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Scandalum acceptum and *scandalum datum*: Kant's non-Interventionism in the Fifth Preliminary Article of the *Perpetual Peace*

Scandalum acceptum e scandalum datum:
il non-intervenzionismo di Kant nel
quinto articolo preliminare della *Pace perpetua*

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ABSTRACT

Is it right to wage war to export democracy, or - as Kant would have said - to forcibly interfere in the constitution and in the government of another state with the goal of transforming it into a republic? The answer of Kant, contained in the fifth preliminary article of the *Perpetual Peace*, leans towards non-interventionism: a bad constitution can never justify a war, because it may be the root only of a *scandalum acceptum*. To understand the meaning of *scandalum acceptum* we have to become aware that it is a term originating from moral theology, which we should translate into the language of international law. The scandal, as it was still clear to Kant's contemporaries, is the sin of advertising a sinful behavior: but it is just a *scandalum acceptum* if the act that inspired others to sin has been done without the intention to give them a bad example. A flawed constitution can be only the occasion of a *scandalum acceptum* because its legal power does not spread its influence beyond the border of its state. If a nation chooses to imitate the allegedly wrong constitution of another state, its choice depends only on its sovereignty, because it is a matter of internal constitutional law. On the other hand, waging war against another country because of its allegedly flawed constitution is a worse kind of scandal, the *scandalum datum*, because it involves an international law principle of limited sovereignty according to which every state has the right to assault another state because of its constitution.

KEYWORDS: War; Peace; Constitution; Scandal; International Law

È giusto fare la guerra per esportare la democrazia, o, come avrebbe detto Kant, interferire con la forza nella costituzione e nel governo di un altro Stato con lo scopo di trasformarlo in una repubblica? La risposta di Kant, contenuta nel quinto articolo preliminare alla *Pace Perpetua*, inclina verso il non-interventismo: una cattiva costituzione non può mai legittimare una guerra, perché ciò può fornire le basi per uno *scandalum acceptum*. Per comprendere il significato di *scandalum acceptum* dobbiamo pensare che il termine proviene dalla teologia morale, che dobbiamo tradurre nel linguaggio del diritto internazionale. Com'era chiaro ai contemporanei di Kant, lo scandalo è il peccato di pubblicizzare un comportamento peccaminoso: ma è *scandalum acceptum* solo se il fatto che ispira altri a peccare è stato compiuto senza l'intenzione di dare il cattivo esempio. Una costituzione imperfetta può essere solo l'occasione per uno *scandalum acceptum*, perché l'influenza del suo potere legale non si estende oltre i limiti dello Stato. Se una nazione sceglie di imitare la costituzione sbagliata di un altro Stato, la sua scelta, in quanto materia del diritto costituzionale interno, dipende solo dalla sua sovranità. D'altra parte, fare la guerra contro uno Stato a causa della sua costituzione imperfetta è una specie peggiore di scandalo, lo *scandalum datum*, perché sottintende un principio di diritto internazionale di sovranità limitata secondo il quale ogni Stato ha il diritto di assalire un altro Stato a causa della sua costituzione.

PAROLE CHIAVE: Pace; guerra; costituzione; scandalo; diritto internazionale

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1. Scandalum acceptum and scandalum datum

Is it right to wage war to export democracy, or – as Kant would have said – to forcibly interfere in the constitution and in the government of another state with the goal of transforming it into a republic’?

The answer of Kant, contained in the fifth preliminary article of the *Perpetual Peace*, clearly leans towards non-interventionism. H.B. Nisbet translates it as follows:

«No state shall forcibly interfere with the constitution or government of another state.

For what could justify such interference? Surely not any sense of scandal or offense [*das Skandal*], perhaps, which a state arouses in the subjects of another state. It should rather serve as a warning to others, as an example of the great evils into which a people has incurred by its lawlessness. And a bad example which one free person gives to another (as a *scandalum acceptum*) is not the same as an injury to the latter. But it would be a different matter if a state, through internal discord, were to split into two parts, each of which set itself up as a separate state and claimed authority over the whole. For it could not be reckoned as interference in another state's constitution is an external state were to lend support to one of them because their condition is one of anarchy. But as long as the internal conflict is not yet decided come to this critical point, the interference of external powers would be a violation infringe of the rights of an independent people which is merely struggling with its internal ills. Such interference would be an active offense [*ein gegebenes Skandal*] and would make the autonomy of all other states insecure»².

In Kant's original text the German word *Skandal* occurs twice: *das Skandal*, *ein gegebenes Skandal* (a given scandal). He uses as well the Latin expression *scandalum acceptum* (scandal taken or received), whose meaning deserves to be explained.

Nisbet seems to feel the necessity to reinforce the first occurrence of *Skandal* by adding «or offense» and to conceal the second one – the «scandal taken» –, by rendering it as «an active offense»³. Kant, however, employs the pair *scan-*

¹ In the first definitive article of the *Perpetual Peace*, a republic is a civil society whose form of government is representative and honours the separation of powers. Therefore a republic cannot be a direct democracy, which is criticized in the same article; it may well be, however, a representative democracy (*Zum ewigen Frieden*, AK, VIII, 352).

² I. KANT, *Political Writings*, edited by H. S. REISS, Cambridge 1991², p. 96 (*Zum ewigen Frieden*, AK, VIII, 346).

³ The very same translation choice is shared by many non-English translators: the awareness of the technical meaning of *ein gegebenes Skandal* seems to be so uncommon that the word *gegebenes* remains usually untranslated. J.F. Poirer and F. Proust, for instance, render the sentence as “elle constituerait un scandale”, E. KANT, *Vers la paix perpétuelle, Que signifie s'orienter dans la pensée? Qu'est-ce que les Lumières?*, Paris 1991, p. 79. J. Gibelin translates it as: «ce serait bien là donner lieu à un scandale», E. KANT, *Projet de paix perpétuelle*, Paris 1990, p. 8. Likewise, in the Portuguese translation of Artur Morão we read: «seria, portanto, um escândalo», I. KANT, *A Paz Perpétua. Um Projecto Filosófico*, Covilhã 2008, p.7. The Spanish translation of Joaquín Abellán (I. KANT, *Sobre la paz perpetua*, Madrid 1998, p. 9) renders the same sentence as: «sería, incluso, un escándalo», while there is a mark of awareness – as we can see from her *Introducción* - in Kimana Zulueta - Fülischer's version: «y se constituiría en un escándalo propiamente dicho», *Sobre la paz perpetua*, Madrid 2011. Eventually, according to the Italian translator Filippo Gonnelli (I. KANT, *Scritti di storia*,



datum acceptum – scandalum datum in a very specific meaning, pertaining to the field of moral theology, whose understanding offers a clearer insight of the legal basis of his case for non-intervention.

According to the [Merriam-Webster](#) dictionary, one of the most common meanings of the word “scandal” is «a circumstance or action that offends propriety or established moral conceptions or disgraces those associated with it». If Kant's *Skandal* were to be read in its ordinary meaning, which has only a loose connection to its theological root, it might well be translated as “offense” without depleting the sense of his text. However, there is a key phrase – the *scandalum acceptum* – hinting that Kant is employing the word in its theological meaning.

Theologically⁴, a direct scandal is the deliberate, intentional endeavour to lead someone into sin by our bad example. It is, in other words, the sin of advertising another sin. However, if we do not have the intention of giving scandal by our behaviour, but someone else follows our example nevertheless, the resulting scandal is called indirect. The direct and the indirect scandal are linked to an act and to its advertisement – unintentional or not – done by the scandalizing person: therefore, they both belong to the active side of the scandal.

The scandal has a passive side as well, in the behaviour of people committing a sin by following the bad example of others. A passive scandal might be either *datum et acceptum* or *mere acceptum*. It is *datum et acceptum* when it is linked, on the active side, to a direct scandal; it is just *acceptum* if the act from which the sinner has taken inspiration has been done without the intention to give others a bad example. In the latter case, the responsibility of the sin lies only on the shoulders of the sinner: he has no one but himself to blame, because no one had the intention to lead him into sin. The scandalizing act, indeed, might be objectively or subjectively good as well: it is just an accidental cause of a sin originating only from the interpretation and the choice of the scandalized.

Scandalum

Active:	direct	indirect
• Passive:	• <i>datum et acceptum</i>	• <i>mere acceptum</i>

politica e diritto, Roma-Bari 1995, p. 205, footnote 8) *scandalum acceptum* means, indeed, «welcome scandal», see M.C. PIEVATOLO, in I. KANT, *Sette scritti politici liberi*, Firenze 2001, p. 197-198.

⁴ See, still outstanding for its clarity, B. HÄRING, *Das Gesetz Christi. Moraltheologie. Dargestellt für Priester und Laien*, Freiburg i. B. 1961 ff, book II, section II, part 1.2, chapter II.

According to Kant, a bad constitution can never justify a war, because it may be the root only of a *scandalum acceptum*. To understand the meaning of *scandalum acceptum* in the context of the *Perpetual Peace*, we have to translate it from the language of moral theology to the language of the law. A flawed constitution can be only the occasion of a *scandalum acceptum* because its legal power does not spread its influence beyond the border of its state. If a nation chooses to imitate the allegedly wrong constitution of another state, its choice – just like in the *scandalum acceptum* – depends only on its sovereignty, because it is a matter of internal constitutional law. None else is to blame: even a despotic constitution is hardly an international law violation.

On the other hand, Kant calls the armed interference of a state in the internal affairs of another country «a given scandal» (*ein gegeben Skandal*), locating such an action on the active side of the sin of *scandalum*. A *scandalum datum* is not just a sin, or an action represented as such by others, but a sin advertising itself. In the language of the law, a state waging war against another country because of its allegedly flawed constitution is claiming an international law principle concerning the relations among sovereign states: it is advocating a kind of limited sovereignty principle according to which every state has the right to assault another state because of its constitution. Such a principle may be invoked by a republican president to export a republican system, but it might be used as well by a despotism to suppress a republic. While a bad constitution does not exceed the borders of its state, such an intervention principle affects the international sphere as a whole, because whoever embraces it applies it abroad, to the relations among states.

If we place Kant's article into the French Revolution historical context, we see that it advocates the liberty of the French people to choose their constitution without any interference, in spite of the outrage among the monarchies of Europe; but it implies as well a condemnation of the 1792 war declared by France on Austria to export the principles of revolution. Kant's ideas on interventionism were hardly conservative or counter-revolutionary: in 1792 they were shared by Robespierre himself.

«The most extravagant idea that can arise in the head of a politician is to believe that it is enough for a people to enter armed among a foreign people and expect to have its laws and constitution adopted. No one likes armed missionaries; and the first advice of nature and of caution is to repulse them as enemies»⁵.

However – someone might object – how can we be sure that Kant did use the words *Skandal* and *scandalum acceptum* with such a theological awareness?

⁵ M. DE ROBESPIERRE, *Sur la guerre (1^{ère} intervention) Discours prononcé au club des Jacobins le 2 janvier 1792*, <http://www.royet.org/near789-1794/archives/discours/robespierre_guerre_02_01_02.htm>. Transl. quoted from <http://www.zenker.se/History/July_1/july_1.shtml>.



And how can we be sure that Kant's contemporaries were acquainted with the jargon of moral theology? Such an objection can be answered by at least two textual evidences.

1. In the *Vorlesung zur Moralphilosophie*⁶ we find the following passage: «All *scandala* are either *data* or *accepta*. The first are those which inevitably constitute a necessary ground of evil consequences for the morality of others. The second, those which merely represent a contingent ground». Such a definition, applied to the *Perpetual Peace* fifth preliminary article, implies, on the one hand, that the connection between an allegedly bad constitution and its imitation abroad is only accidental, as a *scandalum acceptum*; on the other hand, that the intervention principle, as a *scandalum datum*, is necessarily linked to the international order disruption.
2. In 1796 Fichte, reviewing the *Perpetual Peace*⁷, explains its fifth preliminary article as follows: «“No state should forcibly interfere with the constitution and government of another state” - not even, for example, under the pretext of scandal. There is always a certain amount of *scandalum acceptum*, and such foreign interference is itself a great scandal»⁸.

What, today, needs an explanation was still clear to Kant's contemporaries: Fichte dismisses the scandal caused by an allegedly bad constitution as a pretext because he still understands the meaning of the expression *scandalum acceptum*.

While our positive law tradition has accustomed us to place moral theology and international law in two different disciplinary fields, it was not so in the language of the natural law culture, even when it advocated a separation between theology and law. For instance, in [De Jure Naturae et gentium Libri Octo](#), Pufendorf recalls the theological expression *scandalum acceptum* to draw a legal conclusion: «a Man who exerts a good and necessary Action is by no means

⁶ I. KANT, *Vorlesung zur Moralphilosophie*, hrsg. v. W. Stark; Berlin 2004, p. 161, based on the Kaehler notes. «Alle *Scandala* sind entweder *Scandala data* oder *accepta*. *Scandalum datum* ist was nothwendigerweise ein nothwendiger Grund ist von bösen Folgen auf die Sittlichkeit anderer; *scandalum acceptum* ist was nur ein zufälliger Grund von bösen Folgen auf die Sittlichkeit anderer ist». The English translation is by P. Heath, from I. KANT, *Lecture on Ethics*, ed. by P. HEATH and J.B. SCHNEEWIND, Cambridge 1997, p.117 (based on the Collins notes).

⁷ J.G. FICHTE, *Gesamtausgabe der Bayerischen Akademie der Wissenschaften: 1793-1795*, Stuttgart 2008, ser. 1, vol. 3, p. 222.

⁸ Transl. by D. BREAZEALE, J.G. Fichte, *Review of Immanuel Kant, Perpetual Peace: a Philosophical Sketch* (Königsberg: Nicolovius, 1795), «Philosophical Forum», XXXII,4/2001, p. 312.

the Cause of Sin in another Man, who shall thence take Occasion of offending. Thus we commonly say, He who uses his own Right does no body any Wrong»⁹.

2. Interlude: A Matter of Translation

As we have seen, Nisbet's translation shows no awareness of the theological meaning of Kant's "scandal". It could be interesting to check whether other, more recent, translations are sharing its flaw.

1. The 2012 translation by Ian Johnston is freely accessible on the Internet. A translator's note explains the meaning of *scandalum acceptum* as follows:

«A *scandalum acceptum* is a term from Catholic theology. *Scandalum* (scandal) refers to an evil act (or failure to act) which leads to someone else's spiritual ruin. A *scandalum acceptum* (a received scandal) is a term for an action which is perceived as scandalous thanks to the ignorance or weakness of the person judging it (when, in fact, the person carrying out the action may have behaved quite morally according to his own standards)»¹⁰.

Johnston is aware of the theological meaning of the word *scandalum*, but he misses the connection of the *scandalum acceptum* with the passive side of the sin of scandal. The question, on the passive side, is not how accurately we are judging an action, but what we are going to do after having seen it. On the active side of a *scandalum acceptum* there is no given scandal just because there is no intention to set a bad example by one's own behaviour, however bad, good or indifferent it might be. In legal terms: as the scope of a constitution, however bad it might be, does not spread beyond the border of its state, the countries imitating it are the only responsible for their choice.

2. In 2010 Jonathan Bennett published his translation¹¹ of the *Perpetual Peace* within the project [Early Modern Texts](#). His note about the fifth preliminary article is as follows:

«In the rest of this paragraph, 'scandal' (German *Skandal*) is being used in something like its theological sense (quoting the *Shorter Oxford*) of 'moral perplexity caused by the conduct of a person looked up to as an example'. The Latin *scandalum acceptum* is a technical term from Thomist theology. You might think that state x is authorized to interfere with state y if y's subjects behave in ways that create a scandal for x's subjects. But that's not right. A better response to that kind of thing is to exhibit y not as a temptation but as a warning of what can happen if a state lets its people behave lawlessly. In such a *scandalum acceptum* – i.e. *letting that behaviour happen rather than stepping in and putting a stop to it*– the leaders of x are perhaps setting a bad example to others, but they aren't doing harm»¹².

⁹ S. V. PUFENDORF, *De Iure Naturae et gentium Libri Octo*, Frankfurt a.M. 1694, I.V, p. 70 (transl. by B. Kennett, *Of the law of nature and nations: Eight books*, London 1729 I.V, p.46).

¹⁰ I. KANT, *On Perpetual Peace. A Philosophical Sketch*, transl. by I. Johnston, 2012 <<http://records.yiu.ca/~johnstoi/kant/peace.htm>>.

¹¹ I. KANT, *Toward Perpetual Peace. A Philosophical Sketch*, 2010 <<http://www.earlymoderntexts.com/pdfbits/kpeac1.pdf>>.

¹² *Ibidem*, p. 3.



Bennett seems to be aware of the theological meaning of *scandalum*. Aquinas, indeed, draws a distinction between active and passive scandals; he admits, as well, the possibility of a passive scandal that is not connected with an active scandal:

«Another's words or deed may be the cause of another's sin in two ways, directly and accidentally. Directly, when a man either intends, by his evil word or deed, to lead another man into sin, or, if he does not so intend, when his deed is of such a nature as to lead another into sin: for instance, when a man publicly commits a sin or does something that has an appearance of sin. On this case he that does such an act does, properly speaking, afford an occasion of another's spiritual downfall, wherefore his act is called "active scandal". *One man's word or deed is the accidental cause of another's sin, when he neither intends to lead him into sin, nor does what is of a nature to lead him into sin, and yet this other one, through being ill-disposed, is led into sin, for instance, into envy of another's good, and then he who does this righteous act, does not, so far as he is concerned, afford an occasion of the other's downfall, but it is this other one who takes the occasion* according to Romans 7:8: "Sin taking occasion by the commandment wrought in me all manner of concupiscence". Wherefore this is "passive", without "active scandal", since he that acts rightly does not, for his own part, afford the occasion of the other's downfall. Sometimes therefore it happens that there is active scandal in the one together with passive scandal in the other, as when one commits a sin being induced thereto by another; sometimes there is active without passive scandal, for instance when one, by word or deed, provokes another to sin, and the latter does not consent; and sometimes there is passive without active scandal, as we have already said»¹³.

Aquinas' distinction between active and passive scandal mirrors the distinction between *scandala data* and *accepta* of the *Vorlesung zur Moralphilosophie*. On the one hand, just like in Aquinas' active scandals, in the *scandala data* there is a necessary connection between the sin of the scandalizer and the sin of the scandalized; on the other hand, such a connection is only accidental or contingent both in Aquinas' passive scandals and in Kant's *scandala accepta*. Bennett, then, is right in tracing the root of Kant's expression in Thomist theology. He misunderstands, however, the technicality of the *scandalum acceptum*, which is, in the language of the *Summa*, just a passive scandal without an active side, and not the acquiescence to a sinful behaviour.

3. A seeming exception to the non-interventionism rule: civil war

While innovating the matter of the modern international law, the preliminary articles are still preserving its form. In fact, they do not jeopardize the principle of state sovereignty¹⁴ and the international law consensual nature.

¹³ AQUINAS, *Summa Theologiae*, II²-IIae q. 43 a. 1 ad 4. Transl. by the Fathers of the English Dominican Province, *Summa Theologica*, 1920; online edition 2008 <<http://www.newadvent.org/summa/3043.htm>>, italics mine.

¹⁴ See for instance, on the matter of the fifth preliminary article, E. de VATTEL, *Le droit des gens*, II, IV, §55: «Le souverain est celui à qui la nation a confié l'empire et le soin du gouvernement; elle l'a revêtu de ses droits; elle seule est intéressée directement dans la manière dont le conducteur qu'elle s'est donné use de son pouvoir. N'appartient donc à aucune puissance étrangère de prendre con-

And, in dealing with war, they theorize only a *ius in bello*, without invoking any kind of *ius ad bellum*.¹⁵ According to the annotation to the sixth preliminary article (AK, VIII, 346), war is only a regrettable expedient imposed by the necessity of the state of nature, because no court of justice is available: without an impartial tribunal, no enemy can be considered an unjust enemy. The outcome of a war may reveal which fighter is stronger, but it cannot establish who is right; without a legitimate judge, the reasons of law and the reasons of force cannot overlap. War may be unavoidable, but it cannot be just.

The fifth preliminary article seems to contain an exception to the rule: when a state is in a condition of civil war and anarchy, an armed interference might be allowed. Would it be accurate, however, to call an intervention of that kind “a just war”?

As we have seen, war is a – regrettable – way to settle controversies if we are in state of nature, because no impartial court of justice is available. It is, in other words, a solution – however dismal – only if we are still or again in a state of nature. And when a civil war is actually being fought within a country, it is clear that there is no civil constitution any longer. Therefore, an armed interference of another country is simply an intervention in a state of nature. The expedient of war – both among states and within collapsed states – is always the mark of the state of nature: its very use denotes the lack of a system of justice.

In conclusion: the scrutiny of the fifth and sixth preliminary articles of the *Perpetual Peace* yields two results.

1. Justifying an armed intervention as a way to improve the allegedly bad constitution of the enemy does not help to abolish war as a means of settling international controversies: it makes it more likely.
2. A peace-enforcing or a peace-keeping intervention in a civil war is just a war like the others: not better, not worse.

Even without discussing whether the definitive project of the *Perpetual Peace* is federal or confederal, it is clear that its two last preliminary articles sketch an international order that is not very close to our current international situation¹⁶. Kant's dream is deeply rooted in the *jus publicum europaeum* tradition: the first step to overcome war as a means to solve international controver-

naissance de l'administration de ce souverain, de s'ériger en juge de sa conduite, et de l'obliger à y rien changer».

¹⁵ R. KOLB, *Origin of the twin terms jus ad bellum/jus in bello*, «International Review of the Red Cross», 320/1997, pp. 553-56 <<http://www.icrc.org/eng/resources/documents/misc/57jnuu.htm>>.

¹⁶ *Contra*: see J. RAUBER, *The United Nations – a Kantian Dream Come True? Philosophical Perspectives On The Constitutional Legitimacy Of The World Organization*, «Hanse Law Review, The E-Journal on European, International and Comparative Law», 5,1/2009 <<http://www.hanselawreview.org/pdf7/Vol5No1Arto4.pdf>>.



sies is resisting the temptation to moralize it by disguising its violence under humanitarian justifications and re-learning to see it as a problem.

4. Why being so fastidious about such philological details?

Philology is our only way of keeping texts alive – for instance by dissecting the meaning of words that used to be clear to contemporary ears, but have become obscure to today's scholars and translators, because they belong to a field that is not common knowledge any longer. I discovered the frequency of the above mentioned misleading translations of the fifth preliminary article by translating Kant's political writings in my mother-tongue. I found the very same specialized blindness in many current European translations as well, even if they rely on a much wider public of scholars and readers.

In such a perspective, it is also peculiarly senseless to subject the translations of classical philosophical texts to a full copyright, instead of using a Creative Commons license. If scholars could work together to ameliorate – and update – a common version, they would avoid a lot of repetitive work and the public of readers and citizen scientists would have the opportunity to deal with one state-of-the-art translation, constantly under discussion and improvement. For this very reason, in publishing a new translation of Kant's political writings, I chose to subject it to a [Creative Commons Attribution Share-Alike License](#). If the same licensing policy were applied to Kant's English versions as well, it would become obvious to a wider public that philology could be more than fastidiousness, because a text can live only if it is being kept constantly alive by the cooperation of generations and generations of scholars and readers and their free public use of reason.