

From International Law to Romantic Poetics: Legal Historical Observations on Friedrich Schlegel

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It is well known that Friedrich Schlegel, the leader of the prodigiously creative Jena-circle, was the most important theoretical exponent of Romantic poetics. Little known, however, is the fact that his theoretical speculation on Romantic poetry commenced with a treatise on international law, or more precisely with a review of Kant's treatise on international law *Zum ewigen Frieden* of 1795. The starting-point for Kant's considerations is the intrinsic paradoxical nature of international law: the modern state that asserts its sovereignty by making and enforcing laws stands itself above and beyond the law, as subjecting itself to the law would mean nothing else than forfeiting its own sovereignty. This paradox became obvious the moment international law came into being in the seventeenth century as the law regulating the relations between sovereign states. The increasing realization of this paradox plunged international law in a deep crisis in the late eighteenth century. Romantic poetics and criticism, as this essay will argue, can be, indeed must be, understood in conjunction with, and as a response to, this crisis.¹

The Crisis of International Law from Hobbes to Kant

International law as the law governing the relation between sovereign states is a successor to the *ius gentium* in Roman law. Justinian's *Corpus Iuris Civilis* distinguishes three sources of law: first, *ius naturale*, i.e. what nature has taught all living beings, including both animals and humans; second, *ius gentium*, i.e. that which natural reason has established for all human beings, and which all peoples must follow; and finally *ius civile*, i.e. what every people has made for itself. According to the *Digest*, *jus gentium*, usually translated as "law of all peoples", comprises a wide range of legal matters such as worship of God, funeral, obedience to parents, right to self-defense, slavery and manumission, commerce, and all kinds of contractual relationships, recognition of property, delimitation of farmland, assignment of construction sites, law of war, and so on. In the seventeenth century, *ius gentium* underwent a profound transformation from the "law of all peoples" to the law concerned with the dealings between sovereign states.² The crux of this transformation was Thomas Hobbes' theoretical construction of the state.

Hobbes's theory of the state is premised upon the fiction of the state of nature, in which everyone has the right to everything and thus inevitably comes into conflict with everyone else. In order to escape this war of all against all in the state of nature, people come together and, by mutual covenants one with another, transfer their right of governing their selves to one sovereign person. This sovereign person is the civil state.

The civil state transforms the war of all against all into civil peace by imposing laws on its subjects, but by no means ends war as such. With its institution, the right of war is just transferred from every particular man to the one person who represents all, i.e. to the sovereign person. The sovereign person is both entitled and obliged to make war and peace – entitled, because he is granted the authority by the contracting people, obliged, because the authority imposes on him the responsibility of defending the people. The transferal of the right of war from every particular man to the artificial sovereign person means that the sovereign henceforth finds himself in the state of nature vis-à-vis other sovereign persons. The institution of the civil state thus has the effect of drawing a distinction – the distinction between inside and outside. Inside the civil state there is peace, law, and order. Outside there is war and lawlessness, or simply the state of nature. The sovereign is located on the boundary between inside and outside, creating and enforcing peace and lawful order inside, while making war against other sovereign states outside. The “sword of war” is held in the same sovereign hands “wherein is the sword of justice: and consequently those two swords are but one.” (HOBBS, [1640] 1994, p.112-113).

One implication of this asymmetrical relationship between inside and outside is the denial of international law. With the inside identified with legal order, the outside figures as an extralegal space. The co-existence of civil states as sovereign persons in the state of nature is characterized by the lack of enforceable civil laws that govern the internal working of the state. Hobbes concludes *The Elements of Law*, the first exposition of his political philosophy, with a terse statement:

And thus much concerning the Elements and general grounds of Laws Natural and Politic. As for the law of nations, it is the same with the law of nature. For that which is the law of nature between man and man, before the constitution of commonwealth, is the law of nations between sovereign and sovereign, after. (HOBBS, p.182)

Even though the law of nature is called law, it does not constitute a legal order. Because in the state of nature everyone has a right to everything, it is a general rule of reason, or the fundamental law of nature, that every man “ought to endeavour Peace, as farre as he has hope of obtaining it.” This law, however, comes with the basic natural right of man which is: “when he cannot obtain [peace], he may seek, and use, all helps, and advantages of Warre.” (HOBBS, [1651] 1996, p. 92). The second law of nature is that one should be willing to lay down his rights to everything by entering into a contract with the other in order to obtain peace. Yet without a civil authority ensuring that the contract be honored, it can be violated or revoked whenever a contracting party believes that doing so may be more advantageous. A state may well want to have peace, but must be prepared for war. It may be willing to sign a treaty with others, but can always terminate it. Without a higher authority, there could be no true legal order. As long as the state insists on its sovereignty, there could be no higher authority.³

Hobbes’ chilling denial of the existence of binding legal norms in the international arena, hence the impossibility of world order, was neither palatable to those still reminiscing about the *respublica christiana*, nor acceptable to those who came to trust the unifying power of human reason. In the wake of Hobbes, numerous attempts were made to envision an international legal order. Standard histories of international law distinguish three major approaches: first, there were the naturalists who, at once in

deference to Hobbes, believed to be able to derive binding norms from the state of nature itself; then there were the positivists who insisted on the existence of positive laws between states; and finally, there were the syncretists, also referred to as Grotians, who, following Hugo Grotius, considered nature and voluntary agreements of states as the dual source of international law.⁴ All these approaches, however, are bedeviled by irresolvable theoretical difficulties - difficulties entailed by the rise of a dualistic concept of law in the age of Hobbes. Whereas jurists in the sixteenth and early seventeenth centuries still conceived of the entirety of law as a just or rational order, from the mid-seventeenth century onwards this appreciation of a consistent, unified judicial order gradually came to be abandoned. Even though natural, rational law continued to be recognized as valid, jurisprudence decoupled the positive law from universally binding norms of natural justice, viewing it instead as something value-free that issues from the will of the sovereign.⁵ This dualistic concept of law made the legal status of the relationship between sovereign states a moot point. Insofar as this relationship concerns the vital interests of the state, the sovereign understandably seeks to subject it to his will. Yet because it is a matter of more than one state, it extends beyond the reach of one single legislative will, and therefore seems to fall within the purview of natural reason. Such a paradoxical quality of falling under the sway of the sovereign will yet exceeding it at the same time, of being susceptible of both the legislative will and natural reason at once, makes neither the naturalist, nor the positivist, not even the syncretistic approach appear to be adequate.

Kant proves to be more clear-sighted and more candid than all previous jurists - be they naturalists, positivists, or syncretists -, when he states in *Zum ewigen Frieden*: “Although it is largely concealed by governmental constraints in law-governed civil society, the depravity of human nature is displayed without disguise in the unrestricted relations which obtain between the various nations. It is therefore to be wondered at that the word *right* has not been completely banished from military politics as superfluous pedantry, and that no state has been bold enough to declare itself publicly in favour of doing so.” Kant continues to call all the significant theorists of international law – “Hugo Grotius, Pufendorf, Vattel and the rest” – “sorry comforters” (*lauter leidige Tröster*), for they “are still dutifully quoted in *justification* of military aggression, although their philosophically and diplomatically formulated codes do not and cannot have the slightest *legal* force, since states as such are not subject to a common external constraint.”¹ KANT [1795] 1991, p. 103).

Clearly, Kant shares the basic Hobbesian position that individual states face off each other in the state of nature, which is a condition of constant war. Thus international law can be nothing else but the law that governs the state of nature, the law that, lying outside civil authority as it does, lacks any binding power. Yet Kant is reluctant to endorse the Hobbesian denial of the existence of a world legal order.⁶ From Pufendorf onwards, natural jurisprudence seeks to affirm the existence and validity of world order by deriving it from obligation dictated by reason. In spite of the paramount importance attached to reason in his philosophy, Kant does not take this route. Doing so would have turned him into one of the “sorry comforters” whom he so ridicules. As much as he emphasizes that a peaceful world order is a demand of reason, just as little does he believe that reason itself can ensure its attainment. This is so simply because the world we inhabit is not an ideal “kingdom of ends”, but a real world of rival states ruthlessly

pursuing their own interests. If we want to find out how to achieve the morally requisite goal of a peaceful world order in this real world, it is just insufficient, indeed misguided, to keep calling upon reason and the obligation it postulates. In contrast to all the “sorry comforters”, Kant adopts an entirely new approach to the vexing problem of world order. Rather than try to explain world order in terms of obligation, he considers it as an end or purpose posited by reason, which needs to be achieved in the empirical world or nature. This shift of attention means that he seeks the conditions of possibility of world order not so much in practical reason itself as in the power of judgment that makes sense of nature in light of the ends established by practical reason. Rather than a postulate of practical reason, the attainment of world order figures as a principle of the power of judgment, which is the purposiveness of nature. Since purposiveness is a principle that the power of judgment gives to itself in reflecting on nature rather than a law prescribed to nature or a universal moral law prescribed to every rational being, it is purely subjective. Kant’s philosophical re-thinking of international law, therefore, implies above all the subjectivization of world order.

World Republicanism: Friedrich Schlegel’s Reconceptualization of World Order

The Kantian subjectivization of world order points a way out of the crisis of international law caused by the irresolvable problem of legal obligation in the international arena. Yet he still remains within the conceptual framework of natural jurisprudence in that his theory of the political proceeds from such basic notions as the state of nature and the natural right of the individual. In this review of Kant, *Versuch über den Begriff des Republikanismus veranlaßt durch die Kantische Schrift zum ewigen Frieden* (1796), Friedrich Schlegel moves beyond from Kant, and thereby also beyond the entire natural-law tradition.

In a radical departure from almost all political thinkers since Hobbes, Schlegel does not proceed from the concept of the individual person in his theorization of the political, but from sociability, i.e. from the relation between individuals. Apart from the capacity that the human being possesses as a pure isolated individual, Schlegel postulates that the human being also has a “capacity for communication [*das Vermögen der Mitteilung*] in relation to other individuals of its species,” that “human individuals actually do, or at least could, stand in a relation of reciprocal natural influence to one another.” (SCHLEGEL, [1796], 1958, VII, p. 14).⁷ This transcendental postulate of human communication entails a specific modification of the practical imperative: the proposition of critical philosophy “the ego should be” [*das Ich soll sein*] is henceforth replaced by the proposition “‘the community of humanity should be’ or ‘the ego should be communicated.’” Such a modification of practical imperative, Schlegel argues, “is the foundation and subject matter of politics” – it turns the practical imperative into a political imperative (SCHLEGEL, [1796], 1958, VII, p. 15).

What Schlegel proposes here is nothing short of a complete reversal of perspective in modern European political thought. Whereas political theorists from Hobbes and Locke to Rousseau and Kant all presumed human nature to consist, first and foremost, in the natural rights and obligations of the individual person, thus trying to construct the political out of the individual, Schlegel considers human nature above all to consist in community, in the external relations of men to one another, in short, in the

political, insisting that the individual person must be seen as a member of a community. Instead of constructing a theory of the political on the basis of the doctrine of natural right, a doctrine which revolves around the rights and obligations of the individual person, as had been the case since Hobbes, Schlegel reduces natural jurisprudence to the subordinate position, deriving it from the theory of the political. One of the *Athenäums-Fragmente* (1798) mercilessly discredits the validity of natural right: “There are people who, alongside their other rights that are often so unlawful (*unrechtlich*), also have a natural right that is more often than not even more unlawful. Such people also call themselves philosophical jurists” (SCHLEGEL, [1798], 1967, II, p. 253, Nr. 442). In the practical section of his lectures on transcendental philosophy, delivered in Jena between 1800 and 1801, Schlegel warns the audience from the outset: “Here you should not expect to get a conventional doctrine of natural right” ([1800-1801] 1964, XII, p. 44). Then he continues: “Here politics is posited as the principle, and jurisprudence becomes something applied, something derived. This is simply how the main concepts stand. There could be a society even if there were no right, namely a society that would be above right” ([1800-1801] 1964, XII, p. 49). This reversal of the relationship between political theory and natural jurisprudence is repeatedly emphasized: “Conventionally jurisprudence is regarded as the positive, and politics is the subordinate; but here it is the other way round. Politics (namely as the science of society) is here the positive, and jurisprudence is subordinate” ([1800-1801] 1964, XII, p. 84).

Schlegel’s break with the natural-law tradition in thinking the political has the effect of obviating the difficulties of political and legal theory with conceiving world order. Assuming the natural right of the individual person to the preservation of his existence, political thinkers were used to constructing the state as a corporate person that most efficiently ensures the rights of individuals by enforcing law and order. Such a construction of the state forecloses the possibility of a lawful world order, because the state as a sovereign person cannot submit to a higher lawful order without forfeiting its sovereignty. Redefining the human in terms of communication or relations between individuals, Schlegel conceives of the state not as a corporate person, but as “a human society, whose goal is the community of mankind,” or in other words, as “an uninterrupted mass, a coexistent and successive continuum of human beings, the totality of which stand in a relation of physical influence to one another, for instance all inhabitants of a country, all descendants of a family” (SCHLEGEL, [1796], 1958, VII, p. 15). In order truly to realize the political imperative – the imperative that “the community of humanity should be” – the state must fulfill two conditions: first, it must have a republican constitution; second, it must join hands with other republican states to go beyond the partial republicanism of a single state and achieve a universal republicanism of the world. Whereas a particular republican state consists of “a coexistent and successive continuum of human beings,” the universal republic of the world is made up of a coexistent and successive continuum of individual republican states.⁸ World order is homologous to, and continuous with, the republican civil order of a single state. The asymmetry between the lawfulness of the civil order and the anomie of the international arena, which has bedeviled political theory so far, is thus overcome, so it becomes possible to speak of not merely civil peace of the state, but also perpetual peace of the world at large: “Only a universal and perfect republicanism would be valid, but also the only sufficient definite article for eternal peace” (SCHLEGEL, [1796], 1958, VII, p. 22).

Indeed, it becomes possible to speak of a world civil order that is founded on international law or *ius gentium*, just as the civil order of a single state is founded on state law or *ius civile*.

From World Republicanism to Romantic Poetics

Schlegel's vision of perpetual peace and a world civil order evidently hinges on the notion of republicanism. It is in explicating this notion that the first seeds of his gnomic pronouncements on poetics in the heady years of *Athenäum* are sown. In early Romanticism, poetics replaces jurisprudence in imagining world order.

In a certain sense, republicanism is the corollary of the political imperative. The imperative that "the community of humanity should be" requires that the general will, rather than the particular will of an individual or a group, form the basis of all particular political activities. And "just this is the character of republicanism" (SCHLEGEL, [1796] 1958, VII, p. 15). However, the absolute general will "does not occur in the realm of experience and exists only in the world of pure thought. [...] There is no solution here other than, by means of a *fiction*, to regard an empirical will as the *surrogate* of the a priori absolute general will" (VII, p. 16). Such a fiction, the highest *fictio juris*, is not random or fortuitous. Any attempt to inflate the private will of an individual person or of a group into the general will would amount to despotic arrogance. "The only valid political fiction is that based on the law of equality: *the will of the majority* should be the surrogate of the general will" (VII, p. 17). Yet in most cases it is impossible for the majority of the people to act in person, so deputies and commissars are almost always necessary: "Hence political representation is certainly an indispensable organ of republicanism" (VII, p. 17-18). The form of fiction and the form of representation make up the constitution, namely the "totality of all permanent relations of political power and its components" (VII, p. 18).

"Fiction" and "representation" are concepts native to poetics. Employing them as conceptual tools for elaborating the notion of republicanism, Schlegel initiates what can be called the poetological conceptualization of the political. This poetics of the political addresses, first, the form of fiction, i.e., the way in which the empirical will of the majority stands in for the absolute general will, and second, the form of representation, that is, the way in which particular elected individuals or deputies stand in for the majority of the people. Insofar as the constitution concerns the form of fiction and the form of representation, the explication of republicanism boils down to nothing else than a poetics of the constitution. "The technical perfection of the constitution," Schlegel states, "is measured by the degree of approximation of its individual form of fiction and representation to the absolute (though impossible) adequacy of fiction to the fictionalized, the representation to the represented" (VII, p. 21). The poetics of the constitution, then, has basically two tasks: first, to analyze the degree to which the *actual* form of fiction and representation approximates to the absolute adequacy of fiction to the fictionalized, the representation to the represented; and second, to establish *how* to approximate to this absolute adequacy. The former is descriptive, and the latter prescriptive. The distinction between the two is fluid, as descriptive analysis of the form of fiction and representation ultimately serves the purpose of laying down the mode of approximating to said absolute

adequacy. Since the political imperative is categorical, absolute adequacy is by definition impossible, so the approximation is necessarily going to be infinite.

With republicanism being thus brought within the purview of poetics, it should come as no surprise that in the years following the publication of his *Versuch über den Begriff des Republikanismus*, especially during his work on the journal *Athenäum* during the years between 1798 and 1800, Schlegel turned to poetry itself. One of the *Lyceums-Fragmente* ascertains an intrinsic connection between poetry and republicanism: “Poetry is a republican speech; a speech that is its own law and its own end, in which all parts are free citizens and have an equal right to vote” (SCHLEGEL, [1797] 1967, II, p. 155, n. 65). One of the *Athenäums-Fragmente* reformulates the same idea: “Just as a cultured man is not merely an end but also a means for himself and for others, so everything in a cultured poem should also be end and means at the same time. The constitution is republican, whilst it is always allowed that some parts are active and others passive” (SCHLEGEL, [1798] 1967, II, p. 183, n. 118).

Indeed, nothing exhibits the “capacity for communication” better than poetry, and nothing does more justice to the political imperative that “the community of humanity should be,” and that “the ego should be communicated,” as poetry figures as the most elaborate communication between individuals, the subject matter of which, in turn, is nothing but human communications. Not only does poetry connect the poet with the reader or listener, it also creates a community of readers or listeners, “[bringing] together all the minds who love it as friends, and [binding] them together with indissoluble bonds” (SCHLEGEL, [1800] 1967, II, p. 284). In short, it epitomizes “the play of communication and mutual approximation” (*das Spiel der Mitteilung und der Annäherung*), which makes up “the occupation and the power of life” (II, p. 286). Theoretical examination of the nature of poetry, then, would be best suited to illuminating republicanism. Schlegel’s scintillating observations on poetry, particularly those published in the journal *Athenäum*, represent the continuation and culmination of his reflections on republicanism as the principle underlying a world civil order.⁹

Schlegel’s engagement with poetry can be roughly divided into two interrelated parts: first, critical descriptions of authors and poetic works, that is, literary criticism in the strict sense, which he referred to as *Charakteristiken*; and second, more or less prescriptive, apodictic pronouncements on what poetry is supposed to be, that is, literary theory. Both parts address the concerns of the republican constitution, i.e. forms of fiction and representation. The descriptive part, or Schlegel’s literary criticism, scrutinizes the degree to which, to quote again the *Versuch über den Begriff des Republikanismus*, the individual form of fiction and representation as realized by individual authors in individual works approximates to “the absolute (though impossible) adequacy of fiction to the fictionalized, the representation to the represented,” (SCHLEGEL, [1796] 1958, VII, p. 21) whereas the prescriptive part, or Schlegel’s literary theory, develops a model of the attainment of said absolute adequacy, a model which is generally known as romantic universal poetry or transcendental poetry.

In his essay *Über Goethes Meister*, an exemplary exercise in literary criticism, Schlegel seeks, in ever varying approaches, to demonstrate that individual characters in the novel, however idiosyncratically portrayed, represent general human types, providing an “excellent collection of examples for moral and social investigations,” and that the fictional actions and lives come close to “a philosophy that is grounded in a higher

meaning and spirit, and yet very much strives for strict abstraction and sublime generality of all human powers and arts” (SCHLEGEL, [1798] 1967, II, p. 143-144). Goethe’s novel, according to this reading, manages to reach that absolute adequacy of fiction (i.e. fictional actions and lives) to the fictionalized (i.e. spirit or human sociability as such), of representation (i.e. portrayal of individual characters) to the represented (i.e. general moral and social phenomena). This remarkable, almost impossible achievement, Schlegel suggests repeatedly, results from the fact that Goethe’s novel realizes what poetry should be: in it “everything is actually poetry, pure, high poetry” (II, p. 132). The critic makes no secret of the key elements of this “pure, high poetry.” They include the poet’s desire to “represent the representation anew,” “to form the already formed yet again” (II, p. 140).

In highlighting this reflexive quality, which he describes particularly in discussions about literature and theater throughout Goethe’s novel, Schlegel the critic imperceptibly assumes the role of the theorist, as the activity of reflection and self-reflection constitutes the essence of what poetry should be according to his literary theory. In analogy to the Fichtean transcendental philosophy that explores the consciousness of what consciousness is doing, Schlegel envisions a kind of poetry that “would have to be called transcendental poetry”: along with the product (i.e. the poem), it also portrays the producer (i.e. the poet), thereby achieving “the artistic reflection and beautiful self-mirroring” which are to be found “in Pindar, the lyric fragments of the Greeks, the old elegy, and, among the moderns, in Goethe.” In all its representations, such poetry also represents itself, and “is always at once poetry and poetry of poetry” (II, p. 204, n. 238). The “poetic reflection” of transcendental poetry – a kind of poetry that he usually designates by the epithet “Romantic” – unsettles any distinction between representation and the represented, fiction and the fictionalized, as it unceasingly turns representation itself into the object of representation, fiction itself into the fictionalized. In the most famous of the *Athenäum* fragments, he calls this kind of poetry “progressive universal poetry,” saying that “it can hover, on the wings of poetic reflection, in the middle between the portrayed and the portrayer, free from all real and ideal interests, then raise that reflection again and again to a higher power, and multiply it in an endless succession of mirrors” (SCHLEGEL, [1798] 1967, II, p. 182-183, n. 116). In ceaselessly overriding the distinction between representation and the represented, the distinction between the real and the ideal, indeed all distinctions, Romantic universal poetry approximates, in an infinite movement, to the absolute adequacy of the two sides of these distinctions, coming closer and closer to the realization of the political imperative that “the ego should be communicated,” that “the community of humanity should be.” It thus opens up the possibility of universal republicanism. In the words of a participant in the *Gespräch über die Poesie* (1800), in which Schlegel stages infinite poetic reflection by presenting a series of fictional dialogues on poetry among a group of poetry lovers who represent a wide array of different views, it is through the animated, mutually enhancing interplay between various kinds of poetic reflections that “eternal peace” would become possible (SCHLEGEL, [1800] 1967, II, p. 287). In his literary theory, then, Schlegel finally manages to formulate a model of universal republicanism or world civil order, bringing his engagement with the Kantian project of eternal peace to completion.

Schlegel elaborates his conception of Romantic universal poetry as the model of universal republicanism by contrasting it to eighteenth-century neoclassical poetics, which, in its preoccupation with rationally determined laws of poetry, provides a model

for the absolutist state. Whereas Johann Christoph Gottsched, the most prominent representative of neoclassical poetics in Germany, derives great satisfaction from the fact that “the rules put forward in my poetics had served as the yardstick for [prospective poets]” (GOTTSCHEDE, [1730] 1973, VI, p.11), Schlegel spurns any attempt “to preserve or reproduce poetry by such means as rational discourses and doctrines, or even to bring forth, invent, construct it, and to give it punitive laws, as the theory of the art of poetry liked so much to do” (SCHLEGEL, [1800] 1967, II, p. 285). Instead of laying down rules for crafting a perfect poetic work, Schlegel warns the poet against “leaving behind the expression of his characteristic poetry [...] in lasting works,” urging him rather to “strive to expand perpetually his poetry and his view on poetry, and to approximate it to the highest that is possible on earth” (II, p. 286). The second, applied part of Gottsched’s *Versuch einer critischen Dichtkunst* comprises a comprehensive and systematic statement of the laws differentiating some dozen genres from each other, as well as the laws governing their respective mode of functioning. Rather than set forth a code regulating the system of poetic genres, one participant in the *Gespräch über die Poesie* expresses horror at the classification of “fantasy and its works into various rubrics” (SCHLEGEL, [1800] 1967, II, p. 305), while the other participant argues that “poetic genres are actually poetry itself” (II, p. 307), hinting at Schlegel’s definition of the goal of Romantic poetry as “not merely reuniting all separate genres of poetry, but also putting poetry in contact with philosophy and rhetoric” (SCHLEGEL, [1798] 1967, II, p. 182, n. 116). In sum, instead of urging poets to comply with fixed laws, Schlegel declares that the “first law” of Romantic poetry is that “the will of the artist does not suffer any law above himself” (II, p. 183, n. 116). By opposing his conception of romantic universal poetry so decisively to neoclassical poetics, Schlegel throws into sharp relief the most crucial difference between republicanism and the absolutist state of the eighteenth century. Whereas the absolutist state functions in accordance with a system of laws issuing from and enforced by the sovereign will, the republican state always strives to approximate to the general will by constantly mending differences, overcoming distinctions, joining separate parties, as no fixed laws could ever fully do justice to the general will. The former is a static clockwork, and the latter a dynamic system “capable of the highest and the most diverse self-fashioning (*Bildung*),” a system always “in the process of becoming” that “can never be perfected”(II, p. 183, n. 116). Because of this capacity for self-fashioning, “not merely from the inside out but also the outside in” (II, p. 183, n. 116), the individual republican state could join hands with other republican states to form a world republic by applying the same principle of republicanism to the world as a whole. By contrast, because each absolutist state operates with the system of laws determined by its own sovereign, it finds itself permanently at odds with other states, susceptible of no lawful world order on par with its domestic order.

Schlegel’s conception of romantic universal poetry as the realization of a republican world order did not remain a mere theoretical program, but also performed a practical function in the European politics of his time. The ever expanding, ever intensifying self-fashioning of Romantic universal poetry, as well as its infinite self-reflection, imply a “strong yearning for recognizing [itself], for understanding the intention of its masters, for grasping the nature of the work, for finding out the origin of the school, the course of education” (SCHLEGEL, [1800] 1967, II, p. 290). An integral dimension of poetic reflection and poetic self-fashioning is the knowledge of poetry from

the past to the present and all over the world, i.e. the history of poetry as such. Schlegel's *Gespräch über die Poesie*, which stages the program of Romantic universal poetry, features a brief literary history under the title *Epochen der Dichtkunst*. In the following years, this brief history soon blossomed into a full-blown history of European literature from the Greeks to his own time under the title *Geschichte der europäischen Literatur* (1803/1804). The study of European literature across the ages provides compelling evidence for the inner unity of European nations: "European literature forms an interconnected whole, in which all branches are inextricably interwoven. Every element is grounded in the other, and is explained and completed by the other. This goes through all the ages and nations until our times" (SCHLEGEL, [1803/1804] 1958, XI, p. 5). Such an inner unity of Europe, in the words of August Wilhelm Schlegel, differs from "the current predominance of this or that nation acquired through industry, commerce, political arts or weapons," residing rather in "the significance of the contributions that were originally made to culture (*Bildung*)."¹⁰ As part of Romantic universal poetry, the study of the history of poetry thus envisions a European order, a *respublica litteraria* of Europe, which stands in stark contrast, and provides an alternative, to the unending warmongering in the age of sovereign states. In so doing, it adds one unique voice to the political debates about the relations among European states, pointing to a possibility of international order that lies beyond the imagination of the state-centered international law of the time.¹¹

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Notes

¹ This essay is part of a larger project with the working title *Imagining World Order: International Law and Literature from the Renaissance to the Nineteenth Century*. This project is concerned with the ways in which literature joined hands with jurisprudence to imagine world order in the period from the discovery of the new world to the Congress of Vienna – a period known in legal history as the classical age of international law. In many ways, this project ties in with the thriving interdisciplinary research field of *Recht und Literatur* in German studies today. The "Law and Literature"-movement originated in American law schools. The trajectory of this movement can be gauged by the three continuously expanding editions of Richard Posner's *Law and Literature*, published by Harvard University Press in 1988, 1998, and 2009. In recent years, this movement reached literary departments at German universities, growing into a strong current in literary scholarship. This is reflected in book series, e.g., the series *Recht und Literatur* published by Fink Verlag, as well as in special issues of critical journals, e.g., Ulrich Kronauer and Ulrike Zeuch (eds.), *Schwerpunkt: Recht und Literatur um 1800 im Kontext des law and literature movement*, *Internationales Archiv für Sozialgeschichte der deutschen Literatur*, v. 31. n. 1, p. 77-245, e n.2, p. 90-239, 2006; Claude Conter (ed.), *Literatur und Recht im Vormärz*, *Forum Vormärz Forschung Jahrbuch*, v. 15, 2009. In addition to numerous collected volumes and conference proceedings, some major monographs have appeared, which seek to develop a new conception of literature and literary history in light of legal theory and legal history, for example KOSCHORKE, MATALA and LÜDEMANN, 2007; NIEHAUS, 2003; WEITIN, 2009; WEITIN, 2009.

² The modern-language equivalents to *ius gentium* are *law of nations*, *droit des gens*, *Völkerrecht*, etc. Some other terms widely used from the sixteenth century onwards include *ius inter gentes* and *droit public de l'Europe*. The term "international law" was used for the first time by Jeremy Bentham in a manuscript dated between 1786 and 1789, and entitled *Principles of International Law*. See BENTHAM, [1786-1789]

1962, p. 535-571. On the development of these terms, see STEIGER, 1992, p. 97-140. In this essay, I employ the terms *ius gentium*, law of nations, “international law” interchangeably.

³ For recent accounts of Hobbes’ conception of international relations, see ARMITAGE, 2006, p. 219-235; HÜNING, 2000, p. 145-167; MALCOLM, 2002, p.432-452.

⁴ See GREWE, 2000, p. 349-362.

⁵ For a concise account of the rise of dualistic concept of law in the seventeenth century, see SCHRÖDER, 2001, p. 97-117.

⁶ For a general overview of the Kantian critique of Hobbes, see WILLIAMS, 2003.

⁷ All the references to Schlegel in the following are based on *Kritische Friedrich-Schlegel-Ausgabe* and will be marked by a Roman numeral indicating the volume and an Arabic numeral indicating the page. The English translation of *Versuch über den Begriff des Republikanismus* is based on *Essay on the Concept of Republicanism occasioned by the Kantian tract “Perpetual Peace,”* edited by Frederick Beiser (1996, p.93-112).

⁸ Schlegel names four successive components of a universal republicanism: “1) Politicization of all nations; 2) Republicanism of everything politicized; 3) Fraternity of all republicans; 4) The autonomy of each individual state, and the isonomy of all.” (SCHLEGEL, [1796], 1958, v. VII, p. 22.

⁹ Franz-Josef Deiters also argues that Schlegel’s reflections on poetry, particularly in *Gespräch über die Poesie*, represent a consistent extrapolation of the notion of republicanism. See DEITERS, 2007, p. 3-20. However, without locating Schlegel’s notion of republicanism within the context of debates about international law and world order, Deiters comes to a conclusion diametrically opposed to the one developed here. Whereas he regards Schlegel’s theory of Romantic universal poetry as representing the consummation of the political philosophy of the European Enlightenment, I argue that it responds to and resolves the crisis of Enlightenment political philosophy, which in justifying the civil order of a single state inexorably fails to account for the possibility of a lawful world order.

¹⁰ SCHLEGEL, A.W., [1801-1804] 1989, p.12.

¹¹ It is well known that Friedrich Schlegel moved away from republicanism soon after the dissolution of the circle of early romantics in Jena. This also means that the conception of romantic universal poetry as the model of universal republicanism was soon abandoned. “Die Entwicklung der Philosophie in zwölf Büchern”, originally delivered as a series of lectures in Cologne in 1804-1805, concludes with a discussion of the law of nations. There he emphatically spurns universal republicanism in international affairs. Along with this political about-face, romantic universal poetry gives way to imperialism as the realization of world order. See Schlegel, “Die Entwicklung der Philosophie in zwölf Büchern“, v. XII, p. 107-480 and v. XIII, p. 1-175, here v. XIII, p. 165. Ernst Behler aptly sums up this development in Schlegel’s political thought: “Eine andere Bewegungsrichtung des politischen Denkens Friedrich Schlegels besteht in der Wendung seines Interesses vom aufgeklärten Weltstaat ‘polizierter Nationen’ zum europäischen Staatenzusammenhang und von da weiter zum österreichischen Völkerstaat als Modell eines übernationalen Verbandes. ‘Kaisertum’ und ‘Österreich’, freilich in einem symbolischen, überhistorischen Sinne, werden in der Tat die zentralen Ideen der politischen Philosophie Friedrich Schlegels.” “Einleitung,” *Kritische Friedrich-Schlegel-Ausgabe*, v. VII, p. xv-clii, here p. xviii. On Schlegel’s views on the law of nations, particularly on the law of war, after the dissolution of the early romantic circle, see PORTMANN-TINGUELY, 1989, p. 117-155.

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Abstract

This essay argues that early Romantic poetics and criticism can be understood as a reaction to the crisis of international law. Following a brief account of the crisis of international law from Hobbes to Kant, the essay sketches Friedrich Schlegel’s conception of world order, which points a way out of this crisis by replacing the natural-law theory underlying international law with a vision of universal republicanism developed with the help of the concepts of fiction and representation. Universal republicanism, as Schlegel’s poetological writings make it clear, is to be realized in Romantic universal poetry.

Key words: International law, Romanticism, poetics.

Resumo

Neste trabalho, argumentamos que a poética e a crítica no período do início do romantismo podem ser entendidas como reação à crise do direito internacional. A partir de um breve relato do que foi a crise do direito internacional, de Hobbes a Kant, esboçaremos a concepção de ordem mundial exposta por Frederich Schlegel, que aponta uma saída da crise através da substituição da teoria do direito natural subjacente ao direito internacional pela visão de um republicanismo universal, desenvolvido com auxílio dos conceitos de ficção e representação. O republicanismo universal, como os escritos poetológicos de Schlegel deixam transparecer, deve se realizar na poesia universal romântica.

Palavras-chave: Direito internacional, romantismo, poética.