund.org/files/357/0075_Bk.pdf (05.12.2009).

⁵¹ Compare M. Szyszkowska, *Filozofia prawa i jej współczesne znaczenie*, op. cit., p. 151.

⁵² I. Kant, *The Perpetual...*; cited after: M. Szyszkowska, *Filozoficzne interpretacje...*, op. cit., p. 118.

decisions should never be optional for morality and higher values together with a human being, who is the “means in himself”, should constitute their basis.

In the course of mankind there is a rational aim of Nature hidden, where mankind should find their sense. It is in the history that a cultural advancement also takes place which relies on the improvement of social relations and all mechanisms serving to master Nature by humans and the improvement of human skills.⁵³ In this context history is captured as the advancement of human culture which, in turn, is captured as a human acquisition of skills to choose their different aims and to be able to realize them.⁵⁴ The notion of advancement takes a central place in Kant’s historiosophy for it deals with the whole mankind, rather than certain individuals with different aims to fulfill: “Individual perfectionism and happiness of other people” (*Eigene Vollkommenheit – Fremde Glückseligkeit*): these are the aim and the duty of every single individual.⁵⁵

When considering a type of the advancement described by Kant,⁵⁶ it is necessary to highlight that it is the advancement taking place in the field of law. This advancement is to make people: first of all, “morally perfect”; secondarily, members of “a perfect society”.⁵⁷ “The notion of perfection in a practical sense is the fitness or sufficiency of a thing for all sorts of purposes”.⁵⁸ In this way a moral aim of a single individual meets the aim of mankind to make one aim of Nature which relies on the treatment of man as “means in himself” and the “final aim of creation” through the realization of the concept of “perpetual peace”. Inasmuch as the action of a single human moral subject may be recognized as the realization of moral law in the perspective of the principle of natural advisability, when it comes to the realization of the proclaimed law, it is essential to mention a necessity of the appearance of the organism involving all rational creatures first of all, in the shape of “kingdom of ends”, and then their federation.

⁵³ Compare Z. Kuderowicz, *Filozofia nowożytnej Europy*, Warszawa 1989, p. 529.

⁵⁴ Compare *Słownik filozoficzny*, Vol. I, I. Krońska (ed.), Warszawa 1966, pp. 296 and 297.

⁵⁵ I. Kant, *The Metaphysics of Morals*; <http://philosophy.eserver.org/kant/metaphysics-of-morals.txt> (05.12.2009).

⁵⁶ Compare Z. Kuderowicz, *Czy Kant wierzył w postęp?*, [in:] *Kant wobec problemów współczesnego świata*, J. Miklaszewska, P. Spryszak (ed.), Kraków 2006, pp. 13–17.

⁵⁷ Compare J. Lacroix, *Historia a...*, op. cit., pp. 39 and 54.

⁵⁸ I. Kant, *The Critique of Practical...*, <http://www.gutenberg.org/dirs/etext04/ikcpr10.txt> (05.12.2009).

Kant's history of mankind is a course of law which is constantly improved.⁵⁹ Advancement may be only expected from the exterior, for example, in the arrangement of legal relations in accordance with guidelines given by a pure practical reason, therefore, the creation of the states under the rule of law as well as their co-existence in a peaceful community of the whole nations makes the highest task and final aim of mankind's existence. History is a process which has a meaning for it leads mankind towards the advancement in the scope of law: civil, state and international. The end of history will be the achievement of harmony and balance between the freedom of rational creatures with the help of common obligatory law. In the course of actions and its advancement, Kant reconciles two contradictory ideas: the idea of freedom and the idea of law. A historical development of culture points out the final triumph of law which, due to the power and possibilities of practical reason, is in the position to ensure freedom for everybody.

The "royal thinker" did not include a description of the historical process and attempts of periodization of its acts. He limited himself only to the formulation of theoretical premises of his historiosophy in *The Conjectural Beginning of Human History*. Those premises are revealed by ten theses; which hide the plan of Nature regarding mankind: "FIRST THESIS: All natural capacities of a creature are destined to evolve completely to their natural end. SECOND THESIS: In man (as the only rational creature on earth) those natural capacities which are directed to the use of his reason are to be fully developed only in the race, not in the individual. THIRD THESIS: Nature has willed that man should, by himself, produce everything that goes beyond the mechanical ordering of his animal existence, and that he should partake of no other happiness or perfection than that which he himself, independently of instinct, has created by his own reason. FOURTH THESIS: The means employed by Nature to bring about the development of all the capacities of men is their antagonism in society, so far as this is, in the end, the cause of a lawful order among men. FIFTH THESIS: The greatest problem for the human race, to the solution of which Nature drives man, is the achievement of a universal civic society which administers law among men. SIXTH THESIS: This problem is the most difficult and the last to be solved by mankind. SEVENTH THESIS: The problem of establishing a perfect civic constitution is dependent upon the problem of a lawful external relation among states and cannot be solved without a solution of the

⁵⁹ Compare Cz. Porebski, *Umowa społeczna...*, op. cit., p. 125; see O. Höffe, *Immanuel...*, op. cit., pp. 242–248.

latter problem. EIGHTH THESIS: The history of mankind can be seen, in the large, as the realization of Nature's secret plan to bring forth a perfectly constituted state as the only condition in which the capacities of mankind can be fully developed, and also bring forth that external relation among states which is perfectly adequate to this end. NINTH THESIS: A philosophical attempt to work out a universal history according to a natural plan directed to achieving the civic union of the human race must be regarded as possible *and, indeed, as contributing to this end of Nature*".⁶⁰

Additionally, Kant gives a distinction between "physical history", which describes events and explains their causes, and "pragmatic history", which reveals the sense of the historical process of human nature perceiving in it a purposeful intention of the very Nature. Nature's plan is not to raise a human through history so that to make such a state where all human skills could be fully developed. In this context the aim of history is the realization of a perfect model of collective life in accordance with the moral law.⁶¹ To answer the question whether mankind (in general) is constantly heading towards the better, the thinker from the Kingdom states that in this case an individual is a part of mankind who is developing by improving the law. For a rational but still limited creature only the advancement towards the infinity is possible, from the lower to the higher degrees of moral perfectionism.⁶² The Kantian human, as part of mankind, participates in the continuing and never-ending advancement towards the ideal in the process of history.

While preparing mankind to meet the ideal rules, Kant additionally distinguishes between "the culture of being fit" and "culture of punishment".⁶³ The former relies on the development of every technical skills, crafts and mechanical arts resulting in the advancement of human skills. The latter, in turn, relies on the discipline and subordination of selfish aims and passions of certain individuals to become obedient to the aims defined by the advancement of mankind as a species. This is a very difficult enterprise for a specific feature of mankind is that it has to find every good in itself and

⁶⁰ I. Kant, *The Conjectural Beginning of Human History*, trans. Rob Lucas, <http://www.marxists.org/reference/subject/ethics/kant/universal-history.htm> (05.12.2009); See T. Kroński, *Kant*, Warszawa 1966, pp. 176–190.

⁶¹ Por. M. Acewicz, *Sąd teleologiczny a dzieje ludzkości w filozofii Kanta*, [in:] *Idea. Studia nad strukturą i rozwojem pojęć filozoficznych*, M. Czarnawska i J. Kopania (ed.), Białystok 1993, p. 118.

⁶² Compare T. Kroński, *Kant*, op. cit., p. 150; see I. Kant, *The Critique of Practical...*, <http://www.gutenberg.org/dirs/etext04/ikcpr10.txt> (05.12.2009).

⁶³ See Z. Kuderowicz, *Filozofia nowożytnej...*, op. cit., p. 530; *Słownik...*, op. cit., p. 297.

realize it through its freedom.⁶⁴ Basically, the history of mankind is a history which tells us where to go. As a result of this view, Kant's historiosophy considers the history as a realization of general and human values in the shape of aims, the highest point of which is a human.⁶⁵ A human is civilized through culture;⁶⁶ that culture is the destination of mankind to follow in accordance with the plan of Nature. B. Szymańska argues that the human history is the history of the cultural development which, for Kant, means that a human can realize the aims he chooses himself. For this reason, it is exclusively a human being who is capable of conscious acting and it is only with the reference to humans that sensibleness and usefulness of acting can be discussed.⁶⁷

6. Civil state as a legal state

A civil state (*bürgerlicher Zustand*) allows for a legal assurance that people get what they should get. According to O. Höffe, it is characterized by two features. Firstly, a decision regarding the common and obligatory law is not the matter of individuals but it should be handled by public authority. Secondary, it does not deal with any state; it deals with a political harmony, resulting from a legal regulation established on the basis of a practical reason and enabling to combat possible conflicts.⁶⁸ Here what is meant is the a priori model of a civil state which, being a legal state, is based on three basic principles: 1) freedom of every member of the society on the ground of being a human person; 2) equality of every member of the society on the ground of being a subject and 3) independence of every member of the community on the ground of being a citizen.⁶⁹

⁶⁴ Compare I. Kant, *Entwürfe zu dem Colleg über Anthropologie*, *Werke*, Bd. XV, Part II, Berlin 1907, p. 784; cited after: B. Suchodolski, *Rozwój nowożytnej...*, op. cit., p. 759.

⁶⁵ Compare Z. Kuderowicz, *Kant*, op. cit., p. 91.

⁶⁶ See I. Kant, *Anthropologie in pragmatischer Hinsicht*, [in:] I. Kant, *Werke*, Bd. VII, Berlin 1907, p. 119; cited after: B. Suchodolski, *Rozwój nowożytnej...*, op. cit., p. 762; B. Szymańska, *Antoni Lange i myśl kantowska. Recepcja kantyizmu w okresie antypozytywistycznego przełomu w Polsce*, [in:] *Dziedzictwo...*, op. cit., p. 226.

⁶⁷ B. Szymańska, *Immanuel Kant*, "Nauka dla wszystkich" 1978, nr 289, p. 29.

⁶⁸ Compare O. Höffe, *Immanuel...*, op. cit., p. 229.

⁶⁹ See I. Kant, *The Saying: That a Thing May Be Right In Theory...*, http://oll.libertyfund.org/?option=com_staticxt&staticfile=show.php%3Ftitle=358&chapter=56090&layout=html&Itemid=27 (05.02.2010).

A Kantian principle of the social equality is revealed by the formula: it is impossible to make everybody be happy but everybody can be guaranteed equal freedom.⁷⁰ A principle of equality, in turn, means that everybody is equally subjected to the law; everybody but the highest authority in a state. When it comes to the principle of independence, it emphasizes a member of the community or, in other words, a citizen of the state as a co-legislator. Basically, the above-mentioned principles refer to a civil society where free and equal people, being rational and reliable citizens, are the co-creators of their obligatory laws. In this case, a civil society would mean a structure similar to the structure of a living organism, where every citizen is not only the means but also the end of its existence. M. Żelazny argues that a relation between a life of an individual and the existence of the whole society would remind of a harmonious union of a living organism; what is more, the harmony would fully rely on a complete obedience to the law.⁷¹

Kant's theory of the social agreement is based on the triple principle regarding the civil society where the law guarantees private freedom, equality in the light of the exterior law as well as civil independence in the state.⁷² It is not a historical fact but a pure idea of practical reason imposing a duty on the legislator to establish laws which are the will of the whole nation.⁷³ Thanks to it, a ruler is obligated to issue laws whose source would be in the united will of the whole nation; on the other hand, a subject, who wants to be a citizen, has to behave in such a way as to co-create that united will of the whole nation.⁷⁴ Kant calls such a unification of individuals the highest condition of a duty.⁷⁵ It means that every free and equal human can co-create the law which will be obligatory for every citizen in the state. According to Kant, in this way, a touchstone of all the laws, which a ruler can proclaim and establish in the state, is revealed by the following question: "(...) Can a people impose such a law on itself?⁷⁶ – if they had such a possibility.

⁷⁰ Ibid., pp. 19–20.

⁷¹ Compare M. Żelazny, *Idea wolności...*, op. cit., pp. 242 and 243.

⁷² Compare E. Wolicka, *Rozważania...*, op. cit., pp. 183–184.

⁷³ Compare I. Kant, *The Saying: That a Thing May Be Right In Theory...*, http://oll.libertyfund.org/?option=com_staticxt&staticfile=show.php%3Ftitle=358&chapter=56090&layout=html&Itemid=27 (05.12.2009).

⁷⁴ Compare Cz. Porębski, *Umowa społeczna...*, op. cit., pp. 106–107.

⁷⁵ Compare M. Szyszkowska, *Zarys...*, op. cit., p. 118.

⁷⁶ Compare I. Kant, *An Answer to the Question: "What is Enlightenment?"*, <http://www.english.upenn.edu/~mgamer/Etexts/kant.html> (05.12.2009).

Kant considered the issue of the appearance of a state in accordance with the concept of the law of Nature; thus, he did it in an individual way, assuming that an autonomous human being was a starting point. The idea of rational creatures in connection with the idea of a rational will as morally legislative should lead the reader to the notion of “kingdom of ends” or, in other words, such a state where a moral aim is achieved; at the same time the aim of Nature is also achieved according to which every human (citizen) will be treated as “the end in himself”. In this context Kant distinguishes between the state which is here and now and the state which should be or, in other words, the ideal “kingdom of ends”. Therefore, the Kantian definition of the state is described as a realization of legal laws on the one hand; on the other hand, it is described as communion of rational creatures under the rule of those laws.⁷⁷

7. Kant’s “kingdom of ends” and the republican system

A “kingdom of ends” (*Reich der Zwecke*) constitutes the idea which is nevertheless possible to realize as a world based on the authority of the reason.⁷⁸ A state, where no citizen is treated instrumentally, is a model of an ideal human community which, as M. Szyszkowska argues, will result in a harmonious unification of the idea of homocentrism with the idea of sociocentrism with the help of law. At the same time, the construction of such a state is the state which, being ideal, can only be approached by people to some degree. The world of rational creatures as a “kingdom of ends” will become possible due to the common legislation of every person who is a member of the kingdom.⁷⁹ Only a rational, free and moral individual can be a legislator for himself in the sphere of morality as well as a co-creator of law in the “kingdom of ends” as a “kingdom of freedom”.⁸⁰ Thus, “the kingdom of ends” has a moral character and, as such, it should be based on the postulate of freedom.⁸¹ “Freedom of volition – partly incited,

⁷⁷ See I. Kant, *Groundwork...*, <http://www.earlymoderntexts.com/pdf/kantgw.pdf> (05.02.2010); Compare H. Izdebski, *Historia myśli...*, op. cit., p. 178; M. Szyszkowska, *Europejska...*, op. cit., p. 56; *Zarys...*, op. cit., pp. 105 and 111.

⁷⁸ Compare E. Wolicka, *Rozważania...*, op. cit., pp. 166–167.

⁷⁹ Compare A. Chmielewski, *Spoleczeństwo otwarte czy wspólnota? Filozoficzne i moralne podstawy nowoczesnego liberalizmu oraz jego krytyka we współczesnej filozofii społecznej*, Wrocław 2001, p. 227.

⁸⁰ Compare E. Bieńkowska, *W poszukiwaniu królestwa człowieka. Utopia sztuki od Kanta do Tomasza Manna*, Warszawa 1981, p. 46.

⁸¹ Compare P. Beylin, *Kanta moralna filozofia wolności*, [in:] *Antynomie wolności. Z dziejów filozofii wolności*, Warszawa 1966, p. 258.

and partly restrained by moral laws – would be itself the cause of general happiness; and thus rational beings, under the guidance of such principles, would be themselves the authors both of their own enduring welfare and that of others”.⁸² Kant states that “only through morality that a rational being can be a law-giving member in the realm of ends; so it is only through morality that a rational being can be an end in himself.”⁸³ In such a way the Kantian “kingdom of ends” would also be the idea of “self-organizing morality”,⁸⁴ both in the dimension of an individual subject and in the common dimension of mankind.⁸⁵

While presenting a picture of such a state, where simultaneously everybody is a co-legislator and obliged to establish and follow the law and respect other members of the union who are also legislators, Kant takes a stand claiming that a man in the state can only be subjected to the laws which he has co-created.⁸⁶ “The concept of every rational being as one who must regard himself as giving universal law through all the maxims of its will, so as to judge himself and his actions from this standpoint, leads to the fruitful concept of a realm of ends”.⁸⁷ As a consequence, a citizen of “the kingdom of ends” has to obey laws proclaimed by himself. That is why only a member of the “kingdom of ends” can be recognized as a citizen with full rights,⁸⁸ who follows the law of his own will.

It was already in *The Critique of Pure Reason* that Kant, discussing “ideas in general”, stated in relation to Plato: “A constitution of the greatest possible human freedom according to laws, by which the liberty of every individual can consist with the liberty of every other (not of the greatest possible happiness, for this follows necessarily from the former), is, to say the least, a necessary idea, which must be placed at the foundation not only of the first plan of the constitution of a state, but of all its

⁸² I. Kant, *The Critique of Pure...*, <http://www.gutenberg.org/dirs/etext03/cprn10.txt> (05.12.2009).

⁸³ I. Kant, *Groundwork...*, <http://www.earlymoderntexts.com/pdf/kantgw.pdf> (05.12.2009).

⁸⁴ I. Kant, *The Critique of Pure...*, <http://www.gutenberg.org/dirs/etext03/cprn10.txt> (05.12.2009).

⁸⁵ Compare E. Wolicka, *Rozważania...*, op. cit., p. 166; See J. Kloc-Konkołowicz, *Kantowskie pojęcie jawności jako kryterium moralności i polityki*, [in:] *200 lat z filozofią Kanta*, M. Potępa, Z. Zwoliński (ed.), pp. 343–355.

⁸⁶ Compare L. Dubel, *Historia doktryn politycznych i prawnych do końca XIX wieku*, Warszawa 2002, p. 291.

⁸⁷ I. Kant, *Groundwork...*, <http://www.earlymoderntexts.com/pdf/kantgw.pdf> (05.12.2009).

⁸⁸ Compare A. Sikora, *Spotkania z filozofią*, Warszawa 1967, p. 203.

laws.”⁸⁹ Therefore, ideas, being high values, should be the aims ingrained into the common obligatory law. This is the aim which Nature has given to mankind. This is also the aim which Kant largely concentrates on in his social philosophy.

Kant highlights that a human, being “an intelligent creature”, is not only an autonomous legal subject but also, at least potentially, “a state man” or, in other words, the subject of the proclaimed law. While considering a legal status of a human, it is necessary to highlight three levels which he especially activates his performance on. Indeed, these levels correspond with the three types of the legal systems. Firstly, there is a reference to the system in accordance with the state law of every citizen who is a private individual having his own business; secondly, it refers to the system in accordance with an international law of the states regulating their mutual relations; and thirdly, it refers to the system in accordance with a cosmopolitan law where people (and states), remaining in mutual external relations, should be treated as the citizens of the common and international community.⁹⁰

The most perfect system is the republican system or, in other words, a civic system where an individual can be fully realized as a conscious and sovereign political subject. Kant’s republican system is an equivalent of the state under the rule of law based freedom, equality and civic subjectivity of every member. Kant claims that a state is a necessary condition of the triumph of the idea of law; similarly, the idea of law is perceived as a triumph of a practical reason. According to Kant, it is only through the state that the advancement of mankind is possible in the direction of what is good; therefore, it implies the realization of the most important idea of his practical philosophy, that is, the concept of “perpetual peace”.

A construction of the state under the rule of law in the shape of “common cosmopolitan state” as a “world republic” subordinated by the common law is a conscious aim of Nature and, therefore, the aim of history.⁹¹ In this context law becomes an element which in a rational way gives a direction and sense to mankind in the course of the history. According to Kant, the state has to be based to serve the law which, in turn, guards freedom through

⁸⁹ I. Kant, *The Critique of Pure...*, <http://www.gutenberg.org/dirs/etext03/cprn10.txt> (05.12.2009).

⁹⁰ Compare I. Kant, *The Saying: That a Thing May Be Right In Theory...*, http://oll.libertyfund.org/?option=com_staticxt&zstaticfile=show.php%3Ftitle=358&chapter=56090&layout=html&Itemid=27 (05.12.2009); I. Kant, *The Perpetual...*, http://files.libertyfund.org/files/357/0075_Bk.pdf (05.12.2009); See. F. Grootenboer, *The Three Principles of Kant’s Republic: An Interpretation*, [in:] *Kant wobec problemów...*, op. cit., pp. 41–48.

⁹¹ Compare J. Lacroix, *Historia...*, op. cit., pp. 39–40, 43, 50 and 52.

the assurance of equal limits of freedom for everybody. Being expressed by the above-mentioned statement regarding “social individualism”, it appears to be only a temporary stage on the road towards the realization of the project of “perpetual peace”. Kant argues that in future, after the “kingdom of ends” is created and “perpetual peace” is achieved, the positive law will become useless. Now it is only human imperfection that decides about the necessity of proclaiming a law; it becomes unnecessary when people start treating each other as “the end in themselves”. At the moment when the aim of Nature given to mankind and the moral aim of an individual meet themselves in the framework of the process of the history, it will be possible to recognize a complete realization of both “kingdom of ends” and the project of “perpetual peace”. A road, marked by Kant, is possible to be taken although it is rather long and strenuous. It is only up to people and their law, which is to guide them on this road, how long and in which manner it will be covered.

While mentioning articles definitive for “perpetual peace” as the ideal, which is to unite mankind,⁹² in the first place Kant points out a republican system of rules, next, he mentions a federal and peaceful relation of the states, and finally, he refers to a cosmopolitan law (which Kant limited to the explicitness of the conditions of common hospitality).⁹³ When one tries to develop the thoughts revealed by these articles, one may refer a republican system of rules to the modern model of the so-called democratic legal state as a civil society. A republican state, to Kant’s mind, is the “realm of ends where every citizen is exclusively the end of the society which he simultaneously co-creates”.⁹⁴

Zbigniew Kuderowicz claims that a republican system creates the guarantees of perpetual peace because it develops the idea of legal order⁹⁵ and similarly to it, it should be based on the same premises such as: the principle of freedom of every member of the society who are humans; second, the principle of dependence of every citizen on one law which is created

⁹² Compare K. Kuźmicz, *Kantowska koncepcja wiecznego pokoju jako przykład idei jednoczącej ludzkość*, [in:] *Wielokulturowość polskiego pogranicza. Ludzie – idee – prawo*, A. Lityński, P. Fiedorczyk (ed.), Białystok 2003, pp. 411–418.

⁹³ I. Kant, *The Perpetual...*, http://files.libertyfund.org/files/357/0075_Bk.pdf (05.12.2009); Compare Z. Kuderowicz, *Kant*, op. cit., p. 86 and following.

⁹⁴ Compare M. Żelazny, *O historiozofii Kanta – z umiarem*, [in:] I. Kant, *Przypuszczalny początek ludzkiej historii i inne pisma historiozoficzne*, J. Rolewski (ed.), Toruń 1995, p. 14.

⁹⁵ Compare Z. Kuderowicz, *Filozofia nowożytnej...*, op. cit., p. 521.

on a common basis, and finally, the idea of common equality.⁹⁶ Kant's republicanism was, first of all, a state principle of separation of executive power from legislation.⁹⁷ Nowadays this definition can be misleading for it is not about the form of rules but it is about the way of its performance. Therefore, it is possible to state that the Kantian concept of civil state relies on the same principles which shape a modern model of a democratic state under the rule of law. These are the principles of constitutionalism, division of power, national sovereignty, development of civil self-governance, and protection of basic social rights and freedoms. Citizens of the republic understood in this way will never proclaim wars for they are aware of pain connected with them.

The second definitive article is about a federal relation of states as a part of perpetual peace. Nowadays it is being realized in the frameworks of numerous international organizations of cooperation between nations such as the United Nations Organization or the European Union, which have been built efficiently since the end of World War II. These are relations between sovereign states who respect their mutually prepared and proclaimed acts of the international law. Nevertheless, no sooner than at the stage of the establishment of the international society the aim of mankind will be the realization of the project of "perpetual peace" or, in other words, the principle that every nation is not only a means but also the end of the existence of all the other nations who make mankind.⁹⁸

The third and the last definitive condition to lead to perpetual peace is connected with a cosmopolitan law. Looking for some connections with the contemporary world, one may highlight the idea of the world citizenship and a corresponding range of nontransferable rights that every citizen is entitled to in the frame of universal human rights.⁹⁹ Together with the realization of perpetual peace being the highest idea in the Kantian practical philosophy, its primary assumption will be fulfilled stating that a man, being a rational, free and moral creature, is always placed at the highest point of this hierarchy. As captured by Kant, the construction of perpetual peace begins from his theory of perception; next, it leads through ethics to finally reach the historiosophical points of the Kantian social philosophy, politics and law.

⁹⁶ Compare I. Kant, *The Perpetual...*, <http://files.libertyfund.org/files/357/0075-Bk.pdf> <http://www.gutenberg.org/dirs/etext03/cprn10.txt> (05.12.2009).

⁹⁷ Ibid.

⁹⁸ Compare M. Żelazny, *O historiozofii...*, op. cit., p. 14.

⁹⁹ See K. Kuźmicz, *Prawa człowieka i ich kantowskie inspiracje*, [in:] *Filozofia Kanta w XXI wieku*, M. Szyszowska (ed.), Warszawa 2005, pp. 125–134.

The principle of mankind, being the “end in itself”, should be realized both on the surface of a state life through “the kingdom of ends”, and on the surface of an international life through the idea of perpetual peace. A durable peace can only be fulfilled when the world faces justice, respect for human rights and the establishment of conditions of active and real participation of individuals in the creation of legal norms of the obligatory law.

8. Conclusions

From a theoretical point of view, the Kantian model of the state under the rule of law is very close to modern solutions. The only serious difference is connected with Kant’s view on democracy¹⁰⁰ which was not supported by him as it was, for example, by Jean Jacques Rousseau. On the other hand, one cannot be certain that Kant opposes democracy. What is more, he was never in favor of absolutism, even that enlightened one. In his concept the most significant was the rule of the republican system to come true which was understood by him in a specific way, as a system based on law, the principle of constitutionalism; the division of power with a special consideration of freedom of the press (media today) and protection of basic civil rights and freedoms as basic human rights. As captured by Kant, a history of mankind is a history of freedom.¹⁰¹ Therefore, the idea of freedom strictly connected with law was the foundation on which Kant built his practical philosophy. That connection gave way to the whole Kantian apologia of law.¹⁰² One can notice his rationalism, universality and an unconditional order to follow it as an imperative. Hence, Kant’s “kingdom of ends” constitutes an archetype of the state under the rule of law. An individual and his rights are the most important element there.¹⁰³ In this context an individual, who does not respect another individual, is deprived of the respect for the law since in “the kingdom of ends” it is every single individual that is the end in himself.

¹⁰⁰ See R. Kozłowski, *Kant o demokracji (zarys problematyki)*, [in:] *Filozofia a demokracja*, P. W. Juchacz, R. Kozłowski (ed.), Poznań 2001, pp. 105–108.

¹⁰¹ E. Nowak-Juchacz, *Immanuel Kanta droga do republikanizmu*, [in:] *Filozofia a...*, op. cit., p. 79.

¹⁰² Compare A. Kryniecka, *Kantowska apologia prawa jako czynnika umożliwiającego zaprowadzenie ładu społecznego*, [in:] *Silne państwo*, M. Szyszkowska (ed.), Białystok 1999, pp. 227–230.

¹⁰³ Compare K. Kuźmicz, *Jednostka w kantowskim “państwie celów”*, [in:] *Jednostka a państwo na przestrzeni dziejów*, J. Radwanowicz-Wanczewska, P. Niczyporuk, K. Kuźmicz (ed.), Białystok 2008, pp. 24–35.